



Agenda Date: 5/31/17
Agenda Item: 7B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

HOWARD M. STEIN, PETITIONER,)	ORDER MODIFYING
)	INITIAL DECISION
)	
V.)	
)	
NEW JERSEY AMERICAN WATER COMPANY, RESPONDENT.)	BPU DOCKET NO. WC16030255U
)	OAL DOCKET NO. PUC 7455-16

Parties of Record:

Howard M. Stein, petitioner, *pro se*
Joshua K. Givner, Esq., on behalf of Respondent, New Jersey American Water Company

BY THE BOARD:

The within matter is a billing dispute between Howard M. Stein ("Petitioner") and New Jersey American Water Company ("Respondent" or "NJAWC"). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-20. Having reviewed the record, the Board of Public Utilities ("Board") now **MODIFIES** the Initial Decision rendered on March 2, 2017 ("ID") as follows.

STATEMENT OF THE CASE

On March 23, 2016, Howard M. Stein filed a petition with the Board regarding a billing dispute with NJAWC. Specifically, he disputed an outstanding balance of \$1,561.15 due to NJAWC resulting from charges for water service provided to Mr. Stein's residence in Howell, New Jersey from June 2015 through October 2015. On April 22, 2016, NJAWC filed an answer to the petition. Consequently, on May 17, 2016, the Board transferred the matter to the Office of Administrative Law ("OAL") for a hearing as a contested matter pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -23.

On January 30, 2017, the Honorable Susan M. Scarola, ALJ, presided over an evidentiary hearing in this matter. Collen Clays, a Service Delivery Specialist for NJAWC testified on behalf of Respondent. Ms. Clays identified exhibits R-1 through R-24, consisting of Mr. Stein's bills from January 2014 through December 2015, as well as Exhibit R-25, a record of the water usage for that period. (T.6-8) She testified that she first learned of this billing dispute when Mr. Stein filed a complaint with the Board. At that time, NJAWC had interrupted water service for non-payment.

Ms. Clays stated that on September 23, 2015, NJAWC sent a service technician to Mr. Stein's residence. She identified exhibit R-26, a copy of the work order for the service visit, which was entered into evidence. The work order indicated that the customer had a leak on the customer's side of the meter, which was the customer's responsibility to repair. (T.10-12) Ms. Clays testified that subsequently, Mr. Stein paid \$200 to have his service restored and has since remained current with his payments to NJAWC. (T.9) Prior to the payment of \$200, Mr. Stein owed NJAWC an outstanding balance of \$1,761.15. (Exhibit R-24) In light of the discovered leak, NJAWC offered Mr. Stein a courtesy leak adjustment which he rejected.

Lastly, Ms. Clays testified with respect to exhibit R-27, the results of a meter test. According to Ms. Clays, Exhibit R-27 indicates that at Mr. Stein's request, a meter test was performed by the Board which found that the meter was accurate. (T.13-14)

Mr. Stein testified on his own behalf. Mr. Stein primarily argued that the recorded water usage was astronomically high and was not consistent with the amount of people at his residence. On cross-examination, Mr. Stein stated that he was the customer of record, that he had the leak repaired in October 2015, after which his water usage decreased, that he did not dispute the results of the meter test, and that he rejected the courtesy leakage adjustment from NJAWC. (T.22-23)

On April 8, 2016, ALJ Scarola issued an Initial Decision. She determined that the following facts were not in dispute: 1) the Petitioner's bills for water service from June through October 16, 2015 totaled \$1,761.15; 2) NJAWC determined that there was a leak on the customer-side of the meter which Petitioner repaired; 3) in November 2015, Petitioner's service was shut-off for failure to pay his water bill however Petitioner made a payment of \$200 to restore water service; 4) Petitioner has paid his bills, "but the outstanding amount of \$1,761.15 remains in dispute"; 5) Petitioner found NJAWC's leak-adjustment offer to be unacceptable; 6) the Board tested the meter and the results indicated that the "meter was accurate and reporting water flow within reportable limits," and Petitioner did not dispute this finding; and 7) no evidence was produced to show that the meter readings were inaccurate. (ID at 2-3.)

ALJ Scarola found: "petitioner has not proved by a preponderance of the evidence that his NJAWC water bills were incorrect or inaccurate for the time period from June through October 2015. Accordingly, the outstanding bill of \$1,761.15 remains the responsibility of the owner." (ID at 5.) Consequently, she dismissed the petition.

The Board received the Initial Decision on March 3, 2017. Within the statutory period, the Board requested a 45-day extension pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8. The request was granted and, therefore, the time limit for the Board to render a Final Decision is extended until June 1, 2017.

On March 14, 2017, Mr. Stein filed exceptions to the Initial Decision with the Board. He stated that he disagrees with ALJ Scarola's decision that he was responsible for the outstanding balance of \$1,761.15. Mr. Stein noted that he made a payment of \$200 in October 2015 reducing the outstanding balance to \$1,561.15. (Petitioner's Exception pg. 1) Mr. Stein also indicated that he believed that NJAWC's offer of settlement at the OAL hearing was discriminatory and punitive. Lastly, Mr. Stein argues that pursuant to N.J.A.C. 14:3-7.6(g), the Board should consider the customer's established water consumption to reduce the amount Mr. Stein owes.

NJAWC replied to Mr. Stein's exceptions on March 20, 2017. NJAWC argued that Mr. Stein "was responsible for the water consumption at issue" because the leak was on his side of the service. (NJAWC's Reply to Petitioner's Exception pg. 1) In addition, NJAWC noted that Mr. Stein failed to present a basis to warrant rejection of the Initial Decision.

DISCUSSION

N.J.A.C. 14:3-7.1 provides that the customer of record "shall be responsible for payment of all utility service rendered."

The Company presented testimony and exhibits regarding the calculation of the bills for water service. In addition, the Company presented testimony and exhibits indicating that it discovered a leak that was likely the cause of increased consumption. Mr. Stein admitted that the leak was on the customer-side of the meter, that he had the leak repaired, and that consumption was significantly reduced after the leak was repaired.

At the hearing and in his exceptions, Mr. Stein argues that the increased consumption was inconsistent with his usage and that there was no apparent leak which caused visible flooding. However, these assertions do not provide any support to Mr. Stein's burden of proof in light of his admissions.

In addition, citing to N.J.A.C. 14:3-7.6(g), he argues that the Board should consider his past established consumption in making its determination. N.J.A.C. 14:3-7.6(g) states:

When the amount of an electric, gas, water or wastewater bill is significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in the evaluation of whether the bill is correct and appropriate.

In this case, there was an apparent explanation for the increase in consumption, i.e., a customer-side leak. As a result, no consideration need be given to the customer's established consumption.

Consequently, ALJ Scarola conclusion's that Mr. Stein failed to prove by a preponderance of the evidence that his water bills were incorrect or inaccurate from June 2015 to October 2015 is appropriate and is **HEREBY ADOPTED** by the Board.

However, after reviewing the entire record, the Board **HEREBY MODIFIES** two of ALJ Scarola's findings.

Specifically, the Board **MODIFIES** the ALJ's determination that the Board tested the meter and concluded that it was accurate. (ID at 3.) Although Ms. Clays testified that the Board tested the meter, Exhibit R-27 indicates that Board Staff supervised and witnessed the meter test. Exhibit R-27 also shows that Board Staff advised Mr. Stein that the meter was found to be within the prescribed limits of accuracy. Consequently, the Board **FINDS** that Board Staff witnessed and verified the meter test and **FINDS** that the meter was accurate and operating within acceptable limits.

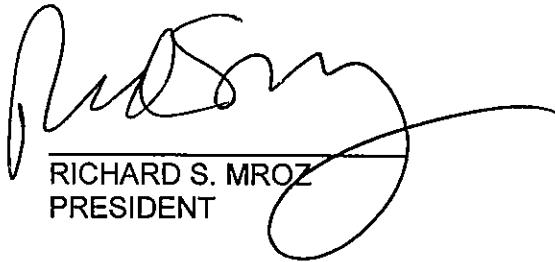
The Board also **MODIFIES** the ALJ's determination that "the outstanding bill of \$1,761.15 remains the responsibility of the petitioner." (ID at 5.) The initial balance in dispute was \$1,761.15. However, the testimony and the exhibits indicate that Petitioner paid \$200 of this balance. (T.9; T.24; Exhibit R-24) Moreover, Petitioner's Exceptions disputed the finding that he was responsible for \$1,761.15, noting that "there was a payment of \$200.00 made in October 2015 which reduces the disputed amount to 1,561.15." (Petitioner's Exception pg. 1) NJAWC did not respond directly to this issue in its response. Consequently, the Board **FINDS** the outstanding bill of \$1,561.15 remains the responsibility of the Petitioner.

Therefore, the Board **HEREBY ADOPTS** the Initial Decision **AS MODIFIED** and the petition in this matter is **HEREBY DISMISSED**.

This order shall be effective on June 10, 2017.

DATED: 5/31/17

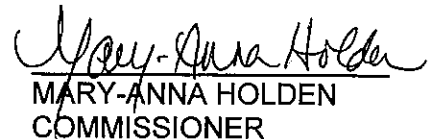
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER




MARY-ANNA HOLDEN
COMMISSIONER



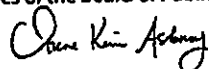
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities



HOWARD M. STEIN

V.

NEW JERSEY AMERICAN WATER COMPANY
BPU DOCKET NO. WC16030255U
OAL DOCKET NO. PUC 7455-16

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BOARD OF PUBLIC UTILITIES

MAR 03 2017

MAIL RECEIVED



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

MAR 03 2017

CLS

INITIAL DECISION

OAL DKT. NO. PUC 7455-16

AGENCY DKT. NO. WC16030255U

HOWARD M. STEIN,

Petitioner,

v.

NEW JERSEY AMERICAN

WATER COMPANY,

Respondent.

Howard M. Stein, petitioner, pro se

Joshua K. Givner, Esq., for respondent (Hurvitz & Waldman, attorneys)

Record Closed: January 30, 2017

Decided: March 2, 2017

BEFORE **SUSAN M. SCAROLA**, ALJ:

STATEMENT OF THE CASE

Petitioner, Howard M. Stein, filed a complaint before the Board of Public Utilities (BPU) disputing the billing charges of respondent, New Jersey American Water Company (NJAWC), for water service provided to his residence on Timberline Drive, Howell, New Jersey, in particular from June through October 2015.

CLS
V. Haynes
D. Lee Thomas
E. Hartsfield
J. Ford
R. Lambert
R. Matos
H. Austerlitz
J. Gertsman
B. Agee
C. Vachier

PROCEDURAL HISTORY

On March 23, the petitioner filed a complaint with the BPU. This matter was transmitted by the BPU to the Office of Administrative Law (OAL), where it was filed on May 17, 2016, for hearing as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. A prehearing conference was held on June 16, 2016.¹ The hearing was held on January 30, 2017, after which the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute:

1. The petitioner receives residential water service from NJAWC. Starting in mid-2015, the petitioner's water usage, as reflected in his billing statements, soared. His bills for water service from June through October 16, 2015, totaled \$1,761.15.
2. The petitioner then made inquiry of NJAWC because of the apparently excessive amount of water used and requested an investigation. His water line was inspected by NJAWC on September 23, 2015, and it was determined that there was a leak in the line between the meter and the residence, which would be the petitioner's responsibility to maintain and repair. The petitioner then arranged for repairs to the water line, which were completed shortly thereafter.²
3. In the meantime, the petitioner did not pay his water bill. In November 2015, service to the residence was shut off; the petitioner then made a payment of \$200 and his service was restored. The petitioner has paid his current water bills, but the outstanding amount of \$1,761.15 remains in dispute and is the subject of this hearing.

¹ The matter had previously been assigned to another judge.

² Subsequent billing statements showed a substantial reduction in water usage and billing amounts.

4. NJAWC offered the petitioner a courtesy adjustment to the bill for the leak, but this offer was not acceptable to the petitioner.

5. As the petitioner could not believe that his water usage could be so high because of a leak, he contacted the PUC and arranged to have the meter tested to ensure it was giving accurate readings.³ The meter was tested by the PUC on July 28, 2016. The test result showed that the meter was accurate and reporting water flow within acceptable limits. The petitioner did not challenge this conclusion of the PUC, nor did he arrange for independent testing of the meter.

6. No other evidence was presented to prove that the meter readings were not accurate during the contested period of water service to the residence.

LEGAL ANALYSIS AND CONCLUSION

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to the matter before the OAL. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

The issue here is whether the petitioner has been properly charged for water service provided to him by the respondent.

N.J.A.C. 14:3-7.6 provides for disputes as to bills:

- (a) A customer that disputes a charge shall so notify the utility, and shall pay all undisputed charges.
- (b) If the utility and the customer do not resolve the dispute, the utility shall notify the customer that:

³ The petitioner questioned where so much water could have gone.

1. The customer may make a request to the Board for an investigation of the disputed charge;
2. The request for investigation shall be made within five business days after the customer contacts the utility to dispute the charges; and
3. If the customer does not make a request for investigation within five days, the customer's service will be discontinued for nonpayment in accordance with N.J.A.C. 14:3-3A.

(c) Once a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease until Board staff notify the utility and the customer that the dispute has been resolved in accordance with (e) below.

(d) Each utility shall provide the Board's Division of Customer Assistance with responses to written complaints within five days of receipt of the complaint, and within three days of receipt of verbal complaints.

(e) When Board staff have determined that a formal or informal dispute has been resolved, Board staff shall notify the utility. If the resolution of the dispute results in discontinuance of the customer's service, the utility shall provide notice to the customer in accordance with N.J.A.C. 14:3-3A.3 before service may be discontinued.

(f) In appropriate cases the Board may require that the customer place all or a portion of disputed charges in escrow pending the resolution of the dispute.

(g) When the amount of an electric, gas, water or wastewater bill is significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in the evaluation of whether the bill is correct and appropriate.

[Emphasis added.]

Here, the established consumption history to June 2015 was not in dispute. From June through October, however, consumption rose substantially. This resulted in larger than usual bills starting with the July bill and the subsequent discovery of the leak. NJAWC has presented proof that the leak was not its responsibility, but, rather, was that of the petitioner, who arranged for the leak to be repaired in September. Pursuant to N.J.A.C. 14:3-4.5, the meter was later tested for accuracy by the PUC and was found to be within acceptable limits. No challenge was made by the petitioner that the PUC's conclusion was not correct. Accordingly, the amount of usage reflected in the billing statements is accepted as correct and appropriate.⁴

I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that his NJAWC water bills were incorrect or inaccurate for the time period from June through October 2015. Accordingly, the outstanding bill of \$1,761.15 remains the responsibility of the petitioner.

ORDER

It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

⁴ The petitioner seeks a more substantial billing adjustment than the one offered to him by NJAWC. No evidence has been presented to support such a substantial discount where the meter accurately calculated usage.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 2, 2017

DATE



SUSAN M. SCAROLA, ALJ

Date Received at Agency:

Date Mailed to Parties:

SMS/cb

APPENDIX

WITNESSES

For petitioner:

Colleen Claeys, NJAWC Service Delivery Specialist

For respondent:

Howard M. Stein

EXHIBITS

For petitioner:

- P-1 Summary water usage from October 2014 through October 2015
- P-2 Summary water usage from October 2015 through February 2016
- P-3 Summary water usage from April 2015 through August 2015
- P-4 Summary water usage from April 2014 through August 2014
- P-5 Billing statement from October 21 to November 19, 2014
- P-6 Billing statement November 20 to December 17, 2014
- P-7 Billing statement December 18, 2014, to January 19, 2015
- P-8 Billing statement January 20 to February 18, 2015
- P-9 Billing statement February 19 to March 19, 2015
- P-10 Billing statement March 20 to April 17, 2015
- P-11 Billing statement April 18 to May 18, 2015
- P-12 Billing May 19 to June 16, 2015
- P-13 Billing June 17 to July 17, 2015
- P-14 Billing July 18 to August 18, 2015
- P-15 Billing August 19 to September 17, 2015
- P-16 Billing September 18 to October 16, 2015

- P-17 Billing October 17 to November 18, 2015
- P-18 Bill due January 8, 2016
- P-19 Bill due February 11, 2016
- P-20 Bill due March 14, 2016
- P-21 Account information
- P-22 Account information
- P-23 Account information
- P-24 Account information
- P-25 Account information
- P-26 Account information
- P-27 Account information
- P-28 Account information
- P-29 Account information
- P-30 Account information
- P-31 Account information
- P-32 Account information
- P-33 Billing statement September 20 to October 21, 2013
- P-34 Billing statement October 22 to November 20, 2013
- P-35 Billing statement November 21 to December 18, 2013
- P-36 Billing statement December 19, 2013, to January 21, 2014
- P-37 Billing statement January 22 to February 19, 2014

For respondent:

- R-1 Billing statement November 21 to December 18, 2013
- R-2 Billing statement December 19, 2013, to January 21, 2014
- R-3 Billing statement January 22 to February 19, 2014
- R-4 Billing statement February 20 to March 20, 2014
- R-5 Billing statement March 21 to April 17, 2014
- R-6 Billing statement April 18 to May 19, 2014
- R-7 Billing statement May 20 to June 18, 2014
- R-8 Billing statement June 19 to July 18, 2014
- R-9 Billing statement July 19 to August 19, 2014

- R-10 Billing statement August 20 to September 18, 2014
- R-11 Billing statement September 19 to October 20, 2014
- R-12 Billing statement October 21 to November 19, 2014
- R-13 Billing statement November 20 to December 17, 2014
- R-14 Billing statement December 18, 2014, to January 19, 2015
- R-15 Billing statement January 20 to February 18, 2015
- R-16 Billing statement February 19 to March 19, 2015
- R-17 Billing statement March 20 to April 17, 2015
- R-18 Billing statement April 18 to May 18, 2015
- R-19 Billing May 19 to June 16, 2015
- R-20 Billing June 17 to July 17, 2015
- R-21 Billing July 18 to August 18, 2015
- R-22 Billing August 19 to September 17, 2015
- R-23 Billing September 18 to October 16, 2015
- R-24 Billing October 17 to November 18, 2015
- R-25 Summary of monthly water usage from January 2014 through December 2015
- R-26 Customer Investigative Work Order
- R-27 Letter from BPU dated July 28, 2016