



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

ANSELMO MARQUEZ,)	ORDER ADOPTING
Petitioner,)	INITIAL DECISION
)	
v.)	
)	
MIDDLESEX WATER COMPANY,)	Docket No. WC17090970U
Respondent.)	OAL Docket No. PUC 04362-18

Parties of Record:

Anselmo Marquez, petitioner *pro se*
Jay L. Kooper, Esq., for Respondent, Middlesex Water Company

BY THE BOARD:

This matter is a billing dispute between Anselmo Marquez ("Petitioner") and Middlesex Water Company ("Middlesex Water" or "Respondent"). This Order sets forth the procedural history and factual background 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 **ADOPTS** the Initial Decision rendered on November 2, 2018, as follows.

PROCEDURAL HISTORY

On or about September 11, 2017, Petitioner filed a petition with the Board of Public Utilities disputing charges for water service rendered at his Colonia, New Jersey residence. The petition alleged invoices from Respondent in March 2017 and May 2017 were excessively high and did not accurately reflect the amount of water used by his home during these periods.

The Petition also recounted a series of events beginning in April 2017, wherein Petitioner requested Respondent conduct testing of his meter to determine if it was accurately measuring water used by his home. The petition claims Respondent's service representatives came to his home, examined the meter, and informed him the meter would need to be replaced. Despite this, the petition continues, the charges from March 2017 were never reduced, and over \$800 in additional charges were assessed in May 2017.

On September 27, 2017, Respondent filed an answer to the petition and denied Petitioner had been erroneously charged for water service. In the answer, Respondent explained that Petitioner's meter had been tested and was determined to be accurately measuring Petitioner's water usage. This included an inspection on Petitioner's premises on April 10, 2017, wherein evidence of a leak was found, and a test¹ at Respondent's meter testing facility on May 12, 2017, which revealed the meter was accurately recording the flow of water.

Subsequently, on March 26, 2018, this matter was transmitted to the Office of Administrative Law ("OAL") for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -23. This matter was assigned to Administrative Law Judge ("ALJ") Susan Olgati. Respondent filed a motion for a summary decision on June 5, 2018, but this motion was denied by order dated August 31, 2018.

This matter was heard during a single-day hearing on September 21, 2018. At the hearing, Respondent elicited testimony from two witnesses: Joseph Herits, Middlesex Water's manager of customer service, who testified about the company's billing practices and the timeline of events in this case; and Glen Porbansky, the training coordinator at Middlesex Water who performed the test of Petitioner's water meter. Respondent offered into evidence all disputed invoices, plus the results of the water meter test.² Petitioner elicited testimony from his wife, Tina Ramos-Marquez, about her household's experience getting service from Middlesex Water over the years and about the disputed bills. The record was closed at the conclusion of the hearing.

On November 2, 2018, ALJ Olgati issued her Initial Decision in favor of Respondent, denying the relief sought by Petition and dismissing the petition. No exceptions were filed.

By Order dated November 23, 2018, the Board obtained a forty-five day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

STATEMENT OF FACTS

On April 5, 2017, Respondent called the Middlesex Water call center complaining of a high water bill and to request a meter inspection. (1T 9:25-10:7).³ At issue was Petitioner's March 2017 bill, which indicated a payment of \$751.00 was owed for the billing period of November 18, 2016 through February 21, 2017. (R1; 1T 11:16-12:4). Middlesex Water sent a representative to inspect Petitioner's meter the following week. (1T 13:19-21). This employee inspected the meter and found it to be operating properly. (1T14:2-14).

¹ "Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months." N.J.A.C. 14:3-4.5(a). For a fee of \$5.00, a customer may request a Board inspector be present at the test. N.J.A.C. 14:3-4.5(e), (f).

² Petitioner submitted one exhibit into evidence, marked as P-1. Respondent submitted eight exhibits, R-1 through R-9. When the file was returned from the OAL, however, exhibit R-5 was missing from the file. This exhibit was a letter dated May 19, 2017, that was sent to Petitioner. (1T 24:21-25:13). This letter informed Petitioner that Respondent was unable to get a remote reading from Petitioner's meter. (1T 25:25-7). This letter concerned a replacement meter installed after Petitioner's meter was removed for testing, not the meter Petitioner alleged to be inaccurate. (1T 25:18-26:22).

³ 1T refers to the transcript of the September 21, 2018 hearing.

The following day Petitioner again contacted Middlesex Water and requested his meter be replaced and the original meter tested. (1T 15:24-16:5). Respondent removed Petitioner's meter for testing on May 12, 2018.⁴ (1T 19:9-11). Testifying witness Glen Porbansky tested Petitioner's meter the following day. (1T 44:7-10). His testing revealed Petitioner's meter was registering at "100.4% accuracy at the intermediate flow and 100.2% at the full flow." (R-3; 1T 46:2-8). Pursuant to N.J.A.C. 14:3-4.6(a), there is a 1.5% regulatory threshold for water meter accuracy; in other words, the permissible range of accuracy is between 98.5% and 101.5%. These findings were reported to Petitioner by Respondent under letter dated May 19, 2017. (R-3; 1T 22:4-6).

Petitioner received his next bill from Respondent on May 22, 2017, for water service between February 21, 2017 and May 19, 2017. (R-4; 1T 22:7-22). This bill for \$1,585.53 represented the sum of the \$751 from the March 2017 bill and additional charges in the amount of 834.53 for the February through May billing cycle. (R-4; 1T 23:9-21).

On June 2, 2017, Petitioner informed Respondent that he was moving from his residence to another home on the same street, also within Middlesex Water's service territory. (1T 27:2-13). Petitioner and Respondent agreed to set up a payment plan to address the March and May charges at Petitioner's former address, and to transfer service to the new address. (1T 27:11-25). Petitioner then made an initial payment of \$375 toward the outstanding bill and service was transferred between the residences. (1T 27:22-28-6).

On June 16, 2017, Respondent sent petitioner a "final bill" for water services at his former address; the total outstanding was \$1,218.96, which reflects the \$375 payment, plus an additional \$8.46 in charges accrued between May 19 and June 15. (R-6; 28:23-29:7). To date, the final bill for \$1,218.96 has not been paid. (R-6; 1T 31:21-10).

DISCUSSION AND FINDINGS

Upon her review of the testimony and exhibits entered into evidence at the September 21, 2018 hearing, ALJ Olgiate found, inter alia, the following facts: (1) the April 10, 2017 inspection of Petitioner's meter revealed that it was working properly and had no leaks; and (2) that the meter test performed on May 12, 2017 confirmed the meter was accurately measuring water used by Petitioner. (ID at 6).

ALJ Olgiate described Petitioner's burden in bringing this matter is to establish by a preponderance of the evidence that the billings disputed by Petitioner are indeed inaccurate. (ID at 7). She concluded Petitioner had failed to provide any legally competent evidence showing that his meter was inaccurate, or that Respondent was otherwise improperly billing his account. (ID at 7). In fact, the judge noted the only evidence produced by Petitioner was the testimony of petitioner's wife, and her belief that the subject bills were in error. (ID at 7). ALJ Olgiate characterized her testimony as "sincere" but unsupported by other evidence. (ID at 7).

⁴ Removal of Petitioner's meter was originally scheduled for April 21, but was delayed due to an issue with a "stuck" valve. (1T 17:2-9). The issue was resolved on May 8, and the meter was removed on May 12. (1T 18:1-7, 19:2-11). Witnesses Herits and Porbansky both testified that the issue with the value was entirely unrelated to the accuracy of a meter. (1T 17:22-25, 49:5-20).

bear the burden of proof by a preponderance of evidence of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is preponderate if it establishes reasonable probability that the facts alleged are true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959).

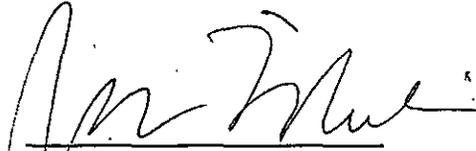
Outside of Petitioner's stated belief that Respondent's billing was excessive or in error, and his wife's testimony to this same effect, Petitioner failed to present any testimony or documentary evidence to rebut the testing performed by Middlesex Water. Consequently, ALJ Olgiati's conclusion that Petitioner failed to prove by a preponderance of the evidence that his water meter was inaccurate is **HEREBY ADOPTED** by the Board.

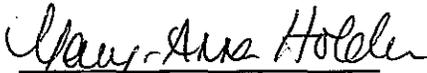
In conclusion, after careful review and consideration of the entire record, the Board **HEREBY ADOPTS** the Initial Decision and **ORDERS** that the petition in this matter be **DISMISSED**.

This order shall be effective January 27, 2019.

DATED: 1/17/19

BOARD OF PUBLIC UTILITIES
BY:

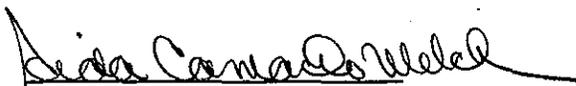

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COMMISSIONER


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COMMISSIONER


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COMMISSIONER


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ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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

ANSELMO MARQUEZ

v.

MIDDLESEX WATER COMPANY

BPU DOCKET NO. WC17090970U

OAL DOCKET NO. PUC 05362-18

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 04362-18

AGENCY DKT. NO. WC17090970U

ANSELMO MARQUEZ,

Petitioner,

v.

MIDDLESEX WATER COMPANY,

Respondent.

Anselmo Marquez¹, petitioner, pro se

Jay L. Kooper, Vice President, for respondent pursuant to N.J.A.C. 1:1-5.4(a)(5)

Record Closed: September 21, 2018

Decided: November 2, 2018

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

Petitioner, Anselmo Marquez filed a billing dispute with the Board of Public Utilities (BPU) regarding water bills issued to him by respondent, Middlesex Water Company (MWC). Petitioner believes the bills to be excessive and issued in error.

¹ The transmittal lists Tina & Anselmo Marquez as the petitioners. However, based on objections from respondent regarding Mrs. Marquez's standing to bring the claim, she agreed to withdraw/be removed as a petitioner.

PROCEDURAL HISTORY

On March 26, 2018, this matter was transmitted to the Office of Administrative Law, for a hearing as a contested case. N.J.S.A. 54:14B-1 to -15 and N.J.S.A. 14F-1 to -13. On June 5, 2018, respondent filed a Motion for Summary Decision. Thereafter, responsive pleadings were filed by petitioner. By Order dated August 31, 2018, the Motion for Summary Decision was denied. The matter was heard on September 21, 2018, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute, accordingly I **FIND**:

1. Petitioner and his wife Tina resided at a home on Lxxx Avenue in Colonia, New Jersey.
2. Petitioner received a MWC bill dated February 22, 2017, in the amount of \$751 for water service at his home. The bill indicated that 169 cubic feet (126,412 gallons) of water had been used by petitioner during the billing period. (R-1.)
3. Petitioner contacted MWC to dispute the bill.
4. On April 10, 2017, a MWC representative went to petitioner's home to inspect the meter.
5. The meter was scheduled for removal on April 21, 2017. The meter was not removed on that date. It was eventually removed on May 12, 2017, and tested the next day.
6. By letter dated May 19, 2017, MWC advised petitioner that:

The meter test indicates the meter was registering 100.4% at the intermediate flow and 100.2% at the full flow. The meter was registering within the acceptable limits of accuracy (98.5% to 101.5%) established by the New Jersey Board of Public Utilities. Our investigation of your water service account indicates we have billed you properly for the water actually delivered through the meter. (R-3.)

7. Petitioner received from MWC a second letter dated May 19, 2017, advising that it had been unable to obtain an accurate reading from the remote reading device at petitioner's home and that the device needed to be repaired or replaced. (R-5.)
8. Petitioner received a MWC bill dated May 22, 2017, in the amount of \$1,585.53. The current charges were \$834.53 and the balance forward was \$751. The bill indicated that 189 cubic feet (141,372 gallons) of water had been used by petitioner during the billing period. (R-4.)
9. On or about June 2017, petitioner moved to another home.²
10. Petitioner paid \$375 towards the unpaid balance owed to MWC. The remaining balance owed to MWC for service at petitioner's former residence is \$1,218.98. (R-6.)

Joseph Herits (Herits) is the Manager of Customer Service for MWC and is responsible for overseeing its call center. He has been employed by MWC for ten years. He testified that he supervised the investigation into petitioner's complaint regarding his water bill. On April 5, 2017, petitioner contacted MWC to dispute the high bill he received on or about February 22, 2017, and to request a meter inspection. On April 10, 2017, a meter inspection was conducted at petitioner's home. The inspection revealed that there was no sign of a leak and that the meter was working properly. On April 11, 2017, petitioner requested that his meter be removed for testing. The meter removal was scheduled for April 21, 2017, however MWC was not able to remove the

² The new home was also located on Lxxx Ave in Colonia.

meter on that date because of a "stuck" shut-off valve. Herits explained that typically in situations of a stuck shut-off valve, another agent is sent to remove any debris that may be causing the valve to be inoperable. Herits explained that a stuck shut-off valve does not mean that the meter is broken or inaccurate. He also explained that without the results of a meter test, a field representative would not be able to determine whether or not a meter was operating properly.

On May 8, 2017, debris was removed from the shut off valve at petitioner's property. No one was at the Marquez home so MWC left a door hanger advising that the curb box work (cleaning debris for the shut off valve) had been completed and that petitioner should schedule a meter exchange. The meter was removed on May 12, 2017, and was tested the following day. On May 19, 2017, MWC sent petitioner a letter advising that the removed meter had been tested and was accurate. MWC sent petitioner a second letter dated May 19, 2017, regarding its inability to get a remote reading on the new meter that had been installed. Herits noted that the May 22, 2017, MWC bill (R-4) confirmed that there was a "zero-read"³ for the new meter.⁴ He also explained that the remote meter reading issue referred to in the May 19, 2017, letter was unrelated to the high water bill.

On June 2, 2017, petitioner advised MWC that he was moving to a new address on Lxxx Avenue. Petitioner paid \$375 towards his outstanding balance and the remaining balance was transferred to the account for his new address. Petitioner received a final bill for his old address reflecting a balance of \$1218.98. (R-6.) On June 6, 2017, MWC received an email from petitioner's wife, Tina Marquez regarding their high bill. On June 12, 2017, Herits called Mrs. Marquez to advise that the amount billed was correct and offered to go through his findings. Mrs. Marquez advised that they intended to fight the bill.

³ Recorded meter reading was "0."

⁴ The bill reflects that the old meter # 76066576 had a present meter reading of 710 and usage was at 189 cubic feet (CCF) while the new meter # 81548108 had a present meter reading and usage of "0." (See R-4.)

On cross-examination, Herits clarified that the May 8, 2017, door hanger related to work done in connection with cleaning debris for the shutoff valve. (P-1.) His notes reflected that on May 8, 2017, MWC cleaned the outside curb line so they could operate the shut off valve.

Gary Porbansky (Porbansky) is a training coordinator for MWC. He testified that he has worked for MWC for twenty-three years and that he has eleven years of experience testing water meters. He explained that during a meter test, they test water flow at full flow, (ten gallons per minute) which is a high usage rate such as when someone is filling a pool and at intermidate flow, (two gallons per minute) which is an average usage rate such as when someone is washing dishes. Porbansky conducted the testing on petitioner's meter. The results of the meter testing confirmed that the meter was within the accuracy range. (R-3.) The equipment used to perform the testing was registered with, and deemed accurate by, the State of New Jersey, Office of Weights and Measures. (R-7 and R-8.) He explained that a stuck shut-off valve is unrelated to the functioning or accuracy of a meter.

On cross-examination, in response to petitioner's suggestion that MWC may have mistakenly read another customer's meter instead of his, Probansky explained that would not happen because the meters are tagged when removed and he verifies that the tags match the appropriate meters.

Tina Ramos Marquez (Mrs. Marquez), testified that she and the petitioner had lived at their address on Lxxx Avenue for eleven years. Prior to receiving the water bill for \$751, their highest bill had been \$235.15. She contacted MWC regarding the bill and they advised they would send someone to inspect the meter. The MWC representative who came to petitioner's house advised that there was a problem with the meter and it needed to be exchanged. Mrs. Marquez did not request the meter to be removed. It was removed because there was a problem. It did not make sense to Mrs. Marquez that their bill would remain the same for eleven years and then jump so

high. She testified that she is aware of other customers who were overcharged by MWC.⁵

On cross-examination, Mrs. Marquez acknowledged that she did not have any experience in the water industry.

Based upon the testimonial and documentary evidence at the hearing, and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I **FIND** the following additional **FACTS**:

1. The April 10, 2017, inspection of petitioner's meter revealed that there were no leaks and the meter was working properly.
2. Petitioner requested that his meter be removed for testing.
3. The meter was not able to be removed on April 21, 2017, as scheduled, because the shut-off valve was inoperable.
4. On May 8, 2017, MWC cleaned the outside curb line which enabled the shut-off valve to become operable and the meter to be removed.
5. The result of the May 12, 2017, meter test confirmed that the meter was accurate and petitioner had been properly billed for the water delivered. (R-3.)
6. In or about June 2017, petitioner and his wife moved to another home.
7. On or about June 12, 2017, Herits contacted Mrs. Marquez and confirmed that their MWC bill was accurate.

⁵ To the extent that petitioner seeks to address claims raised by other MWC customers, he lacks standing to do so.

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 those matters that are before the Office of Administrative Law. 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 likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

Here, petitioner argued that his water bills must have been issued in error and that the meter was not working properly as his prior bills had always been significantly lower. He argued that he and his wife had been told by a MWC representative that there was a problem with the meter. He further argued that the door hanger left by MWC demonstrated that there was a problem with the meter and that it needed to be replaced. Petitioner further suggested that MWC may have mistakenly read another person's meter in place of his. He also argued that MWC had incorrectly overcharge other customers.

Petitioner did not provide any legally competent evidence to support his claim that the MWC bills were issued in error or that the meter was not working properly. At hearing the only witness produced was petitioner's wife who shared his sincere but unsupported beliefs regarding the bills and the meter. The only evidence produced at hearing was the door hanger left by MWC on May 8, 2017. Petitioner's beliefs regarding the accuracy of the bills, the accuracy and the operability of the meter, and the meaning of the door hanger are however, insufficient to overcome the testimony of Porbansky regarding the results of the meter testing.

Additionally, while petitioner may have found the two letters issued by MWC on May 19, 2018, to be confusing and contradictory, Herits explained that the two letters dealt with different meters. The one letter concerned the test results and confirmed the accuracy of, the original meter (#76066576) that had been removed on May 12, 2017

and tested the following day. (R-3.) The second letter concerned MWC's inability to get a remote reading on the new meter that had been installed on May 12, 2017. (R-5.) Herits' testimony as to this point is further supported by the documentary evidence in the record.⁶

Therefore, I **CONCLUDE** that the meter removed from petitioner's home was accurate and that petitioner is responsible for paying MWC the outstanding balance owed.

ORDER

All relief sought by petitioner is **DENIED** and the action filed by petitioner is **DISMISSED**.

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

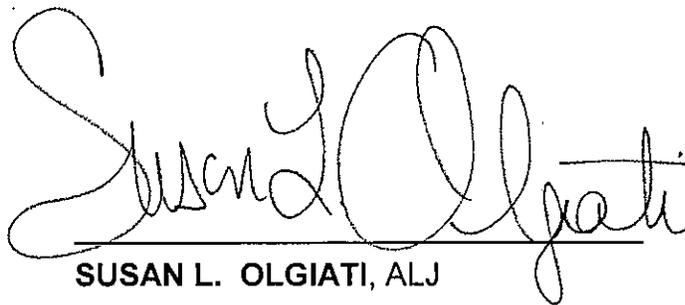
This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is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

⁶ The MWC invoice dated May 22, 2017, shows the new meter # 81548108 as having a reading of zero for the time period May 12, 2017, to May 19, 2017. This invoice further shows that the meter in place prior to May 12, 2017, was meter # 76066576. (See R-4.) The MWC invoice dated June 16, 2017, shows the new meter # 81548108 as having a reading of zero for the time period May 19, 2017, to June 15, 2017. (See R-6.)

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.

November 2, 2018

DATE



SUSAN L. OLGATI, ALJ

Date Received at Agency:

Date Mailed to Parties:

/s/

APPENDIX

LIST OF WITNESSES

For petitioner:

Anselmo Marquez

Tina Ramos-Marquez

For respondent:

Joseph Herits, Middlesex Water Company

Glen Probansky, Middlesex Water Company

LIST OF EXHIBITS

For petitioner

P-1 MWC hang tag re: repair of remote reading system, 5/8/17

For respondent

R-1 MWC bill to Marquez, February 22, 2017

R-2 MWC Initial shut off notice, April 17, 2017

R-3 MWC letter re: water meter reading and testing, May 19, 2017

R-4 MWC bill to Marquez, May 22, 2017

- R-5 MWC letter to Marquez re: meter reading, May 19, 2017
- R-6 MWC bill to Marquez, dated June 16, 2017
- R-7 Registration Certificate, Office of Weights & Measures, valid for 2017
- R-8 Registration Certificate, Office of Weights & Measures, valid for 2018