



This matter was assigned to Administrative Law Judge ("ALJ") Ernest M. Bongiovanni. On February 28, 2019, an evidentiary hearing was held before ALJ Bongiovanni. On that date, John Ruehl, Harvey Culver and Jared Patrice testified on behalf of the Respondent. (1T).<sup>1</sup> For the Petitioners, Mr. Mueller also testified on February 28, 2019. (1T). During this hearing, Exhibits R-1 through R-6 were identified and moved into evidence. (1T24:19 to 1T26:16; 1T37:13 to 1T38:19; 1T67:13 to 1T69:22; 1T72:16-19; 1T73:18 to 23; 1T93:18-23). The record was closed that same day.

On April 12, 2019, Judge Bongiovanni issued an Initial Decision, in favor of Respondent, denying the relief sought by the Petitioners and dismissed the petition.

On April 25, 2019, the Board received Petitioners' exceptions, which were dated April 22, 2019. Suez responded to Petitioners' exceptions on April 30, 2019.

### **EVIDENTIARY HEARING**

On February 28, 2019, the hearing on this billing dispute was heard before ALJ Bongiovanni. (1T). Mr. Mueller testified on behalf of himself and his wife regarding their issues with Suez. (1T6:5 to 1T28:17). Mr. Mueller testified that in June and July 2018, he received two enormous bills in excess of \$2,500, which was much higher than the typical bill received for water usage at the property. (1T6:16 to 1T17:3). Mr. Mueller testified that he noticed water gushing from one of his sump pumps, and as a result, contacted a plumber. (1T9:10-22; 1T19:15 to 1T20:16). Mr. Mueller testified that a leak was diagnosed and treated at the property. (1T20:17 to 1T23:12). However, Mr. Mueller claimed that both he and his wife contacted the Company on multiple occasions to try to resolve the issue surrounding the high water bill due to the leak, but without success. (1T7:4 to 1T9:22). Mr. Mueller also testified that this leak may have been detected earlier if the Company had replaced the antiquated meter on the property with a newer water meter, which would allow the Company and the Petitioners to monitor water usage remotely. (1T12:5 to 1T13:25).

On cross-examination, Mr. Mueller testified that he learned his meter was four (4) years old, and that he received bills at the property which reflected actual monthly meter readings. (1T15:23 to 1T16:19). Mr. Mueller also testified about the size of the property, the meter location, and the type and number of appliances operating in the home. (1T17:21 to 1T26:10). Mr. Mueller also testified that he contacted a plumber after he noticed water gushing from one of the sump pumps located on the property. (1T20:12 to 1T23:12). He claimed that while the plumber inspected the property in June 2018, the plumber took no action; Mr. Mueller explained that the valves leading to the sump pump were later shut off after he hired a leak detection service. Ibid. Mr. Mueller also admitted that he was aware that the customer is responsible for leaks that occur on the customer side of the meter, and admitted that the leak at issue occurred on Petitioners' side of the meter. (1T16:20 to 1T17:5).

John Ruehl, a customer service field representative for Suez, testified first on behalf of Respondent. (1T30:17 to 1T65:18). Mr. Ruehl testified that he has been working for the Company for about thirty (30) years, and that in his current position he was responsible for going to customer's home to read, replace and upgrade meters. (1T31:1-16). He testified about the placement of water service pipes at the property and explained the distinction between the

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<sup>1</sup> 1T refers to the transcript of the February 28, 2019 hearing.

Company and the customer's side of the meter. (1T31:15 to 1T36:25). Mr. Ruehl also testified that on June 18, 2018, he visited the property to replace the aged water meter with a new water meter and a new meter reading transmitter. (1T37:1 to 1T38:25).

Next, Harvey Culver testified on behalf of Respondent. He testified that he has been employed by Suez for thirty-eight (38) years, and currently is a water meter tester for three-quarter to two-inch meters. (1T66:2-14). He described the process for testing meters, and explained that he tested the Petitioners' meter on June 26, 2018. (1T66:15 to 1T72:19). After Mr. Culver's testimony, Mr. Mueller agreed that he was not contesting the accuracy of the meter or the meter reading. Ibid.

On that same date, Jared Patrice also testified on behalf of Respondent. Mr. Patrice testified that he is employed by Suez in the customer relations division of Suez North America. (1T73:1-11). Mr. Patrice testified that he is currently the liaison for New Jersey and handles compliance, regulatory guidelines, and tariff issues. Ibid. Mr. Patrice testified about provisions of the Company's tariff, as well as his discussions with Mr. and Mrs. Mueller regarding the disputed bills. (1T73:12 to 1T92:4). Mr. Patrice testified that he told Mr. and Mrs. Mueller that there could be a leak, but that Suez does not repair leaks on the customer side of the meter and advised that a plumber may be needed. Ibid.

On April 12, 2019, Judge Bongiovanni issued an Initial Decision, in favor of Respondent, denying the relief sought by Petitioners and dismissing the petition. In the Initial Decision, ALJ Bongiovanni made specific findings of fact based upon his review of the testimony and exhibits: (1) Petitioners became aware of a problem with their water bill on or about June 14, 2018 after receiving their May 2018 bill; (2) Petitioners made a series of requests from Suez to address their concerns; (3) Petitioners water usage spiked in May and June 2018; (4) the usage spike was due to a water leak located at the sump pump, which was on the customer's side of the meter; (5) Petitioners learned of the leak in mid-June 2018 after seeing water gushing from the sump pump; (6) Petitioners hired a plumber around June 25, 2018; (7) Petitioners hired a leak detection company as suggested by the plumber, and after inspection, the water was shut off on July 7, 2018; (8) the Company replaced the water meter on June 18, 2018, which was four days after Petitioners complained of their high bill; and (9) the meter was not the source of the spike in usage. (ID at 5). ALJ Bongiovanni also found the testimony of the witnesses to be credible. Ibid.

ALJ Bongiovanni also noted that Petitioners admitted that there was nothing wrong with the meter's accuracy, and admitted that the leak occurred on the customer's side of the water meter. (ID at 6). While ALJ Bongiovanni sympathized with Petitioners' situation, he found that Petitioners did not provide any legally competent evidence and did not cite any legal basis to support their claim that Suez should adjust the bill as the leak was the cause of the increased usage and as it occurred on the customer's side of the meter. Ibid. Accordingly, ALJ Bongiovanni concluded that Petitioners are responsible for paying the outstanding balance owed on their account, which is \$2506.09. (ID at 7).

By letter dated April 22, 2019, Petitioners submitted exceptions to the Initial Decision. These exceptions were filed with the Board on April 25, 2019. In their exceptions, Petitioners reiterated that they conducted themselves in good faith in trying to locate the water leak and resolve their high bills with Suez. Petitioners provided detailed descriptions of their contact with Suez, including their attempts to settle the case. Petitioners also took issue with the testimony of Suez witness John Patrice, arguing that he violated Board regulations requiring Suez to contact the

customer within twenty-four (24) hours of filing a petition with the Board. Petitioners' exceptions also included a newspaper article and an email from a Suez employee to support the argument that Suez acted in bad faith. Additionally, Petitioners also requested a leak adjustment allowance from Suez and that they be permitted to pay their balance with a payment plan.

Respondent filed its reply to Petitioners' exceptions on April 30, 2019. The Company argued that Petitioners' exceptions were without merit as: (1) Petitioners failed to specify any factual findings to which exception was taken, and instead only repeated the same arguments presented to the ALJ at the hearing; (2) Petitioners failed to specify any alternative or additional findings of fact, conclusions of law or dispositions that should have been considered; (3) Petitioners provided no supporting reasons or legal authority to warrant a reduction or elimination of their bill due to the leak; and (4) Petitioners reference to a newspaper article and an email is contrary to N.J.A.C. 1:1-18.4(c) as these documents were not offered at the hearing. Accordingly, Respondent argues that Petitioners' exceptions be rejected and that ALJ Bongiovanni's Initial Decision be adopted.

### **DISCUSSION AND FINDINGS**

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is found to be preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tended hypothesis, in all human likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959).

In this case, ALJ Bongiovanni correctly concluded that Petitioners failed to present any testimony or documentary evidence during the evidentiary hearing to support their contention that Suez should adjust their high bill, which was the result of a water leak on the customer side of the meter. Notably, Petitioners admitted that there was a leak on their side of the meter, and that despite seeing gushing water from the sump pump in mid-June 2018, they did not shut off the water until July 7, 2018. Additionally, as cited by ALJ Bongiovanni, the Board notes that "a tariff is not a mere contract. It is the law, and its provisions are binding on a customer whether he knows of them or not." In re Application of Saddle River, 71 N.J. 14, 29 (1976) (citing Essex County Welfare Board v. New Jersey Bell Telephone Co., 126 N.J. Super. 417, 421-22 (App. Div. 1974)). Here, Petitioners provided no evidence that Suez failed to follow its tariff, and provided no legal basis for why Suez could or should deviate from the relevant tariff provisions. Conversely, Suez provided testimony regarding its responsibilities under the tariff and explained how the Company appropriately followed those provisions in this matter.

Additionally, the Board also considers Petitioners' exceptions and the Company's response to same. As noted above, Respondent argues that Petitioners have failed to meet the standard for exceptions. Exceptions shall "specify the findings of fact, conclusions of law or dispositions to which exception is taken" and set out both "specific findings of fact [and] conclusions of law," as well as "supporting reasons." N.J.A.C. 1:1-18.4(b)1-3. Also, "evidence not presented at the hearing shall not be submitted as part of an exception, nor shall be incorporated or referenced to within exceptions." N.J.A.C. 1:1-18.4(c). While the Board agrees that Petitioners' exceptions do not meet that standard, the Board notes that New Jersey courts have generally allowed *pro se* litigants greater latitude in adhering to procedural requirements. Although *pro se* litigants are not entitled to greater rights than are litigants who are represented, it is nevertheless

fundamental that the court system "protect the procedural rights of all litigants and to accord procedural due process to all litigants. What constitutes due process varies with the circumstances of each case as well as with the individual situation of particular litigants." Rubin v. Rubin, 188 N.J. Super. 155, 159 (App. Div. 1982). In light of this precedent, the Board has reviewed Petitioners' exceptions and will address them although they are procedurally defective.

Here, Petitioners' exceptions primarily restate their position that they acted in good faith in trying to locate the water leak and settle this matter with Suez. Throughout their exceptions, Petitioners reiterate their dissatisfaction with how Suez handled their complaints, and continue to claim that Suez violated their rights by failing to contact them within twenty-four (24) hours of filing their formal Board complaint. However, Petitioners fail to delineate the specific findings of fact or conclusions of law with which they take issue. They provide no legal basis for their argument related to the twenty-four (24) notice. The Board is not aware of any regulation which requires such notice. Additionally, as N.J.A.C. 1:1-18.4(c) does not permit evidence not presented at the hearing to be submitted as part of an exception, the Board will not consider the newspaper article or email provided as part of Petitioners' exceptions.

Essentially, Petitioners' exceptions raise the same arguments as those presented before the ALJ, and as such, no new issues of fact or law have been identified. These exceptions do not change the salient facts here. A customer of record, such as Petitioners, are responsible for payment of all utility service provided. N.J.A.C. 14:3-7.1(a). The Company presented testimony and exhibits regarding its tariff provisions related to customer billing and responsibilities under the tariff when leaks are discovered. Petitioners admitted that the leak was on the customer side of the meter, and as a result, it was their responsibility to fix the leak.

Consequently, the Board **HEREBY FINDS** that the findings and conclusions of law of ALJ Bongiovanni to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioners failed to bear their burden of proof that the adjusted bill from Suez due to the leak was improper and **FINDS** that the outstanding bill of \$2506.09 remains the responsibility of Petitioners.

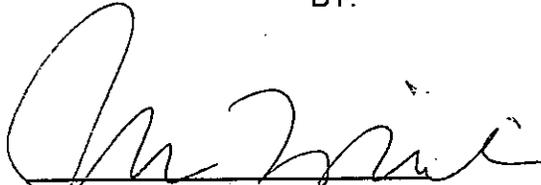
However, the Board notes that Petitioners, in their exceptions, essentially request permission to use a payment plan, which would be consistent with N.J.A.C. 14:3-7.7. Thus, the Board **HEREBY DIRECTS** Suez to contact Petitioners to discuss a payment plan pursuant to N.J.A.C. 14:3-7.7.

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

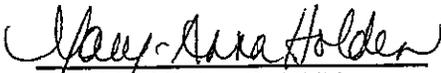
This order shall be effective June 7, 2019.

DATED: 5/28/19

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



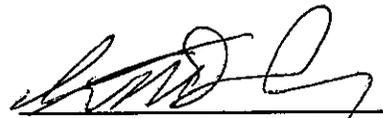
MARY ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

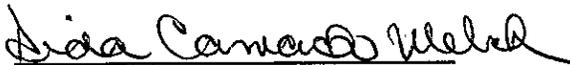


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

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.

**RICHARD MUELLER AND JILL MUELLER  
V  
SUEZ WATER NEW JERSEY**

**BPU DOCKET NO. WC18070710U  
OAL DOCKET NO. PUC 11917-18**

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT NO. PUC 11917-18

AGENCY Ref. No. WC180707IOU

**RICHARD AND JILL MUELLER,**

Petitioner,

v.

**SUEZ WATER NEW JERSEY,**

Respondent.

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Richard Mueller, Petitioner, pro se

John P. Wallace Esq., for Respondent, SUEZ Water New Jersey

Record Closed: February 28, 2019

Decided: April 12, 2019

BEFORE ERNEST M. BONGIOVANNI, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioners, Richard and Jill Mueller filed a billing dispute with the Board of Public Utilities (BRPU) regarding water bills issued to them by respondent SUEZ Water New Jersey (SUEZ) for the bills received in June and July 2018 for water service from April 30, 2018 through and including June 30, 2018. They claim the excess billing comes from a water leak on their property, and that SUEZ failed to do anything about the leak once they learned of it. Further they argue that the leak on petitioner's property could

have been detected far earlier if respondent had replaced an antiquated meter on their property earlier than June 18, 2018.

On August 17, 2018, the Division transmitted the matter to the Office of Administrative Law for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 and N.J.S.A. 52:14F-1 to 13. A hearing was held on February 28, 2019 at which time the record was closed.

### TESTIMONY

#### Richard Mueller

Dr. Richard Mueller (Mueller) and his wife Jill Mueller (the Muellers) are the owners of 21 the Esplanade, Alpine, New Jersey, a two-acre property. They have owned the property since 2003 although it was built before that time. On June 14, 2018 they received a bill from SUEZ for \$755.85 for service from April 30, 2018 to May 30, 2018. This was many times higher than their usual bill. They called SUEZ to ask for an explanation, and a possible adjustment of the bill. They asked for a manual read of the meter. He called SUEZ repeatedly in the days to come. Mueller noticed that water was gushing from a sump pump located in a semidetached utility room near the garage. The sump pump is called a sump jet which runs on water pressure, provided by a connecting pipe conveying water within the property. He made an appointment for the earliest time for a plumber to inspect the property. A plumber was there on June 25, 2018 only to inspect the property. The plumber took no action. On or about July 7, 2018 they hired American Leak Detection. They shut the valves off leading to the sump pump. Thereafter water usage returned to normal. However, the Muellers were billed for service from May 30, 2018 to June 30, 2018 in the amount of \$1834.71. The combined total of the disputed bills, which the parties stipulated to, for the two months is \$2506.09 which is 28-30 times more than their average bill<sup>1</sup>

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<sup>1</sup> The two bills actually total \$2590.56. Dr. Mueller's pleadings also included a copy of their bill for April 1-April 30 in the amount of \$84.47,

Mueller complains that nothing was done by SUEZ to detect the leak. They had an old water meter that has to be read manually compared to the new radio frequency meters that permit the company and the homeowner to monitor the usage any time from a remote location. Two years ago they had a leak of water on the property that was found to come from a leak, from the service line to the property. SUEZ advised them of the leak. They did not have to pay for the excess water that came from that leak. They only had to pay to repair the leak within 30 days; otherwise SUEZ had to shut off service. Mueller thought that was "fair" and asked for the same kind of "fairness" for an adjustment of the bill. During cross examination, Mueller admitted that the leak occurred on the customer's side of the water meter.

John Ruehl.

John Ruehl (Ruehl) is a Customer Service Field Representative for respondent, with thirty years' experience with SUEZ. He inspects meters, reads them, replaces and upgrades them. He had a work order to do a reading and replace the meter at the Mueller's residence on June 18, 2018. On that day he went to the Mueller premises, removed the old meter, replaced it with a newer model that uses radio frequency to do readings from remote locations rather than requiring readings to be done at the site of the meter. He was not aware of any suspected leakage or specific problem with the meter. Neither of the Muellers discussed their concerns while he was at their property. He replaced the 40-year-old meter, with a new one that permits, through radio frequency, meter readings from remote locations at any time rather than on site manual readings. Ruehl was unable to say what percentage of Suez customers, in Alpine, Bergen County or elsewhere have these newer radio frequency meters.

Ruehl described where the service line running from the adjacent street at Tulip Lane of to the meter is located on the property (R-1). The company is only responsible for water that runs from the pipe or pipes running up to the meter. Any leaks that come from a part of the water system, located after the water meter, such as occurred here, are the responsibility of the homeowner.

Jared Patrice

Jared Patrice (Patrice) is a Customer Service Relations officer for Suez. He is the company's liaison to the State of New Jersey, and thus deals with compliance in regulatory and tariff guidelines. He became aware of a formal complaint lodged with the Board of Public Utilities by the Muellers. HE responded to them soon after checking with customer service and reviewing account information. He advised the Muellers that there might be a leak on the property, that SUEZ does not do leak repairs and that they need a plumber to do repairs.

He explained the SUEZ tariff, approved by the New Jersey Board of Utilities. Under Standard Terms and Conditions, Section 1.25, the "Customer's Water system" is defined as "all water facilities on the customer's side of the meter, or on the customer's side of the water service, which are owned or controlled by the customer. Further, under Terms and Conditions Section 7.10. "When leakage occurs on pipes and facilities owned by the customer, the customer shall make the necessary repairs without delay. If the customer fails to make said repairs within a reasonable time, the Company reserves the right to discontinue water service..."

In this particular case, SUEZ was not willing or able to make an adjustment of the customer's bill. The Company views all registered water, which is treated, and which goes through the customer's meter as billable provided the company's equipment is not faulty and the water is standard.

Other Evidence

SUEZ called as a witness Harvey Culver who tests water meters for their accuracy. After his testimony, the petitioner agreed that he was not contesting the accuracy of the meter or any meter reading. Therefore, Culver's testimony is not described here.

**FINDINGS OF FACTS**

Based on the evidence presented at the hearing, as well as on the opportunity to observe the witnesses and assess their credibility, I accept all the witness' testimony to be generally credible and I **FIND** the following **FACTS**:

1. The petitioners became aware of a possible problem with their water bill when they received their bill for May 2018 service on or about June 14, 2018.
2. Soon thereafter, they began a series of requests for SUEZ, their water service provider, to address their concerns.
3. Petitioner's water usage spiked sharply in May and June 2018.
4. The spike in water usage was solely the result of a water leak located at a sump pump which is on the customer's side of the water meter.
5. Petitioner became aware of the leak because he noticed water gushing from the sump pump in mid-June 2018 although he did not shut the water off running to the pump until a leak detection company, recommended by a plumber hired by petitioners on June 25, 2018, inspected the property and shut off the water to the sump pump on July 7, 2018.
6. SUEZ replaced a water meter on June 18, 2018, four days after the petitioners complained of their bill, however the meter was not the source of the problem causing the spike in usage.

**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. In Atkinson v. Parsekian, 47 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 Lowe v. Union Beach, 56 N.J. Super 93, 104 (App Div.) cert. denied, 31 N.J. 75 (1959).

Here, petitioners argue that it would be "unfair" for them to pay the entire amount of both bills in dispute because they didn't use the water, and it resulted from a leak which they were unaware of until receiving their bill on or about June 14, 2018. They admit there was nothing wrong with the meter's accuracy although they feel if they had a more modern meter, they might have learned of the leak earlier. They also admit that the leak occurred on the customer's side of the water meter or water service, which is owned and controlled by the customer.

While one can sympathize with them, petitioners did not provide any legally competent evidence to support their claim that respondent should adjust their bill. They speculate that they could have learned of the water leak sooner if they had a newer meter, or if the technician who replaced the meter on June 18, 2018 had discovered the leak. Although they had previous experience with leaks on the property, they perhaps did not understand that those which occur on the customer's side of the meter are solely their responsibility. However, a public utility's tariff "is not a mere contract. It is the law and its provisions are binding on the customer whether he knows of them or not. Essex County Welfare Board v. New Jersey Bell Telephone Co., 126 N.J. Super 417, 421-422 (App. Div. 1974). Moreover, it is factually speculative that petitioners would have acted differently if they had a newer water meter. Finally, petitioners have cited no legal basis, and there appears to be none, to require adjustment of a bill, given that they admit the water leak was the cause of the increased usage, and the leak occurred on their side of the meter and water service, under their ownership and control, and as provided for under the terms and Conditions of SUEZ's Tariff.

I therefore **CONCLUDE** that petitioners are responsible for paying the outstanding balance owed which the parties agreed is \$2506.09.

**ORDER**

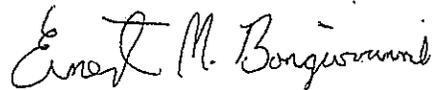
For the foregoing reasons, it is hereby **ORDERED**, that the relief sought by the petitioners is **DENIED** and it is further **ORDERED** that the action filed by petitioner is hereby **DISMISSED**.

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.

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.

April 12, 2019



\_\_\_\_\_  
DATE

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**ERNEST M. BONGIOVANNI, ALJ**

Date Received at Agency:

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Date Mailed to Parties:  
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**APPENDIX**

List of Witnesses

For Petitioner

Richard Mueller, petitioner

For Respondent

John Ruehl, Customer Service Field Representative

Harvey Culver, Water Meter Technician

Jared Patrice, Customer Relations Representative

List of Exhibits in Evidence

For Petitioner

None

For Respondent

R-1 Picture of petitioner's property, aerial view

R-2 June 2018 Meter Change workorder

R-3 Photos (6 pages) of meter changes

R-4 Certification of certainty of meter measurements

R-5 Meter Test for June 18, 2018

R-6 Standard terms and conditions of public water service (excerpt)