



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

DANIELLE DÉMARY,
Petitioner

v.

NEW JERSEY AMERICAN WATER
Respondent

) ORDER OF EXTENSION

) DOCKET NO. WC18111220U
) OAL DOCKET NO. PUC 00977-19

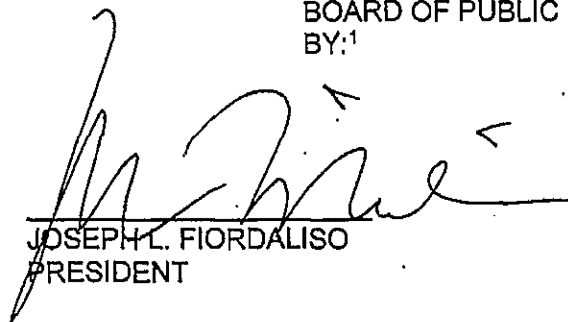
(SERVICE LIST ATTACHED)

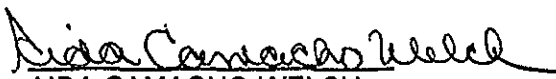
The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on December 4, 2019; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on January 18, 2020. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately review the record in this matter.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until March 3, 2020.

DATED: 1/8/20

BOARD OF PUBLIC UTILITIES
BY: ¹


JOSEPH L. FIORDALISO
PRESIDENT

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.

¹ Authorized by the Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: 1-8-2020

cc: Service List Attached

DATED: 1/8/20



ELLEN S. BASS, ACTING DIRECTOR AND
CHIEF ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: 1/8/20

Date Board mailed executed Order to Parties: 1-9-2020

DANIELLE DEMARY, PETITIONER

V.

NEW JERSEY AMERICAN WATER, RESPONDENT

**BPU DOCKET NO. WC18111220U
OAL DOCKET NO. PUC 00977-19**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 00977-19

AGENCY DKT. NO. WC18111220U

DANIELLE DeMARY,

Petitioner,

v.

NEW JERSEY AMERICAN WATER COMPANY,

Respondent.

Danielle DeMary, petitioner, pro se

Josiah Contarino, Esq., for respondent (Archer & Greiner, PC, attorneys)

Peter Van Brunt, Deputy Attorney General, for respondent (Gurbir S. Grewal, Attorney General State of New Jersey, attorney)

Record Closed: November 20, 2019

Decided: December 4, 2019

BEFORE **TRICIA M. CALIGUIRE**, ALJ:

STATEMENT OF CASE

Petitioner Danielle DeMary (DeMary) filed a petition with the New Jersey Board of Public Utilities (the Board) to contest charges assessed by respondent New Jersey American Water Company (NJAW) for water service provided to DeMary at her residence.

PROCEDURAL HISTORY

On November 1, 2018, DeMary filed a petition (Petition) with the Board requesting a formal hearing on a billing dispute with NJAW. The Board sent a copy of the Petition to respondent on November 8, 2018, and respondent filed its Verified Answer to the Petition on December 7, 2018. This matter was filed with the Office of Administrative Law (OAL) on January 17, 2019, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13.

An initial telephone prehearing conference was scheduled for March 21, 2019, but adjourned due to a scheduling conflict and rescheduled for April 2, 2019. During this conference, the parties stated that they had begun to exchange discovery on an informal basis and the hearing was scheduled for August 20 and 21, 2019. A prehearing order was issued on April 3, 2019, in which the discovery process was detailed and the parties were directed to complete discovery by June 28, 2019.

By letter dated July 5, 2019, respondent requested a telephone conference pursuant to N.J.A.C. 1:1-10.4(d), as petitioner failed to respond to any of respondent's discovery requests. A telephone conference was held on July 16, 2019, during which petitioner was advised that after filing the Petition against NJAW, she was obligated to participate in discovery. The parties agreed to a new schedule of the proceedings including rescheduling the hearing for November 14 and 15, 2019, all of which was confirmed by my letter to the parties of July 17, 2019.

On November 14, 2019, the parties appeared before me for the hearing. At the conclusion of testimony, the second hearing date was adjourned as unnecessary and the parties participated in a settlement conference, as a result of which the parties tentatively agreed to a settlement of all issues in dispute. On November 20, 2019, counsel for NJAW notified me that the parties were not able to reach an agreement on settlement and the record closed.

FACTUAL DISCUSSION

The material facts in this matter are not in dispute. Based on the testimony of DeMary and Maggie Stromoski (Stromoski), NJAW Customer Advocate, and the documents introduced at hearing,¹ I FIND the following as FACTS:

1. On or about August 18, 2016, DeMary leased an apartment located in Howell, New Jersey (the residence). Since that time, NJAW provided water and wastewater service to DeMary at the residence.
2. NJAW provides DeMary with a combined bill for water and wastewater usage plus other related service charges and surcharges. Since August 2016, DeMary stated that her combined bill has been approximately \$100.00/month.
3. NJAW calculates DeMary's water usage based on an actual meter reading conducted by a meter reader on or about the fifteenth day of each month. (R-13.) To determine water usage for the billing period, NJAW subtracts the previous read (number of units) from the current read (number of units). Each unit is equal to 1,000 gallons. (See, R-1.) No testimony was given as to how wastewater usage is charged.
4. The bill issued by NJAW to DeMary for water usage from December 16, 2017, to January 16, 2018, was much higher than previous bills with a "total current charge" of \$603.06. (R-1.)
5. The bill issued by NJAW to DeMary for water usage from January 17, 2018, to February 15, 2018, had a total current charge of \$490.71. (R-2.)

¹ All documents described herein were identified by Stromoski during the course of her testimony. DeMary marked respondent's response to interrogatories as an exhibit, but failed to introduce the document, or testify, and/or ask questions of Stromoski, with respect to the document.

6. Prior to March 5, 2018, DeMary contacted NJAW to complain about the above-described bills.² NJAW sent a field representative to the residence on March 5, 2018, to check the meter. (R-12.) The representative reported that the meter reading was correct. (R-3.)
7. The bill issued by NJAW to DeMary for water usage from February 16, 2018 to March 15, 2018, had a total current charge of \$265.99. (R-6.)
8. After the field check of her meter, DeMary again contacted NJAW by telephone to complain about the accuracy of her water bills. She was not satisfied with the response and called the Board offices to complain. After DeMary contacted the Board offices and/or as a result, Stromoski was assigned to DeMary's account, on or about April 2018. During their first telephone conversation, DeMary stated that she believed NJAW made an error with the bills. Stromoski advised DeMary to continue to pay the undisputed portion of her bills as the process of disputing charges moved along.
9. With Stromoski's assistance, DeMary arranged for a Board staff-supervised test of her meter on July 10, 2018. (R-4.) DeMary and Stromoski attended the testing.
10. By letter dated July 12, 2018, an inspector from the Board's One Call and Meter Testing Office notified DeMary that "the meter which has been measuring the use of water supplied to [her] premises is within the prescribed limits of accuracy" and "no adjustment to [DeMary's] bill is required." (R-5.)
11. NJAW offered DeMary a courtesy leak adjustment (although no leak had been identified) and a payment plan to address the disputed charges, but DeMary refused.

² DeMary claims that an earlier bill, for service from November 16, 2017 through December 15, 2017, was also unusually high, but neither party submitted a copy of this bill.

12. On or about May 17, 2018, while DeMary was still disputing charges of \$1,359.76, NJAW determined that she had not paid approximately \$150.00 in undisputed charges. On May 17, 2018, NJAW mailed DeMary a termination notice stating that if she did not pay \$1,512.55, by May 29, 2018, her service would be discontinued. (R-8.) DeMary stated that she did not receive the termination notice.
13. DeMary did not make payment by May 29, 2018, and on May 31, 2018,³ NJAW shut off water service to the residence. (R-11.) DeMary called NJAW immediately and her service resumed the same day.
14. Stromoski acknowledged that DeMary has had relatively low water usage during the time she has been an NJAW customer at the residence. Both parties agreed that DeMary's water bills are currently in line with those she received prior to the three or four month spike in late 2017-early 2018.

DISPUTED FACTS

While both parties agree that NJAW sent a field technician to the residence on March 5, 2018, (R-3), there is a dispute as to whether or not DeMary was present. DeMary testified (and alleged in her petition) that she spoke with the technician, he told her the meter reading was verified and, therefore, "it must be a billing issue." She then called NJAW again to complain and was allegedly told to hire a professional to check for leaks, which she did not do. Stromoski, however, testified that DeMary was not present at the residence on March 5, 2018, and, therefore, the field technician was not able to complete a leak check as there was no one to turn the services on and off from the inside of the residence. Neither party introduced any documentary evidence to support their claim and the field technician was not called to testify. It is not necessary to resolve this dispute as I **FIND** that neither party determined whether a leak inside the residence was responsible for the increase in DeMary's bills.

³ In 2018, the State of New Jersey State observed Memorial Day on May 28, 2018.

ISSUES IN DISPUTE

DeMary alleges that: (1) the water bills issued to her by NJAW for water consumption at the residence between November 16, 2017 through March 15, 2018, for a total of \$1,359.76, were inaccurate; (2) NJAW failed to follow proper procedures under its tariff and/or Board regulations regarding testing of the water meter at the residence; and (3) NJAW discontinued service to DeMary at the residence without prior notice and/or in violation of Board regulations. The petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962).

LEGAL DISCUSSION AND CONCLUSIONS

Accuracy of NJAW Bills

As the customer of record of NJAW, a public utility, DeMary is "responsible for payment of all utility service rendered." N.J.A.C. 14:3-7.1. At the same time, the regulations provide that she may dispute a utility charge before the Board. N.J.A.C. 14:3-7.6. In a situation such as this one, in which the customer apparently cannot account for a spike in metered usage, the regulations provide as follows:

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.

[N.J.A.C. 14:3-7.6(g) (emphasis added).]

In her petition, at hearing and in her telephone discussions with Stromoski, DeMary speculated that the spike in her water bills coincided with the water meter relocation for the apartment next door to the residence, but Stromoski identified the NJAW work order

showing that this relocation took place at least four months earlier. (R-7.) Further, as described above, the parties dispute whether DeMary prevented NJAW's field technician from inspecting the interior of the premises for a leak.

Although the increased usage was inconsistent with DeMary's established usage, she offered no credible evidence to support her claim that the error was with NJAW's billing office, not with a leak at the residence. Even if the NJAW field technician failed to ask DeMary to inspect the interior, she took no action to ensure that such an inspection be conducted, whether by NJAW or an independent inspector.

I **CONCLUDE** that DeMary has not proved by a preponderance of the credible evidence that her NJAWC water bills were incorrect or inaccurate for the time period from November 2017 through March 2018.

Meter Testing

In order to ensure a system that is fair to all utility customers, it is essential that the meters be accurate in measuring usage. To this end, the New Jersey Legislature delegated to the Board authority to "[e]stablish reasonable rules, regulations, specifications and standards, to secure the accuracy of all meters and appliances for measurement." N.J.S.A. 48:2-25(c). Pursuant to this authority, the Board adopted regulations that require each water utility to ensure that all of the meters in use in its system are tested for accuracy. N.J.A.C. 14:3-4.1 to 4.8.

Consistent with the regulations, NJAW's tariff provides that when a customer is involved in a billing dispute, the utility must "advise the customer that they may have the meter tested by the utility or may have the Board witness a testing of the meter by the utility, and that in any event the customer may have the test witnessed by a third party." (R-10, NJAW_000068.) Such a test "may be appropriate in instances which include . . . unexplained increased consumption[.]" ibid.; see also, N.J.A.C. 14:3-4.5(d).

A water meter shall be considered accurate if it shows an error no greater than one and one half percent when tested in accordance with the regulations. N.J.A.C. 14:3-4.6(a). If, however, a water meter is found to be registering fast by "more than one and one half percent, an adjustment of charges shall be made[.]" Ibid. The Board gives great weight to tests that measure meters' accuracy. Ravi Kohli v. Jersey Central Power & Light Company, OAL Docket No. PUC 09900-10, 2011 WL 2525482, Final Decision (May 16, 2011).

Both parties agree that Stromoski assisted DeMary in contacting Board staff to arrange for the Board staff-supervised test of DeMary's water meter on July 10, 2018. The results of the test found that the meter operated "within the prescribed limits of accuracy." (R-5.) I **CONCLUDE** that NJAW followed proper procedures and based on the results of the meter test, no adjustment to DeMary's bill is required under the regulations and/or NJAW's tariff.⁴

Discontinuance of Service

While the regulations make clear the ongoing obligation of a utility customer to continue to pay current charges during the course of a billing dispute, "[o]nce 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[.]" N.J.A.C. 14:3-7.6(a), (c).

NJAW's Board-approved Tariff echoes the regulations:

A water and wastewater utility shall not discontinue service because of nonpayment of bills in cases where a charge is in dispute provided the undisputed charges are paid . . . and a request is made to the Board within five (5) days for investigation of the disputed charge.

⁴ I note that although the meter was found to be accurate, no leaks were identified exterior of the residence, and the results of an inspection for leaks, if any, was not provided to NJAW, the company offered DeMary a one-time courtesy leak adjustment. I did not construe this gesture as an admission by the company of any errors in its billing system.

A water and/or wastewater company may not discontinue water or wastewater service unless it has provided written notice giving the customer at least ten (10) days' notice prior to the proposed discontinuance. The 10 days shall begin on the postmark date of the notice.

There shall be no involuntary discontinuance of service on . . . the day before a New Jersey State holiday or on a New Jersey State holiday[.]

[(R-8; New Jersey-American Water Company, Inc., Tariff for Water and Wastewater Service (April 1, 2017), NJAW_000066.)]

In May 2018, NJAW was well aware that DeMary was actively disputing bills in the amount of \$1,359.76. Further, the company knew, or should have known given the participation of Stromoski, that the Board staff-supervised test of DeMary's meter was pending as of May 28, 2018, and scheduled for a date in July 2018. The regulations provide that "[w]hen Board staff have determined that a formal or informal dispute has been resolved, Board staff shall notify the utility." N.J.A.C. 14:3-7.6(e). No such notice could have been provided as of the date of termination.

While NJAW contends that DeMary failed to pay approximately \$150.00 of current (nondisputed) charges as of May 17, 2018, that is a relatively low amount given the amount in dispute. While the company was technically within its rights as set forth in its tariff, such action seems particularly mean-spirited. During her testimony, Stromoski alluded to the strong language and less than reasonable demeanor demonstrated by DeMary during their telephone discussions, but that does not reduce the impact of shutting off water service to a single mother at the beginning of the summer. (DeMary's circumstances were known to the company and may be the reason a NJAW technician quickly reversed the shutoff.)

The termination notice required the immediate payment of an amount well in excess of the past-due current charges, a demand that is contrary to the regulations and NJAW's tariff. (R-8.) Even so, DeMary testified that she never received the termination notice and therefore, made no attempt to pay any amount or to contact the company to object to the amount demanded. There is no need to speculate as to the action the company would

have taken had DeMary immediately paid the past-due undisputed charges, as she did not do so. Further, DeMary presented no evidence of actual harm (as her water service was reconnected the same day).

I **CONCLUDE** that DeMary provided no plausible explanation for the increase in the amount of billed services other than increased usage, and she provided no credible evidence that leaks within the residence could be ruled out. Further, though I **FIND** that DeMary's billing history reflects monthly bills of approximately \$100.00, and her bills were curiously high for a short period, I **CONCLUDE** that DeMary did not prove by a preponderance of the credible evidence that the bills were not accurate or that NJAW failed to follow proper procedures regarding reading and/or testing the meter and issuing the bills. Further, I **CONCLUDE** that petitioner has not proved by a preponderance of the credible evidence that the billing meter at the residence did not operate properly during the billing periods in question. Finally, I **CONCLUDE** that NJAW's action in terminating service to the residence on May 31, 2018, did not violate the applicable regulations and/or NJAW's tariff as DeMary had failed to pay undisputed charges and the company gave proper notice to DeMary of its intention to terminate her service and the steps she could take to prevent such action, including contacting the company.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the appeal of petitioner Danielle DeMary is **DISMISSED**, and she remains responsible for the outstanding charges of \$1,359.76.

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.

December 4, 2019
DATE


TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

nd

APPENDIX

WITNESSES

For Petitioner:

Danielle DeMary

For Respondent:

Maggie Stromoski

EXHIBITS

For Petitioner:

P-1 Respondent's Responses to Petitioner's Interrogatories[sic], /s/Josiah Contarino, Esq., Archer & Greiner, P.C., dated October 18, 2019 (Not Introduced)

For Respondent:

- R-1 New Jersey American Water Bill, Total Due \$678.50, Due Date March 9, 2018, Billing Period December 16, 2017 to January 16, 2018 (32 Days), Billing Date March 9, 2018
- R-2 New Jersey American Water Bill, Total Due \$1,169.21, Due Date March 12, 2018, Billing Period January 17 to February 15, 2018 (30 Days), Billing Date March 12, 2018
- R-3 Letter from American Water Customer Service to Petitioner, Regarding Correct Amount on Bill, dated March 8, 2018
- R-4 Letter from Marjorie Moore, One Call and Meter Testing, New Jersey Board of Public Utilities, to Mr. Grabowski, Regarding Removal and Replacement of the Meter Measuring Water Usage at Petitioner's Location, dated June 8, 2018

- R-5 Letter from Andrew Kvarata, Inspector, One Call and Meter Testing, New Jersey Board of Public Utilities, to Petitioner, Regarding Water Meter Accuracy Verified, dated July 12, 2018
- R-6 New Jersey American Water Bill, Total Due \$1,435.20, Due Date April 9, 2018, Billing Period February 16 to March 15 (28 Days), Billing Date March 16, 2018
- R-7 Service Orders
- R-8 New Jersey American Water Bill, Total Due \$1,512.55, Pay Before May 29, 2018, Final Discontinuance Notice, dated May 17, 2018
- R-9 New Jersey American Water Bill, Total Due \$1,588.91, Due Date June 7, 2018, Billing Period April 17 to May 15, 2018 (29 Days), Billing Date May 16, 2018
- R-10 New Jersey-American Water Company, Inc., Tariff for Water and Wastewater Service, NJAW_000063
- R-11 List of Service Orders
- R-12 List of Service Orders
- R-13 List of Service Orders
- R-14 BE WATER WISE, Every Drop Counts, Wise Water Use Tips, Brochure (Not Introduced)