



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

THEODORE UBANWA,)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
v.)	
)	
NEW JERSEY AMERICAN WATER COMPANY,)	BPU DOCKET NO. WC19101333U
Respondent)	OAL DOCKET NO. PUC 17770-19

Parties of Record:

Theodore Ubanwa, petitioner Pro Se
Josiah Contarino, Esq., for respondent, New Jersey American Water (Archer & Greiner, PC, attorneys)

BY THE BOARD:

The within matter is a billing dispute between Theodore Ubanwa (“Petitioner”) and New Jersey American Water (“NJAW” or “Respondent”). This Order sets forth the background and procedural history of Petitioner’s claims and represents the Final Order in the matter. Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on February 26, 2021, as follows.

PROCEDURAL HISTORY

On or about September 17, 2019, Petitioner filed a petition with the Board requesting a formal hearing, regarding a billing dispute with NJAW. Petitioner alleged that NJAW incorrectly billed his account and requested the assistance of the Board in resolving the matter. Petitioner asserts the incorrect billing resulted due to a faulty water meter. Mr. Ubanwa disputes bills for water service from NJAW dated between February 2019 through April 25, 2019.

On December 16, 2019, this matter was transmitted by the Board 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 -13. This matter was assigned to Administrative Law Judge (“ALJ”) Nanci G. Stokes.

ALJ Stokes filed an Initial Decision in this matter with the Board on February 26, 2021. No exceptions to the Initial Decision have been received by the Board.

EVIDENTIARY HEARING

The hearing on this matter was heard before ALJ Stokes on February 10, 2021 via Zoom. Petitioner relied upon exhibits provided by NJAW for the hearing, having supplied no prior documentation through discovery. ALJ Stokes finds the following facts based on the testimony of the petitioner and NJAW's employees, Irene Sweeney and John Taberes as well as the documents admitted into evidence:

1. NJAW provided water service to the petitioner's rental property in Irvington, New Jersey under account number ending in 0383.¹
2. The water service invoices for account number ending in 0383 identify the petitioner as a customer of record for this service location.
3. The rental property consists of two units, one on the first floor and another one on the second floor.
4. In February 2019, petitioner's water usage bill increased significantly and continued until April 25, 2019.
5. Petitioner asserts the increase during this timeframe is due to a faulty water meter.
6. During this timeframe the petitioner only had a tenant on the second floor.
7. Before February 2019, NJAW afforded petitioner a leak adjustment or billing reduction because of a burst pipe in the service property's basement as a courtesy. The billing adjustment occurred less than five (5) years before the period disputed in this case.
8. NJAW calculated the petitioner's water usage through actual meter reading conducted by a meter reader on or about the twenty-fifth day of each month.
9. 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 one thousand (1,000) gallons.
10. Petitioner's NJAW invoice for water usage from January 26, 2019 to February 22, 2019, or twenty-eight (28) days, was fifty units or 50,000 gallons and \$345.97 in current charges.
11. To calculate twenty-eight days, NJAW counts both January 26, 2019 and February 22, 2019.
12. The prior billing period noted water usage of twelve units or 12,000 gallons and charges on \$191.32. The current meter read sixty-two (62) units and deducting the prior read of twelve units made water usage for the billing period fifty (50) units or 50,000 gallons.
13. The January 26, 2019 to February 22, 2019 service period indicates average daily water use of 1,786 gallons or 50,000 total gallons divide by twenty-eight (28) days.
14. NJAW's invoice format changed and the bill for services from February 23, 2019 to March 25, 2019, reflects the new layout. The revised invoice includes the average daily use, whereas the prior format did not. NJAW applies the same formula to determine daily water usage.
15. NJAW invoice for petitioner's account for water usage between February 23, 2019 to March 25, 2019, or thirty-one (31) days was ninety-seven (97) units or 97,000 gallons, and \$655.32 in current charges.
16. The average daily use between February 23, 2019 and March 25, 2019 was 3,129 gallons.
17. On March 28, 2019, the billing date, NJAW corresponded to petitioner alerting him of the higher than regular water use. The letter recommends that petitioner check the property for possible problems causing increased water use and to fix any discovered broken service line or internal plumbing issues "as soon as possible."

¹ This Final Order does not include petitioner's full address, account number, or meter numbers for privacy.

18. Petitioner contacted NJAW after receiving NJAW's March 28, 2019 letter. Thereafter, a field service technician (FSR) came to petitioner's property to check the water metering having a corresponding number ending in 3169.
19. Petitioner brought a plumber to the property to replace two toilets. The toilets were original to the premises petitioner purchased in approximately 2002.
20. On May 2, 2019 the petitioner requested that his meter be changed.
21. On May 3, 2019 NJAW replaced the first meter, number ending in 3169, with a new meter reflecting a number ending in 7876.
22. Petitioner's NJAW invoice for water usage for the period March 26, 2019 to April 25, 2019, or twenty-eight (28) days, was twenty-five (25) units or 25,000 gallons and \$181.95 in current charges. The bill reflects average daily use for the billing period as 806 gallons.
23. The invoice for this period noted the prior meter read 159 gallons and the current meter read of 184 gallons.
24. Petitioner's NJAW invoice for water usage for the period April 26, 2019 to May 23, 2019, or twenty-eight (28) days, is broken into two usage calculations to reflect the meter change that took place on May 3, 2019.
25. Meter 3169 from April 26, 2019 to May 2, 2019, revealed three (3) units or 3,000 gallons. The average daily use for those seven (7) days was 429 gallons.
26. Meter 7876 was set to zero for the initial read and installation on May 3, 2019 and revealed eight (8) units or 8,000 gallons for twenty-one (21) days until the next meter read on May 23, 2019. The average daily use for those twenty-one (21) days was 381 gallons.
27. The total current charges for the period from April 26, 2019 to May 23, 2019 were \$89.62. This invoice is not in dispute.
28. On May 21, 2019 NJAW communicated the meter test results on Meter ending in 3169 as demonstrating the meter's operation was "in satisfactory manner" under regulations establishing acceptable accuracy rates.
29. On August 1, 2019, NJAW, per petitioner's request, replaced the second meter ending in 7876. The new meter reflecting a number ending in 8255 was installed.
30. The Board witnessed and verified testing of both meters, revealing that the meters were "within the prescribed limits of accuracy at both the flow rates." Moreover, the Board concluded that the results required no adjustment to petitioner's bill. When the Board witnesses and verifies a meter test, it provides the results of that testing to the property owner and the utility, or in this case, NJAW.
31. Petitioner's NJAW invoice for water usage for the period July 25, 2019 to August 22, 2019, or twenty-nine (29) days, is broken into two usage calculations to reflect the meter change.
32. For the seven (7) days before the meter change, water usage was six (6) units or 6,000 gallons, and for the period from August 1, 2019, to August 22, 2019, water usage was twelve units of 8,000 gallons.
33. The total current charges for the period of July 25, 2019 to August 22, 2019 were \$122.37 after a \$14.99 Tax Cut and Jobs Act (TCJA) credit. The bill reflects average daily use for the billing period as 621 gallons. This invoice is not in dispute

Testimony and Documentary Evidence of the Petitioner Theodore Ubanwa:

Petitioner, Theodore Ubanwa testified that NJAW's first FSR came to his property because of the high water usage bill. Petitioner highlighted that much less water usage occurred in the months before the February 2019 invoice. The NJAW technician was not able to determine where the leak at the property was coming from but confirmed there was a problem. Petitioner testified that he heard noises in the basement like somebody was taking a shower. Petitioner did not recall meeting FSR John Taberes at his property. Additionally, he was uncertain of the specific dates that NJAW employees came to his property concerning the disputed service in this case.

The petitioner further testified that he performed a test on the toilets at the property by placing a chalk like substance in the bowl and waiting overnight to see if the water line moved or “showed color” without anyone using the toilets. Petitioner testified that his test revealed no problem or toilet leakage.

Mr. Ubanwa called a plumber to the property on several occasions but did not detect a leak. Because petitioner continued to get high water usage bills, he arranged for the plumber to replace both the toilets in the apartments. Petitioner testified that he believes the toilet replacement occurred in March 2019

Petitioner requested that NJAW replace the meter because he felt the problem was due to a faulty meter. Petitioner testified that he requested the technician to seal the bag for the initial meter test, for the meter ending in 3169, but the technician refused to do so. When NJAW replaced the second meter, ending in 7876, petitioner signed a receipt and when the technician tore off the receipt, the meter bag ripped. As a result, Petitioner testified he did not trust NJAW or the meter testing results on either meter because, in his opinion, it was possible to tamper with water meters. Petitioner does not believe NJAW tested the first meter ending in 3169. He further testified that he did not know what a “witnessed” meter test meant.

With respect to the replacement of the third meter, ending in 8255, petitioner received an invitation to be present at the meter testing. The invitation provided the date and time, but his presence was not mandatory. The petitioner did not attend the meter testing.

On August 6, 2020, petitioner’s email account sent an email to respondent’s counsel. The email attached a copy of the petitioner’s typed and signed interrogatory answers and incomplete response to the demand for production. Petitioner does not believe he completed the answers to interrogatories and questions his signature. Instead, petitioner asserts that he forwarded handwritten answers to respondent at some point. Petitioner also testified that he did not know the meaning of the term “admissions” as noted in the interrogatories.

Testimony and Documentary Evidence of the Respondent New Jersey American Water:

Irene Sweeney, is employed by NJAW as a customer advocate and testified on behalf of the respondent. As part of Sweeney’s scope of employment, she addresses customer issues and complaints. Sweeney received notification that petitioner contact the Board with a complaint regarding his bill. Because of that action NJAW escalated the complaint. Sweeney was familiar with the petitioner’s account and communicated with him about his billing concerns. Sweeney reviewed petitioner’s NJAW invoices and testified that NJAW generated invoices in its usual course of business.

Sweeney testified that she spoke to the petitioner by telephone. In its usual course of business, NJAW maintains records of customer discussions and service orders for the properties to which it supplies water. It is NJAW’s standard practice to document these interactions. Accordingly, Sweeney noted her discussion with petitioner. Petitioner relayed that he had an appointment to have the water meter replaced the following day. Sweeney explained that once NJAW removes the meter and tests it, no further meter testing is possible. Sweeney advised petitioner that he could have the Board witness the test and cancel the appointment for May 3, 2019, to accommodate that process. Sweeney noted that she repeated this option three times during her conversation with petitioner. Petitioner declined.

On May 3, 2019, Sweeney documented her response to the Board reiterating that she explained the process to allow for a Board witnessed test. Still, petitioner wanted to move forward with the meter removal and testing by NJAW only. After the conversation with petitioner, Sweeney placed a note updating the meter change service order to 'green tag' the meter for testing, and that petitioner refused a witnessed meter test. The service order concerning the meter change for May 3, 2019, reflects her notation.

Sweeney also testified that a prior discussion on April 24, 2019, indicates the petitioner informed NJAW that he made a leak repair to his property on April 15, 2019. A property owner is responsible for pipes and fixtures, while NJAW is only responsible for the meter. NJAW periodically replaces meters and will also change meters when a customer requests replacement.

NJAW could not offer petitioner a leak adjustment because his usage issue did not meet the company's criteria for such credits. Specifically, petitioner received a leak adjustment in 2018, and the 2019 problem was less than five years after the first billing adjustment. The Board does not regulate or require NJAW to provide customers with leak adjustments. NJAW allows for one courtesy leak adjustment every five years.

Finally, John Taberes is employed by NJAW as a FSS since 2003. Taberes testified that he had no independent recollection of petitioner's service address or interactions with the petitioner. However, he documents each service event in the service order on the service call date and asserts the note would accurately record what occurred.

Service orders indicate that on April 2, 2019, Taberes inspected petitioner's Irvington property for a leak due to a report of unusually high usage. Taberes's note for that inspection states that he detected movement at the leak dial and informed the owner. The comment also records that the new second-floor tenant was not home but reported his toilet was "constantly running." The owner (petitioner) advised Taberes that he would obtain a plumber. The meter read 173 units. A subsequent meter read in the service order on April 26, 2019, notes 184 units, or 11,000 gallons from April 2, 2019, to April 26, 2019. The comment section indicates the owner made a repair and wanted to make sure that no more leaks were present. The May 3, 2019, meter change order lists Taberes as the FSR performing the task and notes that he 'green tagged' the meter for a test. The note also reflects that the customer wanted Taberes to document "his comment that he initially requested the witness [sic] meter test." (Initial Decision at 9). The water reading for meter ending in 3169 was 187 units, or 3,000 gallons, from April 26, 2019, to May 3, 2019. The new meter read zero units.

NJAW relies on petitioner's answers to interrogatories to challenge portions of petitioner's testimony. Significantly, when asked to identify persons knowing facts of this matter or employees with whom he interacted, petitioner responded, "none." Moreover, petitioner indicated no person or employee made an admission concerning the issues in this case. Therefore, NJAW was first made aware of alleged conversations with its FSR's during petitioner's testimony and requested no consideration of such testimony.

DISCUSSION AND FINDINGS

On February 26, 2021 ALJ Stokes issued an Initial Decision in favor of Respondent and denied the relief sought by the Petitioner. In the Initial Decision ALJ Stokes, based upon her review of the testimonial and documentary evidence, found that:

Although petitioner denies any leak, meter readings identified in NJAW's invoices and service order notes are consistent with a repaired leakage problem before the meter change on May 3, 2019. Indeed, these meter readings demonstrate that water consumption resumed to normal average use before the initial meter replacement. Regardless, petitioner supplies no evidence of how NJAW tampered with any of the meters on his Irvington property or that any meter was faulty. Significantly, petitioner testified that he heard noises like "someone was taking a shower" when no one was present in the apartments on several occasions. Petitioner acknowledges that the toilets he replaced were original to his 2002 property purchase. Petitioner also was unclear as to the date the plumber replaced the toilets and supplies no documentation verifying the toilet purchase or replacement date. Similarly, petitioner does not provide plumber invoices for the various visits he claims. However, NJAW's multiple records maintained in the ordinary course of business document several reports of a leak on the petitioner's premises and a repair in April 2019.

The email attaching the answers to interrogatories was from petitioner's account and in response to an email from respondent's counsel. Moreover, the email's date is August 6, 2020, and I instructed petitioner to reply by August 5, 2020. While I appreciate that petitioner does not recall sending the materials, he presents insufficient evidence to support that the documents were not his. Nonetheless, petitioner testified he did not understand the meaning of an "admission," which I find credible from a layperson. Petitioner did not identify any NJAW representative that he spoke with regarding this case. Yet, at the hearing, petitioner acknowledged speaking with NJAW representatives on the phone and FSRs at his home, making his interrogatory answer incorrect. Irrespective, the business records maintained by NJAW are contemporaneous to NJAW's interactions with petitioner and are more credible and reliable than petitioner's testimony as to those discussions after the fact and with minimal detail. (See Initial Decision page 10-11).

In ALJ Stokes' legal analysis, the ALJ reviewed N.J.A.C. 14:3-4.6 "Adjustment of charges for meter error." Analyzing both parties' submissions, ALJ Stokes found that all meter testing was within appropriate water flow accuracy limits, whether performed at the request of NJAW or witnessed by the Board. (See Initial Decision at 12). Despite Petitioner's allegations that faulty meters were at fault for the atypical usage readings, Petitioner failed to provide any proof to substantiate this allegation. ALJ Stokes also found that the invoice from March 27, 2018 documents the petitioner received a leak adjustment in 2018 and was therefore not entitled to another in 2019. Id. Thus, the ALJ dismissed the petition.

No exceptions to the Initial Decision have been received by the Board.

LEGAL ANALYSIS AND CONCLUSION

In customer billing disputes before the Board the petitioner bears the burden of proof by a preponderance of the competent credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). The burden of proof is met if the evidence 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.), certif. denied, 31 N.J. 75 (1959).

As the customer of record of NJAW, a public utility, petitioner 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 he may dispute a utility charge before the Board. N.J.A.C. 14:3-7.6. When the customer apparently cannot account for a spike in metered usage, the regulations provide that:

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)].

The New Jersey Legislature delegated to the BPU the 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). In turn, the BPU adopted regulations that require each water utility to ensure that it tests all of the meters in use in its system for accuracy. N.J.A.C. 14:3-4.1 to 4.8. Under N.J.A.C. 14:3-4.5(c), when a billing dispute occurs, 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 . . . the customer may have the test witnessed by a third party.” Testing “may be appropriate in instances which include . . . unexplained increased consumption[.]” N.J.A.C. 14:3-4.5(d). The Board charges a fee of \$5.00 for a meter test, and when the test is within the “allowable limits,” the Board retains the fee. N.J.A.C. 14:3-4.5(e).

An accurate water meter shows an error no greater than one and one-half percent when tested per the regulations. N.J.A.C. 14:3-4.6(a). If, however, a water meter is registering fast by “more than one and one-half percent, an adjustment of charges shall be made[.]” Ibid. The Board gives significant 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).

In the present matter, the Petitioner failed to meet his burden of proof by a preponderance of the evidence. Mr. Ubanwa did not provide credible evidence by a preponderance of the evidence that the charges to his account were incorrect or that NJAW failed to follow proper meter testing procedures. Every meter test performed through NJAW or witnessed by the Board revealed water flow accuracy within the regulatory limits. Furthermore, the Petitioner did not provide credible evidence that he ruled out leaks within the property. Petitioner is responsible for the outstanding water consumption charges. Additionally, NJAW is not obligated to offer a courtesy leak adjustment to the Petitioner because he fails to meet the criteria for such a credit given his last bill reduction in 2018.

Thus, after careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of law of ALJ Stokes to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to meet his burden of proof. Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Petition be **DISMISSED**.

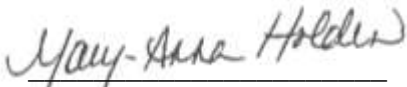
The effective date of this Order is May 17, 2021.

DATED: April 27, 2021


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

THEODORE UBANWA

V.

NJ AMERICAN WATER COMPANY

BPU Docket No. WC19101333U

OAL Docket No. PUC 17770-19

SERVICE LIST

<p>Theodore Ubanwa Newark, NJ 07108</p> <p>New Jersey American Water Company 1025 Laurel Oak Road Voorhees, NJ 08043</p> <p>Josiah Contarino, Esq. Archer and Greiner, PC 21 Main Street, Suite 353 Hackensack, NJ 07602 therten@archerlaw.com</p> <p>Julie Ford, Director Division of Customer Assistance Board of Public Utilities 44 South Clinton Avenue, 9th Floor Post Office Box 350 Trenton, New Jersey 08625-0350 julie.ford@bpu.nj.gov</p> <p>Meliha Arnautovic, DAG Department of Law and Public Safety Division of Law 25 Market Street, Post Office Box 112 Trenton, New Jersey 08625 Pamela.Owen@law.njoag.gov</p>	
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 17770-19
AGENCY DKT. NO. WC 19101333u

THEODORE UBANWA.,

Petitioner,

v.

NJ AMERICAN WATER COMPANY,

Respondent.

Theodore Ubanwa, petitioner, pro se

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

Record Closed: February 10, 2021

Decided: February 26, 2021

BEFORE **NANCI G. STOKES**, ALJ:

STATEMENT OF THE CASE

Petitioner, Theodore Ubanwa, receives water service through New Jersey American Water (NJAW) at his Irvington, New Jersey property and disputes usage invoices from February through April 2019, reflecting higher than typical consumption. Is petitioner responsible for increased water billing? Yes. Under N.J.A.C. 14:3-7.6, only where there is no apparent explanation for the increase or meter testing inaccuracies exist will the Board of Public

Utilities (Board) consider a customer's established consumption to assess the bill's correctness.

PROCEDURAL HISTORY

On September 17, 2019, petitioner filed a billing dispute with the Board. On September 23, 2019, the Board received the appeal, but the appeal did not include the required fee. On December 16, 2019, after the Board received petitioner's payment and NJAW's answer to the appeal, the Board transmitted the case to the Office of Administrative Law (OAL), for a hearing as a contested case under N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13.

On January 21, 2020, I conducted an initial pre-hearing conference under N.J.A.C. 1:1-13.1 to discuss when the parties and their witnesses would be available for the hearing, the nature of the proceeding, and the issues to be resolved, including any unique evidentiary problems. The parties indicated a desire to discuss settlement which was not successful, and discovery requests ensued.

On March 9, 2020, under Executive Order 103, the Governor of the State of New Jersey first declared a State of Emergency caused by COVID-19. The State of Emergency continues to date. On March 17, 2020, the OAL stopped in-person proceedings due to the COVID-19 pandemic and conducted hearings via Zoom.

Multiple telephone conferences addressed continuing discovery concerns delaying the scheduling of hearings in this case. I issued a pre-hearing Order¹ on June 10, 2020, establishing a discovery completion date of July 10, 2020, and scheduling hearings for September 30, 2020.

Discovery issues persisted and I scheduled a telephone conference on July 22, 2020. Petitioner indicated he was not able to appear via Zoom due to technological

¹ The pre-hearing Order is incorrectly noted as an amended pre-hearing Order.

difficulties. On July 24, 2020, I issued an amended pre-hearing Order extending the discovery end date to August 5, 2020, and rescheduled hearings to October 16, 2020.

Yet, COVID-19 restrictions persisted, and petitioner still was unable to participate via Zoom. I rescheduled the hearing to February 10, 2021, and petitioner appeared via Zoom with his daughter's assistance. Petitioner relied upon NJAW's exhibits for the hearing, having supplied no prior documentation through discovery. On February 10, 2021, I closed the record.

FACTUAL DISCUSSION AND FINDINGS

The parties do not dispute many of the material facts in this case. Based on the testimony of petitioner and respondent's employees, Irene Sweeney and John Taberes, and the documents admitted into evidence, I **FIND** the following **FACTS**:

NJAW provided water service to petitioner his rental property in Irvington, New Jersey, under an account number ending in 0383.² The water service invoices identify the petitioner as a customer of record for the service location. The property consists of two units, one on the first floor and another on the second floor.

In February 2019, petitioner's water usage bill increased significantly and continued until April 25, 2019, which petitioner asserts is due to a faulty water meter. During this period, petitioner had a tenant only on the second floor.

Before February 2019, NJAW afforded petitioner a leak adjustment or billing reduction because of a burst pipe in the service property's basement. The billing adjustment occurred less than five years before the period disputed in this case.

NJAW calculated petitioner's water usage through actual meter reading conducted by a meter reader on or about the twenty-fifth day of each month. To determine water

² This decision does not include petitioner's full address, account number, or meter numbers for privacy.

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.

Petitioner's NJAW invoice for water usage from January 26, 2019, to February 22, 2019, or twenty-eight days, was fifty units or 50,000 gallons and \$345.97 in current charges. To calculate twenty-eight days, NJAW counts both January 26, 2019, and February 22, 2019. The prior billing period noted water usage of twelve units or 12,000 gallons and charges of \$191.32.³ The current meter read sixty-two units, and deducting the prior read of twelve units made water usage for the billing period fifty units or 50,000 gallons.

NJAW's invoice format changed, and the bill for services from February 23, 2019, to March 25, 2019, reflects the new layout. The revised invoice includes the average daily use, whereas the prior format did not. Regardless, NJAW applies the same formula to determine daily water usage. The January 26, 2019, to February 22, 2019, service period indicates average daily use of 1,786 gallons or 50,000 total gallons divided by twenty-eight days.

Petitioner's NJAW invoice for water usage from February 23, 2019, to March 25, 2019, or thirty-one days was ninety-seven units or 97,000 gallons, and \$655.32 in current charges. The average daily use during this period was 3,129 gallons.

On March 28, 2019, the billing date, NJAW corresponded to petitioner alerting him of the higher than regular water use. The letter recommends that petitioner check the property for possible problems causing the increased water use and to fix any discovered broken service line or internal plumbing issues "as soon as possible."

Petitioner contacted NJAW after receiving NJAW's March 28, 2019, letter. Soon after, a field service technician (FSR) came to petitioner's property to check the water meter having a corresponding number ending in 3169.

³ The prior invoice is not in evidence, but the February invoice contains historical information. The bill in evidence does not explain the prior charge of \$191.32 or whether that amount includes a previous balance.

Petitioner brought a plumber to the property who replaced two toilets. The toilets were original to the premises petitioner purchased in approximately 2002.

On May 2, 2019, petitioner requested that his meter be changed.

On May 3, 2019, NJAW replaced the first meter, 3169, with a new meter reflecting a number ending in 7876.

Petitioner's NJAW invoice for water usage from March 26, 2019, to April 25, 2019, or twenty-eight days, was twenty-five units or 25,000 gallons, and \$181.95 in current charges. The bill reflects average daily use for the billing period as 806 gallons. The invoice noted the prior meter read 159 gallons and the current meter read 184 gallons.

Petitioner's NJAW invoice for water usage from April 26, 2019, to May 23, 2019, or twenty-eight days, is broken into two usage calculations to reflect the meter change. Meter 3169 from April 26, 2019, to May 2, 2019, revealed three units or 3,000 gallons. Thus, for those seven days, the average daily usage was 429 gallons. New meter 7876 was set to zero for the initial meter read on May 3, 2019 and revealed eight units or 8,000 gallons for the twenty-one days until the next meter read on May 23, 2019, equating to average daily usage of 381 gallons. The invoice reflects the average daily use for the full billing period as 393 gallons. The total current charges were \$89.62. This invoice is not in dispute.

On May 21, 2019, NJAW communicated the meter test results on 3169 as demonstrating the meter's operation was "in a satisfactory manner" under regulations establishing acceptable accuracy rates.

On August 1, 2019, NJAW replaced the second meter, 7876, at petitioner's request with a new meter reflecting a number ending in 8255. The Board witnessed and verified testing of both meters, revealing that the meters were "within the prescribed limits of accuracy at both the flow rates." Moreover, the Board concluded that the results required no adjustment to petitioner's bill. When the Board witnesses and verifies a meter test, it provides the results of that testing to the property owner and the utility, or in this case, NJAW.

Petitioner's NJAW invoice for water usage from July 25, 2019 to August 22, 2019, or twenty-nine days, is broken into two usage calculations to reflect the meter change. For the seven days before the meter change, water usage was six units or 6,000 gallons, and for the period from August 1, 2019, to August 22, 2019, water usage was twelve units of 8,000 gallons. The total current charges were \$122.37 after a \$14.99 Tax Cut and Jobs Act (TCJA) credit. The bill reflects average daily use for the billing period as 621 gallons. This invoice is not in dispute.

Petitioner's Case

Petitioner testified that NJAW's first FSR came to his property because of his high-water usage bill. Indeed, petitioner highlights that much less water usage occurred in the months before the February invoice. The technician was unable to determine where the leak was coming from but confirmed there was a problem. Petitioner heard noises in the basement like somebody was taking a shower.

Petitioner did not recall meeting FSR John Taberes at his property. Petitioner was unsure of specific dates that NJAW employees came to his property concerning the disputed services in this case.

Petitioner performed a test on the toilets by placing a chalk-like substance in the bowl and waiting overnight to see if the water line moved or "showed color" without anyone using the toilets. Petitioner testified that this test revealed no problem or toilet leakage.

On several occasions, petitioner called a plumber who came to the property but did not detect a leak. Because petitioner continued to get high-water usage bills, he arranged for the plumber to replace both the toilets in the apartments as they were old. Petitioner believes that the toilet replacement occurred in March 2019, after the plumber came to the property a couple of times.

Petitioner continued to press NJAW and requested that NJAW replace the meter because he felt the problem was due to a faulty meter. Petitioner testified that he asked the technician to seal the bag for the initial meter test, but the technician refused.

Similarly, when NJAW replaced the second meter, petitioner signed a receipt, and when the technician tore off the receipt, the meter bag ripped.

Accordingly, petitioner testified that he did not trust NJAW or the meter testing results on either meter because, in his opinion, it was possible to tamper with water meters. Petitioner does not believe NJAW tested the first meter it removed.

Petitioner also testified that he did not know what a “witnessed” meter test meant.

Regarding the replacement of the third meter, petitioner received an invitation to be present at the meter testing. The invitation provided the date and time, but his presence was not mandatory, and he chose not to attend.

On August 6, 2020, petitioner’s email account sent an email to respondent’s counsel. The email attached a copy of the petitioner’s typed and signed interrogatory answers and incomplete response to the demand for production. Petitioner does not believe he completed the answers to interrogatories and questions his signature. Instead, petitioner maintains that he forwarded handwritten answers to respondent at some point. Petitioner also testified that he did not know the meaning of the term “admissions” as noted in the interrogatories.

Respondent’s Case

Irene Sweeney

Irene Sweeney works for NJAW as a customer advocate addressing customer issues and complaints. Sweeney received notification that petitioner contacted the Board with a complaint regarding his bill. Because of that action, NJAW escalated the complaint. Sweeney was familiar with petitioner’s account and spoke with him about his billing concerns.

Sweeney reviewed petitioner’s NJAW invoices and explained that NJAW generates invoices in its usual course of business.

On May 2, 2019, Sweeney spoke with petitioner by telephone. In its usual course of business, NJAW maintains records of customer discussions and service orders for the properties to which it supplies water. It is NJAW's standard practice to document these interactions. Accordingly, Sweeney noted her discussion with petitioner. Petitioner relayed that he had an appointment to have the water meter replaced the following day. Sweeney explained that once NJAW removes the meter and tests it, no further meter testing is possible. Sweeney advised petitioner that he could have the Board witness the test and cancel the appointment for May 3, 2019, to accommodate that process. Sweeney noted that she repeated this option three times during her conversation with petitioner. Petitioner declined.

On May 3, 2019, Sweeney documented her response to the Board reiterating that she explained the process to allow for a Board witnessed test. Still, petitioner wanted to move forward with the meter removal and testing by NJAW only.

After the conversation with petitioner, Sweeney placed a note updating the meter change service order to "green tag" the meter for testing, and that petitioner refused a witnessed meter test. The service order concerning the meter change for May 3, 2019, reflects her notation.

Sweeney also testified that a prior discussion on April 24, 2019, indicates the petitioner informed NJAW that he made a leak repair to his property on April 15, 2019. A property owner is responsible for pipes and fixtures, while NJAW is only responsible for the meter. NJAW periodically replaces meters and will also change meters when a customer requests replacement.

NJAW could not offer petitioner a leak adjustment because his usage issue did not meet NJAW's criteria for such credits. Specifically, petitioner received a leak adjustment in 2018, and the 2019 problem was less than five years after the first billing adjustment. The Board does not regulate or require NJAW to provide customers with leak adjustments. NJAW allows for one courtesy leak adjustment every five years.

John Taberes

Since 2003, Taberes worked for NJAW as an FSR. Taberes had no independent recollection of petitioner's service address or interactions with the petitioner. However, he documents each service event in the service order on the service call date and asserts the note would accurately record what occurred.

Service orders indicate that on April 2, 2019, Taberes inspected petitioner's Irvington property for a leak due to a report of atypical usage. Taberes's note for that inspection states that he detected movement at the leak dial and informed the owner. The comment also records that the new second-floor tenant was not home but reported his toilet was "constantly running." The owner advised Taberes that he would obtain a plumber. The meter read 173 units.

A subsequent meter read in the service order on April 26, 2019, notes 184 units, or 11,000 gallons from April 2, 2019, to April 26, 2019. The comment section indicates the owner made a repair and wanted to make sure that no more leaks were present.

The May 3, 2019, meter change order lists Taberes as the FSR performing the task and notes that he "green tagged" the meter for a test. The note also reflects that the customer wanted Taberes to document his comment that he initially requested the witness [sic] meter test. The water reading for meter 3169 was 187 units, or 3,000 gallons, from April 26, 2019, to May 3, 2019. The new meter read zero units.

Petitioner's Answers to Interrogatories

NJAW relies on petitioner's answers to interrogatories to challenge portions of petitioner's testimony. Significantly, when asked to identify persons knowing facts of this matter or employees with whom he interacted, petitioner responded, "none." Moreover, petitioner indicated no person or employee made an admission concerning the issues in this case. Therefore, NJAW was first made aware of alleged conversations with its FSR's during petitioner's testimony and requested no consideration of such testimony.

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

On March 25, 2019, the meter read 159 units, and on the April 2, 2019, service call, the meter read 173 units. Water usage during this period equals the difference of fourteen units or 14,000 gallons. Therefore, in those nine days, counting both March 25, 2019, and April 2, 2019, average daily usage equals 1,556 gallons.⁴

On April 26, 2019, the service call notes a meter read of 184 units. Thus, in the twenty-four days from April 3, 2019, until April 26, 2019, water usage was only 11,000 gallons (184-173) with an average daily use of 458 gallons. Invoices noted similar water consumption after the service call until the meter change and the remaining billing period in May 2019.

Although petitioner denies any leak, meter readings identified in NJAW's invoices and service order notes are consistent with a repaired leakage problem before the meter change on May 3, 2019. Indeed, these meter readings demonstrate that water consumption resumed to normal average use before the initial meter replacement. Regardless, petitioner supplies no evidence of how NJAW tampered with any of the meters on his Irvington property or that any meter was faulty. Significantly, petitioner testified that he heard noises like "someone was taking a shower" when no one was present in the apartments on several occasions.

Petitioner acknowledges that the toilets he replaced were original to his 2002 property purchase. Petitioner also was unclear as to the date the plumber replaced the toilets and supplies no documentation verifying the toilet purchase or replacement date. Similarly, petitioner does not provide plumber invoices for the various visits he claims. However, NJAW's multiple records maintained in the ordinary course of business document several reports of a leak on the petitioner's premises and a repair in April 2019.

⁴ I calculated the average daily water usage in whole numbers by rounding up or down consistent with NJAW's invoices. For example, the May 28, 2019, invoice revealed usage of 11,000 gallons divided by twenty-eight days or 392.857 gallons, rounded up to 393.

Taberes documented that he “green tagged” meter 3169 for testing and credibly explained that the service order notes are contemporaneous to the actions taken on the date indicated. The comments also include relevant information about customer conversations during service calls and reflect that on April 2, 2019, petitioner told Taberes he would obtain a plumber to address the water movement detected.

The email attaching the answers to interrogatories was from petitioner’s account and in response to an email from respondent’s counsel. Moreover, the email’s date is August 6, 2020, and I instructed petitioner to reply by August 5, 2020. While I appreciate that petitioner does not recall sending the materials, he presents insufficient evidence to support that the documents were not his. Nonetheless, petitioner testified he did not understand the meaning of an “admission,” which I find credible from a layperson. Petitioner did not identify any NJAW representative that he spoke with regarding this case. Yet, at the hearing, petitioner acknowledged speaking with NJAW representatives on the phone and FSRs at his home, making his interrogatory answer incorrect. Irrespective, the business records maintained by NJAW are contemporaneous to NJAW’s interactions with petitioner and are more credible and reliable than petitioner’s testimony as to those discussions after the fact and with minimal detail.

Sweeney’s testimony regarding her discussion with petitioner on May 2, 2019, was also credible, straightforward, and supported by NJAW’s various business records. Sweeney discussed the possibility of a witnessed meter test, but petitioner declined. On May 2, 2019, she documented her conversation as customary and placed a note in the service order for the meter change on May 3, 2019, to “green tag” the meter for testing. Moreover, on May 3, 2019, she reported her conversation with petitioner to the Board in response to petitioner’s complaint, reiterating that she offered petitioner a witnessed meter test.

Petitioner testified that he was unsure what a witnessed test entailed, but this is contrary to the service note wherein he asked Taberes to document his request for a witnessed test. Further, the Board later witnessed and verified subsequent meter tests, and petitioner paid the fee associated with such testing.

Significantly, all meter testing was within appropriate water flow accuracy limits, whether performed at the request of NJAW or witnessed by the Board.

Lastly, the invoice from March 27, 2018, documents that petitioner received a leak adjustment in 2018.

LEGAL ANALYSIS AND CONCLUSION

Evidence

As to testing results reported by the Board, “[t]here is a presumption, absent contrary testimony, that those responsible for services to the public will carry out their duties in a proper, careful and prudent manner. “State v. Matulewicz, 101 N.J. 27, 30 (quoting State v Hudes, 128 N.J. 589, 602 (Cty. Ct. 1974)); see also N.J. R. Evid. 803(8)(A)(public official’s statement contained in a writing or other record of an act done by the official or an act, condition, or event observed by the official . . . within the scope of the official’s duty are not excluded hearsay). Here, the Board must witness and verify testing upon customer request, with a fee, and did so in July and August 2019 and notified petitioner of the results. NJAW also receives a copy that it maintains in the customer’s file as part of its usual practice. Therefore, I **CONCLUDE** that I can properly consider the Board’s records as evidence in this case.

In Matulewicz, the New Jersey Supreme Court also explained the business record exception to the hearsay rule, noting "that records which are properly shown to have been kept as required normally possess a circumstantial probability of trustworthiness, and therefore ought to be received in evidence." Id at 29–30 (quoting Mahoney v. Minsky 39 N.J. 208, 218 (1963). Indeed, N.J. R. Evid. 803(c)(6) permits an exception to the hearsay rule for records of regularly conducted activity:

[A] statement contained in a writing or other record of acts, events, conditions . . . made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was

made in the regular course of business and it was the regular practice of that business to make such writing or other record.

[ibid.]

However, this general acceptance of reliability will not attach if "the trial court, after examining them [the records] and hearing the manner of their preparation explained, entertains serious doubt as to whether they are dependable or worthy of confidence." Mahoney, 39 NJ at 218. Here, both Sweeney and Taberes testified regarding the business purpose, preparation, and maintenance of NJAW's records presented in this case, contemporaneous to actions documented in these materials. Each had an obligation to accurately report events as they occurred. Thus, I **CONCLUDE** that NJAW's records are dependable as to their reliability as evidence in this case.

Billing Disputes

In customer billing disputes before the Board, petitioners bear the burden of proof by a preponderance of the competent, credible evidence. 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 is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959). Thus, petitioner must establish his contention that the charges to his account are incorrect by a preponderance of the credible evidence.

As the customer of record of NJAW, a public utility, petitioner 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 he may dispute a utility charge before the Board. N.J.A.C. 14:3-7.6. When the customer apparently cannot account for a spike in metered usage, the regulations provide that:

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).]

A fair system to all utility customers depends upon water meters accurately 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). In turn, the Board adopted regulations that require each water utility to ensure that it tests all of the meters in use in its system for accuracy. N.J.A.C. 14:3-4.1 to 4.8.

Under N.J.A.C. 14:3-4.5(c), when a billing dispute occurs, 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 . . . the customer may have the test witnessed by a third party.” Testing “may be appropriate in instances which include . . . unexplained increased consumption[.]” N.J.A.C. 14:3-4.5(d). The Board charges a fee of \$5.00 for a meter test, and when the test is within the “allowable limits,” the Board retains the fee. N.J.A.C. 14:3-4.5(e).

An accurate water meter shows an error no greater than one and one-half percent when tested per the regulations. N.J.A.C. 14:3-4.6(a). If, however, a water meter is registering fast by “more than one and one-half percent, an adjustment of charges shall be made[.]” *Ibid.* The Board gives significant 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).

Although the increased usage documented on invoices in February, March, and April 2019 was inconsistent with petitioner's established water use, I **CONCLUDE** that he offers no credible evidence to support his claim that the error was with NJAW's meter or that NJAW tampered with the meter. Indeed, I found that every meter test performed through NJAW or witnessed by the Board revealed water flow accuracy within the regulatory limits. Petitioner is responsible for water consumption even where defective pipes, showers, or bathroom fixtures at his property cause leaks.

Significantly, I also **CONCLUDE** that petitioner provided no credible evidence that he ruled out leaks within the property. Instead, I **CONCLUDE** that a preponderance of the evidence supports that petitioner made repairs that returned the property to typical water consumption before the initial water meter replacement. In other words, there is sufficient credible evidence of an explanation for the increase in water usage. Further, I **CONCLUDE** that petitioner did not prove by a preponderance of the credible evidence that the bills were not accurate or that NJAW failed to follow proper meter testing procedures. Additionally, I **CONCLUDE** that NJAW is not obligated to offer a leak adjustment to petitioner because he did not meet the criteria for such a credit given his last bill reduction in 2018. Accordingly, I **CONCLUDE** that petitioner is responsible for the outstanding water consumption charges.

ORDER

Based upon my findings of fact and conclusions of law, I **ORDER** that the petition be **DISMISSED**, and that petitioner remains responsible for the outstanding charges.

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.



February 26, 2021
DATE

NANCI G. STOKES, ALJ

Date Received at Agency:

February 26, 2021

Date Mailed to Parties:
ljb

February 26, 2021

APPENDIX

WITNESSES

For petitioner:

Theodore Ubanwa

For respondent:

Irene Sweeney

John Taberes

EXHIBITS

For petitioner:

None.

For respondent:

- R-1 Invoice – February 28, 2019
- R-2 Invoice – March 28, 2019
- R-3 Invoice – April 29, 2019
- R-4 Invoice – May 28, 2019
- R-5 NJAW Customer Phone Call Notes
- R-6 NJAW Service Order Notes
- R-7 NJAW Letter – May 21, 2019
- R-8 Board Letters – July 12 and August 8, 2019
- R-9 NJAW Letter – March 28, 2019
- R-10 Not in evidence
- R-11 Invoice – August 23, 2019

R-12 Invoice – April 18, 2018

R-13 Email and discovery responses