



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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CUSTOMER ASSISTANCE

<b>ABX GROUP, LLC</b>	)	ORDER ADOPTING
Petitioner	)	INITIAL DECISION
	)	
v.	)	
	)	
<b>MIDDLESEX WATER COMPANY</b>	)	DOCKET NO. WC20120743U
Respondent	)	OAL DOCKET NO. PUC01007-21

**Parties of Record:**

**E. Carter Kromer, Esq.**, for the Petitioner, ABX Group LLC of Kromer Law Firm, LLC  
**Jay L. Kooper, Esq.**, for respondent, Middlesex Water Company

BY THE BOARD:

The within matter is a billing dispute between ABX Group LLC (“Petitioner”) and Middlesex Water Company (“MWC” 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 April 22, 2021, as follows.

**PROCEDURAL HISTORY**

On or about November 18, 2020, Petitioner filed a petition with the Board requesting a formal hearing, regarding a billing dispute with NJAW. Petitioner alleged that NJAW incorrectly billed its account and requested the assistance of the Board in resolving the matter. Petitioner asserts incorrect billing resulted during the May 29, 2019 to August 27, 2019 service period as the residential single family home at 27 Blandford Ave, Avenel New Jersey was unoccupied at the time in question. The total amount in question is \$6,355.17.

On January 28, 2021, 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”) Dean J. Buono.

Administrative Law Judge (ALJ) Dean J. Buono filed an Initial Decision in this matter with the Board on April 22, 2021. MWC filed its motion for summary decision on March 25, 2021, ABX filed its response on March 29, 2021, and MWC filed their reply on March 30, 2021. ABX filed an exception to the Initial Decision in letter dated May 3, 2021. MWC filed an exception to the Initial Decision in letter dated May 4, 2021.

### **DISCUSSION AND FINDINGS**

ALJ Buono issued an Initial Decision in favor of Respondent and denied the relief sought by the Petitioner. In the Initial Decision ALJ Buono, based upon his review of the submissions of the parties, found that:

ABX has failed to provide credible or competent documentary or testimonial evidence to support its contention that the September 2019 bill was improper or inaccurate. Mere speculation alone is not enough. I further conclude that MWC must prevail as a matter of law and is owed \$6,402.42<sup>1</sup>. (See Initial Decision page 11).

The Petitioner is the owner and customer of record, pursuant to N.J.A.C. 14:3-1.1, of the single family home located at 27 Blandford Ave, Avenel New Jersey ("Property"). MWC provided residential water service to the Property from October 19, 2017 to January 31, 2020. See Initial Decision page 2. The assigned account number for ABX's water service ended in Account 8291. ABX was the customer of record for Account 8291 for the duration of the service period. Id. Bills are issued to MWC's residential customers on a quarterly basis. Id. On September 19, 2019, MWC issued a bill to the Petitioner for the period of May 29, 2019 to August 27, 2019 ("September 2019 bill"). The September 2019 bill indicated dramatically increased water usage of 1,026,256 gallons or 1,372 centum cubic feet ("CCF"), resulting in a total bill of \$6,355.17. Id. The September 2019 bill indicated that, during the previous four billing periods, the residence did not consume any water. Id.

On October 18, 2019, per the Petitioner's request, an MWC employee arrived at the Property to inspect the meter and the premise to check for leaks. No signs of leaks were found. Id. Further, the employee determined that the meter was operating properly and was recording the water usage through the meter accurately. Id. at 3. The respondent issued a letter informing the petitioner of the results of the on-site inspection.

On January 16, 2020, ABX contacted MWC to request that the meter serving the Property be removed and tested by MWC. On January 23, 2020, a MWC employee arrived at the property removed the meter serving the premise (Meter Number Ending in 9894) and installed a new meter (Meter Number Ending in 1363). The removed meter was taken to the Company's meter testing facility. ABX initially requested to be present to witness the meter test conducted at the facility by the Company, but subsequently withdrew this request on January 25, 2020.

On February 22, 2020, the removed meter was tested by an MWC employee at the MWC's meter testing facility and tested "well within the acceptable limits of accuracy (98.5 percent to 101.5 percent) established by the New Jersey Board of Public Utilities ("Board") in accordance with

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<sup>1</sup> The initial bill totaled \$6,355.17. A past due amount was added to the charge on that bill of \$47.25, when it went unpaid for a total amount due of \$6,402.42.

N.J.A.C. 14:3-4.6.” Specifically, the meter’s “full flow register” test result was 99.7 percent, and its “intermediate flow register” test result was 99.5 percent. See Initial Decision at 4.

On February 24, 2020, MWC issued a letter informing ABX of the above meter test results. The equipment utilized by MWC to test ABX’s meter is certified by the New Jersey Office of Weights and Measures and was most recently certified and inspected on November 14, 2019. See New Jersey Office of Weights and Measures Certifications of MWC’s Meter Testing Equipment, dated November 14, 2019; Initial Decision at 4.

On November 18, 2020, ABX filed a petition initiating this formal billing dispute matter with the Board. See ABX Petition. ABX made three primary arguments in support of its petition: (1) ABX argued that “the home was vacant from May 29, 2019 to August 27, 2019, and the bill itself shows that the home had been vacant for at least a year before with no water usage.” See ABX Petition at 1. (2) ABX argues that the September 2019 bill “is not consistent with billings for similarly sized residences in the area.” ABX Petition at 2. And (3) ABX argues that Woodbridge Township reduced its bill for sewer service to 27 Blandford Avenue, and therefore MWC must follow suit because Woodbridge Township “bases its [sewer] bill on the water bill.” ABX Petition at 3. The Petitioner disputed the September 2019 bill and requested that it be corrected but, did not specify an amount. On December 11, 2020 MWC filed an Answer to the Petition.

On March 25, 2021, MWC filed a motion for summary decision, asserting that ABX has failed to prove by a preponderance of the competent, credible evidence that the September 2019 bill itself was inaccurate. See Initial Decision at 5.

In its opposition to MWC’s motion for summary decision, ABX argues that summary decision in favor of MWC is inappropriate because the sudden and dramatic change in the September 2019 Bill’s water reading is in and of itself competent and credible evidence that raises the “suspicion of inaccuracy.” Additionally, ABX asserts that the September 2019 bill must be based on an inaccurate water reading because of competent and credible evidence that the property was vacant and therefore could not have used 1,026,256 gallons of water. See Initial Decision at 5.

In ALJ Buono’s 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. See Initial Decision at 7. 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. Thus, the ALJ dismissed the petition and ordered the Petitioner to pay the outstanding balance.

On May 3, 2021 the Petitioner filed an exception to the Initial Decision issued by ALJ Buono. ABX argued that ALJ Buono gave excessive deference to the results of the meter testing. See ABX May 3, 2021 Exception at 1. ABX further emphasized that the Property was vacant, which resulted in unique circumstances, as the present circumstances are distinguishable from the case law relied on by ALJ Buono and a vacant property cannot use the 1,026,256 gallons of water billed. Id. at 2. Finally ABX requested the Initial Decision be set aside and the matter be permitted to proceed on a hearing of the merits. Id.

The Company also filed an exception to the Initial Decision issued by ALJ Buono via letter dated May 4, 2021. MWC requested that the Initial Decision be affirmed and that the exception filed by ABX be rejected. The Respondent emphasized that ABX was permitted to present its argument and it was fully considered and addressed in the briefings and by the ALJ. See MWC May 4, 2021

Exception at 1. MWC further argued that ABX has failed to provide credible evidence that the September 2019 bill, the meter reading and the meter test were inaccurate. See MWC May 4, 2021 Exception at 2.

### **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).

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” N.J.A.C. 1:1-12.5(a). Such motion “shall be served with briefs and with or without supporting affidavits” and “[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). When the motion “is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” Id.

Pursuant to Brill v. Guardian Life Ins. Co. of Am., a genuine issue with respect to a material fact exists requires consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. 142 N.J. 520, 540 (1995). ALJ Buono determined that summary decision is appropriate to consider as there is no a genuine issue of material fact. As the customer of record of MWC, 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 it 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). While the increased water consumption in the September 2019 bill was inconsistent with Petitioner’s established water usage, this change *alone* during a period in which the Petitioner alleged the property was vacant is not sufficient to demonstrate the September 2019 bill was improper or inaccurate. See Demary v. New Jersey American Water Company, BPU Dkt. No. WC18111220U, OAL Dkt. No. PUC 00977-19 (Order Adopting Initial Decision Feb. 5, 2020). See also Katyal v. MWC Water Co., BPU Dkt. No. WC19101325U, OAL Dkt. No. PUC 15778-2019S (Order Adopting Initial Decision Mar. 24, 2021).

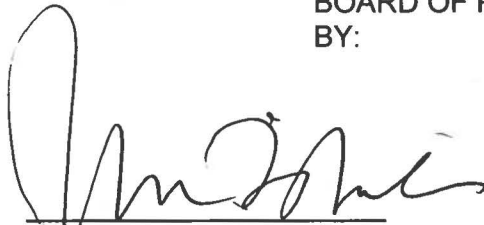
In the present matter, the Petitioner failed to meet its burden of proof by a preponderance of the evidence. ABX asserted that the September 2019 bill must be based on an inaccurate water reading because of competent and credible evidence that the property was vacant, consumed no water during the previous four periods, and therefore could not have used 1,026,256 gallons of water during the September 2019 bill period. While the increase in water usage is indeed dramatic, ABX has failed to carry its burden as the petitioner to present clear, competent evidence that the September 2019 bill was not proper or accurate. Petitioner did not provide credible evidence by a preponderance of the evidence that the charges to its account were incorrect or that MWC failed to follow proper meter testing procedures. The meter test performed through MWC revealed water flow accuracy within the regulatory limits. Furthermore, the Petitioner did not provide credible evidence that it ruled out leaks within the property. Petitioner is responsible for the outstanding water consumption charges.

The Board, at its discretion, has the option of accepting, modifying or rejecting the Initial Decision. Thus, after careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of law of ALJ Buono to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to meet its burden of proof. Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that that the Petition be **DISMISSED** and the Petitioner pay \$6,402.42 to Middlesex Water Company.

The effective date of this Order is July 24, 2021.

DATED: 7/14/21

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

**ABX GOUP, LLC, PETITIONER**

**V.**

**MIDDLESEX WATER COMPANY, RESPONDENT**

**BPU DOCKET NO. WC20120743U  
OAL DOCKET NO. PUC01007-21**

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

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. PUC 01007-21

AGENCY/BPU DKT. NO. WC20120743U

**ABX GROUP, LLC,**

Petitioner,

v.

**MIDDLESEX WATER COMPANY,**

Respondent.

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**E. Carlton Kromer**, Esquire, for petitioner, Kromer Law Firm, LLC, attorneys)

**Jay L. Kooper**, Esquire, for respondent

Record Closed: March 30, 2021

Decided: April 22, 2021

BEFORE **DEAN J. BUONO**, ALJ:

**STATEMENT OF THE CASE**

Petitioner ABX Group, LLC (ABX) appeals a bill issued by respondent Middlesex Water Company (MWC) for water service provided from May 29, 2019 to August 27, 2019, in the amount of \$6,355.17. ABX is seeking a waiver of the charges issued to it by MWC because the previous four billing periods, the residence did not consume any water. MWC filed a motion for summary decision. At issue in the motion is whether ABX provided evidence sufficient to create a genuine issue of material fact concerning the accuracy of the bill in question. MWC filed the motion for summary decision finding that



ABX failed to demonstrate by clear and competent evidence that the amount MWC billed to ABX was inaccurate and that, as a matter of law, this matter should be dismissed.

### **PROCEDURAL HISTORY**

The petition was filed with the Board on November 18, 2020, and transmitted to the Office of Administrative Law (OAL) on January 28, 2021, for determination as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. The matter was assigned to the undersigned, who conducted the initial case management conference. MWC filed its motion for summary decision on March 25, 2021, ABX filed its response on March 29, 2021, and MWC filed their reply on March 30, 2021.

### **FACTUAL DISCUSSION AND FINDINGS**

Having considered the parties' submissions comprising the record in this matter, **I FIND** as **FACT** the following:

ABX owns a single-family home at 27 Blandford Ave, Avenel, New Jersey 07001 ("27 Blandford Avenue"). MWC provided residential water service to 27 Blandford Avenue from October 19, 2017 to January 31, 2020. MWC Answer, p.1. The assigned account number for ABX's water service was Account Number 5437348291. Id. ABX was the customer of record for this account for its duration. Id. Bills are issued to MWC's residential customers on a quarterly basis. Id. On September 19, 2019, MWC issued a bill to ABX for the period of May 29, 2019 to August 27, 2019 ("September 2019 bill"). See September 2019 bill. The September 2019 bill indicated dramatically increased water usage of 1,026,256 gallons or 1,372 centum cubic feet ("CCF"), resulting in a total bill of \$6,355.17. Id. The September 2019 bill indicated that, during the previous four billing periods, the residence did not consume any water. Id.

On October 10, 2019, ABX contacted MWC to request an on-site inspection to read the meter and check for any leaks on the property. MWC Answer, p. 2. On October 18, 2019, an MWC employee arrived at 27 Blandford Avenue, inspected the meter and premise, and found no signs of leaks. Id. Further, the employee determined that the

meter was operating properly and was recording the water usage through the meter accurately. Id. As a result, MWC issued a letter informing ABX of the results of its on-site inspection. See Letter Summarizing On-Site Inspection Findings for 27 Blandford Avenue, dated October 18, 2019.

The September 2019 bill went unpaid, and the \$6,355.17 amount became a past due amount on MWC's subsequent bill issued on December 3, 2019, covering the period from August 27, 2019 to November 27, 2019 ("December 2019 bill"). See December 2019 bill. This past due amount was added to the current charge on that bill of \$47.25 for a total amount due of \$6,402.42. Id.

On January 16, 2020, ABX contacted MWC to request that the meter serving its residence at 27 Blandford Avenue be removed and tested by MWC. MWC Answer, p. 2. On January 23, 2020, a MWC employee arrived at 27 Blandford Avenue, removed the meter serving the premise (Meter Number 82779894) and installed a new meter (Meter Number 86301363). Id. The removed meter was taken to the Company's meter testing facility. ABX initially requested to be present to witness the meter test conducted at the facility by the Company, but subsequently withdrew this request on January 25, 2020. Id. On that same date, the new tenant of 27 Blandford Avenue contacted MWC to initiate a new account for water service with a requested start date of January 31, 2020. Id. In response to this request, MWC scheduled the effective end date of ABX's account with MWC for 27 Blandford Avenue for January 31, 2020, and the start date of the new tenant's account with MWC effective that same date of January 31, 2020. Id.

On February 4, 2020, a final bill was issued to ABX covering the period November 27, 2019 to January 31, 2020 ("February 2020 Bill"). See February 2020 bill. This bill reflects the past due amount of \$6,402.42 from the unpaid December 2019 bill plus the current charge of \$33.75 for a total amount due of \$6,436.17. Id.

On February 22, 2020, the removed meter was tested by an MWC employee at the MWC's meter testing facility and tested "well within the acceptable limits of accuracy (98.5 percent to 101.5 percent) established by the New Jersey Board of Public Utilities ("Board") in accordance with N.J.A.C. 14:3-4.6." Specifically, the meter's "full flow

register” test result was 99.7 percent, and its “intermediate flow register” test result was 99.5 percent. See Test Results of Meter Number 82779894, conducted on February 22, 2020.

On February 24, 2020, MWC issued a letter informing ABX of the above meter test results. Id. The equipment utilized by MWC to test ABX's meter is certified by the New Jersey Office of Weights and Measures and was most recently certified and inspected on November 14, 2019. See New Jersey Office of Weights and Measures Certifications of MWC’s Meter Testing Equipment, dated November 14, 2019.

On November 18, 2020, ABX filed a petition initiating this formal billing dispute matter with the Board. See ABX Petition. ABX makes three primary arguments in support of its petition. First, ABX argues that “the home was vacant from May 29, 2019 to August 27, 2019, and the bill itself shows that the home had been vacant for at least a year before with no water usage.” See ABX Petition at 1. Second, ABX argues that the September 2019 bill “is not consistent with billings for similarly sized residences in the area.” Id. at 2. Third, ABX argues that Woodbridge Township reduced its bill for sewer service to 27 Blandford Avenue, and therefore MWC must follow suit because Woodbridge Township “bases its [sewer] bill on the water bill.” Id. at 3.

In its petition, ABX disputes the September 2019 bill and requests that this bill be “corrected” by an unspecified amount. See Petition at 2. By correspondence dated December 9, 2020, the Board mailed the petition to MWC, and MWC received the petition from the Board on that same date of December 9, 2020. See MWC Answer, p. 3.

On December 11, 2020, MWC filed its answer to ABX's petition. See MWC Answer. On January 8, 2021, ABX filed a reply to MWC’s answer. See Reply to MWC’s Answer. By letter dated January 28, 2021, the Board transmitted the case to the New Jersey Office of Administrative Law (“OAL”). A prehearing conference was held by telephone with the parties on March 16, 2021. At this prehearing conference, a hearing was scheduled for this matter for September 3, 2021, and a Notice Hearing confirming this date was issued to the parties immediately following the conclusion of the prehearing conference.

On March 25, 2021, MWC filed a motion for summary decision, asserting that ABX has failed to prove by a preponderance of the competent, credible evidence that the September 2019 bill itself was inaccurate. Specifically, MWC asserts that ABX's three primary arguments and supporting exhibits are reduced to nothing more than "bald assertions lacking substantiation." See MWC's Motion for Summary Decision at 4.

In response to MWC's motion for summary decision, ABX argues that summary decision in favor of MWC is inappropriate because the sudden and dramatic change in the September 2019 Bill's water reading is in and of itself competent and credible evidence that raises the "suspicion of inaccuracy." See ABX Opposition to Motion for Summary Decision, dated March 29, 2021. Additionally, ABX asserts that the September 2019 bill must be based on an inaccurate water reading because of competent and credible evidence that the property was vacant and therefore could not have used 1,026,256 gallons of water. Id.

As of the date of the filing of MWC's motion for summary decision, the total amount due by ABX for Account Number 5437348291 remains \$6,436.17 as set forth in the February 2020 Bill.

### **LEGAL ANALYSIS AND CONCLUSION**

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

Determining whether a genuine issue with respect to a material fact exists requires consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am. 142 N.J. 520, 540 (1995). Here, there is not a genuine issue of material fact; thus, summary decision is appropriate to consider.

In opposition to MWC's motion for summary decision, ABX asserts that the September 2019 bill constitutes credible, competent evidence because the sudden and dramatic change in the September 2019 bill's water reading raises the suspicion of inaccuracy. ABX also asserts that the September 2019 bill must be based on an inaccurate water reading because of competent and credible evidence that the property was vacant, consumed no water during the previous four periods, and therefore could not have used 1,026,256 gallons of water during the September 2019 bill period. While the increase in water usage is indeed dramatic, ABX has failed to carry its burden as the petitioner to present clear, competent evidence that the September 2019 bill was not proper or accurate.

A customer of record<sup>1</sup> is required to make payments "for all utility service rendered." N.J.A.C. 14:3-7.1(a); see also N.J.A.C. 14:3-1.1. However, as the customer of record for 27 Blandford Avenue, ABX may dispute a utility charge before the Board. N.J.A.C. 14:3-7.6. 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). 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).

ABX asserts that the sudden and dramatic change in water consumption, as indicated in the September 19, 2019 bill, is clear and credible evidence that the meter reading was invalid. During its October 18, 2019, inspection, however, MWC found no

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<sup>1</sup> "Customer of record" is defined as "the person that applies for utility service and is identified in the account records of a public utility as the person responsible for payment of the public utility bill. N.J.A.C. 14:3-1.1.

signs of any leaks, and ABX has not set forth any evidence to the contrary. The regulations provide for situations such as this one, in which a customer apparently cannot account for a spike in metered consumption:

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)].

Because there is no apparent explanation for the water bill increase, the Board must consider ABX's established water consumption, which, until the September 2019 bill, was zero gallons. However, the analysis does not stop there. The customer's previous consumption, *in addition* to the results of any tests on the customer's meter, must be used to determine whether the bill is correct and appropriate. In fact, the Board affords a high degree of deference to tests that measure a meter's accuracy. See Kohll v. Jersey Central Power and Light Co., Dkt. No. EC10070506U, final decision, (May 16, 2011); 2013 N.J. PUC LEXIS 260 at 6 (N.J. P.U.C. August 21, 2013).

MWC has produced evidence that demonstrates that the bill, while high, is accurate as rendered. 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 this section." N.J.A.C. 14:9-4.1 (d). ABX's meter was operating within the accuracy levels as set forth in N.J.A.C. 14:9-4.1(d). On February 22, 2020, the removed meter was tested by an MWC employee at the Company's meter testing facility and tested within the acceptable limits of accuracy (98.5 percent to 101.5 percent) established by the Board in accordance with N.J.A.C. 14:3-4.6. Specifically, the meter registered at 99.7 percent at full flow, and 99.5 percent at intermediate flow. See Test Results of Meter Number 82779894, conducted on February 22, 2020. The equipment utilized by MWC to test Meter Number 82779894 was certified by the New Jersey Office of Weights and Measures. See New Jersey Office

of Weights and Measures Certifications of MWC's Meter Testing Equipment, dated November 14, 2019.

While the increased water consumption in the September 2019 bill was indeed quite inconsistent with ABX's established water usage, this change *alone* during a period in which ABX alleges that the property was vacant is not enough to demonstrate that the September 2019 bill was improper or inaccurate, particularly given MWC's significant evidence to the contrary. In fact, ABX has not presented any evidence in response to MWC's motion asserting that there was any reason why the meter reading or accuracy tests were inaccurate. Rather, ABX only asserts that the reading *had to* have been inaccurate due to the inconsistencies between billing periods.

To defeat a motion for summary decision, ABX is required to provide clear and competent evidence that goes beyond speculation, hypothesizing, and conjecture. See Canning v. Atl. City Elec. Co., PUC 18763-16, Initial Decision (March 7, 2019) adopted 2019 N.J. PUC LEXIS 85 (April 18, 2019). Asserting that MWC's bill for past water consumption was inconsistent with established usage, and thus inaccurate, does not make it so. Absent any competent evidence challenging the accuracy of Meter Number 82779894 or disputing the tests or methods employed by MWC, ABX fails to bear its burden to show that MWC's bill for past water consumption was improper or inaccurate.

ABX further argues in its opposition that the results of the meter test conducted on February 22, 2020, is not relevant to this analysis because the test took place months after the reading for the September 2019 bill took place. See ABX Opposition at 2. However, nowhere in the Board's meter testing regulations, codified at N.J.A.C. 14:3-4.5, is this required. As stated in N.J.A.C. 14:3-4.5(a), "Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months." Id. Because the regulations do not mandate that meter testing occur within a specified time frame after a customer makes a request, ABX's assertion is without merit. ABX was free to request a meter test at any time after receiving the September 2019 bill but did not do so until January 16, 2020. After ABX made its request, MWC promptly removed the meter within one week and tested it within a month.

The facts of this case mirror those in Demary v. New Jersey American Water Company, BPU Dkt. No. WC18111220U, OAL Dkt. No. PUC 00977-19 (Order Adopting Initial Decision Feb. 5, 2020). There, the Board heard a billing dispute with regard to water service delivered by the New Jersey American Water Company (“NJAW”) to the petitioner’s residence. The petitioner challenged two monthly bills and believed them to be in error because they were much higher than previous NJAW bills. The petitioner speculated that the spike in her bills in fact coincided with the relocation of the water meter in the apartment next door. Following her receipt of the two disputed bills, the petitioner complained to NJAW and, unsatisfied with its response, arranged for a Board-staff supervised test of her meter. Following the inspection, the Board’s One Call and Meter Testing Office thereafter notified the petitioner that the meter measuring the amount of water supplied to her premises was within the prescribed limits of accuracy. The parties disputed whether the field inspector completed a leak check inside the residence to rule out leaks as the reason for the increased water bills.

The ALJ found that, although the increased usage was inconsistent with the petitioner’s established usage, the petitioner 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 inspect the interior of her home for leaks, she took no action to ensure that such an inspection be conducted, whether by NJAW or another professional. Further, the ALJ found that NJAW followed the proper procedure in verifying the water meter’s accuracy.

In adopting the initial decision, the Board agreed that the petitioner failed to show by a preponderance of the competent, credible evidence, that the petitioner’s water bills for the billing periods in dispute were not accurate. Although the amount charged for petitioner’s water service during the billing period in dispute was significantly higher than in other billing periods, the petitioner failed to offer any documentary or testimonial evidence to demonstrate that the increased water bills were caused by a leak, a faulty water meter, or any other cause. As such, the Board found that the petitioner did not show by a preponderance of the evidence that the amount charged in her water bills for the billing period in dispute was inaccurate.



Similarly, in Katyal v. MWC Water Co., BPU Dkt. No. WC19101325U, OAL Dkt. No. PUC 15778-2019S (Order Adopting Initial Decision Mar. 24, 2021), the petitioner, also an MWC customer, disputed a charge for two water bills based on the assertion of meter inaccuracy. The petitioner requested an on-site inspection, during which time an MWC employee determined that the meter was operating properly and found no evidence of any leaks. The removed meter was subsequently tested and was found to be within the acceptable limits of accuracy the Board has established pursuant to N.J.A.C. 14:3-4.6. The equipment used to test the meter had been inspected and certified by the New Jersey Office of Weights and Measures. MWC advised the petitioner of the test results and that the bills he received accurately reflected the amount of water delivered through the meter.

In adopting the initial decision, the Board found that, “based upon the evidence presented, MWC followed proper procedures, inspected the property and found no leaks, tested the meter at the customer's request, and found it to be within the accuracy parameters of N.J.A.C. 14:9-4.1(d).” Id. at 7. To overcome a motion for summary decision, the Board found that the petitioner needed to present “more than an assertion” of meter inaccuracy purely based on discrepancies between different billing periods. Id. The Board found that the petitioner did not meet this burden and dismissed the petition.

Both Demary and Katyal are instructive here. MWC tested ABX's water meter at 27 Blandford Avenue at ABX's request, followed proper procedures when testing the accuracy of the meter, inspected the property and found no leaks, and found the meter to be well within the acceptable range of accuracy (98.5 percent to 101.5 percent) as set forth in the Board's meter testing regulations. When tested on February 22, 2020, Meter Number 82779894's registered 99.7 percent at the full flow, and 99.5 percent for the intermediate flow. ABX does not challenge or dispute the test of Meter Number 82779894, nor does ABX challenge the accuracy of the testing equipment which has been certified by the New Jersey Office of Weights and Measures. ABX offered only an assertion of meter or billing inaccuracy resting solely on the September 2019 bill and its inconsistency with ABX's prior consumption during previous billing periods. As the Board has indicated in cases like Demary and Katyal, defeating a motion for summary decision in a utility bill

dispute requires something more than just the mere assertion or speculation of billing inaccuracy based on inconsistency between different billing periods. While the Board must consider prior consumption in disputes in which there is no apparent explanation for a billing increase, the Board gives great weight to meter accuracy tests. Because ABX has not offered any credible, competent evidence to challenge MWC's meter accuracy tests, which were performed in accordance with the regulations and clearly met the minimum level of accuracy, ABX has failed to challenge with a lucid argument.

Accordingly, following the Brill standard, and having reviewed the parties' submissions and argument in support of, and opposition to, the within motion for summary decision, **I CONCLUDE** that ABX has failed to provide credible or competent documentary or testimonial evidence to support its contention that the September 2019 bill was improper or inaccurate. Mere speculation alone is not enough. **I FURTHER CONCLUDE** that MWC must prevail as a matter of law and is owed \$6,402.42.

### **ORDER**

It is hereby **ORDERED** that Middlesex Water Company motion for summary decision be and hereby is **GRANTED**.

It is **FURTHER ORDERED** that \$6,402.42 be paid to Middlesex Water Company.

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 22, 2021

DATE

DEAN J. BUONO, ALJ

Date Received at Agency:

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Date Mailed to Parties:

\_\_\_\_\_

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