



Agenda Date: 7/29/16  
Agenda Item: 7A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
**www.nj.gov/bpu/**

CUSTOMER ASSISTANCE

<b>BIANCA CORTES,</b>	)	ORDER ADOPTING THE
Petitioner,	)	INITIAL DECISION, IN PART,
	)	AND REMANDING TO THE OAL
v.	)	FOR A SECOND EVIDENTIARY
	)	HEARING
<b>SUEZ WATER NEW JERSEY, INC.,<sup>1</sup></b>	)	
Respondent.	)	BPU DOCKET NO. WC14030248U
	)	OAL DOCKET NO. PUC 11838-14

**Parties of Record:**

**Jonah B. Kimmelstiel, Esq.,** on behalf of Petitioner, Bianca Cortes  
**John P. Wallace, Esq.,** on behalf of Respondent, Suez Water New Jersey, Inc.

**BY THE BOARD:**

On March 18, 2014, Bianca Cortes ("Petitioner") filed a petition with the Board of Public Utilities ("Board") disputing water usage and service charges provided by Suez Water New Jersey, Inc. ("Respondent" or "Company"). The matter was transmitted to the Office of Administrative Law ("OAL") as a contested case. Following an evidentiary hearing, Administrative Law Judge ("ALJ") Leland S. McGee issued an Initial Decision. Having reviewed the record, the Board, for the reasons stated below, adopts the Initial Decision, in part, and remands the matter to the OAL for a second evidentiary hearing.

**BACKGROUND**

By the complaint, Petitioner alleges that she had mistakenly received a high bill in the amount of over \$3,000 in 2011. She stated she had contacted the Company, and was advised that the bill was a result of over nine years of estimated meter reads. She said she paid the bill. In October 2012, Petitioner claims she received a second higher bill in the amount of \$8,790. Petitioner states she was placed on a payment plan to prevent a shut off, complaining that a minor drip from the front and rear spigots could not have produced such high billings.

<sup>1</sup> On January 27, 2016, United Water, Inc. changed its operating name to SUEZ Water New Jersey, Inc.

After the filing of Respondent's answer on May 13, 2014, the Board transmitted this matter to the OAL for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. The matter was assigned to ALJ McGee. While the matter was pending at the OAL, Petitioner failed to appear at an August 25, 2014 hearing and the matter was returned to the Board. Petitioner thereafter requested a new hearing date, stating she lacked notice. The matter was re-transmitted to the OAL. A prehearing conference was held on October 30, 2014. The evidentiary hearing, initially scheduled for March 16, 2015, was adjourned at the request of the parties.

On December 17, 2015, the evidentiary hearing was held before the ALJ. Petitioner testified on her own behalf. Respondent presented the testimony of three company representatives: Vanessa Garcia, the present assistant emergency inspector who acted in the capacity of a customer services field representative in this matter; Roy Hill, the customer service field representative; and Kathleen Ofeldt, the manager of customer operations. The record before the OAL consisted of a transcript of the evidentiary hearing and nineteen (19) exhibits admitted during the evidentiary hearing including a ledger prepared by the Company, utility invoices to the Petitioner, a field order, and water meter test results.

Petitioner testified to multiple billing charges and payments from 2011 to 2015, disputing charges from 2011 to 2012 and alleging an overpayment was made. Petitioner referenced a ledger which was received by her attorney from Respondent's attorney. The ledger was introduced during the direct examination of Petitioner. Petitioner thereafter continued providing testimony on five bills for the period in question from 2011 to 2012. She testified her May 26, 2011 estimated bill reflected a \$36.25 charge for 3,750 gallons of water usage and the bill itself reflected a past due balance of \$487.60 on the account. Petitioner testified her August 29, 2011 estimated bill reflected a \$2,190.48 charge for 156,000 gallons of water usage. Petitioner testified to a February 24, 2012 actual bill for \$363.59 in charges and a June 1, 2012 estimated bill for \$357.56 in charges. Petitioner then testified her October 6, 2012 prorated actual bill reflected a \$7,094.90 charge for 1,329,196 gallons of water usage. She testified the June 2012 and October 2012 bills covered an overlapping period. Petitioner further testified to a November 28, 2012 bill in the amount of \$67.31 and stated she was placed on a payment plan for the outstanding \$1,986.32 amount. Petitioner specifically questioned two bills in dispute - the August 29, 2011 estimated bill for \$2,190.48 and the October 6, 2012 prorated actual bill for \$7,094.90. Petitioner acknowledged that the amount of \$7,245.49 was listed as a carry forward balance on the August 26, 2014 bill. Petitioner also testified that a device was installed in the fall of 2011 and the meter was replaced on October 22, 2012. Petitioner further testified, on cross-examination, to noticing water pooling below the spigots during the customer service investigation.

Ms. Garcia testified to conducting a customer service investigation on the removal of meter no. 88500657 on October 22, 2012. During her investigation, Ms. Garcia noticed leaking at the front and back spigots. She clarified that she saw a leak, not a drip or pooling, on the property. Ms. Garcia observed the meter to be spinning from leakage and testified that, under those circumstances, she would normally have notified the customer to get a plumber. She noted documentation reflected meter no. 88500657 was installed on September 12, 2011.

Mr. Hill testified to conducting testing on meter no. 88500657 on October 25, 2012. He stated the meter did not register on a slow test, but it registered within meter accuracy limits on the medium test at 99.0% and on the high test at 99.2%. Mr. Hill testified the meter replacement was not done due to the low flow test result, but because the one-year-old meter was an older model which was scheduled to be replaced by a newer model. On cross-examination, however,

Mr. Hill testified the Company was concerned the meter was not reliable because it was not registering low flow and that amounted to a loss of revenue to the Company. Mr. Hill confirmed the meter was held for thirty (30) days then destroyed.

Ms. Ofeldt testified to her review of billings on the customer account, stating bills were issued quarterly in 2011 and monthly thereafter. Ms. Ofeldt reviewed the August 29, 2011 bill amount of \$2,190.48 and testified the current balance was not reflected on the ledger, therefore she surmised that the bill had been cancelled. Ms. Ofeldt acknowledged there was a previous balance on the August 29, 2011 bill that was not reflected on the ledger, stating there were inconsistencies between the ledger and Company invoices for August 29, 2011 and November 28, 2012. Ms. Ofeldt reviewed the November 8, 2012 bill in the amount of \$1,986.32, noting the meter had been replaced on October 22, 2012, but testified she did not know if that billing had been generated on the old or new meter. On the November 28, 2012 bill, Ms. Ofeldt testified the previous balance of \$8,723.00 was not carried over. Ms. Ofeldt described the ledger as a document which was manually created for the hearing. She indicated that the ledger is not a document which was printed off Respondent's system; therefore, she could not authenticate anything on the ledger and that she would have to review the Company's billing system.

A motion to dismiss was submitted by Respondent on February 2, 2016. Respondent argued Petitioner failed to sustain the burden of proof on the disputed 2011 charge since the bill had been cancelled, as reflected in Ms. Ofeldt's testimony. Further, the disputed October and November 2012 billings reflected increased consumption due to water leakage on an accurate meter, therefore Petitioner's improper billing claims were unsupported. Respondent opposed the credit request and sought dismissal of the petition. Petitioner did not respond to the motion. The record was maintained as open for submission of post-hearing briefs until April 14, 2016.<sup>2</sup>

The ALJ issued an Initial Decision on May 4, 2016 and did not rule on the motion to dismiss. The Initial Decision addressed the meter investigation and billing charges. The ALJ found meter no. 88500657 was removed and tested in October 2012 by Respondent using standard Board methodology and practices, where the result did not support a finding that the meter registered more consumption than what was delivered to the customer. The ALJ further found Petitioner did not present any expert testimony or other evidence supporting that the meter measurements for the period were inaccurate or should be completely disregarded. The ALJ therefore concluded Petitioner had not met the burden of proof that the meter was inaccurately measuring consumption.

The ALJ additionally found Petitioner had received an unusually high quarterly estimated bill in February 2011 prior to the October 2012 meter replacement. The ALJ further found Petitioner's regular monthly bills ranged between \$30 to \$70 after the October 2012 meter replacement. As Petitioner had testified her August 29, 2011 estimated bill reflected a \$2,190.48 charge and Ms. Ofeldt reviewed the August 29, 2011 bill and testified the current balance was not reflected, the ALJ found the August 20, 2011 bill for \$2,190.48 was cancelled. The ALJ further found Petitioner had not claimed a specific amount due or to be credited, therefore the ALJ found insufficient evidence in the record to support a reduction in billing amounts.

While the ALJ determined Petitioner's proofs were insufficient on amounts, the ALJ was additionally troubled by the accuracy of the Company's records, and, therefore, the Initial

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<sup>2</sup> Respondent filed its post-hearing brief on February 2, 2016. Petitioner sent a letter on February 26, 2016, requesting an extension of time to file a post-hearing brief until March 4. But, Petitioner did not file its post-hearing brief by April 14, 2016, the date of record closure.

Decision does not dispose of all issues in controversy. Specifically, the Initial Decision does not resolve the billing and payment obligations for the January 2011 to December 2012 period. Following a review of all testimony and exhibits submitted concerning Company invoices and payments from January 19, 2011 to December 9, 2015, the ALJ found sufficient evidence to question the accuracy of Respondent's bills based upon estimated bills, overlapping time periods, and billing gaps. The ALJ also concluded there was not enough evidence to reflect the actual amounts paid by Petitioner. Accordingly, the ALJ ordered that within thirty (30) days of the date of the Final Decision, Respondent shall reconcile the discrepancy in bills issued for the period beginning January 2011 through October 2012 and Petitioner shall submit a specific amount claimed as overbilled and to provide the basis for that conclusion. The ALJ further ordered that if the Petitioner and Respondent do not reach an agreement within forty-five (45) days of the date of the Final Decision, Petitioner may thereafter file a billing dispute claim for the specific amount determined to be improperly billed.

Petitioner filed exceptions to the Initial Decision on May 18, 2016, challenging the finding that there was a lack of evidence supporting meter inaccuracy. Petitioner re-iterates there were no changes in her household use, there were no leaks to the property, and the two minor leaks identified were left over water in the spigots. Petitioner also argues Mr. Hill's testimony that the meter was changed to a newer model after failing one of three accuracy tests supports the meter inaccuracy argument. Petitioner argues the ALJ incorrectly concluded Petitioner had failed to produce expert testimony on meter measurements because the failure to produce should be disregarded where Respondent destroyed the meter.

Respondent replied to Petitioner's exceptions on May 23, 2016. Respondent contends the ALJ correctly determined that Petitioner failed to produce meter inaccuracy evidence. Respondent argues two bills (May 26, 2011 for 3,750 gallons of water usage and August 29, 2011 for 156,000 gallons of water usage) reflect consumption prior to the installation of meter no. 88500657 on September 12, 2011. Respondent contends Petitioner's consumption history reflects high usage prior to the October 2012 meter removal. Further, Mr. Hill testified that meter no. 88500657 was accurate and the Company was losing revenue as a result of the meter. Respondent, therefore, argues Petitioner's exceptions be rejected and the Initial Decision be modified to dismiss the petition.

Respondent filed exceptions on May 20, 2016. Respondent generally argues the ALJ erred, as the decision did not dispose of all issues required by N.J.A.C. 1:1-18.1(b) because, instead of deciding the case, the order directs the parties to prepare additional data to allow for resolution otherwise a billing dispute claim may be re-filed. Respondent argues Petitioner's failure to establish inaccurate consumption on the meter reflects there was no overcharge. Challenging the ALJ's finding regarding the accuracy of Respondent's billing, Respondent notes that the ALJ did not articulate what evidence there was to support that finding and further states that there were five bills in evidence from January 2011 to October 2012. Respondent claims the ALJ found insufficient evidence to support a reduction in bills where Petitioner bore the burden of proof and therefore this finding requires that the petition be dismissed. Respondent argues Petitioner's failure to furnish additional data prior to the record closure required the ALJ to enter a decision based on the existing record.

Petitioner submitted no reply to Respondent's exceptions. Pursuant to N.J.S.A. 52:14B-10(c), the Board issued an order on May 26, 2016, extending its time to issue a final agency decision by August 2, 2016.

## **DISCUSSION**

After review and consideration of the entire record, including the arguments raised in the exceptions and reply to exceptions, the Board **HEREBY ADOPTS** the Initial Decision, in part, and **REMANDS** the matter to the OAL for a second evidentiary hearing.

The Board **FINDS** that the ALJ's conclusion that Petitioner had not met the burden of proof on the meter inaccurately measuring consumption is proper and supported by the record. Petitioner bears the burden of proof by a preponderance of the believable evidence in proceedings before an administrative agency and factual determinations of the administrative agency are generally sustained if supported by substantial evidence on the whole record. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). If a customer has a complaint filed with the Board regarding the accuracy or performance of the meter, the company shall not remove the customer's meter from service during the pendency of said complaint, or during the thirty (30) days following the Board's decision on the complaint, unless otherwise authorized by the Board's staff. N.J.A.C. 14:3-4.8. N.J.A.C. 14:3-4.7 sets forth meter test reporting requirements. And when a meter test is conducted, the water meter shall be tested with water flowing at both intermediate and full flow capacities and it is considered accurate if it shows an error of no greater than one and one half percent when tested. N.J.A.C. 14:3-4.5(d); N.J.A.C. 14:9-4.1(c)(d). If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if (1) the meter was tampered with, or other theft of the utility service has been proven; (2) the meter failed to register at all; or (3) the circumstances are such that the customer should reasonably have known that the bill did not reflect actual usage. N.J.A.C. 14:3-4.6. Where the meter fails to register or the customer should reasonably have known the bill did not reflect actual usage, the customer shall be allowed to amortize the payments for a period of time equal to that period of time during which the customer was undercharged. N.J.A.C. 14:3-4.6(f). When the amount of a water bill is significantly higher than the customer's established consumption history, and there is no apparent explanation for the increase, the customer's established consumption shall be given consideration, in addition to the results of any tests on the customer's meter, in evaluation of whether the bill is correct and appropriate consistent with N.J.A.C. 14:3-7.6(g).

Petitioner submits exceptions, challenging the ALJ's proof determination and arguing no changes in household water usage existed, the two leaks were minor, and the meter was changed to a newer model after failing one of three accuracy tests. But the record reflects otherwise. The billings of May 26, 2011 and August 29, 2011 reflect previously billed household water consumption charges prior to the replaced meter's installation on September 12, 2011. The leaks and water pooling were acknowledged by both the customer and the Company.

Additionally, while Petitioner argues her failure to produce expert meter measurement testimony should be disregarded because Respondent destroyed the meter, this is not the standard. The utility is prohibited from removing the customer's meter from service during the pendency of a complaint pursuant to N.J.A.C. 14:3-4.8. However, when the utility does not receive a petition challenging meter inaccuracy until the day the meter is removed, the utility could not have known of the issue. Egeolu v. PSE&G, OAL Dkt No. PUC 08977-11, 6-7 (2011). This complaint was filed on March 18, 2014, nearly a year-and-a-half after the investigation and removal of the subject meter. The Company removed the meter before it knew the petition would be filed so its meter removal is irrelevant to the methodology used to obtain meter test results. The record reflects the removed meter was tested and registered within one percent of accuracy limits on

the medium test at 99.0% and the high flow test at 99.2%, as required by N.J.A.C. 14:9-4.1(c)(d). While meter error regulations allow for the adjustment of charges, this meter was found to be registering less than 100 percent of the service provided, therefore the utility is not required to adjust the charges retrospectively or require the customer to repay the amount undercharged. N.J.A.C. 14:3-4.6(a). The record reflects the Company was losing revenue due to the slow test.

The ALJ found that meter no. 88500657 was tested by Respondent using standard Board methodology and practices, but the result did not support a finding that the meter registered more consumption than what was delivered to the customer. Based on the record, there is no reason to disturb the ALJ's finding that Petitioner did not present expert testimony on inaccurate meter measurements to support the January to December 2011 or other period. The Board **FINDS** the ALJ's findings and conclusions on household water consumption history, the existence of leaks affecting consumption, and the accuracy of meter measurements are reasonable and consistent with law. Accordingly, the Board **ADOPTS** the conclusion that Petitioner did not meet the burden of proof that the meter was inaccurately measuring consumption; therefore, Petitioner's exceptions are **REJECTED**.

In a billing dispute, the ALJ's function is to create a record which identifies whether a customer was improperly charged for excess usage, whether the customer suffered any losses as a result of billing problems, and whether any billing adjustments made by the utility were reasonable and appropriate under the circumstances. Reed v. Atlantic City Electric Company, OAL Dkt No. PUC 10976-10, 10-11 (2012). N.J.A.C. 1:1-18.1(3)(b) requires an initial decision to be final in form and fully dispositive of all issues in the case. However, no substantive findings of fact or conclusion of law, nor any concluding order or other disposition shall be binding upon the agency head. N.J.A.C. 1:1-18.1(3)(c). Further, N.J.A.C. 1:1-18.7 allows an agency head to enter an order remanding a contested case to the OAL for further action on issues or arguments not previously raised or incompletely considered. To the credit of the ALJ, the record establishes essential facts that Petitioner is the customer of record and that the period in dispute is from January 2011 through October 2012.

The Board further **FINDS** that the ALJ determination of insufficient evidence in the record to support a reduction in billing amounts, as Petitioner had not claimed a specific amount due or to be credited, is proper and supported by the record. The Initial Decision ordered Respondent to reconcile the discrepancy in bills issued for the period beginning January 2011 through October 2012 and ordered Petitioner to submit a specific amount claimed as overbilled within thirty (30) days of the date of the Final Decision, allowing Petitioner to thereafter file a billing dispute claim within forty-five (45) days if the dispute between the parties was not settled. While the unusual decision directs the parties to prepare additional data following the issuance of a final agency order, Petitioner was noticed of the insufficient record to support a billing reduction at the conclusion of the hearing and in the Initial Decision. While Petitioner filed exceptions, the exceptions focused on the accuracy of the meter. Petitioner argued that because the record reflected that there was no change in her household's makeup, that the bills generated were above her average usage, and that a Company's witness testified that the meter was unreliable, the meter measurements over and above the average usage should be disregarded. However, no calculation excluding the above average consumption was provided to the ALJ. Likewise, the record is devoid of evidence showing all debits and credits on Petitioner's account. Had such evidence been provided prior to the issuance of the Initial Decision, the Board would have had the benefit of the ALJ's more complete analysis and recommendations. Petitioner did not bear the burden of proof on reducing billing amounts. The Board therefore **AFFIRMS** the ALJ determination on insufficient evidence in the record to support a reduction in billing amounts as

reasonable and consistent with law. Accordingly, the Board **ADOPTS** the conclusion that there is insufficient evidence in the record, at this time, to support a reduction in billing amounts. However, because the Initial Decision directed the parties to supplement the proofs after the issuance of the final agency order and because this matter will be remanded to the OAL, Petitioner will have an opportunity to submit evidence regarding payments made by her during the January 2011 through October 2012 period.

The Board further **FINDS** that the ALJ determination that sufficient evidence exists to question estimated billing accuracy, overlapping time periods, and billing gaps from January 2011 to October 2012 to be proper and supported by the record. The record, including the ledger and testimony on the ledger and bills, reflects inconsistencies with billings and payments concerning invoices or ledger entries dated August 29, 2011, February 29, 2012, October 6, 2012, November 8, 2012, November 26, 2012, and November 28, 2012 - and requires clarification.

Respondent has submitted exceptions, generally arguing the decision did not dispose of all issues required by N.J.A.C. 1:1-18.1(b) because the order directs the parties to prepare additional data to allow for resolution otherwise a billing dispute claim may be re-filed. Petitioner did not reply to Respondent's exceptions. While sufficient evidence normally precedes the issuance of an Initial Decision, the ledger prepared by the Company was not reflective of all amounts billed and all payments made on the customer account for the period in question. Therefore, the lack of necessary additional data precluded adequate consideration of the issue by the ALJ.

By exceptions, Respondent specifically argues Petitioner's failure to establish inaccurate consumption on the meter reflects there was no overcharge. However, the accuracy of a meter measurement is not reflective of a billing over-or-under charge. Respondent further states there were five bills in evidence from January 2011 to October 2012. Yet the record reveals the five bills furnished from January 2011 to October 2012 are not a full and complete record of all billings and payments during this period, as testimony reflects there was a previous balance on the August 29, 2011 bill that was not reflected on the ledger and there were inconsistencies between the ledger and Company invoices on multiple dates through November 28, 2012. By exceptions, Respondent claims the ALJ found insufficient evidence in the record to support a reduction in bills where Petitioner bore the burden of proof, requiring petition dismissal. But the finding of insufficient evidence to reduce a customer bill alone is not a sound basis for petition dismissal where the merits involve additional unresolved billing and payment issues. Respondent argues Petitioner's failure to furnish additional data prior to the close of the record on April 14, 2016 required the ALJ to enter a decision based on the record at that time. Yet, the ALJ did enter an Initial Decision following closure of the record on April 14, 2016.

The Board therefore **AFFIRMS** the ALJ's finding that there is sufficient evidence to question the accuracy of the estimated bills issued, overlapping time periods, and billing gaps from January 2011 to October 2012 as reasonable and consistent with law. Accordingly, the Board **ADOPTS** the conclusion that that the majority of bills during the period in question were estimates with no explanation for the increase in billed charges and that evidence was insufficient to reflect the actual amounts paid by Petitioner, therefore Respondent's exceptions in this regard are **REJECTED**.

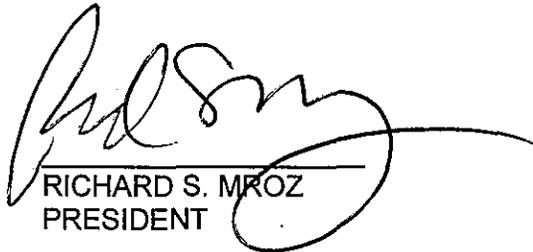
The Board **FINDS** that it does not have a complete record on which to base further fact findings necessary to resolve all issues in this case. Having reviewed the entire record, the Board notes that the issue of whether all billing amounts and payments were made on the customer account from January 2011 to October 2012 remains outstanding. Therefore, the Board, pursuant to

N.J.A.C. 1:1-18.7(a), **REMANDS** the matter to the OAL for further findings of fact to fully dispose of all issues in the case consistent with N.J.A.C. 1:1-18.1(3)(b). By a second evidentiary hearing, the ALJ is to further develop the record showing all amounts billed and all payments posted on the customer account beginning January 1, 2011 and ending December 31, 2012. The ALJ is to determine whether there was an overpayment, and if so, then the reason for the overpayment, the amount of the overpayment and how the overpayment was calculated. The ALJ is to further determine whether there were any credits issued by Respondent and, if so, then whether those credits were issued in accordance with its tariff. The ALJ is also to make a determination whether any amount is due and owing to Respondent.

The effective date of this order is August 8, 2016.

DATED: 7/29/16

BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



JOSEPH L. FIORDALISO  
COMMISSIONER



MARY-ANNA HOLDEN  
COMMISSIONER

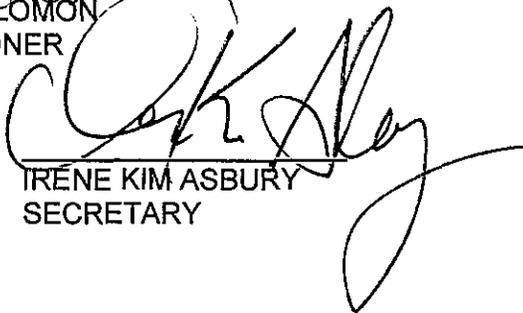


DIANNE SOLOMON  
COMMISSIONER



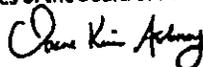
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:



IRENE KIM ASBURY  
SECRETARY

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



**BIANCA CORTES**

**vs.**

**SUEZ WATER NEW JERSEY, INC.**

**BPU DOCKET NO. WC14030248U**

**OAL DOCKET NO. PUC 11838-14**

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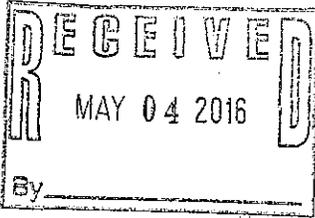
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RECEIVED

MAY 04 2016

BOARD OF PUBLIC UTILITIES  
MAIL ROOM



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

INITIAL DECISION

OAL DKT. NO. PUC 11838-14  
AGENCY DKT. NO. WC14030248U

ON REMAND

OAL DKT. NO. PUC 07824-14  
AGENCY DKT. NO. WC14030248U

**BIANCA CORTES,**

Petitioner,

v.

**UNITED WATER NEW JERSEY,**

Respondent.

Jonah B. Kimmelstiel, Esq., for petitioner (Law Office of Jonah B. Kimmelstiel,  
attorneys)

John P. Wallace, Esq., for respondent

Record Closed: April 14, 2016

Decided: May 4, 2016

BEFORE **LELAND S. MCGEE**, ALJ:

*CMS*  
*V. Haynes*  
*D. Lee Thomas*  
*G. Hartsfield*  
*J. Ford*  
*C. Jordan*  
*R. Lambert*  
*B. Agee*  
*J. Gertsman*  
*C. Vachier*

PROCEDURAL HISTORY

On September 16, 2014, this matter was transmitted to the Office of Administrative Law (OAL) for 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 is a Remand of OAL Docket No. PUC 07824-14 that was previously dismissed due to a failure to appear.

A prehearing conference was held on October 30, 2014. An Evidentiary Hearing was scheduled for March 16, 2015, which was adjourned at petitioner's request. A hearing was scheduled for July 28, 2015, which was adjourned at respondent's request. An Evidentiary Hearing was held on December 17, 2015, and the record was left open for submission of post-hearing briefs. On February 2, 2016, respondent filed its post-hearing brief. On February 26, 2016, petitioner sent a letter via facsimile dated February 26, 2015, and requested an extension of time to file a post-hearing brief until "March 4." Petitioner has not filed a post-hearing brief and the record closed April 14, 2016.

### FACTS

Petitioner filed a petition alleging that respondent overcharged her in calendar year 2011 in amount that exceeded \$3,000, after her water meter had been replaced with a new one. She alleged that her usual bill was \$36.25 "more or less." The petition alleged that respondent's explanation was that for nine years she received estimated bills.

The petition alleged that in October 2012 petitioner received a bill in the amount of \$8,790. Following an inquiry about the reason for such a high bill, one of respondent's employees came to conduct a full investigation on October 12, 2012. The investigator advised petitioner that the front and rear water spigots were dripping water but that there was no evidence of any reason for such a high bill. The investigator replaced the meter and petitioner later received a report that the old meter operated properly.

The petition alleged that Petitioner was placed on a payment plan of \$100 per month to partially pay the bill up to \$1,973.24. Since the meter was changed, her water bills returned to a "reasonable monthly amount."

The petition alleged that there is no pool, sprinkler system or anything else on the property that could cause the water bills to increase to such high amounts and she

never used a volume of water that would result in such high bill amounts.

Attached to, and made a part of, the petition are two water bills dated February 10, 2014, in the amount of \$7,600.01, and February 25, 2014, in the amount of \$7,795.45, respectively.

### Summary of the Testimony

There were four witnesses in this case. Petitioner testified on her on behalf.

### Bianca Cortes

Bianca Cortes (Cortes) has resided at the subject premises for thirteen (13) years. Her husband, her mother, and step-father have lived with her at the home. In July 2014, her child was born. In 2011, her mother and step-father stayed with them primarily during the winter months; otherwise lived in their own home in Sussex County, New Jersey. Cortes's husband works for the Bergen County Sheriff's Office eight hours per day, as does she. Her step-father works six to seven hours per day. There are only two showers in the house—no swimming pool or sprinkler system. Cortes is the only owner of the house, which has only been used a residence and no business has been operated out of it. The lot size is 200 x 125, and in 2011 she watered the lawn with a hose in the summer. There were no leaks in the water heater; there was no damage as a result of Super Storm Sandy; and there are no damaged pipes in the home.

In the beginning of the year 2011, Cortes received a large bill in excess of \$2,000. At the time she had been receiving quarterly bills and they ranged from \$40 - \$60. Cortes described the series of bills that she received:

- February 24, 2011 – reflected on the ledger, Exhibit P-1; current charges \$89.66.
- May 26, 2011 – 88 days from 2/22/11 – 5/21/11; current charges \$36.25; past due balance of \$487.60; estimated bill. (P-2.)
- August 29, 2011 – 95 days from 5/21/11 – 8/24/11; current charges \$2,190.48; estimated bill. (P-3.) Cortes stated that she paid the bill in full.

- September 16, 2011 – reflected on the ledger, P-1; in the amount of \$350.95. Cortes did not receive this bill.
- February 29, 2012 – 96 days from 11/23/11 – 2/27/12; current charges \$363.59; actual meter reading. (P-4.)
- Cortes stated that it was during this time that an investigator came to inspect her meter and house. She was outside cleaning her yard when the United Water Company representative came to check her water meter. The representative indicated that they would add a device that would allow the company to read the meter from outside of the house.
- June 1, 2012 – covering 92 days from 2/27/12 – 5/29/12; current charges of \$357.65 (estimated bill); paid in full.
- October 6, 2012 – 179 days from 2/27/12 – 8/24/12; current charges of \$7,094 (prorated actual bill overlapping with prior bill).
- Cortes stated that she did not consume this amount of water and she “knows” that the new meter was installed prior to this bill because that is the only possible reason for the higher bill amount. There were no floods in the house, no unattended running water, no need for plumbing work to be done, and nothing otherwise unusual happened in the house to cause this level of usage.
- She spoke to Simone in Customer Service who advised that if the bill was not paid in full, service would be shut off. She stated that during 2012, a representative came to the house four or five times to give notice of a shut off.
- November 8, 2012 - listed on the ledger (P-1) in the amount of \$67.31; she does not recall receiving this bill.
- Cortes asserts that there is a billing gap between August 24, 2012, and October 22, 2012. Further, she was required to go on a payment plan before the company would conduct an investigation. In her opinion, the investigator was “surprised” about the outstanding bill because she did not observe any reason for high water usage. The investigator installed a new meter and issued a report dated October 22, 2012. (P-8.)
- November 28, 2012 – covering 35 days from 10/22/12 – 11/26/12; current charges of \$67.31. (P-7.)
- February 25, 2013 – quarterly bill in the amount of \$159.13; listed on the ledger (P-1).

- May 29, 2013 – covering 92 days from 2/21/13 to 5/24/13; current charges of \$171.04; actual reading of the meter from outside of the house. (P-9.)
- August 28, 2013 – quarterly bill reflected on the ledger in the amount of \$131.55; includes the summer months and she made four payments between this bill and the last bill.
- November 26, 2013 – reflected on the ledger, covering the period from 8/23/13 – 11/19/13; current charges \$155.64; actual meter reading. (P-10.)
- Cortes was making her monthly payments according to the payment plan plus the current bill amounts.
- February 25, 2014 – 97 days covering 11/19/13 – 2/24/14; current charges \$195.44; prorated actual meter reading. (P-11.)
- March 26, 2014 – reflected on the ledger (P-1) in the amount of \$49.59; she does not recall receiving this bill. Cortes states that during this time the monthly billing process changed.
- April 25, 2014 – 29 days covering 3/24/14 – 4/22/14; current charges \$45.48; actual meter reading. (P-12.)
- May 28, 2014 – reflected on the ledger in the amount of \$59.69.
- June 25, 2014 – 26 days covering 5/28/14 – 6/23/14; current charges \$41.62; actual meter reading. (P-13.)
- July 28, 2014 – reflected on the ledger in the amount of \$49.86; it was during the summer when usage was up due to watering the lawn. During the summer of 2014, she stopped making the monthly payments and filed her petition. Her child was born on July 19, 2014.
- August 26, 2014 – 29 days covering 7/24/14 – 8/22/14; current charges \$46; actual meter reading. Cortes stated that there was a balance brought forward in the amount of \$7,245.49. (P-14.) There were no construction changes to the home, no additions, and nobody moved out of the home. She was using the water as usual during that time.
- September 25, 2014 – 32 days covering 8/22/14 – 9/23/14; current charges \$46.06; actual meter reading. (P-15.)
- October 27, 2014 – covering 9/23/14 – 10/24/14; current charges \$54.30; actual meter reading. Cortes was still home on maternity leave at this time.
- November 25, 2014 – 28 days from 10/24/14 – 11/21/14; current charges 37.82;

actual meter reading. (P-17.)

Cortes testified that in reviewing the bills reflected on the ledger (P-1) from January 2, 2015, through October 27, 2015, all of the "current charges" were between \$38.29 and \$64.33. She paid all of the current charges for each bill.

The Customer Service Investigation Report of October 22, 2012, indicates that the "outside spigot for hose is leaking front & back." (P-8.) Cortes states that she had used both spigots to wash down the porch and to clean up after her dog on the morning that the investigator came. They were dripping from usage.

Cortes acknowledged that she did not pay the July 28, 2015, bill and she was late in paying the August 28, 2015, bill. The August 29, 2011, bill (P-3) was "zeroed out." Cortes believed that this was a result of her making payments under the payment plan.

#### Vanessa Garcia

Respondent presented Vanessa Garcia (Garcia) who has been an employee of Respondent for eleven (11) years. Her title was customer service representative at the time that she conducted a high bill investigation at petitioner's home in 2011. Garcia did not remember who she met with when she conducted the investigation on October 22, 2012. She was responding to a Field Order Ticket issued on October 16, 2012, which provided the location of the meter to be investigated. (R-1.) When there, Garcia read existing meter no. 885006657, changed it and took another reading, then took the old meter in to be tested.

Garcia stated that whenever there's movement on the meter she is required to investigate whether she can determine a source for water running through the meter. She determined that the water spigots in front and in back of the house were leaking. As a result of the investigation Garcia prepared a Customer Service Investigation Report. (P-8.) She concluded that there were no leaks from the two toilets, the sinks and showers, and that both washing machines were not in use. (ibid.)

Garcia stated that they are required to change the water meters every seven to eight years; however, she changed petitioner's meter because they usually remove meters for high bill inspections. The date of installation of petitioner's meter was September 12, 2011, so the meter was not removed because it was old.

Roy Hill

Respondent presented Roy Hill, Jr. (Hill), who worked for respondent for twenty-three (23) years. He is a customer service field representative who has tested meters in the shop for fifteen (15) years.

When he tested petitioner's meter he checked its serial number against the work order. He tests twenty-four meters at a time, at three levels of testing. He tested petitioner's meter, no. 88500657. The results of the test were that the meter functioned at 99% on the "medium test" (flow of 2 gal. per minute) and 99.2% on "high test" (flow of 15 gal. per minute). There was no reading for the "slow test" (flow of ¼ gal. per minute). (R-2.) His conclusion is that the meter was working properly.

Hill stated that the meter was not put back in service because it was an old "test" meter. He typically holds a removed meter for thirty days in case there was a problem at the residence and then it is discarded. The company was in the process of changing to encoder meters and the old meter type was being phased out. The meter was not reliable at low-flow levels.

Kathy Olfeldt

Respondent presented Kathy Olfeldt (Olfeldt), who is a manager in New Jersey Customer Operations. She has been with the company for 25½ years and is responsible for collections and customer billing.

Olfeldt reviewed Petitioner's billing history, Exhibit P-1, in preparation for this proceeding. She identified several bills that were disputed by petitioner. An invoice

dated August 29, 2011, (P-3) is reflected on page 5 of 5 of Exhibit P-1. She stated that the amount billed, \$2,190.48, was "canceled out." The evidence of this is that on Exhibit P-1 there is a "\$0.00" balance recorded next to the invoice amount. Further, this amount is not reflected in subsequent invoices.

Olfeldt acknowledged that there was a previous balance listed on Exhibit P-3 that is not reflected on the ledger, Exhibit P-1. Further although the billing was scheduled to issue on a quarterly basis, there was another bill issued on September 16, 2011, less than three weeks after the August 29 bill (P-3). She further acknowledged that Exhibit P-1 was not produced by the company's billing system but was created manually. Olfeldt does not know who prepared Exhibit P-1 and acknowledged that there are some inconsistencies between the ledger, Exhibit P-1, and the invoices reflected by Exhibits P-3 and P-7.

### FINDING OF FACTS

Based upon the evidence and testimony in this case I **FIND** the following to be the **FACTS** of this case:

1. Petitioner received an unusually high water usage bill in February 2011. Prior to changing her meter, she received a series of estimated quarterly bills.
2. There were gaps in billing and a period of overlapping bills prior to October 2012.
3. After petitioner's meter was changed, there were regular monthly bills that were in the range of \$30 - \$70.
4. Respondent issued a bill dated August 29, 2011, in the amount of \$2,190.48, which petitioner paid in full. Respondent acknowledges that this payment was canceled out.

5. The electric meter measuring the amount of water consumed by petitioner's home located at XX Marion Road, Montvale, New Jersey, was removed and tested by a customer service field representative of United Water New Jersey.
6. The testing was done using the methods and standards adopted by the Board of Public Utilities.
7. This test result does not support a finding that the meter in question was reporting more consumption than what was actually being delivered to the customer.
8. Petitioner did not present any expert testimony or other evidence to support the position that the meter measurements reported for January to December 2011 or other relevant period, should be completely disregarded as inaccurate.
9. Petitioner has not made a specific claim as to an amount that she claims is due to her by respondent, or the specific time period for which her bills should be credited. There is insufficient evidence in the record to support a reduction in her water bill.
10. There is sufficient evidence in the record to question the accuracy of the bills issued based upon estimated bills, overlapping time periods, and gaps in billing.

### LEGAL DISCUSSION AND CONCLUSIONS

A consumer may dispute a utility charge before the Board of Public Utilities. N.J.A.C. 14:3-7.6. 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 petitioner bears the burden of proof in this matter by a preponderance of the competent, credible evidence. Atkinson v. Parsekian, 37 N.J. 143 (1962).

In order to ensure a system that is fair to all customers of the utility, it is essential that the meters be accurate in measuring usage. It is for this reason that the Legislature enacted the provisions of N.J.S.A. 48:2-25 delegating to the Board of Public Utilities authority to: "c. Establish reasonable rules, regulations, specifications and standards, to secure the accuracy of all meters and appliances for measurement." Pursuant to and in furtherance of this authority, the Board has adopted regulations that require each water utility to ensure that all of the meters in use in its system are tested for accuracy. 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

I **CONCLUDE** that petitioner has not alleged that her meter no. 88500657 was inaccurate in measuring consumption and she has not met her burden of proof by a preponderance of the credible evidence that it did not operate properly during the billing periods in question.

I **CONCLUDE** that there is no apparent explanation for the increase in the amount of billed services (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), and that petitioner's billing history reflects monthly bills in the range of \$30 - \$70.

I **CONCLUDE** that, during the period in question, the majority of the bills that respondent issued were "estimates" and that there were discrepancies in the bills issued by respondent during the subject billing period that remain unresolved.

### **ORDER**

For the foregoing reasons it is hereby **ORDERED** that within thirty (30) days of the date of the Final Decision, respondent shall reconcile the discrepancy in the bills issued for the period beginning January 2011 through October 22, 2012, the date on which the meter was replaced.

It is further **ORDERED** that within thirty (30) days of the date of the Final Decision, petitioner shall submit to respondent a specific amount that she claims was

overbilled and the basis for that conclusion.

It is further **ORDERED** that if the parties are do not reach an agreement within forty-five (45) days of the date of the Final Decision, petitioner may file a billing dispute claim for the specific amount determined to be improperly billed.

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.



May 4, 2016

DATE

\_\_\_\_\_  
LELAND S. MCGEE, ALJ

Date Received at Agency:

May 4, 2016

Date Mailed to Parties:

\_\_\_\_\_

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APPENDIX

Witnesses

For Petitioner:

Bianca Cortes

For Respondent:

Vanessa Garcia

Roy Hill, Jr.

Kathy Olfeldt

Jill Mortimer

Exhibits

For Petitioner:

- P-1 Bill Ledger 2011 to 2015
- P-2 Water bill dated May 26, 2011
- P-3 Water bill dated August 25, 2011
- P-4 Water bill dated February 29, 2012
- P-5 Water bill dated June 1, 2011
- P-6 Water bill dated October 6, 2012
- P-7 Water bill dated November 28, 2012
- P-8 Customer Service Investigation Report
- P-9 Water bill dated May 29, 2013
- P-10 Water bill dated November 26, 2013
- P-11 Water bill dated February 25, 2014
- P-12 Water bill dated April 25, 2014
- P-13 Water bill dated June 25, 2014
- P-14 Water bill dated August 26, 2014
- P-15 Water bill dated September 25, 2014
- P-16 Water bill dated October 27, 2014
- P-17 Water bill dated November 25, 2014

For Respondent:

R-1 Field Order ticket

R-2 Meter testing report dated October 25, 2012