



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

CUSTOMER ASSISTANCE

NICHOLAS LAMICELLA,
Petitioner,

v.

MIDDLESEX WATER COMPANY,
Respondent.

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ORDER OF EXTENSION

BPU DOCKET NO. WC16020171U
OAL DOCKET NO. PUC 05555-16

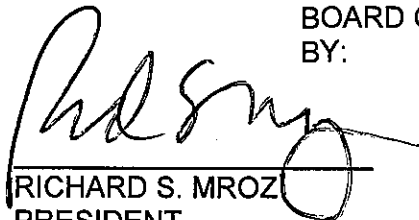
(SERVICE LIST ATTACHED)

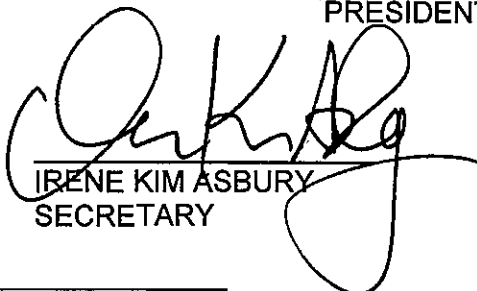
The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on June 3, 2016; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on July 18, 2016. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately review the record in this matter.

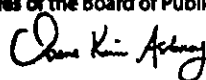
Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until September 1, 2016.

DATED: 6/29/16

BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

ATTEST: 
IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the witness document is a true copy of the original. In the files of the Board of Public Utilities.


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

Date Board mailed Order to OAL: 6/29/16

cc: Service List Attached

DATED:

LAURA SANDERS, ACTING
DIRECTOR & CHIEF
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: _____

Date Board mailed executed Order to Parties: _____

**IN THE MATTER OF NICHOLAS LAMICELLA, PETITIONER V. MIDDLESEX WATER
COMPANY, RESPONDENT – BILLING DISPUTE**

DOCKET NOS. BPU WC16020171U AND OAL PUC 05555-16

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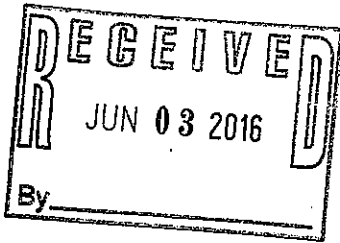
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

RECEIVED
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BOARD OF PUBLIC UTILITIES
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INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. PUC 05555-16

AGENCY DKT. NO. WC16020171U

NICHOLAS LAMICELLA,

Petitioner,

v.

MIDDLESEX WATER COMPANY,

Respondent:

Nicholas Lamicella, petitioner, pro se

**Jay L. Cooper, Esq., Vice President, General Counsel and Secretary for
respondent (Middlesex Water Company, general counsel)**

Record Closed: May 27, 2016

Decided: June 3, 2016

BEFORE EVELYN J. MAROSE, ALJ:

cms
V. Haynes
D. Lee Thomas
E. Hartsfield
J. Ford
C. Jordan
R. Lambert
J. Gentsman
B. Agee
C. Vachier

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On February 26, 2016, petitioner, Nicholas Lamicella, filed a Request for Formal Hearing with the Board Utilities of Public asserting a billing dispute. The matter was transmitted to the Office of Administrative Law (OAL) on April 12, 2016, for hearing and determination as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held and a Prehearing Order was issued on May 11, 2016. Respondent, Middlesex Water Company (Water Company), filed a Motion for Summary Decision on May 18, 2016. Petitioner filed opposition on May 26, 2016.

STANDARD FOR SUMMARY DECISION

Summary Decision may be granted “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).

The standard for granting summary judgment (decision) is found in Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). In Brill, the Court looked at the precedents established in Matsushita Electrical Industrial Company v. Zenith Radio Corporation, 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986), Anderson v. Liberty Lobby, 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986), and Celotex Corporation v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986), wherein the Supreme Court adopted a standard that “requires the motion judge to engage in an analytical process essentially the same as that necessary to rule on a motion for a directed verdict: ‘whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.’” Brill, supra, 142 N.J. at 533 (quoting Liberty Lobby, supra, 477 U.S. at 251-52, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214). The Court stated that under the new standard,

a determination whether there exists a “genuine issue” of material fact that precludes summary judgment requires the motion judge to consider 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. The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.”

[Brill, supra, 142 N.J. at 540 (quoting Liberty Lobby, supra, 477 U.S. at 249, 106 S. Ct. at 2511, 91 L. Ed. 2d at 212).]

The Brill standard contemplates that the analysis performed by the trial judge in determining whether to grant summary judgment should comprehend the evidentiary standard to be applied to the case or issue if it went to trial. "To send a case to trial, knowing that a rational jury can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Brill, supra, 142 N.J. at 541.

In addressing whether the Brill standard has been met in this case, further guidance is found in R. 4:46-2(c):

An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

STATEMENT OF FACTS

The following pertinent **FACTS** in this matter are not in dispute.

The Water Company provides services to Norma Lamicella at her residence located at XX New York Avenue, Metuchen, New Jersey. The account number for the water services is 8820300000. Norma Lamicella is not the petitioner in this matter.

A Water Company employee was unable to read the meter located in the residence in December 2015. On December 8, 2015, the Water Company issued an estimated bill for services for the period from September 8, 2015, to December 4, 2015, in the amount of \$153.75.

On December 14, 2015, petitioner complained via telephone about receiving an estimated bill and a date for an actual reading was agreed upon. On December 16, 2015, a Water Company employee obtained an actual meter reading.

On December 17, 2015, the estimated bill was cancelled and a bill in the amount of \$107.87 was issued. On January 4, 2016, payment in the amount of \$107.87 was received for the only outstanding bill.

On February 5, 2016, the Water Company issued a letter to Norma Lamicella advising her that the remote service meter in her residence was not registering and requesting that she contact the Water Company to schedule installation of a replacement meter in the residence as soon as possible to stop estimated billing. Both parties acknowledge that this letter was issued in error since there had not been a remote reading device at the residence since 2012, when the remote service meter was removed at the request of the customer.

In his request for Formal Hearing, petitioner seeks to compel the Water Company to advise him as to when the quarterly reading will definitely occur. If petitioner is not home so that an actual reading can be made, petitioner asserts that any "yellow card," which would allow a reading by the customer, must be dated stamped when left at the door as proof that an in-person reading was attempted on the noticed day. Petitioner objects to an estimated reading. He asserts that the Water Company's algorithm for an estimated reading does not, within a reasonable margin of error, result in an accurate bill.¹

The Water Company seeks Summary Decision. It asserts that petitioner is not the customer of record for the account in question and thus lacks standing. Further, there was no disputed bill at the time the petition was filed. The estimated bill in question had already been cancelled, an in-person reading provided, and the bill based upon the in-person reading had been paid. As to petitioner's requests regarding meter reading procedures and billing, the Water Company asserts that it is bound by the New Jersey Board of Public Utilities regulations and that the Office of Administrative Law does not have the power to order procedures to the contrary.

¹ The customer will not permit the installation of another remote reading device at the residence.

In his opposition to summary decision, petitioner acknowledged that he was not the customer of record at the time he filed the petition at issue or during the time of the contested billing period detailed in the petition. However, he states that, on May 19, 2016, after the date of Water Company's filed its summary decision papers, he made a request that the account for the residence at issue be changed from the name of Norma Lamicella to Nicholas Lamicella. Petitioner also does not dispute that the bill, for services provided from September 8, 2015, to December 4, 2015, was paid at the time that he filed this petition. Instead, he complains that on March 8, 2016, he received another estimated bill rather than an in-person reading or the ability to read his own meter through use of a "yellow card" left on the premises.

LEGAL ARGUMENT

The Board's regulations define "customer of record" as the person that applied for utility services and is identified in the account records of the public utility as the person responsible for payment of the public utility bill. N.J.A.C. 14:3-1.1; N.J.A.C. 14:3-7.1(a). A spouse who is not the "customer of record" lacks the requisite standing to file a billing dispute petition against the utility. Robinson v. Public Serv. Elec. & Gas Co., 2013 PUC N.J. LEXIS 301 (Final Decision, October 16, 2013). In this matter, the sole petitioner is Nicholas Lamicella. Norma Lamicella, the "customer of record" for the account, is not a petitioner. Following the Brill standard, I **CONCLUDE** that, even after giving all favorable inferences to the evidence presented by the petitioner, the non-moving party, petitioner does not have standing to pursue the claims he asserted in the petition at issue.

Were petitioner the "customer of record" on this account, any disputed utility charges asserted on the account could certainly be the subject of a petition. N.J.A.C. 14:3-7.13. However, no disputed charges for services are detailed in the petition at issue. As noted above, on December 8, 2015, the Water Company issued an estimated bill for services for the period from September 8, 2015, to December 4, 2015, in the amount of \$153.75. On December 14, 2015, petitioner complained via telephone about receiving an estimated bill and a date for an actual reading was agreed upon. On December 16, 2015, a Water Company employee obtained an actual meter reading.

On December 17, 2015, the estimated bill was cancelled and a bill in the amount of \$107.87 was issued. On January 4, 2016, payment in the amount of \$107.87 was received for the only outstanding bill. By February 26, 2016, there was no dispute regarding the charges for services provided from September 8, 2015, to December 4, 2015, nor an outstanding bill of record. Following the Brill standard, I **CONCLUDE** that, even after giving all favorable inferences to the evidence presented by petitioner, the non-moving party, there is no disputed billing charge in the petition.

The OAL does not have jurisdiction to tailor a remedy that unilaterally imposes a different rule or procedure from one approved and adopted by a state agency. N.J.A.C. 1:1-3.2(a). Under the Board's regulations, if for any reason a utility cannot read a customer's meter, the utility may use estimated billing. N.J.A.C. 1:1-3.7.2(c). In calculating an estimated bill, a utility may base the estimation on actual billing from the same time period from the previous year. Gaspare Campisi of Gaspare's Gourmet v. Atlantic City Elec. Co., 2014 N.J. PUC. LEXIS 109 (Final Decision, April 24, 2014). Following the Brill standard, I **CONCLUDE** that, even after giving all favorable inferences to the evidence presented by petitioner, the non-moving party, the OAL cannot order a different method for an estimated bill reading than the use of an actual billing for the same time in a prior year.

In accordance with the foregoing, I **CONCLUDE** that the moving party is entitled to prevail as a matter of law." N.J.A.C. 1:1-12.5(b).

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**, and it is further **ORDERED** that the Petition is **DISMISSED** in its entirety.

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.

June 3, 2016
DATE


EVELYN J. MAROSE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

kep