



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

CUSTOMER ASSISTANCE

DANIELLE DEMARY,)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
v.)	
)	
NEW JERSEY AMERICAN WATER COMPANY,)	BPU DOCKET NO. WC18111220U
Respondent)	OAL DOCKET NO. PUC 00977-19

Parties of Record:

Danielle DeMary, Petitioner, *pro se*
Josiah Contarino, Esq., on behalf of Respondent, New Jersey American Water Company

BY THE BOARD:

The within matter is a billing dispute between Danielle DeMary (“Petitioner”) and New Jersey American Water Company (“NJAW” or “Respondent”). This Order sets forth the background and procedural history of Petitioner’s claims and represents the Final Order in this matter. Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on December 4, 2019, as follows.

PROCEDURAL HISTORY

On November 1, 2018, Petitioner filed a petition with the Board requesting a formal hearing to resolve a billing dispute between her and NJAW for water and wastewater service rendered at Petitioner’s residence at 73 Briarwood Court, Howell, NJ 07731 (“Property”) between November 16, 2017, and March 15, 2018, the billing period in dispute. On or about December 7, 2018, New Jersey American filed an answer to the petition. On January 17, 2019, the dispute was transferred 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 -23. The matter was assigned to Administrative Law Judge (“ALJ”) Tricia Caliguire.

On November 14, 2019, the date of the evidentiary hearing, Maggie Stromoski testified on behalf of Respondent. Petitioner testified on her own behalf. (1T).¹ Respondent’s exhibits R-1 to R-13 were introduced into evidence, but Petitioner’s exhibit P-1 and Respondent’s exhibit R-14 were

¹ 1T refers to the transcript of the November 14, 2019 hearing before ALJ Caliguire.

not introduced into evidence. (ID at 12-13). After the proceedings, both parties took part in a settlement conference to resolve any pending issues, but on November 20, 2019, Respondent informed ALJ Caliguire that the parties were unable to reach a settlement. The record was closed on the same day.

On December 4, 2019, ALJ Caliguire issued an Initial Decision in favor of Respondent, denied the relief sought by Petitioner, and dismissed the petition. Furthermore, the ALJ held that Petitioner “remains responsible for the outstanding charges of \$1,359.76.” (ID at 10). The OAL did not receive exceptions to the Initial Decision from either party.

EVIDENTIARY HEARING

The hearing on this matter was heard before ALJ Caliguire on November 14, 2019. (1T).

First, Petitioner testified on her own behalf. (1T9:5-7). She testified that she resided at the Property since August 2016, and she registered an online account with NJAW, where she could view past invoices and pay any outstanding charges. (1T10:3-18; 1T50:19-51:15). According to Petitioner, her average water usage per month was between 3,000 and 5,000 gallons, and her monthly water bills never exceeded \$120. (1T10:17-11:15). Petitioner further testified that her monthly water bills significantly increased in amount between November 2017 and January 2018. (1T23:10-24:12; 1T47:12-21). In addition, Petitioner noted that on or about July 7, 2017, NJAW replaced the water meter of Petitioner’s upstairs neighbor, and Petitioner claimed that the water meter replacement occurred at about the same time as the large increase in her water bills. (1T15:13-16:16; 1T26:3-27:21). Petitioner stated that she contacted NJAW to dispute the increase in her water bills, and on March 8, 2018, NJAW’s service technician arrived at Petitioner’s Property to verify the water meter’s accuracy. (1T28:15-32:3). The technician did not identify any issues with the meter or locate any leaks. (1T31:15-32:3). On or about May 31, 2018, NJAW allegedly discontinued water service to Petitioner’s Property due to an unpaid water bill, which Petitioner claimed to be in dispute. (1T39:11-44:14). Petitioner claimed that she never received the final discontinuation notice. (1T41:14-23). On the day Petitioner’s water service was purportedly terminated, Petitioner called NJAW to address the disconnected water service, which NJAW ultimately restored on the same day. (1T44:3-45:25). Lastly, Petitioner noted that on or about July 10, 2018, Petitioner and NJAW attended a Board-supervised water meter test. (1T37:15-38:12). According to Petitioner, the water meter “tested fine”. (1T39:5-6).

Next, Maggie Stromoski, NJAW’s customer advocate, testified on behalf of Respondent. (1T53:22-24). She testified that she was familiar with Petitioner’s billing dispute because NJAW assigned the matter to Ms. Stromoski in April 2018, and she reviewed Petitioner’s bills and records. (1T55:1-57:1). Ms. Stromoski referenced the actual reading of Petitioner’s meter and stated that Petitioner used 31,000 gallons of water from December 16, 2017, to January 16, 2018, 25,000 gallons of water from January 17, 2018, to February 15, 2018, and 13,000 gallons of water from February 16, 2018, to March 15, 2018. (1T56:14-61:21; 1T83:7-25). The total amount due for the three billing periods amounted to \$1,359.76. (1T83:17-84:16; 1T93:19-25). In particular, Ms. Stromoski testified that for the billing periods December 16, 2017 to January 16, 2018, January 17, 2018 to February 15, 2018, and February 16, 2018 to March 15, 2018, Petitioner was charged with \$603.06, \$490.71, and \$265.99, respectively, for water usage. (1T61:16-21; 1T87:1-17). According to Ms. Stromoski, Petitioner would receive invoices for water usage “[e]ither through the mail or through paperless billing on her web self-service account.” (1T59:3-14).

Furthermore, Ms. Stromoski testified that in March 2018, Petitioner contacted NJAW to discuss the billing dispute. (1T65:11-17). As a result, NJAW sent a field service representative to Petitioner's Property on March 5, 2018, to conduct a "leak check" and determine the accuracy of the water meter readings for the above-mentioned billing periods. (1T65:18-66:14). Ms. Stromoski explained that Petitioner's meter was accurate, and a letter "confirming the results of the leak check order" was allegedly sent to Petitioner. (1T66:5-22). However, Petitioner was purportedly not in her home during NJAW's leak check. (1T67:1-68:7). As such, NJAW "just verified to read and check the meter." (1T67:18-68:8). In addition, Ms. Stromoski testified that on July 10, 2018, a BPU witnessed meter test was conducted at NJAW's office, and both Petitioner and Ms. Stromoski were present for the test. (1T77:24-80:8). According to Ms. Stromoski, the accuracy range of the meter was between 99.3% and 102%. (1T80:9-81:21).

In response to Petitioner's claim that the replacement of an upstairs neighbor's water meter led to significantly higher water usage charges under Petitioner's account, Ms. Stromoski clarified that the neighbor's replacement of the water meter could not have contributed to Petitioner's water bills because Petitioner's neighbor replaced his water meter on July 8, 2017, which occurred several months prior to the billing periods in dispute. (1T88:3-89:8). Finally, Ms. Stromoski testified that on May 17, 2018, NJAW sent Petitioner a notice of service discontinuation via mail due to Petitioner's failure to pay over \$150.00 in undisputed water charges, and on May 31, 2018, water service to the Property was disconnected. (1T89:25-92:4; 1T94:1-17). NJAW restored water service to the Property on the same day. (1T96:15-20).

On December 4, 2019, ALJ Caliguire issued an Initial Decision in favor of Respondent and denied the relief sought by Petitioner. In the Initial Decision, ALJ Caliguire made specific findings of fact based upon her review of the testimony and documentary evidence. ALJ Caliguire found that:

1. Respondent provided water and wastewater service to Petitioner's Property since August 2016;
2. Petitioner's combined water and wastewater service bill since August 2016 amounted to "approximately \$100/month";
3. Respondent "calculate[d] [Petitioner]'s water usage based on an actual meter reading conducted by a meter reader on or about the fifteenth day of each month," and each unit of water usage equates to 1,000 gallons;
4. Respondent did not explain the method in which wastewater usage was calculated;
5. The total charge for Petitioner's water usage between December 16, 2017, and January 16, 2018, amounted to \$603.06, which was "much higher than previous bills";
6. The total charge for Petitioner's water usage between January 17, 2018, and February 15, 2018, amounted to \$490.71;
7. In response to Petitioner's complaint to NJAW about the accuracy of the December 2017 - January 2018 water bill and the January 2018 - February 2018 bill, Respondent's field representative visited Petitioner's Property on March 5, 2018, and verified the accuracy of the meter;²
8. The total charge for Petitioner's water usage between February 16, 2018, and March 15, 2018, amounted to \$265.99;

² ALJ Caliguire observed that both parties disputed whether Petitioner was present during the March 5, 2018 meter check. Although the disputed fact was relevant to show whether Respondent's field representative was able to conduct a leak check on Petitioner's Property, neither party demonstrated that "a leak inside the residence was responsible for the increase in [Petitioner]'s bills." (ID at 5). Thus, ALJ Caliguire did not find it necessary to resolve the disputed fact. (ID at 5).

9. On or about April 2018, Maggie Stromoski, Respondent's Customer Advocate, was assigned to Petitioner's account to resolve the dispute surrounding the accuracy of the above-mentioned bills;
10. On July 10, 2018, Petitioner "arranged for a Board [S]taff-supervised test of her meter," which Ms. Stromoski attended;
11. On July 12, 2018, an inspector from the Board's One Call and Meter Testing Office confirmed that Petitioner's meter functioned "within the prescribed limits of accuracy";
12. Petitioner refused to accept Respondent's "courtesy leak adjustment" and a "payment plan to address the disputed charges";
13. No leak was discovered or identified within Petitioner's Property;
14. On May 17, 2018, Respondent notified Petitioner via termination notice that if she did not pay \$1,512.55 by May 29, 2018, Respondent would discontinue the provision of water services to Petitioner's Property. About \$150.00 of the total amount sought by Respondent was not in dispute. Petitioner claimed she never received the termination notice; and
15. Since Petitioner did not pay \$1,512.55 by May 29, 2018, Respondent discontinued Petitioner's water service on May 31, 2018. On May 31, 2018, Petitioner inquired about the disconnected water service, and Respondent restored service on the same day. (ID at 3-5).

In ALJ Caliguire's legal analysis, the ALJ first noted that a customer of record 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. (ID at 6). If a customer of record challenges the amount due, and "there is no apparent explanation" for the increase in the utility bill, the ALJ may consider "the customer's established consumption" and "the results of any tests on the customer's meter" in determining whether the disputed amount due is accurate. N.J.A.C. 14:3-7.6(g); (ID at 6). Next, ALJ Caliguire cited Section 15 of Respondent's Board-approved Tariff for Service and emphasized that during a billing dispute, the utility must notify the customer of record that the utility may test the meter in the presence of the Board or a third-party. (ID at 7). The ALJ recognized that the Board attaches great weight to "tests that measure meters' accuracy" and further noted that "[a] water meter shall be considered accurate if it shows an error no greater than one and one half percent when tested in accordance with the regulations." N.J.A.C. 14:3-4.6(a); (ID at 8). Lastly, the ALJ discussed the procedure behind the discontinuance of service and noted that under Section 7 of the Tariff, "[a] water and wastewater utility shall not discontinue service because of nonpayment of bills in cases where a charge is in dispute provided the undisputed charges are paid. . ." (ID at 8). If a utility seeks to discontinue water or wastewater service, the customer must receive ten (10) days' written notice before the discontinuance. (ID at 9).

ALJ Caliguire found that although Petitioner's "billing history reflects monthly bills of approximately \$100.00, and her bills were curiously high" during the billing period in dispute, Petitioner failed to demonstrate by a preponderance of the evidence that her water bills from November 2017 to March 2018 were inaccurate because she "offered no credible evidence to support her claim that the error was with [Respondent]'s billing office. . ." (ID at 7, 10). In addition, the ALJ held that Respondent correctly followed the procedure pertaining to the verification of the water meter's accuracy, and consequently, "no adjustment to [Petitioner]'s bill [was] required under the regulations and/or [Respondent]'s tariff." (ID at 8). Finally, ALJ Caliguire concluded that Respondent's termination of water service to Petitioner's Property on May 31, 2018, was proper because Petitioner did not pay approximately \$150.00 in undisputed charges, and Respondent timely sent a termination notice to Petitioner. (ID at 10).

DISCUSSION AND FINDINGS

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). In the present instance, Petitioner failed to show, by a preponderance of the competent, credible evidence, that Petitioner's water bills for the billing period in dispute were inaccurate. Although the amount charged for water service during the billing period in dispute was significantly higher than in other billing periods, Petitioner did not produce sufficient documentary or testimonial evidence to show that a defective water meter, a leak, or some other externality caused the significant increase in her water bills. Furthermore, Petitioner's claim that the replacement of her neighbor's water meter in July 2017 caused a possible mix-up between Petitioner's and the neighbor's meters is unpersuasive because the meter replacement occurred about four months before the billing period in dispute. As such, 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.

Next, under Section 15 of NJAW's Tariff involving customer billing disputes, the utility is required to inform the customer that the utility may test the customer's meter or that the Board or a third party may witness the testing of the meter. See also N.J.A.C. 14:3-4.5(c). A meter test may occur when the increase in water charges may be due to "unexplained increased consumption" or "any other instance where the meter's accuracy might be an issue in a bill dispute." N.J.A.C. 14:3-4.5(d). N.J.A.C. 14:3-4.6(a) provides that an adjustment of charges shall be made if the water meter is "found to be registering fast by . . . more than one and one half percent. . ."

In the present matter, Petitioner spoke with Ms. Stromoski and requested that the Board witness the water meter test, which occurred on July 10, 2018. As Ms. Stromoski testified, the accuracy range of the tested water meter was between 99.3% and 102%, which met the requirements in N.J.A.C. 14:3-4.6(a). (1T80:9-81:21). The results of the test were provided to Petitioner in accordance with N.J.A.C. 14:3-4.5(b). Thus, pursuant to N.J.A.C. 14:3-4.5(c), Respondent followed the proper procedures in verifying the accuracy of Petitioner's water meter, and Petitioner failed to show, by a preponderance of the evidence, that Respondent failed to follow the proper procedures for testing Petitioner's water meter.

Finally, in matters involving customer billing disputes, the customer must inform the utility of the dispute and "pay all undisputed charges." N.J.A.C. 14:3-7.6(a). Pursuant to N.J.A.C. 14:3-7.6(c), "[o]nce a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease until Board staff notify the utility and the customer that the dispute has been resolved. . ." The utility may discontinue water service to the customer's premises for the nonpayment of all undisputed charges if the utility "provided written notice giving the customer at least ten (10) days' notice prior to the proposed discontinuance." (R-8); see also N.J.A.C. 14:3-3A.3(c). The ten-day period "shall begin on the postmark date of the notice of discontinuance." N.J.A.C. 14:3-3A.3(c).

Here, Petitioner informed NJAW of the billing dispute prior to May 2018, and as such, under N.J.A.C. 14:3-7.6(c), NJAW could not have collected any disputed charges from Petitioner until the billing dispute was resolved and the Board was notified of the resolution. On May 17, 2018, NJAW sent Petitioner a discontinuance notice and required her to pay \$1,512.55 in outstanding

charges by May 29, 2018. Although Petitioner was only required to pay approximately \$150.00 in outstanding, undisputed charges as per N.J.A.C. 14:3-7.6(c), she failed to do so prior to the May 29, 2018 deadline. As such, NJAW's discontinuation of Petitioner's water service was proper under N.J.A.C. 14:3-3A.3(c) and Respondent's Tariff.

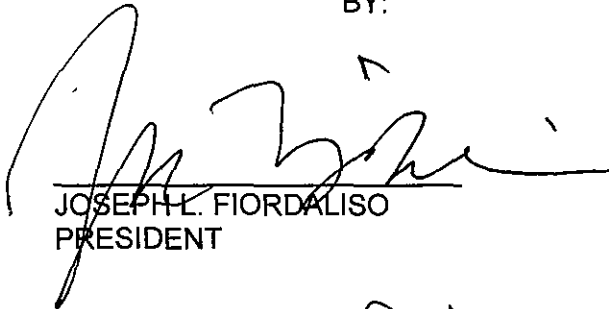
Thus, after careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of law of ALJ Caliguire to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to meet her burden of proof.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the Petition be **DISMISSED**.

This Order shall be effective February 15, 2020.

DATED: 2/5/20


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

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

DANIELLE DEMARY, PETITIONER

v.

NEW JERSEY AMERICAN WATER COMPANY, RESPONDENT

BPU DOCKET NO. WC18111220U

OAL DOCKET NO. PUC 00977-19

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 00977-19

AGENCY DKT. NO. WC18111220U

DANIELLE DeMARY,

Petitioner,

v.

NEW JERSEY AMERICAN WATER COMPANY,

Respondent.

Danielle DeMary, petitioner, pro se

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

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

Record Closed: November 20, 2019

Decided: December 4, 2019

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

STATEMENT OF CASE

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

PROCEDURAL HISTORY

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

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

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

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

FACTUAL DISCUSSION

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

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

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

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

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

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

DISPUTED FACTS

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

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

ISSUES IN DISPUTE

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

LEGAL DISCUSSION AND CONCLUSIONS

Accuracy of NJAW Bills

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

When the amount of an electric, gas, water, or wastewater bill is significantly higher than the customer’s established consumption history, and there is no apparent explanation for the increase (for example, severe weather conditions; changes in the make-up or the lifestyles of the members of the household), the customer’s established consumption shall be given consideration, in addition to the results of any tests on the customer’s meter, in the evaluation of whether the bill is correct and appropriate.

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

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

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

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

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

Meter Testing

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

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

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

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

Discontinuance of Service

While the regulations make clear the ongoing obligation of a utility customer to continue to pay current charges during the course of a billing dispute, “[o]nce a formal or informal dispute is before the Board, all collection activity on the charge in dispute shall cease until Board staff notify the utility and the customer that the dispute has been resolved[.]” N.J.A.C. 14:3-7.6(a), (c).

NJAW's Board-approved Tariff echoes the regulations:

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

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

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

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

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

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

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

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

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

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

ORDER

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

I hereby **FILE** my Initial Decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If

the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 4, 2019 _____
DATE


TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

nd

APPENDIX

WITNESSES

For Petitioner:

Danielle DeMary

For Respondent:

Maggie Stromoski

EXHIBITS

For Petitioner:

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

For Respondent:

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

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