



STATE OF NEW JERSEY  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

CUSTOMER ASSISTANCE

<b>JAROD NAPPI,</b>	)	ORDER ADOPTING
Petitioner,	)	INITIAL DECISION
	)	
v.	)	
	)	
<b>NEW JERSEY AMERICAN COMPANY,</b>	)	BPU Docket No. WC19030377U
Respondent	)	OAL Docket No. PUC 09022-19

**Parties of Record:**

**Jarod Nappi**, petitioner *pro se*  
**Thomas J. Herten**, Esq., and **Josiah Contarino**, Esq., for respondent (Archer and Greiner, attorneys)

BY THE BOARD:

This matter is a billing dispute between Jarod Nappi (“Petitioner”) and New Jersey American Water (“NJAW” or “Respondent”). This Order sets forth the procedural history and factual background of Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-20. Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on January 8, 2020, as follows.

**PROCEDURAL HISTORY and STATEMENT OF FACTS**

On or about March 21, 2019, Mr. Nappi filed a petition with the Board disputing charges for water service rendered at his West Orange, New Jersey residence at 24 Beasley Street.<sup>1</sup> Mr. Nappi alleged that NJAW may have inaccurately billed him due to a “water main mismatch” between his property and an adjoining one. 1P. NJAW answered the petition and explained that it tested and verified the accuracy of Mr. Nappi’s meter and billing data. 1R2. NJAW noted that Mr. Nappi refused to submit payments even after the data was verified. Ibid. The Board transmitted the case to the Office of Administrative Law (“OAL”) for a hearing as a contested case, N.J.S.A. 52:14B-1 to -15, and N.J.S.A. 52:14F-1 to -23, on June 2, 2019. The case was assigned to Administrative Law Judge (“ALJ”) Kelly J. Kirk.

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<sup>1</sup> 1P refers to Mr. Nappi’s petition; 2P refers to Mr. Nappi’s response to NJAW’s motion for summary decision; 1R refers to NJAW’s answer; 2R refers to NJAW’s motion for summary decision; 3R refers to NJAW’s reply letter to Mr. Nappi’s response; 1H refers to NJAW’s first certification; and 2H refers to NJAW’s second certification.

NJAW made a motion for summary decision on November 6, 2019. The motion provided NJAW's statement of uncontested facts, which was supported by a certification from Thomas A. Hoffman, the customer advocate assigned to the case by NJAW. The customer advocate explained that the water meter for Mr. Nappi's property, located at 24 Beasley Street, was in front of the adjoining property at 20 Beasley Street. 1H1. The meter for 20 Beasley Street was located inside the 20 Beasley Street residence. Ibid. In 2017, an NJAW field representative mistakenly changed Mr. Nappi's water meter, instead of the meter for 20 Beasley Street that the NJAW field representative was supposed to be servicing. Ibid. Later that year, a field representative mistakenly shut off Mr. Nappi's water instead of the water for 20 Beasley Street. 1H1-2. Following these incidents, Mr. Nappi alerted NJAW to the potential mismatch. 1H2.

Mr. Hoffman investigated the potential mismatch and found that the meter in front of 20 Beasley Street matched the serial number associated with Mr. Nappi's water usage and billing. Ibid. Mr. Hoffman also explained that his review of the meter data found that 20 Beasley Street used roughly 81% more water between June 2004 and July 2019 than Mr. Nappi's residence. 1H2-3. In sum, NJAW found that the water meter and billing data were correctly matched to the properties; moreover, if there was a mismatch, it would have been to the benefit of Mr. Nappi.

On November 12, 2019, Mr. Nappi responded to NJAW's motion. He argued that the 2017 mistakes by a field representative showed the potential for error. 2P2-3. Mr. Nappi noted that NJAW did not show whether "adequate systems were in place to prevent cross-billing between" the water meters. 2P3. Further, he disagreed that a mismatch would result in his benefit. He contended that he was billed his "neighbor's higher usage and [his] neighbor was billed [Mr. Nappi's] lower usage." 2P3. Mr. Nappi did not support his billing theory with documentation showing that he was billed the higher of the two usages.

NJAW replied with an additional certification from Mr. Hoffman. The certification noted that the in-person errors in 2017 were understandable due to the meter positioning. 2H1. However, the water consumption data was collected through a "computerized system for which the location of the meter makes no difference;" indeed, it left "no risk of similar misidentification." 2H1-2. The customer advocate noted that once a meter is set up, the system applies the meter readings to a specific property until a new meter is installed. 2H2.

On January 8, 2020, ALJ Kirk issued her Initial Decision granting NJAW's motion for summary decision. No exceptions were filed.

By Order dated February 5, 2020, the Board obtained a forty-five day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

## **DISCUSSION AND FINDINGS**

Summary decision "may be rendered if, 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). If a motion for summary decision is made and supported, the adverse party must "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. A genuine issue of fact exists if "the competent evidential materials presented, when viewed in the light most favorable to the non-moving party..., are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Contini v. Board of Educ. of Newark, 286 N.J. Super. 106, 122 (App. Div. 1995) (quoting Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995)).

ALJ Kirk found that the materials presented did not create a genuine issue of material fact that could resolve in Mr. Nappi's favor. ALJ Kirk found that NJAW certified that the meter readings were performed remotely by computer. The system removed the potential for incorrect billing attributable to the type of human error Mr. Nappi witnessed in 2017. Additionally, ALJ Kirk found that it was not clear how the mismatch would have resulted in Mr. Nappi being overbilled because the neighbor's water usage was higher. ALJ Kirk also noted that Mr. Nappi did not present any evidence to seriously question the assertions in NJAW's certifications.

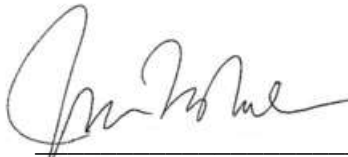
After careful review and consideration of the entire record, the Board **HEREBY FINDS** the findings and conclusions of ALJ Kirk to be reasonable and, accordingly, **HEREBY ACCEPTS** them. Specifically, The Board **FINDS** that summary decision was properly granted because there was no genuine issue of material fact. N.J.A.C. 1:1-12.5(b); Contini, 286 N.J. Super. at 122. Mr. Hoffman investigated the potential mismatch raised by Mr. Nappi. Mr. Hoffman confirmed that Mr. Nappi's water usage data was correct and explained that the meter-reading system was not susceptible to the kind of human error Mr. Nappi witnessed in 2017. Mr. Nappi did not present any evidence to show that that the meter-reading system incorrectly billed him.

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

The effective date of this Order is April 6, 2020.

DATED: March 27, 2020

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

**JAROD NAPPI, PETITIONER**

**V.**

**NEW JERSEY AMERICAN WATER COMPANY, RESPONDENT**

**BPU DOCKET NO. WC19030377U  
OAL DOCKET NO. PUC 09022-19**

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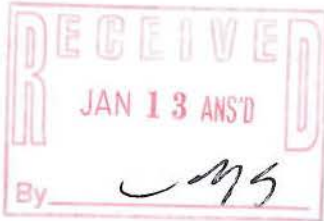
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BOARD OF PUBLIC UTILITIES

JAN 13 2020

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

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. PUC 09022-19

AGENCY DKT. NO. WC19030377U

**JAROD NAPPI,**

Petitioner,

v.

**NEW JERSEY AMERICAN WATER COMPANY,**

Respondent.

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**Jarod Nappi**, pro se, petitioner

**Thomas J. Herten**, Esq. and **Josiah Contarino**, Esq., for respondent (Archer & Greiner, attorneys)

Record Closed: November 27, 2019

Decided: January 8, 2020

BEFORE **KELLY J. KIRK**, ALJ:

**STATEMENT OF THE CASE**

This matter arises from a billing dispute between Jarod Nappi and New Jersey American Water Company (NJAWC or NJAW).

## **PROCEDURAL HISTORY**

Petitioner, Jarod Nappi, filed a petition with the Board of Public Utilities (Board), alleging a “potential water meter mismatch” and inaccurate billing by NJAWC. NJAWC filed an answer to the petition on May 17, 2019. The Board determined to treat the matter 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, and transmitted it to the Office of Administrative Law (OAL), where it was filed on July 2, 2019.

Respondent filed a motion for summary decision on November 6, 2019, accompanied by a brief with one exhibit and certification of Thomas Hoffman, with exhibits (Hoffman Cert.). On November 19, 2019, petitioner filed a reply letter with one exhibit. On November 27, 2019, Respondent filed a reply letter brief and reply certification of Thomas Hoffman with one exhibit (Hoffman Reply Cert.).

## **FACTUAL DISCUSSION**

The Statement of Uncontested Facts in respondent’s brief in support of its motion for summary decision is as follows:

1. Petitioner’s water meter for 24 Beasley Street is located in front of 20 Beasley Street, West Orange, New Jersey 07052. (Certification of Thomas H. Hoffman (Nov. 5, 2019) (“Hoffman Cert.”) ¶ 3).
2. 20 Beasley Street is the “adjoining property” specified in Petitioner’s Petition. (Petition ¶ 1).
3. The water meter for 20 Beasley Street, by contrast, is located inside the residence of 20 Beasley Street. (Hoffman Cert. ¶ 4).
4. Once Petitioner alerted NJAW to his concern of a potential meter mismatch, NJAW reviewed the account details for 24 Beasley Street and 20 Beasley Street. (Hoffman Cert. ¶ 7).

5. From that review, NJAW determined that the serial number for the meter located in front of 20 Beasley Street matches the serial number associated with Petitioner's water usage and resulting charges, and that the serial number for the meter located inside the residence at 20 Beasley Street matches the serial number associated with the water usage and resulting charges to Petitioner's adjoining neighbor at 20 Beasley Street. (Hoffman Cert. ¶¶ 7-8).
6. But NJAW did not stop there. Because of Petitioner's concern of a potential meter mismatch, NJAW reviewed the account history as far back as possible for both 24 Beasley Street and 20 Beasley Street, which showed that from July 2004 through July 2019, 24 Beasley Street used (and was correspondingly charged) 436,000 units less than 20 Beasley Street. (Hoffman Cert. ¶ 10).
7. In other words, the water usage associated with Petitioner's residence at 24 Beasley Street, West Orange, New Jersey 07052 for the period of July 22, 2004 through July 22, 2019 was 537,000 units. (Hoffman Cert. ¶ 11).
8. The water usage associated with the neighbor's residence at 20 Beasley Street, West Orange, New Jersey 07052 for the period of July 22, 2004 through July 22, 2019 was 973,000 units. (Hoffman Cert. ¶ 12).

Additionally, respondent's reply brief cites to paragraphs two through five of the Hoffman Reply Cert., which are as follows:

2. While a New Jersey American Water Company field service representative should have the information necessary to correctly identify meter locations, it is understandable that one not familiar with the unusual position of Petitioner's meter being in front of 20 Beasley Street could mistake the meter in front of 20 Beasley Street as belonging to 20 Beasley Street. This is entirely different from unique computerized meter reading devices that are each attached to separate water meters and that confirm the correct meter is being read during every reading.
3. Thus Petitioner is also wrong to imply that the serial numbers on the water meters do not prevent mismatched billing. The computerized meter reading device traces the serial number on Petitioner's meter to confirm Petitioner's water usage, and traces the serial number on the

neighbor's meter to confirm the neighbor's water usage. Obviously, a field service representative – a human – can physically turn a valve on the meter to shut off the water notwithstanding the serial number on that meter. In other words, the field service representative was able to turn off the water meter in front of 20 Beasley Street even though it had the serial number on it assigned to Petitioner's account.

4. Indeed, look at the bizarre positioning of Petitioner's property (24 Beasley Street) and his neighbor's (20 Beasley Street). (Attached as **Exhibit A** are two photographs where 20 Beasley Street is on the left and the entrance to 24 Beasley Street is on the right.) Petitioner's residence is hardly noticeable from the street. Whereas a field service representative could understandably look at 20 Beasley Street and believe the water meter in front thereof belonged to 20 Beasley Street, a computerized system for which the location of the meter makes no difference (because the water is read remotely) has no risk of similar misidentification.
5. Finally, Petitioner selects only the instances where water usage assigned to his neighbor at 20 Beasley Street was greater than Petitioner's at 24 Beasley Street to come up with "potential overbilling." A stretch under any circumstances, Petitioner's logic could work only if the meter reads had the potential of switching from one property to another property month by month. But that is not how the meter reading devices operate. A single serial number from a specific meter is used for a property until a new meter is installed. Petitioner's logic is therefore flawed.

#### LEGAL DISCUSSION

If a dispute arises between a utility and any other person regarding a utility, an informal complaint may be submitted to the Board in accordance with N.J.A.C. 14:1-5.13, or a petition may be filed under N.J.A.C. 14:1-5. N.J.A.C. 14:3-1.2(d). The customer of record, as defined at N.J.A.C. 14:3-1.1, is responsible for payment for all utility service rendered. N.J.A.C. 14:3-7.1(a).

Petitioner's Petition for a Formal Hearing states as follows:



### **Summary Statement**

I am seeking assistance with resolving a dispute with the New Jersey American Water Company arising from a potential water meter mismatch between my property and an adjoining property.

### **Facts of the Case**

1. In April 2017 New Jersey American Water Company (NJAWC) contacted me to schedule a replacement of the water meter servicing my property at 24 Beasley Street in West Orange NJ. I contacted NJAWC and informed them that I wanted to have my meter tested and verified by the Board of Public Utilities to ensure the accuracy of the existing meter prior to replacement. Upon investigation NJAWC discovered that my meter had already been replaced several months before they contacted me. I was informed that the meter servicing a neighboring property at 20 Beasley Street was supposed to be replaced but mine was replaced instead. Several weeks later I arrived home to find that the water service to my property had been shut off. I contacted NJAWC and a technician was dispatched to my property. The technician discovered that a shutoff notice had been issued and executed for the same neighboring property at 20 Beasley Street, but my service was shut off instead. The technician showed me that the water meter for my property is located in a pit in front of the neighboring property.
2. Based on the events described in Paragraph 1, I became concerned that there was a meter mismatch between 20 Beasley Street and my property at 24 Beasley Street. I contacted NJAWC to investigate this matter and have been unable to reach a satisfactory resolution. Tom Hoffman, the service representative assigned to my case, has informed me that he investigated and found no discrepancy between the two properties. However, no evidence has been provided to support that claim. I am seeking demonstrative proof that NJAWC meter identification systems are in control and that I have been properly billed for water use at 24 Beasley Street since taking ownership of the property in December 1998. In addition, I am seeking reimbursement for any overpayment resulting from inaccurate billing that may have resulted from a water meter mismatch.

### Summary Decision

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision may be “rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Further, “[w]hen a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding.” This standard is substantially similar to that governing a civil motion under New Jersey Court Rule 4:46-2 for summary judgment. E.S. v. Div. of Med. Assistance & Health Servs., 412 N.J. Super. 340, 350 (App. Div. 2010); Contini v. Bd. of Educ. of Newark, 286 N.J. Super. 106, 121 (App. Div. 1995).

In Brill v. Guardian Life Insurance Co., 142 N.J. 520, 540 (1995), the New Jersey Supreme Court set forth the standard governing a motion for summary judgment:

[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 [ . . . ] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” [ . . . ] If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a “genuine” issue of material fact [ . . . ].

[Citations omitted.]

Even viewing the evidential materials presented in the light most favorable to the petitioner, they do not create a genuine issue of material fact sufficient to resolve the alleged disputed issue in his favor. It is not disputed that NJAWC mistakenly replaced the water meter for petitioner’s property instead of the neighbor’s property or that NJAWC mistakenly shut off petitioner’s water when the shutoff notice was for petitioner’s neighbor. Having viewed the photographs of the properties and petitioner’s meter, these mistakes

are not surprising. However, NJAWC has certified that meter readings are performed remotely by computer and are tied to a meter's serial number – thereby removing any human error as a result of the incongruous location of a meter. Petitioner has not argued or submitted any evidence to establish that the foregoing is not true or that the serial number associated with the billing records for his property does not match the serial number on his water meter. Further, the records reflect that since 2004, petitioner has been billed for 436,000 units less than his neighbor. Petitioner argues that any monthly difference in units between petitioner and his neighbor where the neighbor's usage was higher than petitioner's (which is overwhelmingly the case) is "potential overbilling." It is not clear how he could have been overbilled when he would have paid less than his neighbor in every such case. Further, he has not submitted any evidence to suggest that his water meter was replaced or switched with his neighbor on a monthly or other basis for years - which is essentially what would have to have occurred for petitioner's argument of any "potential overbilling" be viable – or any evidence to then establish that his property corresponded to a different serial number on any given month.

There simply has been no evidence presented by petitioner to contradict NJAWC's certifications and create a genuine issue of material fact to support any finding that petitioner was improperly billed or entitled to any reimbursement. Accordingly, I **CONCLUDE** that there is no genuine issue as to any material fact challenged and respondent's motion for summary decision should be granted and the petitioner's petition should be dismissed.

### **ORDER**

I **ORDER** that respondent's motion for summary decision be and hereby is **GRANTED**. I further **ORDER** that petitioner's appeal is **DISMISSED** with prejudice.

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.

January 8, 2020  
DATE

  
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KELLY J. KIRK, ALJ

Date Received at Agency:

January 8, 2020

Date Mailed to Parties:  
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January 9, 2020