



Agenda Date: 3/12/12
Agenda Item: 7A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CUSTOMER ASSISTANCE

ARNO MAYER AND THE ARNO MAYER TRUST,)	ORDER ADOPTING INITIAL
)	DECISION IN PART AND
Petitioner,)	REJECTING AND
)	MODIFYING IT IN PART
v.)	
)	
NEW JERSEY AMERICAN WATER COMPANY,)	BPU DKT NO WC10120888U
)	OAL DKT NO PUC 1290-11
Respondent.		

Parties of Record:

Carl J. Mayer, Esq., on behalf of Petitioner, Arno Mayer and the Arno Mayer Trust
Stacey A. Mitchell, Esq., on behalf of Respondent, New Jersey American Water Company

BY THE BOARD:

INTRODUCTION

On December 6, 2010, Arno Mayer and the Arno Mayer Trust (Petitioner) filed a Petition for Hearing ("Petition") with the Board of Public Utilities (Board) alleging that New Jersey American Water Company (Respondent or NJAWC) shut off the water and changed the meter at the subject premises and removed the existing analog meter and replaced it with an automated remote water-reading device without first giving notice. Petitioner sought damages along with interest, punitive damages, attorney's fees, and cost of suit. Petition, pp. 1-3. In addition, Petitioner requested the Board to order Respondent to: (1) replace the newly installed remote reading device with an analog device; (2) levy a fine on Respondent; and (3) enjoin any further placement of remote reading devices in the State of New Jersey until further investigation of the numerous class actions filed against remote reading device makers is completed. Id. at 3.

Upon receipt of Respondent's Answer, this matter was transmitted to the Office of Administrative Law (OAL) for hearing as a contested case. It was assigned to the Honorable Patricia M. Kerins, Administrative Law Judge ("ALJ"). After conducting a pre-hearing conference and a hearing, ALJ Kerins closed the record on May 5, 2011. On August 25, 2011, ALJ Kerins issued an Initial Decision, which was forwarded to the parties and received by the Board on August 26, 2011, in which she determined that Respondent had failed to provide reasonable notice of its water service disruption to Petitioner's home, but denied the remainder of the relief sought by Petitioner. On September 7, 2011, Respondent filed exceptions to the

Initial Decision. Petitioner filed no exceptions. By previous Orders of extension, the Board was given until April 9, 2012 to render a final agency decision. Having reviewed the record, and for the reasons set forth below, the Board now rejects the Initial Decision's finding and decision that Respondent failed to provide reasonable notice to Petitioner of the service disruption on November 23, 2010, but adopts that part of the Initial Decision regarding the lack of subject-matter jurisdiction.

BACKGROUND

Petitioner avers that NJAWC on or about October 14, 2010 for the first time telephoned and notified him that the utility would immediately replace his analog water meter with an automated remote water reading device. Petitioner, through his counsel, conveyed that he had never been notified in writing and would not consent to having his water shut off. Petition, pp. 1-2. Following an apparently unpleasant exchange, Respondent advised Petitioner's counsel by phone that the water would be shut off on October 18, 2010. Id. at 2. Petitioner alleges that NJAWC shut off the water and changed the meter on November 23, 2010 with no warning or notification whatsoever. Id. Petitioner contends that "New Jersey American Water's actions violated 14:9-4 et. seq. In particular, the BPU requires that water not be shut off without written notice." Ibid.

Respondent, relying partly on N.J.A.C. 14:3-3.6 and N.J.A.C. 14:3-3A.1, asserts that Petitioner had denied it "reasonable access"; that it has the right to suspend service in order to make permanent or temporary repairs, changes, or improvements to any part of its water system; that it contacted Petitioner "on numerous occasions"; that prior to installation of the new meter it knocked on Petitioner's door to advise of the installation of the new meter; that it is not required to obtain customer consent in advance of a suspension of service or replacement of its meter; that NJAWC at no time entered Petitioner's property; and that "[t]o the extent water service was suspended at all in connection with the new meter installation in the right-of-way, the suspension lasted no more than 5 minutes in duration." Answer, pp. 2-3.

EVIDENTIARY HEARING

The transcript of the evidentiary hearing indicates discussions between the parties and the ALJ in chambers, including (i) possible settlement; (ii) lack of jurisdiction on Petitioner's claims except the failure-to-notify claim; and (iii) proceeding without Petitioner, given his elderly status, and allowing Carl Meyer, Esq., counsel for and son of Petitioner, to act as both counsel and fact witness, subject to the residuum rule. The parties apparently could not settle and also rejected the ALJ's offer to adjourn the hearing. Transcript, pp. 4-7.

According to Petitioner, N.J.A.C. 14:3-3A.1(d) is the particular Code section in issue in this case and requires the utility to "provide reasonable notice to the customer, to the extent reasonably possible." T11-23 to 12-20. Petitioner had given NJAWC permission to test and replace the old meter, but denied access for the limited purpose of installing an automated water meter. T46-1 to 48-4; P-2. Petitioner opined that N.J.A.C. 14:3-3A.1(d) required Respondent to give notice prior to installing the new meter, but admitted that he was unaware of any Board regulation granting a customer the right to choose a particular meter that is installed at the customer's property. T48-22 to 49-25. Also, Petitioner never sought to have his current water meter tested for accuracy, but believed that it was metering inaccurately, given that his water bill had jumped from roughly \$50 to \$125 a month, by 150%, and was certain that there had been no leak at the property. T50-17 to 52-3. Petitioner believes that no one was home on November 23, 2010 when the old meter was replaced with the automated water. T52-4 to 16.

Ms. Selina Kearney-Rogers, Service Delivery Specialist, testified for Respondent regarding the Arno Mayer water customer account at 58 Battle Road, Princeton, New Jersey. In March 2010, a 1-inch, 100-cubit-foot Neptune meter with a touchpad device was located at the premises, but outside of the building. To determine consumption at the premises, NJAWC would run a wand over the touchpad and did not actually have to access the home to read the actual numbers on the meter. T55-16 to 60-22.

By letters dated March 26, September 3, and September 27, 2010, NJAWC sent three notices to Mr. Mayer about replacing the existing meter at his home for testing, consistent with Board regulations. T57-18 to 63-14; Exhibits R-1 to R-3. Several subsequent communications between Respondent and Petitioner failed to result in Petitioner's consent to having NJAWC replace his meter. T63-15 to 70-9; Exhibits P-1; P-6; R-4 to R-7. Because Petitioner still had not given access to the property, NJAWC on November 23, 2010, following a knock on the door of Petitioner's home, proceeded to install a new meter in the right-of-way along Battle Road to supply water service to the premises, which resulted in disruption of water service to the home for a period between five and fifteen minutes. T69-9 to 72-4; P-3.

By letter dated December 2, 2010, NJAWC advised Petitioner's counsel that it was withdrawing its request to access Petitioner's property to remove and replace the existing meter for testing, since it was able to install a new meter in the utility right-of-way on Battle Road, and that the meter inside Petitioner's home would be retired. NJAWC also offered to replace and test the meter at no cost to Petitioner. T72-5 to 73-21; Exhibits P-5; R-8.

INITIAL DECISION AND ANALYSIS

The Initial Decision sets out the factual and legal discussions in great detail (pages 2 through 5 and pages 5 through 9, respectively) and need not be repeated at length herein. Suffice it to say that in the fall of 2010, the 84-year old Petitioner, along with a pregnant woman and an infant, was residing in a home owned by the Arno Mayer Trust. Between March 2010 and September 2010, Respondent sent three (3) written notices to Petitioner informing him that the water meter at the premises he occupied was due to be replaced and that he should contact Respondent's contractor in order that an appointment could be scheduled. The second and third notices further indicated that should Respondent not be provided with access to the meter, water service to the premises could be discontinued.¹

Although Petitioner denied receiving any of the written notices from Respondent, it is undisputed that he called NJAWC on October 5, 2010 and that his son and counsel, Carl J. Mayer, Esq., contacted Respondent in mid-October and informed it that his father would grant access to his premises for purposes of reading the meter but not its replacement with a remote-read device. Because it had previously installed meter pits in the utility right-of-way running along the street where the subject premises is located, NJAWC abandoned its attempt to gain access to the house and decided to install a new meter in the right-of-way. On November 23, 2010, employees of Respondent appeared at the premises and, after attempts to contact Petitioner by phone call and by knocking on the door failed, proceeded to install a new remote-read meter resulting in a suspension of service for a period of five (5) to fifteen (15) minutes. Initial Decision, pp. 2-5; T63-15 to 73-21; Exhibits P-1; P-3, P-5, and P-6; R-4 to R-8.

¹ N.J.A.C. 14:3-3A.1(a) provides, in pertinent part, that a utility shall have the right "to suspend or curtail or discontinue service" for refusal of reasonable entrance to the customer's premises in order to gain access to those facilities furnished by the utility which are incidental to the rendering of service.

In the Initial Decision, ALJ Kerins determined that as Petitioner was not able to show that he or any other residents of the premises sustained any damages or harm, and as the Board does not have any statutory authority to award money damages, all claims for such damages must be denied. Initial Decision, pp. 8-9. The Board concurs. See, e.g., Muise v. GPU, Inc., 332 N.J. Super. 140, 165 (App. Div. 2000). Likewise, ALJ Kerins indicated that Petitioner acknowledged that the request to enjoin the use of remote-read meters until their use can be investigated is beyond the scope of this matter. She also determined that the Board's rules neither specify the type of meter to be furnished nor provide the customer with a choice of meter type. Therefore, the only issue remaining is whether Respondent acted within the scope of the Board's rules when it installed a new meter to measure service at Petitioner's premises and whether it provided adequate notice of the resulting interruption of service. Initial Decision, pp. 5-6.

ALJ Kerins found that Petitioner was required to provide Respondent with reasonable access to the meter it had installed at his premises. N.J.A.C. 14:3-3.6(a). She further found that, notwithstanding the facts that the disruption of service was short and that no damages or harm were sustained by Petitioner or any other resident of the premises, Respondent had failed to provide sufficient prior notice pursuant to N.J.A.C. 14:3-3.7(h) and 14:3-3A.4. Accordingly, ALJ Kerins granted Petitioner's request that Respondent be found to not have provided reasonable notice of the disruption of water service while all other requested relief was denied. Initial Decision, pp. 6-9.

In its exceptions, Respondent argues that ALJ Kerins erred in finding that: (1) NJAWC did not provide reasonable notice to Petitioner; and (2) the notice provisions applicable to the discontinuance of service also apply to a temporary suspension or interruption of service related to meter replacement. Respondent notes that pursuant to N.J.A.C. 14:3-3.7(h), "[p]lanned interruptions for operating reasons shall always be preceded by reasonable notice to all affected customers, and the work shall be planned so as to minimize customer inconvenience." Exceptions, p. 4. NJAWC also states that the Board rules further provide that whenever a utility "suspends, curtails, or discontinues service for any reason other than nonpayment, the utility shall provide reasonable notice to the customer, to the extent reasonably possible." Exceptions, p. 5, citing N.J.A.C. 14:3-3A.1(d). Respondent argues that these rules do not require that the utility provide a specific date and time prior to interruptions of service for operating reasons and that placing a telephone call and knocking on the door of the premises in advance of the temporary interruption was reasonable. Exceptions, pp. 5-6.

NJAWC further argues that ALJ Kerins erred in finding that the notice provisions applicable to discontinuance of service set out in N.J.A.C. 14:3-3A.4 also apply to a temporary interruption of service for meter replacement. As discontinuance of service usually extends over a longer period of time until compliance is met, Respondent states that prior notice by the utility is more stringent in order that the customer may be fully aware of his or her rights prior to discontinuance. A suspension of service for a limited amount of time, on the other hand, requires only a reasonable notice. Exceptions, pp. 6-7.

According to N.J.S.A. 48:2-24, "[n]o public utility shall discontinue, curtail or abandon any service without obtaining permission from the board after notice. The board may withhold permission until after hearing to determine if the discontinuance, curtailment or abandonment will adversely affect public convenience and necessity. . . ." Just as N.J.S.A. 48:2-24 does not apply to disruption in service arising from meter replacement, N.J.A.C. 14:3-3A.4 likewise does not apply to the service disruption arising from the installation of the new meter on November 23, 2010.


If this matter involved the discontinuance of service, the Board would agree with the ALJ that the prior notice provided by NJAWC in the form of the written notices and the telephone call and knocking at the door would not have been reasonable or sufficient under the Board's rules. We are of the opinion, however, that the actions of the Respondent to contact Petitioner prior to the short disruption of service were reasonable under the facts of this case. It is possible that had Petitioner been at the premises at the time Respondent's employees arrived to change the meter and had he objected to the work to be performed regardless that it was to be done in the public right-of-way and not on Petitioner's premises a different conclusion could be reached. Those, however, are not the facts before the Board and we need not consider any other possible scenarios.

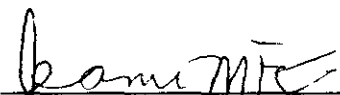
The Board HEREBY FINDS that, based on the facts of this matter, the notice given to Petitioner by Respondent prior to the short disruption of service on November 23, 2010 in order to install a new meter in the utility right-of-way was reasonable pursuant to N.J.A.C. 14:3-3.7(h) and 14:3-3A.1(d). Accordingly, the Board HEREBY REJECTS the findings of ALJ Kerins that (i) NJAWC did not provide reasonable notice of the disruption of service that occurred on November 23, 2010 and (ii) the provisions of N.J.A.C. 14:3-3A.4 are applicable to disruption of service for meter replacement or the type alleged by Petitioner.


As a result, the Board HEREBY MODIFIES the Initial Decision to the extent necessary to conform to the foregoing findings. The other findings and conclusions set out in the Initial Decision are HEREBY ADOPTED. Therefore, the petition in this matter is HEREBY DISMISSED.

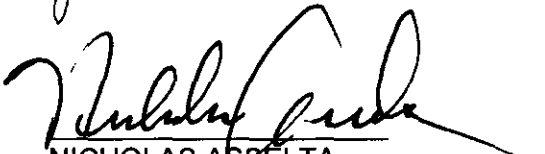
DATED: 3/12/2012

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

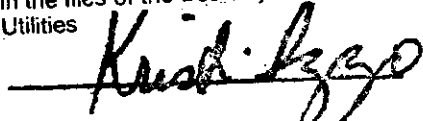

NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

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



ARNO MAYER AND THE ARNO MAYER TRUST

V.

NEW JERSEY AMERICAN WATER COMPANY

**BPU DOCKET NO. WC10120888U
OAL DOCKET NO. PUC 1290-11**

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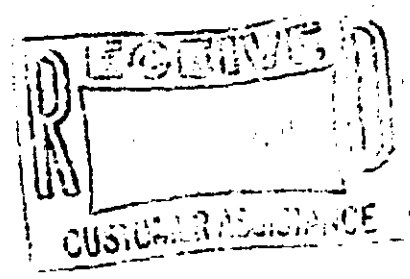
State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 1290-11

AGENCY DKT. NO. WC10120888U

ARNO MAYER, ARNO MAYER TRUST,
Petitioner,
v.
**NEW JERSEY AMERICAN WATER
COMPANY,**
Respondent.



Carl J. Mayer, Esq., for petitioner (Mayer Law Group, attorneys)

Stacey A. Mitchell, Esq., for respondent (Cozen O'Connor, attorneys)

Record Closed: May 5, 2011

Decided: August 25, 2011

BEFORE PATRICIA M. KERINS, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Arno Mayer (Mayer) seeks relief from the Board of Public Utilities (BPU) for an interruption of water service and the replacement of his water meter by respondent New Jersey American Water Company (American Water). Mayer asserts that he was not provided with notice of the water-service interruption and the change

Mayer filed his petition in this matter with the BPU on December 6, 2010. The case was transmitted to the Office of Administrative Law (OAL) on February 2, 2011, for hearing as a contested case. A telephone conference was held on February 24, 2011, and the matter was heard on May 5, 2011. The record closed on that date. An extension of time to issue the Initial Decision was granted.

FACTUAL DISCUSSION

Many of the material facts are not in dispute. Mayer resides in a home on Battle Road in Princeton, New Jersey, which is owned by the Arno Mayer Trust. In the fall of 2010, the eighty-four-year-old Mayer resided in the home with an infant and a pregnant woman. The home's water service is provided by American Water, with usage measured by a meter. In 2010, that meter was an analog meter, most recently installed in or about 2006.

From March 2010 through September 2010 American Water sent three written notices to Mayer that his water meter was "due to be replaced" or removed "for testing," and that he should call its authorized contractor, Kentrel Corporation, to schedule an appointment. (R-1; R-2; R-3.) The second and third letters stated that if petitioner did not allow respondent access to the meter, his water service could be turned off, referencing State regulations. (R-2; R-3.) The third request stated that petitioner's water service would be turned off if he did not respond within ten days of the notice, or it could be turned off as soon as fourteen days from the date of the letter. (R-3.)

In October 2010, after not receiving a response from Mayer to the above letters, American Water staff attempted to contact him by telephone regarding the meter changeover. Mayer did not agree with the meter removal and turned the matter over to his son and counsel, Carl Mayer, who then contacted American Water on or about October 14, 2010. After discussing the issue with American Water's in-house counsel, Carl Mayer filed an email complaint with the BPU. On November 23, 2010, American Water employees suspended water service to the home for a period of five to fifteen

minutes while connecting a new remote-read digital meter in a pit along Battle Road in a utility right of way. The old meter remained in place within the home. American Water staff left a notice on the door regarding the changeover, and on November 29, 2010, the company sent Mayer a letter regarding the changeover. The letter advised him that he could contact the company to arrange for the removal of the old, now-disconnected meter or he could allow it to remain in place. On December 2, 2010, American Water sent Carl Mayer a letter again discussing the removal of the nonfunctioning water meter from the home. On December 6, 2010, petitioner filed his formal petition with the BPU regarding the suspension of service and installation of the new meter.

In presenting his case, petitioner relied upon the testimony of his son, Carl Mayer. Stating that he was familiar with his father's affairs, Carl Mayer disputed whether his father ever received the initial three letters (R-1; R-2; R-3) from American Water regarding the removal of the meter. It was in October 2010, however, when his father received telephone contacts from American Water regarding the proposed meter change, that he became involved. He asserted that his father agreed to allow access for meter testing only, disagreeing with the meter changeover to the newer digital-format meter. In his October telephone conversation with American Water's deputy general counsel, Jordan Mersky, Carl Mayer stated his father's objections to the meter changeover. Apparently the conversation did not go well, resulting in Mayer's initial filing of a complaint online with the BPU on October 14, 2010. Despite his representation of his father and his discussions with Mersky, Carl Mayer stated he was not advised of American Water's plan to change the meter by simply installing the new one in the right-of-way pit along Battle Road in November 2010. He further represented that his father was not advised of the meter change and its accompanying suspension of service prior to the date it occurred. No evidence was presented by petitioner regarding any physical damage to the home or of any harm to individuals resulting from the service disruption or meter change as set forth in his petition.

Carl Mayer also presented his father's objections to the new type of meter installed by American Water. Citing consumer complaints in other jurisdictions where the digital remote-read meters have been introduced, he voiced concerns over their

those issues were beyond the purview of the matter at hand, he pointed to his father's concerns as not only a catalyst for this dispute, but as valid matters for review by the BPU in its regulatory and rulemaking roles.

In response, American Water presented the testimony of Selina Kearney-Rogers, whom it employs as a service delivery specialist. She reviewed the history of the company's attempts to contact Mayer regarding what was alternately described in its letters as meter testing or meter removal. When no response from Mayer was received to its first three letters, American Water staff tried telephone contact. A call was received from Mayer on October 5, 2010, and company records regarding those calls to and from Mayer were placed in the record. (R-4; R-5.) After Carl Mayer called on behalf of his father in mid-October 2010, the matter was transferred to the legal department and the company decided to place the new meter in the roadway right of way, rather than access the home. That changeover took place on November 23, 2010. Kearney-Rogers stated that a company representative tried telephone contact and knocked on the door to advise Mayer of the meter change and service disruption, but no one answered. A notice was then left on the door.

After a review of the record in this matter, **FIND** that American Water sent petitioner three letters between March and September 2010 requesting access to his home for either testing or replacement of the water meter. While petitioner disputes receiving those letters, by October 2010 he did respond to American Water by telephone regarding its request. By mid-October 2010 the eighty-four-year-old petitioner had turned the matter over to his son and counsel. Carl Mayer was credible in his testimony that he advised the respondent that although his father would allow access to have the meter tested, he did not consent to it being replaced with a digital remote-read device. After the filing of a complaint with the BPU in mid-October and communications with a deputy general counsel at American Water, neither respondent nor his counsel received further notice of the date and time for the meter changeover and the accompanying service disruption until the date it occurred, November 23, 2010.

further **FIND** that by mid-October 2010 respondent was on notice that the Mayer home on Battle Road was occupied at the time by an eighty-four-year-old individual, as well as an infant and a pregnant woman.

LEGAL DISCUSSION

In this matter, petitioner seeks several forms of relief arising from respondent's action in temporarily suspending his water service and replacing his analog meter. He seeks an order requiring American Water to replace the new water meter with an analog device. His petition further requests that a fine be levied against respondent, along with monetary damages, and other costs. While the petition also requests that the BPU "enjoin" the use of meters using the remote-read format until their use can be investigated, petitioner acknowledges that any such action is beyond the scope of this matter. The issue to be addressed, therefore, is whether respondent acted within the scope of the regulations when it installed a new water meter on petitioner's property and whether it provided appropriate notice of such change.

Regulations concerning meters for utilities are set forth in N.J.A.C. 14:3-4.1, and regulations specific to water meters at N.J.A.C. 14:9-4.1. Utilities are to furnish meters for their customers' usage pursuant to standards for their location and testing. Testing of water meters is to occur according to a schedule set forth in N.J.A.C. 14:9-4.1. The regulations do not specify the type of meter to be provided, *i.e.*, analog or digital remote read, nor do they provide customers with a choice of meter type. The regulations also state, at N.J.A.C. 14:3-3.6(a):

The utility shall have the right of reasonable access to customer's premises, and to all property on the customer's premises, which is furnished by the utility, at all reasonable times for the purpose of inspection of customer's premises incident to the rendering of service including reading meters; inspecting, testing, or repairing its facilities used in connection with supplying the service; or the removal of its property.

Under the regulations, therefore, petitioner was required to allow respondent reasonable access to the meter it had installed on his property. Access is allowed whether for inspection, testing or removal. While respondent's letters to petitioner regarding access to his property reference both testing and a meter changeover, and are somewhat confusing, the regulations are clear that the utility has a right to access in either case.

In this matter, however, respondent abandoned its initial attempt to access petitioner's home and simply installed a new meter along the road in its right of way. The issue remaining, therefore, is whether the notice of the accompanying suspension of service to effect the installation of the new meter along the right of way was adequate.

Before planned interruptions for operating reasons, utilities must provide reasonable notice to all affected customers to the extent reasonably possible, and the work shall be planned so that customer inconvenience is minimized. N.J.A.C. 14:3-3.7(h); N.J.A.C. 14:3-3A.1(d). Additional notice requirements that apply to a temporary suspension of service to a residential customer provide in relevant part:

(a) The notice requirements in this section shall apply in addition to the requirements in N.J.A.C. 14:3-3A.3.

(b) Each public utility shall annually notify all residential customers that, upon request, notice of discontinuance of service will be sent to a designated third party, as well as to the customer.

(c) Each public utility shall make good faith efforts to determine which of their residential customers are over 65 years of age, and shall make good faith efforts to notify such customers of discontinuance of service by telephone in addition to notice by regular mail. This effort may consist of an appropriate inquiry set forth on the notice informing customers that they may designate a third party to receive notice of discontinuance. This provision shall not apply to utilities that make good faith efforts to contact all residential customers by telephone prior to discontinuance and file with the Board a statement setting forth such procedure.

(g) On all notices of discontinuance to residential customers, from all public utilities, there shall be included:

1. A statement that the utility is subject to the jurisdiction of the New Jersey Board of Public Utilities; which includes the address and the following telephone numbers for the Board: (973) 648-2350 and 1-800-624-0241 (toll free)

[N.J.A.C. 14:3-3A.4 (emphasis added).]

Other notice requirements apply to either discontinuance of service for nonpayment, discontinuance of electric or gas utilities, or discontinuance of water service to customers with fire-protection service or multi-use service.

The regulations further provide that a utility is entitled to suspend services if a customer refuses "reasonable access to the customer's premises in accordance with N.J.A.C. 14:3-3.6." N.J.A.C. 14:3-3A.1(a)(5)(i). A utility also may suspend, curtail, or discontinue services for "making permanent or temporary repairs, changes or improvements in any part of its system." N.J.A.C. 14:3-3A.1(a)(1). The only limitation on this right is to provide reasonable notice to the extent reasonably possible. N.J.A.C. 14:3-3.7(h); N.J.A.C. 14:3-3A.1(d).

In arguing that it provided adequate notice to petitioner that his service was to be suspended, respondent points to the letters sent to petitioner between March and September 2010, and its attempts to discuss the matter with him by telephone in October 2010. While the letters reference a discontinuance of service for his failure to provide access to his home, they are open-ended and non-specific as to the timing of the suspension. While the third letter stated that the water would be "turned off" within ten days if there was no response to the letter, petitioner did contact respondent by early October. Although he did not consent to access, American Water was contacted shortly thereafter by his son, Carl Mayer. By mid-October, respondent was on notice that petitioner was elderly, with an infant and a pregnant woman also in residence at the home. Further, respondent's own legal department was aware of those facts, as well as the complaint filed with the BPU regarding the respondent's handling of the matter to

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service which would accompany it, was given to the eighty-four-year-old petitioner, or his son and counsel, until the day of the new meter installation over a month later on November 23, 2010. While one of respondent's employees did attempt telephone contact and did knock at the door on that date, no one answered, and a notice was left on the door.

It is within the context of those facts that a determination is to be made whether adequate notice was given of the suspension of service on November 23, 2010. The regulations governing the suspension of service in such a situation are not specific, requiring only reasonable notice. Absent further regulatory standards, the determination of what is reasonable is fact-specific. In this case, respondent's earlier letters were not responded to by the eighty-four-year-old petitioner. When he did make contact with the company in mid-October, it was clear that access to remove the meter was an issue with the elderly man. After discussions with his son and counsel were inconclusive and a complaint was filed with the BPU, American Water chose not to provide further notification until the day of the service disruption and meter change. Although the company did attempt telephone contact and a knock on the door, no prior definitive notice of the date and time of the service disruption was provided to the residents of the home.

Although the service disruption was short in duration, the failure to provide a more definite date and time for the water shutoff was not reasonable in this case. Over a month had passed since contact between counsel for the respective parties, without further notice from American Water regarding its intentions. The company was well aware that the home was occupied by vulnerable members of the community, the elderly, the very young and a pregnant woman. Given the facts of this case, they were entitled to a more current and reasonable notice of the service disruption planned by the company and its legal department. While American Water had the time to plan for the meter changeover and service disruption, the members of the household did not have that luxury. Given the standoff between the parties, a written notice prior to the date would have given them the opportunity to plan for the service disruption and the possibility that unforeseen circumstances could extend the disruption over a longer

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did not provide reasonable notice to petitioner of the service disruption on November 23, 2010.

While there was a lack of reasonable notice by respondent, the service disruption was short and no damages or harm to individuals was shown by petitioner. Yet, even if such had occurred, the regulations provide no specific remedy for a failure to provide reasonable notice prior to a temporary suspension of service, nor for penalizing a utility that fails to give reasonable notice. Muise v. GPU, Inc., 332 N.J. Super. 140, 150 (App. Div. 2000). While the BPU has general supervisory, regulatory, and jurisdictional power and control over all public utilities and their assets, N.J.S.A. 48:2-13, there is no express statutory authority permitting the BPU to award money damages. Integrated Tel. Serv., Inc. v. Bell Atlantic-New Jersey, Inc., PUC 5737-97, Initial Decision (December 29, 1999) <<http://lawlibrary.rutgers.edu/oal/search.html>>. Moreover, "the Legislature has not authorized the Board by statute to decide . . . ' . . . disputes alleging negligence, intentional tort or any common law cause of action for damages [because they] are within the jurisdiction of the courts and cannot constitutionally be entertained by the Board either on liability or damages issues." Mondics v. Pub. Serv. Elec. and Gas Co., PUC 11663-09, Initial Decision (April 19, 2010) <<http://lawlibrary.rutgers.edu/oal/search.html>> (denying an electric-utility customer damages for computer equipment that was destroyed by an electrical surge because the Board and, therefore, the OAL did not have jurisdiction to hear a damages claim) (citing Brooks v. Pub. Serv. Elec. Co., 1 N.J.A.R. 243, 248 (Board of Public Utilities 1981)).

Based on the above, petitioner has prevailed in its case that respondent failed to provide reasonable notice of its service disruption to his home. However, the remainder of the relief sought is denied.

ORDER

For the reasons stated above, I hereby ORDER that petitioner's request that respondent be found not to have provided reasonable notice of its water service

LIST OF WITNESSES

For petitioner:

Carl Mayer

For respondent:

Selina Kearney-Rogers

LIST OF EXHIBITS

For petitioner:

Email from Carl Mayer to NJ American Water, dated October 14, 2010

Online Complaint Form of Board of Public Utilities filled out by Arno Mayer

Copy of service call ticket, dated November 23, 2010

Water Meter

Letter from Jordan Mersky to Carl Mayer, dated December 2, 2010

P-6 Letter requests from NJ American Water to Arno Mayer and computer printouts of customer service communications with Arno Mayer

Water bills to Arno Mayer, dated December 3, 2010, January 5, 2011, and February 7, 2011

Email from Carl Mayer and articles regarding water meters

For respondent:

Letter to Arno Mayer from NJ American Water, dated March 26, 2010

Letter to Arno Mayer from NJ American Water, dated September 3, 2010

Letter to Arno Mayer from NJ American Water, dated September 27, 2010

Computer printout of conversation between NJ American Water and Arno Mayer

Computer printout of conversation between NJ American Water and Arno Mayer

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**Computer printout of multiple communications between NJ American
Water and Arno Mayer**

Letter to Arno Mayer from NJ American Water, dated October 13, 2010

Letter from Jordan Mersky to Carl Mayer, dated December 2, 2010