



Agenda Date: 4/27/16  
Agenda Item: VIIB

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

CUSTOMER ASSISTANCE

**DIANE ROEFARO,**  
Petitioner

v.

**SUEZ WATER NEW JERSEY, INC.,<sup>1</sup>**  
Respondent

ORDER OF EXTENSION

DOCKET NO. WC15091000U  
OAL DOCKET NO. PUC 18216-15

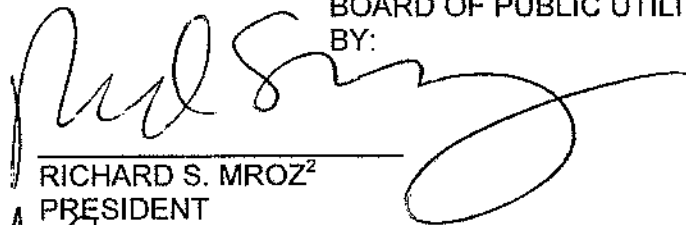
(SERVICE LIST ATTACHED)

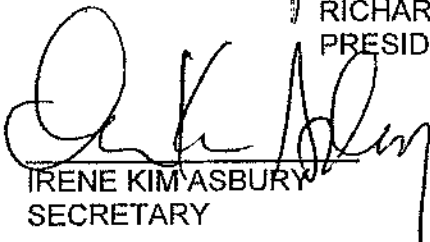
The Initial Decision of the Administrative Law Judge was received by the Board of Public Utilities (Board) on April 8, 2016; therefore, the 45-day statutory period for review and the issuing of a Final Decision will expire on May 23, 2016. Prior to that date, the Board requests an additional 45-day extension of time for issuing the Final Decision in order to adequately review the record in this matter.

Good cause having been shown, pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.8, **IT IS ORDERED** that the time limit for the Board to render a Final Decision is extended until July 7, 2016.

DATED: 4/27/16

BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ<sup>2</sup>  
PRESIDENT

ATTEST:   
IRENE KIM ASBURY  
SECRETARY

<sup>1</sup> On January 27, 2016, United Water, Inc., advised the Board of Public Utilities that the company changed its operating name to SUEZ, the ultimate corporate parent of United Water.

<sup>2</sup> Authorized by Board to execute this Order of Extension on its behalf.

Date Board mailed Order to OAL: \_\_\_\_\_

cc: Service List Attached

DATED:

\_\_\_\_\_  
LAURA SANDERS, ACTING  
DIRECTOR & CHIEF  
ADMINISTRATIVE LAW JUDGE

Date OAL mailed executed Order to Board: \_\_\_\_\_

Date Board mailed executed Order to Parties: \_\_\_\_\_

**DIANE ROEFARO, PETITIONER**

**V.**

**SUEZ WATER NEW JERSEY, INC., RESPONDENT**

**SERVICE LIST**

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

**INITIAL DECISION**

OAL DKT. NO. PUC 18216-15

AGENCY DKT. NO. WC15091000U

**DIANA ROEFARO,**

Petitioner,

v.

**UNITED WATER NEW JERSEY, INC.,**

Respondent.

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**Diana Roefaro, pro se**

**John P. Wallace, Esq.,** for respondent, United Water New Jersey, Inc.

Record Closed: March 16, 2016

Decided: April 8, 2016

BEFORE **KIMBERLY A. MOSS, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Diana Roefaro (Roefaro or petitioner)<sup>1</sup> filed a petition with the Board of Public Utilities (BPU) on August 28, 2015, regarding a billing dispute with United Water of New Jersey (United/UWNJ). Petitioner is disputing the amount of water bills and whether the water meter was tampered with. The matter was transmitted to the Office of Administrative Law (OAL) and filed on November 12, 2015. On December 8, 2015, a

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<sup>1</sup> Petitioner's first name was incorrectly spelled in the caption as Diane Roefaro.

prehearing conference was held. The hearing was held on March 16, 2016. I closed the record at that time.

### **FACTUAL DISCUSSION AND FINDINGS**

I FIND the following uncontested **FACTS**:

Roefaro is a customer of UWNJ. She resides on 77<sup>th</sup> Street in North Bergen, New Jersey. A water meter was removed from Roefaro's home on January 3, 2015. A new water meter was installed at that time.

### **TESTIMONY**

#### **Diane Roefaro**

Roefaro testified on her own behalf. She testified that the meter that was removed on January 3, 2015, was not broken. She was not given a chance to inspect the meter. There was a leak in her tenant's toilet from November 2014 until March 2015. During that time the CCF numbers on the old and new meter were higher than normal. After the toilet was repaired the CCF numbers were similar to the CCF numbers prior to November 2014.

Roefaro was told by UWNJ representative that low consumption was not consistent with the size of her house.

UWNJ advised Roefaro in July 2015 of meter tampering. She was sent photos of the tampered meter. She was sent a bill in the amount of \$3,180 because she was told that she had been under-billed. She asked that the meter be tested in July 2015. In August 2015, she was informed that the meter had been tested. UWNJ determined the actual usage by using the consumption readings from January 2015 through March 2015, which was the time of the toilet leak.

Seven people live in Roefaro's house presently. William Malaperitta did some light plumbing work for her. He is not a licensed plumber.

Jacob Rivera

Jacob Rivera (Rivera) is a customer field representative for UWNJ. His job included exchanging old meters for new meters. He received a work order to change the meter in Roefaro's house. On January 3, 2015, Rivera testified that he removed meter number 88197910. He put that meter in a bucket and transported it to the meter shop. He did not note any problems with the meter. He put a new meter in the Roefaro's house. Rivera did not initially install the meter 88197910 in Roefaro's home.

Roy Hill

Roy Hill (Hill) testified on behalf of respondent. Hill has been employed by UWNJ for twenty-three years. He works at the meter shop and tests meters. He tested meter 88197910 and the slow-flow test came back with a reading of 49. The intermediate-flow test came back at a reading of 99 and the full-flow test came back at a reading of 97.5. Although he does not remember the meter, upon seeing it he knew that there was tampering.

Scott Toscano

Scott Toscano (Toscano) works for UWNJ. He is in charge of the meter change program and tampering with meters. Meter number 88197910 was referred to him by Hill. Toscano noticed that a side of the meter was popped out by what appears to be a screwdriver, which damaged the meter. The meter was forwarded to be analyzed and the Roefaro's meter reads and history were analyzed.

There is a hole inside the meter. The top of the meter is called the meter register. It is secured by four tabs on the register and two tabs on the meter body. The meter removed from Roefaro's home shows one of the tabs on the register is snapped and scuff marks on the body of the meter.

When a meter is removed from a house, it is lifted by the two couplings on the side. Wires that are attached to the radio frequency tabs on top of the register are cut. A meter data-management document was used to generate a back bill for Roefaro. (R-6.) Prior to November 24, 2014, the average daily usage of water was .6. After June 30, 2015, the average daily usage of water was .55. The meter readings on the old meter from September 2008 through October 2014 and July 2015 through February 2016 are consistent.

Gary Harstead

Gary Harstead (Harstead) is the Director of Meters at UWNJ. He calculates back bills. Harstead testified that he reviewed the back-bill calculator (R-7) and additional materials including historical meter readings, readings on the new meter, and usage patterns on both the old and new meters.

There was increased usage prior to and after the meter change. The average daily consumption on new meter was .92 according to R-7 from January 3, 2015, to April 7, 2015. The historical consumption prior to the meter change was .6. Petitioner was under-billed.

Petitioner's water consumption was high until July 2015. Once petitioner received the back bill, the water consumption decreased. The amount of the back bill was determined by looking at three months of consumption on the new meter from January 3, 2015, thru April 7, 2015. This was compared to usage on the old meter. There was a fifty percent increase in usage. The meter reading for June 30, 2015, was .85. From January 2015 thru June 2015, the average meter reading was .85 CFF.

In light of the contradictory testimony presented by respondent's witness and that of petitioner's, the resolution of the charges against petitioner requires that I make credibility determinations with regard to the critical facts. The choice of accepting or rejecting the witness's testimony or credibility rests with the finder of facts. Freud v. Davis, 64 N.J. Super. 242, 246 (App. Div. 1960). In addition, for testimony to be

believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See Spagnuolo v. Bonnet, 60 N.J. 546 (1974); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). A fact finder "is free to weigh the evidence and to reject the testimony of a witness even though not contradicted when it is contrary to circumstances given in evidence or contains inherent improbabilities or contradictions which alone or in connection with other circumstances in evidence excite suspicion as to its truth." In re Perrone, 5 N.J. 514, 521-22 (1950); see D'Amato by McPherson v. D'Amato, 305 N.J. Super. 109, 115 (App. Div. 1997).

Having had an opportunity to observe the demeanor of the witnesses, I **FIND** Rivera, Hill, Toscano, and Harstead to be credible. Rivera's testimony that he replaced the meter was uncontested. Hill's testimony regarding the meter test was clear and uncontested. Toscano clearly showed how the meter was tampered with. His testimony regarding the meter reading was consistent with the documents produced. Harstead's testimony showed the period of increased consumption by petitioner and the meter readings that verified the consumption. I **FIND** Roefaro's testimony to be less credible. She testified that her tenant had a toilet leak from November 2014 thru March 2015. She did not provide any witness or documentation of the leak. In addition, she stated after the leak was fixed in March 2015, her water usage was as low as her pre-November 2014 water usage. The meter damage document shows that her water usage did not decline until July 2015, after she received notice of the back bill.

Based on the testimony presented and the documentary evidence submitted, and having had an opportunity to observe the witnesses and to assess their credibility, I make the following **FINDINGS OF FACTS**:

On January 3, 2015, Rivera replaced a water meter at Roefaro's residence. The meter was tested by Hill who determined that the low-flow was 49, the intermediate flow was 99, and the full flow was 97.5. Hill sent the meter to Toscano because of it was



tampered with. The meter register has four tabs that are secured onto the meter body. The meter body has two tabs. One of the tabs on the meter register was snapped off. The meter body had scuff marks. There was a hole on the side of the meter which appeared to be made by a screwdriver. The snapped tab, scuff marks and hole were not made when the meter was removed, or at any time after it was removed. Prior to November 24, 2014, the average daily water usage of Roefaro was .6 CFF. After June 30, 2015, the average water usage for Roefaro was .55 CFF. From January 3, 2015, thru June 29, 2015, the average daily water usage of Roefaro was .85 CFF. From March 31, 2015, to June 30, 2015, the meter data management shows that UWNJ checked the consumption during that period six times and all but one of those times the daily CFF was between .71 and 1.00. On or about June 30, 2015, Roefaro was sent a bill in the amount of \$3,180 because she had been under-billed due to the tampered meter.

### **LEGAL ANALYSIS AND CONCLUSION**

N.J.A.C. 14:3-4.6 provides:

(a) Whenever a meter is found to be registering fast by more than two percent, or in the case of water meters, more than one and one half percent, an adjustment of charges shall be made in accordance with this section. No adjustment shall be made if a meter is found to be registering less than 100 percent of the service provided, except under (d) below.

(b) If the date when the meter first became inaccurate is known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was in error at the time of the test, adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the total charges for metered service that accrued during the entire period that the meter was in error; and

3. The amount of the adjustment shall be the percentage determined under (b)(1) above, applied to the charges determined under (b)(2) above.

(c) If the date when the meter first became inaccurate is not known, the adjustment shall be determined as follows:

1. Determine the percentage by which the meter was inaccurate at the time of the test adjusted to 100 percent. This figure is not the amount in excess of the tolerance allowed under (a) above, but is the difference between 100 percent accuracy and the actual accuracy of the meter. For example, if the meter was found to be three percent fast, this percentage is three percent;

2. Determine the applicable time period as follows:

i. Determine the period of inaccuracy; that is, the period between the test that found the meter inaccuracy and the earlier of the events at (c)(2)(i)(1) or (2) below (Note: The period of inaccuracy may be longer than the time the meter has served the existing customer):

- (1) The most recent previous test of the meter; or
- (2) The date upon which the meter was taken out of service at the customer's premises;

ii. Perform the following calculation:

- (1) If the period of inaccuracy determined under (c)(2)(i) is shorter than the maximum permitted time between meter tests, as determined under N.J.A.C. 14:5-3.2, 14:6-4.2, or 14:9-4.1(b), divide the period of inaccuracy in half; or
- (2) If the period of inaccuracy is longer than the maximum permitted time between meter tests, divide the permitted maximum time between meter tests in half; then add the difference between the maximum permitted time between meter tests and the period of inaccuracy;

iii. If the time determined under (c)(2)(ii) above is longer than the time the meter has served the existing customer, the applicable time period is the time the meter has served the existing customer;

iv. If the time determined under (c)(2)(ii) above is shorter than the time the meter has served the existing customer,

the applicable time period is the time determined under (c)(2)(ii) above;

3. Determine the total charges that accrued during the applicable time period determined under (c)(2) above; and

4. The amount of the adjustment shall be the percentage determined under (c)(1) above, applied to the charges determined under (c)(3) above.

(d) If a meter is found to be registering less than 100 percent of the service provided, the utility shall not adjust the charges retrospectively or require the customer to repay the amount undercharged, except if:

1. The meter was tampered with, or other theft of the utility service has been proven;

2. The meter failed to register at all; or

3. The circumstances are such that the customer should reasonably have known that the bill did not reflect the actual usage.

(e) If a meter is found to be registering less than 100 percent of the service provided because of theft or tampering under (d)(1) above, the utility may require immediate payment of the amount the customer was undercharged.

(f) In cases of a charge to a customer's account under (d)(2) or (3) above, the customer shall be allowed to amortize the payments for a period of time equal to that period of time during which the customer was undercharged.

In this case the meter did register less than 100 percent, but the meter was tampered with. As stated above, one of the tabs on the meter register was snapped off, there were scuff marks on the meter, and there was a hole in the meter.

Petitioner stated that the back-billing was done during a period of time when there was a toilet leak at the residence. Her average meter consumption prior to November 2014 was .55. She stated that the leak was fixed in March 2015. From March 30, 2015, thru June 30, 2015, Roefaro's average daily water consumption was much higher than prior to November 2014.

I **CONCLUDE** that the meter was tampered with and petitioner has not proved by a preponderance of the evidence that she was improperly billed by UWNJ.

**ORDER**

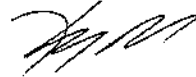
It is therefore **ORDERED** that the petition in this matter be and is hereby **DISMISSED**.

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.

April 8, 2016



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DATE

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**KIMBERLY A. MOSS, ALJ**

Date Received at Agency:

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April 8, 2016

Date Mailed to Parties:

ljb

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**WITNESSES**

For Petitioner:

None

For Respondent:

Jacob Rivers

Roy Hill

Scott Toscano

Gary Harstead

**EXHIBITS**

For Petitioner:

P-1 UWNJ Water Consumption Data from August 15, 2014, to April 7, 2015

P-2 United Water Bills from January 4, 2006, to August 20, 2015

P-3 United Water Answers to Interrogatories

For Respondent:

R-1 United Field Order dated January 3, 2015

R-2 Meter Test Report dated January 21, 2015

R-3(a) Photo of meter

R-3(b) Photo of damage to the meter and the meter pin

R-3(c) Photo of damage to the meter and the meter pin

R-4(a-e) New Jersey Weights and Measures Certification for Water Meter Provider  
dated July 28, 2015, July 27, 2015, July 27, 2015, May 6, 2015, and May 6, 2015

R-5 Meter

R-6 Meter data-management document

R-7 Back-bill calculations

R-8 UWNJ Tariff