



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

NEAL E. BRUNSON,
Petitioner,

v.

UNITED WATER NEW JERSEY,
Respondent

) ORDER ADOPTING
) INITIAL DECISION
)
)
)
) BPU Dkt. No. WC09120998U
) OAL Dkt. No. PUC 05707-10

Parties of Record:

Neal E. Brunson, Esq., Rutherford, New Jersey, Petitioner
John P. Wallace, Esq., Ridgewood, New Jersey, on behalf of Respondent, United Water New Jersey

BY THE BOARD:

The within matter involves Neil E. Brunson's (Petitioner) dispute regarding the under-billed water consumption charges of United Water New Jersey (Respondent or United Water). This Order sets forth the background and procedural history of Petitioner's claims and represents the Final Board Order in the matter pursuant to N.J.S.A. 52:14B-10.

BACKGROUND/PROCEDURAL HISTORY

On or about December 17, 2009, Neal E. Brunson, Esq. filed a petition, disputing a bill by United Water requiring him to pay \$2,763.27 for under-billed water consumption. Petitioner alleges that following Respondent's replacement of a water meter, Respondent alleged that the old water meter, in place since August 2000, was inaccurate and that Petitioner owed United Water additional monies. Petition at 1. Petitioner claims that he was unaware of the alleged malfunction and that United Water had access to the old meter at all times. Petitioner further alleges that United Water did not provide him with a technical explanation for its calculations nor did it provide him with an analysis of his water usage both before and after August 2000. Petitioner further claims that United Water was seeking to collect charges beyond the statutory authority for back billing and that Respondent was seeking to displace its negligence and failure to read, inspect and change its meter onto the consumer. Id. at 1-2. Petitioner, among other things, sought an injunction,

preventing United Water from disconnecting service and eliminating the disputed bill. Petitioner requested discovery regarding how United Water calculates catch-up charges and technical information about the operation of Petitioner's previous water meter. Id. at 2.

On May 25, 2010, Respondent filed an answer generally denying Petitioner's allegations. Respondent asserts that the Petitioner failed to pay for water consumption as his bills only reflected facility charges. Answer at 1. Respondent further states that Petitioner knew or should have known that he had not received bills indicating water consumption. Respondent asserts that Petitioner is obliged to pay the subject bill for water consumption pursuant to N.J.A.C. 14:3-4.6. Id. at 2. Thereafter, on June 7, 2010, the Board transmitted this matter to the Office of Administrative Law (OAL) for hearing and initial disposition 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.

On July 2, 2010, ALJ Moss directed United Water to file a motion to show cause why it should be allowed to file an answer out of time. On July 10, 2010, United Water filed a motion to permit it to file an answer to the petition out of time. Petitioner filed a response to the motion on July 14, 2010. United Water filed a reply brief on July 28, 2010. On August 27, 2010, ALJ Moss heard the motion during which time said motion was granted.

On October 26, 2010, Respondent filed a motion for an Order striking Petitioner's discovery requests, including Document Production Request Number 4, seeking a list of names and addresses of other United Water customers who were back billed for more than three (3) years. After considering the arguments advanced by Petitioner and Respondent, on December 6, 2010, ALJ Moss issued an order partially granting and partially denying Respondent's motion. Specifically, as to Production Request Number 4, ALJ Moss determined that information requested in Production Request Number 4, (i.e., the names and addresses of other United Water customers) could lead to discoverable admissible evidence but restricted the information to be produced by Respondent to the addresses of other United Water customers who have been charged with back water payments of more than three (3) years during the past three (3) years. On December 9, 2010, Respondent filed a request for interlocutory review of the Order by ALJ Moss directing Respondent to produce the addresses of all customers who were back billed for more than three (3) years over the past three (3) years. On January 19, 2011, the Board granted Respondent's request for interlocutory review. On February 10, 2011, the Board found that the addresses of other similarly situated customers were not relevant to the issues in dispute and were immaterial, and therefore, reversed the ALJ's discovery order permitting disclosure of United Water back billed customers' addresses and struck production request number 4 in its entirety.

On March 14, 2011, United Water filed a motion to dismiss the petition for failure to provide fully responsive answers to interrogatories. On April 4, 2011, Petitioner filed a certification in opposition to Respondent's motion. On April 14, 2011, Respondent filed a reply to Petitioner's opposition. On April 18, 2011, the ALJ heard the motion and ruled on the motion. On April 26, 2011, Petitioner filed a motion to dismiss Respondent's Answer for failure to answer interrogatories and failure to properly respond to a Notice to Produce. The ALJ ruled on that motion on May 17, 2011.

On June 1, 2011, Petitioner filed a motion in limine to bar evidence in connection with the water-meter test. Respondent filed opposition to the motion. Petitioner sent a letter to Respondent on June 6, 2011, on which the ALJ was copied, reiterating his request for a motion in limine. On June 8, 2011, Respondent sent Petitioner a letter, on which the ALJ was copied, reiterating its opposition. On June 17, 2011, ALJ Moss denied Petitioner's motion. On June 23, 2011, Petitioner requested

interlocutory review of ALJ Moss' June 17 Order. On August 18, 2011, the Board denied Petitioner's request for interlocutory review.

A hearing was scheduled for November 21, 2011, which was adjourned due to witness unavailability. The hearing was held on January 20, 2012 and March 6, 2012, after which ALJ Moss closed the record.

On March 22, 2012, ALJ Moss submitted her Initial Decision in this matter to the Board. On May 1, 2012, a 45-day extension of time for review and issuance of a Final Decision was requested and granted.

ALJ's Initial Decision

In her March 22, 2012 Initial Decision, ALJ Moss ordered that the Petition in this matter be dismissed and that Petitioner's payment of the under-billing be amortized over six years. ALJ Moss found as undisputed fact that Petitioner has been a customer of United Water at 60 Montross Avenue, Rutherford, New Jersey, since 1992. ALJ Moss also found as undisputed fact that Keline Adams is the wife of Petitioner and that since 1992, she has been paying the water bills. It is also undisputed that Petitioner's water meter was removed on September 30, 2008 and that the water meter was tested on October 4, 2008 and thereafter discarded.

ALJ Moss heard the testimony of Keline Adams, Florence Ficker, Simone Reeves, Michelle Etterbeck, Roy Hill, Jennifer McWilliams, and Neal Brunson. Keline Adams testified that she would always pay the amount owed but never closely examined the bills. She did not remember the date the meter was changed. She stated that between 2000 and 2008, the quarterly water bills were less than \$15 each. Although in answers to interrogatories she answered that they were charged for water usage from 2000 through 2008, she said she does not know if they were charged for water usage during that time.

Florence Ficker is a collections supervisor at United Water. She testified that she signed a stop-meter letter dated October 16, 2008 that was sent to Petitioner after the meter was changed. Ficker looked at Petitioner's account, reviewed the "catch-up" calculations, and looked at this current balance. Ficker reviewed the calculations by reviewing the last day of actual consumption. She then retrieved the consumption for the year prior to the last day of actual consumption. She determined a per-day usage and multiplied that by six years (although the meter stopped registering eight years before the letter was sent) to arrive at the "catch-up" amount. However, Ficker was not the one who sent Petitioner the "catch-up" bill.

Simone Reeves is a customer relations supervisor at United Water. She is familiar with Petitioner's account. After Board Staff sent an inquiry regarding Petitioner's account, Reeves sent a letter to Board Staff explaining that there was a "catch-up" charge and included the calculation of the charge. She did not provide Petitioner with a copy of this letter. She testified that the meter-test results were sent to the Board, Petitioner was not provided with the meter-test results, and that there is no requirement for United Water to keep the meter. She stated that Petitioner's billing history shows that he was not billed for water consumption since the meter stopped registering water consumption in 2000. She stated that customers can receive a copy of their history upon request.

Michelle Etterbeck is employed by United Water. In 2008, she was a customer service field representative. Her duties were to read, change, and install meters. On September 30, 2008, she went to Petitioner's residence to check the meter. Etterbeck turned on the water in Petitioner's basement sink to determine if the low-flow detector would show usage. The low-flow detector on the meter did not register any water usage. She removed the meter at that time. She did not make a determination as to the cause of the problem of the meter, but rather, she took the meter to the meter shop to be tested.

Roy Hill is a customer service field representative for United Water. He has been testing meters for ten years. Hill tested Petitioner's meter on October 4, 2008. There are three types of meter tests: low-flow, intermediate flow, and full-flow tests. He used all of these tests, and all of the tests showed that the meter did not register water usage. The meter was discarded. Meters are discarded for age or because they do not meet standards. There was no indication that the customer wanted to witness the meter test or wanted a Board representative to witness the meter test.

Jennifer McWilliams is employed by United Water in the customer service payment department. She explained that there is a formula for pro-rating a bill in situations of the meter not registering. United Water determines the last time that the meter registered consumption. Then it determines the consumptions for one year prior to the last date the meter registered. That number is divided by 365 to arrive at the average daily usage. For calculation of Petitioner's "catch-up" bill, that number was then multiplied by six years.

Neal Brunson testified that in either August or September 2008, a worker from United Water came to change his meter, but at that time, Petitioner could not accommodate the worker. Subsequently, the meter was changed. In approximately January 2009 or February 2009, Petitioner became aware that a "catch-up" bill had been issued. He does not recall speaking to Reeves regarding the bill. He received a letter from the Board dated January 29, 2009 informing him that he could challenge his bill. Brunson testified that he knew that United Water charges a facilities charge and a consumption charge. His bill dated November 9, 2007 (R-2) shows a facilities charge of \$12.34. It also shows a usage of zero. His bill dated February 9, 2010 shows a facilities charge of \$17.04 and a water charge of \$98.66. It shows usage of thirty.

After hearing the testimony of witnesses, reviewing the exhibits presented, and having the opportunity to observe the witnesses and assess their credibility, ALJ Moss found additional facts. She found that the water meter failed to register water consumption from August 17, 2000 to September 30, 2008. During that time, Petitioner did consume water. Etterbeck went to Brunson's residence on September 30, 2008 and checked the meter. The meter did not register water consumption. Hill performed tests on the meters, and all tests indicated that the meter did not register water. Petitioner was not informed that he could have a representative of the Board witness the tests. The meter was discarded after the tests. Petitioner was sent a "catch-up" bill for six years of water consumption. The "catch-up" bill was calculated by: United Water determined the last time that the meter registered consumption, United Water determined the consumptions for one year prior to the last date the meter registered, United Water divided that number by 365 to arrive at the average daily usage, and United Water multiplied that number by six years. Petitioner was informed in a letter dated January 28, 2009 that the meter had stopped registering water usage in August 2000 and that United Water was entitled to calculate a bill for the time in question and back-bill him.

ALJ Moss concluded that Petitioner did not prove by a preponderance of the credible evidence that United Water did not comply with N.J.A.C. 14:9-4.1. Under N.J.A.C. 14:9-4.1, a water utility must ensure that the meters are tested for accuracy. Here, the meter test appears to show that the size of the meter was 5/8 inch, which only needs to be tested every ten years or 750,000 gallons, whichever comes first. There was no evidence that the meter was not tested within ten years prior to its removal; and therefore, there is no evidence to demonstrate that United Water did not comply with N.J.A.C. 14:9-4.1. ALJ Moss also concluded that N.J.A.C. 14:3-4.5 did not apply to this matter because the meter test was not done at the request of Petitioner or as part of a billing dispute. Lastly, ALJ Moss concluded that based on billing records, the meter did not register water consumption from August 17, 2000 through September 30, 2008 and that Petitioner's payments can be amortized for six years pursuant to N.J.A.C. 14:3-4.6.

DISCUSSION

The Initial Decision is attached hereto and incorporated into this Order. As evidenced by her recommendation for dismissal of Petitioner's complaint, the ALJ found that Petitioner did not sustain his burden of proof showing that Respondent was improper in issuing "catch-up" charges. The record demonstrates that Petitioner failed to meet his burden of proving by a preponderance of the credible evidence that Respondent did not comply with N.J.A.C. 14:9-4.1. There was no evidence presented that the meter was not tested within the ten years prior to removal in September 2008 pursuant to N.J.A.C. 14:9-4.1.

The ALJ also correctly concluded that the relevant provisions of N.J.A.C. 14:3-4.5 did not apply because Petitioner's meter was removed in September 2008 and tested in October 2008. It was then discarded. Petitioner did not file his Petition contesting his bill until more than one year later, on December 17, 2009.

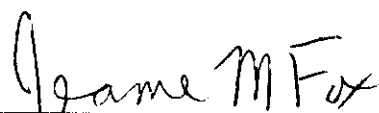
The ALJ also correctly concluded that the meter did not register water consumption from August 17, 2000 through September 30, 2008 and that Petitioner's payments can be amortized for six years pursuant to N.J.A.C. 14:3-4.6. His bill dated November 9, 2007 (R-2) shows a facilities charge of \$12.34. It also shows a usage of zero. His bill dated February 9, 2010 shows a facilities charge of \$17.04 and a water charge of \$98.66. It shows usage of thirty. The bills show that from 2000 to 2008, the meter failed to register at all, and Petitioner's bills indicate zero usage. Petitioner was only charged a facilities charge. Petitioner testified that he knew that Respondent charge a facilities and consumption charge, and Petitioner was getting bills for many years with zero usage for consumption. The circumstances demonstrate that Petitioner should have reasonably known that the bill did not reflect actual usage. In addition, as Petitioner's case of a charge to a customer's account falls under N.J.A.C. 14:3-4.6 (d) 2 or 3, ALJ Moss was correct in allowing the amortization of payment pursuant to N.J.A.C. 14:3-4.6 (f).


After review of the record, the Board HEREBY FINDS that the findings of fact and conclusions of law, as set forth in the Initial Decision of ALJ Moss, are supported by sufficient, competent, and credible evidence. Accordingly, the Board HEREBY ADOPTS the Initial Decision, a copy of which is attached hereto and made a part hereof, in its entirety without modification. Therefore, the petition in this matter is HEREBY DISMISSED.


DATED: 6/18/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

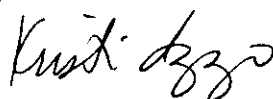

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

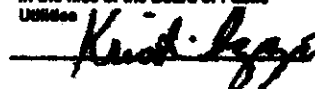

NICHOLAS ASSELTA
COMMISSIONER


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



NEAL E. BRUNSON

V.

UNITED WATER NEW JERSEY

BPU DOCKET NO. WC09120998U

OAL DOCKET NO. PUC05707-10

SERVICE LIST

Neal E. Brunson, Esq.
60 Montross Avenue
Box 410
Rutherford, New Jersey 07070

John P. Wallace, Esq.
171 East Ridgewood Avenue, Suite 203
Ridgewood, New Jersey 07450

Eric Hartsfield, Director
Julie Ford-Williams
Division of Customer Assistance
Board of Public Utilities
P.O. Box 350
Trenton, New Jersey 08625-0350

Caroline Vachier, DAG
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

filed 3/27/12



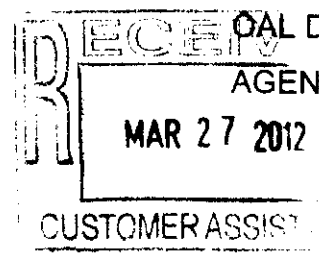
2012 MAR 23 PM 2:58

BOARD OF PUBLIC UTILITIES
NEWARK, N.J.

BPU MAILROOM
MAR 23 2012
RECEIVING

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION



OAL DKT. NO. PUC 05707-10
AGENCY DKT. NO. WC09120998U

NEAL BRUNSON,
Petitioner,
v.
UNITED WATER NEW JERSEY,
Respondent.

*CMS
Aggel-Belbow
V. Haynes
D. Lee-Thomas
J. Fre
R. Tambuto
C. Vachin
DAG
RPA*

Neal Brunson, Esq., petitioner

John P. Wallace, Esq., for respondent

Record Closed: March 6, 2012

Decided: March 22, 2012

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Neal Brunson, (Brunson) disputed a bill by respondent, United Water New Jersey (UWNJ), requiring him to pay \$2,763.27 for under-billed water consumption. Petitioner's complaint was filed with the Board of Public Utilities (Board) on December 9, 2009. On May 20, 2010, Brunson sent an order to the Board compelling the dismissal of back payments in the amount of \$2,763.27 because UWNJ failed to file an answer within twenty days. UWNJ filed an answer with the Board on

May 25, 2010. The matter was transmitted to the Office of Administrative Law (OAL) and filed on June 7, 2010. On July 2, 2010, I directed UWNJ to file a motion to show cause why it should be allowed to file an answer out of time. UWNJ filed the motion on July 10, 2010. Brunson filed a response to the motion on July 14, 2010. I heard the motion on August 27, 2010, and granted UWNJ's motion.

On October 26, 2010, UWNJ filed a motion for an Order striking Brunson's discovery requests. On December 6, 2010, UWNJ's motion was partially granted and partially denied. On December 9, 2010, UWNJ requested interlocutory review of my December 6, 2010, decision. The Board decided the interlocutory review on February 10, 2011. On March 14, 2011, UWNJ filed a motion to dismiss the petition for failure to provide fully responsive answers to interrogatories. On April 4, 2011, Brunson filed a certification in opposition to UWNJ's motion. On April 14, 2011, UWNJ filed a reply to Brunson's opposition. I heard the motion on April 18, 2011, and ruled on the motion at that time. Brunson filed a motion to dismiss UWNJ's answer for failure to answer interrogatories and failure to properly respond to a Notice to Produce on April 26, 2011. UWNJ filed a certification in opposition to the motion on May 9, 2011. I ruled on that motion on May 17, 2011. On June 1, 2011, Brunson filed a motion in limine to bar evidence in connection with the water-meter test. UWNJ filed opposition to the motion. Brunson sent a letter to respondent on June 6, 2011, on which I was copied, reiterating his request for a motion in limine. On June 8, UWNJ sent Brunson a letter, on which I was copied, reiterating its opposition. I denied Brunson's motion on June 17, 2011. On June 23, 2011, Brunson requested interlocutory review of my June 17, 2011, order. Brunson's request for interlocutory review was denied on August 18, 2011.

A hearing was scheduled for November 21, 2011, which was adjourned due to witness unavailability. The hearing was held on January 20, 2012, and March 6, 2012, after which I closed the record.

FACTUAL DISCUSSION AND FINDINGS

Certain facts are undisputed. Accordingly, I **FIND** as **FACT** the following:

Brunson has been a customer of UWNJ at 60 Montross Avenue, Rutherford, New Jersey, since 1992. Keline Adams (Adams) is the wife of Brunson. Since 1992 she has paid the water bills for the family. Petitioner's water meter was removed on September 30, 2008. The water meter was tested on October 4, 2008, and discarded at that time.

Testimony

Keline Adams

Adams testified that when paying the water bill, she would pay the amount that was owed. She did not closely examine the bills or show the bills to Brunson. Prior to this case, she did not know what facilities or usage charges were or if she was paying an actual or estimated bill. She did not know what estimated readings were.

Adams does not recall the date that the meter was changed or if she was home when the meter was changed. She does not know where the meter test was performed. During the course of a day, it is more likely that she will be home than that Brunson will be home. Brunson's office is also located at 60 Montross Avenue, Rutherford, New Jersey. Adams had never seen the meter-test report prior to this case. She was never told that the meter was "stuck" and does not know what it means for a meter to be "stuck."

The water bill dated November 8, 2010, for the period from August 5, 2010, through November 4, 2010, had facilities and usage charges that totaled \$143.07. The water bill dated November 9, 2007, showed no change in the "Meter Reading, Previous and Present" portion of the bill. The water bill dated February 8, 2010, for the period of November 5, 2009, through February 3, 2010, had a facilities charge of \$17.04 and a usage charge of \$98.66.

Adams stated that between 2000 and 2008, the quarterly water bills were less than \$15 each. Although in answers to interrogatories she answered that they were charged for water usage from 2000 through 2008, she said that she does not know if they were charged for water usage during that time. She did not contact UWNJ between 2000 and 2008.

Florence Ficker

Florence Ficker (Ficker) is employed by UWNJ as a collections supervisor. She signed a stop-meter letter dated October 16, 2008, that was sent to Brunson after the meter was changed. A stop-meter letter informs a customer that he will have to pay a "catch-up" bill. In this case, Brunson's meter stopped measuring water, therefore UWNJ changed the meter. The "catch-up" charge is based on the last actual consumption before the meter stopped registering. Ficker did not prepare Brunson's "catch-up" bill. The stop-meter letter contains a telephone number for the customer to call regarding the "catch-up" bill. The letter does not state how to contest the "catch-up" bill. Brunson's "catch-up" bill covered the six years prior to the date the letter was sent, although the meter stopped registering eight years before the letter was sent.

When a customer calls regarding a "catch-up" bill, the customer is told how the bill was calculated. Customer calls are recorded. Ficker did not review any customer calls prior to this hearing. Ficker looked at Brunson's account, reviewed the "catch-up" calculations, and looked at his current balance. Ficker reviewed the calculations by reviewing the last day of actual consumption. She then retrieved the consumption for the year prior to the last day of actual consumption. Ficker determined a per-day usage and multiplied that by six years to arrive at the "catch-up" amount. Ficker did not send Brunson her calculation of the "catch-up" bill. Her calculations were based on the notes in Brunson's account. She does not know what happened to the meter. She believes that Simone Reeves (Reeves) sent Brunson a copy of the calculation of the "catch-up" bill.

Simone Reeves

Reeves is employed by UWNJ as a customer relations supervisor. Her job entails responding to complaints from the Board. She is familiar with Brunson's account. She received a call from Brunson in either October 2008 or October 2009 stating that he was going to the Board with a billing dispute. The policy of UWNJ is that when a representative speaks over the phone to a customer the representative makes a note of the conversation. The note is called a pad note. Brunson was not provided with a copy of the note of their conversation. When Reeves responds to customers she refers to the New Jersey Administrative Code. If she has a question about a regulation, she speaks to the legal department of UWNJ.

Reeves sent a letter to Eric Hartsfield of the Board dated November 13, 2008, responding to his inquiry regarding Brunson's account. The letter reflects that there was a "catch-up" charge and contained the calculation of that charge. She reviewed the math regarding the calculation before she sent the letter to the Board. Brunson was not sent a copy of this letter. Reeves does not know if this letter was included in her answers to interrogatories.

Brunson filed a complaint on December 10, 2009. At the time, Reeves did not know the location of the meter that was removed from Brunson's home. She did not speak to the person who removed the meter. The meter-test results were sent to the Board. She did not provide the meter-test results to Brunson. There is no requirement for UWNJ to keep the meter. Reeves does not know how long meters are kept.

The field ticket is given to the representative who goes into the field for repairs. It has the identification number of the representative who was given the assignment. She now knows that the representative that removed Brunson's meter was Michelle Etterbeck (Etterbeck).

Brunson's billing history showed that he was not billed for water consumption since the meter stopped registering water consumption in 2000. Customers can receive a copy of their history upon request.

Michelle Etterbeck

Etterbeck is employed by UWNJ. In 2008 she was a customer service field representative. Her duties were to read, change and install meters. On September 30, 2008, she went to Brunson's residence to check the meter. She went there either because of long-term estimate bills or because the meter had stopped. When she was checking meters, she always had a replacement meter in the truck in case it was needed. Meters did not get repaired; if not properly functioning the meter would be replaced.

Meters register the water flowing into the premises. Each meter has a serial number. The base meter number is the serial number of the meter. The meter has a head that reads six digits across. The last two digits are partial units. The meter has a sweep hand and a triangle. The triangle is the low-flow detector. Any water usage will cause the triangle to move.

Etterbeck turned on the water in Brunson's basement sink to determine if the low-flow detector would show usage. The low-flow detector on the meter did not register any water usage. She removed the meter at that time. She did not make a determination as to the cause of the problem with the meter. She took the removed meter to the meter shop. Every meter that is removed from a customer's property is taken to the meter shop. She was never questioned about the meter after it was removed from the house. After the meters are tested at the meter shop, they are discarded for scrap.

Roy Hill

Roy Hill (Hill) is a customer service field representative for UWNJ. At one time he changed meters, but he has been testing meters for ten years. There are three types of meter tests: low-flow, intermediate-flow and full-flow. The tanks that are used in the meter tests are calibrated by the Department of Weights and Measures.

Hill tested Brunson's meter on October 4, 2008. He did low-flow, intermediate-flow and full-flow tests. All of the tests showed that the meter did not register water usage. The meter was discarded. Meters are discarded for age or not meeting the standards. There was no indication that the customer wanted to witness the meter test or wanted a Board representative to witness the meter test. He does not know if a customer can have an outside person test the meter.

Jennifer McWilliams

Jennifer McWilliams (McWilliams) is employed by UWNJ in the customer service payment department. She works on accounts and processes field-service orders. She does not speak to customers. Once the field-service ticket is returned with the meter results it is processed and put into the system.

There is a formula for pro-rating a bill in situations of the meter not registering. UWNJ determines the last time that the meter registered consumption. Then it determines the consumptions for one year prior to the last date the meter registered. That number is divided by 365 to arrive at the average daily usage. For calculation of Brunson's "catch-up" bill, that number was then multiplied by six years. UWNJ can go back six years on a "catch-up" bill.

Another formula that could be used is a thirty-day read. A thirty-day read is done by returning to the premises thirty days after the installation of the new meter to determine daily usage, which would be billed pro-rata. Thirty-day reads are done when a customer has a documented water leak. A supervisor from the Board or Reeves would tell McWilliams to do a thirty-day read.

A copy of the calculation, the field ticket and the meter test is sent to Ficker. Brunson was not advised that there were two methods to calculate the "catch-up" bill. Once the field service ticket is processed, it is filed. Anyone who needs to see the ticket can go to the file.

Neal Brunson

Brunson testified that in either August or September 2008 a worker from UWNJ came to his home to change the meter. At that time Brunson could not accommodate the worker. Subsequently, the meter was changed. Prior to this time the meter had not been inspected for a period of five or six years.

In approximately January 2009 or February 2009, Brunson became aware that a "catch-up" bill had been issued. The "catch-up" bill incorporated charges for six years without any explanation. He does not recall if he spoke to Reeves regarding the bill. He was not told how the "catch-up" bill was calculated. He believes that he had a right to know what the problems were with the meter and a right to have the meter tested. He was not told that he could have a representative at the meter test.

Brunson received a letter from the Board dated January 28, 2009. He did not understand the letter to say that the "catch-up" bill was due to the meter not operating. The letter informed him how he could challenge the bill. He did not see the November 9, 2007, bill until he was answering interrogatories for this matter. He did not review prior water bills before he spoke to the Board or UWNJ.

Brunson knows that UWNJ charges a facilities charge and a consumption charge. His bill dated November 9, 2007 (R-2) shows a facilities charge of \$12.34. It also shows the usage as zero. The total charges for R-2 are \$12.34. In his answers to interrogatories, Brunson stated that he was billed for water consumption from August 17, 2000, through September 30, 2008, on average between \$12 and \$43 per billing cycle. He contends that he paid water consumption on R-2 because it was an estimated bill. He is not satisfied that the meter was not measuring consumption.

His bill dated February 8, 2010, shows a facilities charge of \$17.04 and a water charge of \$98.66. It shows usage of thirty. After 2008 a remote meter reader was installed.

Brunson's water consumption increased from 2008 through 2010 due to having a small swimming pool in his yard.

Based on the testimony of the witnesses and the exhibits presented, and having had an opportunity to observe the witnesses and assess their credibility, I **FIND** the following additional **FACTS**:

The water meter failed to register water consumption from August 17, 2000, to September 30, 2008. During this period there was water consumption by Brunson. Etterbeck went to Brunson's residence on September 30, 2008, to check the meter. She performed a test of running water in the basement sink to determine if the meter was registering water consumption. The meter was not registering consumption. She removed the meter and took it to the meter shop. Hill performed three tests on the meter: a low-flow test, an intermediate-flow test, and a full-flow test. They all showed that the meter did not register water. Brunson was not informed that he could have a representative of the Board witness the test. The meter was discarded after these tests.

Brunson was sent a "catch-up" bill for six years of water consumption. The "catch-up" bill was calculated by the following method: UWNJ determined the last time that the meter registered consumption; UWNJ determined the consumptions for one year prior to the last date the meter registered; UWNJ divided that number by 365 to arrive at the average daily usage; and UWNJ multiplied that number by six years. Another method of calculating a "catch-up" bill is to do a thirty-day read from the date of installation of the new meter to show daily usage. Thirty-day reads are done when a customer has a documented water leak. Brunson was informed by a letter from the Board dated January 28, 2009, that the meter had stopped registering water usage in August 2000 and that UWNJ was entitled to calculate a bill for the time in question and back-bill him.

During the course of a day, it is more likely that Brunson's wife will be home than that Brunson will be home.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 14:9-4.1 provides:

- (a) Each water utility shall ensure that all of the meters in use in its system are tested for accuracy in accordance with this section.
- (b) A water utility shall ensure that each meter is tested after a certain number of years in use, or after a certain number of gallons measured, whichever comes first, according to the schedule in Table A below:

TABLE A

Frequency for water utility testing of water meters

<u>Meter Size</u>	<u>Whichever Comes First:</u>
5/8 inch	10 years or 750,000 gallons
3/4 inch	Eight years or 1,000,000 gallons
One inch	Six years or 2,000,000 gallons
Greater than one inch	Four years—no gallon limit

(c) A water meter shall be tested, with water flowing at both intermediate and full flow capacities, as set forth in Water Meters: Selection, Installation, Testing, and Maintenance (M6), which is published by the American Water Works Association, which is incorporated herein by reference, as amended and supplemented, and may be found at <http://www.awwa.org>.

(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 this section.

Brunson stated that prior to 2008 he had not seen a UWNJ meter reader come to his home for five to six years, but Adams testified that during the course of a day it is more likely that she will home than that Brunson will be home. There was no testimony as to the size of the meter in Brunson's home. The meter test appears to show the size of the meter as 5/8 inch, which means the meter should be tested every ten years. There

is no evidence that the meter was not tested within ten years prior to its removal in September 2008. I **CONCLUDE** that petitioner did not prove by a preponderance of the credible evidence that UWNJ did not comply with N.J.A.C. 14:9-4.1.

N.J.A.C. 14:3-4.5 provides:

- (a) Each utility shall, without charge, make a test of the accuracy of a meter upon request of a customer, provided such customer does not make a request for test more frequently than once in 12 months.
- (b) A report giving results of such tests shall be made to the customer, and a complete record of such tests shall be kept on file at the office of the utility in accordance with N.J.A.C. 14:3-4.9 Meter records.
- (c) When a billing dispute is known to exist, the electric, gas or water utility shall, prior to removing the meter, advise the customer that the customer 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.
- (d) A meter test arising from a billing dispute may be appropriate in instances which include, but are not limited to, unexplained increased consumption, crossed meters, consumption while account is vacant or any other instance where the meter's accuracy might be an issue in a bill dispute.
- (e) Upon application by any customer to the Board, a Board inspector shall test the customer's meter. Such test shall be made as soon as practicable after receipt of the application for the test, and Board staff shall notify the customer and the utility as to the time and place of such test.
- (f) The Board shall charge a fee of \$ 5.00 for a meter test, payable at the time application is made for the test. This fee is to be retained by the Board if the meter is found to be slow or correct within the allowable limits. If the meter is found to be fast beyond the allowable limits, that is, more than two percent, or in the case of water meters, more than one and one half percent, the utility shall reimburse the customer for the test fee paid.

In this case the meter test was not done at the request of Brunson or as part of a billing dispute. Therefore, I **CONCLUDE** that the provisions of N.J.A.C. 14:3-4.5 do not apply to this matter.

N.J.A.C. 14:3-4.6 provides, in pertinent part:

(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 failed to register water consumption as of August 17, 2000. This is shown in the billing records of UWNJ (R-4), as well as in Brunson's bill dated November 9, 2008 (R-2), which shows there was zero water usage during that billing cycle. Petitioner consumed water and did not pay for that consumption from August 17, 2000, through September 30, 2008, due to the meter not registering. UWNJ billed Brunson for six of the eight years. I **CONCLUDE** that the meter did not register water consumption from August 17, 2000, through September 30, 2008, therefore UWNJ can bill petitioner for the water consumption in accordance with N.J.A.C. 14:3-4.6(f). The meter did not register water consumption for eight years. UWNJ billed Brunson for six

of those years that the meter did not register water consumption. Brunson's payments can be amortized over six years.

ORDER

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

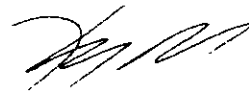
It is further **ORDERED** that Brunson's payment of the under-billing can be amortized over six years.

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.

March 22, 2012



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

Date Mailed to Parties:

ljb

WITNESSES

For Petitioner:

Neal Brunson
Keline Adams
Simone Reeves
Florence Flicker
Michelle Etterbeck
Roy Hill
Jennifer McWilliams

For Respondent:

EXHIBITS

For Petitioner:

- P-1 Petitioner's Amended Answers to Interrogatories
- P-2 United Water bill dated November 23, 2010
- P-3 Four computer printout sheets from United Water showing billing from May 13, 2003, to November 19, 2008
- P-4 Meter Test Report dated October 4, 2008
- P-5 Meter Change Ticket dated September 30, 2008
- P-6 Three computer printout sheets from United Water showing billing from February 23, 1999, to March 3, 2003
- P-7 Respondent's Answers to Interrogatories

For Respondent:

- R-1 Photo of 60 Montrose Avenue, Rutherford, New Jersey
- R-2 United Water bill dated November 9, 2007
- R-3 United Water bill dated February 8, 2010

- R-4 Seven computer printout sheets showing Brunson's billing record from February 23, 2009, through November 19, 2008
- R-5 Letter to Eric Hartsfield from United Water dated November 13, 2008
- R-6 Letter to Brunson from the Board of Public Utilities dated January 28, 2009