



Agenda Date: 5/19/15
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

SHAMS MIRKHANI,)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
V.)	
)	
UNITED WATER NEW JERSEY, INC.,)	OAL DOCKET NO. PUC 13174-14
Respondent)	BPU DOCKET NO. WC14060612U

Parties of Record:

Shams Mirkhani, pro se
John P. Wallace, Esq., on behalf of United Water Company

BY THE BOARD¹:

By petition filed with the Board of Public Utilities (Board) on June 23, 2014, Shams Mirkhani ("Petitioner") alleged billing and technical problems associated with water service provided by United Water of New Jersey, Inc. ("Respondent") at his property on Van Buren Avenue in Teaneck, New Jersey ("Van Buren property"). Specifically, Petitioner alleged that Respondent overcharged Petitioner for water usage and that a problem with the water meter installed at the Van Buren property by Respondent caused the disputed water bill. In its Answer, Respondent contended that the allegedly faulty water meter in question had been tested, and was found to be working properly at the time the disputed bill was generated. After receipt of Respondent's answer on August 11, 2014, this matter was transmitted by the Board to the Office of Administrative Law ("OAL") for hearing as a contested matter on October 10, 2014, for determination and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. Subsequently, on October 17, 2014, a pre-hearing conference was held.

A hearing was held on March 2, 2015 before Administrative Law Judge ("ALJ") Kimberly A. Moss, and on March 13, 2015 ALJ Moss submitted her Initial Decision in this matter to the Board. No exceptions to the Initial Decision have been submitted by Petitioner. On April 15,

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

2015, pursuant to N.J.A.C. 1:1-18.8, the Board requested, and the OAL granted, a 45 day extension of time for issuing a final decision.

During the hearing, ALJ Moss heard, and based her decision upon, the following testimony. Petitioner testified that the Van Buren property has been unoccupied since his purchase of it in August 2011. (T4:17-19). Initially, from September 2011 through March 2013, Petitioner received quarterly bills from Respondent. (T5:12-14). Petitioner further claimed that as a result of a new water meter that was installed in March 2013, his water bill grew to approximately \$1,300. (T5:15-20; T6:8-21). He confirmed that after non-payment of this larger water bill, his water was shut off in May 2013. (T8:19 to T76).

Respondent presented the testimony of its Meter Asset Manager, Frank Cordero, Jr., who is responsible for supervising service technicians who change and test meters and conduct field investigations. (T13:19 to T14:1-6). Mr. Cordero was familiar with the dispute between Petitioner and Respondent, as it was his staff that was responsible for testing and changing Petitioner's water meter. (T14:7-15). Before Petitioner took ownership of the Van Buren property, a meter reading was taken by Respondent to start the account. (T15:1-5). Mr. Cordero noted that the water bill currently in dispute originated from Respondent's quarterly reading from September 2012 to December 2012. (T14:16-25). After Petitioner complained of this particular bill, a new meter was installed by Respondent on March 12, 2013 and Petitioner's old meter was then tested on March 15, 2013. (T16:10-18). This test indicated that the old meter had been working properly. (T18:16-19). In turn, the device used to test the meter was found to be working correctly as well. (T17:8-25).

Respondent also offered the testimony of Collection Supervisor George Jimenez. (T20:19 to T21:3). He explained that the large bill in dispute was as a result of 304 cubic feet of water used at the Van Buren property. (T24:2-8). Until this disputed bill was generated, Petitioner had been paying approximately \$30 per quarter. (T24:9-10). Mr. Jimenez also confirmed that the water meter was changed after the February 27, 2013 bill was issued. (T24:11-15). Mr. Jimenez further testified that the water was turned off at the Van Buren property on May 8, 2013, after his outstanding bill of \$1,337.11 was not paid, despite multiple reminders and past due letters forwarded to Petitioner. (T23:1-11). In addition, Respondent transferred the \$1,337.11 balance for the Van Buren property to Petitioner's account for his residence on Grove Street in Teaneck, New Jersey. (T21:21 to T22-8).

Based on the testimony and exhibits, ALJ Moss concluded that the meter used to calculate Petitioner's September 2012 to December 2012 water bill was not fast, in fact, it was slow. The meter tests conducted showed that the meter was running at 99 percent in low flow; 100 in intermediate flow; and 97.7 in full flow. Therefore, ALJ Moss determined that Petitioner was not over-billed, and thus is not entitled to an adjustment.

DISCUSSION AND FINDINGS

Based upon the testimony and evidence presented, and the Board's review of the entire record, the Board **HEREBY FINDS** the findings and conclusions of the ALJ to be reasonable. ALJ Moss reasonably concluded that the water meter in question was not running fast, and therefore, Petitioner was not entitled to an adjustment of charges. ALJ Moss relied primarily on N.J.A.C. 14:3-4.6, which provides, in part, that "[w]henver 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[.]” N.J.A.C. 14:3-4.6(a). ALJ Moss found that at the time the disputed bill was generated, Petitioner’s meter had been running at less than 100 percent of the service provided, and thus did not conform to the requirements of the Board’s regulation for an adjustment in Petitioner’s favor.

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

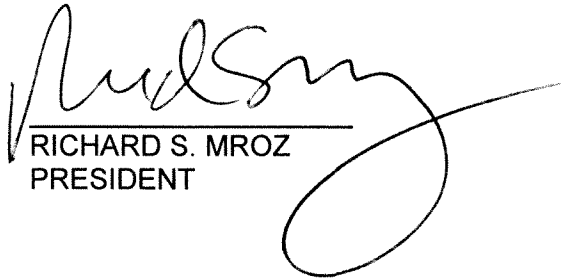
The effective date of this Order is May 29, 2015.

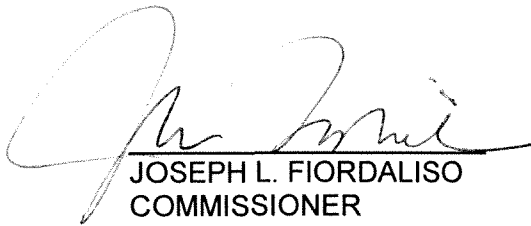
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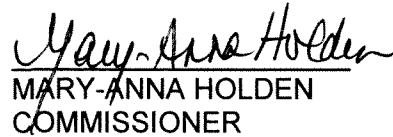
May 19, 2015

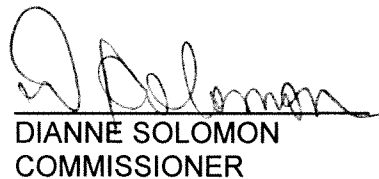
BOARD OF PUBLIC UTILITIES

BY:

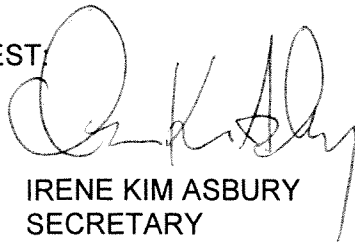

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

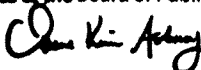

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

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



SHAMS MIRKHANI, Petitioner

V.

UNITED WATER NEW JERSEY, INC., Respondent

BPU DOCKET NO. WC14060612U

OAL DOCKET NO. PUC 13174-14

SERVICE LIST

Shams Mirkhani
256 Grove Street
Teaneck, New Jersey 07666

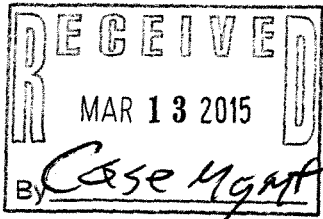
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BOARD OF PUBLIC UTILITIES
MAIL ROOM



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 13174-14

AGENCY DKT. NO. WC14060612U

SHAMS MIKHANI,

Petitioner,

v.

UNITED WATER NEW JERSEY, INC.,

Respondent.

Shams Mikhani, pro se

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

Record Closed: March 2, 2015

Decided: March 13, 2015

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

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Shams Mirkhani (Mirkhani or petitioner)—whose name was incorrectly spelled in the caption above—filed a petition with the Board of Public Utilities (BPU) on June 23, 2014, regarding a billing dispute with United Water of New Jersey (United or UWNJ). Petitioner is disputing the amount of one water bill. The matter was transmitted to the Office of Administrative Law (OAL) and filed on October 14, 2014. On October 17,

2014, a prehearing conference was held. The hearing was held on March 2, 2014. I closed the record at that time.

FACTUAL DISCUSSION AND FINDINGS

I **FIND** the following uncontested **FACTS**:

Mirkhani is a customer of UWNJ. On August 16, 2011, petitioner purchased a home at 248 Van Buren Avenue, Teaneck. Mirkhani does not reside at the Van Buren Avenue home. United read the water meters for the premises with the use of a remote meter reader.

TESTIMONY

Shams Mirkhani

Mirkhani testified on his own behalf. He testified that 248 Van Buren Avenue has been unoccupied since Mirkhani purchased the property. He inspected the property after he purchased it and found no leaks. From September 2011 through March 2013 he received water bills in the approximate amount of \$30 quarterly. He was contacted by United and told that he needed a new meter. A new meter was installed on the premises in March 2013. Once the new water meter was installed he received a bill of approximately \$1200. He contests this bill. The water was shut off for non-payment in May 2013. He was not notified of the shut off. He checked the faucet and realized that there was no water. There were never any contractors on the premises.

Frank Cordero

Frank Cordero (Cordero) is the meter asset manager for United. He supervises the meter readers. Mirkhani's water bill from September 2012 to December 2012 is in dispute. A meter reading was taken of the 248 Van Buren Avenue premises before Mirkhani took ownership of the premises. Mirkhani complained about the bill in March

2013. At that time United removed the meter. The meter was tested on March 15, 2013. The meter tests showed that it was working properly.

Luis Jimenez

Luis Jimenez is a collection manager for United. When Mirkhani did not pay the water bill for the Van Buren Avenue premises, it was transferred to Mirkhani's home address account at Grove Street in Teaneck.

The water was shut off at the Van Buren Avenue address on May 8, 2013, because of the outstanding bill. Past due notices and calls were made to Mirkhani regarding the overdue bill. The bill in dispute was issued to Mirkhani on February 27, 2013.

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**:

UWNJ sent Mirkhani a bill for water consumption between September 2012 and December 2012 in the amount of \$1,237.23. This bill was sent to Mirkhani on or about February 27, 2013. Mirkhani contested the bill. On March 12, 2013 United removed the meter from the Van Buren Avenue premises. The meter was tested on March 15, 2013 by UWNJ. The meter test showed the meter's low flow was 99; intermediate flow was 100; and full flow was 97.7. The meter was not running fast.

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 that was used to calculate the September 2012 bill was not fast. It was slow. The meter tests showed that the meter ran at 99 percent in low flow; 100 in intermediate flow; and 97.7 in full flow. When a meter runs slow, the customer is being under-billed. Since the meter was not running fast Mirkhani is not entitled to an adjustment.

I **CONCLUDE** that petitioner has not proved by a preponderance of the evidence that he 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.

March 13, 2015



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

March 13, 2015

Date Mailed to Parties:

ljb

WITNESSES

For Petitioner:

Shams Mirkhani

For Respondent:

Frank Cordero

Luis Jimenez

EXHIBITS

For Petitioner:

For Respondent:

- R-1 United Field Order dated March 12, 2013
- R-2 Meter Test Report dated March 15, 2013
- R-3 New Jersey Weights and Measures Certification for Water Meter Provider dated February 27, 2013
- R-4 New Jersey Weights and Measures Certification for Water Meter Provider dated June 13, 2014
- R-5 Bill of United showing a transfer of charges dated March 10, 2014
- R-6 Account History of Mirkhani for 248 Van Buren Avenue, Teaneck