



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
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CUSTOMER ASSISTANCE

MICHELLE FONTANEZ,)	ORDER ADOPTING
Petitioner)	INITIAL DECISION
)	
v.)	
)	
MIDDLESEX WATER COMPANY)	DOCKET NO. WC18121336U
Respondent)	OAL DOCKET NO. PUC 01651-19

Parties of Record:

Michelle Fontanez, Petitioner, *pro se*
Jay L. Kooper, Esq., for Respondent, Middlesex Water Company

BY THE BOARD:

This matter is a billing dispute between Michelle Fontanez (“Petitioner”) and Middlesex Water Company (“Middlesex” or “Respondent”). This Order sets forth the procedural history and factual background of Petitioner’s claims and represents the Final Order in the matter pursuant to N.J.S.A. 52:14B-10(c). Having reviewed the record, the Board of Public Utilities (“Board”) now **ADOPTS** the Initial Decision rendered on February 24, 2020, as follows.

PROCEDURAL HISTORY

On or about December 5, 2018, Petitioner filed a Petition with the Board requesting a formal hearing to help resolve the billing dispute between her and Middlesex. On or about January 16, 2019, Middlesex filed an Answer to the Petition. On January 28, 2019, Petitioner filed a Reply to Middlesex’s Answer. On February 1, 2019, the matter was transmitted to the Office of Administrative Law (“OAL”) for a hearing as a contested case pursuant to N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13. The matter was assigned to Administrative Law Judge Susan L. Olgiate (“Judge Olgiate”).

On May 10, 2019, Middlesex filed a motion for summary decision. Petitioner did not file any response to the motion. By Order dated July 2, 2019, Judge Olgiate denied Respondent’s motion for summary decision. An evidentiary hearing was ultimately held on January 9, 2020. On February 24, 2020, Judge Olgiate issued her Initial Decision in favor of Respondent, denying the relief sought by Petitioner and dismissing the Petition. No exceptions were filed. By Order dated March 27, 2020, the Board obtained a forty-five day extension of time in which to issue a Final Decision pursuant to N.J.S.A. 52:14B-10(c) and N.J.A.C. 1:1-18.

EVIDENTIARY HEARING

At the evidentiary hearing on January 9, 2020, the Petitioner testified on behalf of herself. Margaret Snead (“Snead”), Middlesex’s Director of Customer Service, and Jan Chwiedosiuk (“Chwiedosiuk”), Middlesex’s Director of Distribution, testified on behalf of Middlesex.

Snead testified that Middlesex provided water service to Petitioner at 26B Pershing Avenue in Carteret, New Jersey from December 23, 2011, to February 1, 2017. [1T¹.29:7-29:25]. Petitioner lived in the upstairs dwelling of the building. The downstairs unit of the building, unit 26A, was the site of the Iglesia Pentecostal Hermanos Unidos en Christe, a/k/a the United Brethren in Christ Pentecostal Church (“the Church”). [1T.30:2-30:17].

Sewer and wastewater service to both units at 26 Pershing Avenue were provided by the Borough of Carteret. [1T.82:3-82:7]. Middlesex did not provide sewer or wastewater service to Petitioner at 26B Pershing Avenue. [1T.82:8-82:11].

Prior to Petitioner’s occupancy, 26B Pershing Avenue was occupied by a predecessor tenant who received water service from Middlesex until June 30, 2011. Upon notification that the predecessor tenant moved out, Middlesex discontinued water service to that dwelling. [1T.30:18-32:20]. In August 2012, Middlesex discovered that the shut-off valve controlling water to 26B Pershing Avenue had been turned on without authorization. [1T.32:21-33:16]. Thereafter, Middlesex learned that Petitioner had moved in and been occupying 26B Pershing Avenue since approximately November 2011. Ibid.

On August 27, 2012, Middlesex established an account for Petitioner at 26B Pershing Avenue under Account Number xxxx6256. [1T.32:17-33:34:2]. Middlesex issued its first bill to Petitioner in the amount of \$351.70, which covered the time period from December 23, 2011 through June 25, 2012. [R-1²].

Beginning in October 2012, Middlesex began issuing quarterly bills to Petitioner. [R-2]. On October 23, 2012, after receiving no payment on previous balance amounts, Middlesex issued Petitioner a collection reminder letter and thereafter issued an initial shut-off notice. [1T.35:9-36:25-37:12; R-2; R-3]. From November 2012 through March 2013 Middlesex issued Petitioner additional collection reminder letters, past-due payment and shut off notices, and a quarterly bill for continued service. [R-4 through R-6].

On March 18, 2013, Petitioner contacted Middlesex to express concern with her August 2012 bill. [1T.39:1-39:12]. In response, Middlesex offered Petitioner a deferred payment arrangement under the conditions that she: (1) make an immediate payment of \$200 toward her outstanding balance; (2) make \$75 monthly payments toward her outstanding balance over a 6-month period; and (3) timely pay all quarterly bills in full going forward. [R-7]. On March 21, 2013, Middlesex issued Petitioner a letter confirming the terms of the payment arrangement (“the March 2013 Agreement”). [R-7]. Thereafter, Petitioner failed to make payment in accordance with the March 2013 Agreement. [1T.42:4-42:7]. As a result, Middlesex issued Petitioner collection reminder letters, past-due payment and customer shut-off notices. [R-9; R-10].

¹ 1T refers to the transcript of the January 9, 2020 hearing.

² Exhibits R-1 through R-31 were moved into evidence at the January 9, 2020 hearing. [See 1T.90:14-91:3]. Exhibits P-1 through P-3 were also moved into on January 9, 2020. [1T.100:3-102:12; 1T.115:1-115:5].

In July 2013, the total amount due from Petitioner was \$1,010.95. [R-11]. On July 31, 2013, Petitioner made payment to Middlesex in the amount of \$1,110.95.³ [R-12]. Thereafter, Petitioner failed to make timely/full payment on her quarterly bills. From November 2013 to September 2014, Middlesex issued Petitioner collection reminder letters, past due payment and customer shut off notices, and quarterly bills for continued service. [R-13 through R-19]. On September 16, 2014, Petitioner contacted Middlesex regarding her water service. [1T.50:8-50:12].

The October 2014 quarterly bill issued to Petitioner reflected a total amount due of \$1,189.27 (\$893.98 past due and \$295.29 in current charges.) [R-20]. On March 25, 2015, after receiving no payment from Petitioner on previous balance amounts, Middlesex shut off water service to 26B Pershing Avenue. [1T.54:18-54:21]. The total outstanding balance at that time was \$1,433.69. [1T.53:21-54:1 and R-23-24]. That very day, Petitioner contacted Middlesex and the Board seeking to reactivate her water service. [1T.54:22-56:2]. Middlesex agreed to, and did, restore Petitioner's service that day after Petitioner agreed to (1) make a \$50 per week payment effective immediately; and (2) enter into a longer-term deferred payment arrangement following the issuance of the next regularly-scheduled quarterly bill to pay down the outstanding balance. Ibid.

During the parties' discussions on March 25, 2015 Petitioner advised Middlesex that the two units at 26 Pershing Avenue were served by "crossed meters" and that she was not responsible for the outstanding balance on her bill. [1T.56:3-56:17]. Petitioner further advised that there was a leak at 26A that caused her to be assessed for water used by the Church. Based on Petitioner's claims, a site inspection for both dwellings at 26 Pershing Avenue was scheduled and subsequently took place on November 7, 2015⁴. [1T.57:4-57:12].

Petitioner made an initial \$50 payment, and a second \$50 payment in April 2015, but thereafter failed to make payment in accordance with the arrangement discussed in March 2015. [1T.58:20-59:3 and R-25 through R-26]. As a result, Middlesex issued Petitioner collection reminder letters, and past due payment and customer shut off notices. [R-26 through R-27]. On June 9, 2015, after failing to receive payment from Petitioner on previous balance amounts, Middlesex shut off her water service. [1T.59:17-59:20]. The amount due was \$1,640.04. [R-26].

On June 19, 2015, after Middlesex refused to restore service to Petitioner, Petitioner filed an informal complaint with the Board seeking restoration of her water service. [1T.59:21-60:14]. Following consultation with the Board, Middlesex offered Petitioner a deferred payment arrangement to restore her water service subject to the conditions that she: (1) make immediate payment of \$600; (2) pay \$75 per month to pay down the past due balance on her previously-issued quarterly bills; and (3) remain current with all future quarterly bills going forward ("the June 2015 Agreement"). [1T.60:15-61:7]. Petitioner made the "immediate" payment of \$600 and her water service was restored. [See R-27].

On November 7, 2015, in response to the allegations of Petitioner, Middlesex conducted a site inspection of both dwellings at 26 Pershing Avenue to check for crossed meters and the presence of leaks. [1T.66:12-67:18]. Middlesex determined that there was no evidence of crossed meters, water leaks, or past water leaks. [1T.83:9-85:18]. On December 9, 2015, Middlesex issued Petitioner a letter confirming that the November 7, 2015 site inspection had been conducted and that the reading on her meter was accurate. [R-31].

³ Petitioner received a \$100 credit for her overpayment. [R-12].

⁴ The inspection was delayed due to scheduling conflicts for Petitioner and medical issues concerning the church's pastor. [1T.56:22-57:12].

From July 2015 through February 2017, Middlesex issued Petitioner collection reminder letters, past due payment and customer shut off notices, and quarterly bills for continued service. [R-30]. The quarterly bills reflected current charges ranging from \$830.98 (October 2015 bill) to \$318.22 (April 2016 bill). [R-28]. On February 1, 2017, after receiving no payment from Petitioner on previous balance amounts, Middlesex shut off her water service. [1T.63:9-64:20]. At this time, Petitioner's outstanding balance was in excess of \$3,000.00. [R-28 and R-29].

On February 2, 2017, Petitioner again filed an informal complaint with the Board. [1T.68:1-68:20]. Following consultation with the Board, Middlesex offered Petitioner a deferred payment arrangement to reactivate her account and restore water service under the conditions that she: (1) make immediate payment of \$800; (2) agree to pay \$100 per month to pay down the outstanding balance on her bill; and (3) remain current in paying in full all regular quarterly bills going forward. Ibid. Petitioner rejected this offer and her account remained terminated. [1T.69:6-69:8]. At the time Middlesex issued its March 9, 2017, final bill, Petitioner's total outstanding balance was \$3,320.10. [R-29].

THE INITIAL DECISION

Upon her review of the testimony and exhibits entered into evidence at the January 9, 2020 hearing, Judge Olgiati found, inter alia, the following facts:

- 1) The dwellings at 26A & 26B of Pershing Avenue were serviced by Middlesex under separate account numbers and separate infrastructure including service lines and meters. The meter servicing Petitioner's account was operating properly and accurately recording water usage on Petitioner's account;
- 2) Though Middlesex was unable to locate a copy of the June 2015 payment arrangement, Petitioner made a series of past due payments consistent with the terms of the June 2015 Agreement; and
- 3) Beginning on July 24, 2015, and continuing until February 1, 2017, Petitioner made regular monthly payments of \$75 (\$225 per quarter) towards her outstanding past due balances on the quarterly bills issued by Middlesex. Petitioner made no other payments beyond this amount. During this time, Petitioner made no payments towards current charges for continuing water service.

[ID at 7].

Judge Olgiati described Petitioner's burden in bringing this matter, as establishing, by a preponderance of the evidence, whether the Petitioner had been properly charged for water service provided to her, and if so, whether Middlesex's action in discontinuing her water service due to non-payment was proper. [ID at 8]. Judge Olgiati concluded that Petitioner had failed to provide documentation that supported Petitioner's claims. [ID at 8].

While Petitioner did present, and the Court admitted into evidence, what appeared to be a November 29, 2014 fire department incident report, the document only indicated that there was a "water or steam leak" incident reported, to which the fire department responded. [ID at 8 and P-2]. Judge Olgiati determined that the report did not support Petitioner's claims that "pipes burst downstairs right after I received outstanding water bill-not my debt" and "[e]xcessive water everywhere from [Petitioner's downstairs neighbor]. However [sic] turned second floor water service off because of incident." [ID at 8-9]. Similarly, Judge Olgiati noted that the Borough of

Carteret Utility Account Status document relied upon by Petitioner concerned sewer service to Petitioner's building, "was unrelated to water service provided to Middlesex and has no bearing on the issues presented in this matter." [ID 8-9 and P-2].

Judge Olgiati also determined that since 2013 Middlesex entered into three separate deferred payment arrangements with Petitioner. [ID at 10]. Regardless of whether the June 2015 Agreement was reduced to a writing, Judge Olgiati noted Petitioner's admission that from July 2015 until February 2017, consistent with the terms of the June 2015 Agreement, Petitioner made payments to Middlesex of \$75 per month (\$225 per quarter). Ibid. Yet the payments only paid down Petitioner's outstanding past due balances, did not address her current quarterly charges, or satisfy the total amount due for continuing service from October 2015 through January 2017. Id.

As to the propriety of Middlesex's discontinuation of Petitioner's water service in February 2017, Judge Olgiati noted that the total amount due was \$3,171.82. [ID at 10]. The amount far exceeded the regulatory criteria that permits discontinuation of service only if the arrearage is more than \$100 and reflected a lengthy history in excess of the three-month regulatory minimum for discontinuation. Ibid. In fact, the only time that Petitioner made full payment on her Middlesex water bill was in July 2013. Id.

Judge Olgiati determined that Petitioner failed to present any legally competent evidence showing that she was improperly or excessively charged for water usage. [ID at 9]. Judge Olgiati reasoned that Petitioner's beliefs as to improper charges on her account were insufficient to overcome "reasonable and credible testimony and documentation presented by Middlesex." [ID at 9].

DISCUSSION AND FINDINGS

In customer billing disputes before the Board, a petitioner bears the burden of proof by a preponderance of the competent, credible evidence. See Atkinson v. Parsekian, 37 N.J. 143, 149 (1962). Evidence is preponderate if it establishes reasonable probability that the facts alleged are true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.) cert. denied, 31 N.J. 75 (1959).

Deferred payment arrangements between a utility and a residential customer are governed by N.J.A.C. 14:3-7.7(a) which provides that:

Whenever a residential customer advises the utility that the customer wishes to discuss a deferred payment agreement because said customer is presently unable to pay a total outstanding bill and/or deposit, the utility shall make a good faith effort to provide the customer with the opportunity to enter into a fair and reasonable deferred payment agreement(s) which takes into consideration the customer's financial circumstances.

The regulations place limits on such arrangements and specify when discontinuance of service may occur based upon a customer's default:

(c) Any deferred payment agreements, which extend for more than two months shall be in writing and shall provide that a customer who is presently unable to pay an outstanding debt for utility services may make reasonable periodic payments until the debt is liquidated **while continuing payment of the current bills.**

.....

(f) If the customer defaults on **any** of the terms of the agreement, the utility may discontinue service after providing the customer with notice of discontinuance in accordance with N.J.A.C. 14:3-3A.3...

N.J.A.C. 14:3-7.7(c) and (f)(emphasis added). Pursuant to N.J.A.C. 14:3-3A.1(a), a utility has the “right to suspend or curtail or discontinue water service... for nonpayment of a valid bill due for service at a present or previous location, in accordance with N.J.A.C. 14:3-3A.2.” Id. Under N.J.A.C. 14:3-3A.2, “[A] public utility may discontinue service for nonpayment only if one or both of the following criteria are met...1. The customer’s arrearage is more than \$100; and/or 2. The customer’s account is more than three months in arrears.” Id.

Outside of Petitioner’s stated belief that Respondent’s billing was excessive or in error, Petitioner failed to present any testimony or documentary evidence to rebut the testing performed by Middlesex, or the testimony and documentation Middlesex presented relating to the same. Furthermore, whether or not the June 2015 Agreement was reduced to writing, as represented by Snead⁵, there is no dispute that:

- 1) throughout 2013 through 2017, Petitioner failed to pay current bills timely;
- 2) Petitioner’s failure to timely pay current bills was inconsistent with N.J.A.C. 14:3-7.7(c), which requires a customer’s “continuing payment of current bills”, as part of any deferred payment arrangement; and
- 3) Petitioner made payments consistent with both the agreement reached in March 2015 with Middlesex and the June 2015 Agreement.

There is no question that Petitioner was in default of any deferred payment agreements in existence.

Furthermore, leaving aside any deferred payment agreements, Middlesex’s discontinuance of water service occurred after proper notice to Petitioner, at a time when Petitioner’s arrearages were in excess of \$100, and when the Petitioner’s account had been in arrears far in excess of 3 months. There is no dispute that Middlesex sent numerous notices to Petitioner from 2013-2017 warning her that her service would be discontinued, including a notice dated December 19, 2016, which identified an amount due of \$2,886.43. [R-15, R-17, R-19, R-21, R-22, R-24, R-26, R-30]. There is similarly no dispute that Petitioner was not paying current charges after the time of the June 2015 Agreement.

Thus, after careful review and consideration of the entire record and Judge Olgiati’s credibility findings, the Board **HEREBY FINDS** the findings and conclusions of Judge Olgiati to be reasonable, and accordingly, **HEREBY ACCEPTS** them. Specifically, the Board **FINDS** that Petitioner failed to bear her burden of proof, by preponderance of the evidence, that she was improperly billed or that Middlesex’s discontinuation of service was improper.

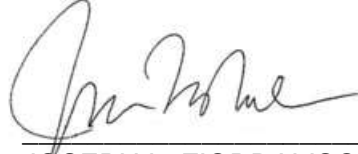
Accordingly, the Board **HEREBY ADOPTS** the Initial Decision and **ORDERS** that the petition in this matter be **DISMISSED**.

⁵ Which testimony was deemed credible by Judge Olgiati. [ID at 9].

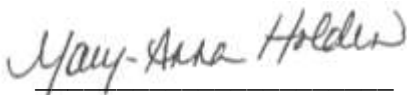
This order shall be effective May 15, 2020.

DATED: May 5, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

MICHELLE FONTANEZ, PETITIONER

v.

MIDDLESEX WATER COMPANY, RESPONDENT

**BPU DOCKET NO. WC18121336U
OAL DOCKET NO. PUC 01651-19**

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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 01651-19

AGENCY DKT. NO. WC18121336U

MICHELLE FONTANEZ,

Petitioner,

v.

MIDDLESEX WATER COMPANY,

Respondent.

Michelle Fontanez, petitioner, pro se

Jay L. Kooper, Vice President and General Counsel, for respondent (Middlesex Water Company)

Record Closed: January 9, 2020

Decided: February 24, 2020

BEFORE **SUSAN L. OLGATI**, ALJ:

STATEMENT OF THE CASE

Petitioner, Michelle Fontanez, filed a billing dispute with the Board of Public Utilities (the Board) regarding water service bills issued to her by respondent, Middlesex Water Company (Middlesex). Petitioner contends that she was improperly and/or excessively charged for water usage resulting from a leak in another dwelling in her building. She further contends that respondent's action in discontinuing her service was improper.

Respondent contends that it accurately and properly billed petitioner for water usage associated with her account and that it properly discontinued petitioner's water service based on her failure to comply with the terms of her repayment agreement.

PROCEDURAL HISTORY

On or about December 5, 2018, petitioner filed a billing dispute with the Board. On February 1, 2019, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case N.J.S.A. 52:14-1 to -15 and N.J.S.A. 52: 14F-1 to -13. On May 10, 2019, the respondent filed a motion for summary decision. Petitioner did not file any response to the motion. By Order dated, July 2, 2019, the undersigned denied respondent's motion for summary decision. The matter was scheduled for hearing on July 10, 2019, and thereafter on September 24, 2019. Petitioner requested and received adjournments of both hearing dates. The hearing was ultimately held on January 9, 2020, and the record was closed on that date.

FACTUAL DISCUSSION AND FINDINGS

The majority of the relevant and material facts in this matter are not in dispute. Based on the testimony of petitioner Fontanez, Margaret Snead (Director of Customer Service for Middlesex), and Jan Chwiedosiuk (Director of Distribution for Middlesex), as well as the documents admitted into evidence, I **FIND** the following **FACTS**:

Middlesex provided water service to petitioner at 26B P. Avenue in Carteret, N.J. from December 23, 2011, to February 1, 2017. Petitioner lived in the upstairs dwelling of the building. The building was also the site of the Iglesia Pentecostal Hermanos Unidos en Christe, a/k/a the United Brethren in Christ Pentecostal Church ("the church"). The church was located in the downstairs dwelling, 26A.

Sewer and wastewater service to both dwellings at 26 P. Avenue was and is provided by the Borough of Carteret. Middlesex did not provide sewer or wastewater service to petitioner at 26B P. Avenue.

Prior to petitioner's occupancy, 26B P. Avenue, was occupied by a predecessor tenant who received water service from Middlesex until June 30, 2011. Upon notification that the predecessor tenant moved out, Middlesex discontinued water service to that dwelling.

In August 2012, Middlesex discovered that the shut-off valve controlling water to 26B P. Avenue had been turned on without authorization. Thereafter, Middlesex learned that petitioner had moved in and been occupying 26B. P. Avenue since approximately November 2011.

On August 27, 2012, Middlesex, established an account for petitioner at 26B P. Avenue under Account Number xxxx6256. Middlesex issued its first bill to petitioner in the amount of \$351.70 covering the time period December 23, 2011, through June 25, 2012. R-1.

Beginning in October 2012, Middlesex began issuing quarterly bills to petitioner. On October 23, 2012, after receiving no payment on previous balance amounts, Middlesex issued petitioner a collection reminder letter and thereafter issued an initial shut-off notice. R-3. From November 2012 through March 2013 Middlesex issued petitioner additional collection reminder letters, past-due payment and shut off notices, and a quarterly bill for continued service. R-4 through R-6.

On March 18, 2013, petitioner contacted Middlesex to express concern with her August 2012 bill. In response, Middlesex offered petitioner a deferred payment arrangement under the conditions that she: (1) make an immediate payment of \$200 toward her outstanding balance; (2) make \$75 monthly payments toward her outstanding balance--over a 6-month period; and (3) timely pay all quarterly bills in full going forward. On March 21, 2013, Middlesex issued petitioner a letter confirming the terms of the payment arrangement. R-7.

Thereafter, petitioner failed to make payment in accordance with the deferred payment arrangement. As a result, Middlesex issued petitioner collection reminder letters, and past-due payment and customer shut-off notices. R-9, R-10.

In July 2013, the total amount due by petitioner was \$1,010.95. R-11. On July 31, 2013, petitioner made payment to Middlesex in the amount of \$1,110.95.¹

Thereafter, petitioner failed to make timely/full payment on her quarterly bills. From November 2013 to September 2014, Middlesex issued petitioner collection reminder letters, past due payment and customer shut off notices, and quarterly bills for continued service. R-13 through R-19.

On September 16, 2014, petitioner contacted Middlesex regarding her water service.

The October 2014 quarterly bill issued to petitioner reflected a total amount due of \$1,189.27 (\$893.98 past due and \$295.29 in current charges.) R-20.

On March 25, 2015, after receiving no payment from petitioner on previous balance amounts, Middlesex shut off water service to 26B P. Avenue. The total outstanding balance at that time was \$1,433.69.

On that same date, petitioner contacted Middlesex and the Board seeking to reactivate her water service. Petitioner advised Middlesex that the two dwellings at 26 P. Avenue were served by “crossed meters” and that she was not responsible for the outstanding balance on her bill. Petitioner further advised that there was a leak at 26A that caused her to be assessed for water used by the church. Based on petitioner’s claims, a site inspection for both dwellings at 26 P. Avenue was scheduled.²

Following discussion with petitioner and the Board, Middlesex agreed to restore petitioner’s water service subject to the conditions that she: (1) make a \$50 per week payment effective immediately; and (2) enter into a longer-term deferred payment arrangement following the issuance of the next regularly-scheduled quarterly bill to pay

¹ Petitioner received a \$100 credit for her overpayment.

² Due to scheduling conflicts for petitioner and issues concerning the church’s pastor, the site inspection did not take place until November 7, 2015.

down the outstanding balance. Petitioner made a \$50 payment and her water service was restored on March 26, 2015.

Thereafter, petitioner did not make payment in accordance with the March 2015 payment arrangement. As a result, Middlesex issued petitioner collection reminder letters, and past due payment and customer shut off notices. R-25 through R-27.

On June 9, 2015, after failing to receive payment from petitioner on previous balance amounts, Middlesex shut off her water service.

On June 19, 2015, petitioner filed an informal complaint with the Board seeking restoration of her water service. Following consultation with the Board, Middlesex offered petitioner a deferred payment arrangement to restore her water service subject to the conditions that she: (1) make immediate payment of \$600; (2) pay \$75 per month starting July 27, 2015, to pay down the past due balance on her previously-issued quarterly bills; and (3) remain current with all future quarterly bills going forward. Petitioner made an immediate payment of \$600 on June 19, 2015, and her water service was restored.

On November 7, 2015, Middlesex conducted a site inspection of both dwellings at 26 P. Avenue to check for crossed meters and the presence of leaks, as petitioner alleged. On December 9, 2015, Middlesex issued petitioner a letter confirming that the November 7, 2015, site inspection had been conducted and that the reading on her meter was accurate. R-31.

From July 2015 through February 2017, Middlesex issued petitioner collection reminder letters, past due payment and customer shut off notices, and quarterly bills for continued service. The quarterly bills reflected current charges ranging from \$830.98 (October 2015 bill) to \$318.22 (April 2016 bill) R-28.

On February 1, 2017, after receiving no payment from petitioner on previous balance amounts, Middlesex shut off her water service.

On February 2, 2017, petitioner again filed an informal complaint with the Board. Following consultation with the Board, Middlesex offered petitioner a deferred payment arrangement to reactivate her account and restore water service under the conditions that she: (1) make immediate payment of \$800 payment; (2) agree to pay \$100 per month payment to pay down the outstanding balance on her bill; and (3) remain current in paying in full all regular quarterly bills going forward. Petitioner rejected this offer and her account remains terminated.

At the time Middlesex issued its March 9, 2017, final bill, petitioner's total outstanding balance was \$3,320.10. R-29.

Testimony

The following is a summary of the relevant and material testimony that remains in dispute.

For petitioner:

Petitioner testified that there was no written payment arrangement between she and Middlesex and there was no requirement that she keep current with her quarterly bills. The pipes at the church (26A) burst and that was not her fault. Water from the broken pipes affected her meter which was on the lower level. The debt charged by Middlesex is not hers. She was told by the tax assessor that 26A [the bottom dwelling occupied by the church] uses more water than her dwelling, 26B.

Petitioner further testified that she is a Section 8 tenant and that Middlesex callously turned off her water service despite the fact that she was making payments of \$75 per month. While Middlesex demonstrated a pattern of non-payment, this was due to deaths in her family and two motor vehicle accidents. She made the payments that she was able. She has a daughter and granddaughter who live with her.

For respondent:

Margaret Snead, the Director of Customer Service testified that Middlesex has been unable to locate a copy of the June 2015 deferred payment arrangement entered into with petitioner.

Jan Chwiedosiuk, Director of Distribution for Middlesex, testified that he reviewed petitioner's file and that the November 2015 site inspection confirmed that 26A & 26 B P. Avenue were served by separate infrastructure including service lines and meters. The meter serving 26B P. Avenue properly recorded the water actually delivered to that dwelling. The site inspection also concluded that there was no leak in the building. He further testified that prior to the November 2015 site inspection, Middlesex had not been on site at 26 P. Avenue in response to a complaint of an ongoing leak at the premises.

Based upon the testimonial and documentary evidence presented at hearing and having had the opportunity to observe the demeanor of the witnesses and assess their credibility, I make the following **Additional Findings of Fact**:

Dwellings 26A & 26B of P. Avenue were serviced by Middlesex under separate account numbers and separate infrastructure including service lines and meters. The meter servicing petitioner's account was operating properly and accurately recording water provided to her account.

Despite that Middlesex has been unable to locate a copy of the June 2015 payment arrangement, petitioner made a series of past due payments consistent with the terms of the agreement.

Beginning on July 24, 2015, and continuing until February 1, 2017, petitioner made regular monthly payments of \$75 (\$225 per quarter) towards her outstanding past due balances on the quarterly bills issued by Middlesex. Petitioner made no other payments beyond this amount. During this time, petitioner made no payments towards her current charges for continuing water service.

LEGAL ANALYSIS AND CONCLUSION

In this administrative proceeding, the petitioner bears the burden of proof by a preponderance of the competent, credible evidence as to those matters that are before the Office of Administrative Law. Atkinson v. Parsekian, 37 N.J. 143 (1962). Evidence is found to preponderate if it establishes the reasonable probability of the facts alleged and generates reliable belief that the tendered hypothesis, in all likelihood, is true. See Loew v. Union Beach, 56 N.J. Super. 93, 104 (App. Div.), certif. denied, 31 N.J. 75 (1959).

Here, the issue is whether the petitioner has been properly charged for water service provided to her and if so, whether respondent's action in discontinuing her water service due to non-payment was proper.

Accuracy of Billing

Petitioner, through her testimony and her correspondence to the Board, makes various arguments that she was improperly or excessively billed by Middlesex for water usage caused by a pipe burst at the church located in 26A P. Avenue. She contends that documentation from the fire department supports her claims. She further contends that documentation from the tax assessor shows that her upstairs dwelling--26B, uses less water than the downstairs dwelling, 26A.

Despite petitioner's arguments, the documentation presented does not support her claims or stand for the propositions she asserts. The November 29, 2014, report (See attachment to P-2³) documents only that there was a "water or steam leak" incident reported at 26 P. Avenue to which it appears the fire department responded. It does not support petitioner's claims as reflected by her handwritten notes on the November 29, 2014, report which state "[s]hows pipes burst downstairs right after I received outstanding

³ Exhibit P-2 is a January 22, 2019, typed letter from petitioner addressed to the Honorable Aida Camacho-Welch, Secretary of the Board. The address is crossed out and replaced with a handwritten address for the Office of Administration Law. The letter contains attachments including a partial November 29, 2014, report which appears to be a fire department incident report. At hearing, Middlesex advised that the document was not produced in discovery. As the document was included as part of the transmission packet to the OAL, the undersigned admitted the document into evidence.

water bill-not my debt” and “ [e]xcessive water everywhere from Iglesia Pent. Hermanos. However [sic] turned second floor water service off because of incident.”

Similarly, the Borough of Carteret Utility Account Status document (See attachment to P-2), produced by petitioner, does not support her claims or stand for the proposition she asserts. This document concerns sewer service to petitioner’s building which was/is provided by the Borough Carteret. Thus, it is unrelated to the water service provided by Middlesex and has no bearing on the issues presented in this matter.

Despite petitioner’s belief that she was improperly or excessively charged for water usage, she failed to present any legally competent evidence supporting her claims and is unable to overcome the reasonable and credible testimony and documentation presented by Middlesex.

Deferred Payment Arrangement and Discontinuation of Service

Deferred payment arrangements between a utility and a residential customer are governed by N.J.A.C. 14:3-7.7(a) which provides that:

Whenever a residential customer advises the utility that the customer wishes to discuss a deferred payment agreement because said customer is presently unable to pay a total outstanding bill and/or deposit, the utility shall make a good faith effort to provide the customer with the opportunity to enter into a fair and reasonable deferred payment agreement(s) which takes into consideration the customer’s financial circumstances. Id.

The regulations however, place limits on such arrangements. Specifically, N.J.A.C. 14:3-7.7(c) provides that:

Any deferred payment agreements, which extend for more than two months shall be in writing and shall provide that a customer who is presently unable to pay an outstanding debt for utility services may make reasonable periodic payments until the debt is liquidated while continuing payment of the current bills. Id.

Discontinuance of water service is also governed by regulation. Pursuant to N.J.A.C. 14:3-3A.1(a), a utility has the “right to suspend or curtail or discontinue water service... for nonpayment of a valid bill due for service at a present or previous location, in accordance with N.J.A.C. 14:3-3A.2.” Id. Under N.J.A.C. 14:3-3A.2, “a public utility may discontinue service for nonpayment only if one or both of the following criteria are met... 1. The customer’s arrearage is more than \$100; and or 2. The customer’s account is more than three months in arrears.” Id.

The record reflects that since 2013 Middlesex entered into three separate deferred payment arrangements with petitioner. Regardless of whether the June 2015 payment arrangement was reduced to a writing, petitioner admits that from July 2015 until February 2017, consistent with the terms of the agreement, she made payments to Middlesex of \$75 per month (\$225 per quarter). These payments however were only partial payments to pay down her outstanding past due balances. They did not address her current quarterly charges or satisfy the total amount due for continuing service from October 2015 through January 2017.

In February 2017, when Middlesex finally discontinued petitioner’s water service, her total amount due was \$3,171.82.⁴ This amount far exceeded the regulatory criteria that permits discontinuation of service only if the arrearage is more than \$100. Additionally, the documentary evidence reflects a lengthy history of arrearages that far exceeds the three-month minimum required for discontinuation. The only time that petitioner made full payment on her Middlesex water bill was in July 2013. Petitioner failed to make full payment and has been in arrears on all quarterly bills issued to her since that time.

Accordingly, I **CONCLUDE**, that petitioner failed to prove by a preponderance of the evidence that her water bills were inaccurate or that she was improperly charged by respondent for water service. I further **CONCLUDE** that respondent’s action in discontinuing petitioner’s water service due to failure to comply with the terms of her latest

⁴ At the time that Middlesex issued its final bill in March 2017 the total amount due was \$3,320.10.

payment arrangement (non-payment) was proper. Accordingly, petitioner remains responsible for the outstanding charges of \$3,320.10.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the petition in this matter is **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.

February 24, 2020
DATE



SUSAN L. OLGIATI, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

/vj

APPENDIX

WITNESSES

For petitioner:

Michelle Fontanez

For respondent:

Margaret Snead

Jan Chwiedosiuk

EXHIBITS

For petitioner:

P-1 December 10, 2018, handwritten cover letter from petitioner to the Board of Public Utilities, with attachments, handwritten November 27, 2018, letter to the Board regarding petition, copy of envelope addressed to the Board, and copy of \$25 check from petitioner (petition filing fee).

P-2 Jan 22, 2019, typed letter from petitioner to the Honorable Aida Camacho-Welch, Secretary of the Board with attachments: FDID incident report for November 29, 2014, Borough of Carteret Utility [Sewer] Account Status, three pages; Middlesex account/billing information for petitioner, three pages; Middlesex payment event information, April 22, 2016.

P-3 January 22, 2019, handwritten letter from petitioner to the Honorable Aida Camacho-Welch, Secretary of the Board, with attachment, Borough of Carteret Utility Account Status, three pages.

For respondent:

- R-1 First bill, August, 2012
- R-2 Quarterly bill October, 2012
- R-3 Collection reminder letter and past due payment/shut off notice October and November 2012
- R-4 Collection reminder letter and past due payment/shut off notice December 2012 and January 2013
- R-5 Quarterly bill January 2013
- R-6 Collection reminder letter and past due payment/shut off notice February and March 2013
- R-7 Confirmation of Payment Plan, March 21, 2013
- R-8 Quarterly bill April 2013
- R-9 Collection reminder letter and past due payment/shut off notice April and May 2013
- R-10 Collection reminder letter and past due payment/shut off notice June and July 2013
- R-11 Quarterly bill July 2013
- R-12 Quarterly bill October 2013
- R-13 Collection reminder letter and past due payment/shut off notice November 2013
- R-14 Quarterly bill January 2014
- R-15 Collection reminder letter and past due payment/shut off notice January and February 2014
- R-16 Quarterly bill April 2014
- R-17 Collection reminder letter and past due payment/shut off notice April 2014
- R-18 Quarterly bill July 2014
- R-19 Collection reminder letter and past due payment/shut off notice September 2014
- R-20 Quarterly bill October 2014
- R-21 Collection reminder letter and past due payment/shut off notice October and November 2014
- R-22 Collection reminder letter and past due payment/shut off notice December 2014 and January 2015
- R-23 Quarterly bill January 2015

- R-24 Collection reminder letter and past due payment/shut off notice February 2015
- R-25 Quarterly bill April 2015
- R-26 Collection reminder letter and past due payment/shut off notice May 2015
- R-27 Quarterly bill July 2015
- R-28 Quarterly bills October 2015 – January 2017 (six bills/pages)
- R-29 Quarterly bill March 2017
- R-30 Collection reminder letter and past due payment/shut off notice August, October, & December 2015, February, April, June, August, October, & December 2016, and February 2017
- R-31 December 9, 2015, letter confirming November 7, 2015, site inspection