

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE COMPLAINT FILED)
BY WILLIAM AND MARLENE LITTON AGAINST)
ARTESIAN WATER COMPANY, INC.) PSC DOCKET NO. 385-12
CONCERNING DISPUTED BILLING CHARGES)
(FILED SEPTEMBER 12, 2012))

ORDER NO. 8313

AND NOW, this 19th day of March, 2013:

WHEREAS, the Delaware Public Service Commission (the "Commission") has received and reviewed the Findings and Recommendations of the Hearing Examiner dated January 8th, 2013 ("HE's Report"), issued in the above-captioned docket, which was submitted after a duly-noticed evidentiary hearing; and

WHEREAS, the Hearing Examiner recommends that the Commission sustain the Division of the Public Advocate's "Motion to Dismiss for Lack of Subject Matter Jurisdiction" dated October 26, 2012, for the reasons stated in the HE's Report; and

WHEREAS, the Hearing Examiner recommends that the Commission acknowledge the accuracy of the July 18th meter reading as identified on Artesian Exhibit 7 and deny the Complainants' request for lack of jurisdiction; and

WHEREAS, the Hearing Examiner recommends the Commission encourage the Staff Complaint Section to alert future complainants of the jurisdictional divide resulting from the Commission's lack of jurisdiction over billing disputes and to make maximum use of informal and mediation complaint procedures to limit unnecessary administrative efforts;

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:

1. That the Commission adopts the Hearing Examiner's January 8, 2013 Findings and Recommendations, which are attached as Exhibit "A".

2. That the Commission acknowledges the accuracy of Artesian Water Company, Inc.'s July 18th meter reading for the Litton residence has been established by a preponderance of the evidence.

3. That the Commission dismisses the Littons' complaint with prejudice for lack of jurisdiction.

4. That the Commission reserves jurisdiction to enter such further Orders as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Dallas Winslow
Chair

/s/ Joann T. Conaway
Commissioner

/s/ Jaymes B. Lester
Commissioner

Commissioner

Commissioner

ATTEST:

/s/ Alisa Carrow Bentley
Secretary

EXHIBIT "A"

FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER
DATED JANUARY 8, 2013

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DATE: January 8, 2013

ROBERT HOWATT
HEARING EXAMINER

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FINDINGS AND RECOMMENDATIONS OF THE HEARING EXAMINER

Robert J. Howatt, duly appointed Hearing Examiner in this Docket, pursuant to 26 Del. C. §502 and 29 Del. Ch. 101, reports to the Commission as follows:

I. APPEARANCES

On behalf of the Complainants, Mr. William A. Litton and Ms. Marlene M. Litton ("the Littons" or "Complainants"), *pro se*

On behalf of the Respondent, Artesian Water Company ("Artesian" or "Respondent"):

BY: JOHN J. SCHREPPLER II, ESQUIRE, Vice President & General Counsel

LOU ANN SNOW, Paralegal

DAVE SPACHT, CFO and Treasurer

RICHARD E. DAVIS, Meter Shop Technician

THOMAS McMULLEN, Assistant Supervisor of Customer Service and Billing

On behalf of the Public Service Commission Staff ("Staff"):

BY: JULIE M. (JO) DONOGHUE, ESQUIRE, Deputy Attorney General

On behalf of the Division of the Public Advocate ("DPA"):

BY: MICHAEL DAMIEN THOMAS AQUINAS SHEEHY, PUBLIC ADVOCATE

On behalf of the Hearing Examiner:

BY: LAWRENCE LEWIS, ESQUIRE, Deputy Attorney General

II. BACKGROUND

A. LITTON COMPLAINT

1. On September 12, 2012 Mr. William A Litton and Ms. Marlene M. Litton filed a formal complaint with the Delaware Public Service Commission ("Commission") against Artesian Water Company, alleging an incorrect bill for water service of 28,000 gallons during the period June 15, 2012 through July 18, 2012. (See Litton Complaint at §4.) The Littons noted they were on vacation from June 7th until June 28th and only home for 15 days during the billing period. They could not justify using 28,000 gallons of water in that 15 day period and honestly believed they used 2,800 gallons, seeking Artesian bill relief of \$203.49.

2. Attached to the complaint were two documents: (1) an August 22, 2012 letter from Mr. William A Litton to Artesian Water explaining their concern, indicating they were disputing the bill, acknowledging meter test information and making payment of \$36.51 for what they believed was the correct amount; and (2) an Artesian provided "Sensus" note sheet with meter readings for May 15, June 15, and July 18, 2012 on which the Complainant noted a new meter reading of 2917.3 for service from August 2, 2012 to August 22, 2012. On the back of the note was the Complainants' calculation showing use of 2,820 gallons between June 15 and July 18, 2012. In their letter to Artesian, the Littons indicated they showed the old tested meter reading numbers as written by Artesian to the

Artesian representative and the PSC representative noting that the way they were written, it appeared that the ending number was to be interpreted as a tenth. The Littons indicated that not one of the representatives said that last number was a whole number. The Littons based their payment on what they thought was an agreed upon interpretation of the meter reading.

B. ARTESIAN RESPONSE

3. On October 12, 2012 Artesian Water Company responded to the formal complaint with the Verified Answer of Artesian Water Company ("Respondent"). Artesian indicated it lacked sufficient information to admit or deny when the Complainants were in the residence. They further denied that there was no justification for the billed consumption of 28,000 gallons. (See Respondent Reply at §4).

4. In support of their response, Artesian indicated an Artesian employee had read the customer meter on both June 18, 2012 and July 18, 2012. The Artesian meter serving the Littons was a Sensus 5/8" residential meter that provides total consumption to 1/10th of a gallon. The automated reading device is configured to send an electronic signal that ignores the 10ths and individual gallons and truncates the gallons consumed to tens of gallons. Furthermore, Artesian only bills in thousands of gallons so the meter reading is further truncated at the thousand gallon level for billing purposes. (Id at §4.a.)

5. Artesian reported a meter accuracy test had been previously conducted on August 22, 2012. The test was witnessed by Artesian personnel, the Complainant and a representative from the Public Service Commission. Artesian reported the meter tested accurate (within the required 2% margin)¹ at normal volumes and underreported at slower volumes. (Id at 4.b.) Artesian noted that under Rule 35 of Artesian's Tariff, the meter is conclusive for both the customer and Artesian, except when the meter has been found to be registering inaccurately. Rule 6.3 of the Minimum Standards Governing Service Provided by Public Water Companies permits billing adjustments only if a meter fails the accuracy test by over registering by more than 2%.

C. DPA INTERVENTION AND MOTION TO DISMISS

6. On October 26, 2012, the Delaware Division of the Public Advocate filed a Statutory Notice of Intervention and a Motion of the Public Advocate to Dismiss Complaint for Lack of Subject Matter Jurisdiction ("the Motion"). The DPA, while sympathetic to the Littons' plight, noted that it was clear from the pleadings that this was a billing dispute and the Delaware Supreme Court has held that the Commission does not have jurisdiction to hear or decide billing disputes between a utility and its customer. (See Motion at §2). The DPA provided several legal citations upon which it based the Motion and further noted that:

¹ 26 Del. C. Admin. Code §2000, 3.10.1.1

"Under Delaware law, a court will dismiss a complaint for lack of subject matter jurisdiction if it is apparent from the record that the court does not have jurisdiction over the claim." (Id. at §3.)

The DPA acknowledged that should the dispute proceed to the point of threatened disconnection, the Commission could consider whether there was a bona fide dispute to prevent disconnection, but could not decide on the merits of the dispute. (Id. at §4.) The DPA also indicated that the Littons could still have remedy of their dispute by filing a claim in the Justice of Peace Court, which has jurisdiction. (Id. at §5.)

D. HEARING EXAMINER'S QUESTIONS TO THE PARTIES

7. On November 26, 2012, after consideration of the DPA's Motion to Dismiss, the Hearing Examiner requested the parties' response to the Motion and two questions.

QUESTION 1 - To what extent should pro se complaints be tied to the literal wording of the complaint? Is the jurisdiction of a State agency limited by the wording of a complaint, or should the agency have the ability to determine jurisdiction based on the root cause of a complaint?

QUESTION 2 - How does a State agency determine when a concern is strictly a billing complaint versus maintenance of adequate service or practices that may have resulted in a billing complaint?

8. On November 28, 2012 the Public Advocate responded to the questions. The DPA noted their awareness that,

"pro se complainants may not always state their complaints as precisely as a party represented by counsel. Thus if there is any possibility that the customer is complaining about a service quality issue as opposed to a straight disagreement with the amount they allegedly owe the utility, the Public Advocate believes that the Commission

may exercise jurisdiction over that portion of the complaint." (See DPA Response, Page 1)

The DPA noted that it could not be said with any certainty when a service quality issue becomes simply a billing issue, but the DPA believed this complaint to be a straight billing issue. (Id. at Page 2.)

9. On November 28, 2012 Artesian Water Company filed a Memorandum of Support for the Motion and responded to the questions. Artesian agreed with the DPA that the case law cited in their motion was controlling precedent and binding on the Commission. Artesian noted that once a meter is tested and found to be in compliance, the Commission has discharged its statutory duties with no further jurisdiction to adjudicate a billing dispute. In response to the Hearing Examiners questions, Artesian answered,

"Formal complaints filed pursuant to 26 Del. Admin. Code 1001-2.3 should be read literally." (See Artesian Response at §3.a.)

Artesian further noted that a mediation process would be an efficient mechanism to determine when a complaint is strictly a billing dispute.

"When a customer calls the Commission Staff to register a complaint, the Staff can offer the informal complaints and mediation process under 26 Del. Admin. Code 1001-2.2." (See Artesian Response at §3.b.)

10. No response was received from the Complainants or Public Service Commission Staff.

E. PRE-HEARING PROCEDURAL CONFERENCE CALL

11. On December 11, 2012, a pre-hearing procedural conference call was held to discuss procedural issues with respect to the Motion and to inform all parties of the expectations related to a hearing scheduled for December 17, 2012. During that call the Hearing Examiner agreed to provide a response on the Motion by close of business on Thursday, December 13, 2012.

F. HEARING OFFICER'S RESPONSE TO THE PUBLIC ADVOCATE

12. In response to the motion, the Hearing Examiner cited three issues of concern with the docket. First, there was the Commission's requirement that the rules governing practice and procedure be liberally construed to secure a just, fair, convenient, economical and expeditious determination in accord with the Commission's statutory and public responsibilities. Second, there was a need to determine whether the complaint was a billing dispute or a tariff service dispute related to meter reading. And third, the Hearing Examiner acknowledged there was a concern with delaying a ruling on the Motion as that would also delay the jurisdictional determination and potentially result in unnecessary effort and cost.

13. While recognizing the issues with respect to the Motion, but having no responses from the Complainants or Staff, the Hearing Examiner proceeded to reserve judgment on the Public Advocate's Motion to Dismiss. The Hearing Examiner noted in his response that a premature ruling on the Motion

could lead to an unfair and unjust determination in this docket, could obfuscate a possible determination of a tariff service dispute, and is not legally required in an administrative hearing. However, the Hearing Examiner provided an opportunity for further discussion on the Motion by asking each of the parties at the beginning of the Evidentiary Hearing to provide a stated position, oral argument on the Motion and any documents they wish to submit for the record.

G. EVIDENTIARY HEARING

14. The Hearing Examiner convened the Evidentiary Hearing on Monday, December 17, 2012 at 10:00 AM. Appearances for the Record were taken followed by discussion on the Motion. The Hearing Examiner explained that discussion on the Motion was not about the merits of the Litton's complaint, but about deciding whether the claim should be heard by the Commission or the Delaware Courts. He further described in simple terms that a ruling of agreement with the motion would mean that there was no need for the PSC to proceed with any factual findings on the case as it was a simple billing dispute in which the Commission lacked jurisdiction. Conversely, he noted a ruling to reject the Motion would mean that there may be a tariff service issue over which the Commission had jurisdiction and the Evidentiary Hearing on the case would continue.

15. Each of the parties provided their position on the motion. The DPA confirmed that they continued to believe this was strictly a billing dispute in which the Commission lacked jurisdiction. Artesian also confirmed their support for the DPA's position. The Complainants started to discuss the case, but were asked to defer that discussion until later. Ms. Litton indicated she did not think it was a billing dispute (Tr. 15:1) Similarly, Mr. Litton indicated it's not a billing dispute (Tr. 15:7-8) The DPA accepted their response as a rejection of the motion (Tr. 15:15-16) Mr. Litton continued on to allege that Artesian had meters mixed up between him and his neighbor for six or seven years. He was paying his neighbor's bill and his neighbor was paying his bill, indicating that Artesian's meter records were poorly maintained. After moving back to discussion on the motion, PSC Staff noted that if there was any question on the accuracy of the meter reading, they believed the Commission would have jurisdiction. Conversely, if the meter readings were accurate, then they believed it would simply be a billing dispute (Tr. 18:9-15)

16. As a result of the positions taken and to ensure fairness to all parties with respect to the complaint, the Hearing Examiner elected to continue reserving judgment on the motion. The DPA objected and again the Hearing Examiner overruled the objection in the interest of ensuring a just and fair determination in a pro se complaint process.

III. SUMMARY OF THE EVIDENCE

A. COMPLAINANTS' TESTIMONY

17. Verbal Testimony of Ms. Marlene Litton and Mr. William Litton - Ms. Marlene Litton asked to introduce the "Sensus" note which had previously accompanied their complaint as an attachment. At this time she called attention to her calculation on the back of the note indicating a usage of 2,820 gallons. She indicated that during the meter test of August 22nd, she proceeded to discuss her understanding of the meter readings with Charmaine Johnson, PSC Representative and Christine, an Artesian Customer Service Representative. She noted her calculation on the back of the note and indicated that everyone in attendance agreed with her interpretation of the meter readings.

"So, I asked Charmaine Johnson, and I asked Christine while they were in the room, I said, Is this not right? Do you agree? And everybody in that room that day said, Oh, yeah, yeah." (Tr. 24:9-12)

Ms. Litton asked that the note on meter readings be entered into the record along with her calculation on the back of the note. Mr. Litton indicated that all water was shut off at their residence prior to their absence and there was no way that the residence could have used 28,000 gallons in their absence. (Tr. 31-32:22-24, 1-10)

18. When asked if they had any additional information, the Littons offered internet articles they had gathered on other meter reading circumstances suggesting that many meter

readings were incorrect. Upon further clarification, it was determined that none of the proposed material was specific to their case

B. ARTESIAN'S TESTIMONY

19. Prior to introducing their witnesses, Mr. Schreppler conducted a limited cross examination of the Complainants. Mr. Schreppler requested additional information on the meter mix-up alleged by the Littons during the Motion discussion. In response to Artesian questioning, the Littons indicated the water company had brought the mix-up to their attention. Upon additional questioning, the Littons indicated they had never asked for a billing adjustment for that period of time as they were not aware of the mix up until Artesian told them. Artesian also appeared to be unaware of this mix-up.

20. Artesian provided two witnesses and seven (7) exhibits to explain their metering system, how meters were read and how the meter indicated the use of 28,000 gallons of water during the July billing period.

21. Verbal Testimony of Mr. Richard Davis, Artesian meter shop technician - Mr. Davis shared an inside look at a typical water meter, testified on how the water meter actually works, confirmed the presence of the Littons' meter, provided the actual cumulative meter reading, discussed the Encoder Receiver Transmitter ("ERT") device, explained how the meter reading was transmitted to a handheld or mobile meter reading device and showed how the device on the Littons' meter was

still operating and reading down to the tens of gallons on the hand held device. Mr. Davis discussed the Artesian meter system which identifies each meter and related customer property I.D., noted how meter readings for several months were consistent in tens of gallons, verified the field order change out for the Littons' water meter, and verified the accuracy of the meter test results for the Littons' meter. (Tr. 36-64)

22. Verbal Testimony of Mr. Thomas McMullen, Artesian Assistant Supervisor of Customer Service and Billing - Mr. McMullen testified on how the readings were entered into the Artesian billing system and provided a series of past year records related to the Littons' account. He discussed how the billing system has high and low limits based on historical usage and how the computer system identified the Littons' July 18 reading as a high consumption reading. Upon further questioning, Mr. McMullen indicated that Artesian, at its discretion, can send out letters of high consumption to customers that exceed average usage, but indicated that no such letter was sent in this case. (Tr. 64-86)

C. DIVISION OF THE PUBLIC ADVOCATE'S TESTIMONY

23. Verbal Testimony of Ms. Charmaine Johnson - The DPA called PSC Staff Member Charmaine Johnson to the stand to testify about the meter test. Ms. Johnson confirmed her signature on the meter test document and that the meter tested within the limits prescribed by regulation. (Tr. 90-92)

D. STAFF'S TESTIMONY

24. PSC Staff offered no testimony into the record

E. REBUTTAL TESTIMONY

25. The Littons had opportunities to cross examine all witnesses and declined to ask any questions. (Tr. 62:13-15), (Tr. 78:6-8), (Tr. 85:23-24), (Tr. 91:13-14) In reply discussion between Artesian and the Littons, the Littons agreed that the meter tested accurately, but again Mr. Litton affirmed that he had no idea where the 28,000 gallons of water had gone. (Tr. 89:2-6) Presentation of general internet material with respect to meter reading accuracy was offered and objected to by Artesian. The objection was sustained.

IV. HEARING EXAMINER FINDINGS

A. BURDEN OF PROOF

26. The Burden of Proof in a complaint proceeding lies with the Complainants pursuant to Rule 24 (C) of the Commission's Rules of Practice and Procedure. This is consistent with the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, which places the burden on the moving party in administrative proceedings. 29 Del. C. § 10125. Generally, the burden of proof rests with the moving party in an adjudicatory administrative proceeding in Delaware. *Weinfeld v. Delaware Board of Medical Practice*, 1999 WL 743803 (Del. Super. 1999). On appeal, in reviewing the

determinations of the hearing officer on the record, the standard employed by the appellate court is whether substantial evidence exists in the record to support the hearing officer's conclusions adopted by the administrative body. *Keller v. Public Service Comm'n*, 1978 WL 192194 (Del. Super. 1978).

B. JURISDICTION AND DISCUSSION OF APPLICABLE LAW

27. The threshold matter presented in this case is jurisdiction. The question is whether the complaint asserts a billing dispute or a quality of service issue. If there is a billing dispute, resolution of the complaint lies in the appropriate court "where there is a bona fide dispute as to the customer's liability for, or to the correctness of, the bill." *Artesian Water v. Cynwyd Club Apts., Inc.*, 297 A.2d 387, 389 (Del. 1972). Addressing a termination of service issue, the Court in *Artesian Water* succinctly expressed the policy considerations for this distinction:

As a matter of fairness and practicality, the public utility must be protected against arbitrary non-payment by consumers of bills as to which there is a pretended dispute, just as the consumer must be protected from arbitrary termination of service for non-payment of bills as to which there is a bona fide dispute. The function of making a quick, initial screening of bona fides of the dispute must rest somewhere; the Public Service Commission is the most appropriate tribunal for that screening. If, upon complaint to the Commission, a bona fide dispute is not made to appear, discontinuance of service may be permitted; otherwise not.

(*Id.* at 389.)

28. The Delaware Public Advocate moved to dismiss on the basis that it was clear from the pleadings that this matter involved a billing dispute. The Public Advocate noted that the claim focused on billing, even accepting all of the Complainants allegations as true. Applying strict standards of pleading, the Public Advocate is correct. The case law clearly provides that the Commission lacks jurisdiction in simple billing disputes related to termination of service. See, e.g., *Artesian Water Co., Inc. v. Cynwyd Club Apartments, Inc.*, 297 A.2d 387 (Del. 1972). However, it is not always clear in pro se complaint proceedings whether it is strictly a billing dispute or an issue with a tariff provided service. "A pro se complaint, however inartfully pleaded, may be held to a somewhat less stringent technical standard than formal pleadings drafted by lawyers." *Vick v. Haller*, Del. Supr., No. 149, 1986, *Christie, C.J.* (March 2, 1987) (ORDER) at ¶ 2.

29. As Artesian rightly points out in Rule 35 of their tariff, an accurate meter is the determining factor for both the customer and Artesian. (See Respondent Reply at §4.b.) Artesian argues that once the accuracy of the meter has been determined, the Commission has discharged its statutory duties. Accordingly, under the case law cited by the Public Advocate, the Commission does not have subject matter jurisdiction. (See Artesian Memorandum of Support at §2.) If all parties agreed as to the accuracy of the meter, the

complaint without question would be a billing dispute under Delaware Court jurisdiction.

30. Up until the Evidentiary Hearing, there was no record of the Complainants' position with respect to the accuracy of the meter. In their complaint, and after the meter test, the Littons continued to dispute the readings and Artesian's interpretation of the readings. Not until after the presentation of Artesian testimony did the Littons' acknowledge the accuracy of the meter.

31. Artesian's reply case verified the accuracy of the meter to be within tariff limits and verified the translation of the meter readings from the actual meter into their meter reading and billing systems. To the extent one agrees that an accurate meter reading is the determining factor between a tariff service and billing dispute, this docket is a billing dispute.

32. As will be outlined below in the discussion of the findings, the facts ascertained in the evidentiary hearing further support the conclusion that this matter is a billing dispute subject to the jurisdiction of the appropriate court. The courts have consistently held that the Commission does not decide a debt action. In *Georgia-Pacific Corp. v. Delmarva Power & Light Co.*, 1992 WL 396397 (Del. Ch. 1992), the Court of Chancery determined that the Commission had exclusive jurisdiction over a tariff dispute but a debt controversy was a matter properly decided by the court. "Because the

Commission 'does not sit as a court of law,' its jurisdiction does not include adjudicating a debt controversy between the parties." (*Bass Properties, Inc., v. Public Service Comm'n*, 2011 WL 2791129 (Del. Super. 2011) at p. 11, citing *Artesian Water v. Cynwood Club Apartments*, 297 A.2d at 389.) The Court of Common Pleas denied the utility's motion to dismiss for lack of subject matter jurisdiction in an appeal of a Justice of the Peace Court decision concerning an action brought by a property owner against the utility to recover funds allegedly paid for services delivered to a prior owner, holding that the Commission has no jurisdiction over a billing dispute. (*ESF Bid Co., Inc. v. Delmarva Power & Light*, Del. CCP, C. A. No., CPU 4-11-000853 (Smalls, C. J.) (July 13, 2011)) In *Malawi v. PHI Service Co.*, 2012 WL 986751 (Del. Com. Pl. 2012), a soldier rented his apartment to his brother while he was deployed. When he returned he tried to open a new account for the residence, however, he was denied because his brother had an outstanding balance. The soldier paid the balance to avoid discontinuance of service, and then sued the company. The Court concluded that it had jurisdiction of the matter because it was a billing dispute, but dismissed the action because payment was voluntarily made to the company.

C. DISCUSSION OF THE FINDINGS

33. Based on the documents filed and assuming an accurate meter, this would appear to be a simple billing dispute; however, there was no confirmation from the Complainants on

meter accuracy prior to the Evidentiary Hearing. During discussion on the Motion, the Littons did not believe this was a billing dispute. As a *pro se* hearing, and to be fair and just, it was appropriate to proceed with the Evidentiary Hearing such that the Complainants could present any additional evidence for consideration.

34. The Complainants alleged an inaccurate bill for water service between June 15 and July 18, 2012, during which time they were only in residence for 15 days. Their argument was that the meter reading had been improperly recorded, which they indicated was agreed to by all parties at the meter test; and that they had turned off all potential water uses during the absence from their residence.

35. During the meter test, an Artesian representative provided the Littons with a note on the May, June and July meter readings. The note did indicate an underlined zero after each reading and could have been interpreted by unknowing parties as a tenth indicator, in which case the calculation Ms. Litton performed could have been correct.

36. Mr. Litton testified that he had turned off all water using devices in the home during their absence and that there was no way they could have used 28,000 gallons in that billing month. Ms. Litton indicated that her concern was with the electronic mobile meter reading device and not the actual meter. (Tr. 88:15-18)

37. Artesian witness Richard Davis described the operation of the Sensus 5/8 water meter, explaining how it moves the register to record usage. (Tr. 37:10-22) He further testified to the meter reading process and the accuracy of the Littons' meter test. (Tr. 56:15-18) He also acknowledged that he had provided the "Sensus" note meter readings from the meter system for Ms. Litton. (Tr. 60:3-8)

38. Artesian witness Thomas McMullen testified that while the meter records down to tenths of a gallon, their meter system records usage in no less than ten gallon increments. Hence, the system meter readings provided to the Littons are actually in tens of gallons which Artesian references by the underlined zero.

39. During Mr. McMullen's testimony, the Hearing Examiner and the DPA both questioned Artesian's use of the billing system high/low warning. Artesian noted that high usage during a dry summer would not necessarily trigger a high usage letter, but could trigger such action during winter months. Mr. McMullen testified that no letter or field check occurred with the Littons' high use warning. (Tr. 83:1-3)

40. During Staff's cross examination Mr. Davis confirmed the July 18th meter reading as 201,580 gallons. He agreed that with the meter reading below 100% at low volumes, the Littons' were actually under billed. Mr. Davis testified that he was unaware as to whether there would be any additional billing to the Littons for the under reported volumes of use.

Mr. Schreppler stipulated for the record that Artesian does not back bill any customers for meters that under record during low flow conditions.

41. The Complainants case was based on the claim of an inaccurate meter reading where Artesian charged them for 28,000 gallons of water use between June 15th and July 18th. The Complainants provided a "Sensus" note on which they had calculated their usage for the same period as 2,820 gallons. Assuming their interpretation of the meter reading was accurate, they would have been significantly over billed for prior water service of 9,000 gallons between February 17th and April 18th, 3,000 gallons between April 18th and May 15th, 4,000 gallons between May 15th and June 15th. According to the Complainants' interpretation of the meter readings, those readings would have to have been 900 gallons, 300 gallons and 400 gallons respectively for water service, but the Complainants also indicated a normal monthly usage of around 3,000 gallons. (Tr. 35:1-2)

42. During testimony the Complainants also registered concern that the meter reading may not have electronically transferred correctly to the Artesian billing system; however, they offered no evidence or witnesses outside of generic internet articles on meter reading which were rejected without applicability to this specific case. (Tr. 14:10-18)

43. There was also a claim that they had meters mixed up with their neighbor in the approximate 2000-2003 timeframe.

(Tr. 78:8) While Artesian was asked to look into the claim, it was not considered part of the Complainants' filing in this case.

44. Testimony on how the Littons secured their home and water access during their absence was limited to Mr. Litton's testimony that he purposely checked and secured all water using appliances before they left and after their return and none were running or could have used the 28,000 gallons.

45. Artesian provided witnesses and exhibits that verified the accurate operation of the meter, the accurate posting of the electronic data transfer and the overall accuracy of the bills. The applicable tariff at Sheet 19, PP 35 requires:

35. The consumption recorded by the meter shall be conclusive for both the customer and the Company except when the meter has been found to be registering inaccurately or has ceased to register. In such cases, a consumption estimate may be based on the customer's prior usage or a meter test.

When a remote meter-reading device has been installed and a discrepancy occurs between the registration on the remote meter-reading device and that on the interior meter, the registration on the interior meter will prevail.

46. The DPA provided a Staff witness that confirmed the accuracy of the meter. Accordingly, I find that the meter was working properly and in accordance with Artesian's tariff requirements.

47. In reply discussion, Ms. Litton agreed that the meter register showed 203,800 gallons and not 2,038 gallons. (Tr. 89:2-4)

48. The accuracy of the meter is the prevailing argument in this docket. Artesian has presented substantial evidence that the meter was working properly. Artesian commendably spent a considerable amount of time and resources to address the concerns raised by the Complainants. Without factual evidence from the Complainants, to support their claim of an inaccurate meter reading, the case becomes a simple billing dispute over the use of the metered service, and it should therefore be dismissed.

V. RECOMMENDATIONS

A. DPA MOTION TO DISMISS FOR LACK OF JURISDICTION

49. The Commission should find this docket as a simple billing dispute and sustain the Motion to Dismiss, notifying the Complainants of their lack of jurisdiction on simple billing disputes, but with recourse through the judicial system.

B. COMPLAINANTS' REQUEST

50. The Commission should acknowledge the accuracy of the meter and the bills rendered to the Complainants and deny the request for billing relief of \$203.49 as it is outside Commission jurisdiction.

C. PSC COMPLAINT PROCEDURE

51. Taking into account that, unlike administrative proceedings, actions in court are often subject to strict

statutes of limitation, the Commission should encourage the Staff Customer Complaint section to:

- a. alert future Complainants to this jurisdictional divide and the Commission's lack of jurisdiction over billing disputes should a meter prove to be accurate, and
- b. offer an informal complaint or mediation process as suggested by Artesian and permitted under 26 Del. Admin. Code 1001-2.2. to help identify and limit non-jurisdictional formal complaints.

Respectfully submitted,



Robert Howatt
Hearing Examiner

Date: 1/8/2013