

COMMISSIONER
Jared S. Chicoine

DEPUTY COMMISSIONER
Christopher J. Ellms, Jr.



TDD Access: Relay NH
1-800-735-2964

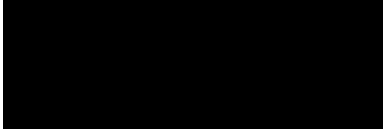
Tel. (603) 271-3670

Website:
www.energy.nh.gov

DEPARTMENT OF ENERGY
21 S. Fruit St., Suite 10
Concord, N.H. 03301-2429

Transmitted via Email Only

October 21, 2024



Re: CPT 2024-006, Complaint of Meter Accuracy and Testing against Pennichuck Water Works, Inc.; Final Decision

Dear [REDACTED]:

This letter serves as notification that the Department of Energy (“DOE” or “Department”) has completed its investigation of the complaint in the above-captioned matter, pursuant to RSA 365:1-4. Based on its investigation, the Department declines to bring proceedings before the Public Utilities Commission (“PUC”) in this matter.

In the complaint, [REDACTED] (“Complainant” or “Customer”) alleged that her water bill from Pennichuck Water Works, Inc. (“PWW” or “Company”) dated June 13, 2024 in the amount of \$267.65, covering the period from April 29 through June 3, 2024, was incorrect because it reflected higher than normal usage during a period when she was not at home. She also argued that PWW is in error because the Company never gave her the option of having an independent test of her meter or offered to test the meter in her presence.

BACKGROUND

On July 12, 2024, the Customer submitted her complaint to the Department for resolution stating that she “would like credit for water, not used, but billed by [PWW].” Specifically, she indicated that PWW showed that her home used 4,200 cubic feet of water between May 11, and May 17, 2024 when the home was unoccupied and during which time the water valve and controller for outside irrigation were set in the “off” position. She further explained that the controller has no wireless capability. She also wrote in the complaint that, upon her return on the afternoon of May 18, 2024, there was no indication of water usage inside or outside the home. The Customer also explained in her complaint that the meter was never tested previously and that PWW did not give her the option for an independent test or tell her that she could be present when the meter was subsequently tested.

On August 9, 2024, PWW responded to the complaint. Along with its response, PWW provided a copy of the Complainant’s bill for the time period between April 29, 2024 and June 3, 2024 (Attachment A). PWW also provided a Data Logger, showing water usage from March 10, 2024 through June 14, 2024 (Attachment B); her monthly usage history between May 31, 2006 and July 1, 2024 (Attachment C); and correspondence between the Customer and the Company (Attachment D). PWW argued that its test of the meter in question, conducted on June 17, 2024, showed it was working properly, and that the Customer’s past usage showed that, historically, there have been periodic spikes in water usage at the residence. Given this, PWW argued that the Customer is not entitled to a bill adjustment pursuant to En 605.05 (Customer Bill Adjustments) or pursuant to PWW’s tariff.¹

On August 20, 2024, the DOE sent several follow-up questions to PWW to which the Company responded on August 26, 2024. In these responses, PWW clarified that the size of the meter in question is 5/8 inch. PWW also confirmed that the meter in question had not been previously tested since it was first installed at the property on October 7, 2005. PWW further explained that it is behind on testing meters due to the COVID-19 pandemic as well as a “temporary shortage of meter technicians.” PWW further clarified that the meter was removed from the Customer’s home on June 14, 2024 and tested at the Company’s facilities on June 17, 2024. According to the Company, this test confirmed that it was operating within the parameters of En 605.03(d). On September 3, 2024, the DOE made additional follow-up requests for information from PWW and by September 13, 2024, the Company fully responded to these requests. This additional information showed the hourly details of water use at the home from May 14 through May 18, 2024. The Company also provided the DOE with a copy of its current tariff.²

DISCUSSION

1) PWW did not test the Complainant’s Meter as required by En 605.04(c) because a period of more than ten (10) years elapsed between the installation and initial test of this meter.

DOE rule En 605.04(c) provides that “[a] water utility shall conduct tests on meters in service, according to the size of the meter in inches, in accordance with the schedule . . . below.” According to the table provided in the rules the maximum interval

¹ A tariff “means the schedule of rates, charges and terms and conditions under which a regulated and tariffed service is provided to customers, filed by a utility and either approved by the commission or effective by operation of law.” Puc 1602.07.

² When referring to the Company’s tariff, the DOE is referring to the version that was made available as of September 6, 2024.

If the Complainant would like a copy of the Company’s tariff, updated as of September 6, 2024, she can request it from the DOE. If she would like the most updated version of the tariff, as required by PUC rules, she can access a copy in PWW’s office “in which it receives applications for utility service.” Puc 1603.04.

between tests for a 5/8 inch meter is “10 years.”³ The meter was installed on the property on October 7, 2005, but was not tested until June 17, 2024, which is a period in excess of eighteen (18) years. Even though this is in violation of En 605.04(c), the rules provide no specific remedy or relief for customers due to this violation.

2) PWW violated En 605.04(f) by not giving the Customer the option to be present when the meter was tested.

Department rules require that “[w]hen a customer requests that the customer’s meter be tested a water utility . . . “[s]hall permit a customer to be represented in person by their agent when the water utility conducts the test of the meter.” En 605.04(f). It is unclear what was specifically communicated between the Customer and the Company, but it was clear that she disagreed with her bill and disputed the high water usage recorded by the meter from May 15 through May 18, 2024. The Company appears to have understood this as a request that the meter should be tested as the Company subsequently removed the meter from the residence on June 14, 2024 and tested it at PWW’s facility on June 17, 2024. Given that the Customer made a request for the meter to be tested, albeit in so many words, PWW, pursuant to En 605.04(f), was obligated to give her the option to be present when the meter was tested.

Although the Company violated En 605.04(f), there is no specific relief delineated under the DOE rules for this violation. In her complaint, the Customer stated that she expressed concerns about the meter testing being conducted by the Company and not by an independent source. PWW is correct in that the rules do not allow for an independent meter test.⁴ However, the rules do allow for a water customer to request a “referee testing,” which is when the customer makes a written application to the DOE for a testing of a meter “in staff’s presence as soon as is practicable.” En 605.04(g). The Company should have made the Customer aware of the option to request a “referee test,” but appears to have not done so.⁵ Although the meter is no longer at the residence, the

³ According to the Company’s tariff “meters will be tested before installation” and “[t]hereafter all meters will be tested in accordance with the requirements of the meter testing rules and regulation of the Public Utilities Commission.” NHPUC No. 6 Water, Original Page 35.

⁴ Although the rules do not provide for an independent test, the Company appears willing to allow an independent test to be conducted at their facilities. “Should a request for an independent testing entity be made, Pennichuck will certainly comply with that process.” Response to Customer Complaint, p. 3 (August 9, 2024). With this said, the Company is under no obligation to pay for an independent test, rather this would be the Customer’s obligation if she wanted an independent test.

There should be no cost for a referee test.

⁵ When notified of an application for a referee test, “the water utility shall not remove, interfere with, or adjust the meter to be tested without the written consent of the customer, and a waiver from the department” In this case, the meter has already been removed from the premises, but given the circumstances, the DOE is still more than willing to be present for a second meter test.

Department is willing to be present during a subsequent test of the meter and the Customer can be in attendance if she prefers.⁶

3) The Complainant is not entitled to a bill adjustment pursuant to En 605.05.

According to the DOE rules a meter shall be determined inaccurate if “(1) [t]he percent error of registration exceeds 103% or is less than 97%; or (2) [t]he registration at the minimum flow exceeds 103% or is less than 90%.” En 605.03(d). If the meter is inaccurate and “in excess of 103% of the correct amount” the utility shall make a refund to the customer. En 605.05(c). The Company explained in its Response that the June 17, 2024 test “indicated the High Flow of 98% and Intermediate Flow of 100%, therefore resulting in a percent error of registration of 99%”⁷ and therefore not in excess of 103%. Response to Department Questions, p. 2 (August 26, 2024). The Low Flow resulted in 98%, and therefore was between the acceptable parameters. *Id.*; see En 605.03(d).

In support of its position that the meter was operating correctly, the Company also reviewed the Customer’s usage history between May 31, 2006 and July 1, 2024. The Company determined that, although the Customer’s daily usage is usually in the single digits (in centum cubic feet) (“ccft”), there have been periodic spikes in usage in the past. The Department reviewed the Customer’s historic water usage as well as the hourly details of water use at the home from May 14 through May 18, 2024. Based on this data, Donald S. Lasell, the Department’s engineer, made the following observations:

“Fall through Spring water use at this residence is very consistent over 15 years at 3 to 4 ccft³/m (hundred ft³/month), while June through September water use varies from 15 ccft³/season to 120 ccft³ season, an 8-fold variation. I suspect this year’s higher use is also specifically due to lawn irrigation. It is claimed that the valve to the automatic irrigation system was off. . . . Automatic irrigation systems are sometimes difficult to program and this could be just a programming issue. . . . [W]ater would also still be available from a backyard spigot, to anyone when the irrigation valve is closed.”

The DOE cannot conclude exactly why the Customer’s bill had a spike in usage during the period when she claims that she was not at her residence and the outside irrigation water valve and controller were in the “off” position.⁸ Based on the information provided by the Company, the meter appeared to be working properly. As discussed above, the Customer can avail herself of a “referee test” with a Department representative

⁶ The Company explained that the meter is being held at PWW facilities “until this matter is resolved.” Response to Department Questions, p. 2 (August 26, 2024).

⁷ “The percent error of registration shall be taken as the algebraic sum of the errors at the intermediate and maximum rates of test flow, as set forth in the Table 6.5.1, divided by 2.” En 605.03(e).

⁸ The DOE cannot independently confirm these claims.

present. If this test uncovers new information, the Customer is welcome to submit this information to the Department for further review.⁹

CONCLUSION

The DOE finds that PWW did, in fact, violate provisions of En 605.04, but at this time, the Department declines to initiate proceedings before the PUC for customer remuneration. The DOE makes this decision because the meter appears to have been operating properly and the Customer was not harmed by the Company's disregard of En 605.05. However, the DOE does intend to conduct a general investigation relative to the Company's apparent violation of En 605.04(c), regarding the testing of meters in a timely manner, in a future proceeding, and, if necessary, consider whether fines may be appropriate in this regard in accordance with RSA 365:41. Further, the PUC, may upon its own volition choose to investigate PWW's failure to test its meters as required by En 605.04(c). *See* RSA 365:5. With regard to the present Complaint, however, the Department encourages PWW and the Customer to work together in order to reach a mutually agreeable resolution of the bill in question. The Company is also reminded to adhere to its tariff specifically Original Page 14 and 15 to determine whether the Complainant entitled to a payment arrangement to pay the arrearage. Finally, the DOE is willing to be present for a subsequent test of the meter in the Customer's presence. If the results of that further test indicate that the meter is not working properly, the Customer may submit this information to the DOE for further review within a year of the date of this decision.

The DOE has waived the filing of paper copies in this matter and this final decision is being sent electronically only.

If the Complainant is unsatisfied with the DOE's final disposition of this complaint, then pursuant to RSA 365:4 the Complainant may petition the PUC to resolve the matter through an adjudicative proceeding.

Sincerely,



Molly M. Lynch
Staff Attorney/Hearings Examiner

cc: Marcia Brown, Esq.
John Boisvert, PWW CEO/Chief Engineer
David Shulock, DOE General Counsel
Amanda Noonan, DOE Director of the Regulatory Division
Jayson P. Laflamme, DOE Water Group Director
Paul Kasper, DOE Director of the Enforcement Division
Don Lasell, DOE Utility Safety Engineer
Public Utilities Commission

⁹ The Department will reopen this complaint if it receives new information within a year of the date of this decision.