

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: [REDACTED]
11 [REDACTED] Morse St NE
Washington DC 20002

Account No. [REDACTED]
Case No. 23-221269

Before Carolyn Elefant, Hearing Officer
July 3, 2024

This proceeding arises out of the customer's challenge to DC Water and Sewer Authority's (DC Water) revised adjustments for excess water and sewer charges ordered by a March 24, 2024 decision issued by Hearing Officer Janet Blassingame (March 2024 Order). The matter came before this Hearing Officer on July 3, 2024. Present for the hearing was [REDACTED] the customer and property owner, Mr. [REDACTED]'s attorney Charles Tolliver, and Kimberly Arrington, Geneva Parker and Arlene Andrews on behalf of DC Water.

By way of background, the March 2024 Order found that DC Water erred in denying the customer an adjustment for excess water charges caused by an underground leak that the customer repaired. The March 2024 Order instructed DC Water to determine the appropriate adjustment for excess water charges for the period December 11, 2021 to March 23, 2022 and to amend the previously granted adjustment for sewer charges to extend through March 13, 2022.

On remand, DC Water determined that no adjustment was due since a \$3752.62 adjustment previously calculated for sewer charges exceeded the recalculated adjustment of \$3170 for both excess water and sewer charges. Specifically, a letter dated May 31, 2024 from the DC Water explained in relevant part (emphasis added):

*Please be advised that the charges for this adjustment period have already been adjusted to your benefit through the previous ("sewer only") adjustment applied on 12/13/2023 in the amount of \$3,752.62. Additionally, you received direct incentive credits from DC Water on 05/16/2023 for the "Catch Up Offer" in the amount of \$1,263.12. A recent review of the sewer only adjustment confirmed that the adjusted amount was 100% of **all** sewer charges instead of the **excess** sewer charges. Therefore, no further adjustments are required.*

In accordance with District of Columbia Municipal Regulation Title 21 Chapter 4 Section 407.5 (see below), the adjustment due by Order in your case is 50% of excess water consumption totaling \$561.31; and 100% of excess sewer consumption totaling \$2,608.69. The total adjustment due is \$3,170.00. The total amount in credits you received from DC Water is \$5,015.74. As of the date of this letter, the balance on your account is a credit balance of \$4,802.12 for the period through June 9, 2024.

At the hearing, Mr. Tolliver argued that DC Water's calculation of the adjustment of the excess water charges was inconsistent with 21 DCMR 407.5 which provides that the adjustments shall not exceed 50% of excess water usage over the average consumption for the premises over three previous comparable periods. Mr. Tolliver argued that the period between 2018 to 2021 was not comparable within the meaning of 21 DCMR 499.1 because there was a change in occupancy. During that period, two people were living in the house in contrast to June 2021 and thereafter when the property was vacant. Mr. Tolliver proposed that any period between 2022 to 2024 would be comparable.

Mr. Tolliver further argued that the hearing officer's decision provided for the adjustment to be made starting in December 2021, but on the disputed balance sheet, the disputed balance review starts in January. Mr. Tolliver remarked that this was another example of the inconsistencies between the March 2024 and DC Water's calculation of the adjustments.

Ms. Parker testified regarding DC Water's adjustments. Ms. Parker stated that the adjustment period used was December 11, 2021 through September 13, 2022. She explained that although the March 2024 Order extended the adjustment period to March 20, 2023, there was no excess consumption after September 13, 2022 so the adjustment would not change. Ms. Parker added that extending the period would increase the daily average consumption and subsequently lower the adjustment amount, so DC Water left it from December to September, which was the high usage period.

Ms. Parker next explained that DC Water did use a similar period from 2018, 2019, and 2020 to calculate a daily average consumption and based the adjustments on those comparable periods. The calculations used a total of 277 days in the period with a total usage of 352.76 CCF. The daily average consumption obtained from the comparable period was 236.83 CCF. Using these calculations, the adjustment for 50% of excess water consumption was \$561.31 and for 50% of excess sewer consumption was \$2,519.87, plus \$66.32 for the payment in lieu of taxes fee and \$22.50 for the right of way fee imposed. This accounted for the total calculated adjustment of \$3,170.

Ms. Parker explained that in recalculating the adjustment of \$3170, it was *less* than the \$3752.62 adjustment that DC Water had previously applied for 100% of total (rather than excess) sewer charges. She stated "we realized that the adjustment we were preparing was actually less than the adjustment we previously applied to the account. For that reason, DC Water determined that no additional adjustment beyond what had already been applied was warranted.

FINDINGS OF FACT

1. The March 2024 Order instructed DC Water to determine the appropriate adjustment for excess water charges for the period December 11, 2021 to March 23, 2022 and to amend the previously granted adjustment for sewer charges to extend through March 13, 2022.
2. During the time period of the disputed bills from June 2021 onward, the property was vacant following the death of the customer's mother. (Testimony of Ms. Tolliver, March 2024 Order)

3. DC Water provided a letter dated May 31, 2024 explaining its implementation of the March 2024 Order (DC Water May 31, 2024 Letter)
4. The adjustment calculations for excess water charges used the comparable period from 2018, 2019, and 2020. (Testimony of Geneva Parker).
5. Mr. [REDACTED] received a one-time credit as part of a "catch-up" program in the amount of \$1,263.12. (Testimony of Geneva Parker).
6. DC Water previously applied an adjustment of \$3,752.62 for 100% of the total rather than excess sewer consumption. (Testimony of Geneva Parker).
7. The Hearing Officer January 2024 Decision ordered DC Water to make several adjustments to water and sewer charges that had been assessed against Mr. [REDACTED]. (Hearing Officer January 2024 Decision).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. If, pursuant to § 407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR 407.4.

4. Under 21 DCMR 407.5, the adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):

- (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
 - (b) The owner has repaired the leak within 30 calendar days after the bill investigation report is issued to the owner or occupant;
 - (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
 - (d) The request for adjustment has been made in accordance with § 402.1 (a).
5. The General Manager may adjust up to 100% of excess sewer charges resulting from an underground leak if it is determined that water usage did not enter the wastewater system. 21 DCMR 407.6.
6. Comparable periods means (a) No change in occupancy; (b) The same or like seasons; and (c) The same or like number of days and billing periods. 21 DCMR 21-499.

DECISION

This proceeding involves a customer challenge to revised adjustments for excess water and sewer charges ordered by the March 2024 Order. As explained below, I adopt DC Water's previously calculated adjustment of \$3750 for excess sewer chargers only. For excess water, DC Water must recalculate the charges using the comparable period of December 11, 2020 to September 13, 2021 and must apply the adjustment separately from the previously calculated adjustment for sewer charges.

Excess Sewer Charges

Under 21 DCMR 407.6, up to 100% of excess sewer charges may be adjusted when they result from an underground leak. DC Water initially adjusted the sewer charges for the period December 11, 2021 to March 23, 2023. March 2024 Order at 14. The amount of the adjustment was \$3752.62. May 31, 2024 Letter. At the hearing, DC Water stated that the \$3752.62 dollar amount actually represented an adjustment to *total* sewer charges rather than excess sewer charges as required by the regulation and therefore was larger than if it had been correctly calculated under Section 407.6. DC Water also explained that it did not extend the adjustment period from September 13, 2022 through March 23, 2023 as instructed by the March 2024 order because the excess usage had ceased on September 13, 2022. DC Water added that if the adjustment period for sewer charges had been extended through March 2023, the resulting amount would have been lower.

I credit DC Water's explanation for its departure from the March 2024 Order because it is reasonable and more importantly, favors the customer. In addition, the customer's counsel had an

opportunity to challenge or cross-examine DC Water when it offered its rationale for the chosen adjustment period but did not do so.

Therefore, the \$3752.62 adjustment for sewer charges is affirmed with the caveat that it applies to sewer charges only and may not be used to offset an adjustment for excess water charges which is what DC Water has done here. At the hearing, DC Water explained that the \$3170 adjustment that it had prepared in response to the March 2024 Order was actually less than the adjustment [of \$3752.62] previously applied to the account. Therefore, DC Water took the position that the \$3170 adjustment had already been subsumed by the larger adjustment so no additional adjustment was due. *See also* May 31, 2024 Letter. The problem with this reasoning is that the \$3752.62 adjustment was intended for sewer charges only while the \$3170 adjustment includes both water and sewer charges. This results in a portion of the customer's sewer charge adjustment being applied to water charges. DC Water must instead calculate an adjustment for excess water charges separately and apply the excess water adjustment to the customer's account as an additional and separate adjustment rather than treating it as having been offset by the previously-applied sewer charge adjustment.

Excess Water Charges

The March 2024 Order held that DC Water erroneously denied the customer an adjustment for excess water charges caused by an underground leak under 21 DCMR 407.4. The Order instructed DC Water to award the customer an adjustment of the excess water charges for the period December 11, 2021 through March 23, 2023. On remand, DC Water calculated an adjustment amount of \$561.31 for 50% of excess water consumption for the period December 11, 2021 to March 23, 2023. *See* May 31, 2024 Letter, Usage Adjustment Form.

The customer challenged DC Water's adjustment. He argued that the periods that the utility applied to calculate the adjustment were not comparable under 21 DCMR 407.4 because the property was occupied by two people whereas it was vacant for the period when the excess consumption occurred. The customer proposed using any period such as 2022, 20223 or 2024 when the property was unoccupied. The customer also asserted that DC Water's adjustments were inconsistent with the March 2024 Order because they excluded December 2021 from the calculation.

Section 407.5 of Part 21 of the DCMR provides in relevant part that:

the adjusted amount for excess water charges resulting from a leak 'shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three previous comparable periods for which records are available.

Under Section 21 DCMR 499, a comparable period is defined as having no change in occupancy, same or like seasons and same or like days or billing periods.

DC Water chose the periods December 13, 2018 to September 12, 2019; December 12, 2019 to September 11, 2020 and December 11, 2020 to September 12, 2021 for

recalculating the excess water adjustment. *See* Usage Adjustment Form. I agree with the customer that these periods were not comparable within the meaning of 21 DCMR 499 because the property had a change in occupancy in June 2021, going from two occupants to vacancy.. The Usage Adjustment form corroborates that the periods were not comparable as it shows billed usage for 2018-19 as 119.77 CCF and for 2019-2020 as 118.97 CCF. But for the period 2020-21 which includes six months of vacancy, billed usage is only 36.35 CCF, which is substantially less than the two other periods.

Although DC Water did not apply comparable periods to calculate the excess water adjustment, the customer's solution of using a period from 2022 onward would not comply with 21 DCMR 407.5 either. This is because 407.5 requires the adjustment to be based on the average of up to three *previous* comparable periods, and the dates proposed by the customer are subsequent.

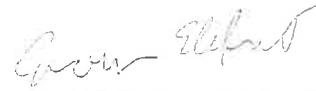
To harmonize the conflict between the "comparable period" and "up to three previous period" requirements for calculating the excess water charge, I will select December 11, 2020 through September 13, 2021 as the previous comparable period for calculating the adjustment. This is both a previous period and is roughly comparable because it captures six months of the period of no occupancy and is for a like season and duration. Reliance on this single period is sufficient because 21 DCMR 407.5 allows use of up to three previous comparable periods, meaning that fewer than three periods may be used.

As for the customer's other objection, there is no explanation as to why the Disputed Billing sheet begins on January 12, 2022 as opposed to December 12, 2021 as required by the March 2024 Order. DC Water must revise its calculation consistent with the December 11, 2021 start date. However, consistent with my ruling with respect to sewer charges, I find that DC Water's use of September 13, 2022 as the end date for calculating excess water charge adjustment because excess use terminated on September 13, 2022 and using the September 2022 end date as opposed to the March 2023 end date will result in a larger adjustment for the customer.

Accordingly, I order the following:

- (1) The \$3752.62 adjustment for excess sewer charges is affirmed. However, this amount applies *only* to sewer charges and may not be used to offset excess water charges or other costs.
- (2) DC Water is instructed to recalculate the adjustment of excess water charges for the period December 11, 2021 through September 13, 2022, using data from December 11, 2020 through September 12, 2021 as the "previous comparable period" as specified in 21 DCMR 407.5 for calculating the adjustment. Further, DC Water must grant the adjustment for excess water charges *in addition* to the \$3752.62 adjustment for excess sewer charges, and cannot use credits from the sewer charges to offset excess water charges.

- (3) DC Water is directed to use December 11, 2021 as the start date for the calculations shown on the disputed billing sheet or in the alternative, to explain why the December date was not used.



Carolyn Elefant, Hearing Officer

Date: October 11, 2024

11 [REDACTED] Morse St NE
Washington DC 20002

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE:

██████████
30 █████ Sherman Ave NW
Washington DC 20001

Account No. ██████████
Case No. 24-39904
Case No. 24-95909
Case No. 24-135490
Case No. 24-177033

Total Amount in Dispute: \$6,356.86

Before Carolyn Elefant, Hearing Officer
August 21, 2024

The customer contested four water bills for the period of (i) August 25, 2023 to September 27, 2023, in the amount of \$1,477.51, (ii) for September 28, 2023 to October 26, 2023, in the amount of \$1,367.38, (iii) for October 27, 2023 to November 28, 2023, in the amount of \$2,325.28, and (iv) for November 29, 2023 to December 27, 2023, in the amount of \$1,186.69. The DC Water and Sewer Authority (DC Water) investigated and determined that no adjustment to the bills was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on August 21, 2024, for a remote hearing. Present for the hearing was ██████████ the customer and property owner, and Arlene Andrews on behalf of DC Water.

The property involved is a D.C. rowhouse comprised of two units that Mr. █████ has owned for approximately five years. Mr. █████ resided in the property for two and a half years before renting out one of the units. Both units are linked to the same meter. Prior to August 2023, the average water bill was around \$300 for both units.

Mr. █████ testified that he received a bill in the amount of \$660 for the billing period of July to August 2023 and assumed that the spike in his water bill was related to an issue with the property's tenants. Mr. █████ stated that he communicated with the tenants to try and identify the source of the spike, but then received the initial disputed bill in the amount of \$1,477.51 a month later. Mr. █████ noted that, over a four-month period, he received nearly \$7,000 in water bills, which he disputed but has since paid.

Mr. █████ testified that he called a plumber who discovered a problem with one toilet. Mr. █████ added that the plumber did not believe the high bill amounts could be the result of the toilet issue, because there was no evidence of a significant leak found and such a high amount of water would cause noticeable water damage. Mr. █████ stated that the plumber informed him that if the meter was constantly running, the meter would indicate if there was a leak, even if the leak was not within the property. Mr. █████ testified that the plumber checked the outdoor meter, confirmed there was no continuous running that would indicate a leak outside, and concluded that there were no leaks significant enough to warrant a \$2,300 water bill on a residential property.

Mr. ██████ noted that, after the four-month spike in his water bills, his usage returned to normal. Mr. ██████ stated that DC Water installed a new meter on his property in the interim and that his water bills had been typical since this occurred. Mr. ██████ added that he believed the meter was replaced in February or March 2024.

Mr. ██████ testified that he had received high usage notifications from DC Water and attempted to determine what was causing them to be sent. He noted that hiring the plumber was one such attempt. Mr. ██████ stated that he had been unable to speak with anyone at DC Water and that all he was told was to file a dispute, which he then did. Mr. ██████ explained that after disputing the high bill, he received a letter stating that no adjustment was warranted, but the letter provided no clear explanation.

Mr. ██████ requested clarification as to why he received a \$2,300 water bill, as he believed this indicated an abnormally large amount of water usage for a residential property. Mr. ██████ added that DC Water had replaced his meter without explanation, leading him to question whether there had been an issue with the original meter. Mr. ██████ concluded that he was uncertain why his dispute was dismissed without further clarification.

Ms. Andrews responded that the property's meter was replaced on April 30, 2024, because Mr. ██████ had submitted his request for an administrative hearing. Ms. Andrews explained that DC Water pulled and tested meters for accuracy prior to administrative hearings in accordance with DC Water policy. Ms. Andrews stated that DC Water only has access to the meter readings of actual use and cannot know the reason for high usage inside a property. Ms. Andrews clarified that the meter system consists of two components, the meter itself and the meter transmitting unit. Ms. Andrews testified that the transmitting unit receives the meter readings and sends them to the company for billing. Ms. Andrews noted that DC Water receives daily, typically hourly, readings for most customers and, as a courtesy, sends high usage or consecutive usage notification alerts to help customers identify potential issues on their property when usage increases. Ms. Andrews explained that high usage could occasionally result from wasted water moving directly into the sewer without visibly leaking into the property. Ms. Andrews testified that, as DC Water cannot monitor inside the property, they can only bill based on the recorded usage.

Mr. ██████ reiterated that before receiving the \$2,300 bill, he had a plumber inspect all the toilets in response to the high usage notices he had been receiving on a daily basis. Mr. ██████ noted he had been panicked and reliant on the plumber's assessment of the situation. Mr. ██████ stated he was unsure how the problem had self-corrected when the plumber found no issues. Ms. Andrews responded that DC Water could not explain how the issue self-corrected. Ms. Andrews also mentioned that she believed the plumber had noted a running toilet on the property, which he may have repaired. Mr. ██████ testified that the plumber repaired some clogs but marked in his report that no leaks were detected. Ms. Andrews noted that the report stated that the plumber found a leak coming from the tank to the bowl bolts on the toilet and that the toilet was also clogged.

Mr. ██████ inquired about the highest water bill DC Water had on record for a residential property, as he believed that his billing was excessive, even if there had been a minor issue with the toilet. Ms. Andrews responded that it depended on the issue with the toilet and how much water was wasted. Ms. Andrews recalled that DC Water had seen a range of billing amounts, including

numbers such as \$200, \$2,300, and \$5,000. Mr. ██████ noted that the disputed \$2,300 bill was issued after he had the plumber inspect the property. Ms. Andrews restated that, as the issue occurred within the property and DC Water billed usage at the meter, she was unable to explain the source of the high usage.

Ms. Andrews explained that when a customer submitted a dispute, DC Water ensured the account was billed correctly by verifying the reads received from their equipment and testing the meter for accuracy. Ms. Andrews stated that DC Water followed this standard process for Mr. ██████ property and did not find any issues on their end. Ms. Andrews testified that whatever issue at the property was thus the responsibility of the property owner and not DC Water.

Mr. ██████ stated that he was unsure why his meter was replaced by DC Water and that he had done his due diligence by hiring a plumber after getting the high usage notification alerts. Mr. ██████ reiterated that he had received a bill for \$2,300 more than a month after the plumber had completed his inspection of the property. Ms. Andrews suggested that there could have been additional issues at the property beyond what the plumber initially identified, and that the plumber may have overlooked something. Ms. Andrews noted that, in some cases, multiple inspections by different plumbers were required to accurately identify an issue at a property. Mr. ██████ responded that, if such an unidentified issue existed, it would still be ongoing, as the high usage had resolved itself without any external intervention. Ms. Andrews restated that she was unable to explain the source of the high usage as DC Water only billed the usage on the meter.

Mr. ██████ noted that the preponderance of evidence rested on him and that the situation he found himself in was difficult to navigate. Mr. ██████ stated that, despite following all the appropriate steps, including hiring multiple plumbers to inspect the property, the company had not provided him with a clear explanation. The Hearing Officer asked if Mr. ██████ had access to the other plumber's reports outside of the one report submitted to the hearing. Mr. ██████ responded that he did not, as the first plumber he hired after receiving a \$660 bill found nothing during the inspection. Mr. ██████ added that he subsequently hired Magnolia, a company he believed to consist of expert and master plumbers, to conduct an inspection of the property. Mr. ██████ concluded that he did not believe that the sole issue Magnolia found with a toilet was the cause of over \$6,300 in bills for a four-month period.

Ms. Andrews testified that DC Water's position is that no adjustment is warranted. She explained that the charges in question were built based on actual meter readings. Ms. Andrews stated that Meter ID number ██████ which serves the property, was removed on April 30, 2024, and tested on May 1, 2024, for accuracy. Ms. Andrews reported that the meter demonstrated an overall accuracy of 100.51%, within the testing standards set by the American Water Works Association. As stipulated by the American Water Works guidelines, a meter reading within the range of 98.50% to 101.50% is considered a passing result. Ms. Andrews added that DC Water's investigation did not disclose a meter overread or faulty computation.

Ms. Andrews testified that DC Water reviewed the Plumber's Report submitted by the customer stating that total repairs were made. Ms. Andrews noted that water usage still continued to increase until December 12, 2023, after which it began to decrease, indicating that the cause of the wasted water was controlled at the property. Ms. Andrews stated that under District Municipal

Regulation 408.1, in cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excess consumption, no adjustment is warranted.

Mr. ██████ requested clarification on why the meter was removed, replaced, and tested in April and May of 2024, long after the issues had occurred at his property. Ms. Andrews responded that DC Water does not remove meters for testing, unless a customer requested an administrative hearing. Ms. Andrews explained that, before the hearing is scheduled, DC Water pulls the meter and tests it for overall accuracy. Ms. Andrews stated that during DC Water's initial investigation, they did not see the need to test the meter, as it appeared to be functioning properly, and thus had not tested it earlier. Mr. ██████ asked how DC Water knew the meter was operating correctly if it was not tested at the time of his dispute. Ms. Andrews explained that the meter was accurately registering water usage without showing any signs of malfunction, such as reading backwards or displaying unusual behavior. Ms. Andrews noted that the DC Water system also receives error codes when a meter is not functioning properly, and that no such error codes were received for this meter.

Mr. ██████ stated that he was unsure how the issue had then resolved itself in January 2024 and noted that there had been no change in tenants during the disputed billing periods. Mr. Weaver requested clarification on how DC Water handled situations like his, noting that it had taken a considerable amount of time to reach the point of having an administrative hearing to address the issue. Mr. ██████ stated that he could not afford a similar situation to happen again, as \$7,000 was a significant expense for a household to bear, and he needed guidance on how to manage such occurrences in the future. Mr. ██████ expressed concern that he was vulnerable to the same problem repeating in the future as the issue had resolved itself without explanation.

Ms. Andrews reiterated that DC Water was unable to explain issues that occurred inside of the property. Ms. Andrews added that when a customer disputes a bill, they investigate to ensure that nothing on the DC Water's side is causing the increase. Ms. Andrews restated that DC Water is unable to provide an adjustment for inconclusive findings under District Municipal Regulation 408.1. Mr. ██████ asked Ms. Andrews to provide DC Water's definition of "inconclusive". Ms. Andrews stated that DC Water defined "inconclusive" as a situation where the customer is unable to provide details about what occurred at their property, and DC Water's investigation finds no issues on their end, leaving the cause of the increased usage unknown. Ms. Andrews concluded that, when neither the customer nor the company can identify the cause of the increased usage, the situation is classified as having inconclusive findings.

Mr. ██████ queried if that indicated that DC Water could assist him if he was able to determine the cause of the increased usage. Ms. Andrews responded that whether an adjustment could be made depended on the specific issue at the property. Ms. Andrews noted that DC Water followed regulations, and if the situation at the property qualified for an adjustment under those regulations, they would proceed accordingly. Ms. Andrews testified that if the issue did not warrant an adjustment, DC Water would inform the customer of the applicable regulation that explained why the adjustment could not be made.

Mr. ██████ asked to clarify if he would then qualify for an adjustment if he could identify the cause of the high bills, such as a faulty toilet that he was unable to repair. Ms. Andrews replied

that, in the case of a faulty toilet unable to be repaired, no adjustment would be made under DC Municipal Regulation 406.2, which states that if the investigation discloses leaking faucets, leaking fixtures or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributed to the leak. Mr. ██████ asked what would then be considered conclusive from his side to warrant an adjustment. Ms. Andrews noted that if there were an underground leak between the meter and the house, such as a burst pipe that required a plumber to dig in the yard for repairs, DC Water would conduct an audit. Ms. Andrews stated that in such cases, the customer would receive a 50% adjustment on the excess usage.

Mr. ██████ stated that he had nothing further to add and expressed his frustration with the situation. At that point, the hearing concluded.

Based upon the foregoing evidence and testimony adduced at the hearing, the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a D.C. rowhouse comprised of two units linked to the same meter that Mr. ██████ has owned for approximately five years. Mr. ██████ resided in the property for two and a half years before renting out one of the units. (Testimony of Mr. ██████)
2. The bills challenged by the customer were for the period of August 25, 2023 to September 27, 2023, in the amount of \$1,477.51; for September 28, 2023 to October 26, 2023, in the amount of \$1,367.38; for October 27, 2023 to November 28, 2023, in the amount of \$2,325.28; and for November 29, 2023 to December 27, 2023, in the amount of \$1,186.69. (Hearing Notice dated August 14, 2024).
3. Water use initially spiked around July 2023. A plumber contacted by Mr. ██████ discovered a leak coming from a clogged toilet from the tank to the bowl bolts but did not believe it to be the source of the high usage. (Plumber's Report dated October 2, 2023, Testimony of Mr. ██████)
4. Mr. ██████ noted that, after the four-month spike in his water bills, his usage returned to normal. (Testimony of both parties).
5. Mr. ██████ testified that he received a bill for \$2,300 more than a month after the plumber had completed his inspection and repair at the property. (Testimony of Mr. ██████)
6. Mr. ██████ testified that he had received high usage notifications from DC Water. (Testimony of Mr. ██████)
7. The property owner submitted the Plumber's Report dated September 29, 2023, but mentioned other plumber's inspecting the property and their findings that there were no leaks on the premises. (Testimony of Mr. ██████)
8. Ms. Andrews testified that the disputed charges were based on actual meter readings obtained by DC Water's automated meter infrastructure and there was no indication of any faulty computations. (Testimony of Ms. Andrews).
9. DC Water removed the meter on April 30, 2023, and tested it on May 1, 2023, demonstrating an overall accuracy of 100.51%, within the testing standards set by the American Water Works Association. A meter reading within the range of 98.50% to

101.50% stipulated by the American Water Works guidelines is considered a passing result. (Testimony of Ms. Andrews).

10. DC Water's investigation determined that an adjustment is not warranted under District Municipal Regulation 408.1, in cases in which all checks and test results show inconclusive findings and there are no reasonable explanations for excess consumption, no adjustment is warranted. (Testimony of Ms. Andrews).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. D,C, Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
4. Meters shall be read quarterly or at such other times as the General Manager shall determine. 21 DCMR 308.1.

DECISION

The customer in this matter was unable to meet the burden of proof to show that the water charges are in error or that he should not be responsible for their payment.

This is a case in which high water usage registered on the water meter for a period of several months before self-correcting and neither the customer nor the utility can determine the cause of the excess water usage.

The customer first noticed a modest increase in his bills around August 2023 when he received a \$660 charge. After communicating with his tenants, the customer was unable to identify the source of the spike. The following month, the customer received a substantially higher bill in September 2023 for \$1477.51, which prompted him to hire a plumber. The plumber found and repaired a small leak, but the increased bills continued for three additional months at which point the excess usage resolved on its own. The customer had no explanation for the increased use.

On the utility's part, DC Water conducted an investigation for the disputed billing periods. In April 2024, DC Water pulled and tested the meter and determined that it was functioning within accepted range of meter accuracy. DC Water also found that there was no meter overread or faulty computation. DC Water concluded that because the excess usage decreased on its own after December 12, 2023, the cause of the wasted water was controlled at the property.

In cases such as this one where the cause of high water use cannot be determined after tests and checks have been performed, no adjustment shall be made for any portion of the excessive consumption. 21 DCMR 408.1. Here, DC Water's investigation found no meter malfunction, and while the customer's plumber's report showed a small leak, that was not the cause of the excess usage because it continued even after the leak was repaired.

Although 21 DCMR 408.1 compels me to affirm the charges, I note the customer's frustration at a nearly \$7000 bill for unexplained excess water use. At the hearing, the customer asked what circumstances might warrant an adjustment and DC Water responded that an underground leak between the meter and house or burst pipe that required digging to repair might qualify for a 50% adjustment on the excess use charges. Should the customer identify an eligible grounds for an adjustment going forward and bring it to DC Water's attention, I expect that DC Water will review the request at that time.

Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.



Carolyn Elephant, Hearing Officer

Date: October 11, 2024

██████████
30 ██████████ Sherman Ave NW
Washington DC 20001

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE:

██████████
51██████████ Rockwood Pkwy NW
Washington DC 20016

Account No. ██████████

Case No. 24-108288

Total Amount in Dispute: \$1,291.86

Before Carolyn Elefant, Hearing Officer
August 7, 2024

The homeowner ██████████ contested a water bill for the property at 5104 Rockwood Parkway NW Washington D.C. The customer contested two water bills, the first dated October 25, 2023, for the period of August 12, 2023 to October 13, 2023, in the amount of \$1,270.23, and the second for the period of October 14, 2023 to November 14, 2023, in the amount of \$195.83. The DC Water and Sewer Authority (DC Water) investigated and determined that no adjustment to the bill was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on August 7, 2024, for a remote hearing. Present for the hearing was ██████████ on behalf of her property, and Kimberly Arrington and Kristen Gibson who appeared on behalf of DC Water.

The property involved is a home purchased in March 2020. The house has no automatic sprinkler. The home was unoccupied during the disputed billing period and checked occasionally by the homeowner's son.

Ms. ██████████ presented a chart of her usage taken from the DC Water website to show her average water usage relevant to the disputed billing period. Ms. ██████████ explained that the graph showed she was not in residence from November 2022 to April 2023, as the water usage was very low. Ms. ██████████ stated that the increase in May and June 2023 indicated her residence in the property before it was unoccupied again from July to September 2023. She noted that she resumed occupancy in October and November 2023, stating that this could explain slight increases in the average water usage. Ms. ██████████ then testified that the chart illustrated an increase in usage during August and September despite the fact that the house was unoccupied. Ms. ██████████ concluded that she believed the chart was accurate for the months of November 2022 to May 2023, and possibly July 2023, but found it inaccurate for the months when the home was unoccupied, yet, there was an unexplained increase in usage.

Ms. ██████████ stated that she immediately contacted CroppMetcalf Services, a plumbing company she found highly trustworthy due to their long-standing service to her, after receiving a high bill from DC Water in October 2023. Ms. ██████████ testified that she had the property inspected at the earliest opportunity, with the work being performed on November 21, 2023. Ms. ██████████ quoted the work order, stating that it listed that none of the fixtures in the residence were dripping

or leaking, all of the toilets passed their tests, and that the technician noticed that the meter at the street continued to run after shutting off the property's main water valve. Ms. [REDACTED] testified that CroppMetcalf Services informed her this suggested a possible leak between her property and the curb, and they recommended she contact the company American Leak Detection.

Ms. [REDACTED] stated she then promptly scheduled American Leak Detection to conduct an inspection of the property on November 30, 2023. Ms. [REDACTED] added that she had submitted both plumber's reports to the hearing. Ms. [REDACTED] testified that the American Leak Detection's report concluded a leak was detected in a first-floor commode during a dye test, and that during their survey of the curbside water meter, the readings appeared to fluctuate up and down, suggesting a potential malfunction issue with the meter itself. Ms. [REDACTED] noted that the report also found no leaks or pressure loss in the water heater and boiler. Ms. [REDACTED] stated that American Leak Detection recommended a government inspector check the electric water meter to ensure it was functioning properly.

Ms. [REDACTED] then added that she had a video on her phone of the meter. Ms. [REDACTED] stated that she approached a DC Water technician while he was working on her neighbor's property, initially assuming he was there to inspect her meter. Ms. [REDACTED] stated that the technician agreed to examine her meter when she told him she was having issues. Ms. [REDACTED] recalled that the technician took a video of the water meter decreasing after a faucet near the property's garage door was turned on and subsequently informed her that the water meter was defective. Ms. [REDACTED] stated that she agreed with this assessment and sent DC Water emails requesting they investigate her meter. Ms. [REDACTED] noted that the DC Water technician advised her there were frequent issues with the meters in her neighborhood due to satellite readings, and that an in-person inspection was the only way to confirm the accuracy of her meter readings.

Ms. [REDACTED] testified that she had paid the disputed bills and was not contesting them due to financial inability, but because she believed the charges were incorrect, as the property was unoccupied during the increase in usage. Ms. [REDACTED] reiterated that she had hired two companies that both concluded that she most likely had a defective water meter and that there were no leaks on the property. She added that American Leak Detection had no vested interest in, nor any reason to support, her initial plumber's claims.

Ms. [REDACTED] stated that CroppMetcalf Services advised her to contact American Leak Detection, as the issue was beyond their capabilities, and American Leak Detection was able to provide the appropriate detection equipment. Ms. [REDACTED] testified that American Leak Detection's report listed possible water meter malfunction on page 2 of their report, with readings occasionally counting up and down. Ms. [REDACTED] added that the report noted no other problems aside from needing a new flapper in the first-floor bathroom, which she replaced in the spring of 2024, as she was leaving the property in December 2023. Ms. [REDACTED] stated that she did not believe this leak to be the cause of the disputed bills, as water usage decreased in November 2023, well before the issue was resolved. Ms. [REDACTED] testified that she did not believe a toilet leak could explain the large spike in water usage from 14 CCF in August to 55 CCF in September.

Ms. Gibson asked if the flapper replacement had been completed by Ms. [REDACTED] or by a plumber. Ms. [REDACTED] responded that she believed her husband had completed the flapper replacement in April 2024.

Ms. Gibson testified that DC Water's position is that no adjustment is warranted. She explained that the charges in question were billed based on actual meter readings. Ms. Gibson stated that DC Water had sent out high usage notification alerts from July 12, 2023 through October 24, 2023. Ms. Gibson testified that these records were to notify Ms. [REDACTED] of a possible leak after the first disputed bill. Ms. Gibson noted that DC Water records indicated that Ms. [REDACTED] contacted DC Water on November 3, 2023, to inquire about and ultimately dispute the charges.

Ms. Gibson stated that DC Water reviewed the customer's DC licensed plumber's report dated November 21, 2023, from CroppMetcalf Services. Ms. Gibson testified that, according to the plumber's report, all toilets were found to have no leaks and no leaks were found on the property. Ms. Gibson noted that DC Water acknowledged that the plumber reported that the meter still registered usage after the main valve for the property was shut off, which was a possible indication of a leak between the service line and the water meter. Ms. Gibson testified that it appeared the plumber suggested the customer contact DC Water to inspect the meter.

Ms. Gibson added that, according to the customer, she was advised to have a leak detection company further inspect the possibility of a leak in the service line and did indeed opt to do so. Ms. Gibson stated that the November 30, 2023, plumber's report by American Leak Detection Company reported a first-floor toilet leak with an attached photo of the failed dye test. Ms. Gibson stated that the report noted a possible meter malfunction due to the reads appearing to go back and forth upon a visual inspection of the meter. Ms. Gibson confirmed that Ms. [REDACTED] relayed these findings to DC Water and requested a new meter.

Ms. Gibson stated that the meter that serves the property was removed on March 22, 2024, and tested on April 11, 2024, for accuracy. Ms. Gibson reported that the meter demonstrated an overall accuracy of 100.79%, within the testing standards set by the American Water Works Association. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. Ms. Gibson added that DC Water's investigation did not disclose a meter overread or faulty computation. Ms. Gibson stated that DC Water's initial determination on the bill investigation report dated January 1, 2024, was that, under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted.

Ms. Gibson then testified that, after further review of the American Leak Detection report and DC Water's AMI system, DC Water determined that no additional higher than normal spikes occurred at the property after the American Leak Detection recommended the customer have the toilet repaired by a plumber. Ms. Gibson stated that the meter readings during and after the disputed period showed stops and starts in usage, which further indicated that no underground leak was present, and that the high usage was controlled on the private side of the property. Ms. Gibson testified that DC Water believed the high usage was likely caused by the defective toilet flapper, which was identified and reported by the customer's contracted plumber on November 30, 2023.

Ms. Gibson concluded that DC Water's position is then that no adjustment is warranted under DC Municipal Regulation 406.2, which states that if the investigation discloses leaking faucets, leaking fixtures or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributed to the towards those leaks.

Ms. Gibson acknowledged Ms. [REDACTED] concerns regarding the plumbers' reports on the water meter and her account of the DC Water technician examining the meter's functionality but reiterated that the property's meter had been tested and passed its examination. Ms. Arrington added that the DC Water inspector Ms. [REDACTED] spoke to had not tested the meter during their meeting, as meters are normally brought in house for inspection. Ms. Arrington then asked if Ms. [REDACTED] recalled the name of the technician she spoke to. Ms. [REDACTED] replied that she did not, but that she would review her notes.

Ms. [REDACTED] stated that she did not believe the increased usage was due to a fault in the toilet, noting that if this were the case, the water issues would have been consistent over several months. While Ms. [REDACTED] acknowledged that the plumbers' reports indicated an issue with the flapper, she contended that a four-fold spike in usage for a single month was unlikely to be the result of this problem.

Ms. [REDACTED] then noted that DC Water tested the meter around March 2024, six months after the high spike in usage. Ms. [REDACTED] stated that the fact that the meter was functioning properly on the day of testing did not rule out the possibility of a malfunction in September when it was reading excessive usage.

Ms. [REDACTED] then stated that, as she traveled extensively outside of D.C. and did not have consistent access to emails and phone calls, she also had inconsistent access to the high usage notification alerts sent to her account. Ms. [REDACTED] clarified that she did not believe DC Water had failed to send the notifications, only that she was not made aware of the excessive water usage initially, as she would have resolved the issue promptly if informed. Ms. [REDACTED] reiterated that she acted immediately upon receiving the high bill, as she did not want to waste money or, more importantly, water. Ms. [REDACTED] questioned how DC Water could explain the fluctuations, particularly the meter registering usage going down instead of up, if it was functioning correctly within the company's parameters.

Ms. Gibson responded that she respectfully disagreed with Ms. [REDACTED] statement that a toilet leak could not cause the water usage trend observed. Ms. Gibson added that her data indicated that the water usage increase began in July 2023 and ended in November 2023. Ms. Gibson noted that, while she had only included the unit reading relevant to the disputed period, the fluctuations had occurred over several months. Ms. Gibson explained that the toilet's usage could vary month to month and was not necessarily dependent on the use of the toilet itself. Ms. [REDACTED] responded that, during the disputed period, the toilet was not in use at all, as the property was unoccupied.

Ms. Arrington asked Ms. [REDACTED] if anyone checked on the property during her absences since she was often away for months, noting that one of the last things people often do before leaving their property is use the toilet. Ms. [REDACTED] replied that her son, a person who is pretty handy, visits the property during her trips and would have noticed if there were any issues. Ms. Arrington

responded that, when someone leaves a home, a faulty flapper can occasionally remain open, causing the toilet to run continuously until someone returns to the property and either shakes the handle or flushes the toilet again to close the flapper. Ms. Arrington speculated that this was a possible cause of the high usage as Ms. [REDACTED] was absent from the property for months at a time. Ms. [REDACTED] added that she did not believe the issue was caused by her son using the bathroom, as it was located up three flights of stairs.

Ms. Arrington clarified that she was not claiming the issue was caused by the toilet flapper but was acknowledging that it was a possibility. Ms. Arrington noted that the plumber had identified an issue with the flapper that was not resolved until 2024. Ms. Arrington then asked if water usage decreased after the flapper was replaced. Ms. [REDACTED] responded that the bills had been typical for the last several months but had also returned to typical levels before the flapper was replaced. Ms. [REDACTED] reiterated that she did not believe a rarely used toilet could have caused such a significant increase in water usage.

Ms. Arrington reiterated that, under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted. Ms. Arrington stated that the meter was checked and passed inspection. Ms. Arrington then testified that, if a meter is malfunctioning, it will continue to do so until it is changed and will not fix itself. Ms. [REDACTED] questioned why the meter was then decreasing. Ms. Arrington responded that the meter was showing decreased water usage. Ms. [REDACTED] replied that if the meter was indicating decreased water usage while water was running, she believed the meter was defective. Ms. Arrington returned that DC Water had tested the meter, and it had passed within the testing standards set by the American Water Works Association. Ms. [REDACTED] added that she would submit her video of the meter to administrative hearings.

Based upon the foregoing evidence and testimony adduced at the hearing, along with documents in the record the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a home purchased in March 2020. The house has no automatic sprinkler. (Testimony of Ms. [REDACTED])
2. The customer disputed two bills, the first dated October 25, 2023, for the period of August 12, 2023 to October 13, 2023, in the amount of \$1,270.23, and the second for the period of October 14, 2023 to November 14, 2023, in the amount of \$195.83. (Testimony of both parties, Hearing Notice dated July 25, 2024).
3. The home was unoccupied during November 2022 to April 2023 and July 2023 to September 2023. It was checked occasionally by the homeowner's son. (Testimony of Ms. [REDACTED])
4. Ms. Lyons contacted a plumber after receiving the disputed bill in October 2023. (Testimony of Ms. [REDACTED])
5. CroppMetcalf Services conducted an inspection of the property on November 21, 2023, finding that none of the fixtures in the residence were dripping or leaking, all the toilets passed their tests, and that the technician noticed that the meter at the street continued to run after shutting off the property's main water valve, suggesting a possible leak between

- the property and the curb. (Testimony of both parties, Plumber's Report dated November 21, 2023).
6. Ms. [REDACTED] scheduled an inspection by American Leak Detection for November 30, 2023, as recommended by CroppMetcalf Services. (Testimony of Ms. [REDACTED])
 7. American Leak Detection's report concluded that a leak was detected in a first-floor commode during a dye test, and that during their survey of the curbside water meter, the readings appeared to fluctuate up and down, suggesting a potential malfunction issue with the meter itself. (Testimony of both parties, Plumber's Report dated November 30, 2023).
 8. Ms. [REDACTED] testified that a DC Water technician working on her neighbor's property inspected her meter, at her request, and told her the meter was defective. (Testimony of Ms. [REDACTED])
 9. Ms. [REDACTED] testified that she has a video of the meter going backwards while water is running. (Testimony of Ms. [REDACTED])
 10. Ms. [REDACTED]'s husband replaced the faulty flapper in the first-floor bathroom in April 2024.
 11. DC Water sent high usage notifications alerts from July 12, 2023 through October 24, 2023. (Testimony of Ms. Gibson).
 12. DC Water records indicate that Ms. [REDACTED] contacted DC Water on November 3, 2023, to inquire about and ultimately dispute the charges. (Testimony of Ms. Gibson).
 13. Ms. Gibson testified that the disputed charges were based on actual meter readings obtained by DC Water's automated meter infrastructure and there was no indication of any faulty computations. (Testimony of Ms. Gibson).
 14. DC Water removed the meter on March 22, 2024, and tested it on April 11, 2024, demonstrating an overall accuracy of 100.79%, within the testing standards set by the American Water Works Association. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. (Testimony of Ms. Gibson).
 15. DC Water determined that an adjustment is not warranted under DC Municipal Regulation 408.1, which says that in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted. (Testimony of Ms. Gibson).
 16. Ms. Gibson testified that the meter readings during and after the disputed period showed stops and starts in usage, which indicated that no underground leak was present, and that the high usage was controlled on the private side of the property. (Testimony of Ms. Gibson).
 17. DC Water's investigation determined that an adjustment is not warranted under DC Municipal Regulation 406.2, which says that if the investigation discloses leaking faucets, leaking fixtures or similar leaks, no adjustment will be made to the bill for any portion of the excessive consumption attributed to those leaks. (Testimony of Ms. Gibson).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:

- (a) Verify the computations made in the formulation of the water and sewer charges;
- (b) Verify that the meter reading for possible meter overread or doubtful registration;
- (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
- (d) Check the meter for malfunction;
- (e) Check the water-cooled air conditioning system, if any, for malfunction; and
- (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

- 3. Under D.C. Municipal regulations, repair of leaking faucets and household appliances are the responsibility of the owner or occupant. Where an investigation discloses leaking faucets, leaking fixtures or similar leaks, no adjustment will be made for any portion of excessive use attributable to those leaks. 21 DCMR 406.1, 406.2.
- 4. D.C. Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
- 5. Meters shall be read quarterly or at such other times as the General Manager shall determine. 21 DCMR 308.1.

DECISION

The customer in this matter was unable to meet the burden of proof to show that the water charges are in error or that she should not be responsible for their payment.

This is a case in which high water usage was registered on the water meter and neither the customer nor the utility can determine the cause of the excessive water use. The customer challenged the bills as excessive, arguing that the house was vacant for at least part of the period in dispute so it was illogical that the bill was high or alternatively, that the meter was faulty.

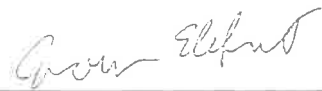
The record does not support either claim. A plumbing company hired by the customer in November 2023 reported a suspected flapper leak in the first floor commode. Although the flapper was not repaired until April 2024 after excess usage subsided, at the hearing, DC Water suggested that the faulty flapper may have been to blame for the excess even when the home was unoccupied. As Ms. Arrington testified, when someone leaves a home, a faulty flapper can occasionally remain open, causing the toilet to run continuously until someone returns to the property and either shakes the handle or flushes the toilet again to close the flapper. I credit this as a possible explanation for the increased use.

Where excess use results from leaking fixtures, no adjustments will be made for any portion of the excessive use attributable to those leaks. 21 DCMR 406.2. In light of the evidence at the hearing that the leaking flapper may have contributed to excessive use, I find that section 406.2 is an appropriate basis for denying the adjustment.

Even assuming that the excess use did not result from the malfunctioning flapper, the customer still has not met her burden of showing that she is not responsible for the disputed bill. Although the customer asserted that both her plumbing company and a DC Water technician told her the meter was faulty, neither actually tested the meter. By contrast, DC Water pulled and tested the meter in April 2024 and found it to be operating within acceptable standards of accuracy.

Accordingly, the record does not support the customer's assertion that a malfunctioning meter was to blame and the customer offered no other explanation for the increased usage. In cases where all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption. 21 DCMR 408.

For the reasons discussed, the determination of DC Water that no basis exists to adjust the customer's account based either on the presence of a malfunctioning fixture within the owner's control or alternatively, inconclusive findings is hereby AFFIRMED.



Carolyn Elefant, Hearing Officer

Date: October 11, 2024

51 [REDACTED] Rockwood Pkwy NW
Washington DC 20016

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: Harun Yimam
2202 18th St NW #44
Washington, DC 20020

Account No. [REDACTED]
Case No. 24-144415

Total Amount in Dispute: \$1,043.26

Before Carolyn Elefant, Hearing Officer
August 13, 2024

The property owner and customer, Harun Yimam, contested a water bill for the property at 1938 I St NE; Washington D.C. The disputed bill dated December 11, 2023 is in the amount of \$1,043.26 and covers the period September 12, 2023 to December 8, 2023. The DC Water and Sewer Authority (DC Water) investigated and determined that no adjustment to the bill was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on August 13, 2024, for a remote hearing. Present for the hearing was Harun Yimam, the customer and property owner, and Arlene Andrews who appeared on behalf of DC Water.

The property involved is a row house with four units in the northeast quadrant of the District. Each unit is one bed, one bath, and the property does not have any sprinklers, dishwashers, washing machines, or central air. Mr. Yimam stated that he purchased the property in 2016 and it has been vacant for over two years. Prior to August 2023, the average water bill was around \$47 while the unit was vacant and it averaged between \$100 and \$200 when fully occupied, with approximately two people in each unit.

Mr. Yimam stated that during the over two-year vacancy of the property, he shut off all the valves in the property to avoid leaks. Mr. Yimam testified that his bills were minimal up until he noticed a high charge, at which point he called DC Water. Mr. Yimam explained that during this call, DC Water informed him of high usage at his property and he requested DC Water shut off the water at the meter, which they did. Mr. Yimam noted that his inspection of the property did not uncover any leaks. Mr. Yimam stated that, as the property was vacant with no water usage or leakage due to the valves being shut off, and he promptly requested DC Water shut off water at the meter, he did not understand the cause of the high bill. Mr. Yimam added that he believed the leak was on DC Water property due to these factors.

Mr. Yimam testified that he had submitted as evidence his past bills for 2023, which note that the property was vacant and the water inside the building had been shut off. Mr. Yimam stated that he had DC Water and the representative informed him that the meter was defective. He argued that since no usage occurred, no leaks were present, and DC Water told him that the meter was defective, he should not be held liable for the charges. Mr. Yimam also noted that DC Water speculated that the defective meter may have caused incorrect high usage readings and advised

him to continue making payments while the dispute remained unresolved. Mr. Yimam noted that the bills for the property had returned to normal after the high spike.

Ms. Andrews testified that DC Water's position is that no adjustment is warranted. She explained that the charges in question were billed based on actual meter readings. Ms. Andrews stated that Meter ID number 83532992, which serves the property, was removed on July 10, 2024, and tested on July 17, 2024, for accuracy. Ms. Andrews reported that the meter demonstrated an overall accuracy of 99.93%, within the testing standards set by the American Water Works Association. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. Ms. Andrews added that DC Water's investigation did not disclose a meter overread or faulty computation. Ms. Andrews also added that, after receiving a high usage notification alert, the customer called DC Water and informed them that he was out of town, at which point he was transferred to the emergency command center, and he requested that the water be turned off. Ms. Andrews noted that the high usage for this property occurred between September 11, 2023 and October 12, 2023, and DC Water turned off the water at the property on October 12, 2023, so whatever was going on at the property was controlled at the premises. Ms. Andrews stated that under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted.

Ms. Andrews testified that DC Water did not have anything in its records indicating that a representative had told Mr. Yimam that the meter was defective, only the call regarding the high usage alerts on October 11, 2023, and the service order for the request to shut off the water. Ms. Andrews stated that the records for that call noted that the customer was out of town, the meter was recording up to 2,000 gallons of water usage, and that he was transferred to the command center for assistance.

Mr. Yimam requested clarification on the specific period for which the charges were applied. Ms. Andrews replied that the billing period covered the period September 12, 2023 to December 8, 2023, but the increased usage occurred between September 11, 2023 and October 12, 2023. Mr. Yimam stated that he was unsure how it was possible to incur a \$1,000 charge for a 30-day period in a vacant property with no leaks. Ms. Andrews responded that the amount of water on the disputed bill reflected what registered through the meter at that time. Mr. Yimam rebutted that, when his property was fully occupied, his highest charges ranged from \$250 to \$300. Mr. Yimam stated that it was illogical for the 30-day period to incur a 400% increase in charges compared to when the property was at full capacity.

Mr. Yimam noted that he believed it was more likely that the meter for the property was defective, as suggested by the DC Water representative he spoke with. Mr. Yimam testified that while he understood DC Water tested the meter in July 2024, the high usage occurred in October 2023, many months earlier. Mr. Yimam stated that he had experienced an active leak a few years ago from a constantly running toilet in multiple units of the property, which resulted in a charge of about \$400, despite a large amount of water from the leak. He explained that, as the property was now vacant, the DC representative had informed him that the high charge was due to a defective meter, which caused the spike in usage. Mr. Yimam noted that his first action was to

request the meter be shut off, and upon returning a few days later, he inspected the property to confirm that there was no leak of any kind.

Ms. Andrews asked if the water had been turned back on and a plumber had inspected the property, noting that when DC Water turned off water at the property, usage decreased. Mr. Yimam stated that the water had not been turned back on and reiterated that his initial inspection had found no leaks. Mr. Yimam noted that he could not test for active leaks with the water shut off and instead had determined that there was no leak or water visible in the walls or bathroom.

Mr. Yimam asked for clarification on if the charges for the high water usage continued into December 2023 when the water had been shut off in October 2023. Ms. Andrews clarified that the disputed bill was extended, covering all of September 12, 2023, to December 8, 2023, including the period of increased usage. Ms. Andrews added that the bulk of the usage was indeed in this period of September 11, 2023, to October 12, 2023. Mr. Yimam requested to know what usage occurred from October 11, 2023, to the end of the billing period in December. Ms. Andrews shared the meter reads, indicating that between September 11, 2023, and October 12, 2023, the water usage was 46.97 CCF. Ms. Andrews testified that from October 12, 2023, the day the water was shut off at the property, up unto December 8, 2023, DC Water recorded no or very little usage at the property.

Mr. Yimam stated that this demonstrated to him that the issue was on DC Water's end and that he believed the meter was defective, as his property was vacant and could not have incurred a water usage of nearly 47 CCF for a \$1,000 charge in one month. Mr. Yimam noted that, if his property were fully occupied with double the occupancy, he would expect monthly charges to range from \$500 to \$600, an amount he had never previously paid. Mr. Yimam added that a prior water bill for an active leak, during a fully occupied period over three months, had totaled less than \$1,000. Yimam concluded that this corroborated that there had been no usage for the past 12 months and the issue was not on his property.

Mr. Yimam testified that he did not receive an identification number for the representative he spoke to that suggested the meter water defective. Mr. Yimam added that, when following up on DC Water calls, information from previous conversations was often not entered into the system, making it difficult for him to track or document conversations. Mr. Yimam stated that, while the conversation on the defective meter had occurred on the phone, he would attempt to find an email documenting information on the call. Mr. Yimam recalled that the representative informed him that a technician had been sent to the property but did not shut off the water because the meter or valve was defective. Mr. Yimam stated that he had requested that the water be turned off if there was an active leak so he could assess the issue with a plumber. Mr. Yimam stressed that the high usage seemed illogical, despite the meter testing DC Water conducted, and did not align with the water usage recorded during the eighteen months prior to the disputed bill.

Ms. Andrews testified that DC Water sent the customer high usage notification alerts which caused Mr. Yimam to call into the office and request the water be shut off. Ms. Andrews reiterated that, once DC Water cut off water at the property, the usage was controlled. Ms. Andrews stated that Mr. Yimam needed to have a plumber inspect the property with the water turned back on to identify the leak. Mr. Yimam agreed but noted that the property had been winterized as it was

vacant, and he had already shut off all the valves and the main water line. Mr. Yimam stated that no usage or spike should have been recorded, even if a leak existed, as any water in the pipes would not cause an active leak.

Mr. Yimam added that if there had been a leak as significant as the one that incurred a \$1,000 charge, it would have been visible, with water evident throughout the property. Mr. Yimam stated that DC Water had previously mentioned the possibility of a defective meter with a different property, and even in that case, he had not encountered charges this excessive. Mr. Yimam testified that he had never contested a water bill before.

Ms. Andrews stated that Mr. Yimam could submit additional documentation online. Yimam mentioned that while he was informed that calls are recorded, he cannot refer to a specific reference number for the conversation he had regarding the defective meter. Mr. Yimam stated that if he could not find an email related to the matter, he would be unable to provide documentation. Mr. Yimam testified he could not recall the date of the call discussing a faulty meter but confirmed that he had made multiple calls to DC Water. Ms. Andrews stated that DC Water only had record of the call on October 11, 2023, to request the water be shut off at the meter. Mr. Yimam stated that the October 11, 2023, communication was his final call to DC Water, and that he had called previously to inquire about the high spike. Mr. Yimam asked if DC Water had any recordings of my calls prior to that date. Ms. Andrews testified that the Interaction Records for Mr. Yimam's account had been submitted to him and that, prior to October 2023, the last time he had called was in September 2022.

Mr. Yimam testified that he did not have access to any such documentation. Ms. Andrews replied that it was included in an email sent to him on the Friday or Monday prior to the hearing. Mr. Yimam confirmed that he had received the hearing notice on Friday, but the only documentation included was the log of the request to shut off the water at his property. Ms. Andrews asked if any other attachments were included. Mr. Yimam confirmed that there were, but that they were not in a PDF format. Ms. Andrews responded that the documents for the hearing were in a ZIP file.

Mr. Yimam asked to confirm that DC Water did not have any records of a defective meter at his property. Mr. Yimam stressed for a final time that the property was vacant, all valves were shut off, and that there was no usage. Mr. Yimam added that he only intended to dispute the high usage during the period of September 11, 2023, to October 12, 2023.

Based upon the foregoing evidence and testimony adduced at the hearing, along with documents in the record the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a row house purchased in 2016 with four units, each with one bed, one bath. The property does not have any sprinklers, dishwashers, washing machines, or central air. (Testimony of Mr. Yimam).
2. The disputed bill of \$1,043.26 was dated December 11, 2023, and covered the period September 12 to December 8, 2023. (Testimony of Ms. Andrews. Hearing Notice).

3. The property has been unoccupied for the last two years, and the valves and main water line have been shut off by the owner. (Testimony of Mr. Yimam).
4. Prior to August 2023, the water bill averaged \$47 while the unit was vacant and between \$100 and \$200 when fully occupied. (Testimony of Mr. Yimam).
5. The high usage occurred between September 11, 2023 and October 12, 2023, with water usage of 46.97 CCF. (Testimony of Ms. Andrews, Interaction Records).
6. On October 11, 2023, Mr. Yimam contacted DC Water after receiving a notice of high usage and requested that the water be shut off at the meter. (DC Water Interaction Report notes).
7. Ms. Andrews testified that DC Water turned off the water at the property on October 12, 2023, and as usage decreased at this time, DC Water determined that whatever was going on at the property was controlled at the premises. (Testimony of Ms. Andrews).
8. Mr. Yimam testified that he had a call with a DC Water representative who informed him that the meter at the property was defective. (Testimony of Mr. Yimam).
9. DC Water did not have records of a call referencing a defective meter. (Testimony of Ms. Andrews).
10. DC Water investigated the disputed bill and concluded that the disputed charges were based on actual meter readings obtained by DC Water's automated meter infrastructure and there was no indication of any faulty computations. (Testimony of Ms. Andrews).
11. DC Water removed the meter on July 10, 2024, and tested it on July 17, 2024, demonstrating an overall accuracy of 99.93%. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. (Testimony of Ms. Andrews, Interaction Records).
12. DC Water determined that an adjustment is not warranted under DC Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted. (Testimony of Ms. Andrews).

CONCLUSIONS OF LAW

- I. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. Under D.C. Municipal regulations, repair of leaking faucets and household appliances are the responsibility of the owner or occupant. Where an investigation discloses leaking faucets, leaking fixtures or similar leaks, no adjustment will be made for any portion of excessive use attributable to those leaks. 21 DCMR 406.1, 406.2.
4. D.C. Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
5. Meters shall be read quarterly or at such other times as the General Manager shall determine. 21 DCMR 308.1.

DECISION

The customer in this matter was unable to meet the burden of proof to show that the water charges are in error or that they should not be responsible for their payment.

This is a case in which high water usage was registered on the water meter and neither the customer nor the utility can determine the cause of the excessive water use.

The customer challenged the bill as excessive because the building was vacant for the duration of the disputed bill and the valves were turned off, so no water could have been consumed. But the customer did not hire a plumber to explore whether a leak was present. Following a receipt of a high usage alert on October 11, 2023, the customer asked DC Water to turn off the water. Thereafter, usage declined to negligible levels, suggesting that usage was controlled at the premises. The customer next contended that the bill amount for a vacant building was illogical because it far exceeded the amounts he traditionally paid when the building was fully occupied. Yet, comparing the bills for this case to past bills is a futile exercise without further information as to other factors such as a leak which might explain the high usage.

Finally, the customer asserted that a DC Water representative told him that the building meter was faulty. DC Water had no record of these communications. Moreover, in July 2024, DC Water pulled the meter for testing which showed that the meter was operating within acceptable standards of accuracy. Thus notwithstanding the customer's claim, the record evidence shows that the meter was functioning properly.

Under 21 DCMR 408.1, inconclusive findings as to the cause of high usage after all checks and tests have been performed bar adjustment of the charges. As just noted, the meter was checked and verified for accuracy by DC Water and the customer did not offer any plausible explanation for the excess use. Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account based on inconclusive findings hereby **AFFIRMED**.

Carolyn Elefant

Carolyn Elefant, Hearing Officer

Date: October 11, 2024

Harun Yimam
2202 18th St NW #44
Washington, DC 20020

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: [REDACTED] [REDACTED]
34 [REDACTED] 23rd St. SE
Washington D.C. 20003

Account No. [REDACTED]
Case No. 24-288387

Total Amount in Dispute: \$15.88

Before Carolyn Elefant, Hearing Officer
August 15, 2024

The property owner, on behalf of her tenant, the customer (hereinafter referenced as the customer) contested a water bill dated January 29, 2024, for the period of December 27, 2023, to January 25, 2024, in the amount of \$15.88. The DC Water and Sewer Authority (DC Water) investigated and determined that no adjustment to the bills was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on August 15, 2024, for a remote hearing. Present for the hearing was [REDACTED], the property owner, and Arlene Andrews and Kristen Gibson on behalf of DC Water.

The property involved is a semi-detached unit comprised of two bedrooms and two baths. The unit is leased by a sole tenant under Section 8 housing. Prior to November 2023, the average water bill was around \$100 for the home.

Ms. [REDACTED] stated that she was present to discuss her bill dated November 28, 2023, which was over \$3,000. She was currently paying it through a payment plan. Ms. Gibson responded that DC Water objected to considering the November 28, 2023 bill at this hearing as the dispute was untimely. Ms. Gibson further stated that DC Water had not received a hearing petition for the November 28, 2023 bill and had sent Ms. [REDACTED] a pre-investigation letter to inform her that the dispute was considered untimely.

Ms. [REDACTED] requested DC Water clarify their definition of "untimely", noting that she did not reside at the property but had maintained prompt communication when she was aware of notifications from DC Water. Ms. Gibson replied that DC Water customers have 20 days from the date a water bill is issued to submit a dispute, and any submission beyond that period is considered untimely. Ms. Gibson further explained that DC Water then sends a letter informing the customer of the untimely submission, allowing them to respond and request a hearing petition regarding the dispute. Ms. Gibson added that no such petition had been received for the November 28, 2023 bill. Ms. Gibson stated that Ms. [REDACTED] initial response, which included a plumber's report, was received on February 2, 2024, and Ms. [REDACTED] then contacted DC Water on February 12, 2024, expressing her intent to dispute bills for November 2023 and December 2023.

Ms. [REDACTED] replied that this was where the discrepancy lies, as she had immediately contacted DC Water upon receiving the November 2023 bill. Ms. [REDACTED] testified that she had never been informed of an adjudication or administrative process, and instead was told DC Water would send a representative to the property to assess the situation. Ms. [REDACTED] stated that her tenant was the initial recipient of the bill and notified Ms. [REDACTED] about the high bill increase approximately a week later. Ms. [REDACTED] stated that she conducted a checklist with her tenant to rule out immediate issues, such as visible leaks or exorbitant usage. Ms. [REDACTED] recounted that when no issue was apparent, she contacted DC Water, who sent out a crew within the week. Ms. [REDACTED] added that, while the lease was for a single person, she believed the tenant occasionally allowed family members to live in the property and she was unable to determine occupancy at the time of the high water usage.

Ms. [REDACTED] testified that the DC Water representative she called informed her that a crew would inspect the property and acknowledged a water main break on her street that they believed contributed to the exorbitant bill. Ms. [REDACTED] added that the representative advised her that the crew would assess if the leak was the responsibility of the homeowner or DC Water. Ms. [REDACTED] noted that she repeatedly contacted DC Water for further information until she was informed that the initial inspection was inconclusive, leading to another inspection 2 to 3 weeks later. Ms. [REDACTED] stated that this second inspection concluded that the issue was on her property and not DC Water's responsibility, an assessment with which she disagreed.

Ms. [REDACTED] noted that she had contacted her personal plumber to inspect the property, whose findings indicated that there was no internal issue and that the issue occurred on DC Water property. Ms. [REDACTED] then testified that, upon sharing her plumber's report with DC Water, she was told that the findings would need verification by a DC licensed plumber. Ms. [REDACTED] stated that she then called a DC licensed plumber, Mr. Odom, to inspect the property, who confirmed the same assessment that the leak occurred on DC Water property.

Ms. [REDACTED] contacted DC Water with a copy of her plumber's report dated January 31, 2024, by Mr. Odom from Odom Services, which stated that no water running or leaking was found on the property. The report also stated that the meter was checked and there was no movement on the meter indicating water usage. Ms. [REDACTED] testified that her interpretation of the report as a layperson was that no leaks were found on her property and thus any leak found was located on DC Water property. Ms. [REDACTED] stated that the lack of responsiveness from DC Water caused a lapse in communication and that she was unsure when Odom Services conducted their inspection. Ms. [REDACTED] testified that she submitted her report to DC Water's online portal and believed the letter she received in response outlined the next steps of the process.

Ms. [REDACTED] noted that to restore running water to her property, which was ultimately turned off, she was required to enter a payment plan. She added that this situation has been challenging for her tenant.

Ms. Gibson reiterated DC Water's object to considering the November 2023 bill and noted that since the written dispute was untimely, the amount owed was not held in abeyance. Ms. Gibson stated that the account received support from the Customer Assistance Program (CAP) through a one-time benefit of \$509.00 and is additionally receiving bill credits on new bills. Ms. Gibson

explained that this was why the bill dated January 29, 2024 bill was only \$15.88. Ms. Gibson testified that the account was enrolled into CAP on November 8, 2023.

Ms. Gibson noted, at the questioning of Ms. [REDACTED] that the current typical bill as of June and July 2024 is \$15.88, excluding the payment plan amount. The remainder of the payment plan totaled \$456.31, with a \$103.00 monthly installment in addition to the tenant's monthly water usage.

Ms. Gibson then testified that DC Water received a call from Ms. [REDACTED] on December 19, 2023, where Ms. [REDACTED] stated that she intended to submit a plumber's report that DC Water ultimately did not receive until February 2, 2024. Ms. Gibson requested clarification on Ms. [REDACTED] timeline and suggested the report may be incorrectly dated. Ms. [REDACTED] responded that she originally was not informed by DC Water that she was required to call a DC licensed plumber, and she believed the delay occurred because the original report was obtained from a non-DC licensed plumber.

Ms. [REDACTED] stated that she received high usage notifications via her cellphone consistently for 3 or 4 days, which concerned her. She noted that her tenant received similar notifications, and it was only after her tenant informed her of the high bill that she connected the issue. Ms. [REDACTED] testified that if she had been able to intercept the issue earlier, an easier resolution would have been possible.

At the Hearing Officer's request, the parties discussed an email from DC Water representative Lisa Barton to the Executive Office that states that Ms. [REDACTED] was originally advised not to hire a plumber. Ms. [REDACTED] then noted that when she first called DC Water, she was advised not to worry about the issue or call a plumber as there was a water main break on her street. However, as the issues persisted, Ms. [REDACTED] called back, and the next representative sent out a crew to complete an inspection. Ms. [REDACTED] testified that she spoke to upwards of 10 to 15 representatives with varying guidance, which she believed contributed to the inconsistent dates on the paperwork in the system. Ms. [REDACTED] stated that after receiving clear guidance, she was able to provide the necessary information after months into the process. She recounted her frustration with the process that she and her tenant underwent.

Ms. Gibson testified that after conducting two underground inspections, the second of which was completed on November 29, 2023, the OCEO office received an escalation from Ms. [REDACTED] regarding a lack of follow-up from DC Water. Ms. Gibson noted that it appeared Ms. [REDACTED] tenant had been advised on the process, not Ms. [REDACTED]. Ms. Gibson testified that Lisa Barton was informed that DC Water had been in contact with Ms. [REDACTED] and that the actions taken by DC Water had been outlined, but no written dispute had been received. Ms. Gibson reiterated that no written dispute was received within the specified time period to dispute the bill. A dispute was received on February 2, 2024. Ms. Gibson stated that Ms. [REDACTED] tenant had been informed, following the underground inspection, that the issue was on the private side and that a plumber's report was needed.

Ms. Gibson added that the DC Water interaction history notes indicated that information had been provided regarding the need for a plumber as well as a record of high and consistent

usage alerts. Ms. Gibson noted that Ms. [REDACTED] first contacted DC Water on October 19, 2023, regarding numerous continuous usage notifications. Ms. Gibson stated that DC Water immediately scheduled an underground inspection for October 2023 as the usage was continuous. Ms. Gibson noted that his hearing was for the period of December 27, 2023, to January 25, 2024, so no DC water reports pertaining to other periods were provided for this case. She further noted that usage had declined by December 7, 2023.

Ms. Gibson noted that at the time of the initial interaction with Ms. [REDACTED] DC Water informed Ms. [REDACTED] that the November 2023 bill was open for a dispute to be received, but no dispute was submitted within the required time frame. Ms. Gibson reiterated that Ms. [REDACTED] notified DC Water about an upcoming plumber's report on December 19, 2023, and submitted said report on February 2, 2024. Ms. Gibson stated that DC Water sent out a pre-investigation communication letter informing Ms. [REDACTED] that the dispute was untimely in addition to a bill report for the timely January 29, 2024 bill dispute.

Ms. Gibson testified that DC Water's position is that no adjustment is warranted for the timely bill dispute. She explained that the charges in question were built based on actual meter readings. Ms. Gibson stated that the meter, which serves the property, was removed on July 11, 2024, and tested that same day for accuracy. Ms. Gibson reported that the meter demonstrated an overall accuracy of 100.83%, within the testing standards set by the American Water Works Association. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. Ms. Gibson added that DC Water's investigation did not disclose a meter overread or faulty computation. Ms. Gibson stated that under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings provide no reasonable explanation for excess consumption no adjustment is warranted. Ms. Gibson also added that DC Water objected to the untimely November 28, 2023 bill being considered at this hearing.

Ms. [REDACTED] asked whether consideration could be made given that she was repeatedly provided with inaccurate information, stating that consistent guidance would have resolved the discrepancy within the required time frame. Ms. Gibson stated that DC Water was following regulations for the dispute deadline and suggested that a timely dispute would not have provided a different outcome, as DC Water confirmed that there was no DC Water infrastructure issue on November 29, 2023. Ms. Gibson also noted that in addition to usage declining at the time of the investigation, it stopped and started, which indicated that the cause of the wasted water was controlled at the property. Ms. Gibson then speculated that a timely dispute would have again resulted in inconclusive findings.

Ms. [REDACTED] stated that her understanding of the term "inconclusive" was that it implied no onus on either party, and that the wording used by DC Water appeared to conclusively place the responsibility on her. Ms. Gibson responded that the underground investigation itself was not inconclusive and that the work order stated that the usage stopped when the valve was shut off. Ms. Gibson added that DC Water can verify water usage trends through their Data Collection Unit (DCU) and automatic infrastructure system, which transmits meter readings remotely. Ms. Gibson testified that through this process, DC Water was able to detect the continuous usage in Ms. [REDACTED] property and send notifications to the account. Ms. Gibson noted that DC Water followed

regulations by conducting an underground leak inspection and ruling out the possibility, as usage returned to normal by December 7, 2023. Ms. Gibson stated that DC Water considered the uncertainty of Ms. [REDACTED] high usage inconclusive.

Ms. [REDACTED] stated that communications should come to her directly and noted that the address on file was inaccurate. Ms. Gibson requested Ms. [REDACTED] email the correct address to DC Water customer support. Ms. [REDACTED] confirmed that her email and phone details were correct, and she was receiving notifications.

Based upon the foregoing evidence and testimony adduced at the hearing, the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a semi-detached unit comprised of two bedrooms and two baths and is leased by a sole tenant. (Testimony of Ms. [REDACTED])
2. The bill challenged by the customer was dated January 29, 2024, for the period of December 27, 2023, to January 25, 2024, in the amount of \$15.88. (Hearing Notice dated August 1, 2024).
3. The customer sought for this hearing to consider the time periods from November 2023 through January 2024. (Testimony of Ms. [REDACTED])
4. DC Water objected to this hearing considering any water usage outside the period of December 27, 2023, to January 25, 2024, as the dispute was untimely. (Testimony of Ms. Gibson).
5. Water use initially spiked around October 2023. (Testimony of Ms. [REDACTED])
6. Consecutive notification messages were sent beginning October 14, 2023, to Ms. [REDACTED] and her tenant. (Testimony of Ms. Gibson).
7. Ms. [REDACTED] contacted DC Water on October 19, 2023, regarding the continuous usage notifications. (Testimony of Ms. Gibson).
8. DC Water representative scheduled an inspection for October 23, 2023. (Testimony of the parties, Interaction Record).
9. A second underground inspection was completed on November 29, 2023. (Testimony of Ms. Gibson).
10. Ms. [REDACTED] was originally advised that she did not need to hire a plumber but was later told to do so. (Testimony of Ms. [REDACTED])
11. There is no indication in the Interaction Records that Ms. [REDACTED] was informed off the deadline to dispute the November 2023 bill. (Interaction Records).
12. Ms. [REDACTED] contacted DC Water on December 19, 2023, to inform them that she planned to submit a plumber's report. (Testimony of Ms. Gibson, Interaction Records).
13. Initially, an inspection by a plumber contacted by Ms. [REDACTED] found no internal issue and stated that the issue occurred on DC Water property. (Testimony of Ms. [REDACTED])
14. The property owner did not submit a plumbing report for the initial inspection by the plumber due to not being licensed. (Testimony of Ms. [REDACTED])
15. A second plumber who was licensed, Odom Services, stated that no water running or leaking was found on the property in a report dated January 31, 2023. The report also stated

that the meter was checked and there was no movement on the meter indicating water usage. (Plumber's Report).

16. Ms. ██████ contacted DC Water with a copy of her licensed plumber's report on February 2, 2023. (Testimony of Ms. Gibson).
17. Water to the property was shut off in March 2024. (Testimony of Ms. ██████, Testimony of Ms. Andrews).
18. The customer account was enrolled into CAP on November 8, 2023, and was supported with a one-time benefit of \$509.00 and receives bill credits on new bills. (Testimony of Ms. Gibson).
19. The current typical bill as of June and July 2024 is \$15.88 with \$103.00 monthly installments for the \$456.31 remainder of the payment plan. (Testimony of Ms. Gibson).
20. DC Water performed an underground inspection on November 29, 2023, and did not find any leaks. (Testimony of Ms. Gibson).
21. DC Water's investigation determined that high usage had declined by December 7, 2023. (Testimony of Ms. Gibson).
22. The work order for the November 29, 2023 inspection stated that the usage stopped when the main valve was shut off, thus indicating that any problem was happening on the private side of the property. (Testimony of Ms. Gibson).
23. Ms. Gibson testified that the disputed charges were based on actual meter readings obtained by DC Water's automated meter infrastructure and there was no indication of any faulty computations. (Testimony of Ms. Gibson).
24. DC Water pulled and tested the meter on July 11, 2024, which tested at a 100.83% accuracy. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. (Testimony of Ms. Gibson).
25. Ms. Gibson stated that DC Water's investigation determined that an adjustment is not warranted under DC Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings provide no reasonable explanation for excess consumption, no adjustment is warranted. (Testimony of Ms. Gibson).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. Under 21 DCMR 402.1, billing disputes must be made in writing within twenty calendar days after the bill date. Challenges under 21 DCMR 402.1 will be untimely if made more than 20 days after the bill date. See 21 DCMR 402.2(a).
4. An owner or occupant may file a petition for an administrative hearing to review the decision of the General Manager within 15 calendar days of the decision date. 21 DCMR 412.1.
5. D.C. Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")
6. Meters shall be read quarterly or at such other times as the General Manager shall determine. 21 DCMR 308.1.

DECISION

The property owner, Ms. [REDACTED] disputed a January 29, 2024 bill on behalf of her tenant, the ultimate customer and attempted to dispute a bill from November 28, 2023. Ms. Parker raised two overarching objections: first, that she received inaccurate information from DC Water which delayed a more timely resolution of the bills and second, that the excess use resulted from either a water main break or leak on DC Water property and as such, the customer should not be responsible for the charges.

Before reaching the merits, I must address DC Water's objection that the challenge to the November bill is untimely. Ms. [REDACTED] did not initiate a billing dispute until February 12, 2024, beyond the 20-day time limit under 21 DCMR 402.1 to dispute a bill. Ms. [REDACTED] testified that when she first contacted D.C. Water, she intended to dispute the November 2023 bill but was never instructed to file a written dispute. Given that D.C. Water's instructions contained other inaccuracies as discussed below, I credit Ms. [REDACTED]'s testimony that she was not told about the deadline for disputing a bill when she contacted D.C. Water.

But Ms. [REDACTED] forfeited her ability to challenge the determination that her dispute was untimely. DC Water notified Ms. [REDACTED] that her dispute of the November bill was untimely in a pre-investigation notice dated March 4, 2024. See DC Water email dated March 4, 2024, Interaction Records at 7. The email advised Ms. [REDACTED] of her right to file an administrative hearing petition but she did not. Because Ms. [REDACTED] did not appeal DC Water's untimeliness finding when provided with an opportunity to do so, I am foreclosed from addressing the customer's challenge to the November 2023 bill

Even if Ms. [REDACTED]'s challenge to the November 28, 2023 bill had been timely, she failed to carry the burden of showing that she should not be responsible for payment. Ms. [REDACTED] says when she first contacted DC Water sometime after receiving the November bill, she was told that she did not need to hire a plumber. That advice was corrected on December 4, 2023 when Ms. [REDACTED] was directed to hire a plumber and on December 19, 2023, Ms. [REDACTED] confirmed to DC Water that she planned to do so. Therefore, I do not find that DC Water caused a delay through initially inaccurate advice about not needing to hire a plumber.

Ms. [REDACTED] also stated that she was not specifically told to hire a DC-licensed plumber. I credit Ms. [REDACTED]'s testimony since it is corroborated by the Interaction Reports which do not specify that a DC licensed plumber was required. But the lack of information about the DC license requirement did not delay resolution of the case. Usage levels returned to normal levels by December 7, 2024 before either plumber visited the property. Ms. [REDACTED] does not explain how the outcome would have been different had she hired a DC licensed plumber from the outset or hired a plumber earlier because usage returned to normal on its own and neither plumber found leaks on the property.

Ms. [REDACTED] also did not show that DC Water was responsible for the excess usage. Ms. [REDACTED] first asserted that she was told that a water main break may have caused the high usage charge, but there is no evidence of a water main break anywhere in the record. Ms. [REDACTED] also argued that there was a leak on the lines within DC Water's control. Ms. [REDACTED] reasoned that because the Odom Plumber's report concluded that there were no leaks on her property, then logically, any leak must be on DC Water's property. Ms. [REDACTED]'s interpretation of the report incorrectly presupposes the existence of a leak somewhere on the property which the plumber's report did not find and which the record does not corroborate.

DC Water's November 29, 2023 inspection report found no underground water leak. In addition, during DC Water's inspection, water use stopped after the main valve in the house was turned off, indicating that whatever was happening to cause excess use was on the private side of the property. DC Water also pulled and tested the meter and found that it was operating within acceptable standards of accuracy. In light of this evidence, I find no support for Ms. [REDACTED]'s contention that DC Water's infrastructure was to blame for the excess use.

In cases such as this one where the cause of high water use cannot be determined after tests and checks have been performed, no adjustment shall be made for any portion of the excessive consumption. 21 DCMR 408.1. Here, DC Water's investigation found no leaks or meter malfunction, and the customer's claims that DC water's system experienced a main line break or leak are not supported by the record. In addition, although some of DC Water's communications were inaccurate, they were not sufficiently material to impact the outcome and therefore, do not support an adjustment.

Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.

Carolyn Elefant

Carolyn Elefant, Hearing Officer

Date: October 11, 2024

34 [REDACTED] 23rd St. SE
Washington D.C. 20003

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: [REDACTED]
45 [REDACTED] Westhall Dr NW
Washington DC 20007

Account No. [REDACTED]
Case Nos. 24-95766
24-171104

Total Amount in Dispute: \$12,920.74

Before Carolyn Elefant, Hearing Officer
August 6, 2024

The customer contested two water bills for the period of September 14, 2023 through October 12, 2023, in the amount of \$795.30, and October 13, 2023 through December 12, 2023, in the amount of \$12,125.44. The total amount disputed is \$12,920.74.

The matter came before the Hearing Officer on August 6, 2024, for a remote hearing. Present for the hearing was [REDACTED], the homeowner who disputed the charges; Stephanie Robinson, who appeared on behalf of DC Water; and Regan Yateman and Kevin Schwam, who observed.

The property is a three-bedroom townhouse with one kitchen and three and a half baths, built in 2012. Since August of 2023, Mr. [REDACTED] and his spouse have resided in the home.

Mr. [REDACTED] testified that his first bill was \$244; the following bill was \$374; and then came the disputed bill periods with a water bill for \$795 and \$12,125. The January 2024 bill was around \$200. However, after the repairs were made, the water bills from February through July of 2024 have been approximately \$83-105 per month. Mr. [REDACTED] explained that this repair was for an underground leak on the private side of the supply line. The cost of this repair was \$12,399.00, performed by Magnolia Plumbing, Heating, and Cooling, on December 11-13, 2023. Mr. Schwat provided a Plumber's Report that detailed the work performed and also emailed an invoice for the work the morning of the hearing.

At the hearing, Mr. [REDACTED] provided a detailed timeline of events. He initially contacted DC Water on October 25, 2023, regarding a leak after receiving a large water bill. When it was confirmed that there was no an underground leak, Mr. [REDACTED] stated that he thought there was a billing issue from reviewing the first bill at issue and the DC Water online account. Mr. [REDACTED] disputed the first bill at issue on October 30, 2023. He had reviewed his account on the DC Water website where it tracks daily usage and noticed the website's listed daily usage amount was much lower than the bill. On November 1, 2023, he started to receive high usage notifications daily. Mr. [REDACTED] confirmed that he would call DC Water almost daily, but he was told that DC water could not send a repairman to perform an inspection or assist in any other manner until the bill in dispute had been addressed. Throughout November of 2023, Mr. [REDACTED] contends that he engaged numerous plumbers to inspect the interior of the home but found no leaks. At that point, Mr. [REDACTED] thought there was an issue with the billing or the meter. On December 5, 2023, Mr. [REDACTED]

affirmed that he noticed substantial water in his yard for the first time. This was the first day he knew there was a serious leak. A couple of plumbers provided inspections, and the homeowners hired Magnolia Plumbing, Heating, and Cooling. The work performed on December 11-13, 2023, included digging up the yard and replacing the supply line into the house.

Mr. ██████ insisted that had he known earlier about the underground leak, he would have been able to address it earlier. It was this delay, Mr. Schwat ██████ that caused the abnormally high water bill.

Ms. Robinson testified that DC Water's position is that no adjustment is warranted. She explained that the charges in question were built based on actual meter readings obtained by automated meter infrastructure. She stated that the reads were consistent with the reads obtained from the metering device and there is no indication of any faulty computation. Ms. Robinson noted that Mr. ██████ provided a Plumber's Report dated October 25, 2023, that showed no internal leaks found. DC Water conducted the first underground inspection on October 27, 2023, prior to receipt of the written dispute, and there were no leaks found on the service line. High usage notifications were sent out each day from November 14, 2023, through December 8, 2023. On December 5, 2023, DC Water conducted a second underground inspection that found a leak on the service line between the meter and the curb stop. DC Water sent notice to the homeowner indicating that it was the owner's responsibility to make the repairs. On December 8, 2023, DC Water responded to the customer's request to assist their plumber who was on site making repairs and needed help working the curb stop. The DC Water technician went to the premises, and, upon arrival, found the sprinkler system running. Once the plumber turned off the sprinkler system the high usage alerts ceased.

Ms. Robinson expressed that she did not have the final paid Plumber's Report. Ms. Robinson stated that when the final Plumber's Report is received, DC Water can then make a determine if an adjustment is warranted under the Municipal Regulations 407.4, which says if pursuant 407.2, the leak is determined to be on private property or the property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak and the DC General Manager, at their discretion or upon the owner's request, may adjust the disputed bills or any bills issued during the investigation for a period not to exceed 30 calendar days.

Mr. ██████ contended that he had provided the final paid Plumber's Report that morning. Upon Ms Robinson's request, he sent it again to a second email address during the hearing. At this Hearing Officer's questioning, Ms. Robinson agreed that DC Water would still be willing to consider an adjustment once it has had an opportunity to review this bill, assuming it satisfies the criteria.

Mr. ██████ noted that he did not know that the previous owner of the home had installed an underground sprinkler system, nor did he know it was running. He further contended that the amount of water usage could not have been solely from the sprinkler system. Mr. ██████ clarified that he was not disputing that the bill represented the amount of water that was flowing through the meter but disputed the process by which he was not able to resolve the issue in a timely fashion.

Ms. Robinson noted that Mr. [REDACTED] contacted customer service on October 25, 2023, and two days later, DC Water performed an on-site underground inspection. The report from the underground inspection was provided to Mr. [REDACTED] as part of a packet DC Water provided to him along with the work order.

At Mr. [REDACTED]'s questioning, Ms. Robinson was able to confirm that Mr. [REDACTED] meter was changed on December 13, 2023.

In a discussion about the disparity between the billed amount and the amount listed on the DC Water account usage, Mr. [REDACTED] contended that the website showed usage for 4.17 CCF, but the first disputed bill was for 42.06 CCF. Ms. Robinson was able to clarify that the website provides incremental information on what is used in real time but also stated that she would confirm how the measurements are listed on the website. It provides information on use at a particular time, but that may not be the reflected amount on the bill. Mr. [REDACTED] clarified that he did not contend that there was a faulty bill. The Hearing Officer referenced Mr. Schwat's petition for an administrative hearing which stated that the bills dated October 19 and December 19 indicate use of 41.06 ccf and 661 ccf respectively whereas the website showed only 70.26 ccf for that period.

At the questioning of this Hearing Officer, Ms. Robinson confirmed that DC Water was in receipt of the final paid Plumber's Report. They would review all the materials and consider whether there's a need for an adjustment. A further request was made for DC Water to review the usage records and the billing records to see if a readjustment is warranted.

Based upon the foregoing evidence and testimony adduced at the hearing, the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a single-family house with a kitchen, three and a half bathrooms, and an outdoor, underground sprinkler system. (Testimony of Mr. [REDACTED])
2. The first disputed bill for \$795.30, was for the period of September 14, 2023 through October 12, 2023, and the second disputed bill for \$12,125.44, was for the period of October 13, 2023 through December 12, 2023. (Testimony of parties, Customer Bill).
3. Mr. [REDACTED] initially contacted DC Water on October 25, 2023. (Testimony of Ms. Robinson).
4. Mr. [REDACTED] provided DC Water a Plumber's Report on October 25, 2023, showing no internal leaks. (Testimony of Ms. Robinson).
5. On October 27, 2023, DC Water performed an on-site underground inspection that showed no leak. (Testimony of Ms. Robinson).
6. Mr. [REDACTED] contends that there is a disparity between his water usage amount listed on the DC Water's website and the amount billed. (Testimony of Mr. [REDACTED])
7. Throughout November of 2023, Mr. [REDACTED] contends that numerous plumbers came to inspect the interior of the home but found no leaks. (Testimony of Mr. [REDACTED])

8. On December 5, 2023, Mr. [REDACTED] noticed a substantial amount of water in his yard. (Testimony of Mr. [REDACTED])
9. On December 5, 2023, DC Water conducted a second underground inspection that found a leak on the service line between the meter and the curb stop. (Testimony of Ms. Robinson).
10. A final paid Plumber's Report from Magnolia Plumbing, Heating, and Cooling was provided by Mr. [REDACTED] showing repairs performed on December 11-13, 2023, that included digging up the yard and replacing the supply line into the house. (Testimony of Mr. [REDACTED] Plumber's Report).
11. DC Water can make a determine if an adjustment is warranted under the Municipal Regulations 407.4, which says if pursuant 407.2, the leak is determined to be on private property or the property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak and the DC General Manager, at their discretion or upon the owner's request, may adjust the disputed bills or any bills issued during the investigation for a period not to exceed 30 calendar days. (Testimony of Ms. Robinson).
12. DC Water received the final paid Plumber's Report and will review to determine whether to adjust Mr. [REDACTED] bills.
13. This Hearing Officer requested that DC Water review the usage records and the billing records for accuracy to see if a readjustment is warranted.
14. The Bill Investigation Report (BIR) for the two disputed bills of October 19, 2023 and December 19, 2023 is dated January 3, 2024.

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. D.C. Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made

to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.”)

4. If an investigation discloses a leak, other than a meter leak, of indeterminate location in the underground service, or at some other location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, on private property, on property that is under the control of the occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing. 21 DCMR 407.2.
5. If, pursuant to § 407.2, the leak is determined to be on private property or on property that is under the control of the owner or occupant, or the result of infrastructure for which the owner or occupant is responsible for maintaining and repairing, the owner or occupant shall repair the leak. The General Manager may, at their discretion, upon request of the owner, adjust the disputed bill and any bills issued during the investigation for a period not to exceed (30) calendar days after the issuance of the bill investigation report. 21 DCMR 407.4.
6. Under 21 DCMR 407.5, the adjusted amount, in accordance with § 407.4, shall not exceed 50% of the excess water usage over the average consumption of water at the same premises for up to three (3) previous comparable periods for which records are available. The General Manager may take the following into consideration in determining whether there should be a reduction in the bill(s):
 - (a) There has been no negligence on the part of the owner or occupant in notifying DC Water of unusual conditions indicative of a waste of water;
 - (b) The owner has repaired the leak within 30 calendar days after the bill investigation report is issued to the owner or occupant;
 - (c) The owner provides evidence that repairs have been made and that those repairs were performed by a licensed District of Columbia master plumber in accordance with the rules and regulations of the District of Columbia Department of Consumer and Regulatory Affairs; and
 - (d) The request for adjustment has been made in accordance with § 402.1 (a).

DECISION

This matter involves excess water charges that resulted from a leak on an underground water supply line. The customer claims that an adjustment is warranted because (1) the leak could

have been diagnosed earlier but for DC Water's delays and because (2) the usage amounts on his bill are substantially larger than the usage amounts shown on his account on the DC Water website.

The customer failed to show that DC Water was untimely in identifying the underground leak. The customer first contacted DC Water about a leak on October 25, 2023. DC Water dispatched a technician to the property two days later on October 27, 2023 for an underground inspection but no leaks were found. Throughout the month of November, the customer had several plumbers visit the property but they did not find any leaks either. On December 5, 2023, the customer noticed a large pool of water on the property and that same day, DC Water conducted a second underground inspection that found a leak on the service line between the meter and the curb stop. DC Water notified the customer of his obligation to make the repairs since the leak was on the private side of the line. The customer retained Magnolia Plumbing to repair the leak and the work was completed on December 13, 2023, a little over a week after the leak was discovered.

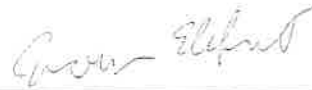
DC Water responded promptly to the customer's concerns about leaks – within two days after the customer's call in October and the same day as his call in December. And while DC Water did not find a leak on its first visit, it cannot be faulted for oversight given that several plumbers retained by the customer who visited the property in November did not detect the leak either. Because DC Water was not dilatory, the customer's request for an adjustment for reasons of delay fails.

That said, I find that the customer is entitled to an adjustment under 21 DCMR 407.4 and 21 DCMR 407.5. These regulations provide for an adjustment where an underground service line leak on private property is repaired by the owner, provided that the owner was not negligent in notifying DC Water of the problem, the owner repairs the leak within 30 calendar days following the bill investigation report, the owner provides evidence that the repairs were made by a master plumber and the requested adjustment is made by initiating a challenge in accordance with 21 DCMR 402.1(a). The adjustment may not exceed 50% of the excess water usage over the average consumption of water at the premises for up to three previous comparable periods.

The customer easily satisfies the above criteria for an adjustment. The customer quickly reported concerns about leaks to DC Water in both October and December 2023, and completed the repairs on December 13, 2024, even before the bill investigation report was completed. On the morning of the hearing, the customer provided an invoice from Magnolia Plumbers showing the repairs were paid for and complete. Finally, the customer initiated two timely billing disputes under 21 DCMR 402.1. Accordingly I will remand this case to DC Water for the appropriate adjustment.

Furthermore, in calculating the adjustment, DC Water is instructed to confirm the usage amounts of 41.06 ccf and 661 ccf shown on the two disputed bills and explain the discrepancy between those amounts and the 70.26 ccf listed on the website for customer use for that period. At the hearing, DC Water indicated that the website only shows incremental use which might explain the discrepancy but it also committed to verify the usage numbers on the bill. This is particularly important given that one of the bills is in excess of \$12,000 which is a substantial charge for a smaller customer.

For the reasons discussed, I find that the customer is entitled to an adjustment in connection with the underground supply line leak found on his property because he satisfies the criteria of 21 DCMR 407.5. Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account is unsupported by the record. DC Water is ordered to adjust the rate and verify the usage numbers and the customer's bills and explain the discrepancy between the usage amounts listed on the website and the customer's bills consistent with this ruling. This ruling applies to both of the water bills under dispute.



Carolyn Elefant, Hearing Officer

Date: October 11, 2024

45 [REDACTED] Westhall Dr NW
Washington DC 20007

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: [REDACTED]
50 [REDACTED] Garfield St NW
Washington DC 20016

Account No. [REDACTED]
Case No. 24-71104
Case No. 24-180502

Total Amount in Dispute: \$2,331.16

Before Carolyn Elefant, Hearing Officer
August 22, 2024

The customer contested two water bills, dated October 20, 2023, for the period of September 15, 2023 to October 13, 2023, and in the amount of \$1,270.23 and for the period of October 14, 2023 to December 13, 2023, in the amount of \$1,060.93. The DC Water and Sewer Authority (DC Water) investigated and determined that no adjustment to the bills was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on August 22, 2024, for a remote hearing. Present for the hearing was [REDACTED], the customer and property owner, and Stephanie Robinson and Rhonda Meyers on behalf of DC Water.

The property involved is a single-family home purchased by the homeowner in 2022. The home has eight bathrooms, a washing machine, two dishwashers, three outdoor spigots, and an underground pool. Prior to September 2023, the average water bill was around \$400 to \$500.

Ms. [REDACTED] testified that she received a high bill on October 23, 2023, and contacted DC Water, who told her to have the property inspected by a plumber. Ms. [REDACTED] stated that she hired a plumber, who informed her that there were no leaks on the property; however, she testified that she received another large bill following the inspection. Ms. [REDACTED] testified that DC Water subsequently sent out a technician, who notified her house sitter of a meter replacement, and afterward the high bills stopped. Ms. [REDACTED] field speculated that, as there was no indication of a leak and no further issues occurred after the meter replacement, the meter was the cause of the disputed bills.

Ms. [REDACTED] added that she had submitted the plumber's report to the hearing. Ms. [REDACTED] noted that the property shared a driveway with another property, and the two meters were

located side by side. Ms. [REDACTED] testified that the plumber she hired was unsure which meter belonged to her property, and she contacted DC Water to make clear how to identify the property's meter. Ms. [REDACTED] field stated that the meter change was not initiated on her end.

Ms. Robinson requested clarification on whether the property had a pond or a pool. Ms. [REDACTED] responded that the property had an underground pool.

Ms. Robinson testified that DC Water's position is that no adjustment is warranted. She explained that the charges in question were based on actual meter readings. Ms. Robinson noted that the disputed bill dated December 18, 2023, was for 61 days of usage and explained that, while accounts are typically billed for a one-month cycle, DC Water can render a bill greater than 30 days in accordance with District Municipal Regulation 308.1. Ms. Robinson testified that DC Water's investigation closed on February 1, 2024, and it was determined that an underground investigation was deemed unwarranted as usage had declined at the time of the investigation, which indicated that the cause of the wasted water was controlled at the property.

Ms. Robinson stated that the meter that serves the property was removed on July 3, 2024, and tested on July 16, 2024, for accuracy. Ms. Robinson reported that the meter demonstrated an overall accuracy of 99.17%, within the testing standards set by the American Water Works Association. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. Ms. Robinson added that DC Water's investigation did not disclose a meter overread or faulty computation. Ms. Robinson stated that under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted.

Ms. Robinson testified that DC Water did not change the meter at the property and instead replaced and reprogrammed the meter transmitter unit. Ms. Robinson explained that the meter transmitter unit sends the daily and hourly usage to DC Water. Ms. Robinson clarified that when testing the meter for accuracy, the actual meter is removed and tested, while the transmitter unit is not part of the testing process. Ms. Robinson noted that the transmitter feeds off the meter, and while the transmitter was replaced in January, the original meter remained in place.

Ms. Robinson stated that DC Water initiated the replacement or repair of a transmitter as part of preventative maintenance, and the contested bills are based on actual meter reads obtained

through the meter transmitting unit. Ms. Robinson explained that a technician determines whether replacement is necessary when a meter or meter transmitter is inspected. Ms. Robinson testified that on September 20, 2023, the meter reads for the property were showing as running backward, which can indicate a backflow issue - hence her inquiry about a pool at the property. She noted that she could provide the relevant work order.

At the Hearing Officer's request, the parties examined the work order for the meter transmitter unit. Ms. Robinson explained that the work order was generated to dispatch a technician to verify the data from the meter that indicated the meter readings were rolling backward on September 20, 2023. That work was completed on January 4, 2024. Ms. Robinson reviewed the work order, stating that the technician recorded the meter reading, which was sequential to the billed reads, and replaced and reprogrammed a new meter transmitting unit. Ms. Robinson further noted that the meter pit was located in the front yard.

Ms. Robinson added that a backflow can occur if a pressure issue arises, such as water lines that are too small or a high demand for water, which can cause the meter to pull water back into the main supply, resulting in meter readings moving both backward and forward. Ms. Robinson concluded that the meter readings indicated that this was the case with the usage recorded in September 2023. Ms. ██████ asked if Ms. Robinson was suggesting the backflow and the spike in water usage were related or two separate issues. Ms. Robinson replied that she was only presenting the facts for the disputed period.

Ms. ██████ then questioned if a faulty transmitter unit could give an inaccurate reading for water usage. Ms. Robinson responded that if the meter transmitter unit was faulty and DC Water was unable to read the meter, Ms. ██████ would have received an estimated bill. Ms. ██████ confirmed that she had not received such a bill and asked why DC Water had replaced the transmitter unit if it had not been adversely impacting the meter readings. Ms. Robinson replied that, as the usage was flowing backwards on September 20, 2023, DC Water sent a technician to verify if there was a problem with the meter, as it could have been affecting the billing. Ms. Robinson stated that backflow can be caused by a faulty meter or transmitter unit, so DC Water sent out a technician to investigate and complete the work order.

Ms. ██████ noted that DC Water found a problematic issue in September 2023 but did not resolve the work order in January 2024. Ms. Robinson clarified that DC Water did not find the issue problematic, only that the data for the property indicated that the usage was flowing

backwards on September 20, 2023. Ms. Robinson added that a meter flowing backwards usually signaled that something at the property was causing the water flow to go back to the main line. Ms. Robinson stated that the technician could not determine if the issue was caused by the pool, as it was an internal fixture and not within DC Water's control, making it the responsibility of the property owner to inspect.

Ms. Robinson testified that if the meter transmitting unit had been faulty, the meter technician would have conducted a visual read. Ms. Robinson stated that the DC Water meter reading records would then have been marked by the technician as a field read instead of an automated meter read. Ms. Robinson further clarified that the disputed bills were based on automated readings, and that if the automated system had been malfunctioning, the technician's handheld device would have detected the issue, prompting a manual reading. Ms. Robinson added that, as the meter transmitter unit receives its information directly from the meter, a problem with the readings would originate from the meter itself, not the transmitter unit.

Ms. [REDACTED] then clarified that she did not believe the second disputed bill was an outlier, as the amount of \$1,060.93 aligned with her expected billing for a two-month period. Ms. [REDACTED] stated that she remained concerned about the disputed bill dated October 20, 2023, and the reading for the period of September 15, 2023 to October 13, 2023, which indicated a usage of 51.5 CCF. Ms. [REDACTED] testified that the disputed bill of \$1,270.23 did not reflect her typical bills, as the billing period covered only one month. Ms. [REDACTED] noted that she was unsure how the spike had occurred, as there had been no change in usage, and she believed her pool was closed during the disputed billing period. Ms. [REDACTED] concluded that the only change she noticed was the replacement of the transmitter unit.

Ms. Robinson stated that DC Water obtains the meter readings and is responsible for ensuring the account is billed accurately based on that data but noted that the meter cannot determine how or when the water was used. Ms. Robinson added that DC Water can send alerts to registered accounts regarding daily usage and had sent one such alert to the account.

Ms. [REDACTED] referred to the water usage record, noting that spike to 51.5 CCF was a clear outlier compared to their usual daily usage. Ms. [REDACTED] stated that she was unsure why this occurred, as she recalled no changes in the household's water consumption. Ms. [REDACTED] reviewed the amount of water usage that occurred and found her CCF for the first disputed time period was in line with her normal usage. Ms. Robinson responded that on September 11, 2023, it appeared

that the property's usage went forward, then moved backward before moving forward again. Ms. Robinson noted that this pattern also occurred on September 12, 2023 and September 13, 2023, indicating consistent usage for those days where the meter readings rolled backward and then forward.

Ms. Robinson then pulled up the water usage graph for the period of September 15, 2023, through October 13, 2023, for further clarification, noting that the most excessive usage occurred on October 1, 2023, at 12:00 A.M. Ms. Robinson stated that the dips on the graph indicated where the meter was rolling backward before it would roll forward. Ms. [REDACTED] asked for clarification on whether the graph signified that the spike in water usage occurred at midnight. Ms. Robinson confirmed this was correct, reiterating that the usage was running backward and rolling forward.

Ms. [REDACTED] stated her confusion over the usage patterns and noted that her children were typically asleep by 10:00 P.M. Ms. [REDACTED] then testified that the precipitous shifts appeared indicative of an unknown issue but did not align with her household's water consumption. Ms. Robinson responded that DC Water could only provide the data they had available.

Ms. [REDACTED] asked if any fluctuations similar to the backflow evident in the water usage graph had occurred since the replacement of the meter transmitter unit. Ms. [REDACTED] then reviewed the monthly water usage in subsequent months and noted that no readings as high as the 51.5 CCF spike occurred again. Ms. [REDACTED] added that these recent readings also appeared consistent with the property's typical usage prior to the outlying spike.

Ms. Robinson then shared the data from the billing period of December 14, 2023, to January 12, 2024, noting that, as the meter transmitter unit was changed on January 4, 2024, the data was split into two groups. Ms. Robinson noted that dips in usage were present both before the installation of the new meter transmitter unit, from December 14, 2023 to January 4, 2024, and after the installation, from January 5, 2024, to January 12, 2024. Ms. [REDACTED] stated that she believed this billing period showed much smaller fluctuations compared to the disputed October 2023 bill. Ms. Robinson replied that it was representative of the property's actual usage. Ms. [REDACTED] replied that the numbers were much lower than the peaks in the October 2023 bill. Ms. Robinson confirmed that the usage did decline. At that point, the hearing concluded.

Based upon the foregoing evidence and testimony adduced at the hearing, the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a single-family home purchased by the homeowner in 2022 with eight bathrooms, a washing machine, two dishwashers, three outdoor spigots, and an underground pool. (Testimony of Ms. [REDACTED])
2. The bills challenged by the customer were for the period September 15, 2023 to October 13, 2023, in the amount of \$1,270.23, and for the period October 14, 2023 to December 13, 2023, in the amount of \$1,060.93. (Hearing Notice dated August 14, 2024).
3. Prior to September 2023, the average water bill was around \$400 to \$500. (Testimony of Ms. [REDACTED])
4. At the recommendation of DC Water, Ms. [REDACTED] contacted a plumber who found no leaks on the property. The property owner submitted the Plumber's Report that stated, "All plumbing and plumbing fixtures in house are not leaking as of 10-26-2023". (Testimony of Ms. [REDACTED] Plumber's Report).
5. Ms. Robinson testified that the disputed charges were based on actual meter readings obtained by DC Water's automated meter infrastructure and there was no indication of any faulty computations. (Testimony of Ms. Robinson).
6. The disputed bill dated December 18, 2023, was for 61 days of usage, which is in line with the typical billing amount. A bill for more than 30-days is permitted in accordance with District Municipal Regulation 308.1, (Testimony of Ms. Robinson).
7. Ms. Robinson testified that September 11-13, 2023, the property's usage went forward, then backward, then forward again, and the rolling pattern continued. (Testimony of Ms. Robinson).
8. Ms. Robinson testified that on September 20, 2023, the meter reads for the property were showing as running backward, which can indicate a backflow issue. (Testimony of Ms. Robinson, Work Report).
9. DC Water sent out a technician who replaced the meter transmitter unit on January 4, 2024. (Testimony of Ms. Robinson, Work Report).
10. A meter transmitter unit sends the daily and hourly usage to DC Water. (Testimony of Ms. Robinson).
11. Ms. Robinson testified that dips in usage were present both before the installation of the new meter transmitter unit, from December 14, 2023 to January 4, 2024, and after the installation from January 5, 2024 to January 12, 2024. (Testimony of Ms. Robinson).
12. The water usage records indicate an outlying spike of 51.5 CCF on October 1, 2023, at 12:00 A.M. (Testimony of Ms. Robinson).

13. DC Water's investigation found that the high usage had declined by the time it completed its investigation on February 1, 2024, ruling out the possibility of an underground leak. (Testimony of Ms. Robinson).
14. DC Water removed the meter on July 3, 2024, and tested it on July 16, 2024, demonstrating an overall accuracy of 99.17%, within the testing standards set by the American Water Works Association. (Testimony of Ms. Robinson).
15. DC Water determined that an adjustment is not warranted under DC Municipal Regulation 408.1, which says that in cases in which all checks and test results and inconclusive findings that provide no reasonable explanation for excess consumption no adjustment is warranted. (Testimony of Ms. Robinson).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence that the decision of DC Water is incorrect. (21 DCMR 420.7 and 420.8).
2. DC Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. D.C, Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the

General Manager, based upon a demonstration y the owner or occupant that such an adjustment will further a significant public interest.”)

4. Meters shall be read quarterly or at such other times as the General Manager shall determine. 21 DCMR 308.1.

DECISION

The customer in this matter was unable to meet the burden of proof to show that the water charges are in error or that he should not be responsible for their payment.

This is a case in which high water usage registered on the water meter and neither the customer nor the utility can determine the cause of the excess water usage. Before reaching the merits, I find that the customer challenge to the bill for the period from June through August 2023 is outside the scope of this hearing having been dismissed as untimely by order of Hearing Officer Janet Blasssingame on March 20, 2024. The customer did not appeal the dismissal order and the time for doing so has expired.

As to the merits, the customer first observed above average bills sometime in April 2023. The customer’s bill was initially adjusted for the period of April through June 2023, after a leak in a lead mainline pipe was discovered and repaired by DC Water. But the excess water charges continued through January 2024.

The customer did not hire a plumber to inspect the property following DC Water’s repairs. The customer could not explain why water use remained high following repair of the leak, or why it returned to normal in January 2024.

On the utility’s part, DC Water conducted an investigation for the billing periods August 23 to September 14, 2023 and for September 15 to October 13, 2023. DC Water performed an underground inspection and found no leaks. DC Water also pulled and tested the meter twice (in August 2023 and February 2024) and determined both times that it was functioning within accepted range of meter accuracy.

In cases such as this one where the cause of high water use cannot be determined after tests and checks have been performed, no adjustment shall be made for any portion of the excessive

consumption. 21 DCMR 408.1. Here, DC Water's investigation found no leaks or meter malfunction, and the customer did not produce a plumber's report or otherwise refute those findings. Accordingly, the determination of DC Water that the charges are valid and no basis exists to adjust the customer's account is hereby AFFIRMED.



Carolyn Elefant, Hearing Officer

Date: October 11, 2024

██████████
50 ██████ Garfield St NW
Washington DC 20016

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE:	Dunbar Mews Condominium Dunbar Mews 1380 Monroe St NW Suite 645 Washington, DC 20010 c/o ksalous@gmail.com	Account No. [REDACTED] Case Nos. 24-226701 24-226702 24-95854
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Total Amount in Dispute: \$3,739.94

Before Carolyn Elefant, Hearing Officer
October 24, 2024

The customer contested water bills for the property at 20 O St NW, Washington D.C. The disputed bills are dated November 8, 2023, for the period of August 8, 2023 to November 7, 2023, in the amount of \$2,657.67; dated January 9, 2024, for the period of December 7, 2023 to January 8, 2024, in the amount of \$525.30; and dated February 8, 2024, for the period of January 9, 2024 to February 6, 2024, in the amount of \$556.97. The D.C. Water and Sewer Authority (D.C. Water) investigated and determined that no adjustment to the bill was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on October 24, 2024, for a remote hearing. Present for the hearing were Kyle Salous, on behalf of his property, Todd Lee with Metro Home Managers, and Arlene Andrews, Rhona Meyers, and Kim Arrington who appeared on behalf of D.C. Water.

The property involved is a 750-square-foot unit on the bottom floor of a condo comprising a total of eight units. Each unit has a kitchen with one sink, one and a half baths, and a washing machine. The property has an unused outdoor hose bib. Mr. Salous owns two units in the building, one upper and one lower, and has lived in the property for seven or eight years. The building is managed by Mr. Lee's company and has a total of four water bills. Prior to the disputed bills, the average water bill was approximately \$75 to \$175.

The Hearing Officer noted that she initially received files for two additional case numbers, but the Hearing Notice dated October 10, 2024, only included the case number for the disputed bills dated January 9, 2024, and February 8, 2024. The notice included Case No. 24-95854, relating to the bill dated November 8, 2023, for the period of August 8, 2023, to November 7, 2023, in the amount of \$2,657.67. The Hearing Officer asked if D.C. Water was prepared to address this bill at the current hearing despite its absence from the notice.

Ms. Andrews responded that the administrator had sent over the customer's entire case file, including case numbers 24-95854; 24-226702; and 24-226701. Ms. Andrews stated that D.C. Water had deemed Case No. 24-226702, for the customer's appeal of his December 8, 2023, bill, untimely. She stated that while the appeal for Case No. 24-95854 was timely, D.C. Water's

decision on the appeal was that no adjustment is warranted. She explained that the customer then did not submit the administrative hearing petition for that bill, so it was not included.

Mr. Salous mentioned that their account with D.C. Water had existed for a significant amount of time. Mr. Salous testified that the first anomalies with billing occurred in December 2023 and continued into February or March 2024. He noted that, as there was a clear deviation from the baseline of the average bill for the property, he and Mr. Lee were contesting any bills from that time frame. Mr. Salous stated that he was unsure why the other bills had not been included in the ongoing hearing since he believed they had opened a case regarding them. Mr. Salous explained that they had hired plumbers, ensured that D.C. Water visited the property, and had not identified any leaks. Mr. Salous concluded that the bills stabilized after the March 2024 bill and reiterated that he was challenging any bills that deviated significantly from the average amount prior to December 2024.

Mr. Lee testified that they received a bill dated August 7, 2023, and then did not receive another bill until November 8, 2023, which was in an amount that did not make sense to him. Mr. Lee stated that they then opened multiple cases and thought they had properly filed for appeals but acknowledged that an error could have occurred during this process. Ms. Andrews stated that D.C. Water objected to the November 8, 2023, bill being included in the ongoing hearing because the customer did not submit the administrative hearing petition for that bill.

The Hearing Officer noted that the customer had 15 days to file an appeal after receiving D.C. Water's decision and asked if the customer recalled filing an administrative hearing petition or getting D.C. Water's decision. The Hearing Officer added that she asked this in order to rule out the possibility that a document had not been received by a party. Mr. Lee replied that there had been multiple communications with D.C. Water. Mr. Lee stated that they had attempted to file the appeal properly but acknowledged the possibility that, due to the three different requirements for the appeals, the filing may not have been completed by the required date.

Mr. Salous stated that Mr. Lee had opened a case to address the deviation in billing amounts and water consumption. Mr. Salous testified that the hearing was scheduled due to several anomalous bills, which later normalized, and noted that Mr. Lee tried to maintain communication with D.C. Water. He explained that they had assumed the hearing would address all billing anomalies, and any unfiled appeal was an unintentional oversight despite their intentions.

The Hearing Officer stated that D.C. Water had the right to object to discussing the bills for case numbers 24-95854 and 24-226702, noting that, if D.C. Water agreed to discuss them, they would not be able to maintain the position that the bills are untimely. The Hearing Officer confirmed that the customer was willing to proceed with the hearing limited to the case number on the hearing notice, covering the bills dated January 9, 2024, and February 8, 2024. The Hearing Officer added that she would consider an argument from the customer as to whether a timely petition was filed.

Mr. Salous testified that they thought the initial high bill was an error, but a later bill was higher than the initial bill and around "1,000% more" than an average water bill, to his estimation. Mr. Salous noted that D.C. Water sent a notice stating that the property might have a leak. Mr.

Salous recalled that, upon receiving a notice, Mr. Lee would contact Mr. Salous in his official capacity as the property manager to ask if there was a leak on the property. Mr. Salous stated that he and Mr. Lee would then inspect the property and find no evidence of a leak. He testified that there were no obvious leaks on the property that could justify a \$2,500 water bill, as no significant damage was observed. Mr. Salous explained that D.C. Water continued to send these notices.

Mr. Salous stated that multiple plumbers were hired to inspect the property. Mr. Salous noted that he and Mr. Lee had provided evidence showing that a professional company confirmed there was a problem, but no leak was detected. Mr. Salous testified that this company commented that they did not believe the unit could consume \$2,500 a month in water considering its size and plumbing configuration. Mr. Salous stated that documentation had been provided to confirm that due diligence was undertaken, including multiple inspections and experts hired to investigate. Mr. Salous reported that the water bills normalized by spring 2024 despite no changes being made. He added that there are no external plumbing features at the property.

Mr. Lee stated that the plumber's report was submitted in the preliminaries, but he had not submitted it for the ongoing hearing. Ms. Andrews responded that she did not have a record of the plumber's report and asked Mr. Lee when they were sent over. Mr. Lee replied that the plumber's report was submitted in March or April 2024. Ms. Andrews noted that the administrative hearing petition was submitted in March 2024, suggesting that the report was not included with the petition. Mr. Lee stated that he would need to check the email to confirm, as the intent was for it to be included. Mr. Salous added that he personally submitted the plumber's report as a part of the hearing response and stated he would search for the email.

Mr. Salous confirmed that the plumber's report was not included in the file for the hearing but testified that it was included in the customer's response. The Hearing Officer noted that the email containing the report may have been delivered to the Administrative Hearings email address. Ms. Andrews asked if either Mr. Lee or Mr. Salous could provide the email address to which the documents were sent. Mr. Salous replied that he was currently searching for that information. Ms. Andrews stated that the customer submitted the disputes online and the only documents attached were the bills. The Hearing Officer requested that a copy of the plumber's report be provided by October 28, 2024. Ms. Andrews stated that the plumber's report could be sent to the Administrative Hearings email address. As noted, *infra*, the Hearing Officer received and reviewed the Plumber's Report.

Ms. Andrews queried whether the units in the condo all had separate meters. Mr. Lee stated that the unit above the disputed unit belongs to a different owner, not Mr. Salous. Mr. Lee clarified that both units were inspected during the plumber's report.

Ms. Andrews testified that D.C. Water's position is that no adjustment is warranted. She explained that the charges in question were built based on actual meter readings. Ms. Andrews stated that Meter ID number 52939341, which serves the property, was removed on July 3, 2024, and tested on July 9, 2024, for accuracy. Ms. Andrews reported that the meter demonstrated an overall accuracy of 100.29%, within the testing standards set by the American Water Works Association. As stipulated by the American Water Works guidelines, a meter reading within the

range of 98.50% to 101.50% is considered a passing result. Ms. Andrews added that D.C. Water's investigation did not disclose a meter overread or faulty computation.

Ms. Andrews stated that on March 5, 2024, a D.C. Water service technician visited the property to perform an underground inspection because of the excess usage. Ms. Andrews testified that the technician's comments from March 5, 2024, are that no signs of leaks were found at the meter. Ms. Andrews testified that, as the high usage had decreased, the cause of the wasted water was controlled at the property. Ms. Andrews stated that under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings provide no reasonable explanation for excess consumption, no adjustment is warranted. Ms. Andrews added that, while the customer now stated that they had a plumber's report, D.C. Water had no record of receiving said report.

Mr. Salous stated that he was currently compiling the email with the plumber's report. Mr. Salous then noted his confusion about how such a large volume of water could have leaked, given the size of the unit and its plumbing fixtures. He reiterated that they had consulted multiple plumbers. Mr. Salous explained that even a leak from a toilet or sink would be unlikely to cause monthly water bills of \$2,500 and noted that there was no evidence of the significant damage such an amount of water over multiple months would cause. Mr. Salous stated that he appreciated the explanation of the meter testing but reiterated that no leak was found on the property.

Mr. Salous mentioned that he would include in his email the correspondence with other unit owners, who were also asked to check for leaks when the water alerts were received but were unable to identify any issues. Mr. Salous restated that professionals were hired and there was no indication of where the water could have gone. He added that some of the bills in the disputed time frame had spiked to 20 times the average usage, possibly more. Mr. Salous asked D.C. Water if this level of leakage was common in units similar to his.

Ms. Andrews replied that she was unable to explain the cause of the high usage. She explained that high water usage often results from wasted water, which is water that flows back into the sewer system. Ms. Andrews clarified that D.C. Water bills for the water registered through the meter and cannot determine what occurs within the property. Ms. Andrews noted that a common cause of excessive usage is a malfunctioning toilet where the wasted water goes back into the sewer system. She explained that this issue often requires a professional diagnosis as the leak often cannot be visually or audibly identified. Ms. Andrews stated that D.C. Water recommends a plumber inspect a property with high usage as they are unable to determine issues at the property. She explained that an underground inspection is conducted to confirm the issue does not lay with D.C. Water.

Mr. Salous thanked Ms. Andrews for the explanation and asked if she believed it was possible for a toilet to consume \$2,500 worth of water in one month in a non-obvious way. Ms. Andrews replied that she had seen bills where that was possible, as customers with issues had previously reached back out to confirm with D.C. Water that it was the cause of their high usage.

Mr. Salous stated that the total of four toilets in the unit and the unit above were inspected multiple times for leaks. He testified that all the few potential sources of leaks were repeatedly

checked as the alerts and high bills continued. Mr. Salous stated that he and Mr. Lee had been engaged with the problem from the moment the first high bill was received and had attempted to find the source of the problem. Mr. Salous noted that they were unsure what other action to take beyond engaging professional plumbers, who tested the toilets for leaks with blue dye and checked the water heaters as part of their inspection.

Mr. Salous mentioned that he had sent the plumber's report, including pictures and analysis, a few minutes prior and requested confirmation of receipt. Ms. Andrews stated that she had alerted the administrator and would ask her to forward the documents.

The Hearing Officer questioned Ms. Andrews as to why the Billed Meter Reading Report indicated that the bills dated December 6, 2023, January 8, 2024, and February 8, 2024, were conducted as field readings instead of transmitted readings from the meter transmitting unit serving the property. Ms. Andrews replied that the meter transmitting unit stopped transmitting on October 31, 2023. The Hearing Officer asked Ms. Andrews whether the meter or the transmitting unit was repaired at that time. Ms. Andrews responded that they were not, and the field reads were conducted to bill the customer. The Hearing Officer inquired whether the meter tested for accuracy was the one with the broken transmitter or a different meter. Ms. Andrews replied that the same meter was on the property up until the meter was pulled for testing in July 2024, Meter ID number 52939341.

Mr. Lee asked to clarify if Ms. Andrews had stated that the transmitter had failed and been replaced in October 2023. Ms. Andrews reiterated that the meter transmitting unit stopped transmitting in October 2023, with the last read received by D.C. Water on October 31, 2023. She explained that after this date, D.C. Water went out to the field to obtain a reading every month.

Mr. Lee testified that the bills returned to their customary levels in April or May 2024. Mr. Lee noted that the February 8, 2024, bill was in the amount of \$360, the April 2024 bill was in the amount of \$560, and the May 2024 bill was in the amount of \$160, with \$160 being a nominal rate for the property and for the community. Mr. Salous added that the peak charges were in November 2023, December 2023, and January 2024, and he believed one bill had reached \$2,600.

Mr. Lee stated that the last regular read was on September 1, 2023, and no bill was issued for October 2023, which he speculated was related to Ms. Andrew's explanation of the field readings. Mr. Lee noted that the November 2023 bill, which he acknowledged was out of scope, was in the amount of \$2,600. Mr. Lee explained that these high bills were the reason they had appealed for an administrative hearing and that he was unaware of the requirement to submit separate disputes for each bill.

At this point, Ms. Andrews received the email from Mr. Salous and confirmed that it had also been forwarded to the Hearing Officer.

Mr. Lee asked Ms. Andrews if the meter for the property had returned to automated reading or if it was still undergoing manual reads. Ms. Andrews stated that the meter was now receiving automated reads.

The Hearing Officer confirmed that the Plumber's Report concluded that no leaks were found at the property and that it did not provide a possible cause of the high bills. The Hearing Officer allowed the report to be considered a late submission into the record.

Based upon the foregoing evidence and testimony adduced at the hearing, along with documents in the record the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a 750-square-foot unit with a kitchen with one sink, one and a half baths, and a washing machine, located on the bottom floor of a condo comprising a total of eight units. The property has an unused outdoor hose bib. (Testimony of Mr. Lee, Testimony of Mr. Salous).
2. The disputed bills are dated November 8, 2023, for the period of August 8, 2023 to November 7, 2023, in the amount of \$2,657.67; dated January 9, 2024, for the period of December 7, 2023 to January 8, 2024, in the amount of \$525.30; and dated February 8, 2024, for the period of January 9, 2024 to February 6, 2024, in the amount of \$556.97. (Testimony of the parties).
3. The average water bill was in the range of \$75 to \$175 prior to the disputed bills. (Testimony of Mr. Salous).
4. D.C. Water asserted that the appeal for Case No. 24-226702, disputing the December 8, 2023 bill, was untimely. (Testimony of Ms. Andrews).
5. D.C. Water asserted the appeal for Case No. 24-95854, relating to the bill dated November 8, 2023, was also untimely since the customer did not submit an administrative hearing petition within 15 days of receiving D.C. Water's decision on the customer's appeal. Additionally, D.C. Water noted that it had determined that no adjustment was warranted based on actual meter readings. (Testimony of Ms. Andrews).
6. Mr. Salous testified that D.C. Water sent notices warning of a possible leak in the property. (Testimony of Mr. Salous).
7. Mr. Salous testified that he and Mr. Lee inspected and found no leaks. (Testimony of Mr. Salous).
8. Mr. Salous testified that multiple plumbers were hired that found no evidence of a leak. (Testimony of Mr. Salous).
9. Mr. Salous provided a Plumber's Report to D.C. Water and the Hearing Officer that concluded that no leaks were found on the property, which was accepted into the record as a late submission. (Testimony of Mr. Salous).
10. The customer received a bill dated August 7, 2023, and then did not receive another bill until November 8, 2023, in the amount of \$2,657.67, which covered 92 days. (Testimony of the parties, November 8, 2023 Bill).
11. D.C. Water conducted field readings for the December 6, 2023, January 8, 2024, and February 6, 2024, bills because the meter transmitting unit for the property stopped transmitting on October 31, 2023. (Testimony of Ms. Andrews).
12. The meter transmitting unit was not replaced until the meter was pulled for testing on July 3, 2024. (Testimony of Ms. Andrews).
13. Mr. Lee testified that the February 8, 2024 bill was in the amount of \$360 and the April 2024 bill was in the amount of \$560. (Testimony of Mr. Lee).

14. Mr. Lee testified that the bills returned to average in May 2024 in the amount of \$160. (Testimony of Mr. Lee).
15. On March 5, 2024, D.C. Water performed an underground inspection and did not find any leaks. (Testimony of Ms. Andrews).
16. D.C. Water removed the meter on July 3, 2024, and tested it on July 9, 2024, demonstrating an overall accuracy of 100.29%, within the guidelines of the American Water Works Association standards of 98.5% to 101.50%. (Testimony of Ms. Andrews).
17. D.C. Water’s investigation determined that an adjustment is not warranted under District Municipal Regulation 408.1, in cases in which all checks and test results show inconclusive findings and there are no reasonable explanations for excess consumption, no adjustment is warranted. (Testimony of Ms. Andrews).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of D.C. Water is incorrect. (21 DCMR 420.7 and 420.8).
2. D.C. Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. Challenges to a bill will be deemed untimely if made more than twenty days after the bill date. 21 DCMR 402.2(a).
4. A petition for an administrative hearing to review a decision of the General Manager must be made within 15 calendar days of the decision. 21 DCMR 412.1.
5. D.C. Municipal Regulations bar adjustment of customer’s bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that “In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.”)

5. Meters shall be read quarterly or at such other times as the General Manager shall determine. 21 DCMR 308.1.

DECISION

The customer in this matter was unable to meet the burden of proof to show that the water charges are in error or that they should not be responsible for their payment.

Before reaching the merits, I must address whether the challenges are properly before me. With regard to the bill dated November 8, 2023 for the period of August 8, 2023 to November 7, 2023 (Case No. 24-95854), the customer timely challenged the bill within twenty days as required by 21 DCMR 402.1. D.C. Water denied the adjustment and notified the customer of his right to request an administrative hearing within fifteen calendar days by letter dated on March 7, 2024 (*See* BIR - 11.08.23). D.C. Water's representative testified that the customer did not file an administrative hearing petition and the case file does not include a hearing petition either. Because an administrative hearing may only be initiated by a timely petition by the customer under 21 DCMR 412.1 and the customer did not file a petition here, the challenge to the November 8, 2023 bill is dismissed.

For a different reason, the challenge to the December 8, 2023 bill in Case No. 24-226702 is also dismissed. Under 21 DCMR 402.2(a), a challenge to a bill made more than twenty days after the bill date is untimely. The deadline for disputing the December 8, 2023 bill was December 28, 2023 but the customer did not file a dispute until January 29, 2024, a month after the deadline expired. (*See* PIC dated March 8, 2024). D.C. Water informed the customer of the untimely dispute on March 8, 2024 and afforded an opportunity to challenge it which the customer did not pursue. Because the customer's challenge to the December 8, 2023 bill was untimely, I am barred from addressing it in this proceeding.

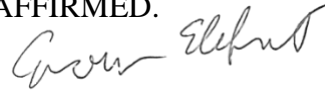
As for the bill dated February 8, 2024, the customer retained a plumber to investigate whether the excessive use might have resulted from a leak on the premises. The plumber's report, which was produced at the hearing found no leaks. The customer also asked unit owners to check for leaks but no issues were identified. Finally, at the hearing, the customer questioned whether the broken meter transmitting unit may have accounted for inaccurate readings.

For its part, D.C. Water pulled and tested the meter in early July 2024 and found that it was operating within an acceptable range of accuracy. D.C. Water's investigation did not disclose a meter overread or faulty computation. And although the meter transmitting unit was broken sometime at the end of October 2023, I find that the transmitter malfunction did not affect the accuracy of the meter readings which were gathered through field visits every month between December 2023 and March 2024. (*See* Billed Reads 3.08.24) D.C. Water also conducted an underground inspection which found no signs of leaks at the meter. In addition, because the high water usage decreased, D.C. Water concluded that the cause of the wasted water was controlled at the property.

In cases in which all checks and test results and inconclusive findings provide no reasonable explanation for excess consumption, no adjustment is warranted. 21 DCMR 408.1.

Here, despite the customer's plumbing inspection and D.C. Water's investigation, neither the customer nor D.C. Water could explain the reason for the excess usage. Nor is there any indication that D.C. Water was responsible for the excess usage.

For the reasons discussed, Case Nos. 24-95854 and 24-226702 are dismissed as untimely and the determination of D.C. Water that the charges are valid and no basis exists to adjust the customer's account in Case No. 24-228701 is hereby AFFIRMED.



Carolyn Elefant, Hearing Officer

Date: December 2, 2024

Dunbar Mews Condominium
Dunbar Mews
1380 Monroe St NW Suite 645
Washington, DC 20010
c/o ksalous@gmail.com

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: Phillip Bishop
11948 Autumnwood Lane
Fort Washington, Maryland 20744

Account No. [REDACTED]
Case No. 24-22582
Case No. 24-120470
Case No. 24-501568

Service Address: 2333 15th St. NE

Total Amount in Dispute: \$1,781.21

ORDER DENYING RECONSIDERATION

The customer, Phillip Bishop timely challenged as excessive several bills issued between September 2023 and March 2024. This matter came for hearing before the Hearing Officer on June 13, 2024 with a decision issued September 24, 2024 affirming D.C. Water’s charges in the above-captioned case. On October 16, 2024, the customer emailed D.C. Water, asserting “a number of issues misrepresented and findings unacceptable” regarding the September 2024 ruling. Despite the informality of the customer’s email, I am treating it as a request for reconsideration that remains within my power to address in this Order. *See Coto v. Citibank FSB*, 912 A.2d 562, 566 (D.C. 2006)(noting that a case is not final for purposes of appeal until the agency has resolved pending motion for reconsideration).

I. FACTUAL BACKGROUND

Mr. Phillip Bishop, the property owner, timely contested several water bills for the property at 2333 15th Street NE, Washington DC. that was rented to tenants at the time of the dispute. The timely disputed bills are as follows: (1) a bill dated September 25, 2023 for the period August 16, 2023 to September 18th, 2023 (\$803.37); (2) a bill dated November 20, 2023 for the period October 18, 2023 to November 16, 2023 (\$469.94) and (3) a bill dated March 18, 2024 the period February 15, 2024 to March 15, 2024 (\$520.90). For the September 25, 2024 bill, D.C. Water determined, based on the customer’s plumbing report, that a malfunctioning flapper was the cause of the excess charges and denied an adjustment under 21 DCMR 406.2. (Plumber’s Report October 11, 2023, BIR dated November 2, 2023). For the remaining two bills, D.C. Water denied an adjustment under 21 DCMR 408.1 citing inconclusive findings. (BIR dated June 5, 2024; BIR dated February 14, 2023).

The customer requested an administrative hearing to challenge the denied adjustments. At the hearing held on June 13, 2024, the customer argued that a minor leak could not be the cause of a large bill and asserted repeatedly that a malfunctioning meter was to blame. As evidence that the meter was the culprit, the customer argued that once the meter was replaced in May of 2024, the bills returned to their customary levels.

To rebut the customer’s case, D.C. Water argued that the meter had an overall accuracy of 97.93% accuracy which reflects underreporting under American Water Works Association

guidelines. D.C. Water also argued that usage returned to lower levels in May 2024 not due to the meter replacement but because the tenants moved out.

The Hearing Officer affirmed D.C. Water's findings. The Hearing Officer agreed that no adjustment was due for the September 25, 2023 bill in light of the malfunctioning toilet and flapper. The Hearing Officer also found that the customer failed to show that the meter was to blame for the high water bills because usage began to decline before the meter was replaced and was reduced further when the tenants vacated.

By email, the customer challenged the Hearing Officer's decision, alleging generally that the decision misrepresented issues and made unacceptable findings. The customer again reiterated that a faulty meter was to blame explaining that even with the property now occupied with tenants, the water bills have returned to normal levels now that the water meter has been replaced. The customer asserted that had the meter been changed in November 2023 or even January 2024, he would not have experienced a \$4500 bill. D.C. Water was afforded an opportunity to respond, and asserted the decision was supported by the record from the hearing.

II. ANALYSIS

Based on my review of the customer's email and the record in this proceeding, I deny reconsideration for the reasons discussed below.

Before reaching the merits, as a preliminary matter, the only bills at issue in this proceeding are those dated September 25, 2023, November 20, 2023 and March 18, 2024 with a total amount in dispute of \$1781.21. The customer's email alludes to bills totaling \$4500, an amount that presumably includes all of the bills issued between August 2023 and March 2024. As determined in the initial decision, there was no showing that any other bills had been timely disputed and the customer did not challenge that finding as part of his email.

As to the merits, the applicable standard of review is whether the customer has met the burden of proof which is by a preponderance of evidence. 21 DCMR 420.8. "Preponderance of the evidence has been defined as "proof which leads the [court] to find that the existence of the contested fact is more plausible than its non-existence." *In re D.I.S.*, 494 A.2d 1316, 1326 (D.C. 1985); *see also Lindsay v. NTSB*, 47 F.3d 1209, 1213 (D.C. Cir. 1995)(explaining that the preponderance standard asks the court to determine whether a proposition is more likely true than not true based on the evidence in the record).

To carry that burden of proof at a hearing, the customer must present a prima facie case showing that the customer was not responsible for the contested water use. If the customer does so, the burden of production shifts to the opponent—the utility—to respond with credible evidence in rebuttal. If the utility does make a sufficient showing, the customer must trump the utility's response with evidence sufficient to carry the burden of proof, which remains always with the customer. *Gatewood v. D.C. Water & Sewer Auth.*, 82 A.3d 41, 52 (D.C. 2013).

With regard to the September 25, 2023 bill, I affirm my decision that D.C. Water properly denied the adjustment under 21 DCMR 406.2 which bars an adjustment where excess usage results from a leaky or malfunctioning fixture that is the responsibility of the owner or occupant. Here, the plumber's report dated October 11, 2023 showed a running toilet and malfunctioning flapper and flush valve which were replaced on October 25, 2023 according to a second plumber's report. Moreover, it can be inferred from the record that the running toilet was shut off during the plumber's first visit because consumption decreased from 43.3 CCF on September 18, 2023 to 28.1 CCF on October 17, 2023. (*See Billed Reads*). Although the customer argued that minor malfunction could not explain a large water bill, this assertion alone, without any additional supporting evidence does not satisfy the burden of showing that it was more likely than not that factors other than the running toilet and broken valve and flapper caused the excess usage.

I also find that the customer failed to meet his burden of showing that a faulty meter was to blame for the excess charges, either through evidence presented at the hearing or through his post-hearing submissions. At the hearing, the customer argued that once the meter was replaced on May 2, 2024, usage decreased substantially, and therefore, it could be inferred that the meter was the cause of the excessive use. Having made out a prima facie case, the burden shifted to D.C. Water to rebut the customer's position which D.C. Water accomplished by showing that the meter was actually underreporting usage. Next, there was evidence that a D.C. Water technician checked the meter on January 12, 2024 and while a data entry error was discovered and corrected, no issues were reported with the meter. *See Testimony of Stephanie Robinson; Work Order 1.14.24*. Finally, D.C. Water contended that another factor, specifically, the tenants' departure at the end of April or beginning of May, and not just the replacement of the meter accounted for the substantial reduction in use. Ruling out the meter as the cause of excessive use and absent any alternative explanation, D.C. Water could not determine the specific reason for the excess usage, and therefore denied an adjustment under 21 DCMR 408.1 for inconclusive findings. The customer's inference of meter inaccuracy based on reduced use after the meter was replaced is insufficient to overcome D.C. Water's evidence of meter underreporting, the technician's findings in January that there were no issues with the meter and the tenants' departure as an alternative explanation for the decreased usage after the meter was replaced.

The customer's post-hearing evidence of lowered water bills for the new tenants does not change the outcome. The customer's new tenants may have consumption patterns that differ from the prior tenants. Under 21 DCMR 499, a comparable period is defined as one in which there is no change in occupancy and as such, the new usage levels by new occupants do not provide a comparable comparison within the meaning of the regulations.

For the reasons discussed above, the customer did not satisfy the burden of proof by a preponderance of evidence under 21 DCMR 420.8 that it was more likely than not that the meter was faulty, or that the meter, as opposed to other factors, was the cause of the excess use. Therefore, I affirm my decision dated September 25, 2024. This is a final order. Any future challenge must be pursued through a written petition to the D.C. Court of Appeals within 30 days of the date of this ruling.

Carolyn Elefant

Carolyn Elefant, Hearing Officer

Date: December 2, 2024

Phillip Bishop
11948 Autumnwood Lane
Fort Washington, Maryland 20744

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: [REDACTED]
32 [REDACTED] Alabama Ave SE
Washington DC 20020

Account No. [REDACTED]
Case Nos. 24-36283P
24-85603

Total Amount in Dispute: \$1,093.90

Before Carolyn Elefant, Hearing Officer
August 8, 2024

The homeowner [REDACTED] contested a water bill for the property at 32 [REDACTED] Alabama Ave SE. The disputed bills cover the period August 24, 2023 to September 26, 2023, in the amount of \$730.41, and September 27, 2023 to October 25, 2023, in the amount of \$363.49. The D.C. Water and Sewer Authority (D.C. Water) investigated and determined that no adjustment to the bill was warranted. The customer requested an administrative hearing.

The matter came before the Hearing Officer on August 8, 2024, for a remote hearing. Present for the hearing were [REDACTED], the property owner, and Kimberly Arrington and Christine Gibson, who appeared on behalf of D.C. Water.

The property involved is a single-family home in southeast D.C. The property has three bathrooms each with a sink, two kitchen sinks, one washer, and two outside faucets. Four people resided there, including two teenagers.

Ms. [REDACTED] stated that outside of the disputed bill, the average water bill was around \$140. Upon receipt of the first disputed bill, Ms. [REDACTED] immediately contacted D.C. Water on September 29, 2023, and was advised to contact a plumber. On October 4, 2023, a plumber came to the property for an unrelated matter but also checked for any leaks. Ms. [REDACTED] testified that no leaks were found. Ms. [REDACTED] noted that she did not have a plumber's report. She has an invoice that only mentions that the plumber snaked a drain. This Hearing Officer declined review of this invoice.

Ms. [REDACTED] testified that a D.C. Water technician did an evaluation on October 12, 2023, and informed her that the system was faulty. She contends that he informed her that she would be receiving an adjusted bill for the first disputed period. No such altered bill arrived, and the following bill for the second disputed period arrived also showing a higher-than-expected amount.

Ms. Arrington shared the relevant work order with Ms. [REDACTED] and explained that the faulty device was the MTU, according to the technician's findings. The MTU transmits the signal that shows the water usage, but it does not control or read the amount of use.

Ms. [REDACTED] questioned how the water usage amount would abruptly drop back to normal after the technician's visit when only the transmitter was faulty, finding it coincidental. Ms. [REDACTED] further questioned whether there was an applicable statute of limitation for D.C. Water to investigate and schedule this hearing, as there had been substantial delay. Ms. Arrington apologized for the delay, citing new systems being implemented and the high number of disputes.

Ms. Gibson testified that D.C. Water's position is that no adjustment is warranted. She explained that the charges in question were built based on actual meter readings – the first disputed bill was based off a field read and the second disputed bill was based off their automated meter infrastructure. Ms. Gibson reiterated that even if a MTU is faulty and not transmitting water usage, the meter is still independently recording the usage. The computer issues with the MTU would not impact the meter's ability to record actual usage. Further, Ms. Gibson stated that the meter that serves the property was removed on October 12, 2024, and tested for accuracy. Ms. Gibson reported that the meter results demonstrated an overall accuracy of 100.83%. A meter reading within the range of 98.50% to 101.50% stipulated by the American Water Works guidelines is considered a passing result. Ms. Gibson added that D.C. Water's investigation did not disclose a meter overread or faulty computation. Ms. Gibson stated that under District Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings provide no reasonable explanation for excess consumption, no adjustment is warranted.

Ms. [REDACTED] pointed out that her family was on vacation and the property was empty from September 10, 2023 through September 17, 2023, with the exception of one day when her parents dropped the dogs off at the house and a friend/dog walker was in the home. Ms. Arrington confirmed that their records do indicate that Ms. [REDACTED] and her family were away on those dates. Ms. Gibson stated that it is common to see a spike when a family goes on vacation due to a flapper not completely shutting leaving a toilet to run continuously. Ms. [REDACTED] affirmed that there was not a toilet running upon their arrival home from vacation.

Ms. [REDACTED] recalled that the city replaced a front pipe to a copper pipe, but Ms. Gibson was able to confirm that D.C. Water records indicate that event took place in 2022.

Ms. Arrington suggested utilizing the high usage alert notification application system offered by D.C. Water. Ms. Arrington was able to confirm that the homeowner currently has the default threshold set to be notified when their water usage is six times their normal usage, so no alert would have been sent even if the MTU had been functional. By lowering the threshold, an alert would be sent when there is a sudden spike in usage.

At the questioning of this Hearing Officer, Ms. Gibson was able to confirm that the information provided by the meter, due to the MTU's malfunction, was not able to isolate the period of time that the high usage took place within the disputed period prior to October 12, 2023. Ms. Arrington was able to review the account records and testified that this account had fluctuation as to water usage each day with some being higher and others lower. Ms. Gibson pointed to October 29, 2023, as an example of a day with a higher consumption. Ms. [REDACTED] confirmed that she had a houseguest and a dinner party on that date.

Ms. Arrington concluded that the applicable standard under the regulations provides that no adjustment is warranted when neither D.C. Water nor the customer can identify the cause of the issue.

Based upon the foregoing evidence and testimony adduced at the hearing, along with documents in the record the Hearing Officer makes the following findings of fact:

FINDINGS OF FACT

1. The property involved is a single-family home in southeast D.C. The property has three bathrooms each with a sink, two kitchen sinks, one washer, and two outside faucets. (Testimonies of Ms. [REDACTED])
2. The property is typically occupied by four residents, including two teenagers, but it was largely vacant from September 10, 2023 through September 17, 2023, with the exception of one day when her parents dropped the dogs off at the house and a friend/dog walker was in the home. (Testimonies of Ms. [REDACTED])
3. The disputed bills covers the period August 24, 2023 to September 26, 2023, in the amount of \$730.41, and September 27, 2023 to October 25, 2023, in the amount of \$363.49. (Testimonies of parties, Customer Bill).
4. Ms. [REDACTED] average water bill is around \$140. (Testimonies of Ms. [REDACTED])
5. Ms. [REDACTED] contacted D.C. Water after receiving the high bill on September 29, 2023. D.C. Water advised her to contact a plumber. (Testimony of Ms. [REDACTED])
6. On October 4, 2023, a plumber did not find any leaks on the property, but no Plumber's Report was provided. (Testimonies of Ms. [REDACTED])
7. The D.C. Water technician did an evaluation on October 12, 2023. (Testimonies of parties).
8. The D.C. Water technician found the MTU, which transmits the signal that shows the water usage, was faulty. (Testimony of Ms. Gibson).
9. A malfunctioning MTU does not impact the meter's independent ability to record actual water usage. (Testimony of Ms. Gibson).
10. On October 12, 2024, D.C. Water removed the meter for testing and returned results of an overall accuracy of 100.83%, which is within the guidelines of the American Water Works Association standards of 98.5% to 101.50%. (Testimony of Ms. Gibson).
11. D.C. Water investigated the disputed bills and concluded that the disputed charges were based on actual meter readings obtained by a field read for the first disputed bill and the automated meter infrastructure for the second disputed bill. (Testimony of Ms. Gibson).
12. D.C. Water's investigation showed there was no indication of any faulty computations. (Testimony of Ms. Gibson).
13. D.C. Water's investigation determined that an adjustment is not warranted under DC Municipal Regulation 408.1, in cases in which all checks and test results and inconclusive findings provide no reasonable explanation for excess consumption, no adjustment is warranted. (Testimony of Ms. Gibson).

CONCLUSIONS OF LAW

1. The burden of proof is on the customer to show, by a preponderance of evidence, that the decision of D.C. Water is incorrect. (21 DCMR 420.7 and 420.8).
2. D.C. Water is obligated to investigate challenge to a bill by doing any or all of the following:
 - (a) Verify the computations made in the formulation of the water and sewer charges;
 - (b) Verify that the meter reading for possible meter overread or doubtful registration;
 - (c) If feasible, check the premises for leaking fixtures, underground invisible leaks, and house-side connection leaks;
 - (d) Check the meter for malfunction;
 - (e) Check the water-cooled air conditioning system, if any, for malfunction; and
 - (f) Make a reasonable investigation of any facts asserted by the owner or occupant which are material to the determination of a correct bill.

See 21 DCMR 403.

3. D.C. Municipal Regulations bar adjustment of customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. 21 DCMR 408 (stating that "In cases in which all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption, except as may be approved by the General Manager, based upon a demonstration by the owner or occupant that such an adjustment will further a significant public interest.")

DECISION

The customer in this matter was unable to meet the burden of proof to show that the water charges are in error or that they should not be responsible for their payment.

The customer argued that the excessive usage amounts were erroneous because a plumber did not find any leaks on the premises and the family was on vacation for a week during the period of excessive use. The customer contended that a faulty meter was to blame for the excess usage. The customer testified that a D.C. Water technician visited the property on October 12, 2023, advised that the meter system was faulty and replaced the meter transmitting unit (MTU)(*See* Service Order dated October 12, 2023). According to the customer, once the MTU was replaced, water usage returned to normal from which the customer inferred that the faulty MTU was the cause of the erroneous excess use.

In response, D.C. Water explained that even if a MTU is faulty and not transmitting water usage, the meter is still independently recording the usage. *See Gatewood v. D.C. Water & Sewer Auth.*, 82 A.3d 41, 56 (D.C. 2013) (recognizing that the meter's recording function and transmitting apparatus are separate features). In addition, for the disputed periods, D.C. Water

based its bills on meter reads performed in the field. *See* Billed Reads (showing Field Read and Service Order for September 26, 2023 and October 12, 2023). Because D.C. Water did not rely on the transmitter for usage data, its accuracy is not relevant.

D.C. Water also pulled the meter on October 12, 2024 for testing and found that it was operating within an acceptable range of accuracy. Moreover, the fact that water usage returned to normal levels by October 2023, roughly a year before the meter was changed, further corroborates that the excess usage was caused by something other than the meter.

In cases where all checks and tests result in inconclusive findings that provide no reasonable explanation for excessive consumption, no adjustment shall be made to the bill for any portion of the excessive consumption. 21 DCMR 408. Here, the customer offered no explanation for the excess usage other than the faulty MTU which as discussed, does not affect the accuracy of the meter's recording function and in any event, was not relied on to transmit the meter readings which were gathered from field visits.

For the reasons discussed, the determination of D.C. Water that no basis exists to adjust the customer's account based on inconclusive findings is hereby AFFIRMED.



Carolyn Elefant, Hearing Officer

Date: December 10, 2024

██████████
32 ██████████ Alabama Ave SE
Washington DC 20020

**BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY
DEPARTMENT OF CUSTOMER SERVICE**

IN RE: [REDACTED]
51 [REDACTED] 3rd Street N.W.
Washington D.C. 20008

Account No [REDACTED]
Case No. 23-582129

Amount in Dispute: \$8123.43

Billing Dates: July 13, 2023

ORDER GRANTING RECONSIDERATION

On November 25, 2024, D.C. Water filed a motion for reconsideration of the Hearing Officer's order denying D.C. Water's motion to dismiss the above-captioned case as untimely. Because D.C. Water has demonstrated that the customer timely received the disputed bill and notice of the administrative process to raise a challenge, I grant the motion for reconsideration and dismiss the case as untimely.

Analysis

This case arises out of a disputed bill dated July 13, 2023. The bill designated August 2, 2023 as the deadline for filing a billing dispute. *Id.* On August 4, 2023, the customer challenged the bill. D.C. Water issued a pre-investigation communication (PIC) letter informing the customer that the deadline for disputing the bill had expired. In response to the PIC, the customer asserted that he pays bills on autopay and did not learn of the high July bill until August 4, 2023, just two days out of time and took immediate action to address it.

On September 23, 2023, D.C. Water moved to dismiss the bill as untimely. The Hearing Officer denied the motion, accepting as undisputed the customer's assertion that because he uses autopay, he did not learn of the bill until it was too late to challenge it. The customer did not acknowledge and D.C. Water did not explain that a bill is emailed to customers in the autopay program. Therefore, based on the record as it existed at that time, it appeared that a bill was never sent to the customer.



On reconsideration, D.C. Water proffered an affidavit from a D.C. Water Customer Care Supervisor attesting that customers who choose to enroll in the autopay program are emailed a copy of the bill the same day as the bill date. *See* Motion for Reconsideration, Exh. 1. In addition, the bill adequately notifies the customer of the deadline for disputing the bill as well as the process for doing so. *See* Motion for Reconsideration, Exh. 3 (Customer Bill). The customer is responsible for checking his email and failure to do so does not defeat the validity of the notice.

Based on the evidence submitted in the Motion for Reconsideration, I find that the bill was emailed to the customer on July 13, 2023, thus giving him notice of the August 2, 2023 deadline for the dispute as of the bill date. Because the customer did not file a dispute until August 4, 2023, two days beyond the 20-day deadline, the challenge is untimely under 21 DCMR 402.2(a). Accordingly, D.C. Water's motion to dismiss the challenge is granted.



Carolyn Elefant, Hearing Officer

Date: December 10, 2024


51  33rd Street N.W.
Washington D.C. 20008

BEFORE THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

AFFORDABLE SERV LLC

Petitioner,

NOI No.: 2024-001

v.

**DISTRICT OF COLUMBIA WATER
AND SEWER AUTHORITY**

Respondent.

_____ /

ORDER

This matter came before the Hearing Officer on August 27, 2024, for a remote hearing, where Petitioner Affordable Serv LLC (“Affordable”), a waste hauling company, initiated this administrative appeal to dispute Administrative Order NOI 2024-001 (“January 2024 Order”) issued by Respondent District of Columbia Water and Sewer Authority (“D.C. Water”) on January 5, 2024. The January 2024 Order fined Affordable \$1,900 for violations of DC Pretreatment Laws and Regulations, violations of the terms of Waste Hauler Discharge Permit No. WH68-20234, and failure to comply with Administrative Order NOI 2023-007, dated July 10, 2023 (“July 2023 Order”).

Present for the hearing were Jason Fields (“Mr. Fields”), on behalf of Affordable, and, on behalf of D.C. Water, Kelly Fisher, Associate General Counsel and Director; Barbara Mitchell, Associate General Counsel and Director; Kevin Schrom, support staff for the legal office; Elaine Wilson, Pretreatment Program Manager; and Carrie Lyons, paralegal. Prior to the hearing, D.C. Water submitted its Prehearing Brief on August 13, 2024. Affordable did not submit a written brief.

BACKGROUND ON PERMIT VIOLATION

Affordable holds Waste Hauler Discharge Permit No. WH68-2023 (Permit) which authorizes it to discharge certain waste at D.C. Water’s Blue Plains Septage Receiving Facility. The permit explicitly restricts waste collection to the Blue Plains Service Area (BPSA), which includes the District of Columbia, Prince Georges and Montgomery Counties in Maryland, and Arlington, Fairfax, and Loudoun Counties and Towns of Herndon and Vienna in Virginia. The permit also specifically prohibits accepting "incidental loads" (defined as less than 50% of the total load) from outside the service area unless requested in advance and approved in writing. The permit in effect on the date of the violation was dated February 24, 2023 and was mailed to David

Fields at Affordable at an address in Springfield, Virginia. *See* D.C. Water Ex. 2, Permit Special Conditions and Transmittal Letter.¹

On December 4, 2023, Affordable submitted a manifest showing that it discharged waste at D.C. Water's Blue Plains facility that included 40 gallons collected from Woodbridge, VA. *See* D.C. Ex. 16, Manifest. This location is outside the Blue Plains Service Area (BPSA), which only includes the District of Columbia, Prince Georges and Montgomery Counties in Maryland, and Arlington, Fairfax, and Loudoun Counties and Towns of Herndon and Vienna in Virginia. The manifest showed this was an "incidental load" (*i.e.* less than 50% of the total load), which under the permit required advance written approval from D.C. Water – approval which was never requested or received.

On January 5, 2024, D.C. Water issued Administrative Order NOI 2024-001 imposing a \$1,900 fine. D.C. Water Ex. 1, Waste Hauler Fine. The violation followed multiple prior violations and enforcement actions for similar infractions, including a July 2023 Order where Affordable had already been fined for violating the same permit condition. The current fine was broken down as \$1,000 for unintentional prohibited discharge, \$500 for failure to comply with prior Notice of Violation, and an additional \$400 for recurring violations. D.C. Water Ex. 1., Waste Hauler Fine. *See* D.C. Water Ex. 1; *also* Testimony of Elaine Wilson on prior violations.

Affordable, through Mr. Fields appealed the January 5, 2024 fine. Mr. Fields argued that an abatement of all fines was warranted because (1) Affordable was not notified of the violations due to an incorrect suite number and invalid email address and (2) the 50% language applicable to incidental loads was unclear. D.C. Water Ex. 4., Affordable Appeal (February 16, 2024).

OVERVIEW OF HEARING AND FINDINGS OF FACT

An administrative hearing was held on August 28, 2024. Jason Fields appeared on behalf of Affordable to challenge the January 2024 Order. Mr. Fields presented two main arguments: first, that Affordable had not received proper notice due to incorrect suite numbers (A-7 vs. A-107) on mailings and invalid email addresses; and second, that the permit language regarding "incidental loads" was unclear and created confusion for their drivers. Fields testified that he was an absentee owner, had never personally visited the facility, and could not confirm whether the company had ever received the February 2023 permit. He also acknowledged that the driver who had been responsible for the prior violation had been terminated and that David Fields was no longer involved in the company.

Through counsel, D.C. Water proffered testimony from Elaine Wilson. D.C. Water countered that proper notice had been provided through multiple channels, including certified mail to the correct address and emails to company-provided addresses. D.C. Water also presented evidence of prior communications, including a June 23, 2023 email exchange where Affordable sought and received clarification about the permit requirements.

¹ All D.C. Water exhibits refer to those attached to its pre-hearing brief.

The following findings of fact were adduced the hearing:

1. The company involved is Affordable Serv LLC, a grease trap only waste hauler. (Testimony of Mr. Fields).
2. Affordable initiated this administrative appeal to dispute Administrative Order NOI 2024-001, which fined Affordable \$1,900 for violations of DC Pretreatment Laws and Regulations, violations of the terms of Waste Hauler Discharge Permit No. WH68-20234, and failure to comply with Administrative Order NOI 2023-007, dated July 10, 2023. (Pre-Hearing Brief).
3. The violations primarily stem from Specific Provision #2 of Affordable's Waste Hauler Discharge Permit, which states: "D.C. Water will only accept hauled waste from facilities in the Blue Plains Service Area, which includes the District of Columbia, Prince Georges and Montgomery Counties in Maryland, and Arlington, Fairfax, and Loudoun Counties and Towns of Herndon and Vienna, in Virginia. Effective April 1, 2023, D.C. Water will not accept "incidental" loads (i.e., <50% of the load) of waste from outside the service area, including the City of Alexandria, unless requested in advance and approved in writing by D.C. Water." (Waste Hauler Discharge Permit No. WH68-2023, Testimony of Ms. Wilson).
4. Mr. Fields testified that Affordable did not receive proper notice due to the use of an incorrect suite number in their mailing address and use of invalid email addresses. (Testimony of Mr. Fields, Affordable Serv's Appeal Form).
5. Mr. Fields testified that the language in the permit describing a prohibition on discharges of incidental loads was unclear. (Testimony of Mr. Fields, Affordable Serv's Appeal Form).
6. Mr. Fields testified that Affordable requested clarification regarding the definition and scope of "less than a 50% load", which they did not receive. (Testimony of Mr. Fields).
7. D.C. Water asserts that the certified mail receipt issuing the January 2024 Order uses Affordable's correct mailing address and suite number, showing Affordable did have proper notice. (D.C. Water Ex. 5, Certified Mail Receipt).
8. D.C. Water asserts that they directly provided Affordable with clarification of the language prohibiting discharge of incidental loads in June 2023, roughly six months before the violation at hand occurred. (D.C. Water Ex. 6, June 26 Clarification Email, Testimony of Ms. Wilson).
9. D.C. Water asserts that Affordable did not dispute that the violation occurred and that the subsequent fines are in line with the regulations. (Pre-Hearing Brief).
10. Mr. Schrom explained that D.C. Water used email addresses that were provided by Affordable to contact them.
11. Affordable was fined for Specific Condition #2 violations in the July 2023 Order, five months before the January 2024 Order, and in the January 2024 Order. (Testimony of Both Parties).
12. Affordable submitted a Hauled Waste Manifest Form on December 4, 2023, which included an incidental load (<50% of the total load) hauled from Woodbridge, VA. (D.C. Water Ex. 16, December 4, 2023 Hauled Waste Manifest Form).
13. Mr. Fields testified that the letterhead of the permit issued on February 24, 2023, lacked a suite number. (Testimony of Both Parties, Waste Hauler Discharge Permit No. WH68-2023).

14. Mr. Fields testified that Affordable did not receive the February 24, 2023 permit until it was requested via email. He could not recall the timeline. (Testimony of Mr. Fields).
15. The haulers were informed of Special Condition #2 via the email sent out in advance of the April 1, 2023, change, the permits were updated with the new language when they came out, and haulers were emailed if there were any issues with the Condition. (Testimony of Ms. Wilson).
16. On June 23, 2023, Affordable employee Chris Vaouli, cc'ing owners David and Jason Fields, emailed D.C. Water requesting clarification of D.C. Water's recent determination that they had violated Specific Condition #2 of their Waste Hauler permit on June 14, 2023. Ms. Wilson responded the same day providing that clarification. (Testimony of Ms. Wilson, D.C. Water D.C. Water Ex. 15, June 26 Clarification Email).
17. D.C. Water sent notice of the January 2024 Order via email as well as a certified mail return receipt. (Testimony of Ms. Wilson).
18. Mr. Fields believed that Mr. Vaouli paid the July 2023 Order fine and could not recall to what extent he or Affordable were involved in the decision. (Testimony of Mr. Fields).
19. Mr. Fields testified that Affordable's mail carrier does not require a signature on certified mail and does not deliver directly to the office. (Testimony of Mr. Fields).
20. The signature on the envelope in the possession of Mr. Fields originates from the D.C. Water mailroom. (Testimony of Ms. Wilson).
21. Mr. Fields testified that D.C. Water's emails are directed to his spam folder and that he receives hundreds of emails. (Testimony of Mr. Fields).
22. Mr. Fields confirmed that his accurate email address was listed on the June 26, 2023, email chain, the January 5, 2024, permit email, and the February 13, 2024, email chain. (Testimony of Mr. Fields, D.C. Water Exhibit 6, June 26 Clarification Email and Ex. 15, February Email Chain).
23. Mr. Fields admitted that Affordable previously paid a fine for a similar violation issued in July 2023. (Testimony of Mr. Fields).
24. Mr. Fields testified that half of the exhibits of documents from D.C. Water to Affordable were missing a suite number or had the incorrect suite number. (Testimony of Mr. Fields).
25. Mr. Fields argued that D.C. Water did not file proper notice that "must be accomplished by a method reasonably calculated to afford the party an opportunity to be heard." (Testimony of Mr. Fields, citing *Kidd Int'l Home Care, Inc v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007)).
26. Mr. Fields testified that the permit was sent to the wrong suite number and incorrect email and he did not receive the permit. (Testimony of Mr. Fields).
27. The 2023 permit contact was David Fields, not Jason Fields. (Ex.2, Permit, Ex. 14, Letter transmitting permit to David Fields).
28. David Fields was not involved in Affordable during 2023 or 2024. (Testimony of Mr. Fields).
29. Mr. Vaouli was terminated in the summer of 2023. (Testimony of Mr. Fields).

STANDARD OF REVIEW

The burden of proof shall be on the parties seeking relief.” 21 DCMR 420.7. Also pursuant to chapter 4, “[t]he standard of proof shall be a preponderance of the evidence.” 21 DCMR 420.8 Thus, Petitioner Affordable bears the burden of proof by a preponderance of the evidence.

LEGAL ANALYSIS

I. Adequacy of Notice

Affordable argues that it was not provided with adequate notice of the January 5, 2024 violation order, the prior violations from July 2023 or the permit terms because communications were either mailed to an incorrect suite number or emailed to the wrong contact or to Affordable’s spam folder. D.C. Water Ex. 4, Affordable Appeal (disputing notice of prior violations and notifications only). To prevail on a claim of inadequate notice, a party must show that (1) notice was provided in a manner reasonably calculated to afford an opportunity to be heard, *Kidd Int’l. Home Care Inc. v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007) and (2) that no prejudice resulted from the deficient notice. *Trans. Leasing v. Dept. of Employment*, 690 A.2d 487, 489 (D.C. 1997). Affordable did not satisfy this two-pronged test.

January 5, 2024 Violation Order - Affordable claims that the notice of the January 2024 violation order was invalid because the letterhead on the notice mistakenly denotes Suite A-7 and not A-107 which is the valid address. D.C. Water Ex. 2 (January 5, 2024 letterhead). But prior to sending the notice, Ms. Wilson verified the correct suite number by email (D.C. Water Ex. 4-16). In addition, the certified mail receipt also depicts the correct suite number of A-107. D.C. Water Ex. 5. So long as notice of the hearing was properly mailed and not returned to the sender – as the evidence shows here – due process is satisfied. *Kidd International Home Care, Inc. v. Prince*, 917 A.2d 1083, 1086 (D.C. 2007). Moreover, even assuming for the sake of argument that notice fell short, Affordable was not prejudiced because it learned of the January 2024 notice in time to challenge the penalty. *C.f. Kidd International Home Care*, 917 A.2d 1083 (finding inadequate notice violated due process where employer never learned of or appeared at hearing with adverse outcome after notice was sent to incorrect suite number).

July 2023 Penalty Notice: With regard to Affordable’s claim that the notice of the July 2023 penalty was inadequate, D.C. Water concedes that the notice was sent to the incorrect suite number. D.C. Water Br. at 3. Even so, there is no need to consider whether the defective notice prejudiced Affordable because its challenge constitutes a collateral attack on a final penalty order that Affordable did not dispute at the time and admitted at the hearing that it had been paid. Accordingly, any arguments regarding adequacy of notice for the July 2023 penalty are moot.

2023 Permit - Finally, Affordable argues that it was never notified of the terms of the permit because it was sent to the correct street address but lacked a suite number. *See* D.C. Water Ex. 2 (Letter dated February 24, 2023). But Mr. Fields admitted that Affordable contacted D.C. Water and received the permit at some point by email. Therefore, even if notice of the permit by

mail was inadequate, Affordable learned of the permit terms through other means and as such, was not prejudiced by any deficiency.

Affordable also claims it did not receive notice of the clarifications to the permit terms. The evidence shows otherwise. D.C. Water sent multiple emails regarding clarification of the permit terms to the email address provided by Affordable to D.C. Water and to David Fields, who was listed as the contact on the permit application. Although Jason Fields testified that these emails went to a junk folder or that David Fields was no longer with Affordable at the time the emails were sent, that does not vitiate the adequacy of the notice. As the permit holder, Affordable was responsible for maintaining accurate contact information on file with D.C. Water and for checking its emails, including its junk folder. Moreover, “[t]he alleged failure of an individual to receive [mail sent to the correct address] does not constitute a deprivation of due process...Adequate notice, rather than "actual" notice, is all that the Constitution guarantees” (*Kidd International Home Care, Inc.* at 1086 citing *Chavis v. Heckler*, 577 F.Supp. 201, 205 (D.D.C.1983)) and adequate notice is what D.C. Water provided here.

II. Unclear Language

Affordable next argues that the language of the permit’s Special Condition 2 prohibiting out of service area incidental loads was unclear. Mr Fields testified that he had questions about whether incidental load was greater or less than 50 percent.

The language of Special Condition 2 is straightforward. It states on relevant part that:

Effective April 1, 2023, D.C. Water will not accept incidental loads (i.e. < 50% of the load) of waste from outside the service area, including the City of Alexandria, unless requested in advance and approved in writing by D.C. Water.

There is no ambiguity that incidental loads are defined as less than 50 percent and that incidental loads are no longer accepted outside the service area without prior approval. In any event, D.C. Water clarified the new policy for Chris Vaouli, one of Affordable’s drivers in a series of emails. D.C. Water Ex. 6. Jason Fields was also copied on at least one of these emails. *Id.* (Email dated June 26, 2023). Given the evidence of unambiguous permit language coupled with D.C. Water’s clarifications, Affordable has not met the burden of showing that the permit terms were so unduly confusing as to warrant an abatement.

For the reasons discussed, D.C. Water’s Administrative Order NOI 2024-001 is AFFIRMED.



Carolyn Elefant, Hearing Officer

Date: December 23, 2024

Mr. David Fields
Mr. Jason Fields
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