

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

IN RE: John Maher  
c/o Jeremy Flynn- Agent Owner  
4405 East West Highway  
Suite 306  
Bethesda, MD 20814

Service Address:  
[REDACTED] 23<sup>rd</sup> Street, NW

Account No: [REDACTED]  
Case No: 21-61012

Amounts in Dispute: \$ 3,073.30

Before Janet W. Blassingame, Hearing Officer  
May 11, 2021 at 12:00 Noon

The customer contested a water and sewer bill for the above account for the period of time July 31, 2020 to September 1, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on May 11, 2021. Present were Jeremy Flynn- agent/owner; Arlene Andrews on behalf of DC Water, as well as, Rosalind George, D.C. Water.

The property involved is a two (2) bedroom rowhouse, having one and one-half (1 ½) bathrooms, one kitchen, a washing machine and a dishwasher. Mr. Flynn has owned the property for ten (10) years and stated that the water and sewer bill, generally, ranges between \$150.00 and \$200.00 per billing cycle. He, also, stated that the tenants moved from the property on July 30, 2020.

Mr. Flynn testified that after the tenants vacated the house, he did turn-around work during the months of August and September. He described the work performed to include painting, installing new counters in the bathrooms and renovating the kitchen. He stated that new appliances were installed along with new counter-tops in the kitchen and new toilets were installed in the bathroom.

Mr. Flynn stated the increased water usage at the property was like a mainline had severed but usage went back to normal. He stated that he hired Robert Clam of Erie Plumbing on May 20, 2021. Mr. Flynn stated that the increased water usage started at 3:00 p.m. on August 24, 2020 and continued until 10:00 p.m. on August 26, 2020. Mr. Flynn stated that the property is and was vacant and that new tenants are scheduled to move-in on June 1, 2021. He stated that the most recent water and sewer bill was dated May 6, 2021 and was in the amount of \$143.73.

Mr. Flynn stated that DC Water did a re-bill of the account because it added the cost of the water meter. He stated that the May 6, 2021 bill statement was for the period 12/31/2020 to 5/3/2021.

Ms. Andrews interjected that in July 2020, the customer's charge was \$187.18. She stated that the charge in June 2020 was \$454.82 for the period 4/30/2020 to 5/28/2020 and that the bill was based upon an estimate of usage. She stated the customer's bill in May 2020 was for \$414.03 based upon an actual meter read, the customer's bill in April 2020 was for \$299.43 based upon an actual meter read and the customer's bill in March 2020 was for \$139.83 based upon an actual meter read.

Mr. Flynn asserted that not enough time elapsed for the amount of water to be used as was charged to his account. He asserted that the size of the main line determines how much water can be used. He stated that the charges/facts are not based in reality...

Mr. Flynn stated that a DC service representative told him that the utility would do an underground leak inspection. He asserted that the service technician saw no registration of the water meter. Mr. Flynn, also, stated that no plumber came to the property in August 2020.

Ms. Andrews retorted that whatever water goes thru the water meter is read and used for invoicing.

Ms. Andrews stated that the service technician did not take a meter reading on the day of the underground leak inspection.

Ms. Andrews testified that she reviewed the meter reads from the property and a spike in usage started in February 2020 and usage increased every subsequent month. Referring to the account for the property, Ms. Andrews read water usage to have been as follows:

1/2/20 -	3.43 CCF
2/3/20 -	4.13 CCF
3/30/20-	19.71 CCF (field read)
4/29/20 -	28.08 CCF (field read)
5/28/20 -	31.06 CCF

Ms. Andrews stated that DC Water estimated the customer's water usage regarding 5/28/20, 6/29/20 and 7/30/20.

Ms. Andrews testified that DC Water changed the water meter at the property on 8/13/20 at which time the meter read 218.59. She stated the usage charged on 9/1/20 was for 3.74 CCF. Ms. Andrews stated that the high-water usage occurred over a period of three (3) months and that the customer's water usage started to decrease as of 8/16/20.

Ms. Andrews stated that the customer's MTU stopped transmitting again in December 2020. She stated that the meter was changed 12/31/20 and the MTU was replaced 8/13/20. Ms. Andrews testified that DC Water conducted an underground inspection at the property and no leaks were found. She testified that DC Water tested the water meter on 1/15/21 and it was determined that the meter had 100.76% accuracy.

Ms. Andrews stated that when Mr. Flynn contacted the utility in August 2020, there was continuous water usage occurring at the property between 8/24/20 and 8/26/20.

Ms. Andrews asserted that for three (3) months prior to the MTU stopping transmission of meter reads, the customer ignored that increased water usage was occurring at the property.

Ms. Andrews stated that DC Water sent a HUNA alert (high water usage alert) to the customer on 2/10/20.

Ms. Andrews asserted that water usage at the property increased over time.

Ms. Andrews stated that DC Water generated a service order in response to calls from the tenant of the property.

Mr. Flynn contended that going from a \$400.00 bill to a \$3,000.00 bill is absurd.

Ms. Andrews stated that DC Water did not determine that the water usage was not due to a leak. Mr. Flynn stated that he does not need anyone to tell him that the water usage was not due to a leak. He asserted that a mainline would have had to fail to account for the amount of water allegedly charged to his account.

Mr. Flynn pointed out that DC Water has changed two (2) pieces of its equipment at the property.

Ms. Andrews asserted that DC Water found no meter overread, faulty computation or meter malfunction and as such, no adjustment of the customer's account is warranted.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family row house. Jeremy Flynn was identified as the property manager for the owner and he stated that the house has been owned for the past 10 years. (Testimony of Jeremy Flynn; DC Water Customer Interaction Note dated 12/2/2020)
2. The period in dispute is 7/31/20 to 9/1/20. (Testimony of the parties)
3. The tenants vacated the property on 7/30/20 and, thereafter, during August and September 2020, there was significant renovation of the property to include renovation of the kitchen and installation of new kitchen appliances and toilets. (Testimony of Jeremy Flynn)
4. The property has been vacant since the tenants left in July 2020; new tenants are scheduled to move-in as of June 1, 2021. (Testimony of Jeremy Flynn)
5. There was a progressive increase in recorded water usage at the property starting in February 2020. (Testimony of Arlene Andrews)

6. DC Water sent a HUNA alert to the customer on 2/10/20. (Testimony of Arlene Andrews)
7. The customer hired Erie Plumbing on 5/10/20. (Testimony of Jeremy Flynn)
8. Between August 24, 2020 and August 26, 2020, there was continuous water usage at the property. (Testimony of Arlene Andrews)
9. Water usage at the property significantly decreased on August 26, 2020. (Testimony of Arlene Andrews)
10. DC Water conducted an underground inspection and no leak was detected. (Testimony of Arlene Andrews)
11. DC Water tested the water meter and the meter was determined to have 100.76% accuracy. (Testimony of Arlene Andrews)
12. The MTU at the property stopped transmitting meter reads and DC Water obtained field reads by a technician for billing in March and April 2020. (Testimony of Arlene Andrews)
13. DC Water estimated the customer's water usage for billing in May, June and July 2020. (Testimony of Arlene Andrews)
14. DC Water replaced the MTU at the property on August 13, 2020. (Testimony of Arlene Andrews)
15. DC Water changed the water meter at the property on 12/31/20. (Testimony of Arlene 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. (21 DCMR 308.4)

### DECISION

The customer in this case failed to show that more likely than not the disputed bill was wrong or for some other reason, he should not be responsible for payment of the charges.

The evidence and testimony established that water usage at the property started to progressively increase beginning in February 2020 and that DC Water sent a HUNA alert (high water usage alert) to the customer on February 10, 2020. The customer's bill dated February 3, 2020 reflected that 4.13 CCF of water had been consumed at the property, however, on the March 30, 2020 bill, the bill reflected 19.71 CCFs had been consumed at the property. The customer's next bill which was dated April 29, 2020, reflected 28.08 CCFs of water had been consumed. DC Water, then, estimated that customer's water usage for May, June and July 2020 because the MTU was not transmitting and the utility did not have field meter reads from the property. The utility changed the MTU on August 13, 2020. As it turned out, with the replacement of the MTU, the utility thereafter had hourly meter reads from the property and the reads indicated that there was continuous water usage at the property between August 24<sup>th</sup> and 26<sup>th</sup> and, thereafter, the high usage stopped. The evidence and testimony, further, established that there were contractors at the property during the months of August and September 2020, doing significant renovations which extended to work regarding toilets and renovation of the kitchen.

Neither party established the cause of the progressive water consumption or why high usage culminated after two (2) days of water continuous running at the property. DC Water did establish that the water meter was functioning accurately and an underground leak was not the cause of increased water usage at the property. The utility was, also, able to establish that it alerted the property owner that something was amiss at the property in terms of high-water usage occurring at the property. It is, also, clear that the property owner failed to take notice of the water usage at the property until the bill became exceedingly high leading to the bill dispute at issue. The customer did testify that a plumber was hired in May 2020, however, he failed to submit a plumber's report indicating the services provided or the plumber's findings. Moreover, the customer's testimony is contradicted in the utility's Customer Interaction Records in which a service representative (Karrington) wrote, in memorializing a conversation with Mr. Flynn, when

"Asked if they hired a plumber after receiving the high bill, he said no, they did not feel it was necessary since someone was usually there working at the property".

There is a provision that dictates that DC Water is to read the water meter on a quarterly basis and the utility estimated the customer's water usage for three (3) billing periods. (See, 21 DCMR 308.1) DC Water thereafter replaced the MTU at the property and automated meter reads resumed. As such, no fault is found on behalf of the utility in prevented the customer from knowing that something was amiss at the property and possibly mitigating the damage or increase in water usage for which he was billed.

Ultimately, the property owner is responsible for water used at his property. In this instance, the owner chose to ignore increasing water consumption until he received an extraordinarily high bill for water usage. No fault lies with DC Water for the customer's neglect and/or failure to react to an alert or to increasingly higher bills over a period of several months. Lastly, the customer testified that the property was vacant, noting that the tenants moved in July 2020. In the customer's testimony, he did state that renovations were being performed at the property in August and September 2020, however, in his interaction with a service representative, the customer stated "that someone was usually there working at the property". In that someone was working at the property in August, not only is it conceivable that a worker caused whatever was causing the increased usage to significantly worsen in August, but a worker conceivably could have repaired whatever caused the water usage since the high-water usage stopped on August 26<sup>th</sup> and has not reoccurred. Mr. Flynn testified that the most recent bill- May 6, 2021 was \$143.73.

21 DCMR 408 dictates that when all checks and tests are inconclusive as to the cause of high-water consumption at a property, DC Water is not to adjust the customer's account.

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

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: August 5, 2021

Copy to:

John Maher  
c/o Jeremy Flynn, Agent Owner  
4405 East West Highway  
Suite 306  
Bethesda, MD 20814

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

IN RE: Cleveland Cooperative, Inc.

██████████  
██████████ Macomb St. NW  
Washington, DC

Account No: ██████████  
Case No: 21-260945

Amounts in Dispute: \$ 3,542.80

Before Janet W. Blassingame, Hearing Officer  
May 18, 2021 at 2:00 P.M.

**CORRECTED DECISION**

The customer contested a water and sewer bill for the above account for the period of time December 20, 2020 to January 5, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on May 18, 2021. Present were: ██████████ of Cleveland Cooperative, Inc.; ██████████, Cleveland Cooperative, Inc.; ██████████ Cleveland Cooperative, Inc.; ██████████ Cleveland Cooperative, Inc.; LaFatima Black, DC Water; Kimberly Arrington, DC Water; and, Kelly Fisher, Esq., DC Water, observing only.

The property involved is a 27-unit apartment building, having 14 one bedroom/one bath units and 13 two bedroom.one bathroom units. All units have a kitchen and radiators. Most units have dishwasher and two (2) units have private washing machines. There are two (2) washing machines in the building laundry room. The building has two (2) outside faucets. In year 2019, the water and sewer bills were approximately \$1,200.00 per billing cycle. In year 2020, the water and sewer bills ranged between \$1,000.00 and \$1,300.00 per billing cycle.

██████████ wrote to DC Water that the Cooperative was disputing two billing periods and since the bill dispute investigation started their bills have been volatile with two additional high months. She stated that the four (4) billing periods of concern were:

10/3/2020 - 11/3/2020	\$4,111.07
11/4/2020 – 12/2/2020	\$4,134.21
12/3/2020 – 1/5/2021	\$3,542.80
3/3/2021 – 4/2/2021	\$3,285.40

██████████ stated that they were not disputing other billing periods. She stated that a call to DC Water was made on 1/8/2021 because the last two (2) billings were high. She stated that she was told that the bills were based upon actual meter reads. ██████████ stated that the Cooperative is/was on auto-pay.

██████ testified that there have been no renovations at the Cooperative. She added that the Cooperative's Board must be given notice and they have not received any notice of work being done at the building and the Board has not approved any work being done.

██████ stated that there was roadwork being done in front of the building. She stated that the roadwork ended in September 2020.

██████ testified that a plumber was hired to inspect the Cooperative for leaks. She stated that no leaks were found.

The Cooperative submitted a plumber's report by Thomas Plumbing Co. In the report the plumber stated that all units were checked and that the toilets were dye tested and all tub and sink faucets were checked for drips or any leaks. The plumber reported checking the laundry room and boiler room to include checking the hot water heater and the boiler. The plumber further reported that the water meter was checked and no leaks were found.

██████ testified that he conducted a walking inspection and visually found no water waste.

██████ stated that water usage for the Cooperative spiked between 3/3/2021 and 4/2/2021. He stated that there was no water usage problem reflected on the February 3, 2021 bill- \$1,573.34, as well as, no problem regarding the May 4, 2021 bill- \$1,058.56 or the September 2020 bill- \$1,286.00.

Ms. Black stated that there was a spike in water usage at the property between 2/28/21 and 3/22/21. She stated that water usage declined between 12/22/20 and 2/28/21.

██████ stated that the customer is not registered to receive high water usage alerts (HUNA).

Ms. Black explained that the Cooperative's prior manager was registered but when management changed to EJP Realty, the property manager did not register for HUNA.

Ms. Black testified that the Cooperative was billed based upon actual meter reads from the property which are transmitted every hour. She asserted that the water meter only advances when water is being used and that there are no misreads when the meter reads are transmitted remotely.

Ms. Black testified that DC Water tested the water meter and the meter was determined to have 99.67% accuracy. She noted that the utility follows the standards for meter accuracy set by American Water Works Association and the meter accuracy is 98.5% to 101%5.

Ms. Black stated that there were spikes in water usage at the Cooperative between 10/2/2020 to 12/22/2020 and, again, between 1/28/2021 to 3/22/2021.

Ms. Black noted that no leaks were found by the plumber hired by the Cooperative and she testified that DC Water tested for an underground leak and no underground leak was detected.

Ms. Black stated that the utility's investigation found no doubtful registration on the water meter.

Ms. Black asserted that based upon all tests and checks being inconclusive as to the cause of the increased water usage, the utility finds no basis for adjustment of the account. She cited DCMR 21- 408.1.

Ms. Arrington added that something may have been going on in a unit of the building and she asserted that the Cooperative's management should sign-up for HUNA alerts.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a 27-unit Cooperative building which is controlled by a Board of Directors and managed by EJT Realty. (Testimony of [REDACTED] the record in this matter)
2. There was a significant increase in water usage at the Cooperative as reflected on three (3) billing cycles during the period 10/3/2020 to 1/5/2021. (Testimony of [REDACTED])
3. Water usage at the property declined as of 12/22/20 and remained down until 2/28/21 when water usage again spiked between 2/28/21 to 3/22/21. (Testimony of Ms. Black)
4. DC Water was contacted on January 8, 2021 by [REDACTED] of EJT Realty and the utility initiated bill dispute investigations for bills dated 12/3/2020 and 1/6/2021. (DC Water Interaction Report dated 1/8/21 and 2/25/21)
5. The Cooperative hired Thomas Plumbing Co. to inspect the building for leaks and no leaks were found. (Report of Thomas Plumbing Co. dated 1/12/21)
6. DC Water tested the water meter and the meter was determined to have 99.67% accuracy. (Testimony of Ms. Black)
7. DC Water conducted an underground leak inspection and no underground leaks were detected. (Testimony of Ms. Black)
8. DC Water has hourly transmitted meter reads from the Cooperative and the utility found no evidence of doubtful registration or misreads. (Testimony of Ms. Black)
9. Based upon its investigation, DC Water concluded that the high-water usage was controlled at the premises. (DC Water Interaction Record dated 2/25/2021)

#### 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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. An owner or occupant may challenge the most recent charges assessed by DC Water for water, sewer and groundwater sewer service by either:
  - (a) Paying the bill, and notifying WASA in writing within thirty (30) calendar days of the bill date that he or she believes the bill to be incorrect and is paying under protest; or
  - (b) Not paying the current charges contained in the bill and notifying WASA in writing, within thirty (30) calendar days of the bill date of the reason(s) why the bill is believed to be incorrect.
 (See, 21 DCMR §402)
5. "Challenges received after the thirty-day (30) period stated in §402.1 will be deemed to have been filed in an untimely manner...." 21 DCMR §402.2

### DECISION

The customer in this matter failed to establish that more likely than not the bills being disputed were incorrect.

The evidence and testimony established two (2) periods when significant increases in water usage occurred at the Cooperative. The first spike occurred between 10/3/2020 and 1/5/2021 and the second spike occurred between 2/28/2021 and 3/22/2021. Based upon meter reads from the property, DC Water was able to pinpoint that water usage declined as of 12/22/2020 and remained within normal range until 2/28/2021. Unfortunately, the Cooperative hired a plumber to inspect the property on 1/12/2021 which was after water usage had declined and before the second spike in water usage occurred. Understandably, the plumber reported that

no leaks were found in any units and that the water meter was not leaking.

In conducting its investigation of the bill disputes, the utility tested the water meter and conducted an underground inspection. The meter was determined to be functioning accurately and no underground leak was detected. The utility also ruled that there was no meter misread or doubtful registration. And the utility has meter reads from the property reflecting when the spikes started and when they stopped

DC Water concluded that the high-water usage was controlled at the premises.

It was also revealed that the Cooperative's current management company failed to enroll the property in DC Water's HUNA alert program when property management changed. Coupled with being enrolled in auto-pay and not being enrolled in HUNA, no one connected with the Cooperative became aware of high usage occurring at the property until three (3) billing cycles of high-water usage had passed. DC Water regulations dictate that a customer is to notify the utility of a bill dispute within 30 days of receipt of the bill. (See, 21 DCMR 402) In this case, the Cooperative sought to dispute its November 2020 bill for the period 10/3/2020 – 11/3/2020 and its December 2020 bill for the period 11/4/2020 – 12/2/2020. The customer's representative contacted the utility to dispute the bills on 1/8/2021 and the utility contacted an investigation of the bills dated 12/3/2020 and 1/6/2021. The D.C. Court of Appeals ruled that 21 DCMR 402 was a rule processing regulation and not a jurisdictional bar to a late bill dispute, however, the Court held that the utility can waive its regulations but if it does not, a customer's dispute will be untimely. (See, Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013) In this case, the utility waived the time filing limits for the 12/3/2020 bill but not for the bill received in November 2020 and, as such, it investigated the customer's most recent two (2) billing cycles preceding the telephone call to the utility to dispute the bill charges.

Notwithstanding, the utility's waiver of the time limits to dispute bill charges for one bill and not another, the Cooperative cannot meet its burden of proof in showing that any charges are wrong or that it should not be responsible for payment of the bills for some other reason.

The Cooperative did not detect the cause of the high-water usage when it was occurring. If the Cooperative had been enrolled in HUNA, it might have been able to mitigate its loss of water by finding the cause. As it was, the plumber hired by the Cooperative inspected the property when high water usage was not occurring. DC Water speculated that the cause of the high-water usage might have come from one of the units in the building. The utility concluded that the usage was controlled at the property.

In cases such as presented here, when all tests and checks do not find the cause of excessive water consumption at a property, the Municipal Regulations bar DC Water from adjusting the customer's bill for the increased water usage. (See, 21 DCMR 408)

The evidence proved that DC Water's equipment was functioning properly and that there

was no underground leak as a possible cause of increased water usage occurring at the property. DC Water established that its water meter was properly recording water used at the home and the utility presented meter reads from the property reflecting when the spike started and when it stopped. Ultimately, the property owner and/or occupant is responsible for water usage occurring at it/his/her property and, in this instance, the Cooperative having paid the service charges, is not entitled to refund or credit for no basis can be found to relieve it of the responsibility for water used at the property.

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

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Aug. 10, 2021

Copy to:

Cleveland Cooperative, Inc.

  
Macomb Street, NW

Washington, DC



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

IN RE: East Friendship Baptist Church  
4401 Brook Street, NE  
Washington, DC 20019

Service Address:  
[REDACTED] 44<sup>th</sup> Street, NE

Account No: [REDACTED]  
Case No: 21-22360

Amounts in Dispute: \$ 3,449.57

Before Janet W. Blassingame, Hearing Officer  
June 2, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time October 22, 2020 to November 20, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was originally scheduled for a remote hearing on May 25, 2021. Present were Arlene Andrews and Kimberly Arrington on behalf of DC Water, as well as, Geneva Parker, D.C. Water, observing. When no representative of the customer neither logged in nor called in for the hearing, the Hearing Officer requested that the customer's representative be telephoned to ensure that there was no difficulty in logging into the hearing. Ms. Arrington telephoned [REDACTED], East Friendship Baptist Church, and [REDACTED] stated that the Notice of Hearing was received, however, she confused the date of the hearing and would request that the hearing be rescheduled. DC Water did not object to the rescheduling of this matter and [REDACTED] subsequently submitted a formal request to reschedule the hearing. This matter was rescheduled for a remote hearing on June 2, 2021. Present for the hearing were [REDACTED] on behalf of East Friendship Baptist Church and Arlene Andrews and Kimberly Arrington on behalf of DC Water.

The property involved is a single-family house owned by East Friendship Baptist Church (hereinafter referred to as "the Church"). No one resides in the house. The house is used for storage, community food distribution activities, service project activities and occasional meetings. The property has two (2) bathrooms, one kitchen, a washing machine and radiators.

[REDACTED] testified the property had been rented, however the tenants moved five (5) years ago. She stated that in recent years, i.e., 2019 and 2020, the toilet and sink on the main level of the house have been replaced. [REDACTED] stated that the Church employs a custodian whose responsibility is to open/close the house when it is used for food distributions. [REDACTED] stated that it is her responsibility to open/close the house when it used for service projects.

██████████ stated that on October 22, 2020 at 2:15 a.m., a Tuesday, she received notice of high-water usage occurring at the property. She stated that she took no action in response to the HUNA notice. She stated that she received a second HUNA alert on November 2, 2020 and she went to the property and checked the sinks, toilets, water heater and looked outside of the house but saw nothing amiss. She stated that she received a third HUNA alert on November 8, 2020 but when she checked the property, she found everything fine and nothing had changed within the house. She stated that she received a fourth HUNA alert on November 4, 2020. ██████████ stated that in response to the 4<sup>th</sup> notice, she had the Church's pastor and a member of the church who has a HVAC background to inspect the property and nothing was found amiss. ██████████ stated that she believed that the Church member inspected the house sometime between November 14<sup>th</sup> and 20<sup>th</sup>.

██████████ stated that it was strange that the HUNA alerts were all sent in the early morning hours. She reiterated that the property is vacant and all of the fixtures had been checked.

██████████ testified that when she received the water and sewer bill, she telephoned DC Water and was told that the bill was based upon a meter read and that the Church could enter into a payment plan.

██████████ testified that she thought the water and sewer charges were in error because of a new water meter.

██████████ stated that the Church's bill went back to normal. She stated that the December 2020 bill was \$256.20 and the January 2021 bill was \$39.89.

██████████ stated that DC Water performed a meter test and there is an indication of an error flag.

██████████ stated that the Church has not had in-person worship services since March 14, 2020.

Ms. Arrington stated that the bill has been looked at and it has been determined that the biller made an error based upon the automated system. Ms. Arrington stated that the Church should have been billed for 28 CCFs of water instead of 228.01 CCFs of water.

Ms. Arrington stated that DC Water would adjust the Church's bill for the property. She stated that 28.01 CCF is the correct read.

Ms. Arrington noted that in December 2020, the read was 15.12 CCF. She stated that, in her opinion, something was going on at the property. Ms. Arrington stated that water usage at the property is now back to normal and that less than 1 CCF per month is registering on the water meter.

Ms. Arrington stated that she has requested that the Billing Department note the corrected read.

Ms. Andrews stated that meter reads are transmitted by a signal to the nearest tower and then transmitted to DC Water. She stated that meter reads are transmitted every hour.

Ms. Andrews stated that DC Water pulled the water meter for testing on May 4, 2021 and the meter was determined to have 101.32% accuracy. She explained that DC Water follows the standards set by the American Water Works Association that acceptable water meter accuracy range is 98.5% to 101.5%.

Ms. Andrews testified that high water usage started at the property on October 20, 2020 and continued to October 21, 2020 amounting to 5.65 CCFs of water usage. Ms. Andrews stated that the customer's October 2020 bill was in the amount of \$111.58.

Ms. Andrews announced that the customer's December 2020 bill was correct.

Ms. Andrews stated that water usage at the property began to decrease on November 22, 2020 at 1:30 p.m. She stated that the usage started on a Tuesday and ended on Sunday.

Ms. Arrington stated that she will reverse the customer's last bill charges and that the customer would have a credit of \$200.00. She informed [REDACTED] to disregard the current bill for May 2021. Ms. Arrington, further, stated that if the Church desired a refund as opposed to a credit, a written request for refund must be submitted.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family row house owned by East Friendship Baptist Church. (Testimony of [REDACTED])
2. The period in dispute is 10/22/2020 to 11/20/20. (Testimony of the parties)
3. The customer was charged \$3,449.57 on its bill dated 11/25/20; the customer paid the bill on 12/21/20. (Account Ledger)
4. The customer was billed for 228.01 CCF of water usage on the 11/25/20 bill. (Bill Summary dated 11/25/20; testimony of Kimberly Arrington)
5. DC Water acknowledges that a billing error was made and the customer's correct water usage for the period 10/22/2020 to 11/20/20 was 28 CCF of water usage. (Testimony of Kimberly Arrington)
6. DC Water has initiated through its Billing Department to correct the customer's account and to adjust the account. (Testimony of Kimberly Arrington)
7. No leaks or plumbing issues were detected in the property. (Testimony of [REDACTED])
8. DC Water tested the water meter and the meter was determined to have 101.32% accuracy. (Testimony of Arlene Andrews)
9. There was high water usage occurring at the property between 10/20/20 and 10/21/20 resulting in 5.65 CCF of water usage and an October 2020 bill of \$111.58. (Testimony of Arlene Andrews)

10. DC Water determined no error in billing regarding the customer's December 2020 bill statement. (Testimony of Arlene 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. If the investigation discloses meter overread or faulty computation, adjustment(s) shall be made to reflect the correct charges, as indicated by the correct reading or corrected computations.

DECISION

The customer prevails in this matter.

Based upon the evidence and testimony, a billing error was made by DC Water and the customer consumed 28 CCF's of water instead of 228.01 CCFs of water as billed for the billing period in dispute. DC Water has acknowledged its billing error and stated that the customer's account will be adjusted.

Accordingly, the customer is entitled to an adjustment of its account and if DC Water has not already done so, the customer's account shall be adjusted to reflect that it consumed 28 CCFs of water for the period 10/22/20 – 11/20/20 and appropriate credit shall be reflected on the account.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer  
Date: August 5, 2021

Copy to:

East Friendship Baptist Church  
c/o [REDACTED]  
4401 Brook Street, NE  
Washington, DC 20019

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

IN RE: [REDACTED]

Service Address:  
[REDACTED] Constitution Avenue, NE

Account No: [REDACTED]  
Case No: 21-244729

Amounts in Dispute: \$ 800.18

Before Janet W. Blassingame, Hearing Officer  
May 26, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time December 4, 2020 to January 6, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on May 26, 2021. Present for the hearing were: [REDACTED]; and, LaFatima Black and Kimberly Arrington on behalf of DC Water.

The property involved is a five (5) unit building of condominiums built in year 2001. [REDACTED] stated that his unit has an English basement which he has rented over the past five (5) years. He stated that the upper level has two and one-half (2 ½) bathrooms, a kitchen, and a washing machine. The basement level has one bathroom, a kitchen and a washing machine. The unit has two (2) outside faucets. [REDACTED] stated that during the Covid-19 Pandemic, his tenant moved into the upper levels of the home to facilitate her working from home, as well as, to better monitor and watch the property. The water and sewer account is on auto-pay and the bill averages ranges between \$95.00 and \$120.00 per billing cycle.

[REDACTED] stated that he has not been in residence during the Pandemic but his tenant has been at the property. He stated that the tenant has told him that she did not hear water running in the home. He stated that the tenant was away from the property between December 24, 2020 and December 28, 2020 and when she returned, she heard water running and determined that the problem was the rubber flapper in the upstairs toilet.

[REDACTED] stated that DC Water did send HUNA alerts of high-water usage at the property. He stated that the alerts were sent on December 22nd, 23rd, 24th, and 25th. [REDACTED] stated that the alerts were sent to his office in [REDACTED] however, his assistant, who would normally receive the alerts, was not in the office due to the Holidays and he, personally, was not in the office during the Holidays. [REDACTED] stated that he had been gone from the District of Columbia since March 2020 until two (2) weeks ago when he returned to the City.

[REDACTED] stated that, as soon as, his tenant returned to the property, she took care of the water problem. He asked that DC Water take the Covid-19 Pandemic into consideration. He asserted that his condominium is not abandoned property but that the utility's efforts to alert of the occurring high water usage failed.

Ms. Black stated that the meter reads from the property are actual and were transmitted on an hourly basis.

[REDACTED] interjected that he is not contesting the amount charges but believes an adjustment is warranted due to the lack of notice and the fact that repairs were performed as soon as he or his tenant became aware of the water issue. He asserted that the charge for water was \$211.00 but the charge for sewer was much more. He asserted that DC Water's charge for sewer service is much higher than that charged in other areas where he owns property.

[REDACTED] asks for equity consideration.

[REDACTED] acknowledged that two (2) HUNA alerts- December 22nd and 28<sup>th</sup>- were sent by DC Water by email to his law firm.

[REDACTED] updated his email notification settings for HUNA alerts by DC Water.

[REDACTED] stated that his assistant did not see the alerts because she was out of the office for Holiday.

Ms. Black responded that pursuant to 21 DCMR §406.2, no adjustment of the customer's account is warranted. Ms. Black further advised that she has no discretion in negotiating with a customer an adjustment.

[REDACTED], then, responded by asking why DC Water had a hearing if equity could not be applied. He asserted that equity exists in all situations. Ms. Black responded that a customer has a right to request a hearing but DC Water does not adjust accounts when an adjustment is not warranted.

[REDACTED] stated that the toilet flapper was repaired on December 28, 2020.

Ms. Black testified that the spike in high water usage at the property occurred December 21, 2020 to December 28, 2020.

[REDACTED] asserted that he does not know what more he could have done to take care of the water issue and that the issue was resolved as soon as he knew.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is condominium townhome with an English basement unit. (Testimony of [REDACTED])
2. The period in dispute is December 4, 2020 to January 6, 2021. (Testimony of the parties)
3. There was a significant increase in water consumption at the property between December 21, 2020 and December 28, 2020. (Testimony of LaFatima Black)
4. DC Water sent HUNA alerts to the customer on December 22<sup>nd</sup>, 23<sup>rd</sup>, 24<sup>th</sup>, 25<sup>th</sup> and 28<sup>th</sup>. (Testimony of LaFatima Black)
5. The customer's tenant, who has access to the entire property during the Pandemic, was on holiday and away from the property from December 24, 2020 to December 28, 2020. (Testimony of [REDACTED])
6. The customer was not in residence at the property during the period in dispute and had not been in residence at the property since March 2020 due to the Covid-19 Pandemic; [REDACTED] was in [REDACTED] his home state. (Testimony of [REDACTED])
7. The HUNA alerts sent by DC Water were by email to the customer's law firm in [REDACTED] and by written notice to the residence. (Testimony of [REDACTED])
8. The customer's assistant at his law firm was on holiday and not in the office and, as such, was unaware of the alerts sent by the utility. (Testimony of [REDACTED])
9. [REDACTED] was not in his law office during the 2020 Christmas holiday. (Testimony of [REDACTED])
10. Upon the tenant's return to the residence on December 28<sup>th</sup>, the tenant heard water running in an upstairs bathroom toilet and she discovered a problem with the toilet's flapper. (Testimony of [REDACTED])
11. The plumbing issue was resolved on December 28<sup>th</sup> and the high-water consumption stopped. (Testimony of the parties)

#### 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. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

#### DECISION

The customer failed to establish a prima facie case that more likely than not the bill in dispute was wrong. The evidence and testimony established that there was a defective toilet in the house and, moreover, when the toilet was repaired, water usage declined. The customer, however, sought consideration, based upon an equity argument, that he should not have to pay the total amount charged to his account. The customer asserted that equity consideration was warranted due to the Covid-19 Pandemic and the lack of notice that high-water usage was occurring in the property.

The Covid-19 Pandemic played no factor in either the toilet defect causing the high-water usage or the lack of notice that high-water usage was occurring at the property. Based upon the

testimony of the customer, the causative factor of someone knowing that high-water usage was occurring at the property was because of the Christmas Holiday and tenant being away from the property and not being aware of the existence of the plumbing issue until she returned and because neither the customer nor his assistant was in his law office during the holidays to see the HUNA alerts since by the utility.

21 DCMR 406 dictates that DC Water does not adjust a customer's account when excessive water consumption is caused by a faulty internal fixture, such as a bathroom toilet. The customer acknowledged the accuracy of the amount billed and that he did not dispute the bill but thought the circumstance of not knowing of the problem and repairing the toilet as soon as he became aware of the faulty toilet were merit a reduction in the charge.

Ultimately, a property owner is responsible for what occurs at his property. In this case, DC Water sent alerts to the customer so that the customer might be aware and have an opportunity to mitigate loss. Unfortunately, the customer's mechanisms to receive messages failed because people were on holiday during the time that high-water usage was occurring at the property. Equity does not come into play under the circumstances in this matter. The utility did nothing to cause harm to the customer and it correctly billed the customer for water service.

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

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: August 5, 2021

Copy to:





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

IN RE: [REDACTED]  
[REDACTED] Underwood Street, NW  
Washington, DC 20012

Account No: [REDACTED]  
Case No: 21-310030

Amounts and Dates in Dispute:  
12/24/2020 – 1/21/2021 = \$499.31  
2/20/2021 – 3/18/2021 = \$308.26

Before Janet W. Blassingame, Hearing Officer  
June 2, 2021 at 12:00 Noon

The customer contested two (2) water and sewer bills for the above account for the periods of time December 24, 2020 to January 21, 2021 and February 20, 2021 to March 18, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on June 2, 2021. Present were [REDACTED] and his wife, [REDACTED]; and Kimberly Arrington and LaFatima Black on behalf of DC Water.

The property involved is a single-family home purchased by [REDACTED] on December 23, 2020; he and his family moved into the home in February 2021. The house has three and one-half (3 ½) bathrooms, two (2) outside faucets, two (2) utility sinks, one kitchen, a dishwasher and a washing machine. The attic and basement are unfinished, however, there is a bathroom in the basement and the water to the bathroom is turned off.

Mr. [REDACTED] testified that prior to his possession of the property, the property was occupied, the water was on and he coordinated with the prior owners the turn-over of the utility accounts. He stated that his first water bill for the period 12/24/2020 to 1/21/2021 was in the amount of \$499.31 for 31.43 CCFs of water. He stated that prior to settlement on the purchase of the property, he looked at the water use history and his realtor said that he should get it checked out. Mr. [REDACTED] stated that he hired an inspector before making an offer to buy the property.

Mr. [REDACTED] stated that he may have gotten a high-water usage alert before moving-into the house. He stated that a contractor was in the house doing painting before his move-in. He stated that the spike lasted three (3) days.

Mr. [REDACTED] stated he telephoned DC Water regarding his water bill after a second spike in water usage occurred in February 2021. He stated that he also hired a plumber after the second spike occurred. Mr. [REDACTED] stated that he received additional HUNA alerts from DC Water in February 2021 and when he spoke with a DC Water service representative, he was told to get a plumber. Mr. [REDACTED] testified that he hired Michael & Sons to inspect the house but no leaks

were detected. Mr. [REDACTED] stated that one week after having Michael & Sons at his property, he hired Anna Contracting on March 4, 2021. He stated that the contracting company plumber was present at the property for an entire day during which the parts were changed in all of the toilets. Mr. [REDACTED] stated that although the toilet parts were changed, they were changed because they were old, not because the parts were defective and needed to be changed. Mr. [REDACTED] asserted that nothing was detected that would explain the occurrence of spikes in water usage at the home.

Mr. [REDACTED] asserted that after the water meter and MTU were changed at the property, there have been no further problems regarding water usage. He stated that equipment was changed on March 9, 2021. Mr. [REDACTED], further, asserted that the spikes were not consistent with the existence of a leak and the professionals suspected a meter problem.

When asked the nature of work being done at the house, Mr. [REDACTED] responded that the contractor was painting, doing window replacements and floors and tile work prior to his move-in. He stated that the work was started in January 2021 but continued when the couple moved into the house.

Mr. [REDACTED] stated that the inspector was at the property in Mid-November 2020. He stated that the property was inspected by a plumber in February 2021 and again on March 4, 2021.

Mr. [REDACTED] stated that asbestos tile was being removed in December 2020 and that a lot of water was used during the process. He stated that water use associated with the tile removal lasted 2 – 3 days.

Ms. Black stated that the meter reads are actual from an automated meter. She stated that the meter reads are transmitted hourly to a tower and then sent to DC Water. She asserted that a water meter only advances when water is being used. She stated that there are no misreads on an automated water meter and water meters do not self-repair.

Ms. Black testified that DC Water tested the water meter and the meter was determined to have 99.58% accuracy. She explained that DC Water follows the standards set by the American Water Works Associations and a water meter is accurate when its accuracy is between 98.5% and 101.5%.

Ms. Black testified that there were two (2) spikes in water usage at the property- 1/9/2021 to 1/12/2021 and 2/20/2021 to 2/22/2021. She stated that water usage at the property then returned to normal however, there were some small spikes in water usage after the water meter was changed at the property on March 9, 2021. She stated that the spikes occurred 4/24/2021 to 4/27/2021, 4/29/2021, 5/1/2021 and 5/2/2021.

Ms. Black stated that DC Water has the customer's plumber's statement of repairs. She stated that the utility's investigation showed no overread or faulty computation. She concluded that based upon 21 DCMR §408.1 that the customer's account should not be adjusted because the tests and checks were inconclusive, in that, no cause of the high-water usage was determined.

Ms. Arrington explained that DC Water pulls a customer's water meter when a dispute is filed. She pointed out that the customer's last bill dated 5/20/2021 reflected that the customer used 48 CCFs of water in one month. She stated that the customer had been averaging 8 CCF per month over the last couple of months and that usage is a little more than is considered normal for two (2) people. Mr. [REDACTED] interjected that he had been re-seeding his yard and believes that the small spikes seen in May 2021 are accurate. He asserted, however, that the larger spikes that have occurred at the property are not explainable.

Ms. Black told the customer that he must consider installing a sub-meter to determine the amount of water used that does not go into the sewer. She stated that use of a sub-meter will eliminate the sewer charge on water used in such activities as watering the lawn.

Mr. [REDACTED] expressed frustration and stated that he hired folks to come in to determine the water issue.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family home purchased by [REDACTED] on December 23, 2020. (Testimony of [REDACTED])
2. The customer's realtor advised him to have the water usage of the property checked out prior to going to settlement and Mr. [REDACTED] hired an inspector before he made an offer to buy the property. (Testimony of [REDACTED])
3. Between purchase and move-in, a contractor was at the property doing painting, window replacements, floors and tile work. (Testimony of [REDACTED])
4. The contractor's work continued after the owner moved into the property. (Testimony of [REDACTED])
5. One work project performed by the contractor was removing asbestos and to do so, the contractor was using a lot of water; the customer said the work started on December 28, 2020 and lasted 2 – 3 days. (Testimony of [REDACTED])
6. Mr. [REDACTED] acknowledges that he may have received an alert that high water usage was occurring at the property before he and his wife moved into the property. (Testimony of [REDACTED])
7. [REDACTED] and his wife moved into the property in February 2021. (Testimony of [REDACTED])
8. The periods in dispute are 12/24/2020 to 1/21/2021 and 2/20/2021 to 3/19/2021. (Testimony of [REDACTED])
9. The customer wrote that he was not disputing the bill dated 2/22/2021 for the period 1/22/2021 to 2/19/2021 because water usage at the property was normal during that period. (March 28, 2021 letter to DC Water by [REDACTED] attached to the Petition for Administrative Hearing)
10. The bill dated 1/28/2020 for the period 12/24/2020 to 1/21/2021 was the first water and sewer bill issued to the customer as the new owner of the property. (Testimony of [REDACTED])

11. The customer acknowledges receiving high water usage alerts from DC Water in February 2021. (Testimony of [REDACTED])
12. During the first billing cycle of the customer's ownership of the property, water usage recorded on the water meter starting December 24, 2020 almost continuously thru the first billing cycle and into the second billing cycle. (DC Water's Meter Log Record)
13. Spikes in water usage occurred at the property 1/9/2021 to 1/12/2021, 2/20/2021 to 2/22/2021, 4/24/21 to 4/27/2021, 4/29/2021, 5/1/2021 and 5/2/2021. (Testimony of LaFatima Black)
14. After each spike in water usage at the property, water usage returned to within normal range. (Testimony of LaFatima Black)
15. The customer acknowledges re-seeding his lawn in May 2021 which would account for spikes in water usage. (Testimony of [REDACTED])
16. The customer hired Michael & Sons Plumbing on February 24, 2021 and no leaks were detected. (Testimony of [REDACTED]; Michael & Sons Plumbing report)
17. The customer hired Anna Contracting on March 4, 2021 and the company changed parts in all of the toilets. (Testimony of [REDACTED])
18. DC Water tested the water meter and the meter was determined to have 99.58% accuracy. (Testimony of LaFatima Black)
19. In its investigation of the customer's dispute, the utility found no evidence of meter overread or faulty computation of the customer's bills. (Testimony of LaFatima Black)
20. The meter and MTU was changed on 3/9/2021. (Testimony of [REDACTED])

#### 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 tried to do all things prudent as a property owner. He hired an inspector prior to making an offer to purchase and he, later, hired two (2) different plumbers to inspect his property for leaks and no leaks were found. The evidence and testimony presented shows that, while there may not have been any plumbing defects at the property, excessive water usage occurred at the property both prior to move-in by the owners and after the new owners occupied the property and there have been small spikes in water usage recently occurring at the property.

The customer testified that his contractor, before move-in, was removing asbestos at the property and used a lot of water in the process. The customer testified that the process took 2 – 3 days and started December 28, 2020. A review of the meter reads from the property shows almost continuous water usage occurring at the property starting December 24, 2020 and continuing until January 2, 2021 when usage stopped at 17:00 hours. Prior to the water stopping on January 2, 2021, the meter log reflects only sporadic stopping of the water for no longer than two (2) hour intervals. Water usage restarted January 3, 2021 at 8:00 a.m. Water usage at the property stopped again on January 4, 2021 at 13:00 hours and there was no usage until 8:00 a.m. on January 5, 2021. Water usage resumed on the 5<sup>th</sup> of January for several hours but then stopped later in the day on January 5<sup>th</sup> and there was no reported water usage until mid-day on January 8, 2021. The Meter Log reflects sporadic water usage until the spike started on January 9<sup>th</sup> at 16:00 hours and continued until January 12<sup>th</sup> at 10:00 a.m. when usage declined but continued at two (2) hour intervals on the 13<sup>th</sup> until water usage started hourly at 13:00 hours on January 13<sup>th</sup>. The Meter Log reflects continuous hourly usage until January 26<sup>th</sup>.

As such, based upon the testimony, there were workers in the house prior to the owner's move-in and renovations continued after the owner's move-in.

Continuous water usage suggests a leak but, because water usage did sporadically stop, the water usage could have been due to workers using the water but it is clear that water usage was occurring.

Further, based upon the testimony and evidence presented, the customer hired Michael & Son to inspect the property during a period when high water usage was not occurring. The plumbing company was at the property on February 24, 2021 and the customer has declared that water usage in February was normal and not being dispute. The testimony was that the spike in water usage in February 2021 occurred between February 20, 2021 and February 22, 2021 and thereafter usage returned to normal. Accordingly, it is no surprise that the plumber found no leak at the property. Likewise, the customer testified that he hired Anna Contracting on March 4, 2021 and, again, excessive water usage was not occurring at the property during the period that

the plumber was at the property. There were no reported spikes in water usage at the property in March 2021. The fact that there was a spike February 20 – 22, 2021 does account for a higher water bill in March because the billing period was February 20, 2021 to March 18, 2021.

The customer asserted that spikes in water usage at the property resolved after the water meter and MTU were changed on March 9, 2021. The testimony and evidence, however, established that spikes in water usage occurred at the property, both, after Anna Contracting changed toilet fixtures at the property and after the water meter and MTU were replaced at the property. The customer had an explanation for the water spikes in May 2021; he had no explanation for spikes in April 2021.

The water meter was tested and determined to have 99.58% accuracy. DC Water found no misreading of the water meter, no overread or faulty computation. The utility also had hourly meter reads from the property allowing it to pinpoint when water was being used.

21 DCMR 408 dictates that when all tests and checks are inconclusive as to the cause of excessive water usage at the property, DC Water does not adjust a customer's account for the excessive water used. Here, the owners were renovating their property both before move-in and continuing thereafter and water was most certainly being used at the property by the contractor and workers. There is no evidence that DC Water's equipment was faulty and as such, DC Water's determination that no basis exists to adjust the customer's account for excessive water usage and the charges are valid is AFFIRMED.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer  
Date: August 5, 2021

Copy to:

██████████  
██████ Underwood Street, NW  
Washington, DC 20012

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

IN RE: Nassar Haider  
2700 Prairie Meadow Drive  
Champagne, IL 61822

c/o Chessely Robinson, Esq.  
2516 Australia Drive  
Raleigh, NC 20310

Service Address:  
[REDACTED] Good Hope Road, SE

Account No: [REDACTED]  
Case No: 2018-4-62

Amounts in Dispute: \$ 10,722.10

Before Janet W. Blassingame, Hearing Officer  
June 8, 2021 at 10:00 a.m.

NOTICE OF ERRATA

The undersigned Hearing Officer files this Notice of Errata to correct the typographical errors found in the Decision dated August 5, 2021.

<u>Page</u>	<u>Paragraph</u>	<u>Now Reads</u>	<u>Should Read</u>
1	2 <sup>nd</sup> paragraph	hearing on June 8, 2021 2021	hearing on June 8, 2021
5	last sentence	contacted the owner on May 28, 2028	contacted the owner on May 28, 2018

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: August 10, 2021

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

IN RE: Nassar Haider  
2700 Prairie Meadow Drive  
Champagne, IL 61822

c/o Chessely Robinson, Esq.  
2516 Australia Drive  
Raleigh, NC 20310

Service Address:  
[REDACTED] Good Hope Road, SE

Account No: [REDACTED]  
Case No: 2018-4-62

Amounts in Dispute: \$ 10,722.10

Before Janet W. Blassingame, Hearing Officer  
June 8, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time January 24, 2018 to May 17, 2018. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing. An Order of Default was entered March 19, 2019 against the customer for failure to appear for hearing. The customer appealed the dismissal of his case arguing that the Notice of Hearing was sent to the wrong address. The customer further asserted that no findings were made by the Hearing Officer and that the Decision by the Hearing Officer was arbitrary and capricious. DC Water decided to forego the challenged judgment and by consent the parties agreed that the matter would be remanded to the Hearing Officer for a hearing on the merits of the dispute.

This matter was scheduled for a remote hearing on June 8, 2021 2021. Present for the hearing were: Nassar Haider, a.k.a. Nasar Haider; Chessely Robinson, Esquire on behalf of Nassar Haider; Emil Hirsch, Esquire, on behalf of DC Water; as well as, Kimberly Arrington and Arlene Andrews, DC Water.

As a preliminary matter, Mr. Hirsch and Mr. Robinson identified documents which each intended to use during the hearing. The documents are as follows:

**Petitioner:**

<u>Exhibit Number</u>	<u>Exhibit Name</u>	<u>Admitted</u>
1	Bill Summaries from 2/15/2018 to 2/27/2019	yes
2	Handwritten Invoice dated 4/20/18 by 20/20 Drain Clean	
3	20/20 Drain Clean Invoice	yes
4	Request for Bill Reduction dated 6/2/2018	yes



5	Petition for Hearing	yes
6	Order of Default	
7	Notice of Hearing	
8	DC Court of Appeals Brief	
9	Bill Summary dated 2/15/2018	yes

DC Water:

<u>Exhibit Number</u>	<u>Exhibit Name</u>	<u>Admitted</u>
1	Motion For and Order of Remand	
2	Denial Letter by Eileen Wright dated 10/20/2019	
3	Investigative Report	yes
4	Request for Bill Reduction dated 6/2/2018	yes
5	Petition for Hearing	
6	DC Water Monthly Meter Readings	yes
7	Historical Summary of Customer Interaction Notes	yes
8	Bill Summary dated 5/15/2018	yes

Mr. Robinson opened by calling Mr. Haider as his witness. Mr. Haider stated that he was born 9/4/1045 and lives at 2700 Prairie Meadow Drive in Champagne, IL. He stated that he owns two (2) properties in Washington, DC. The first property is located at [REDACTED] Q Street, SW and the second property is located at [REDACTED] Good Hope Rd, SE. and the Good Hope Rd property is the property at issue. Mr. Haider stated that the property is a commercial/residential mixed-use building which he had been renting to a tenant. The building has an upstairs two-bedroom apartment having a kitchen and two (2) bathrooms. He stated that the ground level is a convenience store having one bathroom. He stated that the building has one outside faucet and is monitored by one water meter. Mr. Haider stated that his lease agreement with the building tenant is that the tenant could sleep upstairs in the apartment or he could sublet the apartment and the tenant would occupy and operate the convenience store; the tenant would be responsible for all utilities and maintaining the property.

Mr. Haider stated that the tenant did not tell him of any water problem. He stated that in April 2018, he found the property abandoned and he saw water on the floor. Mr. Haider explained that he found busted pipes inside the property and he found a December 2017 DC Water bill for \$2,700.00. Mr. Haider stated that he called a plumber to fix the broken pipe and leaks and Mr. Haider called his insurance carrier to make a claim for repair of the water damage. Mr. Haider stated that he contacted DC Water within a week of seeing the state of the property. He stated that he discussed with the utility's service representative the December 2017 bill for \$2,700.00 and he reached agreement to pay \$100.00 per month on the arrearage.

Mr. Robinson asserted that his client should not have to pay the amount owed to the

utility because it is not right that he pays for something caused by a natural disaster.

Mr. Haider stated that he got the full information regarding what was due and what happened in the building in May 2018 when the water meter was read. He stated that he got the water bill and sent a letter to DC Water. He stated that he was told that the utility would consider a reduction in the amount due.

Mr. Haider stated that DC Water did not come out to the property from May when he contacted the utility until June. He stated that he was living in Chicago, IL at the time and that his daughter moved so they missed receiving several of the water bill statements.

Mr. Robinson asserted that as an absent landlord, his client's obligation goes to reasonableness of the landlord's actions.

Mr. Hirsch cited Euclid St. v. DC Water, 41 Ad3 453 (2012 D.C.) stating that a landlord is always ultimately responsible for water use and that there is no mitigation by reasonableness or tenant liability. Mr. Robinson cited 21 DCMR 407.2 stating that the regulation addresses appropriateness for reduction of a customer's bill and one factor to be considered is the owner's negligence or reasonableness. Mr. Hirsch responded that based upon the "Best Evidence Rule", one must look to the lease between Mr. Haider and his tenant.

Mr. Robinson stated that there is no record of a bill being generated by DC Water for the period February 2018 to March 2018. He stated that his client was re-billed in May 2018 and as such, Mr. Haider had no way of challenging charges incurred in February and March 2018. Mr. Hirsch stated that Mr. Haider did not testify of not receiving bills but, nevertheless, DC Water is not asserting that the dispute is untimely, so whether the customer received the bill or if the bill was generated is immaterial.

The Hearing Officer asked Mr. Haider when his tenant stopped paying his rent for the property and Mr. Haider responded that the tenant stopped rent payments as of December 2017. To questions by the Hearing Officer, Mr. Haider further responded that he self-managed the property and did not employ a property manager. Mr. Haider declared that he received a bill for his other property owned in the District of Columbia but he did not get the bill for the property at issue. He asserted that DC Water had his phone number and email address.

Mr. Robinson continued his questioning of Mr. Haider and Mr. Haider stated that there was a water leak at the property in year 2016 and DC Water contacted him by a phone call to alert him of excessive usage. He recited his telephone number- 302-372-xxxx and his email address and stated that both phone number and email address were the same in year 2018.

Mr. Haider confirmed for the Hearing Officer that his lease with the tenant was signed in year 2017.

Mr. Haider referenced the invoice from 20/20 Drain Clean (ex. 3). He testified that a pipe burst at the entry of the building and that three (3) pipes were busted. He stated that a pipe was busted in the ceiling.

Mr. Haider stated that he called DC Water to request a bill reduction because he was not responsible for the water and sewer bill pursuant to his lease with his tenant. He asserted that he was not informed of bills by DC Water. He stated that he did recall what he was told by the service representative regarding reducing the bill but the utility, ultimately, did not reduce the bill and said that he was responsible for payment.

On cross-examination by Mr. Hirsch, Mr. Haider said that the telephone number under his name on the 20/20 Drain Clean invoice was not his telephone number and he did not know whose telephone number it was.

Referring to ex. 4, the letter from Nasar Haider dated 6/2/18 which contained a telephone number 202-351-xxxx, Mr. Haider stated that the stated telephone number is his current cell phone number. He stated his daughter lived at xxx Morgan Street, Chicago, IL but she moved either at the end of year 2018 or in 2019. He stated that he did not give DC Water an updated address in which to contact him. He stated that starting in June 2018, contact with the utility was by email.

Mr. Haider testified that his tenant stopped paying rent in December 2017 and that he knew by December 11<sup>th</sup> that he had not received a timely rent payment. Mr. Haider stated that he and the tenant talked on the telephone in either January or February 2018 but he had no contact with the tenant in March 2018 and he does not know when the tenant vacated the building. Mr. Haider stated that he did not come to the District of Columbia to inspect the condition of his property when rented to the tenant. Mr. Haider stated that the tenant told him that he was going to fix and improve the property.

Mr. Haider stated that, in September 2018, he provided DC Water with his daughter's address in Chicago, IL but did not give the utility his address in Champagne, IL even though he was living between both properties.

Mr. Haider testified that a DC Water service representative told him that the utility does not get involved in landlord/tenant disputes. Mr. Haider stated that the service representative did not tell him about HUNA notifications.

On re-direct by Mr. Robinson, Mr. Haider stated that the tenant told him that he was going to work on the unit and the pay rent. Mr. Haider stated that the tenant had paid the rent regularly and based upon the tenant's history, he put up with the tenant for a few months.

Mr. Haider stated that he had no communication with DC Water during the occupancy of his tenant, [REDACTED].

Mr. Haider testified that he had no knowledge of any property damage while the tenant was occupying his building.

The Hearing Officer asked the customer whether he sued the tenant and Mr. Haider responded that he did not sue the tenant and that his insurance did not cover the tenant's beach.

Mr. Hirsch moved for a dismissal of the customer's dispute. He argued that the customer failed to make a prima facie case as required pursuant to the Gatewood case. He asserted that because there is a lease with a tenant and the tenant is responsible of utilities, that is not enough cause to give the property owner relief in the form of a bill reduction when the tenant fails to pay the water and sewer bill. Mr. Hirsch cited the Euclid case. He went on to assert that not being informed of billing, also, is not legal ground to relieve the property owner of responsibility to look after his property. Mr. Hirsch asserted that this is a case of dereliction of duty as a property owner and that Mr. Haider is attempting to shift the blame for his own negligence. Mr. Robinson responded to Mr. Hirsch's argument by citing 21 DCMR §407.4 in which the General Manager has discretion to adjust a customer's bill when a leak is found on private property. Mr. Robinson asserted that his client was not challenging an owner's responsibility for payment of the water and sewer bill but his issue is the appropriateness to reduce the bill. Mr. Robinson asserted that the Euclid case does not apply in this matter and neither does the Gatewood case.

With respect to the Motion to Dismiss, the Hearing Officer denied the motion stating that she wanted DC Water to present its case as to why the customer owed the utility for water and sewer service. Based upon said ruling, Mr. Hirsch called Kimberly Arrington as his first witness.

Ms. Arrington stated that she has been employed at DC Water for seventeen (17) years and for the past three (3) years, she has been Supervisor for Escalations. She testified that her first contact with the customer's account was approximately six (6) months ago when she was told to provide the customer with an administrative hearing. Ms. Arrington stated that she pulled the customer's file and reviewed the documents and saw that there was a tenant and owner. She stated that the owner contacted DC Water on November 8, 2016 to add the tenant to the account and since then, the account bill goes to the owner and to the tenant. Ms. Arrington stated that the owner's bill copy is sent to his Chicago address and that the DC Water Collections Department contacted the owner on May 28, 2028.

Ms. Arrington identified the DC Water Historical Notes (DC Water ex. 7) described as a 4-page composite of the contacts between DC Water and Mr. Haider. Mr. Robinson objected to reference of the document. He cited the Clyburn Rule relating to business records taken into evidence. Mr. Robinson cited 741 A2d 395 (1991) stating that for the document to be admissible the original maker must have received the information in the course of regular of business. Mr. Hirsch responded that in an administrative hearing, hearsay is liberally applied and allowed. Referring to the note dated 6/29/18, Mr. Hirsch asserted that the note was contemporaneously made by the customer service representative and that all customer service representatives are required to note all interactions with customers. Mr. Hirsch argued that the contact notes are made in the ordinary course of business. Ms. Arrington testified that the composite notes were taken from the DC Water data base. The Hearing Officer overruled the objection by Mr. Robinson and the note document was admitted into evidence.

Ms. Arrington testified that DC Water customers must sign-up for HUNA alerts and must have an on-line account with the utility. She stated that the high-water usage alert is based upon a customer's usage threshold. Ms. Arrington testified that a customer service representative told Mr. Haider of the HUNA program and of his ability to sign-up for the program. Ms. Arrington testified that Mr. Haider never signed up for HUNA alerts.

Ms. Arrington testified that DC Water conducted an investigation of the customer's dispute of the bill dated 5/18. She stated that the utility verified water consumption in its STAR report of meter reads and that the reads suggest the existence of a leak at the property. Ms. Arrington referred to exhibit 6- monthly meter reads in the STAR automated meter read system. Mr. Robinson objected to ex. 6. Mr. Hirsch asserted that the reads are admissible and Mr. Robinson retorted that the document bears no signature or certificate of authenticity. Mr. Hirsch stated that the witness testified as to the record and there is no need for authenticity. Mr. Robinson cited Rule 902 of the Federal Rules of Evidence and Mr. Hirsch stated that the federal rules do not apply in this case. The Hearing Officer overruled Mr. Robinson's objection to the meter reads stating that the meter reads are maintained by DC Water in its ordinary course of business and are therefore admissible.

Turning to the DC Water Investigative Report dated 10/29/18, Ms. Arrington noted that there was a check mark by "increased Actual usage" on the report and that on the line of actions taken, it is noted that the account was on hold to 11/9/18. Ms. Arrington stated that the decision of the utility after investigation was that no account adjustment was warranted and the charges are valid. She further stated that the plumber's report was not received within 15 days of the notice of the repair but regardless of when the utility received the plumber's report, the report was taken into consideration during the investigation and in the decision by DC Water.

Ms. Arrington testified that DC Water holds owners responsible for water and sewer

charges based upon a D.C. Court of Appeals decision. She stated that the final check mark on the Investigation Report is that usage has declined- usage controlled at premises; not an underground leak. Ms. Arrington asserted that DC Water knew that the water usage was controlled at the premises because of the plumber's report.

Ms. Arrington identified a letter from DC Water to Mr. Haider (exhibit 2) stating that the letter accompanied the Investigation Report. She stated that the letter is referred to a Denial Letter. She stated that the utility considered the plumber's report, AMR readings, and Interaction Notes.

Ms. Arrington testified that Mr. Haider asked DC Water to send his water and sewer bills to the Good Hope Rd address and not to any other address.

With respect to the plumber's report, Ms. Arrington stated that the plumber wrote that pipes were fixed in the entryway and bathroom. She stated that DC Water policy is to look if fixtures are internal. She stated that there was nothing in the plumber's report stating that walls or plaster had to be removed to fix the pipes.

On cross examination, Ms. Arrington reaffirmed that the owner called DC Water in November 2016 to put the tenant on the water and sewer account.

Ms. Arrington stated that from November 2016 to November 2017, there were no other increases.

From the historical notes, Ms. Arrington stated that the first contact with Mr. Haider was on May 29, 2018 and on 5/30/18, he was informed that there had been high consumption from December 21, 2017 to April 19, 2018 and that usage had returned to normal between April 30, 2018 to May 17, 2018.

Ms. Arrington stated that the bill dated 5/30/18 was part of the investigation but the bill dated 7/6/18 was not included in the investigation.

The bill dated 2/15/18 (ex. 9) was admitted; Ms. Arrington stated that bill is accurate. Mr. Robinson stated that his client did not receive a bill for February or March.

Ms. Arrington stated that had the plumber's report stated that the pipes repaired were not visible, the utility would have considered such during its investigation. Referring to Exhibit 7, Ms. Arrington noted from the Interaction Notes that the customer service representative had said that the plumber had to say in the report the location of the leak or visibility of the pipes. Ms. Arrington further noted that nowhere in the plumber's report was it stated that the kitchen faucet

was running.

The Hearing Officer asked DC Water to show all interaction notes regarding the account and Ms. Arrington responded that DC Water changed its system in December 2017 and the legacy notes are not accessible. She stated that there were no notes of contact between January 2018 and May 2018, then, Mr. Haider was called by DC Water's Collection Department in May 2018.

Ms. Arrington stated that DC Water did not inspect the property.

Mr. Hirsch moved for Exhibit 1 to be admitted; the exhibit was admitted.

Mr. Haider was re-called by Mr. Robinson.

Mr. Haider, referring to Historical Note (ex. 7) dated 7/9/18 regarding resending the plumber's report, said he does not recall mentioning the kitchen faucet.

Mr. Haider stated that he does not have anything to show that the repaired pipes were invisible.

Mr. Robinson stated that he would like to submit a written closing statement by June 15, 2021. Mr. Hirsch was told that it was optional for him to submit a written closing statement but if he elected to do so, his statement would be due also on June 15, 2021.

A written Closing Argument by the customer was forwarded to the Hearing Officer on June 16, 2021.

Based upon the foregoing evidence and testimony adduced during the Hearing and considering the Closing Argument submitted by the customer, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a mixed-use building owned by Nasser Haider. The building has a second-floor apartment unit and a ground floor convenience store. (Testimony of Nasser Haider)
2. The period in dispute is January 24, 2018 to May 17, 2018. (Testimony of the parties)
3. The property owner entered into a lease agreement with tenant, [REDACTED], regarding the building in 2016 and, pursuant to the lease agreement, the tenant was responsible for payment of all utilities, including the water and sewer bill. (Testimony of Nasser Haider)
4. The tenant stopped payment rent to the property owner after December 2017; the

property owner was unaware of the status of the tenant's payment of the water and sewer bill. (Testimony of Nasser Haider)

5. The property owner was in contact with his tenant in January 2018 and believed the tenant's assertions that he was going to improve the property and, as such, the property owner decided not to press the tenant regarding rent arrearage. (Testimony of Nasser Haider)
6. The property owner had no contact with the tenant after February 2018 and was not given notice of the tenant's intent to vacate the building. (Testimony of Nasser Haider)
7. The tenant vacated the property unbeknownst to the property owner and the property owner does not know when the tenant vacated the property. (Testimony of Nasser Haider)
8. Mr. Haider resides out-of-state and did not employ a property manager but acted as his own property manager. (Testimony of Nasser Haider)
9. Mr. Haider visited the property in April 2018 and found the building vacant with water damage from busted pipes in the entryway and bathroom and he found a DC Water Bill Summary. (Testimony of Nasser Haider)
10. The property owner hired a plumber who repaired 3 CPVC pipes, as well as, installed a new kitchen faucet and shower valve and unclogged the backyard drain. (Testimony of Nasser Haider; 20/20 Drain Clean Invoice dated 4/23/2018)
11. After finding a water and sewer bill in the building, Mr. Haider telephoned DC Water on 5/29/18 and learned that there was an outstanding arrearage on the water and sewer account. (Testimony of Nasser Haider and Kimberly Arrington; DC Water Interaction Note 5/29/18)
12. The water and sewer Bill Summary for the property dated 2/15/18 reflected current charges due in the amount of \$2,821.68 and a water meter read date of 1/23/18. (Bill Summary dated 2/15/18)
13. Mr. Haider disputed the bill dated 5/15/18 in the bill amount of \$5,456.86 for the period 1/24/2018 to 2/22/2018. (DC Water Investigation Report Letter dated 10/29/2018)
14. The water and sewer Bill Summary for the property dated 5/15/18 reflects the water meter was read 2/22/18. (DC Water Bill Summary 5/14/2018)
15. The water and sewer Bill Summary for the property dated 5/30/18 reflects the water meter was read 5/17/18. (DC Water Bill summary dated 5/30/18)
16. DC Water waived its rule processing regulation regarding a time limit upon the property owner to dispute the water bill dated 5/15/2018. (Statement by Emil Hirsch, Esq. on behalf of DC Water)
17. The property owner added the tenant's name to the water and sewer account for the property in November 2016 and the bill went to the property address; the property owner provided DC Water with his daughter's address in Chicago, IL even though the property owner lived in Champagne, IL. (Testimony of Nasser Haider)
18. The property owner failed to update his account information when his daughter moved.



(Testimony Nasser Haider and Kimberly Arrington)

19. The property owner does not challenge an owner's responsibility for payment of the water and sewer bill. (Statement of Chessely Robinson, Esq. on behalf of Nasser Haider)
20. In investigating the customer's bill dispute, the utility verified the meter reads in the STAR system and considered the plumber's report submitted by the property owner. (Testimony of Kimberly Arrington)
21. DC Water excluded the existence of an underground leak as a cause of excessive water usage at the property because the usage declined which indicates that the usage was controlled at the premises. (Testimony of Kimberly Arrington)
22. High water consumption occurred at the property between 12/21/2017 and 4/19/2018; consumption returned to normal during the period 4/30/18 and 5/17/18. (Testimony of Kimberly Arrington)

#### 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. Meter shall be read quarterly or at such other times as the General Manager shall determine. (21 DCMR §308.1)
3. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
4. Gatewood v. DC WASA, 82 A.3d 41, D.C. Court of Appeals 2013-the utility waived the time filing limits; after the customer makes a prima facie case, the burden shifts to the utility to rebut.
5. Street, LLC v. D.C. Water and Sewer, 41 A. 3<sup>rd</sup> 453, D.C. Court of Appeals 2012- The issue presented was whether WASA has the authority to hold the owner of a building Euclid responsible for paying a tenant's delinquent water services account. Because the applicable statute and regulations establish that the obligation to satisfy outstanding water service fees runs with the property where the water was consumed, the Court concluded that WASA is permitted to bill the owner of a building if a tenant consumes water, is billed appropriately, but fails to pay. The case established that the obligation to pay WASA's water service charges runs with the property where the water services are rendered.
6. DC Water is vested with the authority to "investigate" a challenged bill by verifying computations and meter readings and conducting an on-site inspection of the premises and the water meter, among other powers. 21 DCMR § 403.2
7. D.C. Code § 34-2407.02, which provides:

[I]f an owner of real property fails to pay District water and sanitary sewer service charges in full accordance with § 34-2407.01, *for all bills rendered* which remain unsatisfied for 60 days or more, the Mayor may file a certificate of delinquency with the Recorder of Deeds.

Upon filing, the certificate of delinquency shall constitute a continuing lien against the real property. (See, D.C. Code § 34-2407.02 (a)(1)-(2) (2001) (emphasis added)).

8. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)
9. If a leak is found to be in a location where the leak is not apparent from visual or other inspection, the General Manager shall determine whether the leak is on public space, or private property, or on property that is under the control of the occupant. If the such leak is determined to be on private property or on property that is under the control of the owner or occupant, the owner or occupant shall repair the leak and the General Manager may, at his discretion, upon request of the owner, adjust the bill(s) for the periods during which the leak occurred by an amount not to exceed 50% of the excess water usage. (See, 21 DCMR §407)
10. In deciding whether to adjust for a leak not visible to the naked eye, the General Manager may take into consideration:
  - (a) There has been no negligence on the part of the owner or occupant in notifying the Department of unusual conditions indicative of a waste of water;
  - (b) The owner has taken steps to have the leak repaired promptly upon discovery of a leak on private property;
  - (c) Repairs have been made by a District registered plumber...;
  - (d) Form ES-138 has been obtained from the Authority, completed in full, signed by the owner or occupant and certified by the plumber who made the repair; and
  - (e) The request for adjustment has been made promptly.(See, 21 DCMR §407.5)

### DECISION

The customer contended that he should be granted an adjustment to his account for excessive water usage due to busted pipes. The customer's argument was that he repaired the pipes as soon as he became aware of the condition of his property. The customer stated that he accepts that a property owner is responsible for the water and sewer bill charges when a tenant fails to pay the utility per a lease agreement, but, nevertheless, he seeks relief from excessive water charges caused the leaks within the property.

The testimony and evidence were that the property owner was an absentee landlord living in the State of Illinois. He testified that he lived between Champagne, IL and Chicago, IL where

his daughter lived. He provided DC Water with his daughter's address in Chicago however when his daughter moved, he did not update his contact information with the utility. With respect to his property in the District of Columbia, the customer was no longer receiving rent payment from his tenant as of December 2017. He testified that he gave the tenant forbearance based upon assertions by the tenant that he was going to improve the property and resume payment at an unspecified date. The property owner testified that he had no contact with the tenant after February 2018. The property owner came to the District of Columbia and went into his property in April 2018 and found the tenant gone and substantial water damage to the property due to busted pipes. The property owner hired a plumber who, among other things, repaired three (3) CPVC pipes.

Counsel for the property owner cites 21 DCMR §407.2 as basis for his client's request for an adjustment of his account. Counsel argued that his client's action, in having the leaks repaired, was done in a timely fashion after the property owner learned of the existence of the leaks and that a reduction is appropriate pursuant to the regulation.

Counsel's argument for reduction based upon 21 DCMR §407.2 is faulty. First, the regulation applies to underground leaks and leaks not visible to the naked eye. In this case, the plumber hired by the property owner failed to state that the busted pipes were not visible upon inspection and the property owner did not testify that the busted pipes were not visible to the naked eye. The sole description of the busted pipes by both the plumber and the property owner was that the pipes were in the entryway and in the bathroom. Second, even if one assumed that the busted pipes were not visible to the naked eye, adjustment of a customer's account is discretionary upon the General Manager of the utility. The regulation cites several factors for consideration in exercising the discretion of adjusting a customer's account and this property owner fails more than one factor of consideration besides failing to establish that the pipes were not visible. Here, the property owner failed to inspect his property and was unaware of the existence of pipes causing water loss. High water consumption occurred at the property between 12/21/2017 and 4/19/2018, yet, the property owner was neither in contact with the tenant over the four (4) months that water usage was excessive at the property nor did the property owner review the water and sewer bill(s) which were not only outstanding but excessive due to the condition of the property. The property owner admitted in his testimony that he missed receiving the water and sewer bills because his daughter moved and he did not give the utility his daughter's forwarding address. The property owner asserted that the utility had an email address and telephone number on file for him but neither line of communication relieves the property owner from his responsibility of knowing the condition of his property and paying the water and sewer charges incurred at the property. The property owner also asserted that the tenant was responsible for paying the water and sewer bill. Euclid Street LLC v. DC Water Authority, supra. settled the issue of whether a landlord can transfer responsibility for payment of the water and sewer bill to a tenant and the Court ruled that the water and sewer bill liability runs with the

property and the property owner is responsible for payment regardless of any landlord/tenant lease agreement. Thus, the property owner in this case was negligent in being cognizant not only of whether the water bill was being paid but also of the condition of his property and that water loss was occurring due to busted pipes for a period of four (4) months. The fact that the property owner had the repairs performed when he went to the property, does not excuse his negligence in allowing the prolonged water loss and accumulating an excessively high-water bill arrearage. The fact that the property owner requested an adjustment upon his discovery of the leaks, ignores the length of time elapsing that water loss was occurring due to the negligence of the property owner.

Based upon the foregoing, the Hearing Officer finds no abuse of discretion in not granting an adjustment of the account based upon 21 DCMR §407

21 DCMR §406 bars adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment.

In this case, the plumber repaired the busted pipes, as well as, installed a faucet and shower valve and unclogged a drain. Each defect was under the control of the tenant and, as such the property owner. In that the customer failed to establish qualification under 21 DCMR §407 for an adjustment, an adjustment is barred if excessive water consumption is the result of a leaking faucet, household fixture and similar leaks. Accordingly, the utility's determination that no adjustment was appropriate is determined to be correct under 21 DCMR §406, as well.

Lastly, the property owner argues that he did not receive bills for February and March 2018. The property owner found an outstanding bill statement in the property when he came in April 2018. DC Water had bill statements for February 2018 and two (2) statements generated in May 2018. The bill statements reflected that the water meter was read on 1/23/18, 2/28/18 and 5/15/18. Meters are to be read quarterly or at such other times as the General Manager shall determine. (21 DCMR §308.1) In this case, the utility complied with its regulations regarding the acceptable interval between meter readings. More importantly, however, the customer testified that he missed receiving bill statements because his daughter moved. Again, the property owner is attempting to shift responsibility to someone else for maintaining his property and seeing that the water and sewer bill is paid. He, first attempted to shift responsibility to his tenant and his argument that he did not receive bill statements for two (2) months, is an attempt to shift responsibility to the utility. As noted, the utility has properly read the water meter and billed the customer and a tenant is not the ultimate responsible party for paying the water and sewer bill, thus, efforts to shift responsibility from property owner to someone else fail.

The Hearing Officer finds no basis for an adjustment of the customer's account and, as such, the determination of DC Water that the charges are valid and no basis for adjustment of the account is warranted is hereby AFFIRMED.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: August 5, 2021

Copy to:

Nasser Haider  
2700 Prairie Meadow Drive  
Champagne, IL 61822

Chessely Robinson, Esq.  
2516 Australia Drive  
Raleigh, NC 20310

Emil Hirsch, Esq.  
1025 Thomas Jefferson St. NW  
Suite 400 West  
Washington, DC 20007

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

IN RE: David Brooks  
8302 Westmont Terrace  
Bethesda, MD 20817

Service Address:  
[REDACTED] T Street, NW

Account No: [REDACTED]  
Case No: 21-332073

Amounts and Dates in Dispute:  
11/5/2020 - 12/3/2020 = \$3,326.93  
12/4/2020 - 1/6/2021 = 1,247.78  
1/7/2021 - 2/3/2021 = 833.48

Before Janet W. Blassingame, Hearing Officer  
July 22, 2021 at Noon.

The customers contested water and sewer bills for the above account for the periods of time November 5, 2020 to February 3, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customers requested an administrative hearing.

This matter was scheduled for a remote hearing on July 22, 2021. Present were: Tenants - [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and, [REDACTED]; Owner- David Brooks; as well as, LaFatima Black and Kimberly Arrington, on behalf of DC Water.

The property involved is a three-story rowhouse, divided into two (2) units with an English basement. It has been owned by David Brooks since year 2001 and he holds the property has rental property. The main house has three and one-half (3 ½) bathrooms, one kitchen, a dishwasher and a washing machine. The basement has one bathroom, one kitchen, a washing machine and a dishwasher. The property has two (2) outside faucets and is monitored by a single water meter. On average, the water and sewer bill is \$230.00 per billing cycle.

Each story of the house and the basement unit were occupied by tenants during the periods in dispute and due to the Pandemic, the tenants were primarily working from home. None of the tenants were aware of any leaks or plumbing issues within the house and when the bill was received, it was thought to be in error by DC Water. [REDACTED] stated that the tenants, in fact, anticipated that the water and sewer bill would be lower than average because some tenants were away on travel. [REDACTED] stated that no alerts of high-water usage were received from DC Water. She stated that only upon receipt of the water and sewer bill did anyone become aware that a problem may exist at the house. She stated that they hired a plumber on April 19<sup>th</sup> who inspected the house for leaks and plumbing issues and none were detected. She stated that the inspection was done by Aspen Hill Plumbing.

██████████ testified that on 12/18/2020 a DC Water Repair Notice was left on their door. She stated that they did not experience an interruption in their water service and no one saw work being performed by DC Water. ██████████ stated that a second DC Water Repair Notice was left at the property on 2/8/2021 and that DC employees were observed removing portions of the paved street and working on water pipes right in front of their house. Ms. Black interjected that she could not determine what was going on regarding work in the vicinity of the house and that she could not find any reference in the Maximo system or in Ms. Utility regarding work being performed. Ms. Black stated that she checked for work records within a 30-day range and found nothing.

██████████ testified that water usage at the house dropped significantly following the 12/18/20 notice of work repair and that the customers' experienced no high-water usage readings following the 2/8/2021 notice of repairs being performed. ██████████ added that the plumber told her that no fixture would have produced the amount of water for which they were charged by the utility.

██████████ testified that she looked at the historical meter readings and that there were no readings for the period October 1 thru October 27. She stated that the meter readings for September were not accessible. She testified that meter readings stopped transmitting on August 26<sup>th</sup> and that readings had been sporadic before they stopped. She stated that the first meter read that she was able to see was October 28<sup>th</sup> and the meter read 74,816 gallons or 13.170 CCF.

██████████ testified that the first water bill received was dated October 7, 2020 for the amount of \$184.00, the next bill was dated November 13, 2020 for \$397.41. ██████████ stated that they overpaid the first time. She stated that the December 22, 2020 bill was for \$3,326.93.

██████████ complained that the meter was not tested until June 2021 and that the utility did not conduct an investigation. She asserted that she was told that the meter passed testing. She, also, asserted that she was not told to get a plumber and that the utility would send an email acknowledging their dispute and indicating when the investigation would be complete and, then, the utility failed to complete as indicated.

██████████ asserted that there are three (3) possible explanations for the increased usage. First, that she and the other tenants used the water as charged. Second, that the meter was defective. And, third that the work on the street caused the excessive water usage. The customer asserted that she has proven that explanations 1 and 2 were not the cause of the usage and she pointed out that her plumber and the other tenants support that they did not use the water as charged. She asserted that explanation 3 is the cause of the usage and she pointed out the lack of meter reads and the drop in usage following repairs being performed by DC Water. She pointed out that usage dropped significantly when repairs were performed on the street and that the website reflects the same.

David Brooks stated that his tenants are honest and observant. He pointed out that there were six (6) witnesses (the tenants) plus the plumber who said that no excessive water usage was due to fixtures within the house. Mr. Brooks asserted that it is an extraordinary coincidence that water usage dropped on the same day that DC Water gave notice that it was working in the

street. He also pointed out that no meter readings were found for the property. He stated that he did an extremely detailed inspection with the tenants that involved a walk-thru and crawl thru of the house and over 50 photos and videos were taken when the tenants took possession of the property. Mr. Brooks stated that he employs a cleaning crew whenever the property is turned over to new tenants and his inspection includes running the faucets and checking the drains.

Ms. Black testified that the water meter reads from the property are actual and were transmitted by a MTU to the nearest tower on an hourly basis. She asserted that a water meter only advances when water goes through the meter.

Ms. Black stated that DC Water tested the water meter and the meter was determined to have 100.83% accuracy. She stated that the utility abides by standards set by the American Water Works Association and that water meter accuracy is between 98.5% and 101.5%.

Ms. Black testified that there were multiple spikes in water usage at the property. She stated that 12/17/2020 to 12/18/2020 midnight, there was movement every hour. Other spikes identified by Ms. Black were:

1/16/2021 at 5:00 p.m. to 1/17/2021 at Noon;

11/3/2020 to 11/4/2020;

11/5/2020 to 11/6/2020;

11/27/2020;

12/3/2020 to 12/5/2020.

She stated that the spikes in usage in December 2020 were all higher than average until 12/18/2020, then, usage went down to average consumption. She stated that there were spikes 1/9/2020 to 1/10/2021, 1/12/2021 to 1/13/2021, and 1/16/2021 to 1/17/2021 at Noon when usage went back to normal. She stated that the customers' usage has been normal since 1/17/2021.

Ms. Black pointed out that the customers' water usage had declined by the time that a plumber was out to the property.

Ms. Black stated that DC Water did not conduct an underground inspection because water usage at the property declined.

Ms. Black acknowledged that the customers were not sent any high-water usage alerts by the utility. She explained that the utility was obtaining field reads of the water meter so alerts were impossible since the MTU was not transmitting. Ms. Black stated that DC Water obtained a field read of the water meter on October 28, 2020 when the meter read 74766 and on September 1, 2020 when the meter read 61702. She stated that a service technician reprogramed the MTU on October 28, 2020 and thereafter the utility was receiving hourly reads from the property.

Ms. Arrington stated that the utility had been obtaining field reads from the property since March 2020. She, further, stated that the customers' October 7, 2020 bill was estimated at 11.05 CCF. She stated that the prior tenants of the property paid the September 3, 2020 dated bill. She stated that the November 13, 2020 bill was estimated. She stated that the December 22, 2020 bill was actual and was based upon a meter read of December 3, 2020. Ms. Arrington stated



that the utility had a meter read on November 4, 2020 of 76816 but sent the customer an estimated billing.

Ms. Arrington stated that DC Water estimated the customers' bill for two (2) months/ 64 days.

Ms. Arrington acknowledged that there was a three (3) week delay between the meter read obtained on December 3, 2020 and when the utility sent the bill out dated December 22, 2020.

Ms. Arrington stated that the prior tenant called DC Water in August 2020 to have their name removed from the account and [REDACTED]'s name was added to the account.

Ms. Black testified that the meter read taken on October 28, 2020 was not within the account billing cycle so that read was not used on the customers' bill.

[REDACTED] interjected her question of why the utility delayed in investigating the dispute. She pointed out that high water usage was occurring at the property after the dispute was made with the utility. Ms. Black responded that DC Water has 25 days to investigate a dispute and that an investigation does not mean that the utility would send someone out to the property.

[REDACTED] stated that she told Arlene Andrews of DC Water about the utility doing work in front of the house and that there was a leak in the street. Ms. Arrington responded that Ms. Andrews wrote that work was being performed on T Street in response to a customer calling of a leak in the street. Ms. Black stated that the customer's call was in February and usage had gone down.

Ms. Arrington stated that she has checked but now cannot find an information on DC Water work on T Street. Ms. Arrington refuted Ms. Black and stated that they cannot say when the customer called the utility regarding a leak on T Street. Ms. Black stated that even if repair work was done on December 18, 2020 by DC Water, the work did not stop the high usage. Ms. Hermes stated that the utility came back in February 2021 and did more work, therefore, if high usage continued in December, it was resolved when DC Water did work on February 18, 2021.

Ms. Black asserted that the highest water usage spike ended January 17<sup>th</sup>.

With respect to when and by whom the call came in to the utility regarding a water leak on T Street, Ms. Arrington asserted that they cannot check every water account to ascertain who the customer was that called regarding the leak. Ms. Arrington also stated that she does not see a work order for work performed on T Street.

Ms. Black asserted that there were no meter overread, meter malfunction or doubtful registration on the water meter and, as such, no account adjustment is warranted. Ms. Black cited 21 DCMR §408.1 regarding inconclusive findings.

Mr. Brooks asked what is considered an average toilet leak. Ms. Arrington responded that average water loss due to a toilet leak is 4 – 6 CCF per leaking toilet. Ms. Hermes responded that all of the tenants were home in November 2020 and she believes that someone would have noticed a running toilet. Ms. Arrington, then, retorted that people do not always hear a running toilet. Ms. Arrington added that during the Pandemic, DC Water is not allowing its service technicians to enter customer's homes. [REDACTED] stated that no one at DC Water told them to hire a plumber because the utility was not coming out to investigate. She asserted that they were simply told to await the utility's investigation. [REDACTED] pointed out that there is nothing in the Interaction Notes advising the customers to hire a plumber. [REDACTED] interjected that she was told that the investigation would be done in 25 days but, it was not concluded until March 2021 and when she contacted DC Water to dispute the bill, there was no discussion of on-going high-water usage occurring at the property.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a three-story row house owned by David Brooks which he rents to a collection of tenants; the tenants involved in this dispute took possession of the property in September 2020. (Testimony of [REDACTED])
2. The period in dispute is 11/5/2020 to 2/3/2021 (3 billing cycles). (Testimony of the parties)
3. The MTU at the property stopped transmitting meter reads in March 20, 2020. (Testimony of Kimberly Arrington)
4. The prior tenants were responsible for paying and did pay the water and sewer bill sent by the utility in September 2020; this bill was based upon a field read of the water meter. (Testimony of the parties)
5. DC Water estimated the customers' water usage for billing purposes in October and November 2020. (DC Water Meter Readings; testimony of Kimberly Arrington)
6. DC Water changed the MTU at the property on October 28, 2020 and the service technician obtained a field read of the water meter; the utility did not use the field read to bill the customers. (Testimony of Kimberly Arrington)
7. The MTU started transmitting meter reads from the property after it was changed. (Testimony of LaFatima Black)
8. DC Water had a meter read from the property on November 4, 2020 however the utility did not use the meter read to bill the customers. (Testimony of Kimberly Arrington)
9. DC Water had a meter read from the property on December 3, 2020 but delayed billing the customers for water and sewer service for three (3) weeks after the meter read was obtained. (Testimony of Kimberly Arrington)
10. The customers' bill date for December 2020 was December 22, 2020 and covered the period 11/5/2020 to 12/3/2020. (Bill Summary dated 12/22/2020; testimony of Kimberly Arrington)
11. No high-water usage alerts (HUNA alerts) were sent to the customers advising that the high-water usage was occurring at the property. (Testimony of the parties)

12. DC Water left door tags at the property giving Notice of DC Water emergency repair work on December 18, 2020 and on February 8, 2021. (Testimony of [REDACTED]; Pictures of hang tag advising that DC Water was here for emergency work repairs left 12/18/2020 and 2/8/2021)
13. The property's tenants observed DC Water employees doing work in the street immediately in front of their residence on February 8, 2021. (Testimony of [REDACTED])
14. DC Water failed to confirmed that date and nature of work performed effecting the property on December 18, 2020 and on February 8, 2020 stating that no information could be found in its system, however, when the customer stated that she talked with an identified customer service representative regarding the utility doing work in the street outside of the home, DC Water acknowledged that the service representative did note such a conversation in the Interaction Notes. The Interaction Note memorializing the conversation was not entered into evidence. (Testimony of [REDACTED], LaFatima Black and Kimberly Arrington)
15. There was reference in testimony that a customer called DC Water to report a water leak on T Street, NW, however, DC Water indicated that they could not research to identify the customer or the nature of the customer's report. (Testimony of Kimberly Arrington)
16. In the DC Water Interaction Notes, a customer service representative references emergency work repairs being performed by DC Water on December 18, 2020 regarding the property. (See, DC Water Interaction Note dated 3/5/2021)
17. The customers hired Aspen Hill Plumbing to inspect the property for leaks and plumbing issues and none were detected. (Testimony of [REDACTED]; Aspen Hill Plumbing Invoice dated April 18, 2021.
18. The customers were unaware of any leaks or plumbing issues in existence at the property. (Testimony of [REDACTED])
19. There were spikes in water usage at the property occurring in November and December 2020 and in January 2021. (Testimony of LaFatima Black; DC Water Meter Reads)
20. There was a significant decline in water usage at the property on December 18, 2020, however, usage remained higher than normal and spikes continued to sporadically occur until February 8, 2021. (Testimony [REDACTED])
21. Water usage at the property has been within normal range since February 8, 2021. (Testimony of [REDACTED])
22. The water meter was tested and determined to have 100.83% accuracy. (Testimony of LaFatima Black)
23. Due to the Covid-19 Pandemic, DC Water has suspended interior leak inspections in residential properties. (Testimony of LaFatima Black)
24. DC Water did not conduct an underground inspection because water usage at the property declined. (Testimony of LaFatima Black)
25. When the customer contacted DC Water to dispute the water and sewer charge, the customer was told that the investigation would take 25 days; the investigation was delayed by approximately 3 months with it concluding in March 2021. In the Interaction Notes an Investigation letter dated March 3, 2021 is referenced, however,

the customer stated that they never got the letter and no investigation letter was contained in the customer file. (Testimony of parties; DC Water Interaction Notes)

### 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. (21 DCMR 308.4)
6. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, 82 A.3d, DC Court of Appeals 2013)
7. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable.

(See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979).

### DECISION

In this case, the customers made a prima facie case that the disputed bills are incorrect and/or that they should not be responsible for the charges and, thus, shifted the burden to DC Water to establish that the charges are valid and should be paid by customers. The basis of the customers' prima facie case was that they were unaware of any leaks or plumbing issues, that they hired a plumber to inspect the property and no leaks were found, but, most importantly, that DC Water was doing emergency repair work effecting the property and after the first emergency repair, there was a significant decrease in water consumption at the property and after the second repair, increased water usage stopped, the spikes stopped and water usage at the property returned to normal and has remained normal.

On DC Water's part, the water meter was tested and determined to be functioning within accepted accuracy standards. The utility did not conduct an interior inspection of the property due to Covid-19 restrictions and it did not inspect for an underground leak based upon the premise that water usage declined and no inspections was warranted. The utility, however, failed to address the issue of emergency repairs being performed by DC Water, the effect, if any, of such repairs upon the customers' water usage, and the nature of the repairs. The customer testimony was that everything was fine within their house and they were unaware of anything amiss until receipt of the bill dated December 22, 2020. The customer testified that DC Water did not advise her of high-water usage occurring at the property when she contacted the utility to dispute the December bill. She testified that no high-water usage alerts were received from the utility. She testified that water usage at the property went significantly down after emergency repairs were performed by DC Water in December 2020 and that water usage at the property returned to normal after emergency repairs were performed in February 2021. The petitioner submitted copies of door hangs placed on the property by DC Water advising that the utility was performing emergency repairs effecting their house and the customer testified that DC Water workers were seen outside of the house working in the street on the day in February pertaining to the notice of repairs received by them.

DC Water, initially, asserted that nothing could be found evidencing emergency repairs were performed by DC Water on or about the customers' address or vicinity on the dates of the repair notices. As testimony progressed, however, DC Water modified its stance and acknowledged that reference to the emergency repairs was in the Interaction Notes. The utility did not include the Interaction Action Note in the customer file which would have supported the customer's testimony but a second note was contained in the provided Interaction Notes which was dated 3/5/2021 in which a customer service representative referenced emergency repairs being performed on 12/18/2021. The utility, also, failed to present testimony and/or evidence regarding the customer who called DC Water to report at water issue on T Street, NW and it

failed to describe the nature of the water problem, the nature of the repairs performed and whether or not the work issue repaired affected the customers' residence.


The testimony and evidence did establish that DC Water failed to advise the customers of high-water usage recording on the water meter, even though the utility had the meter readings. The testimony was that the MTU at the property stopped transmitting meter reads in March 2020 before the current tenants took possession of the property and that the prior tenants paid the water and sewer bill in September 2020 which was based upon a field meter read and reflected no high-water usage. The testimony and evidence were that after the current tenants moved into the property, their first water and sewer bill was estimated (October 2020) and their second water and sewer bill (November 2020) was estimated as well. It was established that DC Water reprogrammed the MTU on October 28, 2020 and meter reads were transmitted thereafter, so that the utility had actual meter reads for the November billing and for the December billing except that the utility failed to advise the customer of high-water usage occurring at the property and even though it had meter reads, it delayed sending the December billing to the customers for approximately 3 weeks after the read for billing purposes was in the possession of the utility. DC Water provided no explanation for the delay in sending out the December bill. DC Water provided no explanation as to why no HUNA alert or high-water usage letter was sent to the customer after electronic meter transmissions were restored at the property in October. The customer, also, testified that she was told that the bill dispute investigation would be done in 25 days and that she was not told to hire a plumber because high usage was still occurring at the property; the customer testified that no one told her that high usage was still occurring at the property.

21 DCMR 308.1 dictates that DC Water is to read a customer's water meter at least on a quarterly basis. DC Water presented testimony that it only estimated the customers' water bill twice covering a period of 64 days; DC Water failed to acknowledge that it delayed sending out the December bill to the customer thereby extending the time in which notice was given to the customer of something amiss at the property by an additional 3 weeks beyond the end of the billing cycle of 11/5/2020 – 12/3/2020. The Hearing Officer finds that to have a meter read and not transmit the information to the customer is equivalent to not having the meter read. In this case, the utility had information and knowledge of a meter read that would have put the customer on notice that high-water usage was occurring at the property and the utility delayed transmitting this information for 3 weeks after the close of the billing cycle. In essence, the customers did not have meter reads from the property for over 90 days (a quarter) due to the inaction of the utility,

Equity protects a person harmed by another's delay and the delay must have been unreasonable. In this case, the utility estimated the customers' water and sewer bills for two (2) prior months and then, delayed sending the third cycle billing for 3 weeks after the billing cycle ended with no explanation for delay or lack of notice.

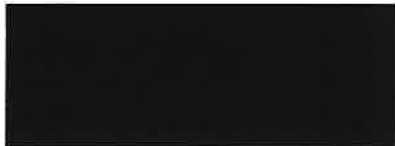
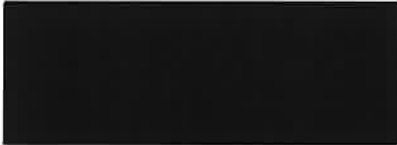
As such, the preponderance of the evidence lies with the customer and the customer succeeds in disputing the charges. The timing of repairs done by DC Water and the decline and stoppage of high usage supports a conclusion that whatever the utility repaired such was the probable cause of the high usage, however, the customer is further protected against the charges based upon equitable laches due to the utility's delay in billing based upon actual meter reads which, if it had done so without the delay, the customers' loss might have been mitigated if the cause of the usage was something other than caused by what was repaired in the street.

Accordingly, the determination by DC Water that no adjustment to the account is appropriate is hereby REVERSED and the customers prevail in their dispute of the charges and shall be billed for the periods in this dispute based upon average water usage.

  
Janet W. Blassingame, Hearing Officer  
Date: Sept. 4, 2021

Copy to:

David Brooks  
8302 Westmont Terrace  
Bethesda, MD 20817



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

IN RE: [REDACTED]  
[REDACTED] 28<sup>th</sup> Street, NW  
Washington, DC 20007

Account No: [REDACTED]  
Case No: 21-85139

Amount in Dispute: \$675.33

Before Janet W. Blassingame, Hearing Officer  
July 13, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time June 4, 2020 to July 6, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 13, 2021. Present were: [REDACTED], the property owner; and, Arlene Andrews and Kimberly Arrington, on behalf of DC Water.

The property involved is a single family 2-story house with a basement. The property has five (5) bathrooms, one kitchen, a dishwasher, a washing machine and two (2) outside faucets. [REDACTED] stated that he has lived in the house for 20+ years and that his water and sewer bill ranges between Fifty Dollars (\$50.00) and One Hundred Fifty Dollars (\$150.00) per billing cycle. [REDACTED] stated that he normally resides in Florida from January to June each year but due to Covid-19, he returned to the District of Columbia at the end of July 2020. [REDACTED] stated that he was not in residence during the period in dispute.

[REDACTED] stated that a lady (maid) comes into the house twice weekly when he is in Florida to check the house, tidy up and check the mail. He stated that his water and sewer bill is on auto-pay. He stated that the outside faucet is turned-off by a valve inside of the house.

[REDACTED] testified that DC Water checked his water meter and told him that the meter was OK.

[REDACTED] testified that his current water usage has been:

- March 2021 = 25 CCF
- April 2021 = under 10 CCF
- May 2021 = under 1- CCF
- Feb. 2021 = practically nothing

[REDACTED] stated that he did extensive renovation of the house fifteen (15) years ago.



Ms. Andrews testified that the meter reads are actual based upon field reads done by a service technician sent to the property each month. She asserted that water meters only advance when water is being used and that meter do not auto-repair. She stated that DC Water tested the water meter on December 29, 2020 and the meter was determined to have 99.0% accuracy. She explained that DC Water follows the standards set by the American Water Works Association which establishes meter accuracy to be 98.5% to 101.5%.

Ms. Arrington asked the customer whether the maid heard running water when she was in the house. Ms. Arrington suggested that a toilet flapper might have been left open when the maid used or flushed a toilet. [REDACTED] responded that the maid said that she found nothing unusual in the house. Ms. Arrington, then, responded that when she sees the type of consumption as in this case, it is generally caused by a toilet. She stated that parts in the toilet may need to be replaced and that a running toilet can used 4 – 6 CCF of water per day.

Ms. Andrews summarized that the utility found no meter overread, malfunction or faulty computation. She asserted that this dispute has inconclusive findings as to the cause of the increased water consumption and as such, there is no justification for an adjustment of the customer's account. She stated that high usage is often caused by a toilet that is not used regularly.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence owned by [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is 6/4/2020 to 7/6/2020. (Testimony of the parties)
3. The property owner was not in residence during the period in dispute, however, a lady came into the house twice weekly to check the property, check the mail and tidy up. (Testimony of [REDACTED])
4. Water consumption at the property spiked during the period in dispute having been low both before and after the period in dispute. (Testimony of [REDACTED] DC Water Raw Meter MR Result/Consumption record)
5. DC Water tested the water meter and the meter was determined to have 99.0% accuracy. (Testimony of Arlene Andrews)
6. During its investigation, DC Water found no meter overread, malfunction or faulty computation of the bill. (Testimony of Arlene 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 was not in residence during the period in dispute when high usage occurred at his property. The house, however, was not left unattended and a worker came into the property twice weekly. DC Water surmised that the usage was caused by a running toilet and that a toilet flapper may have struck when a toilet was used or flushed by the maid. DC Water pointed out that often such excessive usage is seen when a toilet flapper is open on a toilet seldom used.

There was no definitive evidence or testimony as to the cause of the high-water usage in this case. The causation theory of the utility is plausible but not definitive. The evidence and testimony did establish that the water meter was functioning accurately, the meter reads were actual and there was not meter overread or miscalculation of the customer's bill and even though the owner was not in residence, a third party had access to the house and could have cause the water usage, even if unintentional.

21 DCMR §408 states: "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..."

There is no evidence that DC Water's equipment was faulty or that the charges are incorrect, and, as such, DC Water's determination that no basis exists to adjust the customer's account for excessive water usage and that the charges are valid is AFFIRMED.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept 4, 2021

Copy to:

[REDACTED]

[REDACTED] 28<sup>th</sup> Street, NW  
Washington, DC 20007

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

IN RE: [REDACTED]  
[REDACTED] Oregon Ave, NW  
Washington, DC 20015

Account No: [REDACTED]  
Case No: 21-435743

Amount in Dispute: \$1,316.01

Before Janet W. Blassingame, Hearing Officer  
July 15, 2021 at 12:00 Noon

The customer contested a water and sewer bill for the above account for the period of time January 8, 2020 to February 6, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on June 15, 2021. Present were: [REDACTED] and, Arlene Andrews and Kimberly Arrington, on behalf of DC Water, as well as, Kelly Fisher, Esq., Office of General Counsel, DC Water, observing only.

The property involved is a single-family residence having two and one-half (2 ½) bathrooms, one kitchen, a washing machine, a dishwasher, utility sink, and four (4) outside faucets. [REDACTED] stated that she has lived alone in the house since year 1993 and that her water and sewer bill, generally, ranges between \$145.00 and \$150.00 per billing cycle and has never been over \$200.00 in a billing cycle.

[REDACTED] testified that she flew out of the DMV on either January 15<sup>th</sup> or 16<sup>th</sup>, 2020 for a vacation from January 17, 2020 to January 25, 2020. She stated that while she was away, her niece had access to the house to water the plants. She stated that her niece was in house once or twice during the period of her absence on vacation.

[REDACTED] stated that the Oregon Avenue project started in December 19, 2020 by DC Plug to repair drainage from Oregon Avenue to Military Road. She stated that the reconstruction project was a joint project by DC Water and the U.S. Department of Transportation. [REDACTED] testified that it was hard/difficult to access her house due to the street being torn-up as a result of the work.

[REDACTED] testified that when she received the water and sewer bill at issue, she did not know what had happened. She stated that she contacted DC Water and spoke with a service representative. She stated that she received a HUNA alert from DC Water over the 4<sup>th</sup> of July 2021 holiday but she did not receive any high-water usage alerts in year 2020.

██████████ stated that her niece used the bathroom in basement and she called a plumber who said the toilet handle got stuck. ██████████ stated that she saw the running toilet in year 2021 and most recently, a plumber changed everything in the toilet. ██████████ stated that she confirmed with her niece that her niece did, in fact, use the basement bathroom in year 2020.

Ms. Andrews stated that DC Water tested the water meter and the meter was determined to 100.14% accuracy. She stated that DC Water follows the standards set for water meter accuracy by the American Water Works Association.

Ms. Andrews stated that DC Water sent HUNA alerts to the customer's telephone number on file with the utility but it was found that the utility had the wrong telephone number. Ms. Andrews stated that the customer's account has been updated with the current telephone number.

Ms. Andrews testified that when excessive water consumption is caused by an interior fixture, no adjustment of the customer's account is warranted. Ms. Andrews cited 21 DCMR §406.2.

Ms. Andrews informed ██████████ that the District of Columbia Government has a program to which DC residents may apply for assistance in paying utility bills incurred during the Covid-19 Pandemic. Ms. Andrews stated the one should contact the DC Department of Environment and Energy or call 311 regarding the STAY program. She, also, informed the customer that an installment plan can be instituted if she desired and she would contact the customer service center of DC Water to discuss such a plan.

Ms. Andrews added that HUNA is a service to the customers of DC Water which is provided as a courtesy only and imposes no requirement upon the utility which could result in adjustment of an account if a HUNA alert is not received.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by Cheryl Burgess. (Testimony of ██████████)
2. The period in dispute is January 8, 2020 to February 6, 2020. (Testimony of the parties)
3. During the period in dispute, the customer was away from home on vacation from on or about January 15<sup>th</sup> or 16<sup>th</sup> returning on January 25, 2020. (Testimony of ██████████)

4. In the customer's absence, her niece had access to the property to water the plants and while her niece was in the home, her niece used the basement bathroom. (Testimony of [REDACTED])
5. There was a significant spike in water usage occurring at the property between January 17, 2020 and January 29, 2020. (DC Water Meter reads)
6. The customer has learned that the basement bathroom had a problem- a running toilet, which the customer saw personally occurring in year 2021. (Testimony of [REDACTED])
7. After finding the basement toilet running in year 2021, the customer confirmed with her niece that her niece had used the same toilet during her time at the house to water the plants in year 2020. (Testimony of [REDACTED])
8. The customer has hired a plumber who replaced all of the toilet parts in the basement bathroom. (Testimony of [REDACTED])
9. DC Water tested the water meter and the meter was determined to have 100.14% accuracy. (Testimony of Arlene 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 a 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 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 relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

#### DECISION

The customer in this matter has acknowledged that there was a defective toilet in her


basement bathroom and during her absence during the period in dispute her niece had accessed to the house and used that particular bathroom. The customer testified that she observed the toilet running almost a year later and acknowledges that the defective toilet was likely the cause of the excessive water usage reflected on the disputed bill. The customer testified that a plumber has replaced all of the parts in the toilet. The testimony and evidence, further, was that the water meter at the property was functioning accurately.

Based upon the customer's testimony and acknowledgments and the water meter test performed by DC Water, the Hearing Officer finds that more likely than not the excessive water usage incurred during the period in question was caused by the defective toilet in the customer's home and for that reason, the utility's determination that the charges were correct and no basis for adjustment is warranted was appropriate.

Accordingly, the determination by DC Water is hereby AFFIRMED.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer  
Date: Sept 4, 2001

Copy to:

  
Oregon Avenue, NW  
Washington, DC 20015

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

IN RE: [REDACTED]  
[REDACTED] 15<sup>th</sup> Place NW  
Washington, DC 20012

Account No: [REDACTED]  
Case No: 21-343268

Amount in Dispute: \$ 943.83

Before Janet W. Blassingame, Hearing Officer  
July 20, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time November 22, 2019 to December 19, 2019. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 20, 2021. Present were: [REDACTED] and, Arlene Andrews on behalf of DC Water, as well as, Kelly Fisher, Esq., Office of General Counsel, DC Water, observing only.

The property involved is a single-family home rented by [REDACTED]. The house has three and one-half (3 ½) bathrooms, one kitchen, a washing machine, a dishwasher, utility sink, and one or two outside faucets. Four (4) people live in the home and the water and sewer bill before the dispute at issue had never been over Two Hundred Dollars (\$200.00) in any billing cycle.

[REDACTED] testified that there was nothing going on in the home out of the ordinary and that he was shocked upon receiving the water and sewer bill. He stated that he checked for leaks and found nothing amiss. He stated that he waited for the next month bill and the bill was normal. He stated that there had never been any spikes in water usage at the property. He stated that they were a normal family. He added that he received no alerts of high water usage occurring at the house but he, then, acknowledged that he did not know about the HUNA alert system prior to hearing about it during the hearing and he was not signed up with the utility to receive alerts. Ms. Andrews interjected that the customer in fact was sent a HUNA alert. Ms. Andrews stated that the alert was sent December 20, 2019 to an email address on file with the utility. [REDACTED] responded that the email address to which the alert was sent was not his email address. [REDACTED] surmised that the email address might belong to the property owner.

[REDACTED] testified that he had been away on travel and no repairs have been performed by the property owner. [REDACTED] stated that he is responsible for paying the water and sewer bill.



Ms. Andrews testified that the meter reads are actual, done hourly and are transmitted by signal from the MTU on the water meter to a data collection unit.

Ms. Andrews testified that DC Water conducted a meter test on June 21, 2021 and the water meter was determined to have 99/46% accuracy. She explained that DC Water abides by standards set by the American Water Works Association and that water meter was considered accurate if found to be within a range of 98.5% to 101.5%.

Ms. Andrews asserted that water meters only advance when water is being used.

Ms. Andrews asked the customer whether he hired a plumber and the customer said he did not.

Ms. Andrews testified that there was a significant spike in water usage occurring at the property starting at 5:00 p.m. on December 8, 2019 and continuing until 5:00 p.m. on December 17, 2019- 9 days. She stated that because the water usage declined, DC Water ruled out the existence of an underground leak for such leaks cannot self-repair and that an inspection was not warranted since usage declined without the necessity of repairs being performed.

Ms. Andrews asserted that DC Water found no meter overread or faulty computation of the customer's bill. She stated that based upon the utility's investigation after all checks and tests, there reasonable cause was found and as such, the findings were inconclusive as to the cause of the increased usage.

Ms. Andrews explained that the delay in investigation was due to the customer not contacting the utility until April 2021 when he requested DC Water check the water meter. Ms. Andrews stated that the hearing in this matter was delayed due to problems experienced in getting information to the customer and receiving information back from the customer. She stated that due to the communication problems experienced, DC Water waived the time limit for disputing a bill.

Ms. Andrews stated that the customer was informed that he could apply for assistance from the DC Department of Environment and Energy by either going on-line or calling 311 for application to the STAY Program for help with utility payments. She, also, informed the customer that DC Water will enter into an installment plan with customers, if requested, and terms are agreed.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

### FINDINGS OF FACT

1. The property involved is a single-family residence rented by [REDACTED] (Testimony of [REDACTED])
2. The period in dispute is November 22, 2019 to December 19, 2019. (Testimony of the parties)
3. There was a significant spike in water usage occurring at the property from December 8, 2019 to December 17, 2019. (Testimony of Arlene Andrews)
4. DC Water sent a HUNA alert using an email address on file with the utility but the customer has affirmed that the email is not his email and may belong to the property owner. (Testimony of [REDACTED] and Arlene Andrews)
5. Water usage at the property declined on December 17, 2019 on or about 5:00 p.m. (Testimony of Arlene Andrews)
6. DC Water ruled out the existence of an underground leak as a possible cause of the increased usage because the usage declined without necessity of repairs being performed to stop such a leak and underground leaks require repair before the leak will stop. (Testimony of Arlene Andrews)
7. DC Water tested the water meter and the meter was determined to have 99.46% accuracy. (Testimony of Arlene Andrews)
8. Based upon its investigation, DC Water found no meter overread or calculation error on the customer's account. (Testimony of Arlene Andrews)
9. The customer did not hire a plumber to inspect the property for leaks but he did, personally, look for leaks when he received the bill and he found none. (Testimony of [REDACTED])
10. Prior to receiving the bill, the customer was unaware of any plumbing problems in or about the property. (Testimony of Mr. [REDACTED])
11. DC Water waived the time limit on dispute of the bill at issue. (Testimony of Arlene 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 failed to establish that more likely than not the disputed bill is wrong or for some other reason, he should not be held responsible for its payment.

The customer testified that he was unaware of anything amiss in his house until he received the water and sewer bill reflecting high usage. He stated that he, then, self-inspected the house and found nothing amiss. The period in dispute ended December 19, 2019 and testimony established that the high usage stopped on December 17, 2019. As such, by the time that the customer self-inspected, the issue had resolved. The customer, also, stated that he did not hire a plumber.

On the utility's part, DC Water established that the water meter was functioning accurately. It ruled out the existence of an underground leak as a possible cause of the high usage and it determined that there was no meter overread or miscalculation of the customer's bill. In other words, the utility showed that it correctly billed for the amount of water used at the property and that its equipment was functioning properly.

21 DCMR § 408 dictates that DC Water does not adjust a customer's account for excessive consumption when, after tests and checks, the cause of the usage cannot be determined. As such, since the testimony and evidence established that the utility did not cause the usage or made an error in the billing but nothing established that the customer did not use the water as charged, it is the conclusion of the Hearing Officer that the determination of DC Water that the bill is correct and no basis exists for an adjustment of the bill is exists. Accordingly, the determination by DC Water is hereby AFFIRMED.

By:   
Janet W. Blessingame, Hearing Officer

Copy to:

Date: Sept. 4, 2021.

[REDACTED]

[REDACTED] 15<sup>th</sup> Place, NW  
Washington, DC 20012

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

IN RE: Methodist Home  
c/o [REDACTED]  
4901 Connecticut NW  
Washington, DC 20008

Account No: [REDACTED]  
Case No: 21-295547

Amount in Dispute: \$ 943.83

Before Janet W. Blassingame, Hearing Officer  
July 20, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time December 23, 2020 to January 25, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 20, 2021. Present were: [REDACTED]

[REDACTED]  
of DC; all on behalf of the Methodist Home; Arlene Andrews and Kimberly Arrington, on behalf of DC Water.

The facility is owned by Forest Hills of DC Inclusive Senior Living and its name is Forest Hills of DC Residents but is doing business as the "Methodist Home". [REDACTED] stated that the Methodist Home was founded in 1889 and relocated to its present location in 1926. The property is a two-story brick building where nursing and rehabilitation services are provided. The building has 50 rooms for its nursing home and 58 rooms for assisted living. All rooms have bathrooms and there are twelve (12) other bathrooms located within the facility. There is one main kitchen and forty (40) kitchenettes and one laundry room with four (4) washing machines and a laundry sink. There are also three (3) laundry centers with washing machines. The property has two (2) dishwashers, cooling chillers, six (6) radiators in the stairwells, three (3) hose bibs; five (5) utility closets with sinks, one laundry sink, and, four (4) drinking water fountains. There are also a therapy room with a sink and bathroom, a dentist office having a sink and bathroom and five (5) hotel rooms with bathrooms on the premises. The water and sewer bill has, historically, ranged from \$10,800.00 to \$13,000.00 per billing cycle. Last January 2021, the water and sewer bill was \$20,000.00 or \$21,000.00 and, then, the bill declined. The water and sewer bills had been: October, 2020- \$12,238.00; November 2020- \$13,747.00; December 2020- \$18,262.00. The water and sewer bill in February 2021 was \$10,687.00.

[REDACTED] testified that there is a three (3) person maintenance staff on-duty Monday thru Friday. He stated that the chillers are drained in the winter and heating runs year-round. He

stated that in empty apartments, they will cycle the water for one minute to combat the threat of Legionella. [REDACTED] stated that the maintenance staff performs water temperatures checks everyday for select apartments and that housekeepers clean all bathrooms. He stated that they rely upon the housekeepers to notify of problems but once per week, all rooms are checked per a general inspection.

[REDACTED] testified that Magnolia Plumbing was at the facility on March 17, 2021 and February 15, 2021 at which time, the plumber checked the boiler, chiller and cooling tower and found the meter vault filled with water.

[REDACTED] checked all rooms as well as the crawlspace and attic in an effort to find what might have caused the spike in usage. He stated that there is a Maintenance Report on an excel sheet, however, he did not have the report available.

[REDACTED] identified [REDACTED] as a class 3 engineer working at the facility.

The parties testified that after the February 2021 billing, the facility's water and sewer bill went back to normal.

Ms. Arrington interjected that DC Water sent high water usage alerts (HUNA alerts) out to the facility on November 17, 2020 and November 23, 2020; she stated that the alerts were sent to [REDACTED].

[REDACTED] asserted that the incident imposes an extreme hardship upon the facility. She also asked whether the water meter could be moved.

[REDACTED] stated that only one sink was repaired one week prior to the disputed period.

[REDACTED] asserted that it seems funny that the water meter was under water.

On cross examination, Ms. Arrington pointed out that the customer had stated that there were 117 occupied rooms in the facility.

It was reiterated that daily water temperature checks are performed at the facility and when there is a new admission or room change, the room is inspected to include a check of the bathrooms and plumbing fixtures. [REDACTED] added that during the Covid Pandemic, residents stayed in their rooms and no families were allowed to visit. It was stated that [REDACTED] (earlier referred to as [REDACTED]) did the room inspections during the Covid Pandemic. [REDACTED] stated that DC Water recommended that they check all rooms and the crawl space after Magnolia Plumbing had come into the facility to conduct an inspection.

[REDACTED] conducted a leak inspection at the facility on April 13, 2021. The parties stated that they did not know of any earlier inspection.

██████████ emphasized that the facility was operated in good faith for the care of its residents.

Ms. Arrington testified that water usage was billed on actual reads and that the meter reads were transmitted every 15 minutes. She stated that a water meter only advances when water is being used and that there are no misreads shown on an automated system. She, further, stated that water meters do not self-repair or auto repair if once broken.

She stated that DC Water pulled the water meter at the facility on 6/22/2021 for testing. She explained that large water meters are tested by each flow level and in this case, the flows

tested as: <u>range</u>	<u>type of flow</u>	<u>test result</u>
95 – 101%	low	99.70%
90 – 103%	medium	102.28%
95.5 – 101.5%	high	100.86%

Ms. Arrington testified that the water meter's overall accuracy was 100.28% and that the water meter passed testing on all flow levels.

Ms. Arrington testified that there was increased water usage at the facility from December 18, 2020 to January 12, 2021. She pointed out that the disputed bill is also for 34 days as opposed to the normal bill period of 29 days. She stated that during the spike in usage, 1.7 million gallons were used in 34 days.

Ms. Arrington stated that the District of Columbia does not have any program to assist commercial properties in paying utility bills. She informed the customers that a request for relief may be made to the General Manager of DC Water if an adjustment of the account is asserted to be in the public interest.

She stated that large water meters are in vaults and water in the vault does not stop meter transmission. She also added that to move the water meter would be at the expense of the property owner.

Ms. Arrington concluded stating that the cause of the increase usage in this case is unknown, that the findings after tests and checks are inconclusive and no reasonable explanation was found.

██████████ stated that it boggles the mind how so much water could be lost.

██████████ asked if the pipes were frozen, would water flow be affected. Ms. Arrington responded she does not know about pipes freezing but she does not think that the water goes thru the water if the pipe is frozen.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a facility providing nursing, rehabilitative and assisted living housing and services. The property, also, has a dentist office and hotel rooms for visitors. The property is operated under the name of the Methodist Home. (Testimony of [REDACTED])
2. The period in dispute is December 23, 2020 to January 25, 2021. (Testimony of the parties)
3. There was a significant increase in water consumption at the facility from December 18, 2020 to January 12, 2021. (Testimony of Kimberly Arrington)
4. After January 12, 2021, water usage at the facility returned to within normal range. (Testimony of the parties; DC Water Monthly Meter Reads)
5. The increased water usage span two (2) billings- December 2020 and January 2021, however, the customer did not dispute the earlier billing received in December. (DC Water Monthly Meter Reads)
6. Based upon the meter reads presented by DC Water, the customer's facility experienced earlier spikes in water usage in August 2019 and from December 2019 to March 2020. (DC Water Monthly Meter Reads)
7. DC Water tested the water meter and the meter was determined to have an overall accuracy of 100.86%. (Testimony of Kimberly Arrington)
8. DC Water attempted to conduct an underground inspection at the property but could gain access to the meter within the vault. (DC Water Maximo UG Inspection Work Order/Report dated 5/12/2021)
9. The customer hired Magnolia Plumbing to inspect the facility for water issues and no issues were detected. (Magnolia Plumbing Report dated 2/15/2021)
10. The customer conducted a leak inspection on April 13, 2021 and no leaks were found. Crawl space and the attic were checked in addition to plumbing within the building. (Testimony of [REDACTED])
11. DC Water billed the customer upon actual meter reads from the property. (Testimony of Kimberly Arrington)
12. DC Water sent the customers two (2) alerts of high-water usage occurring at the property; the alerts were sent on November 17, 2020 and November 23, 2020. (Testimony of Kimberly Arrington)

#### 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 failed to establish that more likely than not the bill in dispute was wrong or for some other reason, the customer should not be held responsible for payment.

Testimony on the customer's behalf was that regular checks were made within the facility upon notification by the housekeeping staff of a problem and that a maintenance crew was on duty and conducted various checks of rooms and water temperature as well as necessary repairs. Testimony referred to a Leak Inspection performed on 4/13/2021 and of inspections done by Magnolia Plumbing on 2/15/2021 and 3/17/2021; the report by Magnolia Plumbing dated 2/15/2021 was part of the record, however, there was no report dated 3/17/2021 and the Leak Inspection report was not submitted. There was also testimony that an inspection was done of all of the rooms, attic and crawl space after Magnolia Plumbing was at the property.

On DC Water's part, the utility tested the water meter and the meter was determined to have been functioning accurately. DC Water, also, presented meter reads from the property reflecting that the billing was based upon actual reads.

No weight is given to the report by Magnolia Plumbing or to the testimony on behalf of the customer that no plumbing issues were found upon a leak inspection. All of the customer's inspections were performed after the spike in water consumption had ended and water usage had returned to within normal range. The utility was able to pinpoint when the high usage occurred and it provided testimony that high usage alerts had been sent to the customer advising of what was occurring at the facility; the alerts were sent in November 2020 and the meter reads reflected that high water usage occurred as well during the billing period ending December 22, 2021 which would have been the prior billing period of November 25, 2020 to December 22, 2021 which was the billing period just before the disputed period and that the high usage continued into the disputed billing period ending on January 25 2021. DC Water's representative testified that the spike was from December 18, 2020 to January 12, 2021. Based upon the DC Water meter reads, the customer experienced spikes in water usage at the facility, also, in year 2019 in August and then from December 2019 into March 2020.

A plea was made on behalf of the customer that an account adjustment was warranted based upon the type of services provided to residents of the District of Columbia at the facility and that the water and sewer charges created a financial operation hardship upon the facility. Such an adjustment plea, however, is misplaced and it was explained during the hearing that such discretionary power rests with the General Manager of DC Water and that the Hearing Officer does not have such power.

Based upon the evidence and testimony presented to the Hearing Officer and the powers of the Hearing Officer, it is determined that the disputed charge is valid and should be paid. In this instance, all tests and checks were inconclusive as to the cause of the increased water consumption and the utility's equipment was found to be functioning properly. Based upon 21 DCMR 408, DC Water is precluded from adjusting a customer's account based upon the facts in this case.

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

By: Janet W. Blassingame  
Janet W. Blassingame Hearing Officer  
Date: Sept 9, 2021

Copy to:  
Methodist Home  
c/o [REDACTED]  
4901 Connecticut Avenue, NW  
Washington, DC 20008

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

IN RE: [REDACTED]  
[REDACTED] E Street, NE  
Washington, DC 20002

Account No: [REDACTED]  
Case No: 21-381184

Amount in Dispute: \$ 207.32

Before Janet W. Blassingame, Hearing Officer  
July 27, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time December 9, 2020 to January 11, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 27, 2021. Present were: [REDACTED] represented by Stephen Dudek, Esquire, Water Service Division, Office of People's Counsel, DC and Grace Soderberg, Assistant People's Counsel, Office of People's Counsel, DC; and, Arlene Andrews, Kimberly Arrington and Kelly Fisher, Esq., Office of General Counsel, DC Water, on behalf of DC Water.

Ms. Soderberg opened stating that the spike in water usage was not due to unusual usage by her client. She stated that her client checked for leaks and had a plumber check the property and nothing was found amiss. She asserted that [REDACTED] performed his due diligence.

The property involved is a single-family home having one and one-half (1 ½) bathrooms, one kitchen, a dishwasher, a washing machine, a utility sink, radiators, and one outside faucet. Three people live in the home and [REDACTED] stated that he has lived in the home since year 2009. He stated that his December 2020 water and sewer bill was \$193.00.

[REDACTED] asserted that high water usage has been on-going for the past 18 months to two (2) years. He testified that he had a plumber come out to the property and no leaks were found and he had a earlier plumber out in mid-2020 regarding the usage. He stated that the plumber charged him \$190.00 for the inspection. He stated that he talked to DC Water about his bill. The customer declared that his water and sewer bill has always been high.

[REDACTED] declared that he has done everything to conserve water and that his household is not consuming the amount of water for which he is being charged. [REDACTED] stated that he feels that he is being scammed.

[REDACTED] stated that the Office of People's Counsel has informed him of the various

customer assistance programs. He also stated that he was told that he could not challenge older water and sewer bills.

Ms. Andrews asked [REDACTED] whether in June 2020, she suggested to him to have dye tests performed and replacement of the toilets. [REDACTED] responded that he does not remember. [REDACTED] stated that he did not remember any conversation and that Ms. Andrews is being dishonest. Ms. Andrews referred to the Interaction Note of June 7, 2021 in which her conversation with [REDACTED] is memorialized and she inquires regarding dye tests and suggests that he has a plumber change the fixtures inside of the toilets to see if such an action might help.

[REDACTED] stated that a neighbor told him that his water bill costs him under \$600.00 per year. [REDACTED] added that he put in a water-saver toilet 18 months to 2 years ago but he was not sure exactly when but he had a plumber perform the job.

Mr. Dudek interjected that he spoke with [REDACTED] at the beginning of the year and discussed what could contribute to the high-water bill. He stated that they discussed water conservation and assistance programs.

[REDACTED] stated that "his Boo"- Nedyia lost her job in March 2020 and he stated noticing the water bill and he started talking with the water company. He asserted that D.C. residents are paying more for water service than anyone else in the United States. [REDACTED] stated that he thinks about nothing but water and has been doing so for a long time.

Ms. Andrews testified that the meter reads from the property are actual and taken hourly. She stated that the MTU at the property transmits the meter reads four (4) times per day to the nearest receiving tower.

Ms. Andrews testified that on February 16, 2021, DC Water conducted an equipment check at the property and the MTU was changed. She stated that water meter was not changed at the property.

Ms. Andrews testified that DC Water tested the water meter on June 28, 2021 and the water meter was determined to have 101.46% accuracy. Ms. Andrews stated that the utility follows the standards set by the American Water Works Association and that a water meter is considered functioning accurately is from 98.5% to 101.5%. Ms. Andrews asserted that the customer's water meter was function within the standards.

Ms. Andrews asserted that there were no misreads and that water meters do not auto-repair. She pointed out that on May 25, 2021, the customer's hired plumber found no leaks. She further pointed out that the customer's water usage has been consistent for the past six (6) years.

Ms. Andrews stated that an underground leak was not a factor. She did point out that the disputed bill was for a period of 34 days as opposed to a usual bill period of 29 days. She asserted that the additional days in this particular billing period would account for the bill charge being higher than average. She also pointed out that there was a rate increase effective October 1, 2020. Ms. Arrington interjected that fee, such as the meter fee and sewer fee, went up but the charge for water and sewer did not. Ms. Arrington affirmed that adding a couple of days to the billing period cause the customer's water bill to be higher.

Ms. Andrews continued that the bill dispute investigation did not disclose overread or malfunction and she reiterated that the meter passed testing.

Ms. Andrews concluded that this dispute does not involve excess water consumption.

On cross examination, Ms. Soderberg asked about the service visit to the property. Ms. Andrews responded that the service technician was sent out to the property to change the MTU to ensure that the meter reads are being sent to the utility. Ms. Andrews explained that the MTU is a separate device from the water meter. She stated that when the service technician was at the property, a visual read was taken of the meter.

With respect to the Investigation Report, Ms. Andrews stated that DC Water does not have the customer's email address and that the report was mailed to the customer on March 12, 2021. Ms. Andrews asserted that she was not sure why the customer failed to receive the report.

██████████ interjected that he does not buy that the charges are correct. He cited human error and said that the service technician told him that the water meter had been changed. Ms. Andrews responded that whenever the utility receives a Petition for Hearing in a bill dispute, the utility will change the water meter so that the meter can be tested. ██████████ responded that at his mother's house on Alabama Avenue, a water bill for One Thousand Dollars (\$1,000.00) was received and the house has been vacant for years since 1996.

██████████ stated that he pays his bills and that his money should not be taken for no reason. He stated that he has worked thru out the Pandemic. He added that not until the hearing, did he know of any rate increase effecting his water bill and that only today, was he told of a rate increase going into effect.

In closing, Ms. Soderberg stated that the customer's charge for the period in dispute is \$207.32. She stated that ██████████ did due diligence in addressing the issue of his water billing. She pointed out that the customer hired a plumber and also self-examined the property for water issues. She asserted that there has been no change in the customer's usage to account for an increase in his bill. She added that the Office of People's Counsel will research programs that

might assist [REDACTED] with his bills.

Ms. Andrews apologized to [REDACTED] for his frustration in dealing with DC Water but she stated that his usage is actual. She added that most of the customer's calls to DC Water regarded bill payment calls.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family home rented by [REDACTED] since year 2009. (Testimony of [REDACTED])
2. The bill period in dispute is December 9, 2020 to January 11, 2021. (Testimony of the parties)
3. The customer's water consumption was been consistent for the past several years and there is no indication of a spike in his water consumption during the period in dispute or during any months before or following over a period of eighteen (18) months. (Testimony of Arlene Andrews; DC Water Meter Read Log - 1/9/ 2020 to 6/8/2021)
4. Household income was affected when the customer's wife lost her job due to the Pandemic and the customer started paying attention to the water and sewer charge and determined that the bill had been high for the past 18 months to 2 years. (Testimony of [REDACTED]; DC Water Interaction Notes dated 6/7/2021)
5. The customer hired a plumber to inspect the property and the customer inspected the property as well and no plumbing or water issues were detected. (Testimony of [REDACTED])
6. DC Water tested the water meter and the meter was determined to have 101.46% accuracy. (Testimony of Arlene Andrews)
7. During its investigation of the customer's bill dispute, the utility found no evidence of meter overread or equipment malfunction and it ruled out the existence of an underground leak as a possible cause of increased water usage. (Testimony of Arlene Andrews)
8. DC Water sent to the customer an Investigation Report with its determination that the charges were valid, no adjustment of the customer's bill was warranted and that the account had been billed upon actual meter readings. (Bii Investigation Report dated 3/12/21)

#### 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 a 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 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. Upon completion of the investigation, the Utility shall issue a written decision containing a brief description of the investigation and findings. See, 21 DCMR § 404.1

#### DECISION

The customer in this matter failed to establish that the disputed bill was wrong or for some other reason he should not be held responsible for its payment.

The evidence and testimony established that the customer is and has been affected by the Pandemic and that his household income was affected when his wife lost her employment. The customer stated that he starting noticing his water and sewer charge and determined that it had been high for a long time and that something was wrong. The customer testified that he believed that he was being scammed by the utility and he stated that his neighbor's annual water service charge was significantly lower than his charge. The customer found no evidence of water issues within his home and he hired a plumber to inspect the property and the plumber found no water problem within home. DC Water presented meter reads from the property and the reads reflected consistency in water usage over an extended period of time. The customer asserted that he does everything to conserve water but he became hostile toward the DC Water representative when she questioned him regarding her suggestion that dye tests be done and toilet fixtures replaced at the property. The utility, also, tested the water meter and the meter was determined to be functioning accurately. Lastly, the utility found no evidence, during its investigation, of meter overread or equipment malfunction and it ruled out the existence of an underground leak but pointed out to the customer that the bill in disputed extended by a few days longer than an average billing period and that there had been a recent increase in fees effecting his water billing, all of which might cause him to believe that his water bill was higher than it should have been for the period in dispute but it was not wrong.


The Hearing Officer has determined that the customer's effort to reduce his household expenses due to loss income attributed to the Pandemic caused him to "zero in on" his water and sewer expense incurred each month. The customer's focus, however, has been misplaced because his water and sewer bill is true, accurate and consistent with his historical usage.

Accordingly, because there was no spike in water usage established in this case, no leaks, no plumbing defects or water equipment issues, the determination by DC Water that the charges are valid and no basis exists for adjustment of the customer's bill is hereby AFFIRMED.

By: Janet W. Blessingame  
Janet W. Blessingame, Hearing Officer

Date: Sept 4, 2021

Copy to:

  
E Street, NE  
Washington, DC 20002

Grace Soderberg, Esq.  
Office of People's Counsel  
1133 15<sup>th</sup> Street, NW, #500  
Washington, DC 20005-2710



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

IN RE: [REDACTED]  
[REDACTED] Nicholson Street NW  
Washington, DC 20011

Account No: [REDACTED]  
Case No: 21-312450

Amount in Dispute: \$ 300.01

Before Janet W. Blassingame, Hearing Officer  
July 27, 2021 at 12:00 Noon


The customer contested a water and sewer bill for the above account for the period of time December 17, 2020 to January 15, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 27, 2021. Present were: LaFatima Black; and Kimberly Arrington, on behalf of DC Water. Kelly Fisher, Esquire, Office of General Counsel, DC Water, observing. The customer, [REDACTED], failed to log into the hearing or to telephone in to participate in the hearing.

A 30-minute grace period is afforded to all customers. At 12:15 p.m., the Hearing Officer requested that a call be made to the customer to ensure that she was not having difficulty logging into the hearing. Ms. Black telephoned the customer using two (2) telephone numbers on file with the utility. Ms. Black reported that she left a voicemail on the telephone number ending in [REDACTED].


At the conclusion of the grace period, this matter was put on record. Ms. Black stated that the meter read upon which the customer was billed were actual reads. Ms. Black stated that throughout the pending of this matter, DC Water has been unable to contact the customer. She stated that the utility has telephoned the customer and left voice message and has mailed letters to the customer and the customer has failed to respond. She stated that no mail sent to the customer has been returned to the utility as undelivered.

The letter of notification that was sent to the customer advised her that "Failure to appear at your scheduled hearing may result in a default judgment being entered against you." (See, 21 DCMR 415.3) As such, based upon customer's failure to appear or to request in advance that the hearing be postponed, a default judgment is entered against the customer and the determination that the bill is valid is affirmed.

By:   
Janet W. Blassingame, Hearing Officer

Date: Sept 4, 2021

Copy to:

  
Nicholson Street, NW  
Washington, DC 20011

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

IN RE: [REDACTED]  
[REDACTED] Longfellow Street NW  
Washington, DC 20011

Account No: [REDACTED]  
Case No: 21-388143

Amount in Dispute: \$ 829.21

Before Janet W. Blassingame, Hearing Officer  
July 28, 2021 at 2:00 p.m.

The customer contested a water and sewer bill for the above account for the period of time February 24, 2021 to March 23, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 28, 2021. Present were: [REDACTED]; as well as, LaFatima Black and Arlene Andrews, on behalf of DC Water.

The property involved is a single-family residence having two (2) bathrooms, a kitchen, a washing machine, radiators and one outside faucet. [REDACTED] stated that two (2) people reside in the home and he has lived in the home for two (2) years. He stated that the water and sewer bill averages One Hundred Dollars (\$100.00) per billing cycle.

[REDACTED] stated that, following the bill in dispute, his April 2021 water and sewer bill was back to normal at \$103.06 for the billing cycle.

[REDACTED] testified that during the period in dispute, his household was normal-normal days/normal usage. He stated that he had no guests. He stated that nothing catastrophic occurred.

[REDACTED] stated that he performed a check of the premises. He stated that he was told by DC Water that high water usage occurred on February 26, 2021 between 7:00 p.m. and 8:00 p.m. and lasted one hour. [REDACTED] asserted that they were home during the period that the alleged high-water usage occurred. He stated that no repairs have been made at the property and he has not seen anything amiss outside of the house.

[REDACTED] declared that he is not sure how 36,000 gallons of water can be used in one hour.

Ms. Black stated that the meter reads were actual and had been transmitted the MTU device on the water meter to towers. She stated that the reads are taken hourly.

Ms. Black asserted that water meters advance only when water is being used.

Ms. Black testified that DC Water tested the water meter and the meter was determined to have 100.87% accuracy. Ms. Black explained that the utility abides by the standard set by the American Water Works Association which established water meter accuracy to be between 98.5% and 101.5%.

Ms. Black testified that on February 26, 2021, between 6:00 p.m. and 7:00 p.m., 48 CCF or 37,000 gallons of water were used at the property. She stated that water usage decline between 7:00 pm. and 8:00 p.m. She stated that the utility sent the customer a high-water usage alert (HUNA) on February 27, 2021.

Ms. Black asserted that the water usage was not caused by an underground leak because the usage declined.

Ms. Black testified that during the investigation of the charges, the utility found no meter overread or malfunction.

Ms. Black asserted that because all tests and checks failed to find the cause of the high-water consumption, the customer's account cannot be adjusted. She cited 21 DCMR 408.1 regarding inconclusive finding as the basis for the determination that the charges are valid.

Ms. Black stated that she checked for utility work occurring near the customer's home during the period in dispute. She stated that she checked the Maximo system and Ms. Utility and found no record of work being performed.

Ms. Black testified that the customer's usage on February 25, 2021 was .20 CCF, on February 26, 2021 his water usage was 48.68 CCF, and on February 27, 2021, the customer's water usage was .17 CCF.

Ms. Black concluded by informing the customer of the D.C. STAY program and that DC Water will offer a Payment Plan.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family home occupied by two (2) people. (Testimony of [REDACTED])
2. The period in dispute is February 24, 2021 to March 23, 2021. (Testimony of the parties)
3. The customer experienced a one-day spike in water usage at his home. The spike occurred on February 26, 2021 and 48.68 CCF was registered on the water meter as having been consumed. (Testimony of the parties)
4. The cause of the spike in water consumption is unknown to the customer who checked the property for leaks and is unaware of any plumbing issues within or about the property. (Testimony of [REDACTED])

5. DC Water tested the water meter and the meter was determined to have 100.87% accuracy. (Testimony of LaFatima Black)
6. During its investigation of the dispute, DC Water found no evidence of meter overread or equipment malfunction. (Testimony of LaFatima Black)
7. DC Water ruled out the existence of an underground leak as a possible cause of the spike because water usage declined and the nature of an underground leak is such the repairs must be made in order for the leak to subside. (Testimony of LaFatima Black)

### 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 was unable to show that more likely than not the bill in dispute was wrong or for some other reason, he should not be held responsible for payment. Unfortunately, this is case in which neither the customer nor the utility was able to determine what caused the customer's water usage to spike. The customer testified that on the one-day of high-water consumption that occurred at the property, nothing was amiss or unusual. DC Water was able to pinpoint exactly when the high usage occurred through meter reads from the property and the utility tested the water meter and the meter was determined to be functioning accurately. The utility also ruled out

the existence of an underground leak as well as meter overread.


21 DCMR 408.1 dictates that when all checks and tests are inconclusive as to a reasonable explanation of the cause of high-water usage, the utility does not adjust the customer's account for any portion of the excessive consumption.

As such, the determination of DC Water that the charges are valid and no basis exists for adjustment of the customer's account is hereby AFFIRMED.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept 9, 2021

Copy to:

  
Longfellow Street, NE  
Washington, DC 20011

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

IN RE: [REDACTED]  
[REDACTED] 55<sup>th</sup> Street SE  
Washington, DC 20015

Account No: [REDACTED]  
Case No: 21-85199

Amount in Dispute: \$ 791.53

Before Janet W. Blassingame, Hearing Officer  
July 29, 2021 at 12:00 Noon

The customer contested a water and sewer bill for the above account for the period of time September 19, 2020 to October 20, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on July 29, 2021. Present were: [REDACTED]  
[REDACTED]; as well as, Arlene Andrews and Rosalyn George, on behalf of DC Water.

The property involved is a townhouse occupied by [REDACTED] and her family (2 adults/3 children) since October 2019. The house has three and one-half (3 ½) bathrooms, one kitchen, a dishwasher, a washing machine, a utility sink and two (2) outside faucets. The water and sewer bill ranges between \$125.00 and \$150.00 per billing cycle.

[REDACTED], initially, stated that she has not experience any problems at the home, but, she, then, acknowledged receiving high-water usage alerts from DC Water. She stated that the alerts were received in March 2020, January 2020, September 2020 and October 2020. [REDACTED] stated that she checked the house for plumbing and water issues and did not find any leaks or water damage.

[REDACTED] testified that she had a friend who is also a plumber look for leaks or any water issues within the house and none were found. She stated that her friend did not do a write-up of the inspection.

[REDACTED] stated that, except for the bill in dispute, she has not had any more high usage.

Ms. Andrews suggested to the customer that dye tests be performed. Ms. Andrews stated continuous water usage as occurred at the property will normally happen when something is faulty and the defect worsens on overtime to the point that a lengthy spike in usage results.

Ms. Andrews testified that the customer had high-water consumption from September 24,

2020 to October 4, 2020 and that usage during the period was continuous except for maybe a few hours of stoppage. She stated that the customer, also, had high-water usage on October 8, 2020 for a 6-hour period of time and, then, an extended period of high usage occurred October 9, 2020 to October 19, 2020. Ms. Andrews stated that DC Water sent HUNA alerts of high-water usage occurring at the house in March 2020 and that three (3) alerts were sent to the customer in December 2019.

Ms. Andrews testified that DC Water tested the water meter and the meter was determined to have 99.43% accuracy. Ms. Andrews explained that DC Water abides by the standards established by the American Water Works Association that a water meter is accurate between 98.5% and 101.5%.

Ms. Andrews stated that after the customer received the bill in dispute, continuous water usage still occurred at the property but that the span of continuous water usage shortened to 3- 7 days. Ms. Andrews testified that another spike in water usage occurred on October 30, 2020 starting at 8:00 a.m. and continued until 6:00 p.m.

Ms. Andrews testified that the meter reads from the customer's home are reported on an hourly basis and that the reads are registered and transmitted by a MTU device.

Ms. Andrews suggested that the customer reach out to the DC Department of Energy and Environment regarding the STAY program which has been established to assist D.C. residents during the Pandemic. Ms. Andrews also advised the customer that DC Water will afford to its customer's an installment plan. Ms. Andrews stated that [REDACTED]'s current balance due is \$1,681.36, not counting the amount in dispute. Lastly, Ms. Andrews recommended to the customer to reduce the threshold for alerts.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence occupied by [REDACTED] and her family. (Testimony of [REDACTED])
2. The period in dispute is September 19, 2019 to October 20, 2020. (Testimony of the parties)
3. DC Water has sent to the customer high-water alerts (HUNA alerts) in December 2019, as well as, in January, March, September, October and December 2020. (Testimony of the parties)
4. During the months of September and October, 2020, high-water usage recorded on the customer's water meter September 24, 2020 to October 4, 2020, October 8, 2020, October 9, 2020 to October 19, 2020 and October 30, 2020. (Testimony of Arlene Andrews; DC Water Meter Reads)



5. The customer self-checked the residence for leaks and plumbing issues but failed to detect a problem. (Testimony of [REDACTED])
6. The customer had a friend, who is a plumber, check the residence for leaks and plumbing issues and her friend detected no problem; no inspection report was prepared. (Testimony of [REDACTED])
7. DC Water tested that water meter and the meter was determined to have 99.43% accuracy. (Testimony of Arlene Andrews)
8. High-water consumption has continued to register on the water meter at the residence beyond the period in dispute. (Testimony of Arlene 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 a 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 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.

#### DECISION

Customer in this case failed to establish a *prima facie* case that more likely than not the bill in dispute is wrong or for some other reason she should not be held responsible for its payment.

Despite the customer's allegation that there is and has been nothing amiss within her residence regarding water, the testimony and evidence established that starting in December 2019 and throughout the year of 2020, DC Water has sent high-water usage notifications to the customer that high-water usage was occurring at the property. The utility established the periods of high usage during the period in dispute, as well as, periods of high usage extending after the period in dispute. The utility tested the water meter and the meter was established to have been functioning appropriately and within the standards set for water meter accuracy. The utility, also, had hourly meter reads from the property. Despite the alerts, the customer failed to hire a


plumber, electing, instead, to self-inspect and to have a friend inspect the property for plumbing issues. The customer did not have a plumber's report to establish her friend's findings or lack thereof, so little weight is given to the testimony regarding the customer's and her friend's inspection of the property. DC Water suggested that the customer have dye tests performed on the house toilets and that a plumber be hired to inspect the property.

The Hearing Officer is convinced that something is on-going at the customer's home causing increased water consumption and no fault lies with DC Water's bill calculations or equipment.

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

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer  
Date: Sept 9, 2024

Copy to:

  
55<sup>th</sup> Street, SE  
Washington, DC 20019

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

IN RE: U.S. National Arboretum,  
Agriculture Research Surface,  
USDA  
3501 New York Avenue, NE  
Washington, DC 20002

Account Nos.: [REDACTED]

Before Janet W. Blassingame, Hearing Officer  
March 24, 2021

An Administrative Hearing Petition was filed on behalf of The National Arboretum (hereinafter referred to as "the Arboretum") challenging the Clean Rivers Impervious Area Charge (CRIAC) fees, also referred to IAC fees, assessed by the District of Columbia Water and Sewer Authority (hereinafter referred to as "DC Water") against the Arboretum. DC Water responded denying the challenge and refusing to reduce its IAC charges. DC Water, prior to the filing of the Petition, did, however, agree to remove two (2) accounts- Account [REDACTED] Benning Road, NE with 146.4 ERU and Account [REDACTED] Crabtree Road, NE with 16.6 ERU for a total of 163 ERU, from the Arboretum's billing. DC Water assigned the two (2) accounts to the National Park Service effective October 1, 2017.

The Arboretum asserts that it has been assessed for impervious area that does not prevent or retard the entry of water into the grounds as occurring under natural conditions, or that causes water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions. The Arboretum disputes the application of IAC fees to the Arboretum. It initially argued for a reduction of 90% of IAC assessments but, prior to hearing, changed its argument and asserts that the Arboretum should not be assessed IAC fees. The Arboretum requests refund of its overpayments for the entire period of over charges. DC Water takes the position that any refund claim based upon any IAC payment made prior to June 26, 2016 should be dismissed as time-barred.

DC Water filed a Motion to Dismiss the Petition for Administrative Hearing and the parties agreed to bifurcate the proceedings with said motion being heard and decided before any evidentiary hearing took place as to any factual issues in this matter, including the extent of any volumetric contribution of the property to storm water runoff and the amount of any refund claim asserted by the Petitioner. The Motion to Dismiss was heard on November 19, 2019. The Hearing Officer determined that issues of fact material to the dispute exist and the Arboretum should be allowed to present evidence and testimony that it has been overcharged IAC fees.

This matter was scheduled for evidentiary hearing on March 24, 2021. The hearing was held remotely due to the Covid-19 Pandemic. Present on-line for the hearing were: Emil Hirsch, Esq. and Emily Green, Esq., Attorneys for DC Water; Tyler Ellis, Attorney Advisor, General Law and Research Division, Office of the General Counsel, U.S. Department of Agriculture, on behalf of the U.S. National Arboretum, Agriculture Research Surface, USDA; Dr. Richard

Olsen, Director, U.S. National Arboretum, Agriculture Research Service, USDA; Sandy Sadler, P.E., Program Analyst, Agriculture Research Service Facilities Division, USDA; Frank King, Engineer, Agriculture Research Service, USDA; Mike Rolband, Retired, Wetland Studies, Consultant; Evelyn S. Tyson, P.E; Ronald Young, Deputy Director of Facilities, USDA; and Shamarukh N. Billah, Senior Associate Project Manager, STV. Listening to the proceedings were: Tasha Anderson, GIS/New Account Supervisor, DC Water; Nino Fleri, Director, Facility Division; and, Bob Dreesler, Chief, Capital Investment Asset Modernization Branch Management (CIAMB). Also on line was Kimberly Arrington, DC Water, recording equipment manager.

As a preliminary matter, attorneys for DC Water requested a rule on witnesses. Mr. Hirsch requested that witnesses be excused until called to testify; counsel for the Arboretum did not object. The parties agreed that individuals silently observing the hearing on-line may do so if they are not to testify. Also, any witness that may be recalled for rebuttal must remain off-line until called to testify.

Mr. Ellis, in opening statement, using a Power Point presentation, asserted that DC Water is overcharging the Arboretum for impervious area charges found under DC Code Section 34-§ 2107. Mr. Ellis stated that with respect to most properties, there is a direct link between their impervious surface area and their contribution to rainwater run-off but that the Arboretum is not a typical property. Mr. Ellis pointed out that Congress waived sovereign immunity for federal facilities pursuant to the 2011 Stormwater Amendment to the Clean Water Act to pay reasonable fees based on a fair approximation of the proportionate contribution of the facility to the stormwater pollution. Mr. Ellis stated that the issue here is not the IAC charge but the application of the IAC charge to the Arboretum, in that, it does not result in a fair approximation of the Arboretum's contribution to stormwater pollution to the combined sewer overflow system. He stated that the key language phrase to consider is- "under natural condition" as used in Title 34 §2107 and Title 8 §151.01(10). He asserted that since the 1950's, there have been more natural cover plantings, such as trees, meadows, gardens, collections, nurseries, and other naturalized open spaces, so that the property state has been returned to what can be considered equivalent to pre-human intervention. He pointed out that DOE defines natural cover as land area that is dominated by vegetation and does not require regular human input such as irrigation, mowing, or fertilizer to persist in a healthy condition. He stated that the Arboretum does have impervious surfaces amounting to 7.5% of its total area but the surfaces are disconnected and surrounded by sprawling amounts of pervious surface. He asserted that there is only minimal run-off due to natural run-off and only a small portion of run-off actually goes into the sewer system (water shed). He asserted that the Arboretum contributes a much lower percentage of run-off due to its natural ground cover than other properties. Mr. Ellis pointed out the DC Water's own stormwater management guidebook reflects that surface area of 10 percent or less is considered natural ground cover.

On the issue of refund, Mr. Ellis asserted the Arboretum believes that it is entitled to a refund for the entire period of overcharge by DC Water due to the right to sue for monies that it has wrongfully, erroneously or illegally paid. Mr. Ellis asserts obstacle preemption stating that a state law is preempted where it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. He concluded that state law is preempted by the

Federal Claims Collection Act of 1996 which provides agencies with authority to try to collect the claim of the U.S. Government for money or property and, as such, the District of Columbia statute of limitation of 2 years found in DC Code 34-2101(9) is no bar to a refund of overpayment and that the Arboretum is entitled to a full refund of IAC overcharges dating back to 2009 and a full refund for the erroneous billing of accounts that did not belong to USDA.

Mr. Hirsch reserved his opening statement.

The issue is whether the Arboretum is entitled to a 100% reduction of impervious area charges and a refund retroactive to year 2009, as well as, refund for payment of charges pertaining to property not owned by USDA. Both counsels acknowledged that another hearing may be required regarding the extent of refund, if refund is found to be appropriate.

#### SUMMARY OF TESTIMONY AND EVIDENCE

The first witness called by the Arboretum was Shamarukh Billah. Ms. Billah stated that she is educated as a civil engineer and is Chief, Civil Engineer for the Buildings and Facilities Group at STV INCORPORATED (hereafter referred to as "STV"). She stated that she is also the appointed Vice President of STV. The Arboretum offered her as an expert witness in storm water management practice. Ms. Billah stated that she conducted an Investigative Study and Mapping of Stormwater Runoff regarding the Arboretum. She stated that they wanted to analyze the drainage assessment of the Arboretum to see if there was any way to reduce the IAC charge. She stated that her work encompassed:

1. To confirm acreage of the property- boundary survey- 451 acres
2. To confirm total impervious area
3. To investigate stormwater runoff
4. Review impervious area- disconnected
5. Determine existing structural stormwater BMP and how stormwater runoff is treated
6. Looked at non-structural BMPs
7. Application of the Clean Water Act of 2011

Mr. Hirsch requested voir dire of the witness. Mr. Ellis responded that Ms. Billah was being offered as an expert witness regarding stormwater management practices. Based upon Mr. Hirsch's questions, Ms. Billah responded as follows: that she earned her degree from Villanova University in Civil Engineering; she does not have a graduate degree; since earning her BS degree, she has been involved in land development projects- federal, industrial, commercial and stormwater management for the past 20 years; that she is not an environmental engineer but specializes in site management and stormwater management; she has not qualified as an expert as an environment engineer; she has only previously testified before the Hearing Officer for DC Water. Mr. Hirsch had the witness go through her Curriculum Vitae and she cited projects worked upon by her. Mr. Hirsch stated that environment engineering is a subset of civil engineering and Ms. Billah responded that stormwater management and environmental engineers, both, do waste management. Mr. Ellis asserted that the distinction between an environmental engineer and a civil engineer is not relevant. Mr. Ellis asserted that Ms. Billah is experienced regarding impervious area and the effect of stormwater and its conveyances. Mr.

Hirsch argued that Ms. Billah has no experience regarding District of Columbia impervious area charges. The Hearing Officer accepted Ms. Billah as an expert witness finding that she has more than sufficient experience regarding stormwater management.

The Arboretum offered into evidence the Investigative Study done by Ms. Billah; the study was admitted as Arboretum Exhibit 1. Ms. Billah testified that based upon her investigation, she reached three (3) opinions after conducting the study:

1. That compared to other properties, the Arboretum is a very unique property having only 7.5% in impervious coverage and property acts like a natural ground cover;
2. That the majority of the Arboretum's impervious area can be considered disconnected impervious areas mainly because they are roadways and walkways from which water has an opportunity to infiltrate into the surrounding pervious areas essentially, again, mimicking natural conditions; and
3. Only 12 acres actually drains into the DC combined sewer overflow watershed amounting to only about 3% of the total acreage of the Arboretum.

Mr. Hirsch objected to Ms. Billah's opinion/finding that the Arboretum is a unique property, stating that the Hearing Officer is capable of reaching her own conclusion regarding the property. The Hearing Officer asked that the witness delve into the basis of her opinion and instructed that Mr. Hirsch could make his objections at the end of her testimony.

Ms. Billah testified that the Arboretum, compared to the rest of District of Columbia commercial and residential properties, is unique due to its size- 451 acres, land coverage, types of vegetation, naturalized meadows, dense wooded areas and how storm water behaves within the Arboretum versus a typical property. With respect to stormwater management calculations, she stated that she looked at the Arboretum's topography of existing slopes, soil conditions, vegetation and land use, wetlands and stream and soil analysis. Ms. Billah went on to describe the topography of the Arboretum, FEMA flood hazard areas, off-site drainage, storm and sewer conveyance and land use breakdown.

Mr. Ellis stated that Ms. Billah is not giving an opinion regarding the fairness of IAC charges. He stated that Ms. Billah's opinions and fact testimony are based upon the land use of the Arboretum.

Ms. Billah continued that a typical DC property has 75% or more impervious coverage whereas the Arboretum mimics natural groundcover because it has 7.5% impervious coverage. Ms. Billah asserted that the Arboretum mimics natural ground conditions when you compare its 451 acres as a whole and its impervious area is less than 10 percent within the property. She stated that she estimates that approximately 40% to 45% of runoff is infiltrated based on the impervious surface that exists within the Arboretum and that another 14% to 15% of runoff occurs on average depending upon storm frequency from the whole property.

She testified that she calculated the Arboretum's disconnected impervious area based upon methodology used in the 2013 guidebook- DC Stormwater Management Guidebook, and reviewed all areas within the Arboretum that are less than five percent grade and overlapped it

with the existing impervious areas that are also a grade less than five percent. She testified that she looked at the impervious area calculations compared to ERU calculations that DC Water estimates and she also looked at DC Water's GIS data which she calculated to be the corresponding ER use. She stated that she found inconsistencies after they performed their independent calculations of ERU and they came out less than what the Arboretum is currently billed. Ms. Billah stated that the significance of disconnected impervious areas is that stormwater runoff from disconnected areas can infiltrate into the ground as they would in a natural life setting and with respect to connected impervious areas, stormwater runoff basically goes into a storm drainage system and flows right out.

Ms. Billah testified that only .44 acres (corner along Bladensburg Road) of impervious surface flows into the DC Combined Sewer Shed and that accounts for .1 percent of the total impervious area of the Arboretum. Ms. Billah stated that she found that the other areas of the Arboretum flow into the MS Sewer Shed. She testified as to how she analyzed the topography of the Arboretum. She stated that there are four (4) drainage areas, of which only one drains into the combined water sewer shed and the other drainage areas go into the Anacostia, the Kingman Lake and Hickey Run. She stated that each drainage area has less than 10 percent impervious surface and because each drainage area has less than 10 percent impervious area, one can assume that there is no stream degradation occurring within the property

Ms. Billah stated that of the Arboretum's 553.137 acres, 12.70 acres are impervious and most water can flow off into meadows and infiltrate.

Ms. Billah stated that she has looked at the Rolband report dated March 19<sup>th</sup> and, in her opinion, the report talks about for an area to be naturalized, it has to be a wooded condition. She stated that she disagrees with the Rolband report because, in nature, not all surfaces are wooded, such as meadows and grasslands which are also naturalized areas. Ms. Billah used regular mowing and the use of fertilizer as examples of what changes an area from its naturalized state, but she stated that grass mowing once a year as done within the Arboretum is fine, as is, twice yearly mowing of meadow. She, also, took issue with the Rolband report comment on disconnected areas as not having a basis and she stated that in her investigation, they calculated the disconnected areas based on the guidelines provided in the DC 2013 Storm Water Management Guideline booklet. She added that she is not sure how DC calculated their impervious area calculations in order to determine what the ERUs are for each property but she assumes that the utility bases their impervious surface calculations on available GIS data. Lastly, she pointed out the definition of impervious surface disconnection if taken from the DOE guidebook stating that it is the strategy of managing runoffs close to its source by redirecting from impervious surfaces to pervious areas. She asserted that disconnection practices can be used to reduce the volume of runoffs that enter in the combined sewer system.

Mr. Hirsch cited Steel v. DC Tiger Market, 854 Ad.2d 175 (DC Court of Appeals 2004) and Burkhart v. WMATA, 112 F 3rd 1207 (DC Circuit 1997) as the basis for his objections. He stated that these cases discuss when an expert opinion is improper and should not be admitted because the expert invades the province of the decider of the law which, in this case, is the Hearing Officer. He also stated that the cited case discusses when the expert opinion should not

be added on the grounds that the opinion is of no aid to the trier of facts because the trier of fact is able to reach the conclusion without the aid of an expert.

Mr. Hirsch stated his objection to the witness' testimony of the uniqueness of the property. He argued that the trier of fact can reach the conclusion without the regard to any assistance from an expert.

Mr. Hirsch stated that he has no objection to a finding regarding the disconnected impervious areas. He stated that out of 7.5% of the impervious areas, the majority can be considered disconnected impervious areas. Mr. Hirsch added that how much stormwater flows into the MS4 and CSO stormwater conveyance system is immaterial because we are dealing with the statutory standard as defined in Title 34-2107 (a)(1). He asserted that the statute does not deal with volumetric contributions and that IAC is based upon impervious area, not volumetric contribution. He asserted that the witness testimony regarding how much stormwater or water flows into a particular piping system should not be allowed because its immaterial and suggests to the Hearing Officer that she ought to use a different standard than what the DC Council said. Mr. Ellis responded that he would need to look at the cases cited by Mr. Hirsch in order to respond as far as the uniqueness and whether or not to allow Ms. Billah to give her opinion on the uniqueness. Mr. Ellis stated that the Arboretum is not arguing volume contribution but that the impervious area cost attributed to the property should be fair and equitable. He asserted that the charge is counter to the purpose of impervious area charge and he referred to DC Water's website noted that the Board resolution that the impervious area should be fair and equitable way to distribute costs based on a property's contribution of rainwater to the sewer system. Mr. Ellis argued that because the Arboretum's impervious area is only 7.5% of its actual acres with minimal actual surface runoff entering into the sewer system, the way the Arboretum is being charged is not fair and equitable. He asserted that the Arboretum should not be charged for impervious area or it should be viewed as having zero ERUs because, as a whole, its impervious area does not prevent the entry of water into the ground as occurring under natural conditions nor does it cause greater amounts of water or increased rate of flow relative to the flow under natural conditions and for such reasons, he disagrees that testimony regarding where stormwater flows on the property and what actually goes into the CSO sewer shed is not relevant. Mr. Hirsch stated that Mr. Ellis is distorting the law and that it does not matter what the DC Water website says or what the Board resolution says because the case is to be adjudicated based upon the relevant statutes and regulations. Mr. Hirsch asserted that the D.C. City Council has pronounced legislatively that the impervious area charge is the fair and equitable measurement/standard for defraying the costs of compliance with the Clean Rivers Act and the Consent Order pursuant to which the D. C. authorities, including DC Water and the EPA, entered into. Mr. Hirsch pointed out that there is no exception in the statute for unique properties and that the Hearing Officer does not have the power to disregard or to create a different standard from the legal standard in existence. He asserted that the statute is not dependent on how much or how little water flows in the MS4 or the CSO. Mr. Hirsch further argued that the argument of the Arboretum that it is a unique property, if accepted, would set a bad precedent and encourage other property owners to try to find some uniqueness of their properties and future argument that their property has a de minimis discharge of stormwater. Mr. Hirsch argued that the legislative body has already determined to use impervious area and a battle of experts regarding uniqueness of properties would create an enormous burden upon the DC Water system. Mr. Ellis asserted that the



Arboretum seeks to have the statute apply to the property as it is intended and that by looking at the property as a whole, the property does not prevent the entry of water into the ground as part of natural conditions nor does its impervious areas cause surface water in increased rate of flow or in greater quantities than under natural conditions. Mr. Ellis asserted that no property other than the Arboretum can make the same claim of uniqueness and if any property tried to do so, the claim could be easily dismissed. He asserted that the argument of setting precedence is overwarranted.

The Hearing Officer declared that she would refrain from ruling on the uniqueness of the Arboretum at this point in the hearing but that Ms. Billah's testimony is helpful and her testimony of her findings and her opinions are relevant, but the Hearing Officer will decide the case. The Hearing Officer held that the case should go forward in order for her to decide if the Arboretum is entitled to any change in the way it is billed.

Mr. Hirsch asked Ms. Billah about other versions of the investigation report and she acknowledged that, in addition to the final report dated August 1, 2018, there was an earlier report dated January 31, 2017, as well as, a draft study dated December 14, 2016. Mr. Hirsch questioned the witness as to how much STV was paid for the study and Ms. Billah responded that she did not have the information. Mr. Ellis objected to the questioning based upon relevancy and Mr. Hirsch responded that compensation is an indicator of witness bias and is relevant. Mr. Hirsch moved to strike the testimony of Ms. Billah if she did not reveal the compensation paid to her company for the report. Mr. Hirsch asserted that case law in the District of Columbia is well established that he may inquire as to an expert's compensation. Mr. Hirsch, however, was not prepared to cite case law to support his assertion. It was decided that Mr. Hirsch would provide case law to support his assertion and Mr. Ellis would have opportunity to respond/oppose. Mr. Hirsch questioned the witness as to whether the fee paid included provisions based upon the success/result of the Arboretum case regarding impervious area charge and Ms. Billah responded in the negative.

Ms. Billah testified that she understood, in doing the study, that the Arboretum wanted to see if there was any way to possibly reduce their IAC fees and her company agreed to take a look and to do a fair assessment of the site conditions and what the situation is. Ms. Billah testified as to her knowledge regarding filing an application to be given a discount on account of best management practices and she believed that such an application would be filed with DC Water. She testified that, when the study was undertaken, the CIAC fee reduction was only four or five percent but that the amount of discounts have increased. She acknowledged that a grant of discount based upon best management practices is discretionary by the governmental authority.

Ms. Billah acknowledged that STV has not opined anywhere in its written reports that, in STV's opinion, the Arboretum's IAC liability should be reduced to zero. She testified STV did, however, conclude that the charge should be reduced and the percentage was included in their report.

Ms. Billah reaffirmed her position that natural conditions included more than woods. She acknowledged that STV did not do a stormwater flow calculation with respect natural conditions at the Arboretum. With respect to Ms. Billah's use of the word "mimic", she stated that the more

impervious area a property has, the more urbanized it is and the less stormwater infiltrates into the natural aquifer or into the ground. She added that when you have less impervious areas and established vegetated area, such as the Arboretum, it mimics what would happen in a natural condition or it has characteristics comparable to natural conditions. Mr. Hirsch pointed out that STV did not define "natural conditions" in its report. Ms. Billah stated that when the report study was done, it was assumed that the majority of the Arboretum was in its natural state and no reason existed to do an assessment of predevelopment condition, i.e., a hydrologic study. She stated that they assessed the existing condition of the Arboretum and they analyzed the existing conditions if there were no impervious surfaces with the property. Ms. Billah acknowledged that the Arboretum has paths and walkways covered by impervious material and that there are buildings on the Arboretum property which are impervious, as referenced in DC Code Section 34-2107(a)(1)(a); she asserted that the Arboretum is unique and different than a typical DC property. Ms. Billah acknowledge that there is nothing in the statute that says uniqueness or provides for an exception for unique properties.

Mr. Hirsch reserved his right to recall Ms. Billah on the issue of compensation following a ruling as to whether he could inquire into compensation paid to STV. Ms. Billah was instructed to be available in the morning of the next day.

Mr. Hirsch waived giving an opening statement saying he preferred to call his first witness. However, before calling his first witness, Mr. Hirsch moved for judgement arguing that the Arboretum failed to make a prima facie case that it should pay zero IAC charge. He argued that the Ms. Billah failed to support the proposition of zero liability and he argued that uniqueness of the property and volumetric contribution are not exceptions under the structure of 34-2107.

Mr. Ellis retorted that the Arboretum, because of its uniqueness, is the only property in the District of Columbia that has a claim, under federal law, that it should not pay IAC charge and, as such, no precedence will be set by this matter. He asserted that the Arboretum, under the law, is to pay reasonable non-discriminatory fees but the fees must be based on a fair approximation of the Arboretum's contribution to stormwater pollution. He stated that the IAC billing methodology is a valid way to collect fees in the District of Columbia for most properties, but applying it to the Arboretum is contrary to what the federal government intended. He argued that the motion for judgement should not be granted.

The Hearing Officer held that she would not grant the motion for judgment at this juncture in the case and asked Mr. Hirsch to proceed with presentation of DC Water's position/opposition to the claim.

Ms. Hirsch called Michael Rolband as his first witness. Mr. Rolband testified that he is a civil and environmental engineer and has been working in related fields since 1982. He stated that he founded the company, Wetland Studies and Solutions, in 1991 and sold the company in 2014. Mr. Rolband stated that he has transitioned to semi-retirement. He stated that he is on the Board of Directors of Davey Resource Group which purchased his company and the company is now a subsidiary of Davey Tree Expert Company. He stated that he, also, has a consulting contract for part-time consulting. He added that he has created a non-profit, Resource Protection

Group, Inc., of which he is President. He also stated that he does consulting services through Michael Rolband, LLC. He stated that, in his work, he has been most interested in the restoration of streams and wetland and had to understand the urban environment and how runoff affected streams and wetlands in order to restore them. He stated that he has been involved in green infrastructure and the effects of urbanization resulting in the increase in impervious areas. He stated that he deals with runoff and surface hydrology and groundwater hydrology and the influences on the man-built environment. Mr. Rolband testified that hydrology is involved in both civil and environmental engineering. Mr. Rolband stated that he recently finished a three-year position as a professor at Cornell University and he has done short course and guest lectures. He stated that he has previously qualified as an expert before DC Water and in various courts in Virginia and he has testified before different state legislative bodies and study committees.

Mr. Hirsch moved that Mr. Rolband be accepted as an expert witness in civil and environmental engineering and hydrology; Mr. Ellis had no objection. Mr. Ellis, also, had no objection to admittance of the Wetland Studies Report.

Mr. Rolband testified that he was first hired by DC Water to review the Corrected Memorandum of the Arboretum in opposition to DC Water's Motion to Dismiss the Arboretum's Petition for Administrative Hearing. Mr. Rolband stated that he was looking to see if the arguments by the Arboretum made sense and had a basis in engineering. Mr. Rolband testified that the Arboretum made three (3) errors in argument. First, that 10% of impervious area or less is considered natural ground cover. Mr. Rolband stated that the graphic used by the Arboretum is in the Federal Stream Quarter manual and is just a teaching tool to show that when you increase impervious cover, you decrease the amount of water that infiltrates in the ground, you decrease the amount of water that evaporates/transpires from the plants that are growing in the natural ground and more water than runs off. He described the graphic as having four (4) quadrants showing varying amounts of impervious areas. He stated that there is no continuity of impervious surfaces in the graphic and nothing in the graphic insinuates that if its less than 10 percent impervious area, it's natural ground cover. He stated that the graphic used by the Arboretum is not representative of the Arboretum. The second error identified by Mr. Rolband relates to the Arboretum having a net impervious area of 7.5%. Mr. Rolband stated that impervious cover is typically an asphalt or plastic or rooftop- some type of material that does not let water penetrate and infiltrate into the ground. He stated that natural ground lets water infiltrate into the ground. Mr. Rolband stated that the third error by the Arboretum is its assertion that 7.5% impervious area is classified as natural ground cover. Mr. Rolband testified that if you have any area of impervious surface, more water runs off the land in terms of rate or volume relative to the natural condition of not having an impervious surface. Mr. Rolband described a methodology developed by USDA in which it assigns curve numbers to various conditions and the amount of runoff. He stated that the higher the curve number, the more water runs off the ground and impervious areas are given a 98 whereas a wood area would have a 77.

Mr. Rolband testified that the difference between natural ground cover and natural conditions is natural condition is wooded and natural ground cover is a non-manmade, non-man modified cover.

He stated that the USDA has developed a mathematical model based upon empirical studies which divides soil into four categories to determine run-off. He described the make-up of the Arboretum starting with natural land cover which he described as undisturbed woods in good condition. He described the Arboretum as having wood/grass combination where there are trees spaced in some meadow areas. He described the Arboretum as having open space areas, lawns and impervious surfaces. He ultimately stated that he gave the benefit of the doubt in assessing the Arboretum using the USDA methodology of evaluating run-off and he said all of the Arboretum's impervious surfaces are unconnected and that reduces the curve number to a 68 whereas impervious areas are generally assigned 98. He stated that he used aerial photos in the GIS system. He stated that natural conditions were a 65. Mr. Rolband stated that he looked at the run-off from a 30-year period of time and concluded that there's an increase in volume of run-off of 92 percent. He stated that the curve number indicates a relationship between rainfall and run-off- the higher the curve number, the higher the run-off. He stated that curve number also is used to calculate the initial extraction which is how much water infiltrates the ground.

Mr. Rolband testified that he concluded that the rate of run-off and the volume of runoff from the Arboretum is higher than what it would be under natural conditions because of the existence of impervious surfaces.

Mr. Rolband testified that he was asked to conduct an additional investigative study and issue a report. He stated that he was given a report prepared by STV to read and to summarize his opinion of it. He stated that he learned that another report superseded the one initially given to him and he ended up reading the revised report of August 1, 2018 which ended with the December 2019 report. He stated that he was to review the STV report which respect to the corrected memorandum. Mr. Rolband issued a report dated March 19, 2021 which outlines his opinions of the revised August 1, 2018 STV report. Mr. Rolband testified that the corrected memorandum was extraordinary because it was not supported by the STV report. (1) He stated that the STV report does not support a conclusion that impervious area of less than 10 percent impervious coverage constitutes natural conditions. He cited the graphic contained in the report and stated that the graphic says nothing about 10% of natural conditions. He stated that he could find no support in the STV report to support their legal position. (2) Mr. Rolband testified that the STV report does not support the conclusion that stormwater run-off at the Arboretum is equal to or equivalent to natural conditions. He stated that the report does not say that at all because STV never tried to determine what natural conditions are and show that the Arboretum is less than or equal to natural conditions. He stated that because STV did not do an analysis for natural conditions and only analyzed existing conditions of the Arboretum, there is no basis for comparing stormwater runoff as between natural conditions and present-day conditions.

Mr. Rolband testified that he consulted the Stormwater Guidebook to confirm his memory that the graphic used by STV did not say that natural conditions are less than 10 percent impervious cover. He read the caption under the graphic as it appears in the Guidebook and he

concluded that it does not say anything to support STV's statement or USDA's position regarding less than 10 percent impervious cover equates to natural conditions. Mr. Rolband stated that the assertion that 10 percent impervious cover equates to natural condition is not true and cannot be found in any references. He stated that by definition, impervious cover cannot be natural condition because impervious cover is man-made and are not natural and are anthropogenic. (3) With respect to the Arboretum's argument that it should not be required to pay IAC fees to DC Water for impervious areas that do not flow into specified sewer pipes, Mr. Rolband stated that in his opinion, the Arboretum was incorrect and he could not find any basis in any regulation that supports their position. Mr. Rolband elaborated that the regulations define impervious area and they say that you have to pay a fee based on your impervious area and nowhere do the regulations have an exclusion that says runoff has to only go into a sewer system. Mr. Rolband testified that the majority of run-off at the Arboretum flows into tributaries of or directly into the Anacostia River, which is a waterway within the District of Columbia. (4) Mr. Rolband testified that he could not find in the STV report any calculation supporting a conclusion that the STV calculated a smaller impervious area than DC Water charges the Arboretum for IAC. He stated that normal practice is to use a survey and STV failed to do so to show a comparison between actual impervious area and billed impervious. Mr. Rolband testified that his staff, using GIS data, actually had a larger number for impervious area than what was being billed by DC Water. Mr. Rolband contended that STV cannot substantiate its numbers regarding impervious area within the Arboretum because it failed to have a survey done by a licensed land surveyor to determine what the actual impervious area is. (5) Mr. Rolband testified that STV used the wrong terminology in using the term disconnected impervious area; he stated that the correct terminology is unconnected impervious area, but, even so, STV's methodology looked correct. He stated that STV did a detailed analysis of impervious area to see which ones are unconnected but STV did not provide a technical basis for its position that the impervious areas of the Arboretum are the same as natural conditions because they are not. Mr. Rolband concluded that there is still increase run-off. (6) In Mr. Rolband's opinion, natural conditions for the Arboretum are wood areas in good condition that are prior to anthropogenic intervention meaning pre-man or pre-colonial contact or European settler contact.

Mr. Rolband testified that whenever impervious surfaces exist, the amount of run-off increases relative to the natural condition whether the impervious area is connected or unconnected.

Mr. Rolband testified that he, also, uses the term "mimic", however, in his practice, mimic means "to get close to". He stated that natural predevelopment and existing conditions are to two different things and that one cannot match natural volume of run-off but you can get close.

On cross-examination by Mr. Ellis, Mr. Rolband acknowledged that his being a wetlands scientist is not state certified and is not a recognized license by any state. He, also, acknowledged that his company was compensated for his work in reviewing and giving his opinion of the STV report.

Mr. Rolband testified that impervious cover causes an increase in flow rate and volume and also increases the amount of pollutant load.

Mr. Rolband stated that, before man (anthropogenic intervention), the Arboretum was forested except for some marshes. He stated that industry standard to determine natural condition in the District of Columbia area, one must go back to pre-colonial civilization or basically pre-1600s.

Mr. Rolband stated that both a civil engineer and an environmental engineer can be qualified with stormwater management experience in order to weigh in on stormwater management. He also stated that a professional engineer, except for some rare situations, is not normally allowed to measure area and the practice of surveying is done by licensed surveyors, particularly in the District of Columbia which has very stringent licensing requirements for surveyors. Mr. Rolband explained that his critic of the non-use of a surveyor by STV was regarding the measurement of impervious areas within the Arboretum. He asserted that the measurement of impervious areas should have been done by a licensed surveyor. He stated that STV had a boundary survey done but no survey of the impervious surfaces.

Looking at Figure 10B from the STV report, Mr. Rolband stated that even though water hits a sidewalk, the run-off would flow to Hickey Run which would then flow into the Anacostia River. He pointed out that off-site water flows, as well, onto the Arboretum property and into Hickey Run through the Arboretum to the Anacostia River and that water is polluting the river. He stated that the off-site water that comes back into the Arboretum will not infiltrate into the underlying soils, meadow or trees but, instead, it flows into the stream.

Mr. Rolband stated that his company was compensated a little over \$10,000 previous to this year and just under \$10,000 this year. He stated that the compensation is based upon an hourly rate. He added that the company was compensated for reimbursable costs such as photocopying.

Mr. Ellis clarified that the Arboretum is challenging only the CIRAC fee, not the MS4 fee.

Mr. Hirsch had no questions for Mr. Rolband and he asked that Mr. Ellis agree to the admission into evidence of a denial letter by Ms. McCool to Dr. Olsen dated July 13, 2018, as well as, three aerials contained in DC Water's Exhibit book identified as Exhibit 4A, 4B and 4C. Mr. Ellis agreed to admission of the documents.

Mr. Hirsch suggested that counsel submit written proposed Findings of Fact as opposed to making oral closing statements. Hearing Officer stated her preference for counsel to submit memorandums but if either counsel wanted to include Findings of Fact with their memorandums that would be acceptable. The parties agreed to submit their respective memorandum in two (2) weeks- April 12, 2021. The parties further agreed that there would be no rebuttal memorandums.

The parties agreed that this matter would be bifurcated further and that if a decision is rendered that the Arboretum has overpaid and is entitled to a refund, a hearing would be scheduled regarding the issue of refund.

This matter was continued to 10:00 a.m. March 24, 2021 for the purpose of argument and possible testimony regarding the compensation paid to STV for its report. Mr. Ellis indicated that he would confer with STV whether the company will disclose their compensation amount and if the company has no issue regarding releasing the amount, he would advise Mr. Hirsch tonight or before the scheduled time of the hearing resumption. Both counsels agreed that if the compensation amount is voluntarily disclosed by STV, Ms. Billah would not have to appear for the resumption of the hearing.

HEARING RESUMPTION- March 15, 2021 @ 10:00- CANCELLED.

The Hearing Officer was informed by email on the morning of the scheduled hearing resumption that Mr. Ellis was authorized to disclose the amount of compensation paid to STV. It was disclosed that STV, Inc. was paid a professional fee of \$142,940.00 (estimated number of hours x hourly rates, plus reimbursable expenses, travel and printing) for the Arboretum Investigative Study and Stormwater Runoff Mapping- Draft and Final Report. Mr. Ellis noted that the fee covered a multi-person, several year work effect.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. DC Water charges all customers the IAC fee, including federal facilities. (21 DCMR §556.1,4101; See, Comprehensive Stormwater Management Enhancement Amendment Act of 2008, D.C. Law 17-371 (2009))
2. DC Water collects the IAC to cover the costs associated with the Clean Rivers Project and the stormwater user fee for the reduction of the combined sewer overflows (CSO). (See, D.C. Code § 34-2202)
3. DC Water determined that the IAC is a fair way to distribute the cost of maintaining storm sewers and protecting area waterways. D.C. Council Report on Bill 17-935 at 4,6)
4. The Arboretum accepts the use of impervious surface as a surrogate metric. (Statement of Mr. Ellis)
5. Both the IAC fee and the stormwater user fee collected by DC Water are based upon the same calculation metric- the amount of impervious surface on a property. (See, D.C. Code § 34-2202 and D.C. Code § 8-151)
6. The Arboretum is not challenging the calculation by DC Water of the stormwater user fee. (Statement of Mr. Ellis)
7. The Arboretum has not filed with the DOEE for a discount from the IAC. (Testimony of Ms. Billah)
8. The Arboretum is a component of USDA's ARS and is a collection-based research and education facility and public garden. (Statement of Mr. Ellis)
9. The Arboretum is located on 451 acres in northeast Washington, DC. and consists of wooded area, tree collections or nurseries, meadow areas, open space, gardens, water bodies and impervious areas such as paved walkways, buildings, parking areas and paved roadways. (Testimony of the parties; 2018 STV Report at p. 2-2)

10. The Arboretum delivers stormwater runoff into the combined overflow sewer system which DC Water manages and treats. (Testimony of Ms. Billah)
11. The Arboretum adds stormwater pollutants into the Anacostia River and MS4 Sewer Shed. (Testimony of the parties)
12. The Arboretum abuts the Anacostia River and runoff from the Arboretum enters into the tributaries on the property, such as Hickey Run, and drains into the Anacostia River. (Testimony of Ms. Billah)
13. The Arboretum hired STV Incorporated (STV) to build a hydrologic model of the property to determine the actual stormwater flows and volumes that essentially enter into the District of Columbia's sewer systems. (Testimony of Ms. Billah)
14. Much of the impervious areas within the Arboretum are disconnected and the walkways and roads do not have curbs or sewer drains. (Testimony of Ms. Billah)
15. Disconnection practices can be used to reduce the volume of runoff that enters the combined or separate sewer systems, however, disconnected impervious areas on a property are not the equivalent of natural conditions. (Testimony of Mr. Rolband)
16. The impervious surface areas within the Arboretum were not surveyed by a licensed land surveyor. (Testimony of Mr. Rolband)
17. STV impervious area calculations are not supported by any survey data; however, the boundary of the Arboretum was surveyed by a licensed surveyor. (Testimony of Mr. Rolband)
18. Impervious surface area within the Arboretum is not defined or agreed upon by the Arboretum and DC Water. DC Water has calculated an impervious area of 1,452,500 square feet (1452.5 ERUs) or approximately 33.34 acres. STV calculated an impervious area of 34.12 acres (7.57% of the Arboretum property) and in another part of STV's 2018 report, STV calculated an impervious area of 29.91 acres (1,302.912 square feet or 1302.91 ERUs). (2018 STV Report at pp. 2013 and 2-18; Proposed Findings and Conclusions of DCWASA- footnote pp. 2)
19. STV civil engineers utilized GIS aerial photographs data, USDA surface type data and walkthrough to confirm ground coverage within the Arboretum. (Testimony of Ms. Billah)
20. STV did not do, nor, did it include in its Report to the Arboretum, a quantitative comparison of the Arboretum runoff under existing conditions and the flow present under natural conditions; STV concluded that such a comparison was not necessary. (Testimony of Ms. Billah and of Mr. Rolband)
21. The basis of the STV report assumed that the majority of the existing Arboretum was already in its natural state and, as such, STV did not deem it necessary to do a hydrologic study as would be done in pre-development of a site. (Testimony of Ms. Billah)
22. STV has not opined in any of its written reports, including the final 2018 STV Report or in Ms. Billah's testimony at the Hearing, that the Arboretum's IAC liability should be reduced to zero. (Testimony of Ms. Billah and Mr. Rolband)
23. Mimicking natural conditions is not the same thing as natural conditions. (Testimony of Ms. Billah and Mr. Rolband)



24. The Arboretum, in some parts, mimics natural condition because of its wooded, meadows, open spaces and water areas; but the Arboretum also does consist of areas affected post-man and it does have impervious areas, such as, a visitor center, research buildings and other facilities, as well as, roads and walkways and trails. (Testimony of Ms. Billah)
25. A civil engineer and an environmental engineer, both, can be qualified with stormwater management experience in order to weigh in on stormwater management. (Testimony of Mr. Rolband)

#### CONCLUSIONS OF LAW

1. D.C. Code §34-2107(a)(1)-
  - (a) The sanitary sewer service charges established under the authority of this subchapter shall be based upon the following:
    - (1) A billing methodology which takes into account both the water consumption of, and water service to, a property and the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural conditions, or that causes water to run off the surface in greater quantities, or an increased rate of flow, relative to the flow present under natural conditions.
2. Congress has waived sovereign immunity for federal facilities to pay reasonable service charges- such as the IAC. See, 33 U.S.C.A. §1323(c)(1)(A) (2011)
3. The Clean Water Act requires federal facilities to pay reasonable service charges that are based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution. 33 U.S.C.A. §1323(c)(1)(A) (2011)
4. The Cleans Rivers Project arose from a March 2005 Consent Decree between the Environmental Protection Agency (EPA), the Anacostia Watershed Society, and DC Water. See, Consent Decree for *Anacostia Watershed Society v. District of Columbia Water and Sewer Authority and United States v. District of Columbia Sewer Authority and the District of Columbia*, Consolidated Civil Action No. 1:CV000183TFH (D.D.C. Mar. 25, 2005)
5. The IAC is a type of facilities charge, meant to raise necessary revenue to be in compliance with the combined sewer overflow Long-Term Control Plan as set out in the Consent Decree from which the Cleans Rivers Project arose. The IAC fee is based on each DC Water customer's contribution to the problem of stormwater runoff by measuring the customer's property's impervious surface. See, Committee Report on Bill 17-0985 at 6)
6. The D.C. Council authorized DC Water's use of impervious surface area as a surrogate metric for determining contribution to stormwater runoff. (D.C. Code § 34-2107(a) (2012). Council Report on Bill 17-935 at 6 (Nov. 21, 2008)
7. DC Water determined and the D.C. Council agreed that use of impervious area was more equitable than billing solely based on sanitary sewer use because runoff from impervious surfaces contributes significantly to the problem of combine sewer overflows. (See, D.C. Council, Report of Bill 17-935 at 4. 6.

8. Both the IAC fee and the stormwater user fee, both, collected by DC Water are based upon the same calculation metric- the amount of impervious surface on a property. See, D.C. Code § 34-2202.16(d-2)
9. The IAC fee applies all properties in the District of Columbia with impervious surfaces. See, Comprehensive Stormwater Management Enhancement Amendment Act of 2008, D.C. Law 17-371 (2009)
10. All non-residential customers of DC Water are assessed a charge based on the total amount of impervious area on each lot. The total amount of impervious surface is converted into ERUs, rounded to the nearest one-hundred (100) square feet. 21 DCMR §556.1,4101
11. No hearing officer shall have the authority to overrule any law or regulation of the District of Columbia. 21 DCMR §414.3
12. If a property owner objects to the determination of the amount of impervious area, the property owner can challenge the determination in a hearing. See, D.C. Code § 34-2305, 34-2107(c)
13. A property owner can apply with DOEE for a discount from the IAC for installing best management practices to retain stormwater runoff. See, 21 DCMR § 4107

LIST OF ADMITTED EXHIBITS:

Arboretum

Exhibit 1 – STV Investigative Study and Mapping of Stormwater Runoff(Final)- Revised August 1, 2018

DC Water

Exhibit 1(a) – Wetland Studies Report dated 12/12/2019

Exhibit 1 (b) – Wetland Report dated March 19, 2021

Exhibit 1(c) – Curriculum Vitae of Michael S. Rolband

Exhibit 2- Stormwater Management Guidebook

Exhibit 4 (a), (b) and (c)- three aerials contained in DC Water's Exhibit Book identified as 4A, 4B and 4C- Impervious Area Charge Determination

Exhibit 6- Letter to Dr. Richard T. Olsen from Carolyn MacKool dated July 13, 2018

OTHER EXHIBITS REFERENCED DURING OR SUBMITTED FOR THE HEARING

1. Curriculum Vitae of Shamarukh N. Billah
2. Exhibit 3- McCool denial letter to Dr. Olsen dated July 13, 2018
3. Exhibit 3 (a) - DC Water Bill Statement dated 6/14/2018 – Acct. [REDACTED]
4. Exhibit 3 (b) - DC Water Bill Statement dated 8/17/2018 – (Acct. [REDACTED])
5. Exhibit 3(c) - DC Water Bill Statement dated 8/24/2018 (Acct. [REDACTED])
6. Exhibit 3 (d) - DC Water Bill Statement dated 8/24/2018 (Acct. [REDACTED])
7. Exhibit 5(a) - Letter to Shaun Donovan from Mark T. Kim dated April 15, 2015
8. Exhibit 5 (b)- Letter to Shaun Donovan from Mark T. Kim dated April 15, 2016 with attachments
9. Exhibit 7- D.C. Code §34-2107
10. Exhibit 8- D.C. Code §34-2202.16

11. Exhibit 9- D.C. Code §8-151.01
12. National Arboretum Power Point presentation
13. Updated National Arboretum Power Point presentation
14. DC Water Exhibit Book
15. Curriculum Vitae of Evelyn S. Tyson
16. Motion to Dismiss pleadings
17. Motion to Dismiss Order dated March 9, 2020
18. Order Granting Consent Motion to Bifurcate
19. Final Memorandum of the National Arboretum in Support of its Petition to Adjust Its Clean Rivers Impervious Area Charge (IAC) Assessment
20. Proposed Findings of Fact And Conclusions of Law Of District of Columbia Water And Sewer Authority

### ISSUES

1. Whether DC Water's billing methodology results in an error when assessing the Arboretum because it is a unique property, where the net impervious coverage is only 7.5% of the total land area-a much lower percentage than the typical property upon which the ERU calculation is based?
2. Whether the Arboretum should be treated as the equivalent of natural groundcover resulting in an IAC charge of zero?
3. Whether the Arboretum's argument for elimination of IAC fee is based upon volumetric contribution even though it states that it accepts impervious surface as a surrogate metric?
4. Whether DC Water's IAC fee charged to the Arboretum is fair and reasonable?
5. Should the Arboretum be exempt from payment of IAC based upon its unique characteristics because only a small amount of stormwater from the Arboretum actually enters into the CSO water shed before being discharged into the local waterways?
6. Whether the Arboretum has established that it is being charged too much by DC Water for impervious area within the property?

### DECISION

The Arboretum hired STV Incorporated to build a hydrologic model of the property to determine the actual stormwater flows and volumes that essentially enter into the District of Columbia sewer systems. The STV report asserts that it demonstrates to DC Water the reality of what is actually occurring versus DC Water's current assumptions for determining the IAC fees, which is asserted to be based on a simplified impervious cover calculation that completely disregards the property's hydrology. STV concluded that stormwater runoff from the Arboretum does not contribute significantly to DC Water's combined sewers and that only the sanitary sewer discharges from the property contribute to DC Water's combined sewer system. In its report, STV concluded that the Arboretum should only be charged for the percentage of the site that discharges into the MS4 and CSO watersheds and that a calculation of the runoff should be used in lieu of the impervious area methodology used by the DC Water for purposes of assessing the IAC. Initially, the Arboretum contended that its IAC assessment should be reduced by 90%,

however, as of the time of hearing, the Arboretum contends that its IAC assessment should be reduced to zero.

The Arboretum makes several arguments for reduction of its IAC fee to zero:

1. The low percentage of impervious area creates minimal stormwater runoff, and the interspersing of the impervious area among large swaths of pervious surface area results in most of the Arboretum's stormwater either infiltrating or evapotranspiring without ever entering into the stormwater system managed by DC Water.
2. The Arboretum is being overcharged for IAC because it has been assessed for impervious areas that do not prevent the entry of water into the ground as occurring under natural conditions, or that cause water to run off the surface in greater quantities or at an increased rate of flow, relative to the flow present under natural conditions.
3. Of the entire impervious area, only a fraction resides within the CSO Sewer Shed with the remaining runoff going directly into the Anacostia River or Hickey Run.
4. The Clean Water Act required federal facilities to pay reasonable service charges that are based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution ( in terms of quantities of pollutants or volume or rate of stormwater discharge or runoff from the property) and the way the Arboretum is being charged is not fair and equitable because it does not result in a fair approximation of the Arboretum's contribution to stormwater pollution to the combined sewer overflow system.
5. As a whole, the Arboretum exists as a property occurring under natural conditions and should be treated as the equivalent of natural groundcover.

DC Water makes the argument that the Arboretum is no longer natural ground cover in its entirety, but a combination of land cover types which result in increased stormwater runoff relative to natural conditions of woods in good condition. DC Water, further, counters that how it determines the IAC is based upon authorization from the DC City Council- based on the amount of impervious area on a property. DC Code § 34-2107(a)(1). DC Water asserted that the D.C. City Council specified that impervious surfaces include either those that increase runoff or those that prevent or slow infiltration. DC Water pointed out that the Arboretum has chosen not to challenge the calculation of the stormwater user fee, which DC Water is authorized to collect separate from the IAC, for the District of Columbia and such fee is, likewise, based on the amount of impervious surface on a property. DC Code § 34-2202.16 (d-2). The utility argues that it was required to coordinate the development and implementation of the MS4 stormwater user fee with the IAC, to ensure that both fee systems employ consistent methodologies. D.C. Code § 34-2202.16 (d-3). And it is required to collect the stormwater user fee "from each property in the District of Columbia...based on an impervious area assessment of the property." DC Code § 34-2202.16(d-2). DC Water pointed out that the D.C. City Council explicitly stated that the amount of impervious surface on a property was the metric for calculating both the stormwater user fee and the IAC. D.C. Code § 8-151.01(6).

With respect to any exemption of a property from the IAC, DC Water countered that, based upon legislative history, the Council intended to apply the IAC to all properties in the District of Columbia with impervious surfaces. It stated that when the stormwater fee was

amended and the IAC added in 2009, the Council no longer restricted these charges to D.C. Water's retail water and sewer customers. Comprehensive Stormwater Management Enhancement Amendment Act of 2008, D.C. Law 17-371 (2009). DC Water asserted that the 2009 amendments directed the District to establish a method for charging a stormwater user fee to each property in the District based on an impervious surface area assessment of the property and to coordinate the methodology with that used for the IAC. 21 DCMR § 556.1, 4101.

DC Water asserted that basing the IAC on impervious area rather than solely on any volumetric criteria is fair and equitable because impervious surfaces contribute to stormwater runoff and that such had been explained by DC Water in its testimony supporting the IAC before the City Council when the Council enacted the companion bill authorizing the IAC. Water and Sewer Authority Equitable Ratemaking Amendment Act of 2008, D.C. Law 17-370 (2009).

Taking all of the above arguments into consideration and base upon the facts and testimony adduced in this matter, the Hearing Officer believes that the Arboretum, while purporting that it accepts that the D.C. Code allows a billing methodology that considers impervious surface areas and it is not challenging using impervious surface as a surrogate metric, is, nevertheless, attempting to carve out an exception based upon the Arboretum as a unique property so that, unlike other properties within the District of Columbia, it should not pay IAC. The Hearing Officer is further convinced that the Arboretum's request for such an exception is based upon volumetric contribution to stormwater runoff by the Arboretum. Having been convinced that the Arboretum is basing its request for elimination of the IAC upon arguments based upon volumetric contribution, this hearing officer has no authority to overrule any law or regulation of the District of Columbia. 21 DCMR §414.3. The Hearing Officer has no authority to displace District law with an entirely different methodology for determining the basis for charging IAC to District property owners. (See, D.C. Code § 34-2107)

It is clear that District of Columbia law establishes measurement of impervious surface area of each and all properties within the City upon which to base IAC assessment. A hearing officer has no authority to change the standard to upon volumetric contribution, uniqueness of the property or any other factor. The fact that the Arboretum says that it is not making a volumetric argument does not change the nature of the argument. Each argument by the Arboretum rests upon volumetric contribution. The Arboretum hired STV to perform an analysis of the existing drainage on the Arboretum property in order to reduce the IAC charges. The Arboretum argues that it is a natural ground cover and, essentially, does not contribute to runoff into the sewer system and pollution of the rivers. The Arboretum argues that the majority of impervious surfaces within the property are disconnected and such surfaces do not contribute or increase stormwater runoff. The Arboretum argues that it is not being fairly and reasonably assessed IAC in fair approximation of its proportionate contribution to stormwater pollution (in terms of quantities of pollutants or volume or rate of stormwater discharge or runoff from the property). Each of these arguments is based upon volumetric contribution of the Arboretum either to runoff into the sewer shed or pollution into the Anacostia and its tributaries.

With respect to the Arboretum's argument that Congress only waived federal immunity for federal facilities to pay reasonable service charges, such as the IAC- if they are based on some fair approximation of the proportionate contribution of the property or facility to

stormwater pollution, the Hearing Officer agrees with DC Water (See, Proposed Findings of Fact, Conclusions of Law of District of Columbia Water and Sewer Authority, pg. 17) that 33 U.S.C. § 1323(a) forbids displacement of District of Columbia statutory-prescribed § 34-2107(a)(1) billing methodology with a federal standard anchored in § 1323(c)(1)(A) (Clean Water Act 2011 Stormwater Amendments) The Hearing Officer agrees with and adopts that portion of DC Water's discussion of the 2011 Clean Water Act Amendments as follows:

"The displacement of the statutory-prescribed § 34-2107(a)(1) billing methodology with a federal standard anchored in § 1323(c)(1)(A) is expressly forbidden by 33 U.S.C. § 1323(a). Section 1323(a) specifically mandates federal departments, agencies or instrumentalities, like the Arboretum, to comply with all Federal, State, interstate, and *local requirements*, administrative authority and process and sanctions" *Id.* at § 1323(a) (emphasis added). Thus, the statute expressly precludes the notion of any federal preemption via the CWA of the District's statutory standard for prescribing the basis for charging for IAC. In short, 33 U.S.C. § 1323 coexists side-by-side with all District statutory and regulatory requirements governing the IAC charge." At pg. 17

Regarding the Arboretum's argument that it has been overcharged, the fact that the majority of the Arboretum's 451 acres are either undeveloped or maintained as naturally wooded, orchard/groves, meadow or garden areas does not preclude DC Water from assessing IAC based upon impervious surface withing the property. The fact is that the Arboretum does have impervious areas within the property. It is undisputed that the Arboretum has research buildings, nurseries, walkways, parking areas and roads within the property. The Arboretum seems to set the amount of impervious surface at 7.57% of the Arboretum's property. (See, Final Memorandum of the National Arboretum, pg. 2) DC Water has calculated an impervious area of 1,452,500 square feet (1452.5 ERUs) or approximately 33.34 acres. STV calculated an impervious area of 34.12 acres (7.57% of the Arboretum property) and in another part of STV's 2018 report, STV calculated an impervious area of 29.91 acres (1,302.912 square feet or 1302.91 ERUs). As such, DC Water's calculation of impervious area within the Arboretum does not appear unreasonable, in that, the utility is actually billing based upon less impervious surface area than the Arboretum acknowledges to exist within its boundaries.

During the hearing, much was said as to whether the Arboretum is natural groundcover and what is natural condition. D.C. Code §34-2107(a)(7) states in relevant part "A billing methodology which takes into account...the amount of impervious surface on a property that either prevents or retards the entry of water into the ground as occurring under natural condition, or that causes water to run off the surface in greater quantities, or an increased rate of flow, relative to the flow present under natural condition."


The Arboretum does accept that it has some surface runoff, but it argues that its disconnected impervious surfaces cause the runoff to be consistent with runoff as it occurs under natural conditions. It purports that because the property has only 7.5% impervious cover, most of which is largely disconnected and surrounded by large swaths of natural cover, the Arboretum qualifies as a natural groundcover and should not be subject to IAC. The Arboretum also argues

that stream degradation does not occur until there is 10% impervious cover in a specific area and that 10% impervious surface is the baseline of runoff as it is naturally absorbed in the soil.

Mr. Rolband spoke of curve numbers and testified that natural condition is pre-man woods in good condition. He testified that any amount of impervious surface increases the curve number higher than the curve number of natural conditions which he defined as woods in good condition. STV in its report fails to support the Arboretum in finding that impervious surface area of 10% or less is the equivalent of natural conditions. No support is found that the runoff into the Anacostia and its tributaries as well as into Hickey Run and Kingman Lake does not pollute and/or effect the quality of water in these water bodies. Mr. Rolband pointed out that STV failed to calculate stormwater runoff under "natural conditions" and to compare it with stormwater runoff curve numbers under present conditions. Ms. Billah testified that STV assumed that the majority of the Arboretum was in its natural state. The Arboretum took issue with Mr. Rolband's definition of natural condition. STV failed, however, to provide a definition of natural condition. Clearly, the Arboretum is not in a natural condition because both parties agree to the existence of impervious surface areas within the property. The Hearing Officer is not persuaded that because a large part of the Arboretum is pervious area that DC Water is to ignore and not calculate impervious surface areas within the property or that the utility has the ability and/or discretion to not charge IAC, especially, when it charges for stormwater user fees which are also based upon impervious area. STV has not opined in any of its written reports, including the final 2018 STV Report or in Ms. Billah's testimony at the Hearing, that the Arboretum's IAC liability should be reduced to zero. Mimicking natural conditions is not the same thing as natural conditions and Mr. Rolband testified that one cannot match natural volume of run-off but you can get close. Ms. Billah testified that the Arboretum, in some parts, mimics natural condition but she acknowledged the existence of impervious surface areas within the property.

The testimony was that STV civil engineers utilized GIS aerial photographs data, USDA surface type data and walk through to confirm ground coverage within the Arboretum. The Arboretum did not present a survey of the amount of impervious area within the property. There was testimony that a boundary survey was performed but no survey of impervious area. As such, the Arboretum can not prove that DC Water's calculation of its impervious area is wrong. STV presented two (2) different numbers regarding impervious area within the Arboretum. DC Water has calculated an impervious area of 1,452,500 square feet (1452.5 ERUs) or approximately 33.34 acres. STV calculated an impervious area of 34.12 acres (7.57% of the Arboretum property) and in another part of STV's 2018 report, STV calculated an impervious area of 29.91 acres (1,302,912 square feet or 1302.91 ERUs). Having failed to survey the impervious surface areas within the Arboretum and providing evidence of the footage of impervious surface within the property, the Arboretum falls short in proving that DC Water's calculation of the property's impervious surface area is wrong.

For the reasons stated above, the Hearing Officer concludes that the Arboretum is not entitled to a 100% reduction of impervious area charges and a refund based upon a failure to meet its burden of showing that DC Water has calculated its IAC charge in error.

  
Janet W. Blassingame, Hearing Officer

Date: July 2, 2021

**Copies to:**

**Tyler Ellis, Attorney Advisor  
Office of General Counsel  
US Department of Agriculture  
1400 Independence Ave., SW  
Room 3329-C  
Washington, DC 20250**

**Emil Hirsch, Esq.  
Carlton Fields, P.A.  
1025 Thomas Jefferson St., NW  
Suite 400 West  
Washington, DC 20007-5208**



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

In re: [REDACTED]  
[REDACTED] Rittenhouse Street, NW  
Washington, DC 20001

Account No: [REDACTED]  
Case No: 21-462301

Amount in Dispute: \$ 1,090.54

Before Janet W. Blassingame, Hearing Officer  
September 21, 2021 at Noon

The customer contested a water and sewer bill for the above account for the period of time April 5, 2021 to May 5, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 22, 2021. Present were: [REDACTED], the petitioner, represented by Grace Soderberg, Esq., Office of Peoples Counsel for the District of Columbia (OPC), Arlene Andrews and Kimberly Arrington, on behalf of DC Water; Stephen Dudak, Manager, Water Division, OPC; Valea Valentine, OPC; and, Kelly Fisher, Esq., DC Water, observing only.

The property involved is a single-family home occupied by [REDACTED] and her husband. The house has two and one-half (2 ½) bathrooms and a single toilet in the basement, two (2) outside faucets, one kitchen, a washing machine, a dishwasher, a utility sink and radiators. Typically, the water and sewer bills range between \$100.00 to \$110.00.

[REDACTED] testified that she noticed a spike in her April 2021 bill and her husband telephoned DC Water and was told to check the fixtures and faucets. She stated that her husband performed dye tests on the toilets and he entered into a payment plan with the utility. The customer complains that no one at DC Water told her husband when he called regarding the bill that he could file something in writing to dispute the bill. [REDACTED] stated that the bill payment plan agreed to by her husband required payments higher than the couple could afford. She stated that her husband is retired and she has delayed her own retirement until December 2021.

[REDACTED] stated that she consulted a plumber over the telephone but the plumber did not come out to her house because the usage had gone down. [REDACTED] stated that the spike in water usage was in April 2021 but that usage declined by fifty percent (50%) in May but was still high than normal. She stated that her March usage was OK and by June 2021, the usage was down.

██████████ stated that only she and her husband reside now in the house. She stated that her son was in the house but left on February 14, 2021. She stated that her son resided in the attic of the home.

██████████ acknowledged that she did not receive any HUNA alerts because they had disconnected the home land line telephone. She referred to pages 14 – 25 of the DC Water Interaction Notes which reflect that the HUNA alerts sent by the utility failed. ██████████ stated that she did not think to contact DC Water to notify the utility that the phone on file was disconnected and to update the contact information with the utility.

██████████ testified that her neighbor has had water issues in their basement. ██████████ also stated that she has seen utility markings on the street at the neighbor's house.

██████████ stated that her water meter sunk and DC Water raised the meter back up. ██████████ stated that she has wondered whether the neighbors' work had anything to do with her own water meter. She stated that she has not asked her neighbors if they have a water bill issue.

The customer stated that she has talked with Ms. Valentine of OPC to explore programs for help with her water bill.

██████████ stated that a month ago, she took off the top of the toilet in her powder room because the toilet would not flush.

Ms. Soderberg called Valea Valentine as her next witness. Ms. Valentine stated that she is employed at OPC as a consumer outreach specialist in the OPC Water Division. Ms. Valentine testified that she has tried to assist ██████████ with information regarding assistance programs at the DC Department of Energy and Environment. She stated that in the past ██████████ was ineligible for assistance due to income restrictions but recently the agency has raised the income levels to assistance.

In response to questioning by Ms. Andrews, Ms. Valentine acknowledged that she sent an email to DC Water on June 10, 2021 in which she stated that customer had an internal leak. ██████████ stated, however, that she does not remember discussing the existence of a leak with ██████████. Ms. Valentine stated that she believes that DC Water's customer service representative said that the customer had a leak.

On re-direct, Ms. Soderberg asked Ms. Valentine whether or not DC Water customer service representatives generally tell customers that they had a leak causing the high-water

usage; Ms. Valentine affirmed that to be true. Ms. Valentine stated that the customer was told that the time had passed for a plumber to come to house to investigate the cause of the high usage and the [REDACTED] said that her husband had done self-tests.

Ms. Soderberg next called Stephen Dudek. Mr. Dudek testified that OPC was exploring all available programs that [REDACTED] may qualify for to obtain assistance regarding her water bill. Mr. Dudek also stated that he was discussing renegotiating the payment plan entered by the customer's husband with DC Water.

Ms. Andrews stated that the meter reads were actual, hourly and transmitted by signal four (4) times per day to the nearest building tower for invoicing by DC Water. She testified that the water meter was pulled on August 9, 2021 and tested. She stated that the water meter was determined to have 98.98% accuracy. She explained that DC Water follows the standards established by the American Water Works Association which finds water meter accuracy to be 98.5% to 101.5%.

Ms. Andrews asserted that a water meter only advances when water is being used. She stated that there are no misreads on an automated water meter and that water meters cannot self-repair.

Ms. Andrews testified that DC Water's HUNA alert system tried to send high-water usage alerts to the customer three (3) times per day starting March 11, 2021 and that the system continued to send alerts thru the month of March. Ms. Andrews stated that the customer's water usage declined on April 20, 2021 around 11:00 a.m.

Ms. Andrews testified that the utility's investigation found no evidence of meter overread, faulty computation of the bill or faulty meter.

Ms. Andrews concluded that after all tests and checks, the findings were inconclusive as to the cause of the high usage and as such, no adjustment was warranted.

Ms. Arrington interjected stating that she is the Supervisor of Escalations for DC Water and that the AMI automated system populates reads to the date collection unit and information comes in multiple times per day. Ms. Arrington stated that when she reviewed the customer's meter reads, she saw no misreads or any error. Ms. Arrington, also, stated that she consulted with the Billing Department. Ms. Arrington stated that the customer's water meter is located in the tree box and it's put on the work order to help the technician find the meter if needed. Ms. Arrington stated that she does not know what "incorrect Flag-False" means on the work order. She explained that DC Water puts in a new water meter whenever it pulls a water meter for testing in order to avoid billing the customer based upon an estimate.



Ms. Arrington stated that whenever a water meter fails testing, the utility does not bring the dispute to hearing and will adjust the customer's account for the high usage registration. She stated that when a water meter passes testing, the utility will go forward with the administrative hearing.

[REDACTED] asked Ms. Arrington how data is transmitted to the tower and Ms. Arrington responded that a grey box is attached to the meter and the box sends the signal. [REDACTED] stated that she has had problems with cellular service and does not have optimum service at her home. Ms. Andrews responded that DC Water has hourly meter readings from the property. Ms. Arrington stated that meter read data goes to towers throughout the city. She also stated that the markings on the sidewalk seen by the customer may have come from another utility other than DC Water. Ms. Andrews added that she checked Miss Utility and saw no work by DC Water near [REDACTED] property for the period of January 2021 to June 2021. Ms. Andrews further stated that there was nothing in the DC system of being on the street.

Mr. Dudek stated that he is the Manager for the Water Services Division of OPC. He testified that he has seen three (3) unexplained high water bills regarding clients of OPC that DC Water has settled/adjusted the bills. Mr. Dudek stated that he does not know but speculates that it was a meter issue. He stated that he thinks that [REDACTED] dispute merits settlement as well. He asserted that the water meters in the other cases had passed testing as well. He stated that one case had a \$17,000.00 water and sewer bill for a three (3) month period. He stated that another case involved one bathroom, a huge spike in water usage and then usage back to normal without the customer changes behavior.

Ms. Andrews stated that she is unsure of the referenced cases but believes one case may have involved an underground leak.

Ms. Arrington stated that each dispute is based upon individual facts.

Ms. Soderberg asked to submit proof of arbitrary treatment by DC Water in cases similar to [REDACTED] matter. She asserted that someone at DC Water said that the utility had no confidence in the meter test so the case was settled.

Without objections from DC Water, the Hearing Officer granted Ms. Soderberg's request and declared that the matter would be held open until close of business on September 23, 2021 for her to submit any supporting documents relating to her allegations. Ms. Soderberg was asked to redate the names of the customers but to provide the account number so that DC Water would be able to respond.

In Summary, Ms. Soderberg asserted that her client had no change in occupancy, habits or usage regarding water in her home. She stated that [REDACTED] checked the fixtures and found no defects or leaks and, as such, the usage is unexplained. She stated that [REDACTED] was unaware of the need to update her contact information with the utility from that provided when she moved into the house in year 1986.

Post-hearing:

Ms. Soderberg submitted a series of email correspondence between OPC, their clients and DC Water. Ms. Arrington and Lisa Barton were the DC Water representatives conveying that the utility was adjusting a customer's account. The email from Ms. Arrington was dated May 24, 2021 and provided no explanation as to why the account was being adjusted. The email from Lisa Barton dated July 9, 2021 stated that the utility was adjusting the account due to a discrepancy in the meter readings. The email from Kimberly Arrington dated May 19, 2021 advising of an adjustment did not provide explanation. An email dated May 27, 2021 to OPC from their client responded to inquiry by OPC asking their client for specifics on DC Water's decision to adjust. The client responded that in a conversation with Ms. Arrington, Ms. Arrington said that "she struggled with the results of the meter verses the findings of the new one. She said based on all the information I had provided, the frustrations I had with customer service, and the amount of the bill she wasn't comfortable with the original meter reading. It kept her up at night trying to understand the problem".

DC Water submitted a Response to OPC Submission. DC Water pointed out that each customer dispute is highly factual, which makes comparing one dispute to another a difficult if not a fruitless endeavor. DC Water asserted that the emails submitted by OPC do not support the allegation the DC Water does not have confidence in its water meters or that there are any long-standing, pervasive issues with water meters. In summary, DC Water asserted that each dispute must be judged on its own merits given the facts that underline that dispute. The utility asserted that the emails are irrelevant and should not be considered.

Based upon the foregoing testimony, evidence and post-hearing submissions by the parties, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence owned and occupied by [REDACTED] and her husband. (Testimony of [REDACTED])
2. The period in dispute is April 6, 2021 to May 5, 2021. (Testimony of the parties)
3. There was a spike in water usage at the house from March 9, 2021 to April 20, 2021. (DC Water Interaction Note dated 6/21/2021 between Kimberly Arrington



and Lisa Barton- Investigation Letter)

4. Water usage at the house declined in May 2021 and usage returned to normal as reflected on the June 2021 billing. (Testimony of [REDACTED])
5. DC Water attempted to send to the customer numerous HUNA alerts in March 2021 continuing in April 2021, however, the customer had disconnected the land line telephone at the residence and had not updated her contact information with DC Water to receive high-water usage alert notifications. (Testimony of the parties)
6. When the customer received her bill from DC Water, she saw a high bill charge and her husband contacted the utility regarding the bill in May 2021; prior to receipt of the bill, the customer denied being unaware of any plumbing or water issues existing in the house. (Testimony of [REDACTED])
7. The customer's husband entered into a payment plan with DC Water regarding the amount owed on their water and sewer account. (Testimony of [REDACTED])
8. The customer's husband inspected the house for water issues and performed dye tests on the toilet and found no water issues. (Testimony of [REDACTED])
9. The customer consulted a plumber regarding her high-water bill however, by the time that she telephoned the plumber, her water usage had declined and the plumber did not come out to the house to inspect for water issues. (Testimony of [REDACTED])
10. In an email to DC Water, OPC wrote that the customer had an internal leak. (Testimony exchange between Arlene Andrews and Valea Valentine; email dated June 10, 2021)
11. The customer attempted to dispute her April bill but the utility ruled the dispute as untimely but accepted the dispute of the May 2021 bill in that the husband had contacted DC Water in May 2021. (The record in this matter)
12. There was no evidence of street work being done by DC Water in the vicinity of property during the period in dispute. (Testimony of Arlene Andrews)
13. There was not evidence of any connection between a neighbor's basement water issue and the customer's water usage. (Testimony of [REDACTED])
14. DC Water tested the water meter and the meter was determined to have 98.98% accuracy. (Testimony of Arlene Andrews)
15. In its investigation of the customer's dispute, DC Water found no meter overread, miscalculation of the bill or meter malfunction. (Testimony of Arlene 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 a 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 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;
- (e) Check the meter for malfunction;
- (e) Check the water-cooled air conditioning system, if any, for malfunction; and
- (e) 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

### DECISION

The customer failed to establish that more likely than not the bill being disputed was wrong or for some other reason, she should not be responsible for its payment.

The evidence and testimony established that high-water usage occurred at the residence starting in March 2021 and continued in April 2021. The utility attempted to notify the customer of the high usage occurring at the home but the customer had disconnected her land line telephone and not provided new contact information to the utility. The customer testified that upon receipt of the May bill, she noticed the high charge for water service and her husband contacted the utility. In this case, however, high usage started in the prior billing cycle and the customer received a bill in April 2021 which reflected higher than normal usage occurring at the home, however, the customer failed to respond to the earlier billing and her dispute of the billing was declared untimely by the utility when she did attempt to dispute the bill. As such, not only did the customer not update her contact information for HUNA alerts when she disconnected her land line telephone, it appears that she ignored or at least did not react regarding an earlier billing reflecting higher than normal water usage occurring at the property. The testimony and



evidence further established that the water meter was functioning within appropriate standards of water meter accuracy and that the utility had not miscalculated the customer's bill based upon the meter reads from the property.

The customer, through counsel, made an argument of arbitrary handling of bill disputes by DC Water and asserted that her dispute was similar to other disputes in which the utility had adjusted the customer's account. The Hearing Officer finds no evidence of arbitrary handling of the customer's account. Each dispute stands on its own merits. In the two (2) matters presented by counsel in support of her argument, no explanation was provided in the email train to allow the Hearing Officer to know the basis for the adjustment of account. In the third case, the email explanation for adjustment referred to the totality of information submitted to DC Water by the customer as well as frustrations with customer service and the amount of the bill, in addition to differences in the old meter reading vs readings from the replacement meter. None of the factors cited are relevant in the [REDACTED] matter. As already stated, no issue was found in the functioning of the water meter at the property involved. There was no testimony of any difficulty with DC Water customer service and the amount of bill involved in the cited case was considerably more than the amount at issue in this case. Here it is clear that the high-water usage occurred over an extended period of time and the customer failed to react to what was occurring at the property in addition to failing to take appropriate steps to receive notification from the utility if it tried to send alerts to customer.

Ultimately, a property owner is responsible for what occurs at her property. Here, if the property owner had been more diligent in reacting to bill statements sent to her or if she had updated contact information with the utility, she might have been able to mitigate her damage from high usage occurring at her property. By the time that the customer reacted in this case, the water usage had declined and returned back to normal as evidenced by her husband not finding anything leaking when he performed the dye tests and by the plumber declining to come out to the property upon being called by the customer after the issue was resolved.

Finally, OPC sent an email to DC Water stating that the customer had an internal leak. It seems unlikely that OPC would make such a statement in error or based upon something other than information from its client. Notwithstanding, the testimony that the writer of the email could not remember talking to the customer regarding the existence of a leak in the home even though a leak was referenced in correspondence, it remains that all checks and test could not find the cause of the increased water consumption and pursuant to 21 DCMR 408, when there is no reasonable explanation for excessive consumption, DC Water does not adjust a customer's account for the increased usage.

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



By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept. 30, 2021

Copy to:

[REDACTED]

[REDACTED] Rittenhouse St. NW  
Washington, DC 20015

Grace Soderberg, Esq.  
Office of People's Counsel  
1133 15<sup>th</sup> Street, NW, #500  
Washington, DC 20005-2710

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

In re: [REDACTED]

[REDACTED] Rhode Island Avenue, NW [REDACTED]  
Washington, DC 20001

Account No: [REDACTED]  
Case No: 21-509299

Amount in Dispute: \$684.35  
Period in Dispute: 5/8/2021 -6/7/2021

Before Janet W. Blassingame, Hearing Officer  
September 21, 2021 at Noon

The customer contested a water and sewer bill for the above account for the period of time May 8, 2021 to June 7, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 21, 2021. Present were: [REDACTED], the petitioner; and, Arlene Andrews and Kimberly Arrington, on behalf of DC Water.

The property involved is a mixed-use row house. The basement level of the house is a dental office operated by the petitioner. The upper two levels of the house are residential but have been vacant since the end of year 2019. Regarding the dental office, there is one bathroom, two (2) sinks, two (2) air water syringes, a hot water heater and an expansion tank. One doctor works in the office and has a three (3) person staff. The water and sewer bill ranges between \$200.00 and \$300.00 per billing cycle.

[REDACTED] testified that over the Memorial Day Weekend, the expansion tank which is located in the utility room of the basement level of the house, developed a crack and leaked water until she returned to the office on Tuesday. [REDACTED] explained that she was out-of-town for the long weekend and that the dental office was closed. She stated that upon discovering the plumbing issue, she immediately took action to have the repair made. [REDACTED] expressed regret that she did not receive a high-water usage alert from DC Water. She asserted that even though she was out-of-town, if she had gotten a HUNA alert, she could have contacted a staff member or a neighbor with a key to go into the property to investigate whatever could have been causing high usage at the property.

Ms. Andrews interjected that DC Water did, in fact, send the customer a high-water usage alert on June 1, 2021.

Ms. Andrews testified that the meter reads from the property are actual and taken hourly. She stated that meter reads are transmitted by a MTU four (4) times daily to a tower and then transmitted to DC Water.

Ms. Andrews testified that the utility did not test the water meter at the property as part of its investigation of the customer's dispute because the customer submitted a plumber's report to the utility which identified the cause of the high-water usage. Ms. Andrews stated that the plumber's report was received by DC Water on June 8, 2021 and the report was dated June 2, 2021.

Ms. Andrews asserted that there are no mis-reads on an automated water meter and that a water meter does not self-repair. She reiterated that DC Water sent a HUNA alert to the customer on June 1, 2021.

Ms. Andrews stated that the spike in water usage occurred May 30, 2021 to June 1, 2021 and that 25.4 CCF of water were lost.

Ms. Andrews concluded by pointing out that 21 DCMR 406 states that the utility will not adjust a customer's account will high usage is caused by an internal fixture. She stated that, in this case, the utility concluded that the high usage was controlled internally.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a mixed used row house owned by [REDACTED]. (Testimony of [REDACTED])
2. The period in dispute is May 8, 2021 to June 7, 2021. (Testimony of the parties)
3. That an expansion tank in the utility room of the basement of property cracked sometime during Memorial Day weekend causing water to flood the dental office located in the basement of the house. (Testimony of [REDACTED])
4. The dental office was closed Memorial Day weekend 2021 and no one was in the office, thus the plumbing problem was not discovered until the Tuesday following the holiday (Testimony of [REDACTED])
5. Upon return to the office on Tuesday following the Memorial Day weekend, [REDACTED] discovered water in the dental office and she hired a plumber to address the issue. (Testimony of [REDACTED])
6. The customer submitted a plumber's report dated June 2, 2021 to DC Water on June 8, 2021 reflecting that an expansion tank cracked and water was on the floor and walls. (Testimony of the parties; Plumber's reported dated June 2, 2021 (plumber's name was obscured by copy)
7. There was a spike in water usage recorded by the water meter at the property from May 30, 2021 to June 1, 2021. (Testimony of Arlene Andrews)
8. Memorial Day 2021 was on May 31, 2021. (referenced to 2021 calendar)

#### 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. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

### DECISION

The customer in this matter acknowledged that due to a cracked expansion tank in the utility room a significant amount of water leaked in the basement dental office of the property over 2021 Memorial Day weekend. Based upon the customer's testimony and the plumber's report submitted, the preponderance of the evidence is reached that the cracked tank caused the increased water registration on the water meter which occurred between May 30, 2021 and June 1, 2021.

D.C. Municipal Regulation 21 DCMR 406.2 bars adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment.

As such, the customer fails in meeting her burden of proof to show that the disputed bill is wrong or that she should not be responsible for its payment based upon some other ground. Accordingly, the determination by DC Water that the bill is correct and no basis exists for adjustment of the customer's account exists is hereby **AFFIRMED**.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept. 30, 2021

Copy to:

██████████  
██████████ Rhode Island Avenue, NW ██████████  
Washington, DC 20001

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

In re: [REDACTED]  
[REDACTED] 5<sup>th</sup> Street, NW  
Washington, DC 20011

Account No: [REDACTED]  
Case No: 21-204220

Amount in Dispute: \$695.03  
Period in Dispute: 9/17/2020 – 10/16/2020

Before Janet W. Blassingame, Hearing Officer  
September 14, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time September 17, 2020 to October 16, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 14, 2021. Present were: [REDACTED], the petitioner; and, LaFatima Black and Kimberly Arrington, on behalf of DC Water.

The property involved is a single-family residence occupied by [REDACTED] since year 2002. The house has one and one-half (1 ½) bathrooms, one kitchen, radiators, a washing machine, a utility sink, and one outside faucet. [REDACTED] lives with her 27-year-old granddaughter. The water and sewer bill has averaged \$112.00 per billing cycle. [REDACTED] testified that her water and sewer bill in July 2020 was \$136.00 but in August 2020, the bill was \$427.58. She stated that current bill for August 2021 is \$100.00 and in November 2020, the bill was \$80.00.

The customer testified that there were no repairs, no extra people in the home and nothing unusual going on in the house during the period in dispute. [REDACTED] stated that she was working from home and that she felt that she would know if a toilet was running in the house. [REDACTED] asserted that she feels that the disputed bill is a mistake.

[REDACTED] testified that she lives near the corner of 5<sup>th</sup> Street and Missouri Avenue and in the intersection, there has been a water puddle.

[REDACTED] stated that she did not talk with her neighbors regarding their water bill experience.

Ms. Black interjected that she found no record of work by DC Water at the intersection of



5<sup>th</sup> Street and Missouri Avenue.

Ms. Black testified that the meter reads were actual and transmitted to the nearest tower. She stated that the reads are taken hourly. She also stated that a water meter only advances when water is being used and that there are no misreads on automated water meters.

Ms. Black testified that DC Water tested the customer's water meter and the meter was determined to have 99.11% accuracy. Ms. Black explained that DC Water follows the standards set by the American Water Works Association that water meter accuracy is between 98.5% and 101.5%.

Ms. Black stated that there was a significant spike in water usage at the customer's home from July 28, 2020 to October 2, 2020. Ms. Black stated that the utility ruled out the existence of an underground leak as a possible cause of the high-water usage because the usage declined and underground leaks will not decline until repaired.

Ms. Black stated that no HUNA alerts were sent to the customer because the customer did not have contact information on file with the utility. She stated that the customer provided contact information when she called DC Water on October 28, 2020.

Ms. Black asserted that the utility's investigation showed that there were no meter overread or doubtful meter registration.

Ms. Black concluded that because no explanation of the high usage was found, the findings were inconclusive and pursuant to 21 DCMR 408.1, no adjustment of the customer's account is permitted to be made for any portion of the excessive consumption.

Based upon the foregoing evidence and testimony adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family residence occupied by [REDACTED] and her granddaughter. (Testimony of [REDACTED])
2. The period in dispute is September 17, 2020 to October 16, 2020. (Testimony of the parties)
3. There was a significant spike in water usage at the property from July 28, 2020 to October 2, 2020. (Testimony of LaFatima Black)
4. The customer was unaware of any plumbing issues in the home and had no repairs performed or visitor during the period in dispute. (Testimony of [REDACTED])
5. DC Water tested the water meter and the meter was determined to have 99.11% accuracy.

(Testimony of LaFatima Black; DC Water Meter Test Results)

6. DC Water ruled out the existence of an underground leak because usage declined without necessity of repairs being performed. (Testimony of LaFatima Black)
7. DC Water conducted an investigation of the customer's dispute and found no evidence of meter overread or doubtful registration. (Testimony of LaFatima Black)
8. The customer was billed upon actual meter readings. (Testimony of LaFatima Black)

### 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 a 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 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
    - (d) 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 failed to establish that more likely than not the disputed bill is wrong or for some other reason, she should not be held responsible for its payment.

The customer testified that she was unaware of anything amiss in her home and she also testified to seeing standing water at the intersection of 5<sup>th</sup> Street and Missouri Avenue N.W. The customer had no information connecting the intersection water observed by her to her own water usage and DC Water denied any work operation at or near the intersection.

On the utility's part, DC Water established that the water meter was functioning



accurately. It ruled out the existence of an underground leak as a possible cause of the high usage and it determined that there was no meter overread or miscalculation of the customer's bill. In other words, the utility showed that it correctly billed for the amount of water used at the property and that its equipment was functioning properly.

21 DCMR § 408 dictates that DC Water does not adjust a customer's account for excessive consumption when, after tests and checks, the cause of the usage cannot be determined. As such, since the testimony and evidence established that the utility did not cause the usage or made an error in the billing and nothing established that the customer did not use the water as charged, it is the conclusion of the Hearing Officer that the determination of DC Water that the bill is correct and no basis exists for an adjustment of the bill is exists. Accordingly, the determination by DC Water is hereby AFFIRMED.

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept. 30, 2021

Copy to:

  
 5<sup>th</sup> Street, NW  
Washington, DC 20011



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

In re: 3624 10<sup>th</sup> Street Homeowners Association  
c/o Adam Hickey  
3624 10<sup>th</sup> Street, NW, [REDACTED]  
Washington, DC 20010

Account No: [REDACTED]  
Case No: 21-35397-4

Service Address:  
[REDACTED] 10<sup>th</sup> Street, NW

Amounts and Dates in Dispute:  
11/26/2020 to 12/23/2020 = \$ 1,516.54  
12/24/2020 – 1/26/2021 = \$1,007.54

Before Janet W. Blassingame, Hearing Officer  
September 15, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time November 26, 2020 to January 16, 2021. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 15 2021. Present were: Adam Hickey, HOA Vice President, petitioner and Karthik Easwar, HOA President, on behalf of 3624 10<sup>th</sup> Street Homeowners Association; and, Arlene Andrews and Kimberly Arrington, on behalf of DC Water.

The property involved is a condominium converted from two (2) row houses. There are seven (7) units, each having two (2) bedrooms, a washing machine, a dishwasher and a kitchen. The building has an irrigation system and two (2) outside faucets. The building is monitored by one water meter. The water and sewer bills have ranged between \$366.00 and \$400.00 per billing cycle. Each owner is responsible for maintenance of his/her unit and the condominium board only, informally, learns of plumbing issues within each unit.

Mr. Easwar testified that one unit was sold at the end of year 2020 or the beginning of January 2021 and another unit changed ownership at the end of January 2021. He stated that the owner of unit 6 moved at the end of January 2021 and the owner of unit 7 moved in the middle of December 2020. Unit 7 was staged for showing in December 2020 and the new owner moved in late January 2021.

Mr. Hickey stated that all of the building tenants affirmed that they were unaware of any water issues in their respective units. Mr. Hickey pointed out that many of the owners were on travel during the period that high usage allegedly occurred.

Mr. Hickey testified that they hired a plumber to inspect all of the units in June 2021 and no leaks were found. Mr. Hickey stated that the water and sewer bill remained high from January 2021 to June 2021. He stated that the bill was \$1000.00 in May 2021 and \$700.00 in June 2021. He explained that during the plumber's inspection of the building, each resident turned the master valve on but did not use any water and the water meter did not move/run. He added that the water meter did not run when all units had the master valve off, as well.

Mr. Hickey asserted that, generally, each residents uses 39 gallons of water per day, but, during the spike period, 59 gallons of water were used each day per resident. He contended that to consume that quantity of water, there would have to have been 87 people residing in the building. Mr. Hickey stated that there were 19 building residents.

Mr. Hickey asserted that there was no consistency in recorded usage.

Mr. Hickey pointed out that the results of the meter test performed by DC Water reflected that the median flow tested was 102.08% which is above accepted standards, even though the overall accuracy of the water meter was determined to be 100.50%.

Ms. Andrews testified that the meter reads from the building were actual readings that were transmitted four (4) times per day to the nearest tower. She stated that DC Water pulled and tested the water meter and the meter was determined to have 100.5% accuracy which is within the standards set by the American Water Works Association. Ms. Andrews declared that there are no misreads on automated water meters. She testified that the condominium did not receive a HUNA alert because the water usage was not high enough to meet the threshold to trigger the alert system. She stated that because the building is a multi-family residence, DC Water policy is such that the condominium must have inspections done by a plumber; DC Water does not inspect multi-family residences.

Ms. Andrews asserted that the plumbing inspection done on behalf of the condominium was after the water spike in usage had declined. She pointed out that the plumbing report was submitted September 10, 2021. She stated that DC Water did not perform an underground leak test because the high usage declined without necessity of repair which indicates that usage was controlled within the building.

Ms. Andrews asserted that the investigation revealed no meter malfunction or faulty computation of the customer's bill. She concluded that all of the tests and checks were inconclusive as to the cause of the high consumption and pursuant to 21 DCMR 408.1, DC Water does not/cannot adjust the customer's bill for the high usage.

Ms. Andrews explained that the condominium building was served by a 2-inch meter which is a small meter. She explained that in dealing with small meter tests, the average of the three (3) water flows is used to determine the overall accuracy of the water meter, whereas, in large meters which are greater than 2-inches, if one tested water flow fails, the meter fails testing. Ms. Arrington interjected that during the meter flow testing, certain amounts of water are pushed thru. She stated that, regarding small meters, DC Water follows the AWWA which says to use the average of the three (3) water flows.



Ms. Andrews asserted that the previous HOA President was told to have the building inspected and to turn-in the plumber report to DC Water.

Ms. Andrews testified that the spike in water usage occurred December 5, 2020 to December 23, 2020 and that 81 CCF of water were consumed over the two (2) billing cycles involved. She asserted that the high usage was consistent and, then, that water would run a few hours during the course of the day, thus, changing the pattern of usage. Ms. Andrews stated that usage began to decrease in June 2021 and further declined as of July 26, 2021.

Ms. Andrews explained that DC Water reinstalled the tested water meter at the property after testing was complete.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a seven (7) unit condominium building. (Testimony of Karthik Easwar)
2. The period in dispute is November 26, 2020 to January 26, 2021. (Testimony of the parties)
3. There was a significant spike in water usage occurring at the property from December 5, 2020 to December 23, 2020. (Testimony of Arlene Andrews)
4. Water usage pattern at the building changed following the spike in December 2020 and usage decline but remained higher than historical usage; water usage started to significantly decline in June 2021 and further declined as of July 26, 2021. (Testimony of Arlene Andrews; Customer graph showing usage vs. Residents)
5. DC Water did not send a HUNA alert to the customer because water usage did not trigger the alert threshold. (Testimony of Arlene Andrews)
6. Each unit owner is responsible for maintenance within his/her unit. (Testimony of Karthik Easwar)
7. During the period in dispute, two (2) owners moved out of the building and their respective units changed ownership and were vacant for a period of time; one unit was staged for inspection by perspective buyers. (Testimony of Karthik Easwar)
8. None of the residents/owners were aware of a substantial increase in their unit's water usage during the period in dispute. (Testimony of Adam Hickey; signed document dated March 14, 2021)
9. The condominium board hired a plumber in June 2021 to inspect all units for plumbing issues and no leaks were found. (Testimony of Adam Hickey; W.L. Vorhies Plumbing & Heating LLC bill statement dated 6/15/2021)

10. DC Water tested the water meter and the meter was determined to have 100.5% accuracy. (Testimony of Arlene Andrews)
11. DC Water ruled out the existence of an underground leak because usage declined without necessity of repairs being made. (Testimony of Arlene Andrews)
12. During its investigation of the dispute, DC Water found no evidence of meter malfunction, meter overread or faulty computation and the bills were based upon actual meter reads. (Testimony of Arlene 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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 failed to establish that more likely than not the disputed bill is wrong or for some other reason, he should not be held responsible for its payment.

None of the residents/owners knew why there may have been a significant increase in water consumption within their units during the period in dispute. Much later, after the period in dispute, i.e., 6 months later, the condominium board hired a plumber to inspect all of the units

and no leaks were found. DC Water tested the water meter and the meter was found to be functioning within standards of accuracy for water meters. The utility ruled out the existence of an underground leak as a possible cause of the high usage and the utility, in its investigation, found no meter malfunction, bill miscalculation, or meter overread.

The case presents squarely under the guideline of 21 DCMR 408.1 which dictates that when all tests and checks failed to determine the cause of high-water consumption, DC Water can not adjust a customer's account for the high-water usage.

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

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept. 30, 2021

Copy to:

Adam Hickey, Vice President  
3624 10<sup>th</sup> St. Homeowners Association  
[REDACTED] 10<sup>th</sup> Street, NW, [REDACTED]  
Washington, DC 20010

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

In re: Karen Sims  
2602 Rae Dell  
Austin, TX 78704-4737

Service Address:  
[REDACTED] Western Avenue, NW

Account No: [REDACTED]  
Case No: 21-290091

Amount in Dispute: \$1212.36

Before Janet W. Blassingame, Hearing Officer  
September 15, 2021 at Noon p.m.

The customer contested a water and sewer bill for the above account for the period of time September 10, 2020 to December 8, 2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 15 2021. Present were: Karen Sims represented by Grace Soderberg, Office of Peoples Counsel for D.C.(OPC); LaFatima Black and Kimberly Arrington, on behalf of DC Water; Kelly Fisher, Esq., DC Water, observing only; Stephen Dudek, Manager of Water Services Division, OPC and Jason Cumberbatch, Engineer, OPC, witnesses.

Ms. Soderberg opened asserting that what is key to this case is that the property was occupied for only a portion of the period from October 28, 2020 to December 11, 2020. She stated that her client examined the property and found no leaks and that the electric and gas bills for the same period were in-line with the property not being occupied.

Ms. Soderberg called Karen Sims, the property owner, as her first witness and Ms. Sims began by describing her property as follows:

The property involved is single family residence rented by the Chinese Embassy. The house has one full bathroom and a toilet, one kitchen, a washing machine, a utility sink, radiators, and two (2) outside faucets. The property owner does not always know when embassy staff is occupying the house, however, she knows that embassy staff occupied the house from October 28, 2020 to December 9, 2020.

Ms. Sims testified that she first noticed a possible spike in water usage upon receipt of the water and sewer bill dated December 17, 2020. She stated that she telephoned DC Water and



the representative speculated that there may have been a running toilet. Ms. Sims stated that she had her handyman check the house for leaks and no leaks were found. She stated that the handyman inspected the house on December 18, 2020. Ms. Sims added that the house was also inspected on October 9, 2020 and nothing was found amiss.

Ms. Sims asserted that she believes that the MTU at the property was not operational. She stated that DC Water sent estimated bills in October and November 2020. Ms. Sims testified that DC Water had a meter read for November 10, 2020 but the utility did not use the meter read to bill her account. She stated that the utility, instead, of billing upon the meter read, sent her an estimated bill.

Ms. Sims testified that only one bill was unusual and then, the water and sewer bill returned to normal.

Ms. Sims stated that she first contacted DC Water regarding her bill on December 18, 2020 and the DC Water representative speculated that the usage may have been caused by a running toilet. Ms. Sims stated that the representative informed her that she saw no usage on the water meter. Ms. Sims stated that she spoke with "Seth", a DC Water representative, on December 29, 2020 and he told her that she would have to wait for the utility to conduct an investigation. She stated that on January 11, 2021, she was told that a 30-day hold would be put on her account and that the MTU at the property had issues. Ms. Sims testified that she received two (2) voicemails from L. Black of DC Water in late April 2021. She also stated that the utility tested the water meter in May 2021.

Ms. Soderberg called Jason Cumberbatch as her next witness. Mr. Cumberbatch testified that he is a graduate of Howard University and holds a degree in mechanical engineering. He stated that he has worked in the utility industry for ten (10) years and he has experience with gas, electric and water meters. He stated that he has been employed with OPC for seven (7) years.

Mr. Cumberbatch testified that he did an analysis based upon the September 2020 to May 2021 meter readings. Regarding water usage, he found usage from September 10 to September 25, September 25 to October 25 and September to November steady usage. He stated that other utilities had no abnormal activity until there was occupancy in the house in November.

Mr. Cumberbatch observed that the DC Water bill at issue is for a 90-day period.

He stated that water usage in October 2020 was 10x that of usage in September. He asserted that something caused an increase to \$400.00 per month from October to December. He asserted that either the MTU, human error or system error were the cause of the high bill/usage. He asserted that the gas and electric usage/bills were normal but the water usage/bill was the complete opposite.

Mr. Cumberbatch declared that by comparing two (2) other utilities to the water usage, one can see that something was abnormal.

On cross examination, Mr. Cumberbatch stated that there was steady usage in September to November in electricity and gas when the house was not occupied, He stated that there was a decrease in the bills but there was a 20% increase in the utilities in December which tells him that someone was in the home in December. Mr. Cumberbatch stated that one expects gas costs to increase in colder months but gas usage cost was normal when there was no occupancy. He stated that water cost was 10x higher in October and November than normal usage in the rest of the year.

Ms. Black testified that the meter reads from the property were actual based on field reads. She asserted that the water meter only advances when water is used. She also stated that a water meter cannot auto-repair.

Ms. Black testified that DC Water obtained a field read of the water meter on December 8, 2020 and thereafter, the utility had daily reads from the property.

Ms. Black stated that DC Water tested the water meter on May 5, 2021 and the meter was determined to have 100.48% accuracy. She stated that DC Water follows the standards set by the American Water Works Association that water meter accuracy is to be 98.5% to 101.5%.

Ms. Black stated that the utility did not conduct an underground inspection because water usage at the property declined.

Ms. Black testified that DC Water estimated the customer's bill for October and November 2020 but reversed the charges and re-billed the customer on an actual meter read. She acknowledged that there was a field read taken on November 10, 2020. She stated that the utility did not use the field read to bill the customer because the read was high.

Ms. Black stated that the utility found no overread, meter malfunction or faulty computation in its investigation of the dispute.

Ms. Black stated that she cannot tell the specific period of the spike in water usage.

Ms. Arrington interjected that the customer did not get an alert of high-water usage because there was no signal transmitting from the property.

On cross examination, Ms. Black stated that her position at DC Water was that of a Communication Specialist.

Ms. Black stated that the utility had field reads from the property on November 10, 2020 and December 8, 2020. She stated that field reads were taken because there was no transmission



from the MTU at the property. Ms. Arrington interjected that she believes that the MTU at the property was reprogrammed on December 8, 2020.

Ms. Soderberg asked Ms. Black why there was not a field read taken in October and why was her client sent an estimated bill in October 2020. Ms. Black responded that a customer can ask for an actual read when an estimated bill is received. Ms. Soderberg asked why the MTU was reprogrammed and Ms. Black responded that the utility was not receiving transmitted meter reads. Ms. Black clarified by stating that the utility was not receiving regularly transmitted meter reads by the MTU and that a transmitted meter read did not come within 5 days of the customer's billing date. Ms. Black testified that during the period in dispute, DC Water had six (6) meter reads from the property. The transmitted meter reads were on- 9/8/2020; 9/9/2020; 9/14/2020 to 9/25/2020 and that there was no usage on 10/24/2020. She stated that the first estimated bill was for the period 9/10/2020 to 10/9/2020 and the actual bill was dated 9/18/2020. She stated that a meter read was gotten on 11/28/2020 showing usage.

Ms. Black stated that it is hard to determine when the spike in usage occurred because the meter reads from the property were not every day.

Ms. Soderberg requested that she be allowed to submit the analysis of the customer's electric and gas usage.

Ms. Black asked Mr. Cumberbatch whether a person could have touched a faucet or caused a leak. Ms. Sims responded that the repairman was at the property on October 9, 2020 and on December 18, 2020. She stated that the Chinese Embassy did not notify her when people were in the house. Ms. Black asserted, in question form, as to whether people in the house could have repaired whatever caused the usage.

Ms. Sims said that she would submit the analysis.

In closing, Ms. Soderberg stated that only from October 28, 2020 to December 9, 2020 were there occupants in the house. She asserted that the analysis of other utilities comports with a finding that there was no occupancy and therefore, either human error or system errors are the possible causes of the high usage.

Ms. Soderberg transmitted a 2-part transmission post-hearing. The first transmission was "Gaps in MTU transmissions 4837 Western Ave". The second transmission was the billing history comparing the water bill, Washington Gas and Electric Bill from July 2019 to August 2021 (this submission reflected additional water bill charges from 2019 back to 2017, as well as, the water bill and Pepco bill for September 2021).

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is house owned by Karen Sims which she rents to the Chinese Embassy. (Testimony of Karen Sims)
2. The period in dispute is September 10, 2020 to December 6, 2020. (Testimony of the parties)
3. The Chinese Embassy does not notify the owner when its employees are occupying the property, however, the owner understood that the house was occupied from October 28, 2020 to December 9, 2020 by two (2) people. (Testimony of Karen Sims)
4. DC Water had transmitted meter reads from the property in October, November and December 2020, however, the MTU at the property was not transmitting on a regular basis. (See, DC Water AMI reads for 4837 Western Ave NW)
5. The MTU at the property transmitted meter reads on 12/9/2020, 12/8/2020, 11/28/2020, 10/24/2020, 9/25/2020, 9/24/2020, 9/20/2020, 9/19/2020, 9/15/2020, 9/14/2020, 9/9/2020. Meter read transmissions resumed on an hourly basis on 12/20/2020 and appeared to have stopped transmitting on an hourly basis after 9/9/2020. (See, DC Water AMI reads for 4837 Western Ave NW)
6. DC Water obtained field meter reads from the property on 11/10/2020 and 12/8/2020. (See DC Water Meter Reads)
7. DC Water estimated the water usage at the property in September, October and November 2020 and the customer paid the water bills based upon the estimated billings. (Testimony of the parties)
8. DC Water reversed the customer's billings for October and November 2020 and re-billed the customer for those months plus December 2020 usage based upon a field read taken on December 8, 2020 resulting in the bill dated 12/17/2020. (Testimony of LaFatima Black)
9. DC Water tested the water meter and the meter was determined to have 100.48%. (Testimony of LaFatima Black)
10. DC Water ruled out the existence of an underground leak because water usage at the property declined. (Testimony of LaFatima Black)
11. The customer had the property inspected by her handyman on October 9, 2020 and December 18, 2020 and no leaks were found, (Testimony of Karen Sims)
12. DC Water sent no high-water usage alerts to the customer during the billing period in dispute because the MTU was not transmitting on a regular basis. (Testimony of LaFatima Black)

#### 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 a 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 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 a customer's bill when all checks and tests provide no reasonable explanation for excessive water consumption. (See 21 DCMR 408 which states: "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)
5. If at any time, a meter, data collection device or transmitter fails to register correctly or collect, deliver or transmit data or otherwise operate or bears evidence of having been tampered with, as determined by qualified personnel of the Authority, the water charge for the interval in which the incident occurred shall be based on the average previous water consumption for that interval. (21 DCMR 308.4)
6. Once the customer establishes a prima facie case that s/he did not use and/or was not responsible for payment of the water as charged, the burden shifts to DC Water to rebut the customer's claim that s/he did not use the water as charged. (Gatewood v. DC WASA, 82 A.3d, DC Court of Appeals 2013)
7. Equitable laches comes into play when two prerequisites are met- the defendant must have been prejudiced by the plaintiff's delay and the delay must have been unreasonable. (See, King v. Kitchen Magic, 391 A.2d 1184, 1187-88 (D.C. 1978); Fannie B. Martin v. William Carter, 400 A.2d 326 (D.C. 1979).

#### DECISION

In this case, the customer made a prima facie case that the disputed bill was incorrect and/or that she should not be responsible for the charges and, thus, shifted the burden to DC

Water to establish that the charges were valid and should be paid by customer. The basis of the customers' prima facie case was that she was unaware of any leaks or plumbing issues, that the property was unoccupied for a portion of the disputed period, that other utility charges for electricity and gas reflected that such utilities were not in used during the period, and that she had her handyman inspect the property on two (2) dates and no leaks were found.

DC Water established that the water meter was functioning properly and it ruled out the existence of an underground leak.

The testimony and evidence established that the MTU at the property had not been transmitting meter reads on a consistent basis since September 2020. Meter reads were transmitted sporadically by the device and the utility did have transmitted meter reads from the property during the period in dispute. The testimony and evidence, also, established that the utility sent a service technician to read the water meter in November and then, again, in December 2020 but the utility did not use the field read taken in November 2020 for billing but, instead, billed the customer based upon estimation of water usage. Lastly, the testimony and evidence established that DC Water sent the customer estimated bills for water usage in September, October and November 2020, re-billed the customer for October and November usage and sent the customer a bill dated December 17, 2020 covering the period in dispute- 9/12/2020 to 12/8/2020 and at no time did the utility advise the customer that high-water usage was occurring at the property and, as such, the customer was unaware of high usage until she received the bill dated 12/17/2020.

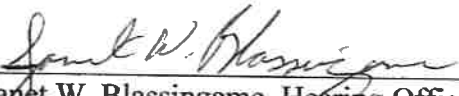
21 DCMR 308.1 dictates that DC Water is to read a customer's water meter at least on a quarterly basis. In this case, the utility had both transmitted reads and a field read from the property during the period in dispute but did not advise the customer that high-water usage was occurring or that any read from the property reflected high-water usage.

In this case, the Hearing Officer does not find that the water usage did not occur, the tests and checks were inconclusive as to the cause of the high-water usage. The customer's handyman did not find leaks at the property and the utility established that the water meter was good and that there was no underground leak. Moreover, the customer testified that she is not informed by the embassy as to when its people may occupy the house, so even though the customer testified that people were in the house October 28, 2020 to December 9, 2020, one cannot rule out that the embassy staff might have been in the house during other periods of time as well. The Hearing Officer does, however, find that DC Water had information, based upon actual and field meter reads, that it could have provided to the customer to allow her to investigate water usage occurring at her property and to mitigate loss due to high-water usage. As of November 2020, the utility knew that high-water usage had registered on the water meter and such information was not provided to the customer.



Equity protects a person harmed by another's delay and the delay must have been unreasonable. In this case, the utility estimated the customers' water and sewer bills for three (3) billing cycles and then re-billed the customer for two (2) cycles encompassing October and November 2020, after the customer had paid the estimated bills, and, then, sent the customer a bill in December 2020 covering an extended billing period. DC Water's representative stated that the billing period was 90 days however, when one factors the estimated bill for September 2020 into the lack of a bill based upon a meter read, the utility failed to meet its duty to bill the customer, at less on a quarterly basis, based upon a meter read.

Accordingly, it is the determination of the Hearing Officer that the customer is protected against the charges based upon equitable laches due to the utility's delay in billing based upon actual meter reads which, if it had done so without the delay, the customers' loss might have been mitigated. As such, the determination by DC Water that no adjustment to the account is appropriate is hereby REVERSED and the customer prevails in her dispute of the charges and shall be billed for the period in this dispute based upon average water usage.

  
\_\_\_\_\_  
Janet W. Blassingame, Hearing Officer

Date: Sept 30, 2021

Copy to:

Ms. Karen Sims  
2602 Rae Dell  
Austin, TX 78704-4737

Grace Soderberg, Esq.  
Office of People's Counsel  
1133 15<sup>th</sup> Street, NW, #500  
Washington, DC 20005-2710

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

In re: [REDACTED]

Service Address:  
[REDACTED] Swan Street, NW

Account No: [REDACTED]  
Case No: 21-448712

Amounts and dates in Dispute:  
4/3/21 to 5/4/2021    \$441.51  
5/5/2021 to 6/2/2021    \$1,188.08

Before Janet W. Blassingame, Hearing Officer  
September 16, 2021 at Noon p.m.

The customer contested water and sewer bills for the above account for the periods of time above referred. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 16, 2021. Present were: [REDACTED], the customer; and, LaFatima Black and Kimberly Arrington, on behalf of DC Water.

The property involved is a single-family brownstone residence having two and one-half bathrooms, a kitchen, a dishwasher, a washing machine, radiators, a utility sink and two (2) outside faucets. [REDACTED] stated that he lived in the house from August 2009 until March 2021 and that he estimates that 50 – 60 gallons of water were used per day. After he moved, no one was living in the house but there were construction workers in the house doing work.

Ms. Black interjected that in year 2020, the daily water usage at the property was .21 CCF or 154 gallons of water per day.

[REDACTED] testified that the house underwent renovation after it was vacated. He stated that walls were patched and painted, a ceiling leak repaired and a sink hole in the patio was repaired. He denied that any work involved plumbing.

[REDACTED] stated that during the renovation, he went to the property to inspect and saw no water puddles or leaks. He stated that in May 2021, he found a running toilet. [REDACTED] stated that he was at the house every couple of days to monitor the work being performed.

Ms. Black testified that the meter reads are actual and were transmitted by signal to the

nearest tower. She asserted that a water meter only advances when water is being used. She stated that there are no misreads on automated meters.

Ms. Black stated that DC Water did not perform a test of the water meter due to the customer's admission that he found a running toilet in the house. Ms. Black stated that the customer in his email to DC Water on June 8, 2021 stated that upon his receipt of the May 2021 bill, he went to the house and found the running toilet.

Ms. Black stated that the spike in water usage occurred May 26, 2021 to June 1, 2021.

Ms. Black stated that the high-water usage was not due to an underground leak because the usage decline and underground leaks will not decline/stop until repairs are performed. She stated that the decline in water consumption verifies that there was no underground leak.

Ms. Black noted that DC Water sent multiple HUNA alerts to advise the customer that high-water usage was occurring at the property. She stated that the alerts were sent on- May 10<sup>th</sup>, 13<sup>th</sup>, 19<sup>th</sup>, 22<sup>nd</sup>, 25<sup>th</sup>, 28<sup>th</sup> and 31<sup>st</sup>. Mr. Prawda stated that the alerts may have gone to the prior owner's telephone number.

██████████ referred to the DC Water Bill of Rights in which there is reference to private space and that the utility will give an adjustment. Ms. Black responded that the provisions read by the customer refers to underground leaks or hidden spaces.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a single-family home owned by ██████████. (Testimony of ██████████)
2. The period in dispute is 4/3/2021 to 6/2/2021. (Testimony of the parties)
3. ██████████ vacated the residence in March 2021 and it was vacant and undergoing renovation thereafter and construction workers were in the house. (Testimony of ██████████)
4. The renovation work did not involve plumbing however ██████████ discovered a running toilet at the house when he went to the house to investigate why he received a high-water bill. (Letter signed by ██████████ sent to DC Water; testimony of ██████████)
5. There was a significant spike in water usage at the property from May 26, 2021 to June 1, 2021 and then usage declined. (Testimony of LaFatima Black)



6. DC Water ruled out the existence of an underground leak as a cause of increased water usage at the property. (Testimony of LaFatima Black)
7. DC Water sent multiple alerts to the customer advising of high-water usage occurring at the property between May 10<sup>th</sup> and May 31<sup>st</sup>. (Testimony of LaFatima Black)
8. The HUNA alerts sent may have gone to the property's prior owner based upon [REDACTED]'s speculation that the telephone number on file with the utility may be that of the prior owner. (Testimony of [REDACTED])
9. DC Water did not test the water meter based upon the customer's acknowledgement of finding a running toilet at the property. (Testimony of LaFatima Black)

### 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 a 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 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 relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

### DECISION

The customer in this case failed to show that more likely than not the bills being disputed were incorrect or for some other reason, he should not be held responsible for payment.

The customer wrote that he believed that it was impossible to consume the amount of for which he was charged. The customer acknowledged, however, finding a running toilet at the property after going over to the house to inspect upon receipt of a high-water bill from the utility. DC Water established that its HUNA alert system sent out multiple alerts of high-water usage



occurring at the house in May and the customer testified that the running toilet was discovered in May. The customer speculated that the telephone number used by the utility to send the alerts was that of the prior property owner. The telephone number used by the utility for the alerts was the number on file with the utility and as such, it was the negligence of the customer to have not updated the contact information with the utility and no fault of the utility that the customer was unaware of the alerts especially sent the alert system reflected receipt at the telephone number sent.

In its investigation, the utility ruled out an underground leak as a possible cause of the high usage and it determined that there was no meter misread or bill miscalculation. Normally in a bill dispute, the utility would test the water meter for accuracy however, in this case, the utility determined that testing was not warranted due to the customer's admission of finding a toilet problem at the property within the period at issue. The applicable regulation regarding bill investigation gives the utility leeway to determine what and how to investigate the dispute and, in this instance, the customer's admission provided explanation for the increased usage without the utility going further in investigation. (See, 21 DCMR 403) The Hearing Officer find no fault in the utility not testing the water meter based upon its explanation as to why it did not do so; the Hearing Officer finds the explanation reasonable.

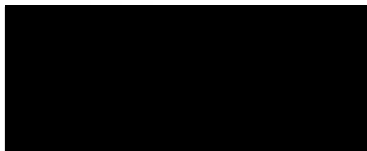
21 DCMR 406 bars adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet and household fixtures which would include a toilet, and, as such, the determination of DC Water that no basis exists to adjust the customer's bill is correct.

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

By: Janet W. Blassingame  
Janet W. Blassingame, Hearing Officer

Date: Sept. 30, 2021

Copy to:



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

In re: TC Enterprises  
c/o Oscar L. White  
P.O. Box 797  
Beltsville, MD 20704

Service Address:  
[REDACTED] Benning Rd. SE

Account No: [REDACTED]  
Case No: 21-518978

Amount in Dispute: \$1,405.79

Before Janet W. Blassingame, Hearing Officer  
September 21, 2021 at 10:00 a.m.

The customer contested a water and sewer bill for the above account for the period of time 6/18/2020 to 7/21/2020. The DC Water and Sewer Authority (DC Water) determined that the charges were valid and no adjustment of the customer's account was warranted. The customer requested an administrative hearing.

This matter was scheduled for a remote hearing on September 21, 2021. Present were: Oscar L. White, the customer; and, Arlene Andrews and Kimberly Arrington, on behalf of DC Water.

The property involved is a 13-unit apartment building owned by Oscar L. White since year 1987. Each unit has one bathroom and a kitchen. The building has two (2) outside faucets and is monitored by one water meter. During the period in dispute, the building had seven (7) vacancies. The water and sewer bill has historically ranged between \$500.00 and \$600.00 per billing cycle. Mr. White stated that he does the building's repairs and that he goes to the building on a daily basis and checks the outside for trash, performs routine repairs and goes into the basement to listen for running water. Mr. White stated that he temporarily stopped visiting the building on a daily basis in May and June 2020 due to the Pandemic.

Ms. Andrews interjected that the period in dispute- 6/18/2020 to 7/21/2020, was 34 days.

Mr. White stated that when he received the bill, it got his attention and he went to the building but did not hear any running water. Mr. White stated that he did not attribute the bill to anything occurring in the building.

Mr. White stated that he goes on-line to look at the usage graph after receiving a HUNA alert. He stated that there was a spike August 2 – 3, 2020, so repairs were performed. Mr. White

stated that he knocked on the doors of his tenants and, ultimately, found a running toilet. To repair the toilet, he stated that the flapper and ball had to be adjusted.

Mr. White testified that he relies upon the HUNA notification system but he may not get the alert for a few days but, in this instance, he did not receive a high-water usage alert from DC Water. He stated that he received no HUNA alerts from January 11, 2020 to August 24, 2020.

Mr. White stated that due to Covid, everyone was home.

Mr. White stated that he wants an adjustment and saw in the DC Water Bill of Rights that an adjustment is appropriate when a leak is on the private side of one's property.

Ms. Andrews responded that a "private side" adjustment refers to an underground leak.

Ms. Andrews testified that the meter reads in this case were actual, taken hourly and transmitted 4-times per day to the nearest tower.

Ms. Andrews stated that DC Water did not test the water meter due to the customer's letter dated 8/7/2020 in which he stated that a toilet had a faulty flapper. Ms. Andrews pointed out that usage at the building declined and that water meter do not auto-repair.

Ms. Andrew stated that DC Water's HUNA alert system was down for maintenance and upgrading in July 2020.

Ms. Andrews testified that there was a significant spike in water usage at the building from June 18, 2020 until August 3 or 4, 2020.

Ms. Andrews asserted that 21 DCMR 406 dictates that DC Water does not adjust a customer's account when increased water usage is due to a leaky fixture.

Ms. Andrews also pointed out that customers can go on-line to monitor water usage and that the on-line option was available during the period that HUNA was not in operation. Mr. White retorted that he believes that HUNA was down for quite a while. He stated that he has come to rely on HUNA and that he is paying for the HUNA system and it should be operational. Mr. White asserted that he only checks on-line when he receives notion of high-water usage by HUNA or he gets a high bill. Ms. Andrews stated that usage view is available on-line and that HUNA is an additional service offered by DC Water but it is not regulated. She asserted that Mr. White received notice when he received the bill reflecting that high usage occurred. Mr. White asserted that HUNA is free and that he is paying for HUNA which he assumes to be part of the metering fee. Mr. White asserted that DC Water should be responsible because as soon as he got



the bill, he went out to the building and dealt with the problem. Ms. Andrews responded that revenue coming into DC Water pays for all services. She stated that HUNA is offered to assist customers as an alternative way for customers to see usage. She asserted that a customer has a choice as to when to see water usage. Mr. White responded that he expects DC Water's systems to work. He asserted that if HUNA had been working, he could have taken care of the problem.

Ms. Andrews reasserted that 21 DCMR 406.2 states that no adjustment is given when increased water consumption is caused by a leaky faucet and/or fixtures.

Ms. White retorted that he is sure that DC Water has made account adjustments for extraordinary circumstances.

Based upon the foregoing testimony and evidence adduced during the hearing, the Hearing Officer makes the following:

#### FINDINGS OF FACT

1. The property involved is a 13-unit apartment building owned by Oscar L. White.  
(Testimony of Oscar L. White)
2. The period in dispute is 6/18/2020 to 7/21/2020. (Testimony of the parties)
3. Upon receiving his water and sewer bill and seeing that the bill was high, the customer inspected the units of his apartments and discovered a running toilet in one of the units.  
(Testimony of Oscar White)
4. The customer repaired the running toilet on or about August 2<sup>nd</sup> or 3<sup>rd</sup> 2020.  
(Testimony of Oscar White)
5. The customer did not receive a HUNA alert of high-water usage occurring at the property because the HUNA system was down for maintenance and upgrading. (Testimony of Arlene Andrews)
6. The utility ruled out the existence of an underground leak causing increase water consumption at the property because the usage declined. (Testimony of Arlene Andrews)
7. The utility did not test the water meter because of its receipt of a letter from the customer in which he states that he found a defective toilet at the property. (Testimony of Arlene 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. D.C. Municipal Regulations relating to water and sanitation bar adjustment of a customer's bill if excessive water consumption is the result of a leaking faucet, household fixtures, and

similar leaks or the malfunctioning water-cooled air conditioning equipment. (21 DCMR 406)

### DECISION

The customer informed DC Water that he found a running toilet in one of the units of his apartment building but he argued that he should not be held responsible for payment of his bill because he did not receive a HUNA alert that high water usage was occurring in the building. The testimony established that DC Water's HUNA system was down for maintenance and upgrading but the on-line usage information of the property was available for the customer's review. The customer asserted that he only looks at usage on-line upon receipt of a HUNA alert or upon receipt of the water and sewer bill. The evidence and testimony further established that the customer was alerted of high usage by his receipt of the bill.

21 DCMR 406 established that when excessive water consumption is caused by an internal fixture such as a toilet, DC Water does not adjust a customer's account for such usage. In this case, it is clear that the high usage was caused by the running toilet discovered by the customer and when the toilet was repaired by the customer, the problem was resolved.

Ultimately, the property owner is responsible for what occurs in and about his property and the customer failed to establish that the bill in dispute was wrong or for some other reason he should not be responsible for its payment. HUNA is service provided to its customers who sign-up for notifications; HUNA is not regulated and is not required of the utility. The utility, also, provides on-line usage information for customer to review and, again, review on-line is a service and is not required by either the utility to provide or the customer to use. Providing either service does not create an obligation upon the utility for which it can be held responsible for if the service is not provided. In this case, the customer testified that under normal circumstances he goes to the property daily to inspect and do repairs but that he stopped due to Covid. HUNA was down due to maintenance. The customer received a bill prompting him to inspect his building for plumbing problems. None of these instances relieve the property owner from responsibility for what occurs in his building...

Accordingly, the Hearing Officer determines that the customer has failed to meet his burden of proof that the bill in dispute is wrong and as such, DC Water's determination that the bill is correct and no basis exists for adjustment of the customer's account is hereby AFFIRMED.

By:   
Janet W. Blassingame, Hearing Officer

Date: Sept. 30, 2021

Copy to:

TC Enterprises  
c/o Oscar L. White  
P.O. Box 797  
Beltsville, MD 20704