

July 27, 2016

In Re: Patrick Mountney

Docket#: 35WRMERZW5702

Statement of Record:

1. Patrick Mountney (hereafter "Petitioner") filed a Petition for Appeal with the Tax Review Board (TRB) on September 24, 2013 requesting review of a Water Revenue Bureau (WRB) bill for the property at 5520 Devon St. Philadelphia, Pa.
2. A public hearing before at TRB Master was scheduled for June 23, 2014. The decision of the Master, as ratified by the TRB, was to deny the petition.
3. Petitioner requested, and was granted, a rehearing before the full TRB.
4. A public hearing was scheduled before the TRB for February 17, 2015. This matter was administratively continued.
5. A public hearing was scheduled before the TRB for March 12, 2015 and continued at the public hearing for the parties to discuss the possibility of a settlement.
6. A public hearing was scheduled before the TRB for May 28, 2015, following which the matter was taken under advisement to allow the City to provide a written brief in response to the brief provided to the TRB at the hearing by Petitioner's attorney, with the Petitioner provided an opportunity to provide a response.
7. A public hearing was scheduled for September 8, 2015, following which the matter was taken under advisement for deliberation.
8. A public hearing was scheduled for December 15, 2015 for the announcement of the TRB decision to deny the petition.
9. Petitioner filed an appeal to the Court of Common Pleas.

Findings of Fact:

- 1) Petitioner requested review of the WRB bill for the property located at 5520 Devon St., Philadelphia, PA. The bill under appeal was for the period of 6/1/2009 to 8/25/2012, with the principal amount due of \$2375.41.
- 2) Bills issued by WRB during the period in question did not include actual water usage charges.
- 3) The bill issued on August 25, 2012, and the subject of this appeal, contained billing for all actual water usage for the entire 39 month period.

Conclusions of Law:

Petitioner based his appeal on the assertion that the Philadelphia Water Department (PWD) is a public utility regulated by the Pennsylvania Public Utility Commission (PUC) and as such failed to comply with both the PUC regulations and Pennsylvania Code with regard to requirements for regular meter readings. Under this theory, Petitioner asserted that because of the failure by the PWD to comply with PUC requirements, the TRB was required to vacate the bill under appeal.

“(T)he Philadelphia Water Department, (is) an entity whose determinations are not subject to review by the Pennsylvania Public Utility Commission (PUC), but instead are subject to review through the Philadelphia Court of Common Pleas.” Consumer Education and Protective Association International, Inc. and Valerie Waller V. City of Philadelphia, 133 Pa Cmwlth. 148, 575 A. 2d 160 (1990).

Municipal Corporations, such as Philadelphia, are expressly excluded from the jurisdiction of The Public Utility Code. See 66 Pa C.S. §102.

The PWD is governed by The Philadelphia Home Rule Charter and The Philadelphia Code, with requirements, responsibilities and regulations that do not fall under the authority of the PUC in its mission to regulate public utilities

Petitioner’s argument was that the TRB was required to vacate the WRB bill under appeal because the usage charge was the result of a failure by the WRB to read the meter for more than 3 years. This argument was based on Petitioner’s assertion that the PWD was subject to the requirement of The Pennsylvania Code and jurisdiction of the PUC and as such was required to have a meter reading at least every 6 months. By failing to comply with these requirements, the bill in question was invalid, under Petitioner’s theory.

Petitioner’s continued argument was that under PUC regulations, the PWD and WRB could not enforce or collect on a bill resulting from failure to read the meter for approximately 3 years.

It is the finding of the Tax Review Board that the WRB and PWD are not subject to these PUC restrictions as the City of Philadelphia is not a regulated public utility under the jurisdiction of the PUC.

With regard to estimated bills, the City of Philadelphia Philadelphia Water Department regulations provide:

5.1 Billing.

(a) Estimated Usage and Billing. When an accurate meter reading cannot be obtained at the time of a scheduled meter reading or when necessary for administrative purposes, the quantity of water used may be estimated for billing purposes. Estimated usage will be based upon actual meter readings from prior cycles or by such other fair and reasonable methods as shall be approved by the Water Commissioner. Where the water usage is estimated because of inability to read the meter, any necessary corrections shall be made at the time of the next actual meter reading, or when appropriate.

In this case, a malfunctioning electronic transmitter failed to transmit the meter readings for the regular monthly billing by the WRB but the meter itself continued to function and record the property's water usage. When the WRB did finally receive an actual reading, it was able to prepare a bill based on actual water usage for the period in question.

Petitioner did not assert that the water had not been used or dispute the amount of usage billed as being incorrect, only that he should not be held responsible for the usage bill because of the WRB delay in getting the actual reading.

There were no penalties or additional charges added to the bill to penalize Petitioner. There were no arguments made that the usage billing was inaccurate. While the TRB could sympathize at Petitioner's displeasure with being surprised by a delinquency bill, there was no basis for dismissal of these charges.

Concurred:

Nancy Kammerdeiner, Chair

George Mathew, CPA

Martin Bednarek

Kaitlin McKenzie-Fiumara, Esq.