



City of Tacoma
Hearing Examiner

May 3, 2019

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Re: *Hannah Inskeep v. City of Tacoma, Department of Public Utilities*
File No. HEX2019-001 (CA #100801217)

Dear Parties,

In regard to the above entitled matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision and Order.

Sincerely,

Louisa Legg
Office Administration

Enclosure (1) – Decision and Order

Cc: John Hoffman, Customer Services Assistant Manager, Tacoma Public Utilities
(Electronic Mail Delivery Only)

CERTIFICATION

On this day, I forwarded a true and accurate copy of the documents to which this certificate is affixed via United States Postal Service postage prepaid or via delivery through City of Tacoma Mail Services to the parties or attorneys of record herein.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED May 3, 2019, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **HANNAH E. INSKEEP,**

4 **Appellant,**

5 **v.**

6 **THE CITY OF TACOMA, through**
7 **its Department of Public Utilities,**

8 **Respondent.**

HEX NO. 2019-001
(CA # 100801217)

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND
ORDER

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10 **THIS MATTER** came on initially for hearing before JEFF H. CAPELL, Hearing
11 Examiner for the City of Tacoma (the “City”), on January 31, 2019 (separately the “Round
12 One Hearing”). The Appellant, Hannah Inskeep (hereafter “Appellant” or “Inskeep”),
13 appeared *pro se* throughout. Tacoma Public Utilities (“TPU”) was represented by Rachel
14 Shroads, Customer Accounts Supervisor, also without legal counsel.

15 Toward the close of the Round One Hearing it came to light that Inskeep was possibly
16 contesting additional utility charges that had not been made part of, nor had they been
17 addressed in, the Round One Hearing. As a result, the Hearing Examiner chose to hold open
18 and continue the hearing to a date where the parties could present issues related to the
19 additional contested billings, address them fully, and then one decision could be issued in a
20 consolidated appeal.¹

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¹ Hearing Examiner Rule of Procedure (“HEXRP”) 1.07 “Consolidation” provides the authority for the Examiner to combine or consolidate what otherwise could have been two separate appeals.

FINDINGS OF FACT,
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AND DECISION AND ORDER

ORIGINAL

1 The hearing was initially reset for March 28, 2019. On March 28, 2019, the parties
2 appeared at the reset hearing, but Inskeep requested, and was granted, a continuance until
3 April 18, 2019, to prepare more fully, to review newly submitted TPU exhibits, and to be fully
4 ready to finish the presentation of her appeal.

5 On April 18, 2019, the hearing was reconvened and concluded.² In both rounds of the
6 consolidated hearing, witnesses were placed under oath and testified. Exhibits were admitted
7 and reviewed.

8 Based upon the evidence submitted, the Hearing Examiner makes the following:

9 **FINDINGS OF FACT**

10 1. This appeal concerns electric utility service TPU provided to 1405 South J
11 Street, Apt. 303, in the city of Tacoma, Washington (the "Subject Property"), under TPU
12 Account No. 100801217 (the "Account"). The Account is in the name of both Appellant
13 Inskeep and Zackary M Manuel [sic]. *Ex. R-1, Ex. R-3, Ex. R-4, R-6, R-8, R-10,*
14 *Exs. R-17~R-19.*

15 2. Inskeep testified that part of the genesis for her appeal came from discussions
16 with unnamed Metropolitan Development Council ("MDC") staff and her landlord at the
17 Subject Property who thought her bill seemed high. In her Statement of Disputed Utility Bill
18 (*Ex. R-6, the "Dispute Statement"*), Inskeep appeared to be contesting TPU's use of a
19 multiplier 10 meter at the Subject Property. *See also Inskeep Round One Testimony.* Inskeep
20 testified that she has been trained as an electrician, and that she performed her own research,
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² If referred to separately, the April 18, 2019 hearing will be called the "Round Two Hearing." Where the word "hearing" is used separately from these defined terms, it shall be inclusive of both rounds, and denote the entire consolidated hearing.

1 but has never heard of multiplier 10 meters or about their use in the electric power utility
2 industry. *Id.* Inskeep testified further that in multiple contacts with TPU personnel, she tried
3 to get answers regarding why her bill is what it is, but never got satisfactory answers.

4 3. In her Dispute Statement (*Ex. R-6*), Inskeep listed the amount in dispute as
5 \$564.05. There is no reference to a specific billing period (invoice) in the Dispute Statement.
6 Rather, the Dispute Statement alleges that “There are multiple mathematical errors on my
7 bills dating from 6.17.17 to 10.3.18.”³ Inskeep goes on to state that there were both under and
8 over charges for this period without stating what those are exactly. At the Round One
9 Hearing, after inquiry, Inskeep testified that she was disputing \$619.82. TPU initially
10 submitted invoices for the Account dating from February 6, 2018 through October 3, 2018.
11 *Ex. R-9*. Total electric power bills for this roughly nine (9) month period are \$432.41. *Id.* By
12 the time of the Round Two Hearing, TPU added invoices for the Account from October 4,
13 2018 through February 5, 2019, into the exhibit mix. *Ex. R-17*. Electric bills for this period
14 total \$251.11, bringing the total amount for all invoices submitted to \$683.52. *Ex. R-9, Ex. R-*
15 *17*.

16 4. During this period, the “Average cost per day” for electricity usage at the
17 Subject Property ranged from a low of \$1.63 (Billing period – 4/6/18 to 6/5/18) to a high of
18 \$2.11 (Billing period - 2/6/18 to 4/5/18). *Id.* TPU testified that the average electricity cost per
19 day for the Subject Property for the entire period in dispute is approximately \$1.97. *Hoffman*
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³ Neither party offered any TPU invoices prior to February 2018 as evidence.

1 *Testimony.* On questioning at the Round Two Hearing, Inskeep declined to specify any
2 additional amount in dispute over the \$619.82 figure she gave at the Round One Hearing.

3 4. In addition to the hearsay opinions of the MDC employee and her landlord (*FoF*
4 *2 above*), Inskeep testified that she felt her billings were high because (a) she is almost never
5 home due to school and work, (b) she uses the baseboard heaters in the Subject Property very
6 little even when home, (c) she has no clothes washer, dryer, or dishwasher at the Subject
7 Property, (d) she uses her 1,100 watt microwave to cook in rather than the range/oven, and
8 (e) she uses the other power consuming facilities in the Subject Property sparingly. A garbage
9 disposal and water heater at the Subject Property have malfunctioned and been repaired. *See*
10 *also Ex. A-1 through Ex. A-3.*

11 5. At both rounds of the hearing, Inskeep testified that she was contesting her
12 electricity billings because no one from TPU had explained her bills and the amounts therein
13 satisfactorily. This dissatisfaction appeared to include her confusion over TPU's use of a
14 multiplier 10 meter at the Subject Property until it was replaced with a non-multiplier (single
15 constant) meter on October 22 of 2018. *Inskeep Testimony, Shroads Testimony, Hoffman*
16 *Testimony; Ex. R-1, Ex. R-6, Ex. R-8.*

17 6. TPU testified that multiplier 10 meters are commonly used in Tacoma and other
18 jurisdictions. *Wacker Testimony; see also Ex. R-1, Ex. R-7.* Information confirming this is
19 readily available online as TPU contends. *Id.* Nonetheless, TPU changed the meter at the
20 Subject Property to one that does not use a multiplier at Inskeep's request. *Shroads*
21 *Testimony; Ex. R-1, Ex. R-8.* At the Round One Hearing, Inskeep was confused about

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 whether the meter change out had actually occurred, even though she had requested it, and if
2 it had, why she was not notified. She also wanted to know why the bill from October 4, 2018
3 to December 5, 2018 still showed a multiplier 10 meter in use. *Inskeep Testimony*. Shroads
4 testified that there is no general requirement that a customer be notified of a meter change
5 out, but that in this case, because of a life support seal on the meter at the Subject Property,
6 one of the two names on the Account would had to have given permission for the brief
7 outage that would accompany the meter change out. Shroads speculated that Zackary Manuel
8 would have given this acknowledgment.⁴

9 7. TPU's invoice for the period from October 4, 2018 to December 5, 2018
10 erroneously indicates a multiplier 10 meter still in use at the Subject Property throughout that
11 billing cycle, even though a non-multiplier (single constant) meter was in use after
12 October 22, 2018. *Inskeep Testimony, Shroads Testimony, Hoffman Testimony; Ex. R-17*.
13 TPU apologized for any confusion this engendered, but maintained that both meters were
14 reading accurately. *Hoffman Testimony, Shroads Testimony; Ex. R-1, Ex. R-3, Ex. R-4,*
15 *Ex. R-8*.

16 8. Inskeep's initial contact with TPU regarding her suspicions of power
17 consumption reading too high at the Subject Property was in late January of 2018. *Inskeep*
18 *Testimony, Shroads Testimony; Ex. R-1*. In early February of 2018, TPU sent a field
19 investigator to confirm the then current reading and test the accuracy of the meter. *Shroads*
20 *Testimony; Ex. R-1, Ex. R-3*. The meter reading was deemed accurate at this time. *Shroads*
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⁴ As referenced above, "Zackary M Manuel" is listed as a joint account holder on the Account. Inskeep indicated at the Round One Hearing that Manuel "has trouble leaving the house and going out in public" which is possibly why he was likely home at the time the meter was swapped out.

1 *Testimony; Ex. R-1, Ex. R-3.*

2 9. Inskeep contacted TPU again three days after the field investigator's visit still
3 concerned about the meter. *Shroads Testimony; Ex. R-1, Ex. R-5.* This contact led to the
4 meter being tested by a TPU meter shop technician who found it to be registering accurately.
5 *Id; Ex. R-4.*

6 10. Thereafter, TPU had no contact with Inskeep until she submitted the Dispute
7 Statement on October 15, 2018, which led to the present appeal.

8 11. Any Conclusion of Law more properly deemed or considered a Finding of Fact
9 is hereby adopted as such.

10 Based upon the foregoing Findings of Fact, the Hearing Examiner makes the
11 following:

12 **CONCLUSIONS OF LAW**

13 1. The Hearing Examiner has jurisdiction over the parties and the subject matter of
14 this case pursuant to Tacoma Municipal Code ("TMC") 1.23.050.B.21 as a "[d]ispute[]
15 concerning utility service..."

16 2. As the Appellant in this proceeding, Inskeep bears the burden of proof to
17 establish by a preponderance of the evidence that TPU's billings are incorrect. *TMC*
18 *1.23.070.C.* The Hearing Examiner's review of the matter is *de novo*. *TMC 1.23.060.*

19 3. TPU, as a municipal utility, is obligated by law to bill the cost of utility services
20 provided. *See, e.g., RCW 35.92.010, RCW 80.28.080; TMC 12.06.010; Housing Auth. v.*
21 *Sewer and Water District, 56 Wn. App. 589, 784 P.2d 1284 (1990).*

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
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1 4. The burden of proof in this appeal, resting on Appellant Inskeep as it does,
2 creates a legal presumption benefiting TPU that its billing is correct unless an appellant can
3 show otherwise by a preponderance of the evidence. “A legal presumption is a conclusion
4 based upon a particular set of facts, combined with established laws, logic or reasoning. It is
5 a rule of law which allow[s][] a court to assume a fact is true until it is rebutted by the
6 greater weight (preponderance) of the evidence against it.”⁵

7 5. Here, there was no evidence presented that TPU did anything other than follow
8 its own standard procedures (i.e., taking and reporting meter readings, checking accuracy
9 when a question comes in, maintaining the meter, billing on time, etc.). A simple Google
10 search verifies that the use of multiplier meters is common in the United States. There was no
11 great fluctuation in the amounts TPU billed that would indicate any malfunction in the
12 meters used at the Subject Property for the period from February 6, 2018 until February 5,
13 2019. The Appellant’s opinion, bolstered by the opinions of others, that the usage seems
14 high, must be supported by evidence upon which the Examiner can rest a determination that
15 TPU’s billing was actually incorrect. That is what the TMC and other applicable laws
16 require. In this case, there was nothing more than opinion offered regarding the billings. TPU
17 situated properties, and low levels of occupancy.⁶

18 ⁵ <https://definitions.uslegal.com/legal-presumption/>. See also *Ency. of Evidence*, Vol. 9, pg. 882, which
19 describes the difference between a presumption of fact and a presumption of law as follows:
20 “The distinction usually drawn between these two classes of presumptions is that a presumption of law is
21 an arbitrary rule of law that when a certain fact or facts appear a certain other fact is, for the purposes of
the case, deemed to be established, either conclusively or until contrary evidence is introduced; while a
presumption of fact is merely a logical inference or conclusion which the trier of the facts is at liberty to
draw or refuse to draw.”

⁶ No evidence was offered to show conclusively what Manuel’s level of presence is at the Subject Property. At
the Round One Hearing, Inskeep testified that he hardly ever went out. At the Round Two Hearing, she indicated
that he was now venturing out from the Subject Property to work and attend classes similarly to Inskeep herself.

**FINDINGS OF FACT,
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1 6. Of course, the Examiner acknowledges that the opinions offered are based on
2 Inskeep's low occupancy at the Subject Property, the small size of the Subject Property, the
3 electric appliances present, and their use. While all that has some evidentiary value, it does
4 not overcome TPU's evidence and the presumption of correctness by a preponderance.
5 Regrettably, there was no concrete evidence tying any of the foregoing to actual numbers
6 regarding usage and rates charged to show a precise lower number (or any number) that
7 should have been billed instead. In the absence of that, the Examiner is not empowered to
8 grant any reduction, or to otherwise find TPU's billings incorrect.

9 7. The Examiner acknowledges the difficulty an appellant faces in overcoming the
10 presumption of correctness from which TPU benefits. Inskeep stated multiple times that she
11 was looking for answers about why she has been billed the amounts in evidence for the
12 period from February 6, 2018 until February 5, 2019. Unfortunately, a hearing examiner can
13 only preside over and decide matters for which he/she has express legislative authorization.⁷
14 Without a different number being proved by a preponderance, TPU's billed amounts stand.

15 8. Any Finding of Fact more properly deemed or considered a Conclusion of Law
16 is hereby adopted as such.

17 Based upon the foregoing Findings of Fact and Conclusions of Law the Hearing
18 Examiner makes the following:

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⁷ *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 843, 899 P.2d 1290, (1995) (*The scope and nature of an administrative appeal or review must be determined by the provisions of the statutes and ordinances which authorize them*). *Skagit Surveyors & Eng'rs, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 558, 958 P.2d 962 (1998) (*The power of an administrative tribunal to fashion a remedy is strictly limited by statute.*).

**FINDINGS OF FACT,
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AND DECISION AND ORDER**

1 **DECISION AND ORDER**

2 Appellant Inskeep failed to show by a preponderance of evidence that TPU's billings,
3 at any point during the period from February 6, 2018 until February 5, 2019 were incorrect.
4 No evidence was presented that TPU's use of a multiplier 10 meter at the Subject Property
5 until October 22, 2018 was unlawful or that the meter was inaccurate. Given the foregoing,
6 Inskeep's appeal is **DENIED** and the joint holders of the Account are liable for the charges
7 billed. These amounts may be paid in full or on a schedule acceptable to the parties hereto.

8 **DATED** this 3rd day of May, 2019.

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10 **JEFF CAPELL, Hearing Examiner**

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**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION AND ORDER**

ORIGINAL

1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of motions
13 for reconsideration and contents of such motions are jurisdictional. Accordingly, motions for
14 reconsideration that are not timely filed with the Office of the Hearing Examiner or do not set
15 forth the alleged errors shall be dismissed by the Examiner. It shall be within the sole
16 discretion of the Examiner to determine whether an opportunity shall be given to other
17 parties for response to a motion for reconsideration. The Examiner, after a review of the
18 matter, shall take such further action as he/she deems appropriate, which may include the
19 issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

11 **APPEAL OF EXAMINER'S DECISION TO MUNICIPAL COURT:**

12 **NOTICE**

13 Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing
14 Examiner's decision may be appealable to Tacoma Municipal Court. Any court action to set
15 aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner likely will
16 need to be commenced within 21 days of the entering of the decision by the Examiner, unless
17 otherwise provided by statute.

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**FINDINGS OF FACT,
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AND DECISION AND ORDER**