

1 **OFFICE OF THE HEARING EXAMINER**  
2 **CITY OF TACOMA**

3 **JAY A. SKINNER,**

4 **Appellant,**

5 **v.**

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

8 **Respondent.**

**HEX2021-007**  
**(Account #101050754)**

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

9 **THIS MATTER** came on for hearing before JEFF H. CAPELL, Hearing Examiner  
10 for the City of Tacoma (the “City”), on February 25, 2021.<sup>1</sup> Appellant Jay A. Skinner  
11 (“Appellant” or “Skinner”) appeared at hearing *pro se*. Tacoma Public Utilities (“TPU”) was  
12 represented by John Hoffman, Customer Services Assistant Manager, also without legal  
13 counsel present.

14 The parties were placed under oath and testified. Exhibits were admitted and  
15 reviewed. Based on both parties needing to provide some potentially material additional  
16 evidence to the proceeding based on a clarification of the issue on appeal, the hearing was  
17 recessed on February 25, 2021, and continued until March 18, 2021. On that date, additional  
18 testimony and argument was heard, together with some additional inquiry being made to the  
19 parties from the Examiner, both during the reconvened hearing and in writing thereafter.  
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<sup>1</sup> Due to National, State of Washington and City of Tacoma Proclamations of Emergency made in response to the COVID-19 virus, the City of Tacoma closed the Tacoma Municipal Building to the public until further notice on or around March 17, 2020. As a result, the public hearing in this matter was conducted virtually using Zoom teleconferencing with both internet and telephonic access.

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

1 Based upon the entirety of the evidence and argument presented, the Hearing Examiner makes  
2 the following:

3 **FINDINGS OF FACT**<sup>2</sup>

4 1. This appeal concerns the City’s provision of electric power utility service, under  
5 TPU Account No. 101050754 (the “Account”), to residential real property occupied by the  
6 Appellant at the address of 12409 20<sup>th</sup> Avenue E, in the city of Tacoma, Washington (the  
7 “Subject Property”) relevant to the period of October 29, 2019 to November 2, 2020 (the  
8 “Billing Period”). *Hoffman Testimony, Skinner Testimony; Ex. R-1, Ex. R-4~R-9*

9 2. As a general rule, it is TPU’s goal to have accurate billing always. That did not  
10 occur here during the Billing Period due to a mechanical problem with the power meter at the  
11 Subject Property. TPU has processes in place designed to detect the kind of mechanical meter  
12 failure that occurred here, but detecting the failure in this case took longer than TPU would  
13 generally consider acceptable, and as a result, under billing went on for longer than it  
14 normally would. During the hearing, TPU apologized for these failures and delays. *Hoffman*  
15 *Testimony; Ex. R-1, Ex. R-2.*

16 3. Mechanical power meters, such as the one previously installed at the Subject  
17 Property, do not fail outright all at once. Their accuracy can deteriorate over time while still  
18 registering some amount of power consumption, but doing so inaccurately. That is what  
19 happened here leading to the Subject Property being billed for less than its actual  
20 consumption during the Billing Period. *Id.*

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<sup>2</sup> It is noted here that the material facts in this appeal are not in dispute. Appellant Skinner’s argument is based on his view of the law as he argued it applies to TPU having back billed him for under recorded power usage, as will be addressed further below.

1           4.    TPU’s system uses what are referred to as “implausibles” in order to detect  
2 meter deterioration/inaccuracy. Skinner’s meter began failing sometime between October 29,  
3 2019 and March 3, 2020. During this period, power consumption at the Subject Property fell  
4 precipitously according to the meter. *Hoffman Testimony; Ex. R-1, Ex. R-4~R-9.*

5           5.    In the latter part of 2019 and early 2020, some customers’ power consumption  
6 was estimated rather than read from their meters due to weather conditions interfering with  
7 meter readers going on their normal routes at the time and taking actual readings. This gap in  
8 readings combined with a manual correction to the Account in March of 2020 based on the  
9 already malfunctioning meter, made the TPU system think that these lower levels of  
10 consumption were somehow correct, and contributed to the delay in discovering Appellant’s  
11 meter malfunction until later in 2020, when on November 2 another implausible meter  
12 reading occurred. At this point, TPU personnel inspected the meter at the Subject Property in  
13 person and found it to be faulty. *Id.*

14           6.    By November 12, 2020, TPU personnel conclusively determined that the meter  
15 had failed, and it was replaced. TPU then went through the process of estimating what the  
16 actual consumption for the Billing Period was, and issued Skinner a corrected invoice for the  
17 amount of shortfall (Exhibit R-9). *Id.*

18           7.    In cases of failed meters, such as here, TPU uses previous use history at the  
19 Subject Property to make a “good faith” estimate of what the actual consumption was. This  
20 process was concluded and the aforementioned invoice was sent demanding payment of  
21 \$933.76<sup>3</sup> for under-billed power consumption (again, Exhibit R-9). *Id.*

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<sup>3</sup> This figure was what remained after Skinner had made a \$400 payment shortly after the under billing had been discovered.

1           8.     Going into the hearing on February 25, 2021, Skinner had contended in some  
2 communications with TPU that a new heat pump, installed during the Billing Period, should  
3 have led to lower consumption than TPU’s estimate. He contended, as a result, that TPU’s  
4 calculation of \$933.76 was too high. He also contended that, because the meter failure and the  
5 time it took to discover it were all within TPU’s control, TPU was obligated to give him a  
6 discount or even waive billing for the shortfall. At the hearing on February 25, 2021, Skinner  
7 did not present any evidence regarding the heat pump. This, together with TPU’s not being  
8 able to confirm the exact amount of shortfall still outstanding, led the Examiner to recess the  
9 hearing until March 18, 2021, in order for the parties to submit the missing information, as  
10 well as to see if they could reach an agreement on their own regarding the outstanding  
11 amount. *Skinner Testimony, Hoffman Testimony.*

12           9.     After the hearing recessed on February 25, 2021, TPU informed later that same  
13 day that the still outstanding shortfall amount was indeed \$933.76 as shown in Exhibit R-9.  
14 Somewhere between February 25, 2021 and March 18, 2021, Skinner submitted information  
15 regarding his new heat pump which TPU considered, but ultimately determined that  
16 consumption had increased with the new heat pump rather than decreased and so could not  
17 make an adjustment on that basis.<sup>4</sup> That notwithstanding, TPU pointed out in the 3/17 Letter  
18 that it had “[e]xamined the entire account history” to determine the most accurate estimate for  
19 the Billing Period possible, and had made a downward adjustment of \$251.70 leaving the  
20 outstanding shortfall at \$682.06, reduced from the previous \$933.76.

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<sup>4</sup> See TPU letter to Skinner dated March 17, 2021 (the “3/17 Letter”).

1 10. At the reconvened hearing on March 18, 2021, Skinner stated that he was not  
2 satisfied with this reduction. He maintained that because the meter malfunction was not his  
3 fault he should not be back billed, and that in any event, he believed that section 480-100-178  
4 of the Washington Administrative Code (“WAC”) prevents TPU from back billing for more  
5 than a six month period.<sup>5</sup>

6 11. After the conclusion of the reconvened hearing, the Examiner requested by email  
7 on March 24, 2021, that TPU address the applicability of WAC 480-100-178 to TPU back  
8 billing. TPU, through legal counsel, submitted its written response on April 6, 2021.

9 12. Any conclusion of law herein which may be more properly deemed or  
10 considered a finding of fact is hereby adopted as such.

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

13 **CONCLUSIONS OF LAW**

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

17 2. The Hearing Examiner’s review of this matter is *de novo*. *TMC 1.23.060*.

18 3. The Appellant bears the burden of proof to establish, by a preponderance of the  
19 evidence, to show that his claim is consistent with applicable legal standards and the lower  
20 decision should be reversed. *TMC 1.23.070.C*. Here the lower decision was to back bill the  
21 Appellant the estimated amount of utility usage at the Subject Property for the Billing Period

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<sup>5</sup> Skinner had made this same argument based on the WAC in the first round of the hearing as well.

1 as determined by TPU's estimating methods. Skinner's challenge to that decision is based on  
2 his contention that the meter malfunction is TPU's fault, and therefore he should not be  
3 responsible for the under billed amount, and that in any event, TPU cannot back bill for a  
4 period exceeding six months pursuant to WAC 480-100-178.

5 4. TPU, as a municipal utility, is obligated by law to bill the cost of utility services  
6 provided.<sup>6</sup> In the *Housing Authority* case, the billing at issue had been incorrect (low) for four  
7 years. The deficit was back billed and the back billing was upheld. The court concluded that  
8 the utility was obligated to collect moneys owed it, and that the back billing could not be  
9 estopped from collection even if the utility had been negligent in under billing the customer.<sup>7</sup>  
10 The foregoing authority is directly on point here. Skinner's somewhat off-again on-again  
11 contention that TPU has no authority to collect under billed amounts after the fact is incorrect.

12 5. Skinner's contention that WAC 480-100-178 prevents TPU from back billing  
13 beyond a six month period from the date the error occurred is also incorrect. WAC 480-100-  
14 178 does not apply to TPU's operation as a municipal utility, as the City (TPU) correctly  
15 pointed out in its response to the Examiner's questions posed on March 24, 2021. Section  
16 80.04.500 of the Revised Code of Washington ("RCW") expressly exempts municipal utilities  
17 such as TPU from the provisions of WAC 480-100 including section 480-100-178. As a  
18 result, it appears that TPU follows state contract law principles in regard to its back billing by  
19 limiting back billing for general service to three years,<sup>8</sup> and commercial services under  
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<sup>6</sup> See, e.g., RCW 35.92.010, RCW 80.28.080; TMC 12.06.110, and .160; *Housing Auth. v. Sewer and Water District*, 56 Wn. App. 589, 784 P.2d 1284 (1990).

<sup>7</sup> *Id.*, at 595.

<sup>8</sup> Presumably based on the Statute of Limitations of three years for actions on an unwritten contract under RCW 4.16.080(3).

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

- 6 -

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1 written agreements to six years.<sup>9</sup> TPU was within the three year limitation in the back billing  
2 that occurred here.

3 6. Pursuant to RCW 35.63.130, the local “[l]egislative body may vest in a hearing  
4 examiner the power to hear and decide those issues it believes should be reviewed and  
5 decided by a hearing examiner, including but not limited to: ... (b) Appeals of administrative  
6 decisions or determinations; ...”

7 7. As evidenced by the foregoing, hearing examiners are creatures of statute and  
8 have only the authority they are given by those same statutes. In the present matter, as stated  
9 above, that authority comes from TMC 1.23.050.B.21, which provides the following:

10 B. In regard to the matters set forth below, the Examiner shall conduct  
11 adjudicative proceedings, maintain a record thereof, and enter findings of fact,  
conclusions of law, and a final decision or other order, as appropriate: ...

12 21. Appeals arising from the imposition of charges for service issued by the  
13 Department of Public Utilities, as well as those arising from disputes  
14 concerning utility service, use of watershed or other Department property, and  
15 termination of any use; provided, that the Hearing Examiner shall not  
adjudicate claims with respect to any rate set by the City Council in a rate  
ordinance nor hear any challenge to the rate-making process (Chapters 12.06  
and 12.10);

16 8. In the absence of a preponderance of the evidence showing that TPU’s back  
17 billing was incorrect, and that some other (presumably lesser) amount should have been  
18 charged, any action by the Hearing Examiner to adjust TPU’s billing demand would amount  
19 to the Examiner acting beyond his express authority. TPU presented testimony regarding its  
20 methods for determining the amount to back bill for under billed usage. TPU’s methods are  
21 reasonable, and appear to be suited to making as accurate an estimate possible. Aside from

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<sup>9</sup> See RCW 4.16.040(1) setting forth the Statute of Limitations of six years for actions on written contracts.

1 consideration of the heat pump, Skinner presented no other evidence to show that TPU’s back  
2 billed amount—especially as now revised further downward by the 3/17 Letter—is  
3 inaccurate.

4 9. TPU’s downward revision of the outstanding shortfall evidenced TPU’s good  
5 faith in trying to resolve this matter. Per the 3/17 Letter, TPU made this downward revision  
6 based on additional examination of the entire account history (*Finding of Fact 9*), but was  
7 authorized to make such an adjustment in any event because “A municipal corporation has  
8 inherent power to enter into a compromise settlement of disputed claims, arising out of a  
9 subject matter concerning which the municipality has the general power to contract.”<sup>10</sup> As  
10 alluded to already above, TPU’s provision of utilities to its customers is a contractual  
11 relationship.

12 10. To summarize, Appellant Skinner’s legal arguments that TPU cannot back bill  
13 when the inaccurate readings were due to its own equipment failure, and alternatively that any  
14 such back billing is limited to six months from the date the error occurred are not supported  
15 by the law. As a result, TPU’s last calculated shortfall amount of \$682.06 is due under  
16 controlling statutory and case law.

17 11. Any finding of fact herein which may be more properly deemed or considered a  
18 conclusion of law is hereby adopted as such.

19 Based upon the foregoing Findings of Fact and Conclusions of Law the Hearing  
20 Examiner makes the following:

21 <sup>10</sup> *Warburton v. Tacoma Sch. Dist.*, 55 Wn.2d 746, 752, 350 P.2d 161 (1960), citing *Abrams v. Seattle*, 173 Wash.  
495, 502, 23 P.2d 869 (1933), and *Christie v. Port of Olympia*, 27 Wn.2d 534, 179 P.2d 294 (1947). See also  
*Eugster v. City of Spokane*, 139 Wn. App. 21, 31-32, 156 P.3d 912, 918 (2007) (*A good faith settlement of a  
dispute is sufficient consideration, absent any actual donative intent, to not be a violation of the constitutional  
prohibition on gifting public funds.*).

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



1 **ORDER**

2 Appellant Skinner is hereby ordered to pay to TPU the outstanding amount of \$682.06  
3 for electric power usage previously under billed. Inasmuch as the error was due to TPU's  
4 equipment malfunction, TPU should exercise maximum flexibility (to the extent Skinner  
5 desires such) in working out a payment schedule to accommodate Skinner's payment of the  
6 outstanding shortfall. If the parties cannot reach agreement regarding a payment schedule,  
7 they may submit a request to the Office of the Hearing Examiner for determination of a  
8 reasonable schedule.

9 **DATED** this 9th day of April, 2021.

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 **JEFF H. CAPELL, Hearing Examiner**

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 parties  
17 for response to a motion for reconsideration. The Examiner, after a review of the matter, shall  
18 take such further action as he/she deems appropriate, which may include the issuance of a  
19 revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

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

21 **NOTICE**

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

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