



City of Tacoma  
Hearing Examiner

February 9, 2017

FIRST CLASS & ELECTRONIC MAIL DELIVERY

James Henderson, Sr.  
2201 N 30<sup>th</sup> St.  
Tacoma, WA 98403-3361

Lynn Bucher, Customer Accounts Supervisor  
John Hoffman, Operations Manager  
3628 S. 35th Street  
Tacoma, WA 98409-3192  
(Interoffice Mail Delivery)

**Re: *James Henderson, Sr. v. City of Tacoma, Tacoma Public Utilities***  
**File No. HEX 2016-044 (CA #100986373)**

To the Parties,

In regards to the above entitled matter, please find enclosed a copy of the Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision entered on February 9, 2017, as the result of a hearing held on January 12, 2017.

Sincerely,

Louisa Legg  
Office Administrator

Enclosure: Findings, Conclusions, and Decision

**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 February 9, 2017, at Tacoma, WA.

Louisa Legg

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **JAMES HENDERSON, SR.,**

4 **Appellant,**

5 **v.**

6 **TACOMA PUBLIC UTILITIES,**

7 **Respondent.**

**HEX NO. 2016-044**

**CA # 100986373**

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

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10 **THIS MATTER** came on for a hearing before PHYLLIS K. MACLEOD, Hearing  
11 Examiner for the City of Tacoma, on January 12, 2017. The Appellant James Henderson, Sr.  
12 represented himself, *pro se*. Tacoma Public Utilities (TPU) was represented by Lynn Bucher,  
13 Customer Accounts Supervisor.

14 Witnesses were placed under oath and testified. Exhibits were admitted and reviewed  
15 and the parties made closing arguments.

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

17 **FINDINGS OF FACT**

18 1. James Henderson, Sr. owns the property at 2136 Wilkeson Street in Tacoma,  
19 Washington.<sup>1</sup> The property contains a rental home that tenants were occupying during  
20 September of 2016. The utility service for the premises was in the tenants' name as of  
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<sup>1</sup> James Henderson, Jr. was present at the hearing and indicated he also possesses an ownership interest in the property.

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

City of Tacoma  
Office of the Hearing Examiner  
Tacoma Municipal Building  
747 Market Street, Room 720  
Tacoma, WA 98402-3768

- 1 -  
**ORIGINAL**

1 September 2016, but the tenants failed to pay utility charges that were due and owing. Based  
2 on this delinquency, TPU disconnected electrical service on September 27, 2016, and water  
3 service on October 11, 2016. The tenants' utility account was then closed. *Bucher Testimony.*  
4 The electrical meter reading at the time of disconnection was 10,862. After the tenants fell  
5 behind on paying rent, Mr. Henderson, Sr. began legal proceedings to regain possession of the  
6 property. *Henderson Testimony; Exs. A-1; A-5; A-6.*

7 2. In anticipation of regaining possession of the property, Mr. Henderson, Sr. called  
8 TPU on November 9, 2016, asking to put service in his name as of November 15, 2016.  
9 Mr. Henderson, Sr. was informed during the call that a service establishment charge of \$18.60  
10 applied to the request. *Bucher Testimony; Ex. R-1.*

11 3. The tenants did not voluntarily vacate the property and sheriff's deputies  
12 removed them from the premises on November 15, 2016. *Ex. A-1.* Mr. Henderson, Sr. was  
13 present and indicated that the power was off at 9:00 a.m. and that the deputies were using  
14 flashlights while removing the tenants. Mr. Henderson, Sr. had a crew on site to begin clean-  
15 up of the property. He did not see TPU personnel come to the property during the morning  
16 hours, although they were expected due to his prior arrangement to have power restored  
17 during the morning of November 15, 2016. Mr. Henderson, Sr. was actively using the back  
18 yard during the clean-up and did not see TPU personnel on site or near the meter. *Henderson,*  
19 *Sr. Testimony.*

20 4. TPU records reflect that a field investigator was on the site at 11:08 a.m. on  
21 November 15, 2016. The visit was documented in TPU's computer files, as is the normal

1 procedure. The field investigator found the power was on and that the meter seal was broken.  
2 The situation was considered a self cut-in (SCI) because the power was not supposed to be on,  
3 and it was on, due to tampering with the locked meter. Pursuant to standard procedure, he  
4 contacted the meter shop to have a technician determine whether the tampering had rendered  
5 the meter unsafe or inoperable. *Ex. R-11*. The meter technician came to the site at 4:17 p.m.  
6 on November 15, 2016. The technician rebooted the meter and installed a new locking ring.  
7 The charges associated with the meter shop technician's call at the property were \$169.59,  
8 which included mileage of \$1.00, one hour of crew time at \$123.59, one barrel locking ring  
9 charge of \$25.00, and an administration charge of \$20.00. *Ex. R-3*. The meter technician  
10 turned off the power pending payment of the charges assessed for the service call. *Ex. R-11*.

11 5. Mr. Henderson, Sr. contacted TPU at 4:51 p.m. on November 15, 2016, to see  
12 why there was still no power at this residence. He was told that the field investigator had  
13 found the service on and that a meter shop technician had visited the property for repairs and  
14 left the service off pending payment of tampering charges. The next day, Mr. Henderson, Sr.  
15 paid the outstanding tampering charges in order to reinstate service at the site and obtained a  
16 form to dispute the billing. *Ex R-1; Ex. A-2*. Power was then restored to the property. When  
17 the power was reconnected, the meter read 10,891 rather than the 10,862 it read at close-out in  
18 September 2016 and during interim readings in October and November 2016. In fact, the  
19 reading on November 14, 2016, still reflected 10,862. The meter showed usage between the  
20 November 14, 2016 and November 15, 2016, readings and the November 17, 2016, start-up  
21 reading. *Ex. R-9*.

1           6. Mr. Henderson Sr. claims he should not be charged for the tampering repairs  
2 because he was not the utility customer until November 15, 2016. He contends the tenants  
3 were the utility customer and should be solely liable. *Henderson, Sr. Testimony; Ex. R-4.*  
4 However, the tenants' utility service had been disconnected significantly before November  
5 2016. Moreover, the meter did not reflect electrical usage during the period between the  
6 disconnection in September 2016 and the physical move-out on November 15, 2016. *Ex. R-9.*  
7 TPU contends that after the disconnections in September and October 2016, the tenants were  
8 no longer customers and the owner of the property became responsible for damage that was  
9 subsequently inflicted on utility equipment. *Bucher Testimony.*

10           7. Mr. Henderson, Sr. contends there would be no reason for him to tamper with the  
11 meter when he had already initiated an order for TPU to connect service beginning on the  
12 morning of November 15, 2016. He states he was expecting TPU to arrive at any time to  
13 connect the power and, therefore, it would make no sense to tamper with the meter. The  
14 Hendersons further expressed frustration that, under TPU's approach, there is no mechanism  
15 available to protect an owner from damage that is inflicted by tenants who are moving out of a  
16 property. *Henderson, Sr. Testimony; Henderson, Jr. Testimony.*

17           8. Any Conclusion of Law deemed to be properly considered a Finding of Fact is  
18 hereby adopted as such.

19           Based upon the foregoing Findings of Fact, the Hearing Examiner makes the  
20 following:

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1 CONCLUSIONS OF LAW

2 1. The Hearing Examiner has jurisdiction over the parties and the subject matter of  
3 this case under Tacoma Municipal Code (TMC) 1.23.050.B.21.

4 2. The appellant in these proceedings bears the burden of proof to establish by a  
5 preponderance of the evidence that TPU's billing to him was incorrect. *TMC 1.23.070.C.*  
6 The Hearing Examiner's review of the matter is *de novo*. *TMC 1.23.060.*

7 3. TPU, as a municipal utility, is obligated by law to bill the cost of utility services  
8 provided. *See, e.g., RCW 35.92.010; TMC 12.09.020, .030, .110, and .160; cf. Housing*  
9 *Auth. v. Sewer and Water District*, 56 Wn. App. 589, 784 P.2d 1284 (1990).

10 4. The disputed utility billing in this case includes a utility services establishment  
11 fee of \$18.60. The fee is imposed pursuant to TMC 12.01.010.A. Mr. Henderson called on  
12 November 9, 2016, to establish service in his name at 2136 South Wilkeson Street and the  
13 service establishment fee is properly due and owing.

14 5. The remaining disputed charges relate to the costs of investigating and repairing  
15 the meter at the 2136 South Wilkeson Street property on November 15, 2016. Mr. Henderson,  
16 Sr. argues that the charges should be assessed against his tenant as the utility customer. In this  
17 case, however, the tenants had ceased to be a customer for utility services when the services  
18 were disconnected on September 27, 2016 (electricity) and October 11, 2016 (water) and the  
19 account was closed. During the ensuing period, no person or entity was designated as the  
20 customer and no service was being provided. The issue becomes whether the property owner  
21 is responsible when a meter serving his property is damaged and power is used without

1 authorization.

2 6. The TMC addresses tampering with City equipment at TMC 12.06.140:

3 A. It shall be unlawful for any person, other than a duly authorized  
4 employee of the Department acting under the authority of the  
5 Director to connect any house, premises, wires or appliances with the  
6 City's electric circuits for the purpose of securing the electric current  
7 therefrom, or for any other purpose whatever. If such unlawful  
8 action is taken, the Department shall have the right to disconnect the  
9 service at the service source and demand a minimum restoration fee  
10 as set forth in City Code Section 12.01.010 plus all other unpaid  
11 charges owing the Department.

12 B. If the seal on the City's meter is broken, or the meter from any  
13 cause does not properly register, or any other evidence of energy  
14 having been used illegally is found, the customer shall be charged  
15 with a consumption estimated by the Director and bill rendered  
16 accordingly.

17 C. The civil remedies set forth herein are in addition to all other  
18 civil or criminal remedies available under State law, including but  
19 not limited to RCW 80.28.240 and/or RCW Title 9A, this Code, or  
20 Customer Service Policies adopted hereunder.

21 *TMC 12.06.14.*

7. The provisions of TMC 12.06.140.A do not limit responsibility for unauthorized connections to customers, but rather refer to persons. The charges required to restore service are also imposed without limitation to the customer. In this case, Mr. Henderson, Sr. wanted to obtain service at the property and due to the circumstances of tampering with the meter and unauthorized use, TPU had the ability to disconnect service and require payment in order to re-establish service. The courts have upheld a municipal utility's authority to collect fees and charges from a property owner, even if a tenant originally incurred the charge. In a decision

1 involving the City of Tacoma, the Washington Supreme Court held:

2 The ordinance giving the officer of the city of Tacoma power to cause a  
3 shutoff of water from premises affected, and to keep it shut off until the  
4 sum due therefor has been paid, if, in his opinion such a course of conduct  
5 is necessary to collect the amount due the city, is a reasonable provision.  
6 The remedy runs against the premises served, as well as against the tenant  
7 using the water.

8 *McCormacks, Inc. v. Tacoma*, 170 Wash. 103, 111, 15 P.2d 688 (1932). See also, *Union*  
9 *Enterprise, Inc. v. Seattle*, 77 Wn. 2d 190, 193, 460 P.2d 285 (1969)(citing *McCormacks* for  
10 the proposition that an owner can be held liable for the delinquency of a tenant).

11 8. Mr. Henderson, Sr.'s suggestion that he had no reason to tamper with the meter  
12 when he had already called to establish service is logical. However, the facts demonstrate that  
13 the meter was tampered with and power was on without authority when TPU personnel visited  
14 the site on November 15, 2016. Regardless of whether some other person, such as a tenant or  
15 workman did the tampering, the meter was damaged and had to be repaired. As the property  
16 owner, Mr. Henderson, Sr. is ultimately liable for paying the charges arising from damage to  
17 TPU equipment before service is restored.

18 9. Any Finding of Fact deemed to be properly considered a Conclusion of Law is  
19 hereby adopted as such.

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

### DECISION

Mr. Henderson Sr.'s appeal of the utility charges for the service establishment fee and



1 the costs incurred due to tampering is DENIED. The full amount owing of \$188.19 is  
2 AFFIRMED.

3 DATED this 9<sup>th</sup> day of February, 2017.

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5 PHYLLIS K. MACLEOD, Hearing Examiner

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

**ORIGINAL**

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1 **NOTICE**

2 **RECONSIDERATION/APEAL 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*)

11 **APEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

12 **NOTICE**

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