



Agenda Date: 6/23/04
Agenda Item: 5B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

WATER AND WASTEWATER

DECISION AND ORDER

IN THE MATTER OF THE PETITIONS OF
MP REAL ESTATE LP, STUDEBAKER
SUBMETERING, INC. AND THE NEW JERSEY
APARTMENT ASSOCIATION FOR PERMISSION)
TO CHECK-METER WATER SERVICE IN)
RESIDENTIAL APARTMENT BUILDINGS)

DOCKET NO. WO00040254 ✓
WO00060360
WO00070510

(SERVICE LIST ATTACHED)

BY THE BOARD:

The Board has received three petitions requesting permission to check-meter water service in residential apartment buildings. On May 2, 2000, MP Real Estate LP, a partnership which owns the Mystic Point Apartments located in Somers Point, New Jersey, filed a Petition with the Board, requesting permission to check-meter water at Mystic Point Apartments. On June 19, 2000, Studebaker Submetering, Inc., a utility-billing company filed a Petition with the Board, requesting a Declaratory Ruling allowing water check-metering in residential apartment buildings. On July 19, 2000, the New Jersey Apartment Association, a statewide organization of apartment owners, managers and builders representing 200,000 units, filed a Petition with the Board, requesting approval to check-meter water service in residential apartment buildings.

EXISTING BOARD POLICY:

The Board has not specifically addressed the issue of water check-metering. However the Board does have a formal policy on the check-metering of electric and gas service that was promulgated through the issuance of four separate Board Orders. The Board currently allows electric and gas sub-metering in: 1) industrial or commercial buildings; 2) publicly financed and government owned buildings; 3) cooperative housing or condominiums and (4) eleemosynary institutions. Initially, electric check-metering was allowed in industrial and commercial buildings, and residential buildings that are publicly financed and government owned. I/M/O Petition of PSE&G for an Order Approving an Amendment to Section 9 of the Standard Terms and Conditions of the Filed Tariff for Electric Service, Docket No. 7511-1176, Order Rejecting Hearing Examiner's Report and Recommendations (October 16, 1980). The Board subsequently allowed electric check-metering in cooperative housing and condominiums. I/M/O Petition of PSE&G for an Order Approving an Amendment to Section 9 of the Standard Terms and Conditions of the Filed Tariff for Electric Service, Docket No. 7511-1176, Order of

Modification (March 4, 1981). In 1986 the Board issued an order allowing check-metering of gas service consistent with its earlier orders regarding the sub-metering of electric service and in charitable institutions. I/M/O Boards Investigation Into the Check Metering of Gas Service, Docket No. GX8509901 (September 5, 1986). In 2001 the Board rejected a request to extend check-metering to privately-owned residential housing units. I/M/O Petition of Marine View Plaza Apartments for a Declaratory Ruling Permitting Check-Metering, Docket No. EO99040252, Order Denying Motion (March 30, 2001).

DISCUSSION AND FINDINGS:

Before the Board considers the merits and drawbacks of the issues raised in the three Petitions, it must determine whether adjudication on an individual case basis, is the proper method for resolution of this matter. The Board has great latitude to determine the manner in which to proceed on the matters presented before it. Texter v. Human Services Dept., 88 N.J. 376, 383 (1982). In fact, the Board may use its discretion to choose whether to proceed on a matter through rulemaking or adjudication. Yet, when an agency is confronted with a matter that contains broad policy issues that affect the public or the proposed action would have wide application and affect, the agency is advised to proceed through rulemaking. Crema v. New Jersey Department of Environmental Protection, 94 N.J. 286, 299 (1983). Moreover, "where the subject matter of inquiry by agency during fact-finding process reaches concerns that transcend those of individual litigants and implicate matters of general administrative policy, rule-making is a suitable mode of proceeding." Metromedia, Inc. v. Director, Division of Taxation, 97 N.J. 313, 330 (1984).

Among the factors to be considered, either singly or in combination, in determining whether rulemaking should be instituted instead of adjudication are whether the determination: 1) will impact a broad segment of the population; 2) will be applied uniformly; 3) is prospective in nature; 4) prescribes a legal standard that is not provided by or inferable from the enabling statutory authorization; 5) reflects a policy that was not previously expressed or a policy that has been changed; 6) reflects regulatory policy that is either an interpretation of law or a general policy. Metromedia at 331. Although these six factors provide agencies with a set of guidelines to help them determine whether agency action is rulemaking or adjudication, they need not be measured equally. Metromedia at 332. In fact, all of the factors do not have to be present for agency action to constitute rulemaking. Id.

In April 2004, Board Staff notified the three Petitioners of the Staff's intention to recommend that the Board deny their petitions without prejudice and proceed to institute appropriate rulemaking procedures. Petitioners were given the opportunity to comment. Comments were received from the New Jersey Apartment Association and Friedman Realty Group. The Board has considered the comments received and has decided to pursue a uniform rulemaking based upon the Metromedia criteria.

Upon weighing the Metromedia factors, it is apparent that the Board should institute a rulemaking proceeding to review the issue of check-metering, both with respect to electric and gas, as well as water. The three Petitions before the Board undeniably contain policy issues that affect a broad segment of New Jersey residents. Water check-metering in residential apartment buildings would primarily affect the tenants and landlords of these buildings, both of which comprise a broad segment of New Jersey residents. In addition, allowing water check-metering in residential apartment buildings has the potential to impact the entire state. The imposition of water check-metering in residential apartment buildings may affect the manner in which tenants are billed for water service and the price they are charged for such service.

Further, landlords may be impacted by the imposition of water check-metering because they are the customer of record for the water service that would be check-metered. Also, separate studies have shown that the imposition of water-check metering may potentially lead to reduced water usage in residential apartment buildings and result in significant water conservation for the entire state.

Board adjudication of these Petitions would therefore involve new policy determinations impacting a broader section of the public than these individual petitioners. Accordingly, the three Petitions are HEREBY DENIED WITHOUT PREJUDICE.

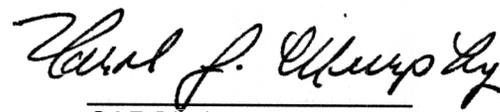
The Board will: 1) immediately convene a Sub-Metering Working Group to consider the issue of sub-metering in multi-unit housing; and 2) institute a rulemaking proceeding in the near-future to address this issue. The Sub-Metering Working Group will be comprised of representatives from other state agencies and representatives of affected parties, including the three Petitioners in this proceeding. Further, nothing in this order will preclude the Petitioners from exercising their rights in the forthcoming rulemaking proceeding.

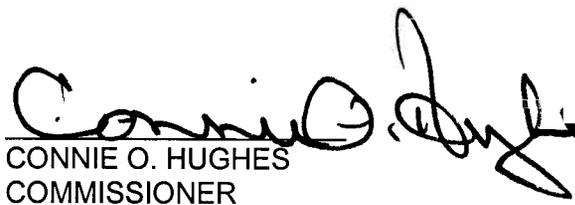
DATED: 6/24/04

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KRISTI IZZO
SECRETARY

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STUDEBAKER SUBMETERING, INC. AND THE NEW JERSEY APARTMENT
ASSOCIATION FOR PERMISSION TO CHECK-METER WATER SERVICE IN
RESIDENTIAL APARTMENT BUILDINGS

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