



Agenda Date: 11/20/09
Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF A PILOT PROGRAM ALLOWING)	ORDER SUSPENDING
SUB- METERING (FORMERLY CHECK-METERING))	SUB-METERING PILOT
IN RESIDENTIAL PROPERTIES REGULATED BY)	PROGRAM
THE NEW JERSEY HOUSING AND MORTGAGE)	
FINANCING AGENCY)	DOCKET NO. AO05080734

(SERVICE LIST ATTACHED)

BY THE BOARD:

The New Jersey Board of Public Utilities ("Board" or "BPU"), pursuant to N.J.S.A. 48:2-1 et seq., has been granted general supervision and regulation of and jurisdiction and control over public utilities in New Jersey. A determination of whether to permit sub-metering is within the lawful discretion of the Board. See Sixty-Seven South Munn v. Board of Public Utility Commissioners, 106 N.J.L. 45 (Sup. Ct. 1929), aff'd, 107 N.J.L. 386 (E & A 1930), cert. denied, 283 U.S. 828; 51 S. Ct. 352; 75 L. Ed. 1441 (1931).

On September 14, 2005, in Docket No. AO05080734 ("September 2005 Order"), the Board initiated a 5 year Pilot Program on Sub-Metering in conjunction with the New Jersey Housing & Mortgage Finance Agency ("NJHMFA"), to be administered and monitored by NJHMFA ("the Sub-Metering Pilot Program"). NJHMFA is established under, but is not a part of, the Department of Community Affairs and is constituted as a body politic and corporate and an instrumentality of the state, exercising public and essential governmental functions.

The Board noted that the Sub-Metering Pilot Program was intended to serve conservation objectives, was limited to NJHMFA mortgaged properties, subject to policies and procedures established by NJHMFA, and ultimately subject to NJHMFA approval. Pursuant to the September 2005 Order, the Board and the NJHMFA entered into a Memorandum of Understanding on December 6, 2005 ("MOU"). Pursuant to the MOU, NJHMFA set forth the New Jersey Housing & Mortgage Finance Agency Management Policy and Procedure Manual, including attached Specifications and Guidelines. The 5 year Sub-Metering Pilot Program which was initiated upon the execution of the MOU is scheduled to end on December 6, 2010.

The Sub-Metering Pilot Program was restricted to NJHMFA financed buildings that agreed to abide by the terms of the program. Marineview Housing, LP ("Marineview"), the owner of a 433 unit apartment complex known as Marineview Plaza, Hoboken, New Jersey, HMFA No. 00298,

submitted a formal application in the Sub-Metering Pilot Program on or about February 28, 2007 and was accepted into the Sub-Metering Pilot Program. Union Plaza Associates, L.P. ("Union Plaza"), the owner of an apartment complex known as Union Plaza Apartments, Union City, New Jersey, HMFA No. 00007 applied and was accepted into the Sub-Metering Pilot Program.¹

According to NJHMFA's brief submitted in this proceeding, on or about March 15, 2007, NJHMFA approved Marineview's sub-metering contractor's, Metering Systems, Inc. ("MSI"), proposal of \$255,000 for installation of sub-metering equipment at Marineview, and the amount was paid through Marineview's Reserve and Replacement Account. On or about October 26, 2007, NJHMFA approved changes in the Lease and House Rules as well as the reduction in rent at Marineview using the United States Housing and Urban Development, Office of Public and Indian Housing allowance for Tenant-furnished Utilities and Other Services chart of August 1, 2007. These rent reductions were expected to reduce rent commensurate with expected energy costs. On or about February 2008, NJHMFA approved the sending of "dummy" sub-metering bills, which reflected electrical charges for the apartments as read by the sub-metering equipment. NJHMFA subsequently authorized Marineview to commence charging tenants electrical bills from June 5, 2008. NJHMFA made the rent reductions effective July 1, 2008.

In August 2009, NJHMFA contacted Board Staff and identified alleged billing discrepancies in the Sub-Metering Pilot Program at Marineview. NJHMFA provided data it had compiled from 18 months of sub-metering bills, showing that approximately 32% of the units in Marineview have significant variances in their billing (14% underpaying the expected costs of energy and 18% overpaying the expected costs of energy), with monthly bills for comparably sized units as low as \$10 and as high as \$600. The Board considered the matter at its August 19, 2009 agenda meeting and issued a Secretary's letter authorizing NJHMFA to take appropriate action, including suspending sub-metering at Marineview and returning tenants to their pre-pilot project rents, which included a uniform charge for electricity.

Board Staff met with NJHMFA, Marineview and the Department of Public Advocate, Division of Rate Counsel ("Rate Counsel") on October 2 and October 5, 2009 to discuss the Sub-Metering Pilot Program and sub-metering practices at Marineview. This matter was further discussed in Executive Session at the Board's October 7, 2009 meeting and no Board action was taken during the public session.

In a letter to the Board dated October 26, 2009, Marineview asserts that a majority of its tenants have conserved energy and saved money as a result of the Sub-Metering Pilot Program, and accordingly, the implementation of the Sub-Metering Pilot Program should continue. Specifically, as supported by a certification of M. Dee Allgood, an electrical engineer and President of MSI, which implements the Sub-Metering Pilot Program at Marineview, Marineview contends that there has been a reduction of electricity usage and any variance in the ratio of highest and lowest bills is not extraordinary due to the variation of electricity usage among tenants. Furthermore, any tenant complaints have been reviewed and addressed by Marineview and MSI in accordance with the Sub-Metering Pilot Program guidelines and complaint procedure. Nonetheless, Marineview contends that it has previously proposed additional testing

¹ Prior to full implementation of the Sub-Metering Pilot Program at Union Plaza, the Union Plaza Tenants Association challenged the landlord's right to implement the program at Union Plaza. Union Plaza Tenants' Association et al. v. Union Plaza Associates, L.P. et al., HUD-L-643-08. A decision upholding the landlord's right to implement the program is currently on appeal. A-005897-08T3. (Collectively the "Union Plaza Litigation") The trial court's decision did not impact the placement of sub-meters at Marineview.

to ensure that there is no cross-wiring between units and/or common areas and that tenants are being billed correctly. However, Marineview claims that it has not received approval from NJHMFA to fund the costs of the testing in order to proceed with this work. But, Marineview argues that once approval is granted by NJHMFA, the proposed testing can be completed within 8 to 12 weeks. Marineview concludes by arguing that the suspension of the Sub-Metering Pilot Program would lead to an immediate increase in rents to the tenants, cause financial damage to the owners of Marineview, cause confusion and create an "administrative nightmare."

At its October 28, 2009 agenda meeting, the Board determined that on November 20, 2009, it would review the available information regarding the Sub-Metering Pilot Program. As noted by the Board's Commissioners during the agenda meeting, the Board was concerned that the Sub-Metering Pilot Program was not functioning in the best interest of the State or the residents of the buildings such that immediate suspension of the program is appropriate. Specifically, the Board was concerned that notwithstanding the representations of the landlord that the building was wired properly, these variations could be the result of a number of factors, including: cross-wiring; lack of metering in common areas; and building inefficiencies which disproportionately impacted a segment of Marineview tenants.

The Board issued an Order requiring NJHMFA, as well as the two buildings involved in the Sub-Metering Pilot Program, to Show Cause "Why a Final Order should not be issued, suspending the Sub-Metering Pilot Program, including any sub-meter billing occurring at Marineview. During this suspension no additional properties will be permitted to apply to participate in the Sub-Meter Pilot Program." This Order allowed interested parties to submit facts and argument to the Board regarding the implementation of the Sub-Metering Pilot Program. The Board specifically served the NJHMFA, Marineview and Union Plaza (as well as their respective tenants associations) and Rate Counsel. The Board also notified public officials in affected areas that had previously expressed an interest in the Sub-Metering Pilot Program.

Position of the Parties

New Jersey Housing & Mortgage Finance Agency

In response to the Board's Order to Show Cause, NJHMFA submitted a brief seeking a Final Board Order suspending the Sub-Metering Pilot Program. In support of its position, NJHMFA cites discrepancies in billing between certain units that resulted from "an error in the sub-metering equipment, the process, the lack of insulation and weatherization, possible cross-wiring between units or other reasons." NJHMFA Initial Brief dated Nov. 12, 2009 at 7. NJHMFA further adds that it believes that the Board's input is necessary at this time to review the entire Sub-Metering Pilot Program. To that end, NJHMFA argues that the Board's power to re-examine and modify the Sub-Metering Pilot Program is supported by case law.²

NJHMFA references a recent decision of the New York Public Service Commission ("NYPSC") regarding residential sub-metering. In that decision, the NYPSC suspended the sub-metering of electricity in a multi-family complex until energy efficiency measures were implemented, thermostats were installed and tenants were provided with information regarding the implementation of energy efficiencies measures. See, Petition of Frawley Plaza, LLC to

² Specifically, NJHMFA relies on Duvin v. State, 76 N.J. 203, 207 (1978); In re Trantino Parole Application, 89 N.J. 347, 364 (1982); and Trap Rock Industries v. Sanger, 133 N.J. Super. 99, 110 (App. Div. 1975) in support of its argument that an administrative agency, in the absence of legislative restriction, may, with good cause, re-open or modify its prior decisions.

submeter electricity at 1295 Fifth Ave, 1309 Fifth Ave and 1660 Madison Ave, et al, Cases 08-E-0836 through Case 08-E-0839, NYSPSC Decision dated Sept. 17, 2009. According to NJHMFA, the NYPSC expressed four concerns about sub-metering in the case before it:

1. Tenants should not be disadvantaged economically;
2. Energy efficiency measures should be undertaken;
3. Tenants should be able to control the amount of electricity used to heat the apartment; and
4. Tenants should be provided with information so they are able to make reasonable decisions about electrical consumption. NJHMFA Initial Brief at 9.

NJHMFA concludes that the "serious and substantial issues regarding the fairness and accuracy of sub-metering billing at [Marineview]" warrant a suspension of the Sub-Metering Pilot Program until the billing issues raised in its Initial Brief and accompanying certification can be investigated and resolved. NJHMFA Initial Brief at 9. NJHMFA further states that while suspending the Sub-Metering Pilot Program is necessary considering the current circumstances, such a suspension should not be permanent. NJHMFA subsequently submitted bullet point recommendations to the Board regarding how the Board should suspend the Sub-Metering Pilot Program.

Marineview

Marineview, in its Initial Brief submitted pursuant to the Board's Order to Show Cause, argues that there is no factual basis on which to support a suspension of the Sub-Metering Pilot Program, and requested a "production of all documentation allegedly against it." Marineview contends that any issues with the Sub-Metering Pilot Program are within the jurisdiction of NJHMFA pursuant to the MOU.

Marineview alleges that if the Board proceeds against it, such a proceeding would be a violation of Marineview's due process, property and contract rights. Marineview further argues that an Order suspending the Sub-Metering Pilot Program would be an unjustified form of emergent relief because there is an absence of irreparable harm in this case. In support of its claim, Marineview contends the Board's September 2005 Order provides primary jurisdiction to handle the "financial issues" associated with the Sub-Metering Pilot Program belongs with NJHMFA. Marineview adds that emergent relief is not necessary here because this is merely a "monetary question about certain tenants bills" and these issues can be address through NJHMFA's authority. Marineview's Initial Brief at 16. Marineview bases its argument on N.J.A.C. 1:1-12.6(a), which Marineview argues provides that emergent relief may be granted "where irreparable harm will result without an expedited decision" and that such relief can only be provided in a contested cases as defined in N.J.S.A. 52:14B-2(c). Marineview Initial Brief at 20-21. Marineview further argues that the Order to Show Cause was not issued within a contested case or pursuant to a filed complaint. Furthermore, Marineview contends that there has been no showing of an irreparable harm because to the extent there are issues regarding billing, such issues can be redressed by monetary damages and should not be considered irreparable harm under the test provided by the New Jersey Supreme Court in Crowe v. DeGioia, 90 N.J. 126 (1982). However, Marineview maintains that to its knowledge, no tenant has come forward with a complaint regarding billing and the record in this matter shows that there is no evidence of cross-wiring or issues with Marineview's sub-meters. Marineview Initial Brief at 22.

Marineview also argues that emergent relief should not be granted here because it would harm the *status quo*, as provided in Crowe v. DeGioia, *supra*. Suspending the Sub-Metering Pilot Program would leave Marineview with no means to pay for utilities because pre-program rents would not be in place. Moreover, Marineview argues that the "balancing of equities" prong favors Marineview because Marineview participated in a comprehensive application and review process before it could implement the Sub-Metering Pilot Program, and Marineview spent over \$300,000 to install and implement the program, which Marineview argues would be lost if the program is suspended. Marineview Initial Brief at 24. Additionally, Marineview alleges that reinstating new leases to tenants that permit utilities to be paid through rents would cause "tumult in the building and unconscionable (and non-attainable) financial obligations" for Marineview. *Id.* at 24. Finally, on this point, Marineview contends that the suspension of an energy conservation program would be detrimental to the public interest and welfare. *Id.* at 25.

Marineview further argues that an order suspending the Sub-Metering Pilot Program would be extraordinary relief for which there is no basis. Accordingly, Marineview argues that such an order would be arbitrary, capricious and unreasonable. Marineview contends that there is nothing in the record to support the suspension of the program, because the certified statements of Mr. Allgood show that the program is successful. *Id.* at 25-27. Marineview argues that Mr. Allgood has specialized expertise regarding residential sub-metering on which the Board should rely. Marineview also submitted certifications by Joseph Taylor, P.E. and Ephraim Fruchthandler (general partner of Marineview).

Additionally, Marineview argues that it was encouraged to participate by NJHMFA, expended moneys and appropriately relied on the continuation of the Sub-Metering Pilot Program, including entering into lease addendums. Marineview contends that suspending the program would constitute a manifest injustice and would be contrary to NJHMFA's legislative mandate.

Marineview further asserts that it would be inappropriate to suspend the program without procedures that would allow it to unravel previously instituted rent reductions to allow it to pay utility bills in its building. Marineview asserts that the Sub-Metering Pilot Program has achieved energy conservation rates of nearly 40% and any billing variations are a result of wasteful electricity usage by a minority of tenants and not improper wiring or other metering issues. This point was similarly made in Marineview's letter and accompanying certification to the Board dated October 26, 2009, referenced above.

Marineview argues the BPU's suspension of the sub-metering program would unnecessarily impair the contractual relationship of owner and tenant, which contract and lease were approved by HMFA, thereby impeding Marineview's constitutional rights regarding impairment of private contracts. Finally, Marineview argues that it is entitled to an evidentiary hearing prior to a final determination by the Board.

On November 17, 2009, Marineview submitted a letter to the BPU in response to the briefs submitted by HMFA. Marineview argues that the BPU should not rely on the NYPSC decision as the facts in the instant case are substantially different and a New York decision has no precedential value in New Jersey. Marineview further notes that while Rate Counsel submitted a letter supporting the suspension of the pilot program, they had previously conducted an analysis and concluded that any billing discrepancy was not due to "any meter malfunction or anything other than variations in the size of tenants' units or variations in the electricity use."

Union Plaza

Union Plaza submitted a brief generally supporting the brief submitted by Marineview. In addition, Union Plaza argued that NJHMFA is equitably estopped from suspending the Sub-Metering Pilot Program at Union Plaza based upon NJHMFA's position in Union Plaza's ongoing litigation (referenced in footnote 1, above). Union Plaza further asserts that governmental agencies have a fundamental duty of fair dealing. See Union Plaza Initial Brief at 11. Union Plaza asserts that it has complied with all requirements of the Sub-Metering Pilot Program and should be permitted to proceed with sub-metering.

Union Plaza further cites sub-metering at the Lower Main Street development in Rahway ("Rahway Plaza"). Union Plaza asserts that Rahway Plaza implemented electric sub-metering at Rahway Plaza after obtaining "applicable approvals in 1988" and has resulted in substantial energy savings. *Id.* at 6. Union Plaza indicates that Rahway Plaza was designed by the same architects and developed by the same builder as Union Plaza. Union Plaza asserts that the success of sub-metering at Rahway Plaza is evidence that the Sub-Metering Pilot Program's goals can be achieved.

Union Plaza submitted documents submitted in the Union Plaza Litigation, including, certifications from Charlene Lemoine, the property manager of the managing agent for Union Plaza; James Carey, the President of Bay City Metering Company, Inc. who is implementing sub-metering at Union Plaza, as well as a brief and certifications submitted in that action on behalf of NJHMFA.

Union Plaza also argues that the Union Plaza Tenants Association is estopped from asserting the claims made in the Union Plaza Litigation as they were dismissed by way of summary judgment in the Superior Court. In a letter addressed to the BPU and dated November 18, 2009, Union Plaza supplements their brief with substantially similar arguments to those made in Marineview's November 17, 2009 letter.

Union Plaza Tenants Association

Ravinder S. Bhalla, Esq. submitted a brief on behalf of the Union Plaza Tenant's Association ("UPTA") supporting the issuance of a Final Order suspending the Sub-Metering Pilot Program in its entirety. The UPTA supports suspension of the Sub-Metering Pilot Program. It further requested that the Board review the legal issues raised in the Union Plaza Litigation. The UPTA further asserts that sub-metering should not be suspended pending the outcome of the Union Plaza Litigation (essentially seeking a stay by the Board pending its appeal in the Union Plaza Litigation). The UPTA further asserts that its concerns about sub-metering are justified given the issues that have arisen at Marineview. The UPTA asserts that the Sub-Metering Pilot Program violates legal protections offered to tenant's under New Jersey's Anti-Eviction Act; that a landlord may not make changes in the terms and conditions of a tenancy which the tenants refuse to accept unless the landlord can demonstrate the change is reasonable and does not substantially reduce tenants' rights and privileges enjoyed prior to conversion. The UPTA further argues that the HUD formulas by which rents would be reduced are unreasonable and not based on fact. UPTA maintains that even the most energy efficient tenants will be responsible for costly utility bills that are not sufficiently offset by the plan's rent reduction.

Juan Milan, President of the UPTA further submitted a letter supporting the Board's suspension of the Sub-Metering Pilot Program. This letter cited billing discrepancies at Marineview, energy inefficiencies at Union Plaza and the general hardship associated with increases relating to electricity costs of sub-metered units. Attached to the letter were signatures of other tenants at Union Plaza who oppose sub-metering.

Marineview Tenants

The Board received numerous letters opposing sub-metering, as well as copies of utility bills from Marineview tenants. The submission of these documents was generally facilitated by the officials noted below. These letters generally cite the lack of information regarding the efficiency of appliances in units, the energy inefficiencies of Marineview and inaccurate billing leading to excessive utility bills.

Rate Counsel

Rate Counsel submitted a letter to the Board dated November 13, 2009. Rate Counsel expresses its belief that some tenants are being harmed financially due to billing discrepancies that may be attributable to cross-wiring and electrical use in common areas of the property. Rate Counsel asserts that these issues, as well as, the failure of Marineview to receive final local approval of its sub-meter installation are a sufficient basis to suspend the program.

Other Interested Parties

The Board received numerous letters from local officials and legislatures supporting the suspension and review of the Sub-Metering Pilot Program. Letters were received from State Senator Brian Stack, Assemblyman Ruben J. Ramos, Jr., Assemblywoman Caridad Rodriguez, Hudson County Freeholder Anthony L. Romano, Jr., Hoboken Mayor Dawn Zimmer, Hoboken Councilwoman Theresa Castellano and a resolution from the City Council of the City of Hoboken. These public officials advocated for suspension of the Sub-Metering Pilot Program at Marineview and Union Plaza, citing affordability, billing discrepancies and meter inaccuracy.

Discussion

As set forth above, the Board's review of its prior order instituting the Sub-Metering Pilot Program is within its authority. N.J.S.A. 48:2-40. This is particularly true with a pilot program, since the purpose of a pilot program is for the Board to determine whether a program will be effective and whether the Board wishes to institute a policy change. In ordering the Sub-Metering Pilot Program, the Board specifically noted that the program was in contravention of prior Board policy regarding residential sub-metering. The Board chose to institute the program through NJHMFA, as it has certain oversight and financial control over residential buildings, in order to ensure that the program is implemented in a manner that is fair and reasonable to landlords and tenants. Through its experience to date in the Sub-Metering Pilot Program, the Board is concerned that the Sub-Metering Program's policies and procedures do not provide sufficient protections to ensure "equitable treatment for the residents." Specifically, the buildings can be selected for the Sub-Metering Pilot Program without adequately checking for cross wiring and without considering a building's historic energy inefficiencies, which cannot be controlled by tenants.

Pilot programs are instituted for a limited duration to allow an agency to determine whether a policy change is appropriate. Without any additional action by the Board, the Sub-Metering Pilot Program would terminate on December 6, 2010. After reviewing information submitted to the Board by NJHMFA and one of the buildings participating in the Sub-Metering Pilot Program, the Board has determined that in implementing the Sub-Metering Pilot Program, sufficient protections were not put in place to ensure meter accuracy, verify building wiring and require landlords to provide energy efficient structures to reasonably transfer the responsibility of electric usage in individual units to tenants.

The Board issued its October 28, 2009 Order to Show Cause to provide an opportunity for NJHMFA; the two buildings selected for the Sub-Metering Pilot Program, Marineview and Union Plaza; as well as any other interested parties to comment on whether the Board should suspend the Sub-Metering Pilot Program. As set forth above, NJHMFA notified the Board in August 2009 that it had serious concerns regarding sub-meter billing at Marineview. These concerns were documented in spreadsheets which demonstrated that approximately 32% of tenants at Marineview were paying electric utility bills significantly above or below the average utility bill (at least 1 standard deviation from the mean). In addition to other issues, NJHMFA also expressed concerns that the Sub-Metering Pilot Program did not require verification of a building's wiring and the implementation of energy efficiency measures prior to implementation of sub-metering. In its brief, NJHMFA reiterated these concerns and further cited an opinion by the NYPSC expressing similar concerns in a sub-metering program in New York. NJHMFA also proposed a schedule and proposed order language. Additionally, numerous tenants of Marineview and Union Plaza submitted a petition, electricity bills, and letters in support of suspending the Pilot Program. Additionally, local officials reiterated to the Board that their constituents were dissatisfied with the Sub-Metering Pilot Program and sought its discontinuance. Additionally, the Union Plaza Tenants Association submitted a brief to the Board.

Marineview argues that NJHMFA has certain authority to implement the Sub-Metering Pilot Program in conjunction with the MOU between the Board and NJHMFA. Nonetheless, the authority to determine whether to allow utility sub-metering remains with the Board. See Sixty-Seven South Munn, supra. In its September 2005 Order, the Board decided to allow residential sub-metering on a trial basis as a 5 year pilot program. In exercising this authority by instituting a residential Sub-Metering Pilot Program, the Board allowed NJHMFA to establish policies and procedures to implement the Sub-Metering Pilot Program. Additionally, the Board authorized NJHMFA to determine which buildings would participate in the Sub-Metering Pilot Program. Where, as here, the Board has gathered sufficient information from the Sub-Metering Pilot Program to determine that it does not wish to implement the program as designed, it may terminate the program. See IN THE MATTER OF THE PROVISION OF BASIC GENERATION SERVICE FOR THE PERIOD BEGINNING JUNE 1, 2006, Docket No. EOO5040317, December 8, 2005 (Discontinuing the JCP&L Non-Utility Generation ("NUG") Pilot Program after three years, as the benefits of the program did not materialize) available at 2005 N.J. PUC LEXIS 121. Here, the Board learned that numerous tenants appear to be substantially over or under paying for electricity service. The Board did not intend to encourage energy efficiency by creating a situation where tenants may be supplementing adjoining units or common area energy usage. Additionally, energy efficiency cannot be reasonably encouraged if inequities in building inefficiencies unduly impact select units.

The Board instituted the Sub-Metering Pilot Program in furtherance of the State's interest in energy conservation and in furtherance of the Energy Master Plan. The goal of the Sub-Metering Pilot Program is to promote energy efficiency by encouraging tenants to reduce their electric usage which should result in savings. During the course of a pilot program, if the Board

discovers that the program is not structured in a manner that it is achieving the programs goals, the Board may modify or terminate a program. The information presented to the Board appears to show that individual residents are paying substantially more or less than would be expected based on a review of other similar units.³ The information presented by Marineview regarding the overall reduction in energy usage does not ameliorate the impact which results in bills for 32% of units being beyond 1 standard deviation from the median. The landlord's certification that such fluctuations are within the normal range is an unacceptable outcome to the Board. While one would expect certain outliers when reviewing a statistical analysis of electric bills, the substantial number of outliers here concerns the Board.

As described above, the Board is taking this action based on its analysis of the data obtained to date from the Sub-Metering Pilot Program. As the issues identified by the Board will require broader changes to the Sub-Metering Pilot Program, beyond Marineview, the Board has determined that it must suspend the pilot program as it now exists for all participants. As set forth above, this pilot program has an expiration date. The Board made clear in its September 2005 Order that residential sub-metering was being tested as part of a pilot program with a limited duration. Marineview and Union Plaza chose to participate in this limited duration program. Implementing a pilot program does not guarantee modification of Board policy or implementation of sub-metering at the conclusion of the pilot program. Additionally, any arguments by the parties that sub-metering has occurred in New Jersey outside of the scope of this pilot program is not a basis for reliance that the Board will institute residential sub-metering.⁴

Sub-metering of residential buildings is important to the achievement of the State's goals of reducing energy consumption and reduction of greenhouse gas emissions. However, the pilot program as currently constituted does not give tenants sufficient tools to achieve energy conservation within their means.

In regard to Marineview's position that rent reductions were instituted upon the implementation of the Sub-Metering Pilot Program, the Board recognizes that the suspension of the Sub-Metering Pilot Program requires that electricity expenses at Marineview must be reinstituted as part of tenants' rents. The Board has been advised by NJHMFA that with the cooperation of Marineview, such rental adjustments can be made effective January 1, 2010.⁵

Therefore, the Board hereby MODIFIES its September 5, 2005 order and ORDERS that the Sub-Metering Pilot Program implemented through the Board's MOU with NJHMFA is hereby suspended effective January 1, 2010. Marineview may bill for sub-metered electrical usage through and including December 31, 2009.

The Board's decision is based on its analysis of the information it has learned from the Sub-Metering Pilot Program, as supplemented by the interested parties that submitted briefs. Separate issues were raised by tenants of Union Plaza and addressed in their challenge to the

³ Prior to implementing sub-metering, Marineview was not required to verify unit wiring; conduct an energy audit; or otherwise update insulation, fixtures or other structures which are outside the control of tenants. Additionally, meters were not implemented in common areas, preventing an appropriate audit of energy use within Marineview.

⁴ Union Plaza asserts that certain residential buildings in New Jersey are currently engaged in sub-metering. The Board will determine separately from this Order how these allegations should be reviewed.

⁵ Consistent with the Board's decision at its November 20, 2009 meeting, the Board was advised that on November 30, 2009, Marineview, after appropriate review by NJHMFA, forwarded notice of a rental increase to its tenants relating to the suspension of the Sub-Metering Pilot Program to be effective January 1, 2010.

implementation of the Sub-Metering Pilot Program, which were addressed in Union Plaza Tenants' Association et al. v. Union Plaza Associates, L.P. et al., HUD-L-643-08. A decision upholding the landlord's right to implement the program is currently on appeal. A-005897-08T3. Although these issues were raised by the Union Plaza Tenants Association, they are not part of the Board's decision in this case.

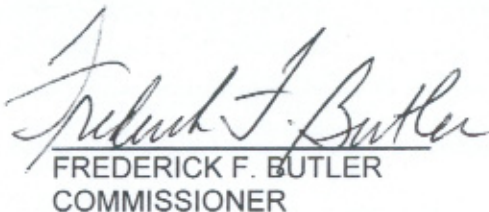
The Board continues to believe that sub-metering in residential buildings is a program that may reduce energy consumption, with appropriate conditions and oversight. In suspending the Board's Sub-Metering Pilot Program today, the Board looks forward to NJHMFA and other parties working together to develop a sub-metering program that promotes energy conservation, by giving tenants the appropriate incentive and tools to conserve energy by installing energy efficiency measures and reducing overall energy usage.

The Board FURTHER ORDERS that if NJHMFA or any other party wishes to propose the reinstatement of the Sub-Metering Pilot Program and/or the implementation of a new sub-metering program, they must, at minimum, address the concerns outlined in this Order. Any such party would be well served to consult with Board Staff when preparing to propose such a program.

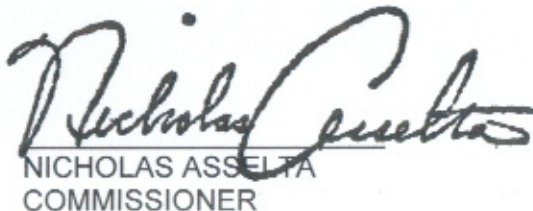
DATED: 12/10/09

BOARD OF PUBLIC UTILITIES
BY:


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PRESIDENT

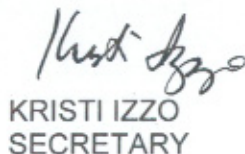

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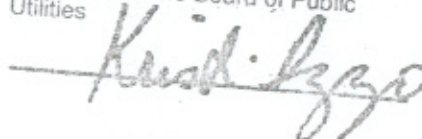

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ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



**IN THE MATTER OF A PILOT PROGRAM ALLOWING SUB- METERING (FORMERLY
CHECK-METERING) IN RESIDENTIAL PROPERTIES REGULATED BY THE NEW JERSEY
HOUSING AND MORTGAGE FINANCING AGENCY.**

DOCKET NO. AO05080734

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c/o Ms. Darcy Martinez, President
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Grogan Marineview Plaza - Bldg. 1
3rd & Hudson Streets
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