

MEMORDUM

TO: Seema M. Singh, Esq.
Director , Division of the Ratepayer Advocate
Paul Flanagan, Esq., Felicia Thomas-Friel, Esq., Ami Morita, Esq.
FROM: Debra F. Robinson, Esq.
RE: Sub-metering of Utility Services
DATE: September 9, 2005

I have been advise that the Board of Public Utilities will consider on its September 14, 2005 BPU Agenda, a recommendation by the Sub-Metering Working Group that the Board initiate a five (5) year pilot program in partnership with the New Jersey Housing & Mortgage Finance Agency which will allow electric, gas and water sub-metering in residential multi-unit housing financed by the NJHMFA.

Attached are draft RPA comments to be filed with the Board. Also, attached is a proposed form of Order which was prepared by the Sub-Metering Working Group. I have discussed with RPA Consultant, Scott Rubin (and he has reviewed) both my suggested RPA comments and the proposed form of Order.

The suggested RPA Comments are comprehensive and gives details background information regarding the sub-metering process in New Jersey. As you know the RPA back in 2003 and 2004 received several complaints form tenants regarding the sub-metering of tenant utility services in Plainsboro, New Jersey area. Among other things these complaints was the impetus to revisit the sub-metering issue in New Jersey. After much review and discussion, the Sub-Metering Working Group agreed to recommend to the Board that sub-metering be allowed by the NJHMFA. The Sub-Metering Working Group felt that the NJHMFA could best control the process; NJHMFA had the resources (financial and personnel) to put in place proper controls and processes and the NJHMFA was willing to share reporting data with the Board on the issue of the conservation benefits of sub-metering.

You should review the attached and advise if additional information is needed. RPA is asked to file comments ASAP.

September 12, 2005

Kristi Izzo, Secretary
State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**RE: IN THE MATTER OF A PILOT PROGRAM ALLOWING SUB-METERING IN RESIDENTIAL PROPERTIES REGULATED BY THE NEW JERSEY HOUSING & MORTGAGE FINANCE AGENCY
BPU Docket No. AO05080734**

Dear Secretary Izzo:

Please accept for filing an original and ten copies of the Division of the Ratepayer Advocate's ("Ratepayer Advocate") comments regarding the above referenced matter. Enclosed is one additional copy. Please date stamp the copy as "filed" and return it to the courier. Thank you for your consideration and attention to this matter.

Background

On June 23, 2004 the New Jersey Board of Public Utilities (the "Board") issued an order¹ dismissing without prejudice three Petitions which requested approval to check-meter water service in residential apartment buildings. On June 19, 2000, the New Jersey Apartment Association, a statewide organization consisting 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. On June 19, 2000, Studebaker Submetering, Inc., a utility-billing company filed a Petition

¹ 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 Nos. W000040254, W000060360 and W000070510 (June 23, 2004)

with the Board, seeking a Declaratory Ruling allowing check-metering 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.

Pursuant to the Board's June 2004 Order, Board Staff was directed to immediately convene a Sub-Metering Working Group to consider the issue of sub-metering in residential multi-unit housing. The Sub-Metering Working Group was to be comprised of stakeholders from other state agencies and representatives of the affected parties, including the three Petitioners, who had filed Petitions in BPU Docket Nos. WO00040254, WO00060360 and WO00070510.

The Sub-Metering Working Group based on the participation and discussion of the representative stakeholder groups is recommending that the Board initiate a five (5) year pilot program in partnership with the New Jersey Housing & Mortgage Finance Agency (the "NJHMFA), which will allow electric, gas and water sub-metering in residential multi-unit housing financed by the NJHMFA. The Ratepayer Advocate thanks the Board for the opportunity to provide comments on the Sub-Metering Working Group recommendation.

Summary Stakeholders Discussion

The Sub-Metering Working Group included representatives of landlord's associations, a representative of a tenant's association, sub-metering companies, utilities, state sister agencies whose jurisdictions overlap that of the Board (i.e. the Division of Consumer Affairs, the Division of Codes & Standards, the Division of Weights & Measures and the Department of Environmental Protection). Representatives from the New Jersey Housing & Mortgage Finance Agency were also in attendance. The Division of the Ratepayer Advocate was also a member of the working group.

Stakeholders from landlord associations and sub-metering companies advanced conservation as the primary advantage for permitting sub-metering. It was cited tenants

who pay for their own water directly are more likely to modify their consumption behavior by using less water. In addition, these Stakeholders argued a change in tenant water use would impact seasonal drought, foster efficient water use among tenants, and have the potential to encourage property owners to install water conservation equipment that result in real cost savings to both tenants and property owners.

Stakeholders from landlord associations also mentioned equitable billing as an advantage of sub-metering. It was discussed that equitable billing results among tenants, since each tenant pays for their own use and can control consumption. It was also pointed out that equitable billing also results among tenants and the property owner, since the property owner would be responsible for paying the full cost of common area usage.

Tenant association representatives opposed expanding sub-metering to residential tenants citing primarily that proponents of sub-metering had not provided any empirical information in support of their position that sub-metering results in significant long term conservation.

In addition, landlord abuse in the monitoring of sub-metered apartments and unreasonable rent increases were cited in opposition to permitting sub-metering in residential multi-unit housing. Tenant representatives also commented on the cost of buying, installing and maintaining the sub-meters. Passing along these costs in addition to the cost of billing tenants were cited as prohibitive.

Board Policy

Gas and electric sub-metering has been implemented as a policy of the Board through Board Orders. The Board issued its first Order on October 15, 1980, in response to a request by PSE&G, and allowed electric check metering in publicly financed or government owned or in charitable residential housing, because of its conservation promoting benefits. The Board did not allow sub-metering in private buildings, because of problems policing the activities of landlords. *In the Matter of the Petition of Public Service Electric and Gas Company 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. In an Order of Modification, Docket No. 7511-1176 dated March 4, 1981, the Board extended the right to sub-metering to cooperative or condominium residential

housing complexes. The rationale was that apartment owners through their owners associations had a say in whether to install check meters and how to administer such a program. They were also the beneficiaries of any savings and had the ability to forestall possible abuses.

The Board permitted sub-metering for gas service by Order dated September 5, 1986. *In the Matter of the Board's Investigation into the Check Metering of Gas Service*, Docket No. GX8509901. 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). At the time, the Board specifically rejected the extension of the allowance of check-metering in privately owned residential multi-unit housing even though the property was publicly financed. The Board has not specifically addressed the issue of water sub-metering.

Discussion

The NJHMFA by letter dated April 15, 2005, requested that the Board allow sub-metering for electric, gas and water in multi-unit residential housing financed by the NJHMFA. In its letter the NJHMFA represented that the NJHMFA has extensive regulatory control through its policies and procedures over its residential multi-unit housing which will allow the agency to monitor all phases of a sub-metering program to ensure equitable treatment for the tenants.

Under the NJHMFA policies and procedures properties that receive a mortgage from the NJHMFA are subject to rent control and, in some cases, additional controls are imposed on the properties by the Department of Housing & Urban Development ("HUD"). In addition, property owners are required to obtain NJHMFA approval for all repairs, deferred maintenance expenditures, capital additions or any other alterations to the property that exceed \$10,000. Property owners wanting to make improvements to their properties are required to submit bids setting forth the scope of the work and obtain architects, engineers or other professional's specifications when applicable.

The NJHMFA maintains a staff consisting of property management professionals, architects, and civil and mechanical engineers, who review property owners' repair and

maintenance requests prior to any work being done. The NJHMFA has represented that any requests by property owners to sub-meter will go through this rigorous review process.

Under its policies and procedures the NJHMFA is responsible for the review and resolution of tenant inquiries and complaints. This oversight process holds true for rental disputes, repair and maintenance requests, tenant association concerns and general landlord/tenant issues. In addition, the Agency provides general information to residents regarding various city, state and federal programs.

According to its letter of April 15, 2005, the NJHMFA has agreed to take responsibility for all aspects of sub-metering in agency financed developments. The NJHMFA will require property owners to submit a detailed plan including, but not limited to:

- 1) A statement substantiating the economic advantages of sub-metering;
- 2) A description of the type of sub-metering system to be installed and a validation of its reliability and accuracy, including detailed specifications and costs;
- 3) The method and basis for calculating rates to tenants, including a reduction of their current rent;
- 4) Complaint procedures, which would include the Agency's involvement, if necessary, in landlord/tenant disputes;
- 5) Certification that the method of rate calculation, the rate cap, complaint procedures, tenant protections, and the enforcement mechanism shall be incorporated in plain language into all leases governing sub-metered premises;
- 6) A description of the appropriate *rent reduction formula* that accurately reflects the applicant's overall reduction in his costs resulting from conversion to sub-metering.

The NJHMFA has requested to partner with the Board in this initiative and share relevant data on the effect of conservation on sub-metered properties.

Recommendation

The recommended sub-metering pilot program is premised on the conservation benefits from sub-metering. There is a concern, however, that tenants in NJHMFA-financed buildings do not appear to have control over much of the infrastructure

(appliances, plumbing fixtures, etc.) that are the major drivers of utility costs. While the Ratepayer Advocate acknowledges the potential conservation benefits from sub-metering under certain conditions, the Ratepayer Advocate recommends that the Agency's pilot program include an explicit conservation component. It would be very informative, therefore, to have NJHMFA do a controlled study of buildings of similar age and with similar energy- and water-use characteristics, and divide the buildings into four categories: (1) the control group (no changes from current practices), (2) the efficiency group (insulation, efficient fixtures and appliances, etc. are installed), (3) the sub-meter group (sub-metering is implemented), and (4) the efficient sub-meter group (efficiency improvements are installed along with sub-metering). The results of such a study could be very important in determining appropriate policies and investment decisions – not just for the Board but also for NJHMFA, other public-housing agencies, building owners, environmental regulators, among others.

With this caveat, the Ratepayer Advocate is not opposed to the initiation of a five (5) year pilot program in partnership with the New Jersey Housing & Mortgage Finance Agency which will allow electric, gas and water sub-metering in residential multi-unit housing financed by the NJHMFA.

Very truly yours,

Seema M. Singh, Esquire
Director & Ratepayer Advocate

By: _____
Debra F. Robinson, Esq.

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c: Service List