



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue
Trenton, NJ 08625
www.nj.gov/bpu/

DIVISION OF WATER

IN THE MATTER OF THE PETITION OF THE NEW JERSEY APARTMENT ASSOCIATION FOR AN ORDER AUTHORIZING THE USE OF WATER SUB- METERING TO ADVANCE WATER CONSERVATION IN NEW RESIDENTIAL APARTMENT BUILDINGS)))))	ORDER APPROVING WATER SUB-METERING DOCKET NO. WO11060381
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Parties of Record:

John D. Cranmer, Esq, Archer and Greiner, P.C., on behalf of the New Jersey Apartment Association

Stefanie A. Brand, Esq., Division of Rate Counsel

(Service List Attached)

BY THE BOARD¹:

This Order memorializes action taken by the Board of Public Utilities ("Board" or "BPU") at a public agenda meeting held August 18, 2011 regarding the New Jersey Apartment Association's ("NJAA", "Association" or "Petitioner") request to allow water sub-metering in new residential apartment buildings.

Background and Procedural History

On December 10, 2010, the New Jersey Apartment Association filed a petition seeking authority to install sub-meters in newly constructed residential apartment buildings that

¹ Commissioner Jeanne Fox abstained from this matter and submitted the attached statement.

are built in communities served by water utilities that are subject to the Board's jurisdiction. The Petitioner previously participated in a petition seeking permission to permit water sub-metering in residential apartments which was denied in June 2004. 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. WO00040254, WO00060360 and WO00070510 (June 23, 2004).

If the Association's petition is granted, landlords of newly constructed apartment buildings could sub-meter water service in individual apartments and tenants would be responsible for paying for the water that they consume.² The sub-meters that would be installed in each apartment would either be owned by a sub-metering company or by the individual landlord. The bills that are generated by a sub-metering company would be in addition to a tenant's rent. The tenant's and the landlord's rights and responsibilities would be set forth pursuant to the terms of each individual tenant's lease.

The parties to the proceeding consisted of the Petitioner, Board Staff and the Division of Rate Counsel (Rate Counsel). Both Board Staff and Rate Counsel propounded discovery on the NJAA and the parties have met to review said discovery and any outstanding concerns.

The Board, 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).

The Board currently has jurisdiction over investor owned water and wastewater utilities and those municipally owned water utilities that serve 1,000 or more billed customers outside of the serving municipality's boundaries (who have not opted out of Board jurisdiction). The Board does not have jurisdiction over county or regional water and wastewater authorities, and water utilities that are owned and operated by homeowner associations where a majority of the customer-owners have elected to exempt the water utility from Board Jurisdiction. The Board's current prohibition on water sub-metering does not apply to those areas outside of its regulatory control.

"Sub-metering" is the practice whereby the primary consumer of the utility commodity or customer of record, through the use of direct metering devices, monitors, evaluates or measures his own utility consumption or the consumption of a tenant for accounting or conservation purposes. If the primary consumer (utility's customer of record) charges the tenant for the actual usage incurred by the tenant, the sum of such charge(s) shall not exceed the cost incurred by said primary consumer for providing the utility commodity. The sum of such charge(s) does not exceed the amount that the utility serving the primary consumer would charge a private residential customer for the same

² Each apartment building would continue to be metered by a utility owned water meter that would be in the landlord's name and the landlord would continue to be responsible for keeping such bills current. The sub-meters would allocate the costs of water used by the tenant pursuant to the amount of water that is measured by the sub-meter that is installed in each apartment.

service. As in past utility tariffs approved by the Board, the resale of water or energy for profit is prohibited. I/M/O A Pilot Program Allowing Sub-Metering (Formerly Check-Metering) In Residential Properties Regulated By The New Jersey Housing & Mortgage Finance Agency, Docket No. AO05080734 .

The Board has previously allowed certain forms of electric and gas sub-metering through a series of orders in certain limited circumstances: 1) industrial or commercial buildings; 2) publicly financed and government-owned buildings; 3) cooperative housing or condominiums; and 4) eleemosynary (charitable) institutions.¹ In 2001 the Board rejected a request to extend sub-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). In June of 2004, the Board issued an order dismissing, without prejudice, three petitions which requested water sub-metering in residential apartment buildings. I/M/O 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 (June 24, 2004). At that time, the Board established a working group to examine residential sub-metering.

Through the working group, the positions of the various parties were fully aired and debated. The NJAA and landlords, along with sub-metering companies, emphasized the conservation benefits of sub-metering along with equitable cost allocation between various tenants. The tenants association and certain state agencies stressed the difficulty of assuring meter accuracy, the opportunity for abuse on the part of landlords, and the idea that sub-metering would be a rent increase in disguise. Utility stakeholders were basically neutral on the subject, although concerns were voiced that potential landlord/tenant disputes regarding billing might be erroneously blamed on the utility provider.

As a result of the working group, by Order dated September 14, 2005, I/M/O A Pilot Program Allowing Sub-Metering (Formerly Check-Metering) In Residential Properties Regulated By The New Jersey Housing & Mortgage Finance Agency, Docket No. AO05080734 ("September 2005 Order"), the Board initiated a five year pilot program on residential sub-metering of electric and gas (specifically excluding water sub-metering) in conjunction with the New Jersey Housing and Mortgage Finance Agency ("NJHMFA").

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. The Board noted in its order that the Pilot Program was in contravention of Board policy which prohibits sub-metering

¹ 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); 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); I/M/O Boards Investigation Into the Check Metering of Gas Service, Docket No. GX8509901 (September 5, 1986).

of utilities in residential apartment buildings. The five year Sub-Metering Pilot Program was initiated upon the execution of the MOU on December 6, 2005 with a scheduled conclusion date of December 6, 2010. This Program was suspended by Board order on December 10, 2009³. The pilot program subsequently expired and terminated on December 6, 2010.

In establishing the pilot program, the Board noted the extensive regulatory control NJHMFA held over properties on which it holds mortgages. Through the pilot program, NJHMFA established policies and procedures that landlords were required to follow. Nonetheless, at the time the Board suspending the pilot program through its December 10, 2009 order, the Board was concerned about cross wiring and historic inefficiencies in buildings it noted were never intended to be individually metered when constructed. I/M/O A Pilot Program Allowing Sub-Metering (Formerly Check-Metering) In Residential Properties Regulated By The New Jersey Housing & Mortgage Finance Agency, Docket No. AO05080734 (December 10, 2009) ("December 2009 Order")

As stated in the September 14, 2005 Sub-Metering Pilot program Order "The issue of water sub-metering requires further exploration and may be revisited in the future". I/M/O A Pilot Program Allowing Sub-Metering (Formerly Check-Metering) In Residential Properties Regulated By The New Jersey Housing & Mortgage Finance Agency, Docket No. AO05080734

The Division of Rate Counsel submitted its comments regarding the current petition by letter dated August 5, 2011. Rate Counsel stated that that sub-metering should not be allowed until all reasonable conservation measures are installed. Rate Counsel stated that landlord/tenant law would govern the relationship between the landlord and the tenant and that the Board does not have jurisdiction over this relationship. Nonetheless, Rate Counsel believes that the Board should put guidelines in place to address equitable apportionment; mechanisms for resolving billing disputes between landlords and tenants; shut offs of water service; meter installation; meter reading; billing and maintenance. Rate Counsel then questions the Board's authority to enforce such protections.

Further, Rate Counsel identified that the jurisdiction of certain issues relating to the landlord/tenant relationship is found in the Superior Court of New Jersey. As has been previously noted by the Board, the Board's authority to place restrictions on certain elements of the landlord tenant relationship is limited, however, the Board maintains the authority to permit or prohibit sub-metering in different contexts. Nonetheless, the Board must evaluate the benefits and harms associated with permitting water sub-metering in new construction and determine whether permitting water sub-metering in new construction is in the public interest.

Discussion and Findings

The Board notes that this petition seeks permission to allow water sub-metering in newly constructed residential apartment buildings. This petition does not seek, nor is the Board considering sub-metering in previously constructed residential buildings or any

³ The Board's Order suspending the sub-metering pilot program is currently being appealed in Appellate Docket Nos. A-2106-09T3 and A-2148-09T3.

issues relating to electric or gas sub-metering.⁴ The Board's prior orders governing electric and gas sub-metering shall stay in full force and effect.

The Petitioner submits that permitting water sub-metering in newly constructed residential buildings will provide the conservation benefits of sub-metering without raising some of the concerns previously identified by the Board.

After reviewing the issue brought before this Board by the Petitioner, the Board believes that the conservation benefits of water sub-metering, combined with the technical sophistication of today's water sub metering systems, the oversight of the local municipal construction office ensuring compliance with water conservation requirements through the National Standard Plumbing Code/2009 and the current laws governing the landlord-tenant relationship, adequately protects the rights of tenants living in new apartment buildings where water is proposed to be sub-metered.

The Concerns raised by Rate Counsel regarding the landlord tenant relationship are not new. When evaluating retrofitting of older buildings, the Board had determined that in the balance, sub-metering should continue to be prohibited, unless certain additional protections are in place. Where, as here, residential water sub-metering is being restricted to newly constructed buildings, it is anticipated that a number of the issues previously identified by stakeholders regarding historic building inefficiencies and cross plumbing/wiring of previously constructed buildings will not result. Specifically, buildings which are permitted to sub-meter pursuant to this Order will be newly constructed. Additionally, pursuant to law, all buildings will be constructed in accordance with the National Standard Plumbing Code/2009 as adopted through the Department of Community Affairs regulations N.J.A.C. 5:23-3.1 et seq. Additionally as these are newly constructed apartments, there are no "current rents" that must be reduced.

Based on facts and circumstances specific to this matter as set forth hereinabove, the Board HEREBY FINDS that permitting water sub-metering in newly constructed residential properties is in the public interest and in accordance with the law. The Board HEREBY ORDERS that water sub-metering will be permitted in residential apartment buildings newly constructed on or after the effective date of this Order. Any building, where, as of the effective date, pipes, service lines or other water infrastructure has not been installed beyond the utility company's meter, will be permitted to sub-meter. Any building which was previously constructed or which has installed pipes, service lines or other water infrastructure beyond the utility company's meter prior to the effective date of this order is not permitted to sub-meter water service. Repurposing existing buildings for residential use will be considered new construction and such buildings will be permitted to sub-meter pursuant to this order, only if, as part of the conversion, all existing pipes, service lines or other water infrastructure beyond the utility company's meter are removed and new pipes, service lines or other water infrastructure are installed.

⁴ The Board notes that the electric utility Tariffs generally prohibit master metering of residential apartment buildings as utilities individually meter each apartment. See Atlantic City Electric Tariff at 4.5; Public Service Electric and Gas General Company Utility Tariff at 9.2.1; Jersey Central Power and Light Company Tariff 1.05; Rockland Electric Company Tariff at No. 27. As such, electric sub-metering of newly constructed buildings is not generally an issue.

The Board notes that nothing in this order prohibits the direct metering of water service in individual apartments in multiple dwelling units.

In considering this application, the Board is mindful of N.J.S.A. 48:2-13 and issues discussed in In The Matter Of The Petition Requesting The Issuance of a Declaratory Ruling That Global Utility Services, LLC ("Gus") Would Not Be A "Public Utility" Pursuant To N.J.S.A. 48:2-13 Under The Factual Circumstances Presented, Docket No. WO08070500, February 3, 2009, regarding when a party is a public utility. Any person or entity that would constitute a Public Utility pursuant to N.J.S.A. 48:2-13 and other applicable law is subject to the full jurisdiction and regulatory oversight of the Board, notwithstanding any claim that such person is purportedly acting consistent with this Order. As such, all entities permitted to sub-meter must be mindful of any relevant statutory and regulatory obligations.

This Order shall be effective on August 28, 2011.

DATED: 8/18/11

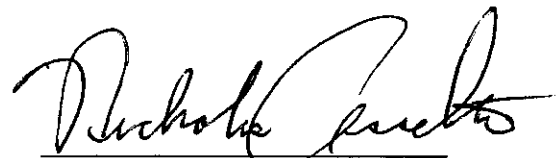
BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT

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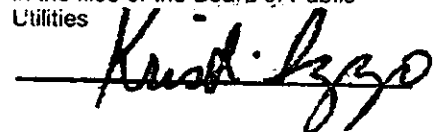
JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

ATTEST


CARMEN DIAZ
ACTING SECRETARY

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



ABSTENTION

While I agree with many aspects of this order, such as its applicability to new construction only and the Board's authority to permit sub-metering, I respectfully abstain from this matter. I would recommend that water sub-metering be initially permitted through a limited pilot program to facilitate adjustments in the future. Additionally, I would have deferred this matter until the next Board meeting and sought additional information from municipal and county utility authorities about whether sub-metering has been implemented in their respective service territories and whether they have any recommendations that would assist the Board. I would also have recommended further discussions with the Department of Community Affairs regarding applicable construction codes for residential apartment buildings.


JEANNE M. FOX
COMMISSIONER

**IN THE MATTER OF THE PETITION OF THE NEW JERSEY APARTMENT
ASSOCIATION FOR AN ORDER AUTHORIZING THE USE OF WATER SUB-
METERING TO ADVANCE WATER CONSERVATION IN NEW RESIDENTIAL
APARTMENT BUILDINGS**

Docket No. WO11060381

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