



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9th Floor  
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Trenton, New Jersey 08628-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF COUNTRY GARDENS, LTD., )	ORDER ADOPTING
d/b/a SANDY RIDGE APARTMENTS, )	INITIAL DECISION GRANTING
Petitioner, )	SUMMARY DECISION
)	)
v. )	)
)	)
NEW JERSEY AMERICAN WATER COMPANY, )	BPU Docket No. WC09020104
Respondent. )	OAL Docket No. PUC-04545-09

**Parties of Record:**

**Douglas A. Cole, Esq.**, for Country Gardens, Ltd., d/b/a Sandy Ridge Apartments  
**Shari Shapiro, Esq.**, for New Jersey American Water Company  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

This matter involves an action by Country Garden, Ltd, d/b/a Sandy Ridge Apartments ("Petitioner" or "Sandy Ridge") seeking an Order from the New Jersey Board of Public Utilities ("Board") compelling New Jersey American Water Company ("Respondent" or "NJAW") to install individual water meters and to locate those water meters inside the heater rooms at Sandy Ridge. For the reasons stated below, the Board adopts the Initial Decision Granting Summary Decision ("Initial Decision") of the Honorable Elia A. Pelios, Administrative Law Judge ("ALJ Pelios"), dated June 13, 2013<sup>1</sup>.

**BACKGROUND AND PROCEDURAL HISTORY**

Sandy Ridge is located at 175 Pennsgrove-Auburn Road, Carney's Point, Salem County, New Jersey. NJAW provides service to approximately 635,000 water and approximately 35,000 wastewater customers in certain portions of Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Middlesex, Mercer, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren Counties, New Jersey. NJAW began providing water service to Petitioner through its acquisition of the former Pennsgrove Water Supply Company. I/M/O New Jersey American Water Company, Docket No. WM07020076, Order dated September 13, 2007.

<sup>1</sup> By Order of Extension dated July 23, 2013, the Board was granted an extension until September 19, 2013 to issue a final agency decision.

Petitioner filed a verified petition with the Board on February 3, 2009, seeking an Order requiring that NJAW install individual meters for each apartment and laundry room and to locate those meters in the heater room of each building. Petition at 2.<sup>2</sup> Petitioner stated that the installation of individual water meters "is aimed at reducing wasteful water consumption," and which is consistent with N.J.S.A. 48:2-23, which among other things requires the "...furnishing and performance of service in a manner that tends to conserve and preserve the quality of the environment and prevent the pollution of waters, land and air of this State, and including the furnishing and performance of service in a manner which preserves and protects the water quality of a public water supply." Petition at 3.

NJAW filed a response to Sandy Ridge's filing by letter dated April 2, 2009. NJAW stated that it had no objection to the installation of individual meters at Sandy Ridge provided that those meters are located in individual meter pits as set forth in NJAW's tariff. Response at 2. NJAW further stated that its position is consistent with the Company's nationwide practices and would allow NJAW unfettered access to said meters in order to obtain reads, respond during emergencies, and address water quality issues. NJAW also stated that the installation of meters in Petitioner's boiler rooms would "undoubtedly lengthen the service lines between the street and meters and therefore increase the risk of damage to and/or leaks from those lines." Ibid. In addition, according to NJAW, Petitioner's proposal would prevent NJAW from controlling theft and cause NJAW to lose the ability to terminate service for non-payment. Ibid.

On May 19, 2009, the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case where it was subsequently filed and assigned to the Honorable Israel D. Dubin, ALJ. Apparently the matter was put on the inactive case list for the parties possibly to resolve the issues raised in the Petition, and the case was later reinstated to the active list and assigned to ALJ Pelios. Initial Decision at 2.

On November 30, 2012, Respondent filed a motion for summary decision ("MFSD"), pursuant to N.J.A.C. 1:1-12.5 seeking dismissal of the petition. Among other things, NJAW stated that Petitioner could not establish that the denial of Petitioner's request to install individual meters in Sandy Ridge's boiler rooms violated any of the Board's regulations. MFSD at 5. NJAW further stated that the requirement that individual meters be installed in meter pits located outside of the building was consistent with the American Water Works Association Water Distribution Operating Training Handbook. Ibid. NJAW further relied on N.J.A.C. 14:3-4.2(c) that "meters shall be so located as to be easily accessible for reading, testing, and making necessary adjustments and repairs. Meters should be placed in a location where the visits of the meter reader or tester will cause minimum inconvenience to the customer or to the utility." Id. at 6. NJAW also argued that Petitioner's proposal to have meters installed in locked boiler rooms would never be easily accessible for reading, testing, or making necessary adjustments or repairs and that NJAW's employees should not be reasonably expected to carry individual keys to the boiler rooms for access to the meters. Finally, Respondent contended that if all apartment complexes were permitted to do as Petitioner requests, then NJAW's employees would be given keys to every apartment complex in its service territory and would have to maintain said keys so they could be accessed in an emergency or even for routine maintenance. Ibid. Moreover, NJAW argued that the Petition should be dismissed because it has complied with all relevant portions of its Tariff, which requires that all meters be housed inside meter pits, although NJAW may grant an exception to such policy on a case-by-case basis. Id. at 7-8, citing Tariff, Second Revised Sheet No. 16, ¶ 14.

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<sup>2</sup> Sandy Ridge states that this would result in the installation of 227 meters. Id.

On December 17, 2012, Petitioner filed a brief in opposition to the motion for summary decision ("OMFSD"), contending that the propriety of NJAW's requirement of underground pits under the circumstances presented a factual issue precluding summary decision: "The sole dispute between the parties in this case is whether the respondent, in its capacity as the municipal water authority, properly denied petitioner the right to have additional meters for individual units contained above ground in petitioner's apartment complex." OMFSD at 2. The Petitioner stated that installing individual meters would result in tenants wasting less water if the tenants were individually accountable for it; it has employees on duty 24 hours a day; other utilities have their meters above ground; and that NJAW stated in discovery that other customers in Carney's Point have meters above ground, and that NJAW can obtain remote meter reads. Id. at 2-3.

Sandy Ridge also stated that NJAW's requirements will necessitate more trenches being dug, more concrete to be poured, more pipe to be run, more holes to be drilled, and more man hours to accomplish the work that will need to be done; NJAW's requirements are cost prohibitive because its estimate of its proposal would cost less than \$80,000 and that its estimate of NJAW's plan was \$432,000; and the NJAW Tariff allows an exception to Respondent's requirements for location of its meters on a case-by-case basis. Id. at 2. According to Petitioner, NJAW did not present evidence to show that it sufficiently considered Petitioner's application in light of the Tariff and controlling law, and thus failed to show that it was entitled to summary decision as a matter of law. Id. at 2-3. In addition, NJAW arbitrarily and unreasonably rejected Petitioner's request and contrary to the Tariff, because NJAW apparently did not consider the Tariff's exception to meter pits on a case-by-case basis, unjustifiably raised billing and discontinuation of service issues, and failed to properly consider conservation of water and the favorable environmental impact connected to Petitioner's proposal. Id. at 3-5.

On January 29, 2013, the Division of Rate Counsel ("Rate Counsel") filed a letter reply brief ("RCLB") supporting the position of Respondent. Rate Counsel stated that the installation of meters inside meter pits is a utility practice that has been approved by the Board and that the Board authorized this practice when it approved NJAW's tariff. RCLB at 3. Rate Counsel stated that Sandy Ridge's conclusion that tenants would waste less water if they were individually accountable for it was not supported by the fact that apartment dwellers are limited in the amount of water they can actually conserve because the property infrastructure is in the landlord's sole control. Id. at 4. Not only for repairs, but for the basic condition of the pipes, fixtures and common areas are completely outside the tenant's ability to regulate. Ibid. Rate Counsel also stated that Petitioner has described Sandy Ridge as being occupied by low income and moderate income tenants and that Petitioner's proposal has the potential impact of shifting an onerous economic burden to low income and moderate tenants, which could compromise their housing stability in a dire economic climate. Ibid.

On June 13, 2013, ALJ Pelios granted summary decision, based on the facts of the case, NJAW's Tariff, and the applicable law. ALJ Pelios found that NJAW's Tariff "requires that all meters be housed inside meter pits. . .". Initial Decision at 4. Relying on Application of Saddle River, 71 N.J. 14 (1976), ALJ Pelios stated that "a tariff is essentially the law governing the relationship between a public utility and its customers, and is binding upon those parties." Initial Decision at 4. Thus, ALJ Pelios found no genuine issues of material facts; Respondent's determination that the meters be housed in meter pits outside of any structures is consistent with and permitted by its Tariff; the Tariff provision, "the Company may grant an exception to this rule on a case by case basis," clearly means that NJAW has the discretion to grant exceptions to that Tariff provision requirement if circumstances so warrant and thus the granting of exceptions is permissive rather than mandatory; and, NJAW may not exercise such discretion in an arbitrary manner. Initial Decision at 4-5.

In addition, ALJ Pelios found that Respondent had "articulated concerns about access, vandalism, safety, emergency response and logistics of potentially carrying keys for every customer's premises as basis for not granting an exception," relying on N.J.A.C. 14:3-2.1 (dealing with the construction and installation of utility plant and facilities) and N.J.A.C. 14:3-4.2 (dealing with the installation of meters and connections). Initial Decision at 5. Thus, ALJ Pelios found that Respondent's denial of Petitioner's request for an exception was not arbitrary, capricious, or unreasonable, but was "based upon articulated considerations which tightly hew to the requirements of the governing regulations and respondent's own tariff." Id. at 5-6. Accordingly, ALJ Pelios determined that NJAW's motion for summary decision should be granted.

On June 24, 2013, Petitioner filed exceptions to ALJ Pelios's Initial Decision, claiming that the ALJ did not consider the conservation of water in his decision and erred in his analysis of Respondent's exercise of discretion, and that the case should be remanded to the OAL for an evidentiary hearing. Exceptions at 3-7. Petitioner asserts that the Board is required to consider conservation of water in its decision making process under N.J.S.A. 48:2-23; Respondent is imposing requirements that would make it cheaper to waste water simply because it does not want to bear the minor inconvenience of alternatives that are available under the Tariff; and, Petitioner submitted data to show how much water its plan would save if Respondent allowed the plan to go forward in a cost effective manner. Id. at 3-4.

Petitioner also claims that Respondent has not sufficiently considered its application in light of the Tariff to support a finding that it properly exercised its discretion; whether the circumstances warrant above ground meters is a factual issue of which there is a genuine dispute; and whether Petitioner's proposals are unreasonable or merely inconvenient to Respondent should have been determined at a hearing. Id. at 4-6.

On July 12, 2013, Respondent filed a reply to Petitioner's exceptions. Respondent states that over the course of twelve years, it has considered every detail Petitioner has provided regarding its meter plan; Petitioner cites no legal authority to support its claim that the Respondent had to consider water conservation at all; N.J.S.A. 48:2-23 is inapplicable here and does not even require the Board to consider water conservation in every decision it makes; the water conservation impacts of the two plans are identical and the difference between the two plans is cost to the landlord, not the amount of conservation; and, Respondent did not unreasonably exercise its discretion by requiring the meter pits because meter pits provide the access, maintenance, and security characteristics required under New Jersey law. Reply Exceptions at 5-12. Moreover, Respondent points out a June 11, 2003, communication from Board Staff to Sandy Ridge Apartments whereby Petitioner was advised that Respondent's use of meter pits was consistent with its Tariff and allowed it to provide safe, adequate, and proper service. Reply Exceptions at 4.

In addition, Respondent argues that Petitioner would have to provide evidence that its plan provided at least equivalent access, maintenance, and security characteristics; Petitioner did not proffer any evidence that its plan would provide equivalent access, security, and the ability to shut-off service to Board-approved meter pit configuration; Petitioner in response to interrogatories on utility access under Petitioner's plan merely stated that "[t]here would be no material obstruction to respondent's access"; and, Petitioner could not specifically describe how it would access the meters in order to shut them in the event of non-payment or emergency. Reply Exceptions at 13-15. Thus, Respondent contends that Petitioner cannot show that requiring it to comply with the default Tariff requirement that meters be located in external meter pits was unreasonable and, therefore, the Board should adopt ALJ Pelios's Initial Decision.

## DISCUSSION AND FINDINGS

Under N.J.A.C. 1:1-12.5, “[a] party may move for summary decision upon all or any of the substantive issues in a contested case.” The summary decision “may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” Ibid. Determining whether a genuine issue of material facts exist “requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995).

In Application of Saddle River, 71 N.J. 14 (1976), the court stated: “A tariff is a published schedule of rates, filed by a public utility, and thereafter, in the absence of successful challenge, applicable equally to all customers. . . . As our Appellate Division has recently pointed out, such a tariff is not a mere contract. It is the law, and its provisions are binding on a customer whether he knows of them or not.” Id. at 29, citing Essex County Welfare Board v. New Jersey Bell Telephone Co., 126 N.J. Super. 417, 421-22 (App. Div. 1974).

According to Petitioner, the issue before the Board is “whether the respondent, in its capacity as the municipal water authority, properly denied petitioner the right to have additional meters for individual units contained above ground in petitioner’s apartment complex.” OMFSD at 2. Based on the relevant information presented by the parties, as discussed in the background and procedural history above, ALJ Pelios found that NJAW was entitled to summary decision as a matter of law, and the Board agrees. It is undisputed that the Tariff controls, and the Board finds that NJAW’s decision on the use of meter pits for Petitioner is consistent with the Tariff and the applicable rules. The tariff requires the Respondent to house all the meters inside meter pits or meter vaults. “All meter pits and meter vaults will be located outside the Customer’s structure in a location acceptable to the express approval of the Water Company.” Tariff, Second Revised Sheet 16, ¶14. The ALJ correctly found that Respondent’s requirement that any meters be housed in meter pits outside of any structure is consistent with and permitted by its tariff.

N.J.A.C. 14:3-4.2(c) provides: “Meters shall be so located as to be easily accessible for reading, testing and making necessary adjustments and repairs. Meters shall be placed in a location where the visits of the meter reader or tester will cause minimum inconvenience to the customer or the utility.” Also, N.J.A.C. 14:3-2.1(b) provides that “[e]ach utility shall make reasonable efforts to protect its property from injury, vandalism, or damage of any kind, and shall exercise due care to reduce hazards to which employees, customers, and the general public may be subjected by the utility’s equipment and facilities.” Although the Board, under N.J.S.A. 48:2-23, may require NJAW to furnish safe, adequate, and proper service in a manner that tends to conserve and preserve the quality of the environment and, in doing so, as argued by Petitioner, consider the conservation of water by Petitioner, the Board does not deem the potential conservation of water to override NJAW’s exercise of its discretion under the Tariff to deny Petitioner’s request.

Respondent points out that the meters will not be easily accessible for reading, testing, or making necessary adjustments or repairs if the meters are inside locked boiler rooms. Moreover, Respondent asserts that placing the meters inside the boiler rooms would potentially subject the meters to vandalism by the customers and the general public that may gain access

to the boiler rooms. Notwithstanding Petitioner's assertion that it has a manager on duty twenty-four hours per day, and that the boiler rooms can be accessed only by Petitioner-approved personnel, Respondent asserted that having the meters in the meter pits outside the building assures Respondent of around-the-clock access to its facility and the ability to shut-off service for nonpayment. Similarly, Petitioner's offer to provide Respondent with keys to the laundry room where the meters will be located was appropriately considered by Respondent and rejected due to safety and security reasons.

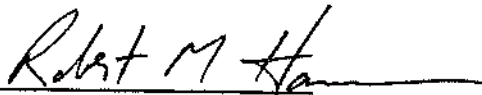
Indeed, the Tariff does not even require NJAW to justify its reason for not granting an exception to Petitioner. Nevertheless, the Board finds no reason to discount Respondent's assertion that its rejection of Petitioner's request complies with its Tariff and the rules, which require the meters to be placed in a location that causes minimum inconvenience for the utility to perform its regulatory duties. N.J.A.C. 14:3-4.2.


Based on the evidence presented and the Board's review of the entire record, the Board **HEREBY FINDS** that ALJ Pelios reasonably concluded that: (1) no genuine issue of material facts exists; (2) Respondent's requirement of housing the meters in meter pits outside of any structure is consistent with and permitted by its Tariff; and (3) Respondent did not exercise its discretion in an arbitrary or capricious manner. Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety and **ORDERS** that the petition be dismissed.


This Order shall become effective on August 30, 2013.

DATED: 8/21/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

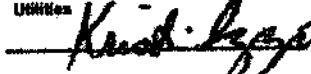
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

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 COUNTRY GARDENS, LTD.,  
D/B/A SANDY RIDGE APARTMENTS, PETITIONER, v.  
NEW JERSEY AMERICAN WATER COMPANY, RESPONDENT  
BPU Docket No. WO09020104  
OAL Docket No. PUC 04545-09

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**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION GRANTING**

**SUMMARY DECISION**

OAL DKT. NO. PUC 04545-09

AGENCY DKT. NO. WO09020104

**COUNTRY GARDENS, LTD.,**  
**D/B/A SANDY RIDGE APARTMENTS,**

Petitioner,

v.

**NEW JERSEY AMERICAN**  
**WATER COMPANY,**

Respondent.

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**Douglas A. Cole, Esq.,** for petitioner (Stem & Cole, attorneys)

**Daniel J. Bitonti, Esq.,** for respondent (Cozzen O'Connor, attorneys)

**Debra F. Robinson, Esq.,** for Division of Rate Counsel, appearing pursuant  
to N.J.A.C. 1:1-5.4(a)2,

Record Closed: May 1, 2013

Decided: June 13, 2013

BEFORE ELIA A. PELIOS, ALJ:

**STATEMENT OF THE CASE**

In this matter, Country Gardens, Ltd., (petitioner) seeks an order by the New Jersey Board of Public Utilities (BPU) compelling respondent to approve petitioner's



proposal to install individual meters for each apartment unit, to be housed inside the apartment buildings.

### **PROCEDURAL HISTORY**

On February 3, 2009, petitioner filed a verified petition with the BPU. On May 19, 2009, the case was transmitted to the Office of Administrative Law where it was filed as a contested case. A motion for summary decision, pursuant to N.J.A.C. 1:1-12.5, was filed by the respondent on November 30, 2012. Petitioner filed a brief in opposition to the motion on December 17, 2012. The Division of Rate Counsel (Rate Counsel) filed a reply brief on January 29, 2013, to which petitioner replied on January 31, 2013. Although respondent indicated a desire to file a reply brief in support of its motion, none was received and the record was deemed closed on May 1, 2013.

### **STATEMENT OF FACTS**

Petitioner is the owner of Sandy Ridge Apartments, an apartment complex located at 175 Pennsgrove Auburn Road, Carneys Point, Salem County, New Jersey. The complex contains 216 apartment units and 11 laundry rooms all housed within in 18 buildings. Eleven water meters, located in water meter pits outside the building, are in use at the complex. Each meter services two buildings and as such most meters serve twenty-four apartment units. Petitioner is the customer of record for all of the water bills associated with the complex.

Petitioner wishes to individually meter each residential dwelling unit and the laundry rooms at the apartment complex, for a total of 227 meters, and to locate those meters in the heater rooms for each respective building. As such petitioner seeks approval from respondent for the proposed meter installation project.

Respondent claims it is willing to install individual meters at petitioner's complex provided that these meters are located in individual meter pits as set forth in respondent's tariff, arguing that its position is consistent with the respondent's nationwide practices, and further arguing that such installation would allow the

respondent unfettered access to these meters to obtain reads, respond during emergencies, address water quality issues, and perform its regulatory duty to change meters without having to obtain access to each boiler room. Respondent further argues that the installation proposed by petitioner would inhibit respondent's ability to control theft and eliminate its ability to terminate service for nonpayment. Petitioner argues that respondent did not give petitioner's design individualized consideration and that respondent is merely seeking to avoid minor inconvenience rather than embrace alternatives which petitioner purports are cheaper, less wasteful and reduce environmental impact. Rate Counsel argues that respondent's position is within the provisions of its approved tariffs.

### CONCLUSIONS OF LAW

Pursuant to N.J.A.C. 1:1-12.5(b), summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The 'judge's function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial'.

[Brill, supra, 142 N.J. at 540 (citations omitted).]

The mere existence of disputed facts is not conclusive. An agency must grant a plenary hearing only if material disputed adjudicative facts exist. Bally Mfg. Corp. v. Casino Control Com'n, 85 N.J. 325, 334, 426 A.2d 1000 (1981), App. Div. 454 U.S. 804, 102 S.Ct. 77, 70 L.Ed.2d 74 (1981); Cunningham v. Dept. of Civil Service, 69 N.J. at 24-25, 350 A.2d 58. N.J.S.A. 52:14B-9.

Petitioner claims that a dispute as to material facts exists, specifically whether or not respondent's requirement of underground pits and refusal to permit the storage of meters in the building was proper and given due consideration. Having reviewed the parties' submissions in support of, and opposition to, the within motion, I conclude that the alleged disputed question of fact, whether respondent's requirement is proper, appears rather to be a question law. Accordingly, I **FIND** that there are no genuine issues of material fact and **CONCLUDE** that this matter is ripe for summary decision.

N.J.A.C. 14:3-1.3(a) provides that "each public utility shall, prior to offering a utility service to the public, submit a tariff or tariff amendments to the [BPU] for approval[.]" The tariff shall "clearly describe . . . all terms and conditions regarding the services[.]" N.J.A.C. 13:3-1.3(b)2. A utility is expected to operate in accordance with its tariff, N.J.A.C. 13:3-1.3(d), though any inconsistency between a tariff and the governing regulations is resolved in favor of the regulation, unless the tariff "provides for more favorable treatment of customers." N.J.A.C. 13:3-1.3(i). In other words, a tariff is essentially the law governing the relationship between a public utility and its customers, and is binding upon those parties. Application of Saddle River, 71 N.J. 14 (1976).

In the section of respondent's tariff governing standard terms and conditions of its water service, item fourteen under general rules provides:

The Company requires that all meters be housed inside meter pits (for meters that are less than or equal to two inches) or meter vaults (for meters that are larger than two inches). Where more than one service type exists (domestic, private fire protection or irrigation) all meters shall be housed inside a meter vault if any one meter is greater than two inches. The customer is responsible for the installation and maintenance of meter vaults. All meter pits and meter vaults will be located outside of the customer's structure in a location acceptable to the express approval of the Water Company.

Notwithstanding the foregoing, the Company may grant an exception to this rule on a case by case basis.

Clearly, respondent's requirement that any meters be housed in meter pits outside of any structure is consistent with and permitted by its tariff. It is equally clear that respondent "may" grant exceptions to this rule if circumstances warrant. The granting of exceptions is permissive rather than mandatory. Petitioners argue that petitioners have not given due consideration to granting an exception. Had the intent been to deny the respondent the exercise of discretion, the operative word would have been "shall" or "must" rather than "may." In interpreting such language, one looks to the "ordinary and well understood meaning" of the words therein. Safeway Trails v. Furman, 41 N.J. 467, 478, cert. denied, 379 U.S. 14 (1964). Of course, the respondent may not exercise its discretion in an arbitrary manner.

Petitioners have articulated concerns about access, vandalism, safety, emergency response and logistics of potentially carrying keys for every customer's premises as basis for not granting an exception. N.J.A.C. 14:3-4.2 provides that "Meters shall be so located as to be easily accessible for reading, testing and making necessary adjustments and repairs. Meters shall be placed in a location where the visits of the meter reader or tester will cause minimum inconvenience to the customer or to the utility." Furthermore, N.J.A.C. 14:3-2.1 provides, in pertinent part, that:

(a) The construction and installation of plant and facilities of the utilities shall be in accordance with standard utility practice, shall comply with all applicable requirements of this chapter, and shall be conducted so as to enable the utility to provide safe, adequate and proper service.

(b) Each utility shall make reasonable efforts to protect its property from injury, vandalism or damage of any kind, and shall exercise due care to reduce hazards to which employees, customers, and the general public may be subjected by the utility's equipment and facilities.

Based on the foregoing, I **CONCLUDE** that the respondent's denial of petitioner's request for an exception is not arbitrary, capricious or unreasonable but rather is based

upon articulated considerations which tightly hew to the requirements of the governing regulations and respondent's own tariff. I further **CONCLUDE** that respondent's motion for summary decision should be **GRANTED**.

**DECISION AND ORDER**

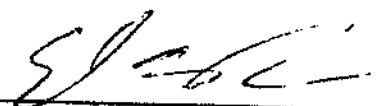
The respondent's motion for summary decision is hereby **GRANTED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

June 13, 2013  
DATE

  
\_\_\_\_\_  
ELIA A. PELIOS, ALJ

Date Received at Agency:

June 13, 2013

Date Mailed to Parties:

6/17/13