SH

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 4989

Tariff filing of Village of )
Stowe Electric Department )
requesting a revision to its )
Rules and Regulations )

Hearing at
Montpelier, Vermont
February 11, 1991

Order entered: 7/17/91

PRESENT: Sharon Appel, Esq., Hearing Officer

APPEARANCES: Richard C. Sargent, Esq.
for Village of Stowe Electric Department

Robert Simpson, Esq.
for Department of Public Service

INTRODUCTION

This matter is before the Board on remand from an Order entered in this docket on August 10, 1989.

On January 30, 1985, the Village of Stowe Electric Department (Stowe), filed a petition requesting approval of a revision to the rules and regulations affecting electric service for Stowe. On February 15, 1985, Stowe filed a tariff revision, superseding its January 30, 1985 filing. On March 1, 1985, the Department of Public Service (DPS or the Department) informed the Board that it had reviewed the filing and recommended suspension and investigation of the filing. By Temporary Order, dated March 12, 1985, the tariff filing was suspended until final determination of the subject proceeding.

A prehearing conference was held in this matter on May 24, 1985. At the time of the prehearing conference, the only unresolved issue concerned to whom all electric service would be

billed. Stowe proposed that all charges for electric service be billed to the property owner. The DPS opposed that practice.

On August 30, 1985, Stowe and the DPS entered into a Stipulation which stated that "the issue of holding property owners liable for all bills occasioned by the use of electricity on their premises is being litigated in an action entitled 'Petition of Joyce Westover, Michael Obuszki, and Alvina Obuszki vs. Village of Barton Electric Department,' Supreme Court Docket Number 84-452." The Stipulation also provided that: the decision of the VT Supreme Court in the Barton case would be binding upon the parties in Docket No. 4989.

All activity was suspended in this case until Spring 1988, when the Supreme Court issued its decision in Westover. The Supreme Court decision did not resolve the billing issue in the instant docket. As a result of the Supreme Court decision, this docket (No. 4989) again became active. A prehearing conference was held on April 29, 1988. Hearings were held on February 23, and May 2, 1989.

On March 27, 1989, the parties entered into a Stipulation (Stipulation #1) which amended the tariff, as follows: "Section 1.0 BILLING B. states that: All charges for electric service will be billed to the party requesting service. Deposits may be required pursuant to the within Section 6.0 DEPOSITS. Not withstanding the provision for service and billing to the party requesting service, if copies of bills are sent to the landowner, then the landowner will have the ultimate

responsibility for the bill should the party requesting service default." Pet. exh. 2.

On August 10, 1989, the Board issued an Order in this docket in which it stated that it had several concerns regarding the proposed tariff provision which were not answered by the record or the stipulation in the case. Consequently, the Board remanded the matter to a new Hearing Officer for the purpose of addressing the Board's stated concerns.

On August 23, 1990, and December 27, 1990, prehearing conferences were held. At the prehearings, the Department made clear that its position regarding proposed Section 1.0 Billing B had changed and that it no longer supported the Stipulation that had been filed on March 26, 1989.

On October 26, 1990, Stowe prefiled the testimony of its Manager, Frederick J. Hutchins. In its prefiled, Stowe stated that the billing provision it wished to have in its Rules and Regulations was as follows:

> All charges for electric service will be billed to the party requesting service. Deposits may be required pursuant to the within Section 6.0 DEPOSITS. Not withstanding the provisions for service and billing to the party requesting service, if copies of bills are sent to the land owner within 30 days of the time the bill is sent to the party requesting service (if that party is not the land owner) then the land owner will have the ultimate responsibility for the bill should the party requesting service default. The utility will send copies of bills to all land owners whose tenants request service and whose bills are in default. When a party requests service the party will indicate on the application for service whether the party is a landlord or tenant."

Hutchins pf. at 1.

On February 11, 1991, a technical hearing was held. On March 26, 1991, the parties filed a Stipulation (Stipulation #2) with the Board which stated that: "The filed tariff revision of the Village of Stowe Electric Department Filed February 15, 1985 is acceptable to the parties except for Section 1.0 Billing B which will remain an issue for resolution by the Public Service Board."

FINDINGS

Based upon the substantial evidence of record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. §8.

1. Stowe's existing tariff does not include a provision that requires a person, upon applying for utility service, to state whether s/he is a landlord or tenant. Tr. at 29.

2. Stowe would like to have such a provision, i.e., Section 1.0 Billing B, approved in the instant docket. Tr. at 29-30.

3. Section 1.0 Billing B of the proposed tariff is interpreted by Stowe to mean that: the utility makes the decision of whether or not to send tenants' bills to landlords; the utility would only contact landlords with respect to accounts that are at least $50 in arrears; and that the utility would send the bill to the landlord within 30 days of the date that the account becomes delinquent, i.e., within 30 days of the date that the account is $50 or more in arrears. Tr. at 38-39.

4. Implicit in Stowe's decision to draw up this provision was:

> the assumption that once a bill becomes delinquent, that certain new steps come in. And, in fact, in my own mind, that possibility of introducing the bill possibly, you know, slightly into a more public realm by notifying the landlord is probably a lesser -- not as draconian step possible as issuing it to a collection agency where people's credit ratings might be impaired and a lot of very unpleasant sorts of steps and circumstances might occur, or court, for that matter.

Tr. at 31.

5. Stowe's reasons for wanting to send a tenant's delinquent bill to her/his landlord are as follows: "to simply provide notice to the landlord that indeed there may be an amount that the landlord ends up owing;" tr. at 23; and "out of a concern that customers be notified or the landlord be notified that a, you know, a payable might be created." Tr. at 24.

6. Stowe has not polled the tenants in its service area as to whether or not they would agree to having a copy of their utility bill sent to their landlords. Tr. at 30.

7. Stowe believes that its customers, including customers who are tenants, have personal privacy rights in the contents of their electric bills. Tr. at 27.

8. Stowe was aware of the privacy interest but did not look into the possibility of obtaining consent of the tenant before sending the utility bill to the landlord. Tr. at 31-33.

9. Stowe would not make the contents of a tenant's bill available to residents of Stowe, other than the tenant's landlord, without the tenant's permission. Tr. at 28-29.

10. Stowe will not agree to an amendment to its Rules and Regulations which would provide that the utility could send a copy of the tenant's delinquent bill to a landlord if the tenant so consented. Tr. at 31-32.

11. Stowe maintains that the fact that it has authority to place a lien on the landlord's property in the event that a tenant defaults was not one of the factors behind its proposal that landlords should be sent copies of tenant's delinquent bills. Tr. at 23.

12. Stowe has never used the lien provision to collect delinquent tenant accounts from landlords. Tr. at 25.

13. Over the past five years, Stowe has filed approximately 17 liens related to foreclosure. The amount collected was over $50,000 and the net investment was under $200. Tr. at 50.

14. During this time period, Stowe did not have the landlord-notification procedure which it now seeks in this proceeding. Tr. at 51.

15. The lien provision has worked well over the past five years. Tr. at 52.

## DISCUSSION

### I. ANSWERS TO QUESTIONS POSED BY BOARD IN ORDER DATED AUGUST 10, 1989

Listed below are the questions posed by the Board in its Order in this docket dated August 10, 1989, and the answers to those questions.

1. Who will be the party responsible for the decision to send (or receive) copies of the utility bills?

Under Stowe's proposal, the utility would be responsible for the decision to send the bills. Tr. at 38-39.

2. When must the copies be mailed out?

The bill would be sent out within 30 days of the time the tenant's account became delinquent. Id.

3. If the utility is the one to make the decision to send landowners copies of bills, on what basis will the utility make that selection, or will the utility send all landowners copies of their tenants' bills?

The utility would notify landlords only with respect to accounts that are at least $50 in arrears. Id.

4. How will the utility determine whether a party requesting service (or current customer) is a tenant?

Stowe's proposal requires that the customer, at the time s/he applies for service, identify whether s/he is a landlord or tenant.

5. What are the costs and benefits of this proposal?

The costs of the proposal are that tenants' rights to privacy and confidentiality will be violated. The benefit, as explained by Stowe, is that landlords will be informed of liabilities that they might incur. These issues are discussed extensively, infra, at II(A).

6. How does the regulation compare or contrast with other Vermont utility provisions that were specifically designed (or proposed) to address the tenant/landlord problem?

Stowe surveyed eight municipal electric companies to determine whether they: (1) place liens on landlords' property when a tenant's account is delinquent; and (2) notify the landlord of tenants' delinquent accounts. The municipalities

surveyed were: Morrisville, Johnson, Hyde Park, Burlington, Lyndonville, Enosburg Falls, Hardwick and Barton. Stowe found that of the eight, four place liens against landlords' property for delinquent accounts of tenants. Stowe also found that:

> Six of the municipalities notify landlords of delinquent tenant accounts. Two will give the landlord this information, how much a tenant owes, if the landlord asks. Johnson and Enosburg do not place liens on landlord property, however, they have notified landlords of how much a tenant owes, although not done routinely. Burlington is one of the two municipalities which does not notify landlords. Since it is in the process of effectuating its lien authority, it may be notifying landlords at some future point.

Reply Brief for Stowe, filed April 8, 1991, at 1-2.

As discussed below, I find that, for several reasons, the unauthorized release of tenants' account information to landlords is unlawful. Consequently, I recommend that the Board require Stowe, as well as all other municipal electric companies that permit release of such information, to revise their billing practices so as to ensure that release of such information is not permitted. See infra, Order at Paragraph 4.

7. How does this provision relate to the recently revised Board Rules 3.200 and 3.300 regarding deposits and disconnections?

The provision does not relate to Board Rule 3.200. However, as discussed infra at II(B), the provision is inconsistent with Board Rule 3.300 and discriminatory under 30 V.S.A. §209(a)(6) and §218(a).

II. OTHER ISSUES

A. Right to Privacy and Confidentiality

The DPS argues that releasing the tenant's account information to the landlord without the tenant's consent would

violate the tenant's right to privacy as recognized by the Board in Petition of Farmers Home Administration for an order to show cause why Central Vermont Public Service Corporation should not be directed to disclose information regarding electric usage for apartments at Green Mountain Apartments, Brattleboro, Vermont, Docket No. 4697, Order of October 15, 1982, and by the Vermont Legislature when it enacted the Access to Public Records Law, 1 V.S.A. §315 et seq. (PRL). Stowe replies that neither the Board Order nor the PRL protect the tenant from release of the account information. I find that, for the reasons discussed below, release of the information would violate the tenant's right to confidentiality and privacy as protected by the U.S. and Vermont Constitutions, and as recognized by the Board in Docket No. 4697 and by the Vermont Legislature in the Access to Public Records Law.

1. Stowe's interest in assuring that landlords are given notice that "indeed there might be an amount that the landlord ends up owing" is insufficient to outweigh the tenant's constitutionally-protected interest in nondisclosure of personal information.

As the Supreme Court explained in Whalen v. Roe, 429 U.S. 589 (1977):

> The cases sometimes characterized as protecting 'privacy' have in fact involved at least two different kinds of interests. One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions.

429 U.S. at 598-600 (footnotes omitted). The two strands of the right to privacy cases are often referred to as "confidentiality" cases and "autonomy" cases.[1] Whalen involved both.

The issue in Whalen was the constitutionality of a New York statute that authorized the state to record the names and addresses of patients who received prescriptions for certain drugs considered likely to be abused. Although the court upheld the statute, it did so only after determining that public disclosure of the information was unlikely. Id. Legally, the information could only be used in judicial proceedings, and the state had made unauthorized disclosure of the information a crime punishable by up to a year in prison and a $2,000 fine. Id.

Whalen is, nonetheless, significant for several reasons. First, it recognized that individuals have a "protectible interest in avoiding disclosure of personal

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1.. Although the Vermont Supreme Court does not appear to have decided a case involving the right to informational privacy, it is reasonable to assume that the Court would be at least as protective of this right as are the federal courts. As the Court explained in State v. Badger, 141 Vt. 430, 438-39 (1982):

> Although the Vermont and federal constitutions "have a common origin and a similar purpose," . . . our constitution is not a mere reflection of the federal charter. Historically and textually, it differs from the United States Constitution. It predates the federal counterpart, as it extends back to Vermont's days as an independent republic. It is an independent authority, and Vermont's fundamental law.
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> . . . Indeed, we have at times interpreted our constitution as protecting rights which were explicitly excluded from federal protection. . . . We are free, of course, to provide more generous protection to rights under the Vermont Constitution than afforded by the federal charter.

(Citations omitted.)

matters." Id. at 599. Second, it employed a de facto balancing test to determine whether or not infringement of that right was lawful. Third, it stated that "compelling state interests" would be necessary to justify "[b]road dissemination by state officials" of confidential personal information. Id. at 606 (Brennan, J., concurring).

In Nixon v. Administrator of General Services, 433 U.S. 425, 457 (1977), the Court reaffirmed that the right to privacy includes "'the individual interest in avoiding disclosure of personal matters.'" 433 U.S. at 457 (quoting Whalen, 429 U.S. at 599). In Nixon, the Court upheld the Presidential Recordings and Materials Preservation Act, Pub.L. No. 93-526, Title I, note following 44 U.S.C. §2107 (1970 ed., Supp. V), which directed the Administrator of General Services to screen the Presidential materials. The Court reasoned that while former President Nixon had a legitimate expectation of privacy in his personal communications, this expectation had to be viewed in the context of the circumstances of the case: the limited intrusion of the screening process; the former President's status as a public figure; his admitted lack of expectation of privacy in the overwhelming majority of the materials; the important public purpose in preservation of the materials; and the virtual impossibility of segregating the small quantity of private materials without comprehensive screening. Id. at 465. The Court held that when this was combined with the "unblemished record" of the archivists for discretion, the likelihood that the public access regulations to be promulgated would further moot

appellant's fears that his materials would be viewed by numerous persons, and the requirement under the Act that appellant's private materials be returned to him, appellant's privacy claim was without merit. Id. at 465, 460. Thus, the Court in Nixon, as in Whalen, conducted a balancing test to determine whether or not an individual's privacy interest in personal information is outweighed by the public interest in disclosure of that information.

Since Whalen and Nixon, most courts that have examined the confidentiality branch of the right to privacy have similarly employed a balancing of interests test to determine whether an intrusion on a privacy interest is lawful. These Courts apply an intermediate level scrutiny, or even strict scrutiny, standard of review when examining the intrusion.

In Plante v. Gonzalez, 575 F.2d 1119, 1134 (5th Cir. 1978), for example, the court held that financial disclosure laws are subject to a review standard that is something less than strict scrutiny but more than mere rationality. In that case, the issue was whether the interests of certain elected officials in privacy in information regarding their finances outweighed the public's interest in disclosure of the information. The court held that while "[f]inancial privacy is a matter of serious concern, deserving strong protection," the public interest supporting public disclosure of financial information about elected officials was even stronger. Id. at 1136.

Similarly, in Barry v. City of New York, 712 F.2d 1554 (2d Cir. 1983), the court applied intermediate level scrutiny in

reviewing a financial disclosure law that required city officials and employees to file annual financial reports. The court recognized that public disclosure of financial information could be personally embarrassing and intrusive but found that, in light of the statute's privacy mechanism, the City's interest in public disclosure outweighed the possible infringement of plaintiffs' privacy interest. Id. at 1561-63.

It is important to bear in mind that in all of these cases, and in other cases in which intermediate scrutiny is employed, the disclosure that the courts permitted was disclosure to a governmental agency, as distinct from disclosure to third parties. However,

> "[a]doption of a balancing approach does not preclude in all circumstances the government's need to present a compelling interest to justify an intrusion. Indeed, when the intrusion is severe, a compelling interest is required to justify the intrusion. "Severe" intrusions include public dissemination of confidential information as opposed to disclosure of such information only to the government or other litigants.

Tavoulareas v. Washington Post Co., 724 F.2d 1010, 1023 (D.C. Cir. 1984) (citing 429 U.S. at 606 (Brennan, J., concurring)). Thus, in Tavoulareas, the court held that a corporation has a qualified constitutional interest in nondisclosure of confidential discovery materials not used at trial. Id. at 1022. In light of that interest, a newspaper's, and therefore the public's, interest in disclosure of 3800 pages of deposition transcript had to:

> bow to the court's obligation to avoid a severe intrusion on [a corporation's] constitutionally protected privacy interest and to preserve the integrity of the discovery process. Consequently, respect for the [newspaper's] free expression interest

> cannot provide the compelling reason necessary to justify the district court's order to unseal.

Id. at 1029.

The disclosure in the instant matter involves disclosure to third parties and, thus arguably is subject to strict scrutiny. But, even if the more relaxed intermediate level scrutiny governed, the policy would still fail.

The state interest in support of the proposed disclosure of financial information, as articulated by Stowe, is that landlords should be notified of liabilities that they might incur. Tr. at 23-25. The tenant's interest in nondisclosure is the right to privacy and confidentiality in financial affairs. The tenant's interest exists regardless of whether or not concrete consequential damages flow from the release of information to the landlord; the mere release of the information establishes a violation. Plante, 575 F.2d at 1134. The task before the Board, then, is to balance the utility's asserted state interest against the tenant's interest and to determine whether the former justifies the violation of the latter.

An examination of Stowe's asserted interest shows that it falls far short of that required even under the intermediate standard of review for abridging an individual's privacy right. At best, Stowe's proffered reason is based on speculative considerations. Certainly, the mere fact that a tenant's account becomes delinquent at a given point in time does not predict whether the account will remain delinquent or whether the utility will ever have to do anything other than send out a disconnection notice to ensure collection. See infra II(B). Stowe's desire to

inform landlords of liabilities which they might, but might not, eventually incur does not rise to the level of the important state interest that is necessary to justify the abridgement of the tenant's privacy interest.

2. The tenant's utility records constitute "personal documents relating to an individual" within the meaning of 1 V.S.A. §317(b) and, therefore, are exempt from disclosure under the Vermont Access to Public Records Law.

The Vermont Access to Public Records Law (PAL) permits:

> [a]ny person [to] inspect or copy any public record or document of a public agency." V.S.A. §316(a). The policy behind this statute is "to provide for free and open examination of records consistent with Chapter I, Article 6 of the Vermont Constitution. Officers of government are trustees and servants of the people and it is in the public interest to enable any person to review and criticize their decisions even though such examination may cause inconvenience or embarrassment."

Sprague v. University of Vermont, 661 F. Supp. 1132, 1139 (D. Vt. 1987). The PAL applies to departments "of any political subdivision of the state," 1 V.S.A. §317, such as Stowe.

Expressly excluded from the definition of "public record," however, are "personal documents relating to an individual, . . . including information in any files relating to personal finances . . ." 1 V.S.A. §317(b)(7). Presumably, then, if a document held by Stowe is not a public record within the meaning of the PAL, then Stowe does not have the authority to release it. Yet Stowe argues that the Access to Public Records Law:

> [o]nly offers relief to persons seeking information who have been denied access by an agency. The statute also does not mandate the withholding of "exempted record." It simply defines public records and lists exemptions. It is up to the agency what records it releases,

> generally once the agency receives a request for records."

Brief for Stowe, filed March 25, 1991, at 4. In other words, material expressly exempted from the definition of "public record" may be released to any person, provided that person has not requested it.

I find this reasoning to be untenable. If such an interpretation is permitted, then exempted materials may be released at the whim of Stowe's employees, persons who as "[o]fficers of government are to be trustees and servants of the people . . ." 661 F. Supp. at 1139. If the PAL prohibits disclosure of exempted materials upon a specific request for the material, then surely it prohibits release of such materials when there is no request for them, as well as under any other circumstances.

3. Because the test articulated by the Board in Docket No. 4697 is essentially the same as that articulated by the federal courts in the right to confidentiality cases and because application of the federal court test proves the tariff provision to be unlawful, it follows that the provision is unlawful under Docket No. 4697 as well.

In Docket No. 4697, the Board set forth the following test for determining whether or not customer account information may be released to third parties.

> A utility should treat all information it maintains on its customers as confidential. Although disclosure of a residential customer's electric consumption is not likely to be prejudicial in ordinary circumstances, that information is generally no one's business but the customer's, and its privacy ought to be respected. But this consideration is not an absolute. Where a valid public purpose may be served by the release of such information, disclosure ought to be authorized -- under

> appropriate restrictions -- at least in the absence of a showing that specific harm would result.

Docket No. 4697, Order of 10/15/82, at 2-3. This test considers the customer's privacy interest in her/his account information in light of the public purpose, or state interest, that would be served by disclosure. Consequently, it is essentially the same as the balancing test employed by the federal courts in the confidentiality cases. Application of the test employed by the federal courts showed that the state interest in affording landlords notice of liabilities they might incur was not sufficiently important to outweigh the tenant's right to confidentiality. Since the test articulated by the Board is equivalent to that employed by the federal courts, it follows that application of the test articulated by the Board must yield the same result.

Since the decision in Docket No. 4697 is the only Board decision to address the issue of release of customer account information, it warrants close examination here. In that decision, the Board applied the balancing test articulated above and found that the release of information regarding customers' electric consumption to a third party would likely result in substantial benefits to the public at large and the individual tenants. The third party, the Farmers Home Administration (FMHA), held a mortgage on the property and wanted the information so that it could insulate or make structural improvements to reduce energy consumption in the building. Docket No. 4697, Order of 10/15/82, at 1-2. It is important to stress, however, that the Board permitted release of the

information only after: each affected tenant had received personal or abode service that such release was proposed; each affected tenant had been given a meaningful opportunity to be heard, and the only tenants who expressed an opinion supported the release; and after the Board found that no one but the landlord objected to the release. Id. at 2-3.

The situation in Docket No. 4697 thus stands in direct contrast to the situation in the instant case. In Docket No. 4697, the tenants were given notice of the proposed release of the information and an opportunity to comment on it, and none objected to it. In the instant docket, on the other hand, the tenants have not been given notice of or an opportunity to comment on the proposed release of their account information. Although the DPS has suggested that Stowe revise its tariff provision to provide that if the tenant so consents then the utility may send a copy of her/his delinquent bill to the landlord, Stowe has rejected this suggestion. Tr. at 31-32.

The cases are also different in that in Docket No. 4697, an important public purpose was served by release of the information -- energy conservation -- and this purpose apparently could not have been achieved without release of the information. In contrast, the public purpose at issue in this docket -- collection of delinquent bills -- is already being well served without unauthorized release of tenant account information. Under the authority of the lien provision in its Village Charter, Stowe has filed approximately 17 liens related to foreclosure in the past five years and has collected over $50,000. Tr. at 50.

Its net investment has been less than $200. Id. Release of the account information thus does not seem necessary to achieve the public purpose at issue in this docket.

B. The Utility's Proposal to Notify Landlords of Tenants' Delinquent Accounts Is Inconsistent With Board Rule 3.300 and is Discriminatory Under 30 V.S.A. §209(a)(6) and §218(a).

1. Board Rule 3.300.

Delinquency is defined under Board Rule 3.301(B) as follows:

> [F]ailure of the ratepayer to tender payment for a valid bill or charge (1) within thirty days of the postmark date of that bill or charge, or (2) by a "due date" at least thirty days after mailing, which date shall be printed on the bill.

Delinquency, under certain circumstances, triggers the utility's right to disconnect an account: "if payment of a valid bill or charge is delinquent and if notice of the delinquency has been furnished to the ratepayer, as provided in this rule." Board Rule 3.302. The notice required under the Rule "shall mean written notice on a form approved by the Board, mailed or delivered within 40 days after delinquency but not more than twenty days, nor less than fourteen days prior to the first date on which disconnection of service may occur." Board Rule 3.301(C). The disconnection notice form must comply with the requirements of Board Rule 3.303.

If, however, any of the following exceptions applies, then disconnection is prohibited:

(1) the company bills at least once every two months and the delinquency charge does not exceed $50.00

(this exception may be used for only two billing cycles per calendar year); Board Rule 3.302(B)(1);

(2) the charges constituting the delinquency are more than two years old; Board Rule 3.302(B)(2);

(3) the delinquency is due solely to a disputed portion of a charge which has been referred to the Board by the ratepayer and the Board has advised the Company not to disconnect service; Board Rule 3.302(B)(3);

(4) the delinquency is due to a failure to pay a non-recurring charge (with certain exceptions); Board Rule 3.302(B)(4);

(5) the disconnection would represent an immediate and serious hazard to the health of a ratepayer or a resident in her/his home, as set forth in a physician's certificate; Board Rule 3.302(B)(5); or

(6) the ratepayer has not been given an opportunity to enter into (a) a reasonable repayment plan or, having entered into such a plan has substantially abided by its terms; or (b) in the case of a gas or electric utility, a monthly installment plan to pay for future bills. Board Rule 3.302(B)(6).

The way in which the ratepayer often learns of these exceptions to the disconnection rule is upon receipt of the disconnection notice which, as mandated by Board Rule 3.303, must apprise customers of the exceptions. If a ratepayer can establish that s/he falls into one of the exceptions then disconnection is prohibited.

Under the tariff provision at issue here, Stowe would send a copy of the bill of a tenant-ratepayer, to the landlord between 30 and 60 days after the date the bill is due. Thus, the landlord could receive a copy of the bill before the tenant ratepayer has even received a disconnection notice. Yet it is certainly possible, if not probable, that many ratepayers, when confronted with disconnection notices, will pay their bills or

attempt to establish that disconnection is not authorized because their circumstances fit within one of the exceptions outlined in Board Rule 3.302. After receiving the disconnection notice, then, the tenant could well take action, authorized by Board Rule 3.302, that would render the delinquency moot. Thus, even if there were a valid reason for contacting the landlord about the tenant's bill (there is not, see supra II(A)), doing so at the time Stowe suggests here would be premature.

The proposed tariff provision, at best, violates the spirit of Board Rule 3.300 and, at worst, burdens the tenant's right to freely exercise all rights created under the Rule.

2. 30 V.S.A. §209(a)(6) and §218(a).

This also amounts to discrimination among classes of users in violation of 30 V.S.A. §209(a)(6) and §218(a). Ratepayers who are landlords may freely exercise all options created by Board Rule 3.300 without risking disclosure of their account information to third parties, unless and until their account is actually disconnected. Ratepayers who are tenants, on the other hand, risk disclosure of their account information unless they pay their bills before any delinquency develops. Such discrimination should not be permitted by this Board.

C. Stipulation Regarding Remainder of Tariff

As the Stipulation of 3/26/91 explains, "[t]he filed tariff revision of the Village of Stowe Electric Department Filed February 15, 1985 is acceptable to the parties except for Section 1.0 Billing B which will remain an issue for resolution by the Public Service Board." Because the parties agree that the tariff

is acceptable except for Section 1.0 Billing B, and because the Board directed that the only issues on remand pertained to this provision, I recommend that the Board approve the Stipulation and allow the remainder of the tariff into effect.

A Proposal for Decision pursuant to 3. V.S.A. Sec. 811 has been served on the parties to this case.

DATED at Montpelier, Vermont, this 24th of June, 1991.

Sharon Appel

Sharon Appel, Esq.
Hearing Officer

BOARD DISCUSSION

We agree with the Hearing Officer's conclusion that the public interest purposes articulated by Stowe in support of release to landlords of tenants' account information is insufficient to justify the automatic release of such information upon the account becoming delinquent. We, therefore, agree with the Hearing Officer's conclusion that proposed tariff provision Section 1.0 Billing B must be stricken or revised to consist of only the first two sentences of that proposal. But, because we do not believe that it is necessary to rest this decision on constitutional grounds, we do not reach the constitutional arguments discussed in the proposal for decision.

While we find that the tariff provision, as written, is unacceptable, we also recognize that weather conditions in Vermont are at times severe, rendering rental properties subject to property damage if utilities are disconnected. For this reason, we believe that the landlord is entitled to notice prior to disconnection of a tenant's account. Should the utility file a tariff provision in which notice to the landlord is limited to circumstances where disconnection is impending, such a tariff might satisfy the requirements of the balancing test discussed herein. See Tariff filing of the Village of Morrisville Water and Light Department requesting a revision to its rules and regulations re: tenant/landlord issue, Docket No. 5345, at 27, 19.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and conclusions of the Hearing Officer are hereby adopted, and the Stipulation is accepted.

2. Proposed tariff provision Section 1.0 Billing B shall be permitted, only if revised to consist of the first two sentences of that proposal, as follows: "All charges for electric service will be billed to the party requesting service. Deposits may be required pursuant to the within Section 6.0 DEPOSITS."

3. Stowe shall file the revised provision with the Board for approval within thirty (30) days of the date of this Order. The DPS shall have ten (10) days to file comments, if any, on the revision. The Hearing Officer will evaluate the provision for its conformance with the terms of this Order.

4. Copies of this Order shall be sent to all Vermont Electric utilities. Each Utility shall, within 30 days of the date of this Order, make a filing with the Board, as follows:

(a) stating that its tariff is consistent with this order;

(b) stating that its tariff is inconsistent with this Order, but filing an amendment which renders the tariff consistent with the Order; or

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(c) stating that its tariff is inconsistent with this Order, but establishing that the tariff is just and reasonable, nonetheless.

DATED at Montpelier, Vermont, this 17th of July, 1991.

Richard H. Cowart )
Suzanne D. Rude ) PUBLIC SERVICE
Richard H. Wilson ) BOARD
) OF VERMONT

OFFICE OF THE CLERK

FILED: July 17, 1991

ATTEST: Susan M. Hudson
Clerk of the Board