

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6074

Investigation into confidentiality of customer bills of)
Barton Village, Inc. Electric Department)

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STATE OF VERMONT
DEPT OF PUBLIC SERVICE
MONTPELIER, VT.
05620-2601
Order entered: 6/5/2007

I. SUMMARY

In this Docket, Barton Village, Inc. Electric Department ("Barton") has requested that the Public Service Board ("Board") issue a ruling determining what information Barton may provide to third parties, including landlords, concerning customers' electric bills. In this Proposal for Decision, I recommend that the Board order Barton to treat customer billing information in a confidential manner, and not to provide this information to third parties without the customer's consent or a directive from the Board. My recommendation is based on precedent in which the Board has consistently determined that customer's bills are confidential, and that such information may be disclosed without the customer's consent only for reasons of significant public interest.

II. BACKGROUND

On February 9, 1998, Barton filed a Petition for Declaratory Ruling ("Petition"), requesting that the Board:

Find, determine and declare that customer-specific information held by a municipal utility is private financial information of the customer to whom it pertains, held in trust by the utility on behalf of the customer, and that such information is thus not subject to compelled disclosure under the 'Access to Public Records' statutes . . .

In its transmittal letter accompanying the Petition, Barton states that "[t]he immediate situation triggering Barton's filing of this Petition at this time involves a landlord's demand for information on a tenant's electric account."

A prehearing conference was held on May 12, 1998.¹

On June 1, 1998, the City of Burlington Electric Department ("BED") filed a Motion to Intervene in this Docket, seeking intervention under Board Rule 2.209. This request was denied in an Order entered under this Docket on August 7, 1998. BED was allowed to participate in this Docket as an *amicus curiae*; BED declined this opportunity.

On July 10, 1998, Barton submitted the prefiled testimony of Robert Arnold. On July 24, 1998, the Department submitted the prefiled testimony of Deena Frankel.

In a letter filed July 30, 1998, the Department informed the Board that neither it nor Barton request evidentiary hearings. In an Order issued August 7, 1998, I stated that "[i]f the parties wish to avoid evidentiary hearings, they must stipulate to the admission of the prefiled testimony and exhibits."² The Department and Barton stipulated to the admission of Mr. Arnold's and Ms. Frankel's prefiled testimony on August 11 and 12, 1998, respectively.

III. FINDINGS

Based upon the evidence of record, I submit the following findings to the Board in accordance with 30 V.S.A. § 8.

1. Barton is a duly organized municipal electric utility, subject to regulation by the Board. Exh. REA-1 at 1.
2. The Village of Barton's Municipal Charter provides that unpaid electric bills become a lien against the property taking the electric service. Arnold pf. at 3.
3. Barton does not reveal any information as to a customer's electric account to any party without written authorization from the customer. Thus, Barton does not provide landlords with access to information regarding whether a tenant has unpaid electric bills that have triggered the lien provisions of Barton's Municipal Charter, unless the tenant authorizes the disclosure. Arnold pf. at 3-6.

1. Notice of the prehearing and of this proceeding was provided to the attorney for the landlord who had requested that Barton provide information concerning the tenant's electric account; neither the landlord nor his attorney attended the prehearing or participated in this proceeding.

2. Order of 8/7/98 at 3.

4. Landlords within the Barton service territory sometimes inquire of Barton as to the status of tenants' electric accounts. Arnold pf. at 3.

5. Barton has informed landlords that they may seek to include a provision in a lease by which the tenant agrees that the landlord may obtain information concerning the tenant's electric usage and bills. Barton has also reminded landlords that they may keep the electric service in their own names and increase the rent to reflect the inclusion of electricity therein; the landlord would then receive (and pay) the electric bills and thus be fully informed of the status of the electric account. Arnold pf. at 7-8.

6. Customers' bills include sensitive information on credit and payment history; for business customers, bills may also reflect competitively sensitive information. Frankel pf. at 2-3; exh. REA-1 at 5, n. 1.

IV. POSITIONS OF THE PARTIES

Barton acknowledges in its brief that it should not generally disclose customer-specific information, but contends that:

a reasonable balancing of the interests at stake could indeed lead the Board to conclude that there should be a limited and specific exception to this policy to allow landlords to request information from Barton to protect themselves against liens resulting from tenants' unpaid bills.³

The Department contends that a utility should not disclose customer-specific information absent customer consent or a Board Order. The Department recommends that, in this Docket, the Board declare that all utilities, including Barton, must keep customer-specific information confidential. In the alternative, if the Board is unwilling to issue a declaration in this Docket affecting all utilities, the Department recommends that the Board order Barton to keep customer-specific information confidential, and open a rulemaking proceeding to require all utilities to keep confidential customer-specific information.⁴

3. Barton Brief at 1-2.

4. Department Brief at 10-11.

V. DISCUSSION

The Village of Barton finds itself in a situation where it is attempting to protect the privacy rights of tenants in the face of requests from landlords, under the Vermont Access to Public Records statute, to discover whether a lien has been placed on a building which the landlord owns. The situation originates in 1934 amendments to the town's municipal charter, which provides that:

Such rates or rents, with the charges for wiring and piping, shall be chargeable to, and may be collected of, the owners of the property supplied with the same, unless otherwise agreed upon by the water commissioners, trustees and such owners, and shall be a lien in the nature of a tax upon any real estate so supplied with the same, wherever located, whether such rates, rents or charges be charged in the first instance against the owner or occupant thereof, and may be collected in the same manner as any tax assessed by said village.⁵

Essentially, the Charter allows the municipal utility to link the responsibility for delinquent payments to the building to which service is provided, rather than to the customer who is taking the service. Under this provision, the owner of a building in Barton's service territory is responsible for any unpaid electric bills regardless of whether the owner is the customer of record for the electric utility.

As noted above, this Docket was opened in response to a request by Barton for a declaratory ruling that "customer-specific information held by Barton is private and confidential information of the customer, and thus, as a matter of law, not subject to compelled disclosure, in the absence of customer consent, under the 'Access to Public Records' statutes."⁶

At the prehearing conference, I requested that the parties brief the issue of whether the Board has jurisdiction to issue the requested ruling under the Access to Public Records statute. Neither party has presented legal argument specifically addressing this issue, although the Department asserts that the Board need not interpret that statute to resolve this proceeding.⁷ Given that Barton's petition specifically requests that the Board rule that customer-specific

5. P.A. No. 264 (1939 Vt., Bien Sess.).

6. Petition at 1.

7. Department Brief at 1.

information cannot be disclosed, without customer consent, under the Access to Public Records statute, I recommend that the Board address whether it has the authority to issue that ruling. I further recommend that the Board conclude that it lacks such authority, because the plain language of the Access to Public Records statute grants jurisdiction to hear controversies regarding public records access to the superior courts, not to the Board.⁸

This is not to say that the Board lacks the authority to rule on the core issue of the confidentiality of customer's bills. Neither party disputes the Board's authority to rule on that issue, and I conclude that such authority falls squarely within the Board's powers under 30 V.S.A. §§ 209 and 221.

The Board has previously addressed the issue of the confidentiality of customer-specific information, and that Board precedent provides clear guidance in resolving the issues in this proceeding. Previous Board Orders recognize that there is a presumption of privacy with respect to consumer information, although there is no absolute right to privacy. To determine when customer billing information should be released, the Board has utilized a test that seeks to balance a customer's personal privacy with the public interest.

The Board described the parameters of the test in Docket No. 4697. In that proceeding, the Board examined whether utilities may provide electricity consumption patterns to a mortgage company which was attempting to discern the source of high electric bills. The Board held that:

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 restriction – at least in the absence of a showing that specific harm would result.⁹

In Docket No. 4697, the holder of a mortgage on a housing complex attempted to determine the reason for extremely high electric usage in the building. Central Vermont Public Service

8. 1 V.S.A. § 319(a).

9. Docket No. 4697, Order of 10/13/82 at 2-3.

Corporation ("CVPS") refused to provide this information without the consent of the Board. In the course of the ensuing Docket, notice and an opportunity to comment were provided to the tenants of the building. No tenant objected to the release of electric consumption information, and the Board ruled that the disclosure of such information was in the best interests of both the public, in the form of decreased electric consumption, and the tenants of the building, in the form of decreased electric bills.

The Board employed this balancing test again in Docket No. 4989, which addressed a situation factually similar to the present case. In that docket, the Village of Stowe Electric Department ("Stowe") sought, through a tariff revision, the authority to automatically notify landlords upon a tenant's account becoming delinquent. Stowe's municipal charter included a provision providing its Village Electric Department with the ability to place a lien on property with delinquent electric payments. The Board determined that the public interest was insufficient to support automatic disclosure of tenants' account information to landlords.¹⁰ Although the Board concluded that automatic disclosure of delinquencies was not warranted, it did recognize that Stowe could appropriately notify a landlord in the event of disconnection of electrical service, given the concern for potential property damage that could be caused by disconnection of electrical service during cold weather.¹¹

I find that the Board's conclusions in Docket 4989 are directly applicable to the present case. As in Docket No. 4989, the public interest here consists primarily of the interests of landlords in avoiding a lien on their property due to tenants' unpaid bills. This interest is important, particularly to the potentially affected landlord. However, there are other methods available to landlords to protect their interests. For example, a landlord could include in the lease language requiring the tenant to provide the landlord access to the tenant's electric bills.

A lease is essentially a contract, with the landowner as the offeror and the prospective tenant as the offeree. As with any offer, the offeror is the master of

10. Docket No. 4989, Order of 7/17/91 at 18.

11. *Id.* at 23; *see also*, Docket No. 5345 (In re Tariff Filing of the Village of Morrisville Water and Light Department), Order of 5/13/91 at 27.

his offer, i.e., he determines its terms. The offeree, here the prospective tenant, is free to accept or reject the offer.¹²

In fact, Barton informs landlords that they may seek to use a lease provision to protect their interests, and also that they may maintain the electric accounts in their own names.¹³ Landlords thus have it well within their power to protect themselves from the possibility of an unforeseen lien due to a tenant's unpaid bills.

I conclude that there is not a sufficiently compelling public interest to outweigh the tenants' privacy interest, and that thus Barton should not provide a customer's billing information to a landlord, or any other third party, absent the customer's consent or a specific Board directive. I do recommend, however, that Barton be allowed to provide notice to landlords when electrical service is disconnected at the landlord's property.

I further conclude that the Board should not adopt the Department's recommendation to issue a declaration, in this Docket, that would apply to all utilities. This proceeding was initiated by a petition filed by a single utility (Barton), was never noticed as a general investigation into the obligations of all utilities, and proceeded on the express understanding that the investigation was limited to the obligations of Barton alone.¹⁴ As for the Department's proposal that the Board initiate a rulemaking to address the obligations of all utilities regarding the confidentiality of customer-specific information, I recommend that the Board invite the Department to file either a rulemaking petition with a proposed rule, or a request that the Board initiate a workshop procedure to solicit comment on a possible rulemaking.

VI. CONCLUSION

For the reasons stated above, I recommend that the Board rule that Barton cannot disclose customer-specific information to third parties absent the customer's consent or a directive from the Board. I further recommend that Barton be permitted to inform landlords when electrical service is disconnected at the landlord's property.

12. Docket No. 5345, Order of 5/13/91 at 6.

13. Tr. 5/12/98 at 18; Arnold pf. at 7-8.

14. Tr. 5/12/98 at 25-29; Prehearing Conference Memorandum, 5/19/98, at 1.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 14th day of May, 2007.



Kurt Janson, Esq.
Hearing Officer

VII. BOARD DISCUSSION

On May 11, 2007, the Department filed comments on the Hearing Officer's Proposal for Decision. No other comments were filed.

In its comments, the Department supports the Proposal for Decision, and recommends that the Board supplement the procedural history with the following paragraph:

A decision in this case has been pending since 1998 when Jim Volz served as the DPS Director for Public Advocacy. In 2005, Mr. Volz was appointed to serve as Chair of the PSB, and he wrote the parties on April 1, 2005 about his potential participation in the case. After receiving no objections to Chairman Volz's participation, the Deputy Clerk of the Board informed the parties on April 28, 2005 that the Chairman would participate in the final decision in this manner.

According to the Department, incorporating the above paragraph into the procedural history "will more accurately reflect the record and will prevent any suggestion that it was improper for Chairman Volz to be involved in PSB's final order in this docket."

We agree with the Department's recommendation, and adopt the paragraph quoted above as a supplement to the procedural history of this docket.

There is one additional area which requires clarification. In its prefiled testimony, Barton indicated that its practice has been to disclose customer information "in limited instances where disclosure is necessary to collect past due amounts," including those occasions when it files a notice of lien in the land records.¹⁵ Such disclosure of customer information is appropriate, and we will modify the Hearing Officer's proposed Order to reflect this allowed disclosure. Also, we hereby clarify that when Barton files a notice of lien in the land records for a delinquent account at a landlord's property, Barton may then disclose to the landlord the identity of the customer and the amount of the delinquency, along with any other information that is included in the notice of lien. Such disclosure to the landlord is appropriate in order that the landlord, when faced with a lien for a tenant's delinquent electric account, might seek recovery from the responsible tenant.

15. Arnold pf. at 5.

VIII. ORDER

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

- 1. The Findings, Conclusions, and Recommendations of the Hearing Officer are adopted, as supplemented above.
- 2. Barton shall not disclose customer-specific billing information to third parties absent the customer's consent or a directive from the Board, except as necessary to collect past-due amounts.
- 3. Barton may inform landlords when electrical service is disconnected at the landlord's property.
- 4. When Barton files a notice of lien in the land records for a delinquent account at a landlord's property, Barton may then disclose to the landlord the identity of the customer and the amount of delinquency, along with any other information that is included in the notice of lien.

Dated at Montpelier, Vermont, this 5th day of June, 2007.

s/James Volz)
)
s/David C. Coen)
)
s/John D. Burke)

PUBLIC SERVICE
 BOARD
 OF VERMONT

A true copy:

OFFICE OF THE CLERK

FILED: June 5, 2007

ATTEST: 
 Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.