

**Matter of Metropolitan Ins. & Annuity  
Co. v New York City Water Bd.**

2007 NY Slip Op 32221(U)

July 10, 2007

Supreme Court, New York County

Docket Number: 0111533/2005

Judge: Herman Cahn

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

**HERMAN CAHN**

PRESENT:

PART 49

Index Number : 111533/2006

METROPOLITAN INSURANCE &

vs  
NYC WATER BOARD

Sequence Number : 001

ARTICLE 78

INDEX NO. \_\_\_\_\_

MOTION DATE 11/14/06

MOTION SEQ. NO. 001

MOTION CAL. NO. 17

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED
_____
_____
_____

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion

**MOTION IS DECIDED IN ACCORDANCE  
WITH ACCOMPANYING MEMORANDUM  
DECISION IN MOTION SEQUENCE .....**

Dated: 7/11/07

Herman Cahn  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

FOR THE FOLLOWING REASON(S):

THIS MOTION IS RESPECTFULLY REFERRED TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK; IAS PART 49

-----X

In the matter of the Application of  
METROPOLITAN INSURANCE AND ANNUITY  
COMPANY,

Petitioner,

For a Judgement Under Article 78 of the  
Civil Practice Law and Rules and for a  
Declaratory Judgment

Index No. 111533/06

-against-

NEW YORK CITY WATER BOARD,  
CITY OF NEW YORK AND NEW YORK CITY  
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondents.

-----X

**CAHN, J.:**

This CPLR Article 78 proceeding, is brought by petitioner Metropolitan Insurance and Annuity Company, the former fee owner of the housing complexes known as Peter Cooper Village and Stuyvesant Town located in Manhattan (the Property).<sup>1</sup> Respondents are the New York City Water Board (Water Board), a municipal instrumentality empowered to establish rates and billing practices for water-sewer charges; the New York City Department of Environmental Protection (DEP), an agent of the Water Board for billing and collection services; and the City of New York (City).

Petitioner seeks to vacate certain final administrative determinations of the Water Board dated April 28, 2006 (the April Determination) and June 29, 2006 (the June

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<sup>1</sup> In or about October 2006, petitioner sold the Property to Tishman Speyer Properties.

Determination), on the basis that the April Determination is arbitrary and capricious, and that the June Determination is contrary to the standard practices of the Water Board. Respondents filed an answer generally denying petitioner's allegations and request that the court dismiss the petition in its entirety.

The petition is granted in part and denied in part, as more fully discussed below.

### **Background**

Petitioner's Property are two large residential complexes located in Manhattan. The Property is comprised of 110 buildings with approximately 11,200 apartments. It receives water and sewer services from respondents.

Water meters were installed by petitioner in 1994 to monitor the Property's water consumption.

In 1995-1996, over 12,000 low-flow toilets were installed to replace regular-flow toilets for the purpose of conserving water. This installation entitled petitioner, the then owner of the Property, to receive billing "credits" from respondents.

On December 20, 1996, petitioner filed an election of metered billing form with DEP. By filing this form, petitioner elected to have its billing converted from "frontage" billing to metered billing.<sup>2</sup>

Petitioner states that, prior to the filing of the election form, a study conducted by an engineering firm retained by it determined that a conversion to metered billing would result in

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<sup>2</sup> In frontage billing, the water bill is based on the height and width of a property and the number of water consuming fixtures therein, regardless of the actual amount of water consumed.

In metered billing, the bill is based on the actual amount of water consumed as recorded by water meters installed at the property.

significant savings.

On July 9, 1997, petitioner's engineering firm wrote DEP, requesting confirmation of a meeting scheduled for July 10, 1997, to discuss billing issues relating to the Property. A proposed agenda for the meeting included, among other things, discussions as to why metered billing had not yet commenced by DEP, even though the request for conversion had been filed in 1996. Petitioner's Appendix (PA), Exh 5, sub-exh C. The parties met on July 10, 1997. Despite the proposed agenda, the parties dispute what was actually discussed at this meeting. An office memorandum dated July 16, 1997, written by an executive of petitioner who attended the meeting, stated, among other things, that "if the [water meter] readings from Met Life are accepted, billing will be retroactive to the date of the application's filing." PA, Exh 5, sub-exh B. Respondents state that, during the meeting, petitioner orally agreed to commence metered billing as of July 1, 1997 (July 1<sup>st</sup> is the starting date of the Water Board's fiscal year).

The record reflects that, in the bills sent by DEP to petitioner in December 1997 and February 1998 (the 12/97 and 2/98 Bills), the first bills sent after the July 1997 meeting, DEP converted the Property from frontage to metered billing, using July 1, 1997 (rather than December 20, 1996) as the starting date for metered billing. Thereafter, several years passed without questions being raised by any party as to major billing issues for the Property, and specifically as to the starting date for the conversion.

In June 2002, petitioner retained a utility auditing firm to audit the Property's water and sewer bills. On June 11, 2002 and July 1, 2002, the auditing firm sent letters to DEP raising issues concerning the alleged incorrect conversion commencement date used by DEP for the metered billing, and requesting adjustments of the 12/97 and 2/98 Bills. PA, Exh 1, sub-exh

D, E.

The Water Board, in its determination dated November 21, 2002, denied petitioner's appeal to adjust the 12/97 and 2/98 Bills, stating that petitioner's request for billing adjustment received by the Water Board on July 16, 2002 was untimely, based on a four year limitations period under the Water Board regulations that took effect as of July 1, 2002. PA, Exh 1, sub-exh J.

#### The Prior Proceeding

In March 2003, petitioner commenced an Article 78 proceeding against respondents (Prior Proceeding), contending, among other things, that a six year limitation period should apply with respect to the claims for adjustment of the 12/97 and 2/98 Bills. Respondents cross-moved to dismiss, arguing that there had been an oral agreement to commence metered billing on July 1, 1997. This court (R. Lippman, J.) on January 5, 2004, directed the parties to engage in discovery relating to the existence of the claimed oral agreement. PA, Exh 7. Thereafter, by decision dated December 13, 2004, Justice Lippman ruled that "petitioner's complaint letter to DEP was timely, and the November 21, 2002 determination of the Water Board is vacated, and the proceeding is remanded to the Water Board for a determination on the merits." PA, Exh 11.

Respondents did not appeal the decision, but sought to reargue their motion seeking dismissal. The reargument motion was denied in a decision dated September 22, 2005, which stated, among other things:

This court finds respondents' arguments regarding the account stated theory, the contract-implied-in-fact theory, and the doctrine of waiver to be unpersuasive . . . Furthermore, it is undisputed that there is no

written evidence supporting the existence of the alleged oral agreement to start metered billing as of July 1, 1997. In addition, the evidence resulting from the discovery process does not seem to support the existence of an oral contract. Thus . . . the court will not disturb its prior decision . . . to the extent of vacating the underlying determination of the Water Board . . . .

PA, Exh 15.

#### Water Board's April Determination

On April 28, 2006, the Water Board issued its final administrative determination, as embodied by the April Determination (Petition, Exh A).

The April Determination states the following salient points: (1) there was an oral agreement between the parties to commence metered billing on July 1, 1997, despite petitioner's having filed an application for conversion on December 20, 1996; (2) a credit in the amount of \$544,196.16 is granted to petitioner for the installation of low-flow toilets; (3) the 12/97 and 2/98 bills should be adjusted to reflect an increase of \$203,664.15, based on the Water Board's recalculation of the average daily flow (ADF) for water consumption at the Property, for the period commencing from the meter installation date to the meter readings recorded on December 1, 1997; and (4) a final net credit is granted to petitioner in the amount of \$340,532.01, which represents an offset of the \$203,664.15 billing increase against the low-flow toilet credit of \$544,196.16.

#### Water Board's June Determination

Apart from the April Determination, on June 29, 2006, the Water Board issued a final administrative determination for a related account of petitioner, pertaining to steam condensate discharges at the Property (i.e. the June Determination).

The record indicates that petitioner purchased steam from Con Edison to heat the Property. As of July 1, 2002, respondents began to charge customers for discharging steam condensate (i.e. water) into the City's waste water system. However, because the Property is located adjacent to Con Edison's steam plant, steam condensate from the Property has been returned to Con Edison through a special piping system that was built years prior to 2002. After respondents were advised of this unique arrangement, they eventually agreed to stop billing petitioner for this discharge. However, before billing on the steam condensate account ceased, about \$133,000 in charges had already accrued, and \$68,000 of interest accrued on such charges.

On May 7, 2006, petitioner appealed to the Water Board from DEP's adverse decision, dated October 25, 2005, rendered in connection with steam condensate accrued charges and interest.<sup>3</sup> On May 18, 2006, the Water Board determined not to hear the appeal, reasoning that the appeal from the DEP's initial decision was untimely. By letter dated June 15, 2006, petitioner requested the Water Board to reconsider, arguing that, at a minimum, the accrued interest should be canceled because the low flow toilet credit (in excess of \$300,000) could be used to zero-out any accrued interest on the open steam condensate account. In response, the Water Board issued the June Determination, declining to reconsider its prior determination (Petition, Exh K).

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<sup>3</sup> Water Board's regulations provide for a multi-tiered complaint resolution process. Specifically, if a customer disagrees with a decision rendered by the DEP, it must appeal such decision within 30 days thereof, by submitting a written request to the Water Board for a final determination.

### Relief Sought in the Instant Petition

The petition seeks an order of this court directing the Water Board to: (1) cancel the retroactive upward adjustment of the 12/97 and 2/98 Bills in the amount of \$203,664.15; (2) increase the low-flow toilet credits by \$24,256.60; (3) cancel the frontage charges for the period 12/20/1996 to 6/30/1997 in the net amount of \$1,818,006.90, and to re-bill petitioner metered charges in the amount of \$1,049,687.15 based on actual meter readings (resulting in savings/credits of \$768,319.75); (4) cancel accrued interest on the steam condensate account in the amount of \$68,132.08; and (5) cancel the steam condensate charges of \$133,874.50. Petitioner also requests pre-judgment interest of 9% for all credits due it, including the low-flow toilet credits and the savings/credits based upon the conversion from frontage to metered billing.

### Discussion

A court's function in an Article 78 proceeding is to scrutinize the record, and to decide whether an agency's determination is supported by substantial evidence and is not arbitrary or capricious. *Matter of Consolation Nursing Home, Inc. v Commissioner of New York State Department of Health*, 85 NY2d 326, 331 (1995). If the court finds that the agency's determination is rational and is supported by substantial evidence, such determination must be sustained. A court should not substitute its own judgment for that of the agency. *Matter of Dawson v Zoning Board of Appeals of Town of Southhold*, 12 AD3d 444 (2d Dept 2004).

“Although the interpretation of regulations made by the agency responsible for their administration is generally to be accorded deference, an agency is not thereby freed of the obligation to read those regulations reasonably and rationally.” *Mutual Redevelopment Houses, Inc. v New York City Water Board*, 279 AD2d 300, 301 (1<sup>st</sup> Dept 2001) (citations omitted); *see*

also *Pell v Board of Education*, 34 NY2d 222 (1974) (deference should not be given if an agency behaved inconsistently and did not follow its own regulations). Moreover, a court may find an agency's determination arbitrary and capricious, if the agency "neither adhered to its own prior precedent nor indicated its reasons for reaching different results on essentially the same facts." *Matter of 2084-2086 BPE Associates v State of New York Division of Housing and Community Renewal*, 15 AD3d 288, 288 (1<sup>st</sup> Dept 2005).

1. Alleged Oral Agreement of July 10, 1997

The April Determination "finds that the conversion to metered billing was by agreement between [the parties] made effective as of July 1, 1997." Respondents contend that the finding was rational and reasonable because "both parties benefitted from this agreement." Resp Br at 20. Specifically, respondents argue that "DEP benefitted because it was far simpler to adjust a frontage account at the end of a fiscal year rather than at the middle [and] petitioner benefitted . . . because DEP [in late July 1997] accepted the [Property's] unique metering configuration where nine meters serviced approximately 120 buildings, in contravention of the [regulatory] requirement that each building be separately metered." *Id.*

Respondents' arguments are without merit for several reasons. First, in the Prior Proceeding, Justice Lippman found no written evidence supporting the existence of the alleged oral agreement to commence metered billing on July 1, 1997. Despite extensive discovery, respondents failed to produce any evidence to support such allegation.

Second, the claimed benefit to petitioner in having obtained DEP's approval, in late July 1997, of the Property's unique meter-plumbing configuration is unpersuasive. According to the affidavit submitted in support of the petition by Lawrence Lamanna, a former

DEP supervisor who was involved in its water-sewer billing practices, there was “no justification to delay the conversion to metered billing because of any type of ‘plumbing configuration’ issue.” Lamanna Aff at 8. Lamanna opined that the Water Board’s claimed justification, that it needed to inspect the water meters before activating them for billing purposes in July 1997, was misleading. He explained that when the meters were installed in 1994, they had to be inspected and approved by DEP before they were sealed. Because the meters were sealed by DEP in or about 1994, and there is no evidence that petitioner or DEP ever altered the meters’ plumbing configuration, there was no need for DEP to re-inspect them in July 1997 before converting the Property to metered billing. *Id.* at 6-8. This explanation is rational and reasonable, especially where, as here, it is not controverted by respondents.

Further, whether or not there was a benefit to the parties from the claimed oral agreement is really not the issue. The issue is whether such an alleged agreement was entered into; there has not been proof adduced that would clearly indicate that it had.

Respondents again argue waiver, implied contract and account stated. Resp Br at 20-22. These arguments are without merit, since Justice Lippman in the Prior Proceeding had already found them unpersuasive. Further, respondents failed to address or controvert the substance of a document dated November 18, 2003, produced by petitioner, which reflected a prior determination made by the Water Board in another case, which stated that “[i]n the absence of any allegation from DEP that the [conversion election] form was defective or that the customer in anyway hindered timely contact, [such customer’s] appeal requesting commencement of metered billing as of [the conversion form submission date] is approved and DEP’s determination is reversed.” PA, Exh 10, sub-exh L. The Water Board’s said prior

determination constitutes a precedent and is applicable here, particularly in the perspective of the similarity of facts for the prior determination and the April Determination.

In light of Justice Lippman's decisions in the Prior Proceeding and the record in this proceeding, I conclude that the April Determination, to the extent it finds the existence of an agreement to commence metered billing only as of July 1, 1997, is arbitrary and capricious.

Accordingly, the frontage charges issued for the period of December 20, 1996 to June 30, 1997 should be cancelled, and new billings based on the actual meter readings for the same period should be issued.<sup>4</sup>

## 2. Retroactive Upward Adjustment of 12/97 and 2/98 Bills

In its April Determination, the Water Board sought to retroactively increase the amount of the 12/97 and 2/98 Bills by \$203,664.15, some eight years after these bills were issued. Respondents argue that the increase is proper pursuant to the Rate Schedules, effective July 1 2005 to June 30, 2006, which authorized the Water Board to "upwardly adjust bills covering specific periods where such billing periods are contained within a longer period for which a billing adjustment is sought by the Customer, provided that the total amount rebilled is less than the total amount billed prior to the billing adjustment." Resp Br at 25-26. Respondents argue that, because petitioner is entitled to credits of over \$500,000 for low-flow toilets dating back to 1995, the 12/97 and 2/98 Bills can be adjusted upward to reflect "abnormally low" ADF

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<sup>4</sup> In a footnote, respondents argue that petitioner should not be entitled to a December 1996 conversion date, because Water Board regulations provided that conversion to metered billing would be effective approximately 30 days after submission of a request made by customer. Such argument is tenuous, in light of the Water Board's prior precedent made in another case discussed above, where the Water Board agreed to commence metered billing as of the conversion form submission date.

calculations for a longer billing period, and the upward adjustment can be offset against the credits due petitioner. *Id.* at 26. Respondents argue that because the “total amount rebilled” is “less than the total amount billed prior to the billing adjustment” (and results in net credits, after offset, of more than \$300,000), an upward adjustment of the 12/97 and 2/98 Bills is justified. *Id.*

Respondents’ arguments are without merit. The upward adjustment made by the Water Board in its April Determination in 2006 could well have been made in its prior determination, dated November 21, 2002, which was the subject of the Prior Proceeding. The facts for the retroactive adjustment (based upon improper ADF calculations) have not changed from 2002 to 2006.<sup>5</sup> However, if such adjustment was made by the Water Board in 2002, the then “back billing” limitation period was only “four years from the time service was provided to the property.” *See* Water Board regulations annexed as Exhibit G to the petition. Therefore, if the Water Board were to make an upward adjustment of the 12/97 and 2/98 Bills in 2002, it would have been time barred.

By delaying the upward adjustment until 2006, respondents seek to recalculate the 12/97 and 2/98 Bills, using regulations that were inapplicable at that time. This is impermissible and inequitable, not only because the Water Board fails to comply with its own applicable regulations, its conduct also prejudices petitioner to the extent that the Water Board relies upon 2006 regulations to upwardly adjust bills going back many years, for the apparent purpose of using the upward adjustment to offset the larger low-flow toilet credits owed to petitioner for many years.

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<sup>5</sup> Indeed, the facts necessary for making any retroactive adjustment have not changed since 1998, at or about the time when the 12/97 and 2/98 Bills were issued to petitioner.

Aside from the infirmity of their argument from a procedural perspective (i.e. retroactive adjustment is time barred by the limitation period under applicable regulations), respondents also contend, from a substantive perspective, that the 12/97 and 2/98 Bills should be adjusted due to improper ADF calculations. In support thereof, respondents argue, among other things, that based upon the number of inhabitants at the Property (using the 25,000 number from an article published by the New York Times in October 2006), ADF for the Property (and the per person per day water consumption rate) with respect to 12/97 and 2/98 Bills was abnormally low, when compared with similar buildings in the City, as well as other cities such as Philadelphia, Boston, Detroit and Los Angeles. Respondents also argue that its ADF recalculation is rational and reasonable because the longer period of time (from the meter installation date in 1994 to the dates of the 12/97 and 2/98 Bills) is more representative, and blends both peak summer use and off-peak use of water. Resp Br at 26-27.

Such contentions are unpersuasive. First, the recalculated ADF fails to take into account that low-flow toilets were installed in 1995 and 1996, which significantly decreased water consumption. Second, using unsubstantiated and unverified population figures contained in a newspaper article published in October 2006, as a basis to support the April Determination issued in 2006, is not valid. This is especially so when considering the statement of petitioner, the owner of the Property, that there were only about 19,200 (not 25,000) inhabitants at the Property in December 1996. Petitioner's statement also appears to be supported by figures from a report of the United States Census Bureau for the relevant period. *See Reply Aff, Exh G.*

More importantly, respondents have not provided evidence that the installed water meters were registering incorrectly, stopped registering or were otherwise removed or

bypassed, such that using calculated ADF figures based on "similar" buildings in the City or other metropolis, in lieu of the actual meter readings, would be a more accurate method of measuring actual water consumption. Respondents postulated several "potential" possibilities for the low meter readings, including: "some or all of the nine meters connected to the [Property] are not functioning properly due to old age of the meters and because of the [Property's] unique metering configuration that makes it possible that low volumes of water flowing through the meters are not accurately measured." Answer at 18, n.6. Mere postulates of potential possibilities, i.e. guesses, cannot overcome the presumptive validity of actual readings of meters which have been inspected and sealed by the DEP.

Respondents' arguments in support of the retroactive adjustment of the 12/97 and 2/98 Bills are without merit. Thus, such upward adjustment should be cancelled.

### 3. Low-Flow Toilet Credit Increase

Noting this as "the most insignificant issue at this time," petitioner nonetheless believes that it should be granted an additional \$24,256.60 credit, on top of the \$544,196.16 that has been granted by the Water Board, with respect to the low-flow toilet rebate program. Petition at 29.

Respondents contend that it was the Water Board's policy to credit a frontage account for use of low flow toilets, "from the date of the DEP check that reimbursed a building owner for the cost of the actual low-flow toilet." Answer at 31. Because numerous checks with a range of dates had been issued to petitioner, the Water Board chose July 1, 1995, "to avoid a complex calculation," as the starting date to credit petitioner's frontage account. Respondents argue that "the July 1, 1995 date that was used benefitted the petitioner, since most of the

reimbursement check dates post-dated July 1, 1995.” *Id.*

In its reply affirmation, petitioner fails to address or dispute respondents’ position. Because petitioner has not shown that respondents’ position is arbitrary or capricious, petitioner’s request to increase the low-flow toilet credit by \$24,256.60, is denied.

4. Steam Condensate Account

As to the accrued charges of \$133,874.50 on the steam condensate account, petitioner argues that such charges are clearly erroneous, as it never used respondents’ sewer system for disposing steam condensate, since the Property has had a unique piping arrangement with Con Edison for many years, prior to respondents’ assessment of such charges.

There should be no charges, since the Property never discharged steam condensate into respondents’ sewer system. However, petitioner failed to timely appeal the DEP decision denying its request to cancel and, as a result, the Water Board confirmed DEP’s decision based on petitioner’s “tardy submission” of appeal. The June Determination with respect to the steam condensate account was not arbitrary or capricious, and it should not be disturbed.

As to the accrued interest of \$68,132.08, because it was part of the open steam condensate account charges and, because interest continued to accrue during the appeal process pursuant to applicable regulations, the June Determination declining to cancel the accrued interest charge also seems proper. Petitioner argues, however, that the Water Board should have applied the low-flow toilet credits to eliminate the accrued interest charge. Petitioner alleges that it is “standard practice” of respondents to apply credits earned by customers from prior years against customers’ open account charges and, as such, respondents have engaged in inconsistent practice with respect to petitioner’s accounts. While such argument has some appeal, petitioner

has not provided evidence (e.g. prior Water Board precedents) showing the alleged “standard practice” of the Water Board, or showing that that decision was arbitrary or capricious.

Accordingly, petitioner’s request seeking cancellation of the accrued interest charges is denied.

#### 5. Prejudgment Interest

Petitioner also requests an award of prejudgment interest at the rate of 9%, solely against the Water Board, “for all credits that should have been issued as of the dates the credits were due.” Petition at 32. Respondents contend that there is “no authority that authorizes the imposition of interest in situations where a proceeding is remanded to the Water Board for a determination regarding charges,” and that the State legislature has not “provided for imposition of interest in such situation.” Answer at 31. Other than the foregoing statements, the parties have not provided the court with decisional or statutory law regarding the award of prejudgment interest.

The purpose of awarding prejudgment interest is to compensate a successful claimant for economic loss where the claimant is “deprived of the use of money to which he or she was entitled from the moment that liability was determined.” *Denio v State of New York*, 7 NY3d 159, 169 (2006).

Based on the record, an award of prejudgment interest is appropriate. With respect to judgments against public or government entities, such as respondents, an interest rate lower than the statutory 9% may be awarded, if applicable statutes otherwise provide. This is recognized by the “except” clause in CPLR 5004.

Section 1045-v (4) Public Authorities Law (entitled New York City Municipal Water Finance Authority Act), provides, in relevant part, that “[t]he rate of interest to be paid by

the authority or the water board upon any judgment . . . shall not exceed the rate of interest on judgments and accrued claims against municipal corporations as provided in the general municipal law from time to time.” In turn, section 3-a (1) General Municipal Law provides, in relevant part, that “the rate of interest to be paid by a municipal corporation against any judgment or accrued claim . . . shall not exceed nine per centum per annum.”

Thus, prejudgment interest against the Water Board may be imposed at a rate not to exceed 9% per annum.<sup>6</sup>

As pointed out by the court in *Denio*, 7 NY3d at 168, the burden is on the governmental entity to rebut the presumptive reasonableness of the statutory maximum rate, and it must proffer “substantial evidence that rates of return on both public and private investments during the relevant period are below nine percent.” Here, although respondents have failed to provide evidence to rebut the reasonableness of the 9% rate, a hearing on what reasonable rate should be awarded, is required. Similarly, the hearing should consider and report on the date from which interest should accrue, as it is quite possible that interest should accrue in different dates for different parts of the award. The issues of interest discussed above, are referred to Special Referee to hear and report.

### Conclusion

Petitioner is entitled to recover a money judgment against the respondent Water Board in the amount of \$768,319.75, on account of the credit/savings resulting from the changing the date of conversion of frontage to metered billing, from July 1, 1997 to December 20, 1996,

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<sup>6</sup> It is noteworthy that the interest rates applicable to certain water authorities are capped at 6%. *See, e.g.*, Pub. Auth. Law § 1174-0 (Southeastern Nassau County); § 1197-n (4) (Great Neck North); § 1198-0 (4) (Western Nassau County); § 1198-0 (4) (Western Nassau County).

and \$544,196.16, on account of the low-flow toilet credits, for a sum total of \$1,312,515.91.

Petitioner is entitled to prejudgment interest on this amount. The issue of the rate of said interest, and the date from which it shall commence, is referred to a Special Referee to hear and report.

The other relief sought by petitioner is denied.

SETTLE JUDGMENT.

Dated: July 10, 2007

ENTER:

  
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J.S.C.