

**15. Duquesne Power, L.P.; Duquesne Light Co.; Monmouth Energy, Inc.; Metro Energy, L.L.C.; NM Colton Genco, L.L.C.; NM Mid-Valley Genco, L.L.C.; NM Milliken Genco, L.L.C.**

[Docket Nos. ER04-268-000, ER98-4159-003, ER99-1293-002, ER01-2317-002, ER03-320-003, ER03-321-003, and ER03-322-003]

Take notice that on December 8, 2003, Duquesne Power, L.P., Duquesne Light Co., Monmouth Energy, Inc., Metro Energy, L.L.C., NM Colton Genco, L.L.C., NM Mid-Valley Genco, L.L.C., and NM Milliken Genco, L.L.C., tendered for filing a Notice of Change in Status and applications for certain waivers and authorizations under section 205 of the Federal Power Act.

*Comment Date:* December 29, 2003.

**16. The Morenci Water and Electric Company**

[Docket No. OA04-2-000]

Take notice that on December 5, 2003, The Morenci Water and Electric Company tendered for filing a request for a disclaimer of jurisdiction that it is not a public utility under the Federal Power Act and a waiver of the reciprocity requirement, or in the alternative, a waiver of the requirements of Order Nos. 888 and 889 and certain regulations.

*Comment Date:* January 5, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission's Web site at <http://www.ferc.gov>, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502-8222 or TTY, (202) 502-8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E3-00609 Filed 12-22-03; 8:45 am]

**BILLING CODE 6717-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL-7601-7]**

**Applicability of the Safe Drinking Water Act to Submetered Properties**  
**Docket: OW-2003-0065**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) finalized a memorandum that outlined its revised policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) for submetered properties. The revised policy is shown in the **SUPPLEMENTARY INFORMATION** section of this notice, in its final memorandum form. Under SDWA section 1411, the national primary drinking water regulations apply to public water systems (PWS) that have their own water source, treat, or "sell" water. EPA staff and program managers have previously issued memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the EPA is changing its interpretation of section 1411 as it applies to submetered properties. EPA believes that the addition of a submeter should not in any way change the quality of water provided to customers on these properties.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (*e.g.*, many military installations/facilities or large mobile home parks).

**DATES:** EPA's revised policy, as described in the section I.A. memorandum, effective December 16, 2003.

**ADDRESSES:** Related documents, including EPA's response to public

comments on the subject policy, can be accessed at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. For more information, see section I.B.1 of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For more information please contact Ronald Bergman by phone at 202-564-3823, or by e-mail at [bergman.ronald@epa.gov](mailto:bergman.ronald@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Final Revised Policy*

Today, EPA is publishing a memorandum revising current policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) of submetered properties. The memorandum changes EPA's interpretation of section 1411 as it applies in the specific context of submetering and direct billing of tenants. EPA published a proposed memo in the **Federal Register** on August 28, 2003 (68 FR 51777) and solicited public comments for 60 days. Comments were received from a variety of stakeholders, including State, county, and local governments, apartment building owners and associations, utility companies, and housing associations. Generally, commenters strongly supported the proposed policy and agreed that submetering promotes water conservation.

**Memorandum**

*Subject:* Applicability of the Safe Drinking Water Act to Submetered Properties.

*From:* G. Tracy Mehan III, Assistant Administrator.

*To:* Regional Administrators, Regions I-X.

The purpose of this memorandum is to announce EPA's revised policy concerning the applicability of the Safe Drinking Water Act (SDWA) to submetered properties. Submetering, as applied in this policy, means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system. Under the revised policy, a property owner who installs submeters to track usage of water by tenants on his or her property will not be subject to SDWA regulations solely as a result of taking the administrative act of submetering and billing. Property owners must receive all of their water from a regulated public water system to qualify under the terms

of this policy revision for submetered properties.

EPA proposed the revised policy in the **Federal Register** on August 28, 2003 (68 FR 51777) and requested public comment. In response, the Agency received strong support for the revised policy on submetering from a variety of stakeholders. In light of this response, and because a key objective of the Agency is to promote water efficiency and conservation, EPA has decided to change the policy for submetering.

Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation. Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In addition to helping reduce the risk of water shortages, water conservation also provides other important benefits. Water conservation helps ensure in-stream flows, thereby providing protection for ecosystems, which can become out of balance when demands stress water resources. Water conservation also helps reduce stress on water supply and wastewater infrastructure making them less prone to failure. Further, the use of submeters to measure water consumption is a necessary pre-requisite to achieving full-cost and conservation pricing.

#### Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers had issued several memoranda stating that any building or property owner who met the definition of a PWS and received water from a regulated public water system without adding further treatment, but billed tenants separately for this water, would be considered to be "selling" the water and, therefore, would be independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of section 1411 as it applies in the specific context of submetering.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting section 1411. In that legislative history, the Committee report

stated that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."<sup>1</sup> Under EPA's previous interpretation, an owner of an apartment building or similar property who is exempt under section 1411 but merely installed a submeter and billed the tenants for the water, or simply began billing tenants (even without a submeter), would then be considered to be operating a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress originally intended the statute to be applied in this manner, or that it should continue to be the Agency's interpretation for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings or similar properties for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger full SDWA regulation.

- Some owners of apartment buildings and other multifamily housing expressed concern that, under EPA's previous policy, the installation of submeters subjected them to the full regulatory requirements of the Safe Drinking Water Act (SDWA), comparable to the requirements imposed on water utilities.

- In 1996, a Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (e.g., apartment buildings and/or complexes) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation

efforts.<sup>2</sup> In response, EPA agreed to reconsider the matter and issue further guidance.<sup>3</sup>

- EPA's approach in previous memoranda may have created a disincentive to water conservation, which can undermine water quality over the long term.

- Simply applying the concept of "sell" to every billing transaction is not appropriate.

#### Revised Policy

Consistent with Congressional requests to reconsider this matter, the Agency now believes that certain property owners, who had not previously been (or would not be) subject to SDWA's national primary drinking water regulations, and who install submeters to accurately track usage of water by tenants on his or her property, should not be subject to regulations solely as a result of taking the action to submeter and bill.

The addition of a submeter should not in any way change the quality of water provided to customers on the property. A PWS that provides water to a property maintains responsibility for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers. In addition, the PWS must make "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (section 1431) if public health risks arise.

#### Scope of Revised Policy

EPA received numerous comments asking that the revised policy be expanded beyond apartment buildings. EPA agrees that submetering to achieve water conservation may be appropriate for other property types, which share similar characteristics to an apartment building, and likewise should not be considered as "selling" under SDWA section 1411, simply because a submeter is installed and the property owner begins direct billing for the water. This description is the basis for the definition of submetering. Determinations of whether billing for water is a "sale" for purposes of section 1411, and whether systems are "submetering" as that term is used in this policy, should be made by the Primacy Agency.

<sup>1</sup>H. Rept. 93-1185 (93rd Cong., 2nd Session), reprinted in *A Legislative History of the Safe Drinking Water Act*, Committee Print Serial 97-9 (1982) at 549.

<sup>2</sup>H. Rept. 104-632 at 55 (1996).

<sup>3</sup>H. Rept. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

In making a determination, the Primacy Agency should consider if the property has certain characteristics, such as a limited distribution system with no known backflow or cross connection issues; the majority of its plumbing is within a structure instead of underground; and property ownership is a single/individual (or association of property owners, in the case of co-ops or condominiums). Of course, for any system to be excluded under section 1411, it must receive all of its water from a regulated public water system.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (e.g., many military installations/facilities or large mobile home parks).

Although EPA is not requiring that submetered systems be regulated, each State has the flexibility to determine whether, and how, to best track properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system that provides it with water, register with the Texas Commission on Environmental Quality, and follow regulations for submetering.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that property owners and others convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

#### **Ratio Utility Billing Systems (RUBS) and Hybrid Billing Systems (HWH)**

Several commenters raised the issue of ratio utility billing systems (RUBS)<sup>4</sup> and other allocation billing systems. Some commenters suggested that EPA

<sup>4</sup> A ratio utility billing system (RUBS) or an allocation formula, divides a property's water bill among its residents based on a ratio of floor space, number of occupants, or some other quantitative measure. With RUBS, a price signal based on actual use is not sent to the tenant as with submetering, and the amount of water saved by these systems is unclear. A hot water hybrid (HWH) billing system is a combination of submetering and allocation where hot water is submetered and a formula is applied to estimate the resident's total water use based on the volume of hot water metered. HWH systems provide more of a price signal than RUBS but less than that for submetering.

should include this type of billing in the revised policy because it would have no negative effect on water quality. Other commenters encouraged EPA to exclude RUBS, stating that RUBS may not result in water conservation, and may, in fact, reduce incentives to install submeters and charge on the basis of actual water usage. Water savings, if any, from RUBS and hot water hybrid billing systems (HWH) are uncertain. At this time, EPA believes that RUBS or other allocation billing systems do not meet the definition of submetering, as used in this policy, and do not encourage water conservation. Therefore, a property using these billing systems is not addressed by this policy. Primacy Agencies will need to determine whether such properties are "selling" water within the meaning of SDWA section 1411.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum.

#### *B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW-2003-0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Water Docket is (202) 566-2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view

public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

Dated: December 17, 2003.

**G. Tracy Mehan III,**

*Assistant Administrator, Office of Water.*

[FR Doc. 03-31588 Filed 12-22-03; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority**

December 11, 2003.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction (PRA) comments should be submitted on or before February 23, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by