By Michael Rhyner, MMRMA Executive Director

IN JUNE, the Association of Governmental Risk Pools (AGRiP) named Jenny Emery as its new Executive Director. Emery replaces Harold Pumford, who served as AGRiP's first CEO since 2000.

Pumford was a pioneer who successfully grew AGRiP to be the premier service organization for public entity pools. AGRiP was organized in late 1998 as a membership organization for public entity risk and benefits pools in North America. It is a successor to the Public Risk Management Association's Pooling Section, which operated for nearly 20 years. MMRMA is a founding member of AGRiP, and I have served on its Board of Directors for over 12 years.

Emery's career in public entity pooling spans 30 years, 25 of which were with Towers Watson. She has worked with more than 50 pooling organizations nationwide in the areas of actuarial, brokerage, health benefits, claims, and risk management. She is also no stranger to MMRMA, having served as our broker through Towers Watson for many years and as a consultant on special projects.

Association with NEAMI
Emery will serve as AGRiP Executive Director through an arrangement with Northeast Association Management (NEAMI), which has provided public entity association management services since 1995.

NEAMI's current staff of 72 performs association operations management, IT services, financial management, strategic planning, event planning, and meeting planning and production. Its executive management team has more than 95 years of combined public entity experience, most in public entity pooling.

Evolving Pool Environment
Emery's appointment is most timely because public entity pooling is entering the next phase of its evolution and faces a new set of challenges.

In the formative years, AGRiP provided valuable information concerning pool formation and methods for operation. AGRiP developed Advisory Standards for pools and recognized those that adhered to these standards. Today, pools have matured into large, complex organizations that handle hundreds of millions of dollars in contributions.

The selection of Jenny Emery and NEAMI reflects the AGRiP Board's desire to embrace the challenges and opportunities of the evolving risk pooling environment. These include regulation, technology, pool governance and leadership transitions, and members' changing educational needs.

Backed by her experience and NEAMI's resources, Jenny Emery is well equipped to lead AGRiP through the next stage in its evolution. All of us at MMRMA extend our heartiest congratulations to Jenny in her new role.

AGRiP Mission
AGRiP was created to:

> Promote pooling as a practical extension of local government's obligation to be a good steward of public funds.

> Advocate for intergovernmental pooling as the most appropriate risk and employee benefits financing mechanism for most local governments.

> Provide a forum for intergovernmental issues related to the administration and operation of self-funded and group insurance purchasing programs.

> Identify legislative and regulatory issues affecting intergovernmental pools and provide information to address them.

> Act as a clearinghouse for data and resources relating to intergovernmental pools and support new research for tomorrow's pools.
TASER® Use Case Gives Birth to Qualified Immunity Questions

by Michael Ellis
Director of Claims

RECENTLY I HEARD someone ask, “Did the U.S. Supreme Court really say it’s okay to TASER a pregnant lady three times?” It dawned on me how inadequately the news media had covered the Court’s recent decision not to hear Brooks v City of Seattle, a case with many facets: civil disobedience, allegations of excessive force, questions of legislative intent, and a pregnant woman.

Facts of the Case
In 2004, Malaika Brooks, age 33 and seven months pregnant, was pulled over by Seattle city police for driving 35 MPH in a 20 MPH school zone while taking her child to school. Brooks gave the police her ID and sent her child to school on foot. City police wrote Brooks a speeding ticket, and the troubles began.

The Washington State legislature ruled that speeding tickets must be signed by the driver, and that refusal to sign is a crime. Brooks, erroneously believing that signing would be an admission of guilt, refused to sign the ticket.

The officer at the scene explained that Brooks’ signature was required by law, but she continued to refuse. A second officer arrived at the scene and affirmed that signing was required, but Brooks still wouldn’t sign. A third officer arrived.

Despite three officers telling Brooks that she would be arrested if she didn’t sign the ticket, Brooks firmly gripped her steering wheel and defiantly refused to sign the ticket, get out of her car, or be arrested.

The three officers decided that using a TASER on her leg was the method least likely to cause permanent injury. Brooks clung to the steering wheel and endured three stun jolts from the TASER before she let go. The three shocks took 42 seconds, after which she was removed from her car and arrested.

Brooks later gave birth to a healthy baby but was convicted of refusing to sign her ticket. The jury was hung on the charge of resisting arrest and the prosecutor did not retry her on that charge. Brooks then sued the police for excessive force, claiming that while her baby was fine, Brooks had a scar on her leg from the TASER.

What a TASER Is
TASERs use electro-muscular disruption (EMD) technology to disable a person for a very short period of time. There are generally no long-lasting consequences, a fact that makes such devices preferable to handguns, batons, pepper spray, or physical force, all of which have the potential for long-lasting consequences and permanent injury.

Many law enforcement agencies have adopted TASERs as part of their force continuum when responding to situations in which force is required.

U.S. law enforcement officers are well trained in physical techniques that aid compliance when arresting an uncooperative person. When someone cannot be controlled by verbal commands or social pressure—in instances of domestic violence, bar fights, and shootings, for example—we send police officers to take control of the situation.

There is, of course, an element of force inherent in these law enforcement activities. However, resulting lawsuits do not allege force, but rather “excessive” force. The law recognizes that some force will be required; it is merely a question of how much, and in what situation.

Michigan has a very broad statute that says public entities can only be sued in limited situations. Public employees, however, can be sued in any situation if it is believed that they displayed gross negligence.

Moreover, suits can be brought for constitutional violations at the state and federal level, with a different form of immunity for public employees.

Absolute v Qualified Immunity
Absolute immunity applies to the highest official in a specific entity or department for policymaking activities, and is based on the employee’s position and the type of decision being made.

Qualified immunity, on the other hand, applies to all employees, based on the premise that an employee will only be held responsible if he or she knowingly violated someone’s civil rights.

Through their decisions, courts define what is “clearly established” as a civil rights violation. As a result, public employees are held to an ever-changing standard. The relatively recent use of TASERs in law enforcement makes it an evolving area of the law, so there’s no point in researching past Taser cases for guidance.

In fact, the whole notion of qualified immunity fits nicely

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Energy Cost-Savings Under Threat from Legislative Action

As municipalities look for ways to reduce expenses, energy costs can sometimes be overlooked. Energy prices have become very volatile in the past few years due to recent Michigan legislation that allows both natural gas and electric utilities to file for frequent rate increases. As a result, rates are rising more than once a year.

In 2001, MMRMA created the Electric Choice Program (ECP) to help members reduce energy costs through cooperative buying. ECP enables members to buy natural gas and electricity from alternative suppliers at rates lower than traditional utility companies.

Through ECP, members can lock in energy costs at a set rate for the upcoming fiscal year. Having a fixed, competitive rate for energy is a valuable tool in these days of uncertain revenue and increasing operating costs.

Legislation Caps Participation

However, due to legislation passed in 2008, MMRMA can no longer add members to the Electric Choice Program. Public Act 286 capped the participation in “electric choice” at 10 percent of a utility’s total sales.

What was projected at the time to be an unachievable level was reached within 12 months of the legislation’s enactment. This cap currently bans new customers from participating in ECP. Since the municipalities already participating in ECP are realizing savings of 20 to 30 percent, it’s no mystery why the utilities worked to limit their competition.

Price Relief Bill Stalled Since 2008, utility electric rates have risen almost 30 percent, and expectations are that they will continue to rise. To address the ongoing need for price relief, legislation (HB5503) introduced by Rep. Mike Shirkey of Clark Lake would raise or eliminate the cap and permit more customers to enjoy the savings associated with record low wholesale electric prices. However, the bill is currently being opposed and stalled by the utilities. Without municipality support, HB5503 may never get out of committee.

To further confuse the issue, Rep. Ken Horn of Saginaw introduced another bill, HB5733, which would totally eliminate electric choice and revert Michigan’s electric system to a monopoly for Consumers Energy and Detroit Edison. Obviously, HB5733 would not be good for MMRMA members that currently enjoy ECP savings.

Raising the cap on electric choice will allow more public entities to enjoy the benefits of lower electric rates.

If the benefit of competition is removed, utility companies would be free to raise their rates without fear of losing customers to competitors.

Today, more than 9,000 governmental and corporate accounts are awaiting the chance to save on energy costs in a competitive market.

Your Action Is Needed

MMRMA members have a stake in this issue, and we are asking you to take action. Contact your local legislators and urge them to support HB5503 and oppose HB5733. Raising the cap on electric choice will allow more public entities to enjoy the benefits of lower electric rates.

To learn more about ECP, please contact Jeff Clark or Jan Rogers with MMRMA’s energy advisor, Summit Energy, at 888-345-0440 or jan.rogers@summitenergy.com.

Summit Energy will be on hand at MMRMA’s Annual Meeting in August to provide details about ECP and energy cost-saving opportunities. Make it a point to stop by the Resource Room for one-on-one advice on how the Electric Choice Program can be of benefit to you.
September Workshops: Tactical Encounters for Patrol Officers

Two Sessions: September 17-20 and September 20–23, Northern Michigan Law Enforcement Training Group, Camp Grayling
$159 per person

This intensive three-day course, featuring live-fire and simunitions training, covers firearms skills, mental mindset, patrol tactics, and building searches. Proficiency is field-tested through reality-based training scenarios and practical exercises.

Led by Captain Ron Taig of the Livonia Police Department, the course material is taught by skilled instructors with experience in Special Response and Officer Survival. The course is funded in part by an MMRMA Risk Avoidance Program (RAP) grant.

To register, please contact Cara Kowal at 734 513-0300 or ckowal@mmrma.org.

TASER Ruling, continued from page 2

around the development of new technology like TASERS, on which there are no historic standards to rely.

U.S. Supreme Court Declines to Hear Appeal
Brooks sued both the City of Seattle and the officers in federal court. When the officers moved to have the suit dismissed, the trial judge found that whether the use of the TASER was a constitutional violation as excessive force was a question of fact for the jury.

The officers appealed, and the federal circuit court of appeals held that the officers were entitled to qualified immunity because, in 2004, it was not clearly established law that this use of a TASER was excessive.

The case was appealed to the U.S. Supreme Court, which declined to hear the case, leaving in place the appeals court ruling that the officers were entitled to qualified immunity.

In the text of the appeals court’s decision, there seemed to be an implied assumption that using a TASER on a pregnant woman three times was “excessive.” Yet the court never explained what it expected the officers to do in Brooks’s situation.

MMRMA Still Supports Use of TASERs
As a consequence of deciding that it was not clearly established law at that time, the courts left open the question of whether it is clearly established law now. Those who use TASERs continue to be in doubt about exactly when, where—and on whom—use is permissible.

MMRMA has long supported use of the TASER as a non-lethal method of obtaining compliance of recalcitrant individuals with minimum risk of injury.

RAP Guidelines Revised

In May, the Membership Committee revised the standard guidelines for Risk Avoidance Program (RAP) grants to give members a better idea of areas being funded and grant amounts.

The May revisions include adjusted aggregate amounts for in-car video cameras and Livescan fingerprinting. The committee also added body-worn video cameras and security software for laptop computers to the grant list.

The next deadline for RAP grant applications is October 31. For a complete list of projects, including aggregate limits and application details, go to mmrma.org.