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NJ BPU
MAILROOM



VIA FEDEX

July 28, 2014

Kristi Izzo, Secretary
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

REC'D
2014 JUL 29 PM 1 57
NJ BPU
CASE MANAGEMENT

WF14070904

**RE: In The Matter of the Petition of United Water West Milford, Inc.
For Deferral Accounting Authority for the Financial Impact of the Settlement of
Litigation with Bald Eagle Commons Building Association**

Dear Secretary Izzo,

Enclosed for filing please find an original and ten (10) copies, plus one additional copy, of a Petition and Verification of Gary S. Prettyman, submitted on behalf of United Water West Milford, Inc., initiating the above referenced matter. Please stamp the additional copy "filed" and return in the self-addressed, stamped envelope provided.

Please advise if you need additional information.

Very truly yours,

Gary S. Prettyman
Senior Director - Regulatory Business

Enclosure

cc : Stefanie Brand, Esq. (two copies via FedEx)
Caroline Vachier, DAG (two copies via FedEx)
Service List

CMS
leg9/(2)
DAG
RPA
M. Moran
M. Kammer
Water (3)
B. Wojcik

SERVICE LIST

I/M/O United Water West Milford Inc.

Deferral Petition

BPU Docket No. W_1408_____

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10/10/17

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**IN THE MATTER OF THE PETITION OF
UNITED WATER WEST MILFORD INC.
FOR DEFERRAL ACCOUNTING AUTHORITY
FOR THE FINANCIAL IMPACT OF THE
SETTLEMENT OF LITIGATION WITH BALD
EAGLE COMMONS BUILDING ASSOCIATION**

PETITION

Docket No:1408 _____

TO THE HONORABLE COMMISSIONERS OF THE BOARD OF PUBLIC UTILITIES:

Petitioner, United Water West Milford Inc. ("UWWM" or "Company"), a duly organized and existing public utility corporation of the State of New Jersey, with its principal office at 200 Old Hook Road, Harrington Park, New Jersey 07640, hereby petitions the Board of Public Utilities ("Board") of the State of New Jersey, pursuant to N.J.S.A. 48:2-16, 48:2-21.1 and 48:2-23, and such other statutes, regulations and Board Orders that may be deemed by the Board to be applicable, as follows:

1. UWWM is a duly organized and existing public utility of the State of New Jersey subject to the jurisdiction of the Board. The Company is engaged in the business of collecting, treating and disposing of wastewater, and provides this service on a retail basis, to customers in a portion of the Township of West Milford, in the County of Passaic, New Jersey. The Company owns and operates these sewerage facilities.

2. UWWM respectfully requests authority from the Board to defer on its books the actually incurred costs of settlement of the litigation brought by Bald Eagle Commons Building Association ("BECBA") against UWWM in New Jersey Superior Court, Docket No. PAS-L-4863-12 (the "Litigation Settlement") that are not otherwise recovered through its currently approved base rates. The Company proposes that the appropriate amortization period for such deferred costs will be addressed in the Company's next base rate case.

3. In 2010, UWWM and BECBA began communicating over the perceived movement of a stone retaining wall running along Richmond Road in BECBA's residential development, which is situated adjacent to the property upon which UWWM's sewer system disposal beds are located. In February of 2012, BECBA asserted that a portion of the wall was failing and that it belonged to UWWM. It was unclear whether UWWM or BECBA owned or was responsible for the wall however, UWWM offered temporary monitoring and safety measures while UWWM researched those issues.

4. In May 2012, BECBA contended that if UWWM did not agree to take ownership of the wall in an easement from BECBA, BECBA would take the wall down. UWWM asked for time to review the impact that the removal of the wall would have on the disposal beds and reiterated its offer for temporary safety measures in the interim. BECBA nonetheless filed a complaint seeking emergent injunctive relief against UWWM in New Jersey Superior Court, Chancery Division, in November 2012. Injunctive relief was denied at the initial hearing and BECBA voluntarily withdrew its complaint on November 27, 2012. BECBA then re-filed its complaint, this time in the New Jersey Superior Court, Law Division, in January 2013.

5. In an effort to resolve the matter amicably, UWWM and BECBA representatives met in April 2013 to discuss a potential settlement. In essence, the parties verbally agreed that in exchange for a payment of \$200,000 by UWWM to BECBA, BECBA would withdraw the Law Division litigation; replace/supplement the failing portions of the wall (and UWWM would have an opportunity to review plans); acknowledge their ownership and maintenance obligations going forward; and release and indemnify UWWM as to present claims they have or could bring, and for claims by third parties. In fact, in May 2013, BECBA voluntarily withdrew the lawsuit and an Order of Dismissal was entered on May 22, 2013.

6. The parties have finalized a settlement document to memorialize the verbal settlement reached in principle in May 2013. While it is UWWM's position that it does not own the property the failing portion of the wall sits on and is not responsible for

maintaining that portion of the wall itself, UWWM clearly has an obligation and interest in ensuring that the adjacent drying beds are not compromised. In addition, BECBA has a differing position on the status of the wall and has demonstrated a clear intent to litigate the matter. Continued litigation would result in additional unknown legal costs incurred by UWWM, and would mean uncertainty of ultimate outcome. If the litigation resulted in an unfavorable outcome for UWWM, engineering and construction costs to replace the wall could be imposed upon UWWM. In this worst case scenario, it is the Company's estimate that the total costs to UWWM could exceed \$1,000,000. In light of the foregoing, it is UWWM's good faith belief that the Litigation Settlement is in the best interest of UWWM's customers and represents the most prudent resolution of this matter.

7. The costs associated with the Litigation Settlement for which UWWM is seeking deferral authority is currently \$200,000 (plus \$90,633), and includes the cost of the Litigation Settlement, legal fees and engineering fees, which would not otherwise have been incurred. Exhibit A to this Petition contains a detailed listing of these costs incurred by UWWM. If additional costs are incurred, the Company will provide an update to Exhibit A.

8. These costs represent actual, prudently incurred costs associated with the resolving the costly ongoing property dispute and achieving the Litigation Settlement.

9. No ongoing, routine expenses are included in the requested deferral accounts established for costs associated with the Litigation Settlement and include only additional expenses incurred as a direct result of resolving the dispute and achieving the Litigation Settlement.

10. UWWM respectfully requests that the Board approve this request and issue a Decision and Order authorizing such deferred accounting treatment.

11. UWWM has served notice and a copy of this filing upon the New Jersey Division of Rate Counsel and the Office of the Attorney General, Division of Law.

12. Correspondence in this matter should be addressed to the following:

Kelly Ruggiero
Corporate Attorney
United Water Management & Services Inc.
200 Old Hook Road
Harrington Park, New Jersey 07640

And

Gary S. Prettyman
Senior Director – Regulatory Business
United Water Management & Services Inc.
200 Old Hook Road
Harrington Park, New Jersey 07640

WHEREFORE,

1. The Company respectfully requests that the Board issue an Order approving the request for deferral authority described above; and
2. Such other relief that the Board deems just, reasonable and necessary.

Respectfully Submitted,

United Water West Milford Inc.

By: Kelly K. Ruggiero
Kelly K. Ruggiero, Esq.

Dated: July 28, 2014

VERIFICATION

STATE OF NEW JERSEY }

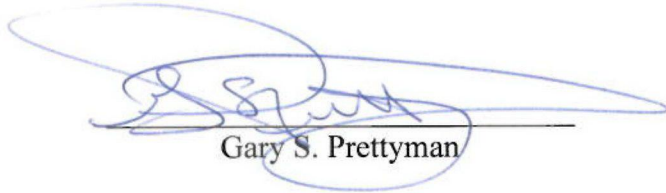
COUNTY OF BERGEN }

GARY S. PRETTYMAN, of full age, being duly sworn, upon his oath deposes and says:

1. I am Senior Director Regulatory Business, United Water Management and Services, Inc., and in that capacity I am authorized to make this Verification on behalf of United Water West Milford Inc. in this matter.

2. I have reviewed the within Petition and exhibits thereto, and the same are true and correct to the best of my knowledge, information and belief.

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Gary S. Prettyman

Sworn to and subscribed before me
this 28th day of July, 2014.

Debra Maureen Visconti
Notary Public
My commission expires: 8/19/14
DEBRA MAUREEN VISCONTI
ID # 2228741
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/19/2014

EXHIBIT A

UW West Milford Sewer
Stone Wall (Deferred Costs)
as of June 2014

<u>AP Vendors</u>	<u>Cost Type</u>	<u>Amount</u>
ARCHER & GREINER PC	Legal	\$36,293
ARCHER & GREINER PC	Settlement Cost	200,000
BALD EAGLE COMMONS BUILDING ASSOC.	Temporary Barrier	9,150
BUCK SEIFERT & JOST	Engineering	22,873
CREW ENGINEERS INC	Engineering	15,510
GARDELL LAND SURVEYING LLC	Survey	6,807
		<u>\$290,633</u>