

**SAUL EWING
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& LEHR^{LLP}**



Stephen B. Genzer
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*Filed
12/29/17*

December 26, 2017

BY FACSIMILE

Hon. Tricia M. Caliguire, ALJ
Office of Administrative Law
P.O. Box 49
Trenton, NJ 08625-0049

BOARD OF PUBLIC UTILITIES

DEC 28 2017

MAIL RECEIVED

Re: In the Matter of the Petition of Middlesex Water Company for Approval of an Increase in its Rates for Water Service and Other Tariff Changes and for An Order Authorizing Special Accounting Treatment of Income Tax Refund Proceeds and Future Income tax Deductions
BPU Docket No. WR 17101049
OAL Docket No. PUC 16144-12017S

Dear Judge Caliguire:

Pursuant to Ms. Demling's instructions (attached) please find copies (by facsimile) of the email exchanges from today as well as the fax of our responsive pleadings to the NJAWC motion for intervention in the above captioned matter.

Respectfully submitted,

Stephen B. Genzer

Cc: service list (attached) by regular mail ✓
Ira Megdal, Esq.

CMS

Stephen B. Genzer - Newark Managing Partner
One Riverfront Plaza, Suite 1520 ♦ Newark, NJ 07102-5426 ♦ Phone: (973) 286-6700 ♦ Fax: (973) 286-6800

Genzer, Stephen B.

From: Genzer, Stephen B.
Sent: Tuesday, December 26, 2017 2:03 PM
To: Demling, Nancy; 'Megdal, Ira'
Cc: Jay Kooper; Veronica Beke; Renee Greenberg; andrew.kuntz@dol.lps.state.nj.us; Robinson, Debra; McClure, Susan; msn@gm-law.net; 'Juarez, Christine'
Subject: RE: PUC 16144-17 Middlesex Water Company

Dear Ms. Demling-

For the record, and so there is a complete record for decision on NJAWC's motion for intervention, please advise Judge Caliguire that Petitioner, Middlesex Water Company, does not object to NJAWC filing a response to our papers no later than next Tuesday, January 2, 2018, which would be the 5 days for a response under the rule. In that way, a complete set of papers on this issue will be before Judge Caliguire and the Board to decide this issue of the standard of intervention and whether NJAWC meets that standard in its motion.

With this email, I am sending this email to all counsel in the Middlesex case as well as Ms. Juarez, copied in the email below from Mr. Megdal, who I believe is assigned to the NJAWC base rate case but not Middlesex's.

Respectfully submitted,
Stephen B. Genzer

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sgenzer@saul.com

* Please note that our Firm name and my email address have changed.

From: Megdal, Ira [mailto:IMegdal@cozen.com]
Sent: Tuesday, December 26, 2017 1:49 PM
To: Demling, Nancy; Jay Kooper; Veronica Beke; Renee Greenberg; Robinson, Debra; Juarez, Christine; msn@gm-law.net; Genzer, Stephen B.
Subject: RE: PUC 16144-17 Middlesex Water Company

Dear Ms. Demling: This firm represents New Jersey-American Water Company, a Movant in this matter. I understand from your e-mail below that Judge Caliguire's Order granting intervention status to Movant is stayed. I would assume that while the Order is stayed pending consideration by Judge Caliguire of Petitioners papers, Movant should refrain from making any submissions to Judge Caliguire, such as responsive papers pursuant to NJAC 1:1-12.2(c). Please confirm whether that assumption is correct. Thank you.

Ira Megdal



Ira G. Megdal
Suite 300, Liberty View, 457 Haddonfield Road, P.O. Box 5459 | Cherry Hill, NJ
08002-2220
P: 856-910-5007 F: 877-259-7984 C: 856/912-3941
Email | Bio | LinkedIn | Map | cozen.com

From: Demling, Nancy [<mailto:nancy.demling@oal.nj.gov>]

Sent: Tuesday, December 26, 2017 1:07 PM

To: Jay Kooper <jkooper@middlesexwater.com>; Veronica Beke <Veronica.Beke@law.njoag.gov>; Renee Greenberg <Renee.Greenberg@law.njoag.gov>; Robinson, Debra <drobinso@rpa.nj.gov>; Juarez, Christine <cjuarez@rpa.nj.gov>; msn@gm-law.net; Megdal, Ira <IMegdal@cozen.com>; Genzer, Stephen B. <Stephen.Genzer@saul.com>

Subject: RE: PUC 16144-17 Middlesex Water Company

Importance: High

To all parties and movants:

The judge has asked me to advise you that her decision with respect to the motion of New Jersey American Water to intervene in the rate case filed by Middlesex Water Company is hereby stayed pending consideration of petitioner's response, received by the judge this afternoon.

Her decision with respect to the motion of East Brunswick to intervene is confirmed.

Best regards,

Nancy Demling

Judicial Assistant

Honorable Elia A. Pelios, ALJ (609) 689-4048

Honorable Jacob S. Gertsman, ALJ (609) 689-4052

Honorable Tricia M. Caliguire, ALJ (609) 689-4046

Honorable Gerald T. Foley, ALJ t/a (609) 689-4046

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From: Genzer, Stephen B. [<mailto:Stephen.Genzer@saul.com>]

Sent: Tuesday, December 26, 2017 12:22 PM

To: Demling, Nancy <nancy.demling@oal.nj.gov>

Cc: 'Jay Kooper' <jkooper@middlesexwater.com>; imegdal@cozen.com; McClure, Susan <smcclure@rpa.nj.gov>;

Robinson, Debra <drobinso@rpa.nj.gov>; Veronica Beke (Veronica.Beke@law.njoag.gov)

<Veronica.Beke@law.njoag.gov>; andrew.kuntz@dol.lps.state.nj.us; Kammer, Mike <Mike.Kammer@bpu.nj.gov>;

Mosser, Mona <Mona.Mosser@bpu.nj.gov>; Cederberg, Justin <Justin.Cederberg@bpu.nj.gov>; 'Lou Neely'

<lneely@eastbrunswick.org>

Subject: RE: PUC 16144-17 Middlesex Water Company

Dear Ms. Demling:

I am in receipt of Mr. Kooper's email below which contains your email of this morning. We are not cc'd on your email.

Nevertheless, since we did not receive NJAWC's hard copy of its motion for intervention until last week, but even electronically until December 13, we have until today to respond to that motion and we are opposing the motion by the attached letter.

If the Judge requires additional motion practice to contest NJAWC's intervention in this case without the need for us to file with the BPU, please advise us. Otherwise, we will assume that any preliminary action taken by the Judge on NJAWC's motion will either be reversed, confirmed, or stayed pending consideration of our response (attached hereto), or pending an appeal directly to the NJBPU. I am copying counsel on this email including Movant's counsel, Mr. Megdal, and will have hard copies of our letter response mailed to all parties on the service list today.

We appreciate your consideration.

Respectfully submitted,

Stephen B. Genzer

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sgenzer@saul.com

* Please note that our Firm name and my email address have changed.

From: Jay Kooper [<mailto:jkooper@middlesexwater.com>]

Sent: Tuesday, December 26, 2017 11:55 AM

To: Demling, Nancy

Cc: Genzer, Stephen B.

Subject: RE: PUC 16144-17 Middlesex Water Company

sg

From: Demling, Nancy [<mailto:nancy.demling@oal.nj.gov>]

Sent: Tuesday, December 26, 2017 11:50 AM

To: Stephen R Bishop; Jay Kooper; Veronica Beke; Renee Greenberg; Robinson, Debra; Juarez, Christine; msn@gm-law.net; imegdal@cozen.com

Subject: PUC 16144-17 Middlesex Water Company

Importance: High

Dear Counsel:

I hope this email finds you well. Attached please find the following orders concerning the above-referenced matter before Judge Caliguire:

- Prehearing Order; and
- Order Permitting the Township of East Brunswick and New Jersey American Water Company, Intervention.

Please be guided accordingly.

Best regards,

Nancy Demling

Judicial Assistant

Honorable Elia A. Pelios, ALJ (609) 689-4048

Honorable Jacob S. Gertsman, ALJ (609) 689-4052

Honorable Tricia M. Caliguire, ALJ (609) 689-4046

Honorable Gerald T. Foley, ALJ t/a (609) 689-4046

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"Saul Ewing Arnstein & Lehr LLP (saul.com)" has made the following annotations:

+~~~~~+

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Genzer, Stephen B.

From: Genzer, Stephen B.
Sent: Tuesday, December 26, 2017 12:33 PM
To: 'Demling, Nancy'
Cc: Jay Kooper; McClure, Susan; msn@gm-law.net; Robinson, Debra; Veronica Beke; Renee Greenberg; imegdal@cozen.com
Subject: RE: PUC 16144-17 Middlesex Water Company

Dear Ms. Demling,

Thank you for sending this to me, however, we have simultaneously, a few minutes ago, emailed to you and identified counsel, our opposition to NJAWC's intervention.

I will review the documents you have attached and I suspect need to get back to the Judge either with a conference call among counsel, a formal motion to reconsider the decision to allow NJAWC's intervention, or with a stay and an appeal directly to the BPU.

Thank you and I hope you had a wonderful Christmas.
Stephen B., Genzer

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sgenzer@saul.com

* Please note that our Firm name and my email address have changed.

From: Demling, Nancy [<mailto:nancy.demling@oal.nj.gov>]
Sent: Tuesday, December 26, 2017 12:27 PM
To: Genzer, Stephen B.; Jay Kooper; McClure, Susan; msn@gm-law.net; Robinson, Debra; Veronica Beke; Renee Greenberg; imegdal@cozen.com
Subject: PUC 16144-17 Middlesex Water Company
Importance: High

Dear Counsel:

Attached please find the following concerning the above-referenced matter before Judge Caliguire:

- Prehearing Order;
- Order to Intervene; and
- Hearing Notice.

These orders and notice will only be emailed to you.

Thank you,

Nancy Demling

Judicial Assistant

Honorable Elia A. Pelios, ALJ (609) 689-4048

Honorable Jacob S. Gertsman, ALJ (609) 689-4052

Honorable Tricia M. Caliguire, ALJ (609) 689-4046

Honorable Gerald T. Foley, ALJ t/a (609) 689-4046

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To: Demling, Nancy
Cc: 'Jay Kooper'; imegdal@cozen.com; McClure, Susan; Robinson, Debra; Veronica Beke (Veronica.Beke@law.njoag.gov); andrew.kuntz@dol.lps.state.nj.us; Kammer, Mike; Mosser, Mona; 'Cederberg, Justin'; 'Lou Neely'
Subject: RE: PUC 16144-17 Middlesex Water Company
Attachments: 20171226121232.pdf; 20171226122223.pdf

Dear Ms. Demling:

I am in receipt of Mr. Kooper's email below which contains your email of this morning. We are not cc'd on your email.

Nevertheless, since we did not receive NJAWC's hard copy of its motion for intervention until last week, but even electronically until December 13, we have until today to respond to that motion and we are opposing the motion by the attached letter.

If the Judge requires additional motion practice to contest NJAWC's intervention in this case without the need for us to file with the BPU, please advise us. Otherwise, we will assume that any preliminary action taken by the Judge on NJAWC's motion will either be reversed, confirmed, or stayed pending consideration of our response (attached hereto), or pending an appeal directly to the NJBPU. I am copying counsel on this email including Movant's counsel, Mr. Megdal, and will have hard copies of our letter response mailed to all parties on the service list today.

We appreciate your consideration.

Respectfully submitted,

Stephen B. Genzer

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To: Demling, Nancy
Cc: Genzer, Stephen B.
Subject: RE: PUC 16144-17 Middlesex Water Company

sg

From: Demling, Nancy [<mailto:nancy.demling@oal.nj.gov>]
Sent: Tuesday, December 26, 2017 11:50 AM
To: Stephen R Bishop; Jay Kooper; Veronica Beke; Renee Greenberg; Robinson, Debra; Juarez, Christine; msn@gm-law.net; imegdal@cozen.com

Subject: PUC 16144-17 Middlesex Water Company

Importance: High

Dear Counsel:

I hope this email finds you well. Attached please find the following orders concerning the above-referenced matter before Judge Caliguire:

- Prehearing Order; and
- Order Permitting the Township of East Brunswick and New Jersey American Water Company, Intervention.

Please be guided accordingly.

Best regards,

Nancy Demling

Judicial Assistant

Honorable Elia A. Pelios, ALJ (609) 689-4048

Honorable Jacob S. Gertsman, ALJ (609) 689-4052

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December 26, 2017

Honorable Tricia M. Caliguire, ALJ
Office of Administrative Law
P.O. Box 49
Trenton, NJ 08625-0049

Re: In the Matter of the Petition of Middlesex Water Company for Approval of an Increase in its Rates for Water Service and Other Tariff Changes and for an Order Authorizing Special Accounting Treatment of Income Tax Refund Proceeds and Future Income Tax Deductions
BPU Docket No. WR17101049
OAL Docket No. PUC 16144-2017S

Dear Judge Caliguire:

In lieu of a more formal filing, please accept this letter on behalf of Petitioner, Middlesex Water Company (“the Company” or “Middlesex”) in Opposition to the Motion to Intervene served electronically on Middlesex by New Jersey-American Water Company (“NJAWC” or “American”) on Wednesday, December 13, 2017.

1. Introduction

In 2009, NJAWC made a similar Motion to intervene in a Middlesex base rate case, which Motion was subsequently withdrawn. The rationale on which NJAWC based its argument at that time is essentially the same as to their Motion in this matter. Essentially, through its purchase of a miniscule portion of its overall water supply through the Township of Marlboro (“Marlboro”), which *is* a customer of Middlesex, NJAWC argues – without expressly acknowledging so – that it is not a customer, but rather a ‘*customer of a customer*’ of Middlesex.

Through that attenuated relationship, NJAWC then claims since it “will” be affected by any New Jersey Board of Public Utilities (“Board” or “BPU”) action that might increase the rates to one of its own suppliers, in this case Marlboro, that somehow NJAWC has standing and is therefore “entitled” to become a full intervening party to this proceeding because NJAWC “will” be affected by any decision in this matter. Middlesex disagrees with this strained and tortured

conclusion and respectfully urges both Your Honor and the BPU to reject this new attenuated standard for establishing standing to intervene or participate in a base rate case.

Middlesex is certainly aware and has, both in this case and historically in prior base rate cases, not objected to the intervention of any of its customers, including those who are municipalities, in its base rate proceedings. Middlesex's *customers* have *direct* interests, since they '*will*' be charged rates set by the BPU as just and reasonable and who will then be obliged to pay rates pursuant to BPU tariffs. Municipal customers have statutory rights to intervene.

That is simply not the case with respect to '**customers of customers**', such as NJAWC here, or '**customers of customers of customers**', taking NJAWC's newly designed standard for establishing standing to its logical potential result as NJAWC argues that such intervention is needed in turn to protect its own customers (including, ironically, Middlesex, since Middlesex is indeed a *direct customer* of NJAWC). Only customers or other statutory intervenors who actually meet the criteria specified in the regulations should be permitted intervention. Not others. NJAWC is not either a customer or a municipal customer of Middlesex and therefore is not an eligible intervenor---statutory or otherwise. NJAWC is not being *directly* impacted by any action resulting from this case and is certainly not *substantially* impacted or *specifically* impacted. Regardless of its wholly overstated allegations with respect to each of the regulatory criteria, and in spite of its unfounded claims to the contrary, NJAWC simply does not meet any of the criteria specified in the regulations governing intervention.

And no amount of NJAWC's repeating that something "will" happen when it merely "might" or "might not" happen, can actually transform uncertainties into certainties. When NJAWC's allegations are actually sorted through, the facts for Your Honor to determine are both simple and straightforward: NJAWC buys a miniscule portion of its overall water supply from the Township of Marlboro, which, in turn, charges its customers for water supply at rates the Township sets using appropriate municipal ordinances and contractual arrangements with NJAWC. One of *Marlboro's* customers is NJAWC. Marlboro has the legal authority to charge NJAWC whatever rate it deems appropriate pursuant to its municipal ordinances, and within the confines of the Township's contract with NJAWC. NJAWC entered into such contract with Marlboro of its own free will and we assume with full knowledge as to how any future rates charged to NJAWC by Marlboro would be calculated. Such rate charged by Marlboro to NJAWC can in theory bear no resemblance whatsoever to the rate Middlesex charges to Marlboro under the water supply contract between Middlesex and Marlboro. Those are the facts.

NJAWC is *not* a customer of Middlesex. NJAWC does not *directly* purchase water from Middlesex, under tariff, under contract, *or in any other manner*. Middlesex does not dispute here the NJAWC allegation that the Township of Marlboro has a contract with NJAWC nor (in this response to the NJAWC motion) does it make any effort to analyze or dispute NJAWC's or Marlboro's rights or obligations under that contract. It is simply not a relevant examination for this proceeding. Marlboro is a contract customer of Middlesex and buys water subject to BPU approved tariffs and the terms of Marlboro's contract with Middlesex. Middlesex's rates to

Marlboro and to every other Middlesex customer in this case will be set based on BPU-approved ratemaking principles.

What Marlboro charges its own customers for water service is not the business of this Middlesex rate proceeding, which is the proceeding in which NJAWC, a non-customer of Middlesex, now seeks to intervene. What NJAWC is charged by Marlboro and how that process plays itself out is governed by municipal law, contract law, and between those parties – NJAWC and Marlboro – to work out. It is not governed by the BPU or at issue in this Middlesex case.

Moreover, the Board's Purchased Water Adjustment Clause (PWAC) regulations, cited by NJAWC in its Motion herein, simply have no bearing on this matter. Middlesex has every reason to believe that NJAWC will comply with the Board's PWAC regulations in formulating its own PWAC, taking into account relevant NJAWC costs which increase or decrease or both. Middlesex is equally confident that whatever method Marlboro uses with respect to determine its charges for water to its customers – including NJAWC – will be implemented pursuant to law and that NJAWC has sufficient interest, as Marlboro's customer, to insure that. This is no different from Middlesex, in formulating its own base rates and PWAC, takes into account rates charged by its supplier, NJAWC. There is one critical difference here – Middlesex is a direct customer of NJAWC, NJAWC is not a customer of Middlesex.

NJAWC is asking Your Honor to adopt the logic that NJAWC, as a customer of Marlboro, has as much of a direct interest in this Middlesex base rate proceeding as a resident of Woodbridge – taking water service under tariff from Middlesex Water Company – has in a NJAWC base rate proceeding. The logic appears to be essentially that a Woodbridge resident is a "customer of a customer" of NJAWC because Middlesex is a customer of NJAWC. Under this seeming new proposed "customer of a customer" standard for standing, extreme and absurd results could abound. Under this logic, a current NJAWC customer from Sussex County would have standing to intervene in a Middlesex base rate case because that customer, as a customer of NJAWC, "might" be affected if the Township of Marlboro acts to increase NJAWC's rates, which in turn "might" be affected by the results of this Middlesex base rate case.

It is an absurd, attenuated, and unworkable standard. We have found no case in which the BPU adopted anything close to such a standard, nor has NJAWC cited any. For good reason.

2. Legal Standard

Pursuant to N.J.A.C. 1:1-16.3 (a) and 16.3 (c), when ruling on a motion to intervene, the Court must take into consideration the following criteria:

- a) Any person or entity not initially a party, who has a statutory right to intervene or who will be **substantially, specifically and directly** affected by the outcome of a contested case, may on motion, seek leave to intervene.

* * *

c) The nature and extent of the movant's interest in the outcome of the case, whether or not the movant's interest is sufficiently different from that of any party so as to **add measurably and constructively** to the scope of the case, the **prospect of confusion** or undue delay arising from the movant's inclusion, and other appropriate matters.

Emphasis added.

As Middlesex will demonstrate, NJAWC has failed to satisfy any of these criteria for intervention, its intervention is unnecessary, and so its Motion should be denied.

NJAWC implies that its customers, on whose behalf the Motion states it is protecting, is insufficiently represented by the Division of Rate Counsel as well as the Staff of the Board of Public Utilities. In fact, Middlesex has intervened in NJAWC's base rate case as a direct customer of NJAWC precisely to insure that its own customers – one of which is the Township of Marlboro – are treated fairly from the results of the NJAWC base rate case. Customers, like Middlesex in the NJAWC base rate case, who are *directly* affected are regularly granted standing. Customers who “may” be affected indirectly by the results of this proceeding, such as NJAWC (as described *infra*), have no need for multiple representations in the same case.

An examination of the actual impact of any rate increase ultimately awarded to Middlesex and applying that to the criteria for standing reveals that NJAWC's customers may not be affected at all, let alone *substantially* affected by any increase awarded to Middlesex by the BPU. Gross numbers are misleading at best, but since that is what the NJAWC Motion relies on, rather than the impact on any specific customer, let us first examine that allegation. NJAWC carefully makes no allegation whatsoever about how each of its customers may be *substantially* impacted, although it is those customers NJAWC claims need representation.

Paragraph numbered 5 of the NJAWC motion calculates that *if* Middlesex's proposed increase were to be granted *in full*, and *if* fully passed through in full to Middlesex's customer, Marlboro, *without adjustment*, and *if* Marlboro then fully passed it on *without adjustment*, to NJAWC, the motion calculates the impact to be about \$55,000 (\$449,906-\$394,055). Applied over the 631,000 customers identified in paragraph 2 of the NJAWC Motion, the alleged '*substantial*' impact would be little more than 8 cents per year per customer, or less than 2/3 of *one* penny per month per customer. And that is *only if* the increase were granted in full, *only if* the increase was fully passed to Marlboro and *only if* Marlboro then in turn fully passed it on to NJAWC and its customers with no other offsets, calculations, or tariff design changes. *Substantial?* We think not. This hypothetical extrapolated financial impact to NJAWC is added here simply to further illustrate the frivolous nature of this Motion and in no way undermines the central issue at hand which is that NJAWC, as a 'customer of a customer', has no valid legal or regulatory standing to intervene.

NJAWC is simply not a customer of Middlesex. It has alleged in numbered paragraph 8, in bolded caps, that this Middlesex base rate case is the ‘only proceeding in which NJAWC can assure the propriety of the MWC base rate increases’. But is that statement really true even if it could be concluded that a ‘customer of a customer’ trying to represent interests of ‘customers of customers of a customer’ has any right whatsoever to try to somehow assure the ‘propriety’ of the result of any Middlesex base rate increase?

Is NJAWC now or has NJAWC ever alleged that it has intervened in every rate proceeding before every public or private body which determines any input to its customer’s rates, or even to its PWAC inputs? Here, it has not even *alleged* it has appeared or argued before Marlboro, to whom it *is* a customer, to defend its customers’ rights. NJAWC has not alleged that Marlboro has failed in any way to adhere to state law in setting its own rates to NJAWC, nor would fail to follow state law in setting its own rates. Yet NJAWC now wants Your Honor and the BPU to allow it to intervene in this case so NJAWC can examine the rates of an entity to which it is not even a customer? *Specific? Direct?* Again, it has not.

3. NJAWC’s interest in this matter is far too attenuated to warrant intervenor status.

It is Middlesex’s understanding that in 2008 NJAWC and Marlboro executed a water supply agreement that contained pricing terms impacted, in part, on certain BPU determined Middlesex tariff rates. Middlesex was not a party to that agreement and played no role in its negotiation or execution. By virtue solely of those financial terms between itself and Marlboro, however, American would now have this Court believe NJAWC has somehow been transformed into a Middlesex “customer”. And because of this fiction, it is now somehow ‘entitled’ to intervene in this matter. American is simply wrong.

As support for this fanciful proposition, American’s Motion relies on the certification of Mr. Simpson who generally certifies that the statements made in the Motion are accurate. But unless something has changed with respect to this contract, which NJAWC has not yet alleged (and so we can not respond), there are clearly things left out which Mr. Simpson could not certify, and he has not done so.

Unless something has changed since this same argument was presented by NJAWC in 2009, the pricing terms of the contract between Marlboro and NJAWC are not as simple as what is argued in the NJAWC motion. NJAWC neglects to note that the rate paid by American to Marlboro under their contract has a second component intended to cover Marlboro’s own costs in providing water service to American. The pricing terms linked to Middlesex’s rates are merely one portion of the overall rate paid by American, so the Marlboro contract is not merely a pass through arrangement, as NJAWC would have Your Honor believe. Marlboro produces its own water and it is Middlesex’s understanding that Marlboro can change the rate it charges American, using appropriate municipal procedures, under its contract, based on a myriad of factors, each of which *might* affect American’s final rate, and thus alter the rate, after an NJBPU proceeding, which American may then charge to its *statewide* customers. Unless something has

changed (unmentioned by NJAWC), Middlesex's rate is therefore but one pricing input to American's rate under its supply from Marlboro. However NJAWC impliedly represents to Your Honor that Middlesex's rate to Marlboro is the entire rate it is assessed by Marlboro and that in turn provides the alleged argument for NJAWC's intervention in this matter.

As an initial matter, it is ordinarily a fairly straightforward exercise to determine who is or is not a utility customer for purposes of determining an intervention request. If one is a customer, the party seeking intervention simply says so and it is easily verified. NJAWC has not done that in its current motion and the reason is obvious. They are not a customer of Middlesex.

As we also noted in 2009, typically customers are located in a utility's service territory and so are entitled to service from the utility. Alternatively, potential customers execute contracts for service with the utility, making them actual customers. Customers expect to receive bills for utility services rendered and expect the utility to respond to questions regarding those bills. Customers expect to pay the utility for the services provided. Utility customers expect their utility to respond to service issues and complaints, and they even have the right to file a complaint at the BPU should a problem arise with their utility services. In short, these are all common indicia of a customer-utility relationship.

Yet none of these activities are performed between Middlesex and NJAWC with respect to American's service *from Marlboro*. Middlesex has no obligation to serve American; *Marlboro* has undertaken this obligation by virtue of its 2008 water supply contract with American. Indeed, it is our understanding that the American/*Marlboro* agreement required *American* to construct new water interconnections *with Marlboro* to facilitate *Marlboro*'s delivery of water supply to American. Middlesex does not provide water service to American, *Marlboro* does. Middlesex does not bill American for water service, *Marlboro* does. American does not pay Middlesex for water service; it pays *Marlboro*. When American has a complaint about service under its contract, it contacts *Marlboro*. If American wishes to increase or decrease its water purchases, it must negotiate with *Marlboro*. There is no relationship whatsoever between Middlesex and American arising out of the *Marlboro*/*American* contract.

Middlesex again observes, as it did in 2009, that it seems a dangerous and foolhardy precedent for the BPU, and frankly, for American itself, to try to establish this 'customer of a customer' standard for determining eligibility for intervention, *i.e.*, standing. A finding by Your Honor in favor of NJAWC's Motion could have far reaching detrimental consequences to the BPU in regulating electric, gas, telecommunications, and water utilities under the its jurisdiction throughout the State of New Jersey. As the largest private water company in the state, and specifically the largest wholesale supplier of water service to others in New Jersey, American has a large number of water supply contracts with other water purveyors. American is the supplier; the other water purveyors are American's customers.

If one follows the logic of American's argument here, then each and every one of those suppliers' residential, commercial, or industrial customers, individually, would be entitled to intervene in American's current base rate proceeding. After all, for example, Middlesex

purchases over 3 million gallons per day of water from American pursuant to American's tariff rates, at a current cost of approximately \$2.62 million annually, an amount currently petitioned to increase by over 27%, which is why Middlesex has intervened in that proceeding. But under American's logic stated herein, standing could now be conferred on any and all Middlesex customers in the current NJAWC base rate case as a 'customer of a customer'. For example, an individual residential customer of Middlesex's Bayview system in Downe Township on the Delaware Bay should now be permitted to intervene in NJAWC's current base rate case on the theory that any rate increase granted to American *would* eventually appear on that Bayview customer's Middlesex bill (we assume) since the BPU has the authority to allocate any increase to any set of customers it deems appropriate.

Clearly, this is an unworkable and overly expansive view of standing, and one which to the best of our knowledge has never been adopted for good reason by the Board or the Office of Administrative Law.. Notions of judicial economy and efficiency all undercut American's new and frivolous effort at interpreting the needed criteria for standing for an entity or individual to intervene or participate.

As noted above, beyond the nature of the interest American asserts, Your Honor should consider the quantum of the financial interest identified by American. By American's estimate, calculated based on NJAWC's own suggested data cited above, the annual impact of a fully granted rate increase by Middlesex in this matter would be less than 8 cents per year per customer. While Middlesex takes no position on whether American might consider this *substantial* or not, even American must concede that this miniscule amount would not even rise to the level of a rounding error for a company who recovers nearly a billion dollars of revenue each year, and whose average residential customer might pay approximately \$800 per year, depending on usage.

Although American might otherwise be applauded for its apparent selective focus on cost containment, and its apparently selective efforts in trying to protect its customers from increases by its own *municipal* or other water suppliers, NJAWC may in fact be costing its customers more in legal fees to attempt to intervene in this proceeding of one of its supplier's suppliers than NJAWC might indeed save its customers from this effort. Layered on top of this are: (1) the fact that NJAWC has made no representation with respect to its efforts directly with any of its actual suppliers – including Marlboro – to control costs; and (2) NJAWC is attempting to impose a 27.4% increase on Marlboro's supplier – Middlesex – in NJAWC's own base rate case. To ignore the reality that NJAWC is failing to make a consistent effort to advocate on behalf of its customers for cost containment is an understatement. There must be other reasons why NJAWC has selected this one tiny water supplier of *its* supplier in which to intervene.

Fundamentally, the interest that NJAWC claims to raise is a contract matter between it and Marlboro. Marlboro is a municipality over which the BPU has no jurisdiction. The BPU does not control how Marlboro might input the result of this Middlesex base rate case on NJAWC or how Marlboro will factor in its own costs in setting NJAWC's rates. NJAWC should not be permitted to bootstrap its unrelated contract concerns with Marlboro into this proceeding

through an ill-considered motion to attempt to provide standing for itself and try to intervene in the Middlesex base rate case. Based on this filing, NJAWC could not even remotely justify participant status, let alone intervention status.

4. NJAWC's interest has not been alleged to be sufficiently different from any other party's so as to add measurably and constructively to the scope of this case.

Your Honor must consider the extent to which NJAWC's interest here differs from that stated by other parties. While NJAWC does not belabor its differences with other parties' interests, it merely states one sentence. However, this is a requirement to justify intervention. And while NJAWC alleges in that one sentence that its interest is significantly different from other parties or potential parties, a simple review of the facts questions that assertion.

Middlesex infers by this motion that NJAWC must mean that its concern rests with the Middlesex rate schedules covering *Service under Contract* and *Transmission Service South River Basin* since those are the schedules under which NJAWC's supplier, and Middlesex's customer, Marlboro, takes water from Middlesex. NJAWC has made no allegation of why Rate Counsel and/or Board Staff, in combination with Middlesex itself in this proceeding, are incapable or unwilling to protect the fairness, justification, and appropriateness of the rates imposed on those tariff classifications. In fact, it is our understanding that Rate Counsel believes itself specifically directed to represent all classes of customers.

NJAWC must at least allege, and provide the BPU and other parties the ability to check on the allegations, that no other party is capable or willing to protect its identified interest. It has failed to do so.

5. NJAWC's inclusion in this case will cause confusion and could cause undue delay.

NJAWC has stated, but has again neglected to provide any basis whatsoever for its raw statement that its intervention in this case will not cause confusion, only that it will adhere to the schedule already set for this case. Ordinarily, Middlesex would not consider this omission particularly important. However in this case, Middlesex and the state parties have already negotiated and executed non-disclosure agreements in this case which have governed a so far efficient and effective discovery process. Middlesex would have certainly required different terms for those agreements if another water company were able to rummage through its financial and other records. In itself, that would create significant confusion and time to work such agreements out, if indeed they could be worked out. We would have to confront that issue if faced with a legitimate entity with standing to intervene, but that is simply not the case here.

6. Conclusion

For the reasons stated herein, Middlesex opposes NJAWC's motion to intervene in this proceeding and respectfully requests that Your Honor reject NJAWC's naked attempt to rewrite

Honorable Tricia Caliguire, ALJ

December 22, 2017

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(as far as we can tell) the standard of intervention into an inefficient and unworkable '**customer of a customer**' one not previously adopted by the BPU or any New Jersey Administrative Law Judge. For these same reasons, Middlesex opposes the granting of participant status to NJAWC, (which, admittedly, has not been requested).

Middlesex therefore respectfully requests that Your Honor deny in its entirety the Motion To Intervene filed by New Jersey American Water Company.

With this letter and signature below, I certify that the entire service list have been served electronically today and by mailing hard copies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Stephen B. Genzer', written in a cursive style.

Stephen B. Genzer

Cc: service list as noted

SERVICE LIST

In the Matter of the Petition of Middlesex Water Company for Approval of an Increase in its Rates for Water Service and Other Tariff Changes and for an Order Authorizing Special Accounting Treatment of Income Tax Refund Proceeds and Future Income Tax Deductions
BPU Docket No. WR17101049

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