



New Jersey  
Natural Gas

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CASE MANAGEMENT

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

February 7, 2019

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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*2/13/19*

**VIA FEDERAL EXPRESS**

Honorable Aida Camacho-Welch  
Secretary of the Board  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3rd Floor, Suite 314  
P.O. Box 350  
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Re: In the Matter of the Petition of New Jersey Natural Gas Company Request for Deferred Accounting Authority for Costs and Lost Revenue Related to Veterans' Organizations Pursuant to N.J.S.A. 48:2-21.41 and Associated Tariff Changes, BPU Docket No. GR19010016;

In the Matter of the Verified Petition of Jersey Central Power & Light Company Seeking Review and Approval of the Veterans' Organization Service Application and Tariff, Docket No. ER19010013;

In the Matter of the Petition of Public Service Electric and Gas Company For Approval of Deferred Accounting Authority For Coats and Lost Revenue Related To N.J.S.A. 48:2-21.41 and Associated Tariff Changes, Docket No. GR19010063; and

I/M/O Rockland Electric Company's Request for Deferred Accounting Authority for Cost and Lost Revenue Related to Veterans' Organizations Pursuant to N.J.S.A. 48:2-21.41 and Associated Tariff Changes, BPU Docket No. ER19010046;

I/M/O a Request by Atlantic City Electric Company for Approval of Tariff Pages Related To The Implementation of Veteran's Organizations Rates Pursuant To N.J.S.A. 48:2-1.41 and Deferred Accounting Authority For Costs and Lost Revenue Related Thereto, BPU Docket No. ER19010062;

In the Matter of South Jersey Gas Company's Request for Deferred Accounting Authority for Costs and Lost Revenue Related to Veterans' Organizations Pursuant to N.J.S.A. 48:2-21.41 and Associated Tariff Changes  
BPU Docket No. GR19010018;

In the Matter of Elizabethtown Gas Company's Request for Deferred Accounting Authority for Costs and Lost Revenue Related to Veterans' Organizations Pursuant to N.J.S.A. 48:2-21.41 and Associated Tariff Changes  
BPU Docket No. GR19010017.

*CMG*  
*list & copied*  
*S. Peterson*  
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Secretary Camacho-Welch:

Please accept, on behalf of New Jersey Natural Gas Company, Jersey Central Power & Light Company, Public Service Electric and Gas Company, Atlantic City Electric Company, Rockland Electric Company (“Rockland”) South Jersey Gas Company and Elizabethtown Gas Company (hereinafter, collectively referred to as the “New Jersey Utilities” or “Companies”) this response to the comments filed by the New Jersey Division of Rate Counsel (“Rate Counsel”) in the above-referenced matters. For the reasons outlined below, the New Jersey Utilities oppose the position of Rate Counsel with respect to deferred accounting treatment, carrying charges, and lost revenues associated with implementation of each of the New Jersey Utilities tariffs for Veterans’ Organizations (“Veterans’ tariffs”) in accordance with N.J.S.A. 48:2-21.41 (also referred to as P.L.2018, c.77).

In each of the Petitions<sup>1</sup>, the Companies requested authority from the New Jersey Board of Public Utilities (the “Board” or “BPU”) to:

1. defer on their books actual incurred costs associated with the implementation of the Veterans’ Organizations tariff and not otherwise recovered through its currently approved base rates, including carrying charges, calculated based upon each Companies’ weighted average cost of capital, that was determined by the Board in each of the Companies’ most recent distribution rate case, associated with the deferred costs;
2. approve the Companies’ request to recover any and all lost revenue associated with the implementation of the Veterans’ tariff as set forth herein;
3. approve as just and reasonable the modified tariff and the proposed application form; and
4. such other relief that the Board deems just, reasonable and necessary.

The Companies respectfully submit that the Board should reject Rate Counsel’s position opposing the Companies’ requests, as it is factually inaccurate and conceptually flawed.

#### Deferred Accounting Request

The implementation of the Veterans’ tariff is a result of a mandate imposed upon the utilities by the New Jersey Legislature through the enactment of N.J.S.A. 48:2-21.41. Each of the New Jersey utilities is requesting authority from the Board to defer on its books any and all actually incurred costs (capital and O & M) associated with the Veterans’ tariff and not otherwise recovered through its current base rates. Rate Counsel opposes this request. . As articulated by Rate Counsel:

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<sup>1</sup> Rockland’s January 10, 2019 filing (“Filing”) indicated that it currently was implementing the Veteran’s tariff in-house, and was not seeking incremental administrative or IT costs in the Filing. However, the Rockland Filing reserved the right to seek recovery of incremental costs, in the event Rockland could not implement the Veteran’s tariff in-house in the future. The Rockland Filing also requested recovery of lost revenues. Therefore, Rockland supports this response by the Companies and supports the Companies’ requests for relief set forth above

Rate Counsel asserts that the Board should not allow the Company, or any utility, to defer direct costs and create a regulatory liability for ratepayers which could be found to be imprudent.

Rate Counsel comments at p. 3.

Following Rate Counsel's line of reasoning, the Board could never allow a utility to defer any costs on its balance sheet in order for the utility to petition the Board for future recovery of those deferred costs. This goes against long-standing Board precedent as well as Rate Counsel's prior positions in various rate proceedings.

In the two most recent base rate proceedings filed by PSE&G, Rate Counsel's expert witness Andrea C. Crane testified that a utility has an obligation to seek a deferred accounting order from the regulatory authority should a utility wish to defer a cost for ratemaking purposes. In PSE&G's 2009-2010 case in particular, Ms. Crane testified that, "[i]f a utility wants to defer a cost for ratemaking purposes, it has an obligation to seek a deferred accounting order from the regulatory authority," and went on to state that "[m]ost accounting orders issued by regulatory agencies permit a utility to seek future rate recovery of a previously incurred cost, although accounting orders generally do not guarantee such recovery."<sup>2</sup>

Again, in PSE&G's most recent base rate proceeding, Ms. Crane submitted testimony on this same issue, and again acknowledged that a utility can recover prudently incurred deferred costs in a future base rate case, where the Board has provided "prior authorization for deferral."<sup>3</sup>

Indeed, Rate Counsel appears to accept this position, at least in part, in its January 28, 2019 comments in this proceeding:

... as part of the Company's next base rate case, the Board should review the direct costs, the number of participants charged the new rate, the amount of actual charges that were paid by the Veteran's Organizations under the new tariff, and any other relevant data to determine the prudence of the Company's expenses.

Rate Counsel comments at p. 4.

The position being taken by Rate Counsel in each of the New Jersey Utilities proceedings is inconsistent with Rate Counsel's own expert witnesses' direct testimony in the two PSE&G base rate cases. If the costs are not within the test year in a base rate proceeding, according to Rate Counsel, they are not allowed to be recovered unless the utility previously sought Board approval

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<sup>2</sup> See I/M/O The Petition Of PSE&G For Approval Of An Increase In Electric And Gas Rates And For Changes In The Tariffs For Electric And Gas Service, B.P.U. N.J. 14 Electric And B.P.U. N.J. No. 14 Gas Pursuant To N.J.S.A. 48:2-21 And N.J.S.A. 48:2-21.1 And For Approval Of Gas Weather Normalization; A Pension Expense Tracker And For Other Appropriate Relief, BPU Docket No. GR09050422, Direct Testimony of Andrea C. Crane at pp. 67-68.

<sup>3</sup> See I/M/O The Petition Of PSE&G For Approval Of An Increase In Electric And Gas Rates And For Changes In The Tariffs For Electric And Gas Service, B.P.U. N.J. 16 Electric And B.P.U. N.J. No. 16 Gas And For Changes In Depreciation Rates Pursuant To N.J.S.A. 48:2-18, N.J.S.A. 48:2-21 And N.J.S.A. 48:2-21.1 And For Other Appropriate Relief, BPU Docket Nos. ER18010029, GR18010030, Direct Testimony of Andrea Crane at p 53-54.

for deferral, as that would “constitute retroactive ratemaking”. This position is inconsistent with the position articulated by Rate Counsel in this proceeding, which is that a utility can never defer costs.

The Companies agree that these costs are subject to a prudence review in the context of a future base rate proceeding, and they are not seeking cost recovery at this time. However, if deferred accounting is not permitted, and the costs are not within a given test year, the utility is penalized as Rate Counsel would oppose the utility for not having authorization to defer the costs from the Board. As previously noted, this mandate was imposed upon the utilities by the New Jersey Legislature through the enactment of N.J.S.A. 48:2-21.41. The utilities are required, pursuant to New Jersey law, to carry out the provisions of the law for Veterans’ Organizations.

The Companies concur with Rate Counsel that a “mandate from the Legislature to charge certain organizations under the residential rate does not exempt the New Jersey Utilities from the legal standard of first showing prudence prior to review.” *Id.* However, Rate Counsel’s position of not allowing the Companies to defer these costs would effectively bar the utility from the ability to even have these costs reviewed for prudence if they fall outside of a given test year.

The “precedent set by the” BPU that Rate Counsel relies upon is misplaced and does not address the issue of a utility requesting deferred accounting. Rate Counsel rests its argument on a quotation from the Administrative Law Judge in his Initial Decision. *See I/M/O the Petition of Atlantic City Electric*, BPU Docket No. ER97020105, Initial Decision (December 23, 1997). The issue therein related to the expiration of an amortization period for expenses that the Board allowed to be deferred for the abandoned Hope Creek nuclear generating station. The issue was how and when to address the expiring 15-year amortization period. This is not the case in the instant proceeding.

The Board has historically approved utilities’ requests to defer costs that are not otherwise recovered through a Company’s currently approved base rates.<sup>4</sup> Attached please find full and complete copies of Board Orders that support the New Jersey Utilities’ request.

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<sup>4</sup> See, e.g., In The Matter of New Jersey Natural Gas Company’s Request For Deferral Accounting Authority For Storm Damage Restoration Costs Related to Hurricane Sandy, BPU Docket No. GE12111036 (May 29, 2013); In The Matter Of The Board’s Review Of The Prudence Of The Costs Incurred By New Jersey Utility Companies In Response To Major Storm Events In 2011 And 2012, BPU Docket No. AX13030196; In The Matter Of The Board’s Establishment Of A Generic Proceeding To Review The Prudence Of The Costs Incurred By New Jersey Natural Gas Company In Response To Major Storm Events In 2011 And 2012, BPU Docket No. G013070610 (October 22, 2014); In The Matter Of Public Service Electric And Gas Company’s Petition To Recover The Deferred Costs Of The Energy Information And Control Network Pilot Program Through A Temporary Electric Societal Benefits Charge Component, Specifically, “The myPower Pilot Program Charge”, BPU Docket Nos. EO04060395, EO09060465, (July 29, 2009); In The Matter of The Petition Of Suez Water Princeton Meadows, Inc. For Deferred Accounting Authority For The Financial Impact Of Waste Remove From Sludge Lagoons, BPU Docket No. WF17030186 (July 26, 2017); 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, BPU Docket No. WF14070804 (December 17, 2014); In The Matter Of The Petition Of Aqua, New Jersey, Inc., For Approval Of An Increase In Rates For Water Service And Other Tariff Changes And; In The Matter Of The Petition Of Aqua, New Jersey, Inc., For Approval Of Deferred Accounting Treatment For Certain Costs Related To Water Quality Treatment For Radio Nuclides, BPU Docket Nos WR05121022, WR06120897 (January 1, 2007).

The Companies assert that approval of the requested accounting treatment would not preclude a prudency review of the actual costs related to Veterans' Organizations in each of the Companies' future rate cases, including the reasonableness of the costs. Denying the requested accounting treatment on the other hand would reduce the Company's revenues as a result of external forces, *i.e.*, a legislatively imposed mandate. For the reasons discussed above, Rate Counsel's position on this issue is without merit and should be rejected by the Board.

#### Carrying Charges

The Companies are requesting authority from the Board to recover their respective carrying charges associated with the deferred costs, calculated based upon the Companies' weighted average cost of capital that was determined by the Board in their most recent distribution rate case(s). Rate Counsel opposes this request. Rate Counsel bases its position on one sentence: "At this time, the estimated costs are speculative and determining that the Company is entitled to recovery of carrying charges would be inappropriate given that the direct costs are still subject to a prudency review." *Id.* Please see the section below entitled "Lost Revenues" for the Companies' response to the "speculative" nature of these costs.

Without repeating the arguments set forth above, each of the Companies is simply requesting the permission of the Board to record on its balance sheet the carrying charges that are associated with any costs related to implementing the legislatively mandated Veterans' tariff. This accounting treatment does not automatically guarantee that the Companies will recover the carrying charges in a future rate proceeding. Like the implementation costs themselves, the carrying charges will still be subject to a prudency review.

Therefore, Rate Counsel's position on this issue is without merit and should be rejected by the Board.

#### Lost Revenues

The Companies have also requested recovery of any and all lost revenue associated with the implementation of the Veterans' tariff. Rate Counsel opposes this request. Rate Counsel mistakenly believes that it is "...not certain at this time whether any of the utilities affected by the statute will in fact lose revenues." *Id.* It is a fact that utilities will lose revenue as a result of implementing this law. A Veterans' organization's utility service will be eligible for a credit beginning with the billing cycle that commences after receipt of the application. At least annually (and in some cases, with greater frequency), a utility will compare the billed customer, delivery and demand charges, if applicable, to what the Veterans' Organization's customer and delivery charges would have been under Residential Service ("RS"). If the RS charges for the review period are lower than the comparable billed charges under the utility's commercial rate schedule, a credit will be applied to the account in the amount of the difference to the bill for delivery service. The New Jersey Utilities' revenues from the Veterans' Organization accounts are based on commercial tariff rates. Any credits required to be provided to adjust to residential rates under the Veterans'

tariff are lost revenues to the utilities. The amount of those lost revenues will be determined in a future base rate case.

Rate Counsel asserts that it “is opposed to allowing the Company to defer any ‘lost’ distribution revenue since customer behavior regarding energy usage can be influenced as a result of approval for the Veterans’ Organization tariff therefore making any perceived difference an unmeasurable variable, and the language of the statute does not include a mechanism for utility recovery of revenues.” *Id.* With respect to the assertion that a regulatory asset must be “quantifiable” to qualify for this treatment, it should be noted that the Board has approved deferred accounting for costs that were not quantifiable at the time of the Board’s approval, but that would be quantifiable and finally established in later proceedings. *See, e.g., I/M/O the Request of Public Service Electric and Gas Company for Deferred Accounting Treatment of Coal Tar Clean-up costs, BPU Docket No. GO89070658 (August 8, 1989).*

Therefore, Rate Counsel’s position on this issue is without merit and should be rejected by the Board.

#### Conclusion

Based upon the foregoing, Rate Counsel’s position that the Board should deny deferred accounting treatment, carrying charges, and lost revenues associated with implementation of the Companies’ tariffs for Veterans’ Organizations should be rejected. The Companies respectfully request that the Board approve each of the Companies’ original requests to allow them to defer costs incurred for implementation of the Companies’ tariffs for Veterans’ Organizations, associated carrying costs, and the associated lost revenues. As noted above, the deferred amounts will be subject to a prudence review in a future rate case.

Respectfully submitted,



Andrew K. Dembia  
Regulatory Affairs Counsel

AKD/FK  
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C: Service list (via email)

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COMPANY RESPONSE TO THE COMMENTS FILED BY THE NEW JERSEY  
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Agenda Date: 7/26/17  
Agenda Item: 5C

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IMPACT OF WASTE REMOVAL FROM SLUDGE )  
LAGOONS ) DOCKET NO. WF17030186

**Parties of Record:**

**Bryant Gonzalez, Esq., Corporate Attorney, SUEZ Water Princeton Meadows, Inc.**  
**Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel**

**BY THE BOARD:**

On March 2, 2017, SUEZ Water Princeton Meadows Inc.<sup>1</sup> ("SWPM," "Company" or "Petitioner"), a public utility of the State of New Jersey, subject to the jurisdiction of the New Jersey Board of Public Utilities, filed a verified petition pursuant to N.J.S.A. 48:2-16, N.J.S.A. 48:2-21.1 and N.J.S.A. 48:2-23, seeking authorization for deferred accounting treatment of actually incurred costs related to maintenance to ensure compliance, safe discharge and preparation for abandonment/retirement of the detention lagoon that is not otherwise recovered through its currently approved base rates. The Company proposes that the appropriate amortization period for such deferred costs be addressed in its next base rate case.<sup>2</sup>

The detention lagoon ("lagoon" or "facility") is an earthen basin and serves to equalize fluctuating diurnal flow, maintain consistent head pressure/flows on the final stage of the process where chlorination, disinfection and de-chlorination take place prior to discharge to the surface water outfall. The facility is going to be required to meet more stringent discharge limits by December 31, 2019, during which time the lagoon will be undergoing significant upgrades that will significantly affect the rate base of Petitioner. To insure DEP Discharge Permit

<sup>1</sup> SWPM provides wastewater service to approximately 3,500 customers in a portion of the Township of Plainsboro, Middlesex County, New Jersey.

<sup>2</sup> SWPM current rates were approved by the Board in IM/O the Petition of Princeton Meadows Utility Company, Inc. for Approval to Increase its Rate for Sewer Service and Change in Depreciation Rates (BPU Docket NO. WR92040394J, OAL Docket No. PUC3110-92, May 11, 1993). By letter dated November 12, 2015, the Petitioner's Counsel notified the Board that United Water Princeton Meadows, Inc. was changing its name to SUEZ Water Princeton Meadows, Inc.

compliance, the Petitioner will address short-circuiting issues caused by material accumulation that has limited the detention time and repair of baffling devices. Most of this work would be considered a cost to remove as part of the retirement of the lagoon if completed as part of the upgrades. Although this work would be part of the facility's upgrades, it needs to be accelerated due to environmental regulatory compliance risk. The Company intends to complete this work in 2017.

The estimated costs associated with the pre-retirement work for which SWPM is seeking deferral authority is not to exceed \$375,000 and includes cost of external labor, contractor costs, equipment, and other costs that are directly related to proposed work. No ongoing, routine expenses are included in the requested deferral accounts established for costs associated with this project. In addition, the Company states that the current costs will be classified as either capital/cost to remove or sludge removal (i.e., expense) depending on the final upgrade design.

The Company responded to discovery requests from Board Staff and the New Jersey Division of Rate Counsel ("Rate Counsel").

By letter dated July 6, 2017, Rate Counsel submitted comments regarding Petitioner's request. Although Rate Counsel does not object to Petitioner's request for deferred accounting authority, Rate Counsel "believes that the Board should establish terms that limit the magnitude of the deferred expense and terms that establish the appropriate amortization period if the accumulated expense is subsequently treated as an operating expense rather than a cost of removal in the Company's next base rate proceeding." (Comment at 1-2.) Thus, Rate Counsel conditionally does not object to the Company's request to defer on its books and records, for accounting purposes only, the actually incurred costs related to maintenance to ensure compliance, safe discharge and preparation for abandonment/retirement of the detention lagoon that is not otherwise recovered through its currently approved base rates.

Specifically, Rate Counsel recommends that any Board approval of the petition contain the following language:

- 1) This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets now owned or hereafter to be owned by the Petitioner. The value of the regulatory asset created as a result of the approved deferral shall not exceed \$375,000.
- 2) This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting the Petitioner. The Board specifically reserves the right to review the prudence of the recommendation of the Petitioner's engineering evaluation of the alternatives to the continued use of the existing wastewater treatment facility.

- 3) This Order fixes the term of the amortization of the regulatory asset created as a result of this approval to twenty years. To the extent that the accumulated cost is determined to be an operating expense the amortization shall begin at the conclusion of the Petitioner's next base rate proceeding.
- 4) The Petitioner shall not apply a return on the monthly unamortized deferred cost balances from the initial deferred cost booking until the rate effective date of the Petitioner's next base rate case.
- 5) If the costs deferred under this authorization are not determined to be a cost of removal in the Petitioner's next base rate proceeding, the Petitioner shall not apply a rate of return to the unamortized balances after the effective date of the Petitioner's next base rate case.

[Comment at 8].

After reviewing the record, the Board **FINDS** that the Petitioner's request for deferral authority is reasonable, in the public interest, and in accordance with the law. The Board **HEREBY AUTHORIZES** Petitioner to defer on its books, for accounting purposes only and without interest, actually incurred costs related to maintenance to ensure compliance, safe discharge and preparation for abandonment/retirement of the detention lagoon that is not otherwise recovered through its currently approved base rates. The Board **ORDERS** that the prudence and recovery and the appropriate amortization period for such deferred costs be addressed in the Company's next base rate case.

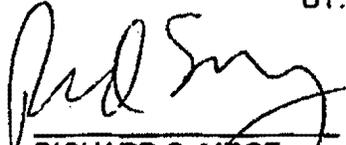
This Order is subject to the following additional conditions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets not owned or hereafter to be owned by Petitioner.
2. This Order shall not affect or in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter Petitioner.
3. Approval of this deferred accounting treatment request constitutes approval for accounting purposes only and does not constitute approval for ratemaking purposes; any determination of the appropriateness or reasonableness of the costs and expenses shall be made in an appropriate subsequent proceeding.

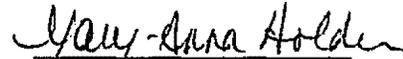
This Order shall be effective on August 5, 2017.

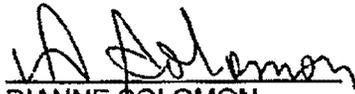
DATED: 7/26/17

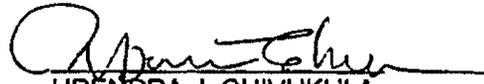
BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

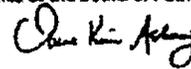
  
MARY ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
IRENE KIM ASBURY  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities



**IN THE MATTER OF THE PETITION OF SUEZ WATER PRINCETON MEADOWS, INC. FOR  
DEFERRED ACCOUNTING AUTHORITY FOR THE FINANCIAL IMPACT OF WASTE  
REMOVAL FROM SLUDGE LAGOONS  
Docket WF17030186**

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Agenda Date: 12/17/14  
Agenda Item: 5A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF THE PETITION OF UNITED )  
WATER WEST MILFORD INC. FOR DEFERRAL ) ORDER ADOPTING  
ACCOUNTING AUTHORITY FOR THE FINANCIAL ) STIPULATION  
IMPACT OF THE SETTLEMENT OF LITIGATION WITH )  
BALD EAGLE COMMONS BUILDING ASSOCIATION ) DOCKET NO. WF14070804

**Parties of Record:**

**Kelly K. Ruggiero, Esq., Corporate Attorney**, on behalf of United Water West Milford  
**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

**BY THE BOARD<sup>1</sup>:**

On July 29, 2014 pursuant to N.J.S.A. 48:2-16, N.J.S.A. 48:2- 21.1 and N.J.S.A. 48:2-23, United Water West Milford Inc. ("UWWM, Company, "Petitioner"), a public utility of the State of New Jersey, providing wastewater service to approximately 500 customers in certain portions of the Township of West Milford, Passaic, County, New Jersey and subject to the jurisdiction of the Board of Public Utilities ("Board"), filed a petition seeking authority from the Board to defer on its books the actually incurred costs resulting from the settlement of the litigation brought by Bald Eagle Commons Building Association ("BECBA" or "Bald Eagle Commons") against UWWM in New Jersey Superior Court Document No PAS-L-4863-12 (the "Litigation Settlement ") that are not otherwise recovered through the Company's currently approved Base rates. The Company proposed that the appropriate amortization period of such deferred costs be addressed in its next base rate case.

**BACKGROUND/PROCEDURAL HISTORY**

According to the petition, Bald Eagle Commons and Petitioner have been communicating since 2010 about the perceived movement of a stone retaining wall running along Richmond Road in BECBA's residential development. Said retaining wall is situated adjacent to the property upon which UWWM's sewer system disposal beds are located. The petition states that in February 2012, Bald Eagle Commons asserted that a portion of said retaining wall was failing and that the

<sup>1</sup> Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

retaining wall belonged to UWWM. The Petitioner states that it is unclear who owned the retaining wall or who was responsible for mainlining it. The Petitioner states that it offered temporary monitoring and safety measures for the retaining wall while the Company researched the ownership and maintenance issues. The Company states that in May 2012, Bald Eagle Commons notified UWWM that Bald Eagle Commons would take down the retaining wall if UWWM did not agree to take ownership of the wall in an easement from Bald Eagle Commons. UWWM asked for time to review the impact that the removal of the retaining wall would have on its disposal beds and reiterated its offer for temporary safety measures in the interim. Bald Eagle Commons filed a complaint seeking emergency injunctive relief against Petitioner in New Jersey Superior Court, Chancery Division in November 2012. Injunctive relief was denied and BECBA withdrew its complaint on November 27, 2012. Bald Eagle Commons refiled its complaint, in New Jersey Superior Court, Law Division in January 2013.

UWWM and Bald Eagle Commons subsequently engaged in settlement discussions and ultimately agreed to a settlement ("settlement") that among other things: resulted in Bald Eagle Commons voluntarily withdrawing its Law Division litigation in May 2013;<sup>2</sup> a settlement payment by UWWM to Bald Eagle Commons; provided that Bald Eagle Commons would replace/supplement the failing portions of the retaining wall; and that Bald Eagle Commons would acknowledge its ownership and maintenance obligations of the retaining wall on going forward basis. UWWM and Bald Eagle Commons executed a written settlement document in May 2014. The Petitioner states that while it is UWWM's position that the Company did not own the property the failing retaining wall sits on and was not responsible for maintaining that portion of the retaining wall itself; that BECBA has a different opinion as to ownership and maintenance of the retaining wall, and has demonstrated a clear intent to litigate; and that the Company has an obligation to ensure the UWWM sewer system drying beds adjacent to the failing retaining wall are not compromised. Finally, the Petitioner stated that it was it was the Company's estimate that total costs to UWWM may have exceeded \$1,000,000.

The Company estimated that the costs associated with the settlement amounted to \$293,633, which included the costs of the settlement, legal fees and engineering fees that would otherwise not have been incurred. The Petitioner maintains that these costs represent actual prudently incurred costs that were associated with resolving the costly ongoing property dispute and achieving the settlement.

This matter was retained by the Board.

### **STIPULATION**

The Parties to this Stipulation, UWWM, the Division of Rate Counsel ("Rate Counsel"), and the Staff of Board of Public Utilities ("Staff") engaged in settlement discussions which resulted in the following Stipulation<sup>3</sup>:

1. UWWM may defer on its books and records \$293,980 for accounting purposes only, reflecting actual expenses incurred through October 31, 2014 (see Stipulation Exhibit A).

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<sup>2</sup> An Order of Dismissal was entered on May 22, 2013.

<sup>3</sup> Although described in this Order at some length, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

2. UWWM may defer any additional expenses for accounting purposes only associated with the settlement that incurred after October 31, 2014 and that are not reflected in base rates. These additional expenses are subject to a maximum cap of \$20,000.
3. No ongoing, routine expenses are included in the requested deferral accounts established for costs associated with the settlement.
4. The ratemaking treatment of the costs associated with the settlement will be determined in UWWM's next base rate case, at which time Rate Counsel and Staff will examine the reasonableness and prudence of such costs.
5. The amortization period for the costs listed on Stipulation Exhibit A will be addressed in UWWM's next base rate case.

### **DISCUSSION AND FINDINGS**

The Board, having reviewed the petition and Stipulation settling the petition, **FINDS** that the Parties have voluntarily agreed to the Stipulation and that the Stipulation fully disposes of all issues in this proceeding and is consistent with the law. The Board **FINDS** that the Stipulation to be reasonable, in the public interest, and in accordance with the law. The Board **HEREBY ADOPTS** the Stipulation as its own, as if fully set forth here. The Board **HEREBY ORDERS** that Petitioner shall be allowed to defer on its books and records, for accounting treatment only, the above described costs associated with the litigation with Bald Eagle Commons.

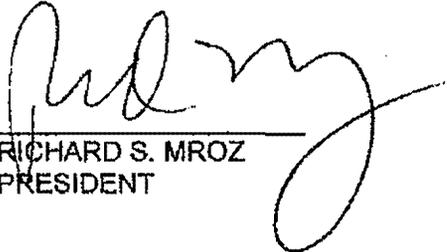
This Order is subject to the following additional conditions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets not owned or hereafter to be owned by Petitioner.
2. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matters affecting United Water West Milford, Inc.
3. Approval of this deferred accounting treatment request constitutes approval for accounting purposes only and does not constitute approval for ratemaking purposes; any determination of the appropriateness or reasonableness of the costs and expenses shall be made in an appropriate subsequent proceeding.

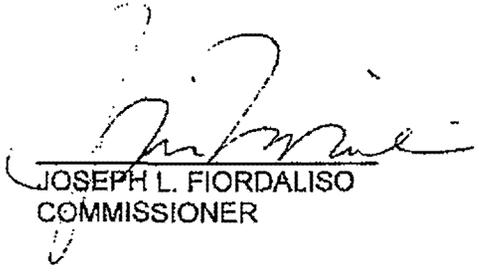
This Order is effective on December 26, 2014.

DATED: 12/17/14

BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



JOSEPH L. FIORDALISO  
COMMISSIONER



MARYANNA HOLDEN  
COMMISSIONER



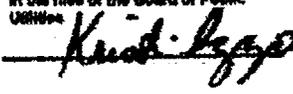
DIANNE SOLOMON  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the 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  
DOCKET NO. WF14070804

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Via FedEx

November 24, 2014

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

RE: In The Matter of the Petition of United Water West Milford, Inc.  
For Approval of Deferral Accounting Authority for the Financial Impact  
of the Settlement of Litigation with Bald Eagle Commons Building Association  
BPU Docket No. WF14070804

Dear Secretary Izzo,

Enclosed for filing please find an original and ten(10) copies, plus one additional copy, of a Stipulation of Settlement executed by Petitioners, United Water West Milford, Inc., The Division of Rate Counsel and the Staff of the Board of Public Utilities, in the above referenced matter. Please stamp the additional copy "filed" and return in the self-addressed, stamped envelop provided.

Thanks you for your attention to this matter.

Very truly yours,

  
Gary S. Prettyman  
Senior Director - Regulatory Business

Enclosure  
Cc: Service List via e-mail

**SERVICE LIST**  
I/M/O United Water West Milford Inc.  
Deferral Petition  
BPU Docket No. WF14070804

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

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<b>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:</b>	<b>: : : : : :</b>	<b>STIPULATION OF SETTLEMENT BPU DOCKET NO. WF14070804</b>
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**APPEARANCES:**

Kelly Ruggiero, Esq., on behalf of United Water West Milford Inc., Petitioner

Alex Moreau, Deputy Attorney General and Christopher Psihoules, Deputy Attorney General  
(John J. Hoffman, Acting Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Debra F. Robinson, Esq., Deputy Rate Counsel, Christine M. Juarez, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel (Stefanie A. Brand, Director)

**THE HONORABLE BOARD OF PUBLIC UTILITIES:**

The Parties in this proceeding are United Water West Milford Inc. (the "Company" or "Petitioner"), the Division of Rate Counsel ("Rate Counsel"), and the Staff of the Board of Public Utilities ("Board Staff").

On July 29, 2014, Petitioner, a public utility corporation of the State of New Jersey, filed a petition with the Board of Public Utilities (the "Board") seeking permission 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 that are not otherwise recovered through its currently approved base rates. The Company proposed that the appropriate amortization period for such deferred costs will be addressed in the Company's next base rate case.

As set forth in the petition, in November 2012, BECBA commenced a lawsuit against UWWM as a result of a dispute between the parties regarding ownership and maintenance responsibilities with respect to a failing retaining wall in BECBA's residential development. While it was UWWM's position that UWWM did not own the property the failing wall sits on and was not responsible for maintaining that portion of the wall itself, BECBA had a different opinion as to ownership and maintenance of the wall, and demonstrated a clear intent to litigate. Moreover, UWWM had an obligation to ensure the UWWM sewer system drying beds adjacent to the failing wall were not compromised. It was UWWM's estimate that absent settlement of the matter, the total costs that could have been incurred by UWWM may have exceeded \$1,000,000. UWWM and BECBA reached a mutually agreeable settlement of the litigation in the Spring of 2014. As noted above, UWWM filed the within petition seeking permission to defer on its books the actually incurred costs of settlement of the litigation with the Board on July 29, 2014.

Subsequent settlement discussions among the Parties hereto were held, and the agreements reached during those discussions have resulted in the following stipulations by the Parties:

1. The Parties agree that UWWM may defer on its books \$293,980 for accounting purposes only, reflecting actual expenses incurred through October 31, 2014 (see attached Exhibit A).

2. The Parties agree that UWWM may defer any additional expenses for accounting purposes only associated with the Litigation Settlement that are incurred after October 31, 2014 and that are not reflected in base rates. These additional expenses are subject to a maximum cap of \$20,000.

3. No ongoing, routine expenses are included in the requested deferral accounts established for costs associated with the Litigation Settlement.

4. The ratemaking treatment of the costs associated with the Litigation Settlement will be determined in UWWM's next base rate case, at which time Rate Counsel and Board Staff will examine the reasonableness and prudence of such costs.

5. The amortization period for the costs listed on Exhibit A attached to this Stipulation will be addressed in the Company's next base rate case.

6. This Stipulation is the product of negotiations by the Parties, and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its entirety without modification or condition. It is also the intent of the Parties to this Stipulation that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein. The Parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from the order adopting same as to those issues upon which the Parties have stipulated herein. The Parties agree that the within Stipulation reflects mutual balancing of various issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Parties hereto expressly and jointly state that they would not have signed this Stipulation had any terms been modified in any way. In the event any particular aspect of this Stipulation is not accepted and approved by the Board, then any Party hereto materially affected thereby shall not be bound to proceed under this Stipulation. The Parties further agree that the purpose of this Stipulation is to reach fair and reasonable rates, with any compromises being made in the spirit of reaching an agreement. None of the Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Board in any other proceeding, as such agreements pertain only to this matter and to no other matter.

7. This Stipulation may be executed in as many counterparts as there are

Parties of this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

8. WHEREFORE, the Parties hereto do respectfully submit this Stipulation and request that the Board issue a decision and order approving this Stipulation in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

UNITED WATER WEST MILFORD INC.

Nov. 21, 2014  
Date

By: Kelly K. Ruggiero  
Kelly Ruggiero, Esq.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Staff of the Board of Public Utilities

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Alex Moreau, Esq.  
Deputy Attorney General

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Christine M. Juarez, Esq.  
Assistant Deputy Rate Counsel

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UNITED WATER WEST MILFORD INC.

Nov. 21, 2014  
Date

By: Kelly K. Ruggiero  
Kelly Ruggiero, Esq.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Staff of the Board of Public Utilities

November 24, 2014  
Date

By: [Signature]  
Alex Moreali, Esq.  
Deputy Attorney General

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Christine M. Juarez, Esq.  
Assistant Deputy Rate Counsel

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UNITED WATER WEST MILFORD INC.

Nov. 21, 2014  
Date

By: Kelly K. Ruggiero  
Kelly Ruggiero, Esq.

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Staff of the Board of Public Utilities

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Alex Moreau, Esq.  
Deputy Attorney General

STEFANIE A. BRAND  
DIRECTOR, DIVISION OF RATE COUNSEL

11/21/14  
Date

By: Christine M. Juarez  
Christine M. Juarez, Esq.  
Assistant Deputy Rate Counsel

**EXHIBIT A**

**Updated Actual Through October 31, 2014**

**UW West Milford Sewer  
Stone Wall (Deferred Costs)**

<b><u>AP Vendors</u></b>	<b><u>Cost Type</u></b>	<b><u>Actual Through October 31, 2014 Amount</u></b>
ARCHER & GREINER PC	Legal	\$39,503
ARCHER & GREINER PC	Settlement Cost	200,000
BALD EAGLE COMMONS BUILDING ASSOC.	Temporary Barrier	9,150
BALD EAGLE COMMONS BUILDING ASSOC.	Move Power Conduit (1)	
BUCK SEIFERT & JOST	Engineering	23,010
CREW ENGINEERS INC	Engineering	15,510
GARDELL LAND SURVEYING LLC	Survey	6,807
		<b><u>\$293,980</u></b>



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF THE BOARD'S REVIEW OF THE PRUDENCY OF THE COSTS INCURRED BY NEW JERSEY UTILITY COMPANIES IN RESPONSE TO MAJOR STORM EVENTS IN 2011 AND 2012	)	DECISION AND ORDER
	)	APPROVING STIPULATION
	)	
	)	DOCKET NO. AX13030196
	)	
IN THE MATTER OF THE BOARD'S ESTABLISHMENT OF A GENERIC PROCEEDING TO REVIEW THE PRUDENCY OF THE COSTS INCURRED BY NEW JERSEY NATURAL GAS COMPANY IN RESPONSE TO MAJOR STORM EVENTS IN 2011 AND 2012	)	
	)	
	)	DOCKET NO. GO13070610
	)	
	)	

**Parties of Record:**

**Andrew K. Dembia, Esq.,** for New Jersey Natural Gas Company  
**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On March 20, 2013, the New Jersey Board of Public Utilities ("Board") issued an Order establishing a generic proceeding to review the prudence of costs incurred by New Jersey utilities in response to multiple Major Storm Events<sup>1</sup> in 2011 and 2012<sup>2</sup> ("March 20 Order"). Among other things, the March 20 Order required any utility seeking reimbursement for these costs from its ratepayers to file a detailed expense report by July 1, 2013, for evaluation and prudence review under its own separate sub-docket within the generic proceeding. March 20 Order at 3.

In response to the March 20 Order, on July 1, 2014, New Jersey Natural Gas Company ("NJNG" or "Company") filed a petition with the Board requesting recovery of preparation, response and restoration costs associated with Superstorm Sandy. According to the petition, the

<sup>1</sup> Major Storm Event is defined as sustained impact on or interruption of utility service resulting from conditions beyond the control of the utility that affect at least 10 percent of the customers in an operating area. March 20 Order at 2.

<sup>2</sup> In re: the Board's Establishing a Generic Proceeding to Review the Prudence of Costs Incurred by NJ Utility Companies in Response to Major Storm Events in 2011 and 2012, Docket No. AX13030196, March 20, 2013.

estimated Major Storm Event costs as of the date of the filing through March 31, 2013 totaled approximately \$38.8 million. The Company filed an update with the Board on August 26, 2014 in which it represented that, as of June 30, 2014, NJNG has deferred approximately \$15.2 million of incremental operations and maintenance ("O&M") costs, and incurred approximately \$33.5 million of capital investments. These costs are associated with Superstorm Sandy; NJNG is not seeking review of costs related to any other Major Storm Event.

NJNG requested that it be permitted to fully recover its deferred O&M and capital investments in its next base rate proceeding, in accordance with the Board's May 29, 2013 Order<sup>3</sup> ("May 29 Order"), which authorized NJNG to defer on its books, for accounting purposes only and without interest, actually incurred prudent otherwise unreimbursed, incremental Major Storm Event costs not otherwise recoverable through base rates or insurance. In the May 29 Order, the Board has further directed that the prudence and recovery of any deferred uninsured Superstorm Sandy related expenses will be reviewed in a future proceeding which approved the Company's request for deferred accounting treatment of actually incurred uninsured incremental storm costs associated with Superstorm Sandy that were not otherwise recovered through the Company's approved base rates.

By Order dated November 22, 2013, this matter was retained for hearing at the Board, and Commissioner Dianne Solomon, was designated as the presiding Commissioner with authority to rule on all matters that arise during the proceeding. On January 2, 2014, Commissioner (then President) Solomon issued an initial Order Setting Bar Date for the filing of motions to intervene, Manner of Service and Preliminary Schedule. Commissioner Solomon issued a Prehearing Order along with a procedural schedule for this matter on February 7, 2014. Throughout the course of this matter, the Company, the Division of Rate Counsel ("Rate Counsel") and Board staff (collectively, "the Parties") have engaged in discovery.

After notice in newspapers of general circulation within NJNG's service territory, and the serving of notice upon affected municipalities and counties within the Company's service area, public hearings were conducted in this matter in Rockaway, New Jersey and Freehold, New Jersey on February 18 and 19, 2014, respectively. No members of the public appeared at the hearings, and no written comments were received by the Board, Rate Counsel or NJNG.

**STIPULATION:**

Following the review of discovery and testimony, the Parties met to discuss the issues in this matter. As a result, on October 14 2014, the Parties executed a stipulation of settlement ("Stipulation"). The Stipulation provides the following<sup>4</sup>:

- (1) The Parties agree that NJNG's Superstorm Sandy deferred O&M costs through June 30, 2014 of \$15,201,449 were reasonably and prudently incurred by the Company and no further O&M costs related to Superstorm Sandy will be deferred. The parties agree that this amount represents the total recoverable O&M costs incurred by the Company as a result of Superstorm Sandy and the other Major Storm Events identified in the March 20 Order. The Parties further agree that the \$33,588,047 in capital investments through June 30, 2014 related to Superstorm Sandy were reasonably and prudently incurred. The agreed Superstorm Sandy costs, as

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<sup>3</sup>In the Matter of New Jersey Natural Gas Company's Request for Deferral Accounting Authority for Storm Damage Restoration Costs related To Hurricane Sandy, May 29, 2013, Docket No. GR12111036, May 29, 2013 ("May 29 Order").

<sup>4</sup> Although described at some length in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions of this Order.

provided for in this paragraph reflect the adjustments set forth below, in paragraphs 2 through 6.

- (2) For the purpose of settlement, the Parties agree that the Superstorm Sandy deferred O&M account shall be reduced by \$5,135.50, representing fifty percent (50%) of the \$10,271.00 expended for the purchase of Global Positioning System units. This \$5,135.50 reduction shall be treated as ordinary O&M expense.
- (3) For the purpose of settlement, the Company agrees to remove \$295.14 expended for condolence gifts, specifically related to three NJNG employees directly involved with storm restoration work who had deaths in their families, from its Superstorm Sandy deferred O&M account and agrees not to seek recovery of these costs from ratepayers in future proceedings. NJNG represents, that, with this adjustment, the Company's Superstorm Sandy costs do not include any costs for gifts.
- (4) NJNG represents that the expenditures for meals included in its Superstorm Sandy costs only include the costs of meals for non-executive Company employees and mutual aid providers who were directly involved in storm restoration and emergency management.
- (5) NJNG represents that the initial accrued Mutual Aid charges of \$140,000 and \$93,000 reflected in the Petition have been reversed and that only actual Mutual Aid charges have been included in the Company's Superstorm Sandy costs.
- (6) The Superstorm Sandy costs reflected in the petition included a \$200,000 reserve for legal fees to recognize a \$200,000 insurance deductible regarding potential legal claims against NJNG from Superstorm Sandy damages. NJNG represents that this reserve was fully reversed in September 2013 and is not reflected in the costs.
- (7) The Parties agree that the \$15,201,449 of prudently deferred O&M costs related to Superstorm Sandy that are referenced in Paragraph 12 of the Stipulation will continue to be deferred without carrying costs and shall be eligible for recovery in the Company's next base rate case which has been ordered to be filed, pursuant to a separate proceeding, no later than November 15, 2015.<sup>5</sup>
- (8) The Parties agree that the appropriate amortization period for NJNG's deferred O&M costs related to Superstorm Sandy will be addressed by the Parties in the Company's next base rate case.
- (9) The Parties agree that the NJNG capital investments associated with Superstorm Sandy will be included in the Company's rate base in its next base rate case, at net book value and recovered in the same manner as other prudent capital investments.
- (10) There is no rate impact on customers at this time as a result of the deferred O&M and capital investments incurred by the Company for restoration of the NJNG gas distribution system. The Parties agree that NJNG will recover the costs associated with Superstorm Sandy in the Company's next base rate case, subject to the amortization period for the O&M costs determined in that case.

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<sup>5</sup> In The Matter of The Petition of New Jersey Natural Gas Company For Approval of The Safety Acceleration and Facility Enhancement Program Pursuant To N.J.S.A. 48:2-23, and For Approval of the Associated Recovery Mechanism Pursuant to N.J.S.A 48:2-21 and 2-21.1, BPU Docket No. GO12030255

(11) With respect to the eligibility of storm-related costs for recovery from insurance, NJNG maintains insurance coverage for certain utility property and for general liability purposes associated with its business operations. NJNG's property insurance covers above-ground property such as office buildings, regulator stations and equipment, liquid natural gas plant facilities and buildings, warehouses and radio equipment and towers. The insurance proceeds received to date related to Superstorm Sandy total \$409,148.00 and has served to offset the capital expenditures associated with those assets repaired or replaced. Any additional insurance proceeds will serve to offset the storm-related capital expenditures identified in this case and reduce the amount of such capital expenditures to be recovered in the next base rate case.

(12) NJNG has not received, and has no pending application for, any cost recovery from any governmental program or third party for costs associated with Superstorm Sandy.<sup>6</sup> NJNG is actively monitoring progress on possible federal funding for programs which may provide for cost recovery. In the event NJNG receives any such federal funding, the Company agrees to appropriately credit any amount received to offset the deferred O&M and/or capital investments associated with Superstorm Sandy.

#### **DISCUSSION AND FINDINGS:**

The March 20 Order required certain information to be filed by the utilities which would be reviewed by Board Staff and other interested parties to determine if the preparation, recovery and restoration costs associated with the Major Storm Events were prudent. According to the Stipulation, the Major Storm Events costs have been reviewed by the Parties, and it has been determined that the majority of the costs incurred by NJNG as a result of Superstorm Sandy are reasonable and prudent. Based on the Board's review of the petition and Stipulation, the Board **HEREBY FINDS** that the requirements of the March 20 Order have been satisfied.

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<sup>6</sup> Investor owned utilities are not eligible for cost recovery from the Federal Emergency Management Administration for restoration costs. See 42 U.S.C.A. §5172(a)(1)(B) and 44 C.F.R. §206.221(e). The New Jersey Department of Community Affairs submitted its Community Development Block Grant Disaster Recovery Action Plan to the United States Department of Housing and Urban Development on March 27, 2013, describing potential projects to make the utility infrastructure less susceptible to storm damage as unmet needs of the State. (See Action Plan at p. 2-18). However, to date, costs associated with those projects or with restoration have not been included in New Jersey's pending Action Plan seeking a Community Development Block Grant.

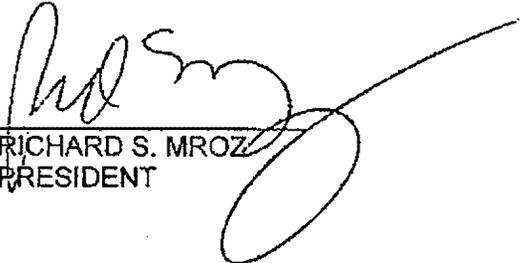
Based on the Board's careful review and consideration of the record in this proceeding, the Board **HEREBY FINDS** the Stipulation to be reasonable and in accordance with the law, striking an appropriate balance between the needs of customers and of the Company. Therefore, the Board **HEREBY FINDS** that the costs associated with Superstorm Sandy as set in the Stipulation may be recovered from ratepayers in a future base rate proceeding. Accordingly, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein.

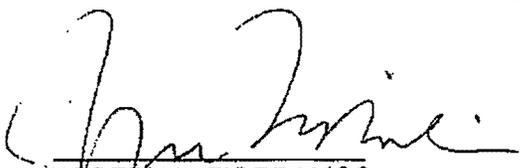
The Board **HEREBY RATIFIES** the decisions of Commissioner Solomon rendered during this proceeding for the reasons stated in her Orders.

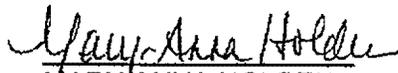
This Order shall become effective on October 31, 2014.

DATED: 10/22/14

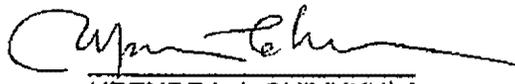
BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARYANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public  
Utilities



IN THE MATTER OF THE BOARD'S REVIEW THE PRUDENCY OF COSTS  
INCURRED BY NEW JERSEY UTILITY COMPANIES IN RESPONSE  
TO MAJOR STORM EVENTS IN 2011 AND 2012  
DOCKET NO. AX13030196

IN THE MATTER OF THE BOARD'S ESTABLISHMENT OF A GENERIC PROCEEDING TO  
REVIEW THE PRUDENCY OF COSTS INCURRED BY NEW JERSEY NATURAL GAS  
COMPANY IN RESPONSE TO MAJOR STORM EVENTS IN 2011 AND 2012  
DOCKET NO. GO13070610

SERVICE LIST

<p><b>NJNG:</b></p> <p>Andrew K. Dembia, Esq. Regulatory Affairs Counsel New Jersey Natural Gas Company 1415 Wyckoff Road Post Office Box 1464 Wall, NJ 07719-1464 <a href="mailto:ADembia@NJNG.com">ADembia@NJNG.com</a></p> <p>Mark R. Sperduto New Jersey Natural Gas Company 1415 Wyckoff Road Post Office Box 1464 Wall, NJ 07719-1464 <a href="mailto:MSperduto@NJNG.com">MSperduto@NJNG.com</a></p> <p>Michael Moscufo New Jersey Natural Gas Company 1415 Wyckoff Road Post Office Box 1464 Wall, NJ 07719-1464 <a href="mailto:MMoscufo@NJResources.com">MMoscufo@NJResources.com</a></p> <p>Frances Karras New Jersey Natural Gas Company 1415 Wyckoff Road Post Office Box 1464 Wall, NJ 07719-1464 <a href="mailto:FKarras@NJNG.com">FKarras@NJNG.com</a></p> <p>Tina Trebino New Jersey Natural Gas Company 1415 Wyckoff Road Post Office Box 1464 Wall, NJ 07719-1464 <a href="mailto:TTrebino@NJNG.com">TTrebino@NJNG.com</a></p> <p><b>Board of Public Utilities:</b></p>	<p><b>Rate Counsel:</b></p> <p>Division of Rate Counsel 140 East Front Street, 4<sup>th</sup> Floor Post Office Box 003 Trenton, NJ 08625-0003</p> <p>Stefanie A. Brand, Esq., Director <a href="mailto:sbrand@rpa.state.nj.us">sbrand@rpa.state.nj.us</a></p> <p>Sarah Steindel <a href="mailto:ssteinde@rpa.state.nj.us">ssteinde@rpa.state.nj.us</a></p> <p>Brian Lipman, Esq., Litigation Manager <a href="mailto:blipman@rpa.state.nj.us">blipman@rpa.state.nj.us</a></p> <p>Felicia Thomas-Friel, Esq. <a href="mailto:ftomas@rpa.state.nj.us">ftomas@rpa.state.nj.us</a></p> <p>Christine Juarez, Esq. <a href="mailto:cjuarez@rpa.state.nj.us">cjuarez@rpa.state.nj.us</a></p> <p>Shelley Massey <a href="mailto:smassey@rpa.state.nj.us">smassey@rpa.state.nj.us</a></p> <p>David Dismukes, Ph.D. Kimberly Dismukes Alex Aguila Acadian Consulting Group 5800 One Perkins Place Drive Building 5, Suite F Baton Rouge, LA 70808 <a href="mailto:daviddismukes@acadianconsulting.com">daviddismukes@acadianconsulting.com</a> <a href="mailto:kimdismukes@acadianconsulting.com">kimdismukes@acadianconsulting.com</a> <a href="mailto:alexaguila@acadianconsulting.com">alexaguila@acadianconsulting.com</a></p>
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**STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE BOARD'S	)	
ESTABLISHING A GENERIC PROCEEDING	)	
TO REVIEW THE PRUDENCY OF COSTS	)	BPU GENERIC DOCKET NO.
INCURRED BY NJ UTILITY COMPANIES	)	AX13030196
IN RESPONSE TO MAJOR STORM EVENTS	)	
IN 2011 AND 2012	)	
	)	
IN THE MATTER OF THE BOARD'S	)	
ESTABLISHING A GENERIC PROCEEDING	)	
TO REVIEW THE PRUDENCY OF COSTS	)	BPU DOCKET NO.
INCURRED BY NEW JERSEY NATURAL	)	GO13070610
GAS COMPANY IN RESPONSE TO MAJOR	)	
STORM EVENTS IN 2011 AND 2012	)	STIPULATION OF
	)	SETTLEMENT

**To: THE HONORABLE COMMISSIONERS OF  
THE NEW JERSEY BOARD OF PUBLIC UTILITIES:**

**APPEARANCES:**

Andrew Dembia, Esq., New Jersey Natural Gas Company for the Petitioner, New Jersey Natural Gas Company

Felicia Thomas-Friel, Deputy Rate Counsel, Sarah H. Steindel, Esq. and Christina Juarez, Esq., Assistant Deputy Rate Counsels, New Jersey Division of Rate Counsel (Stefanie Brand, Esq., Director)

Alex Moreau, Deputy Attorney General, for the Staff of the New Jersey Board of Public Utilities (John J. Hoffman, Acting Attorney General of New Jersey)

**BACKGROUND – DEFERRED ACCOUNTING FILING FOR STORM COSTS  
BPU Docket No. GR12411036**

1. On November 19, 2012, New Jersey Natural Gas Company (NJNG, Company or Petitioner) a public utility of the State of New Jersey, subject to the jurisdiction of the New Jersey Board of Public Utilities (BPU), filed a petition, pursuant to N.J.S.A. 48:2-21, N.J.S.A. 48:2-21.1 and N.J.S.A. 48:2-23, seeking authorization for deferred accounting treatment of actually incurred uninsured incremental storm costs associated with Superstorm Sandy that are not otherwise recovered through the Company's currently approved base rates<sup>1</sup> (referred to as the "Deferred Accounting filing"). Superstorm Sandy made landfall in New Jersey on October 29, 2012, with record winds and storm surges, causing unprecedented and catastrophic damage in many areas within the NJNG service territory. The Company proposed that the appropriate amortization period for such deferred costs be addressed in its next base rate case to be filed no later than November 15, 2015.

2. In its Deferred Accounting filing, NJNG asserted that the storm related incremental expenses that the Company seeks to defer are actual, were prudently incurred and were associated with the impact of Superstorm Sandy on NJNG's natural gas distribution system. The costs that the Company requested to defer include incremental overtime, contractor costs, mutual assistance from other utilities, and other directly related restoration costs associated with damage from Superstorm Sandy in the NJNG service territory. The Company further stated that ongoing, routine, non-emergency costs have not been included in the requested deferred accounts established for costs associated with Superstorm Sandy storm damages.

3. By Order dated May 29, 2013, the Board authorized NJNG to defer on its books, for accounting purposes only and without interest, actually incurred prudent otherwise

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<sup>1</sup> NJNG's current base rates became effective on October 3, 2008. See, In the Matter of the Petition of New Jersey Natural Gas Company For Approval of an Increase in Gas Rates, Docket No. GR07110889, October 3, 2008).

unreimbursed, incremental storm costs not otherwise recoverable through base rates or insurance.<sup>2</sup> The Board further ordered that the prudence and recovery of any deferred uninsured Superstorm Sandy related expenses will be reviewed in a future proceeding.

**BACKGROUND - GENERIC STORM COST RECOVERY FILING**  
**BPU Docket Nos. AX13030196 and GR13070610**

4. By Order dated March 20, 2013, the Board initiated a generic proceeding to evaluate the prudence of extraordinary, storm-related costs incurred by all the regulated utilities as a result of the natural disasters New Jersey experienced in 2011 and 2012, thereby satisfying the Board's concern that delayed review of extraordinary costs be avoided. The Board would also determine the manner in which such prudent costs shall be recovered from customers. See, In the Matter of the Board's Establishment of a Generic Proceeding to Review the Prudence of Costs Incurred by New Jersey Utility Companies in Response to Major Storm Events in 2011 and 2012. BPU Docket No. AX13030196 (referred to as the "Generic Storm Cost Proceeding"). The Board required all utilities seeking recovery of unreimbursed costs related to Major Storm Events to submit a comprehensive filing detailing those costs no later than July 1, 2013.

5. Pursuant to the Board's Generic Storm Cost Proceeding, on July 1, 2013, the Company filed a petition with the Board requesting recovery of preparation, response and restoration costs associated with Superstorm Sandy, estimated as of the date of the filing, through March 31, 2013, to be \$38.8 million (referred to as the "Storm Cost Recovery filing"). NJNG requested that it be

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<sup>2</sup>In the Matter of New Jersey Natural Gas Company's Request for Deferral Accounting Authority for Storm Damage Restoration Costs related To Hurricane Sandy, Order, May 29, 2013, BPU Docket No. GR12111036. ("NJNG Deferred Accounting Order")

permitted to fully recover its deferred O&M and capital investments in its next base rate proceeding, in accordance with the May 29, 2013 Order approving the Company's Deferred Accounting filing. As of June 30, 2014, NJNG has deferred approximately \$15.2 million of O&M and incurred approximately \$33.5 million of capital investments. The deferred O&M costs and capital investments as reflected in the July 3, 2013 Petition and as updated through June 30, 2014, are detailed in Paragraph 12 below. The foregoing amounts all relate to Superstorm Sandy. NJNG is not seeking review of costs related to any other Major Storm Event, as defined in the Generic Storm Proceeding Order.

**PROCEDURAL HISTORY  
STORM COST RECOVERY FILING**

6. By Order dated November 22, 2013, the Board retained the Company's Storm Cost Recovery filing and appointed President Solomon<sup>3</sup> as Presiding Officer with authority to rule on all motions that arise during the pendency of these proceedings and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues.

7. By Order dated January 2, 2014, President Solomon issued a prehearing order with a proposed procedural schedule that was also posted to the Board's website. Interested parties were required to submit comments on the proposed schedule by January 16, 2014. After reviewing the proposals exchanged regarding the proposed schedule, and after giving due consideration to the positions of the Parties, President Solomon issued a prehearing order dated February 7, 2014 setting forth the procedural schedule. The Parties consented to and requested several adjournments of the filing of Rate Counsel's witnesses' pre-filed direct testimony in order to conduct settlement

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<sup>3</sup> At that time, President Solomon was a Commissioner on the Board and not President.

negotiations. President Solomon approved all of those requests to allow the Parties to continue working towards settlement.

8. After appropriate public notice, public hearings on the Petition were held on February 18, 2014 in Rockaway Borough and on February 19, 2014 in Freehold Township. No members of the public appeared at either public hearing and no written comments regarding the Petition were received by the BPU, NJNG or Rate Counsel.

9. NJNG has received and responded to all discovery requests that have been propounded in this proceeding by BPU Staff and Rate Counsel.

10. Following settlement discussions among the Parties to address resolution of the Petition, the following agreement has been reached.

11. Specifically, in consideration of the terms, covenants, conditions and agreements contained herein, it is hereby **STIPULATED AND AGREED** by representatives of NJNG, BPU Staff, and Rate Counsel (the "Parties") as follows:

#### **STIPULATED ISSUES**

##### **SUPERSTORM SANDY RELATED COSTS**

12. The Parties agree that \$15,201,449 of NJNG's Superstorm Sandy deferred O&M costs through June 30, 2014 were reasonably and prudently incurred by the Company and no further O&M costs related to Superstorm Sandy will be deferred. The Parties agree that this amount represents the total recoverable O&M costs incurred by the Company as a result of Superstorm Sandy and the other Major Storm Events identified in the Board's March 20, 2013 Order in the Generic Storm Costs Proceeding. The Parties further agree that \$33,588,047 in capital investments

through June 30, 2014 related to Superstorm Sandy were reasonably and prudently incurred. The agreed Superstorm Sandy costs as provided for in this paragraph reflect the adjustments set forth below, in paragraphs 13 through 17.

13. For the purpose of settlement, the Parties agree that the Superstorm Sandy deferred O&M account shall be reduced by \$5,135.50, representing 50% of the \$10,271.00 expended for the purchase of Global Positioning System units. This \$5,135.50 reduction shall be treated as ordinary O&M expense.

14. For the purpose of settlement, the Company agrees to remove \$295.14 expended for condolence gifts, specifically related to three NJNG employees directly involved with storm restoration work who had deaths in their families, from its Superstorm Sandy deferred O&M account and agrees not to seek recovery of these costs from ratepayers in future proceedings. NJNG represents, that, with this adjustment, the Company's Superstorm Sandy costs do not include any costs for gifts.

15. NJNG represents that the expenditures for meals included in its Superstorm Sandy costs only include the costs of meals for non-executive Company employees and mutual aid providers who were directly involved in storm restoration and emergency management.

16. NJNG represents that the initial accrued Mutual Aid charges of \$140,000 and \$93,000 reflected in the Petition have been reversed and that only actual Mutual Aid charges have been included in the Company's Superstorm Sandy costs.

17. The Superstorm Sandy costs reflected in the Petition included a \$200,000 reserve for legal fees to recognize a \$200,000 insurance deductible regarding potential legal claims against NJNG from Superstorm Sandy damages. NJNG represents that this reserve was fully reversed in

September 2013 and is not reflected in the costs.

#### RATEMAKING TREATMENT

18. The Parties agree that the \$15,201,449 of prudently deferred O&M costs related to Superstorm Sandy that are referenced in paragraph 12 will continue to be deferred without carrying costs, and will be eligible for recovery in the Company's next base rate case which has been ordered, to be filed, pursuant to a separate proceeding, no later than November 15, 2015.<sup>4</sup>

19. The Parties agree that the appropriate amortization period for NJNG's deferred O&M costs related to Superstorm Sandy will be addressed by the Parties in the Company's next base rate case.

20. The Parties agree that the NJNG capital investments associated with Superstorm Sandy will be included in the Company's rate base in its next base rate case, at net book value and recovered in the same manner as other prudent capital investments.

#### RATES

21. There is no rate impact on customers at this time as a result of the deferred O&M and capital investments incurred by the Company for restoration of the NJNG gas distribution system. The Parties agree that NJNG will recover the costs associated with Superstorm Sandy in the Company's next base rate case, subject to the amortization period for the O&M costs determined in that case..

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<sup>4</sup> In The Matter of The Petition of New Jersey Natural Gas Company For Approval of The Safety Acceleration and Facility Enhancement Program Pursuant To N.J.S.A. 48:2-23, and For Approval of the Associated Recovery Mechanism Pursuant to N.J.S.A 48:2-21 and 2-21.1, BPU Docket No. GO12030255

22. With respect to the eligibility of storm-related costs for recovery from insurance, NJNG maintains insurance coverage for certain utility property and for general liability purposes associated with its business operations. NJNG's property insurance covers above-ground property such as office buildings, regulator stations and equipment, liquid natural gas plant facilities and buildings, warehouses and radio equipment and towers. The insurance proceeds received to date related to Superstorm Sandy total \$409,148.00 and has served to offset the capital expenditures associated with those assets repaired or replaced. Any additional insurance proceeds will serve to offset the storm-related capital expenditures identified in this case and reduce the amount of such capital expenditures to be recovered in the next base rate case.

23. NJNG has not received, and has no pending application for, any cost recovery from any governmental program or third party for costs associated with Superstorm Sandy.<sup>5</sup> NJNG is actively monitoring progress on possible federal funding for programs which may provide for cost recovery. In the event NJNG receives any such federal funding, the Company agrees to appropriately credit any amount received to offset the deferred O&M and/or capital investments associated with Superstorm Sandy.

#### FURTHER PROVISIONS

24. The Signatory Parties further agree that this Stipulation fully disposes of all issues in controversy in this proceeding. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its

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<sup>5</sup> Investor owned utilities are not eligible for cost recovery from the Federal Emergency Management Administration for restoration costs. See 42 U.S.C.A. §5172(a)(1)(B) and 44 C.F.R. §206.221(e). The New Jersey Department of Community Affairs submitted its Community Development Block Grant Disaster Recovery Action Plan to the United States Department of Housing and Urban Development on March 27, 2013, describing potential projects to make the utility infrastructure less susceptible to storm damage as unmet needs of the State. (See Action Plan at p. 2-18). However, to date, costs associated with those projects or with restoration have not been included in New Jersey's pending Action Plan seeking a Community Development Block Grant.

entirety. In the event any provision of this Stipulation is not accepted and approved in its entirety by the Board, any Signatory Party aggrieved thereby will not be bound to proceed with this Stipulation and will have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event the Board, in any applicable order(s), does not adopt this Stipulation in its entirety, then any Signatory Party hereto is free to pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

25. It is the intent of the Signatory Parties that the provisions hereof be approved by the Board as being in the public interest. The Signatory Parties further agree that they consider the Stipulation to be binding on them for all purposes herein.

26. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of these proceedings. Except as expressly provided herein, NJNG, Board Staff, or Rate Counsel will not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein.

WHEREFORE, the Signatory Parties hereto do respectfully submit this Stipulation and request that the Board issue a Decision and Order approving it in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

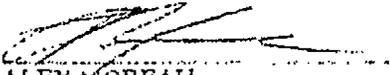
NEW JERSEY NATURAL GAS  
PETITIONER

By:   
ANDREW K. DEMBIA, ESQ.  
New Jersey Natural Gas

STEFANIE A. BRAND, ESQ., DIRECTOR  
NEW JERSEY DIVISION OF RATE COUNSEL

By:   
SARAH H. STEINDEL, ESQ.  
ASSISTANT DEPUTY  
RATE COUNSEL

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY  
Attorney for the Staff of the Board of Public Utilities

By:   
ALEX MOREAU  
DEPUTY ATTORNEY GENERAL

Date: October 10, 2014



Agenda Date: 05/29/13  
Agenda Item: 2A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

ENERGY

IN THE MATTER OF NEW JERSEY NATURAL GAS )  
COMPANY'S REQUEST FOR DEFERRAL )  
ACCOUNTING AUTHORITY FOR STORM DAMAGE )  
RESTORATION COSTS RELATED TO HURRICANE )  
SANDY )  
ORDER APPROVING )  
DEFERRED ACCOUNTING )  
DOCKET NO. GR12111036 )

**Parties of Record:**

**Tracey Thayer, Esq.**, on behalf of Petitioner, New Jersey Natural Gas Company  
**Stefanie A. Brand, Esq.**, Director, Division of Rate Counsel

BY THE BOARD:

**BACKGROUND AND PROCEDURAL HISTORY**

On November 19, 2012, New Jersey Natural Gas Company<sup>1</sup> ("NJNG" or "the Company"), a public utility of the State of New Jersey, subject to the jurisdiction of the New Jersey Board of Public Utilities ("BPU" or "Board"), filed a petition, pursuant to N.J.S.A. 48:2-21, N.J.S.A. 48:2-21.1 and N.J.S.A. 48:2-23, seeking authorization for deferred accounting treatment of actually incurred uninsured incremental storm costs associated with Superstorm Sandy that are not otherwise recovered through the Company's currently approved base rates<sup>2</sup>. The Company proposed that the appropriate amortization period for such deferred costs be addressed in its next base rate case<sup>3</sup>.

<sup>1</sup> New Jersey Natural Gas Company serves approximately 500,000 customers, as of March 31, 2013, within Monmouth and Ocean Counties and in certain portions of Burlington, Middlesex, and Morris Counties.

<sup>2</sup> NJNG's current base rates became effective on October 3, 2008 (In the Matter of the Petition of New Jersey Natural Gas Company For Approval of an Increase in Gas Rates, Docket No. GR07110889, October 3, 2008).

<sup>3</sup> A base rate case shall be filed no later than November 15, 2015 per the October 23, 2012 Board approval of the Stipulation in Docket No. GO12030255 (In the Matter of the Petition of New Jersey Natural Gas Company for Approval of the Safety Acceleration and Facility Enhancement Program Pursuant to N.J.S.A. 48:2-23, and for Approval of the Associated Recovery Mechanism Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 2-21.1).

In its petition, NJNG asserted that the storm related incremental expenses that the Company seeks to defer are actual, were prudently incurred, and were associated with the impact of Superstorm Sandy on NJNG's natural gas distribution system. The costs that the Company seeks to defer include overtime, contractor costs, mutual assistance from other utilities, and other related expenses that the Company claims were directly resulting from damage and restoration costs associated with recovery from Superstorm Sandy in the NJNG service territory. The Company further stated that no ongoing, routine, non-emergency costs will be included in the requested deferred accounts established for costs associated with Superstorm Sandy storm damages.<sup>4</sup>

### DISCUSSION AND FINDING

The Board has initiated a generic proceeding<sup>5</sup> to evaluate the prudence of extraordinary, storm-related costs incurred by all of New Jersey's regulated utilities as a result of the major storm events<sup>6</sup> New Jersey experienced in 2011 and 2012, thereby satisfying the Board's concern that delayed review of extraordinary costs be avoided. In this proceeding, the Board will evaluate and review the prudence of the Major Storm Event costs that the utilities seek to recover from their ratepayers.

After reviewing the petition, the Board **FINDS** that the Company's request to defer these costs on its books and records is reasonable, in the public interest, and in accordance with the law. The Board **HEREBY AUTHORIZES** NJNG to defer on its books, for accounting purposes only and without interest, actually incurred prudent, incremental storm costs not otherwise recoverable through base rates or insurance subject to the conditions described below.

As determined in the March 20 Order, the prudence of the deferred incremental and uninsured Superstorm Sandy related expenses will be reviewed in the generic storm proceeding described above. Therefore, the Board **HEREBY ORDERS** that, as a condition for approval of the right to currently defer unreimbursed storm related costs on its books and records for accounting purposes only and without interest, NJNG shall cooperate with staff as the Board reviews the prudence of storm-related costs in the above referenced generic proceeding, and shall provide requested information including, but not limited to the following by July 1, 2013:

- 1) An estimate of the total of actually incurred unreimbursed, uninsured, incremental storm restoration costs;
- 2) For each cost identified, information as to the eligibility for, and probability of cost recovery from insurance, any governmental program or any other third party;
- 3) The costs and ratemaking treatment for those costs for which the Company continues to request deferred accounting;
- 4) The tax treatment expected for each storm-related cost; and

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<sup>4</sup> While this matter was discussed at the Board's April 29, 2013, agenda meeting, review of the transcript indicated that the Board did not vote on this matter. It was therefore rescheduled for the May 29, 2013 agenda.

<sup>5</sup> In the Matter of the Board's Establishment of a Generic Proceeding to Review the Prudence of Costs Incurred by New Jersey Utility Companies in Response to Major Storm Events in 2011 and 2012; BPU Docket No. AX13030196 (Order dated March 20, 2013).

<sup>6</sup> The major storm events ("Major Storm Events") include the following: Hurricane Irene - made landfall at Little Egg Inlet in New Jersey on August 28, 2011; Snowstorm - Northern New Jersey on October 29, 2011; Derecho Wind Storm - Southern New Jersey on June 30 2012; Superstorm Sandy - made landfall near Atlantic City, New Jersey on October 29, 2012, and Nor'easter - November 7, 2012.

5) How the Company Intends to report storm related costs for GAAP (Generally Accepted Accounting Principles) purposes.

This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matters affecting NJNG.

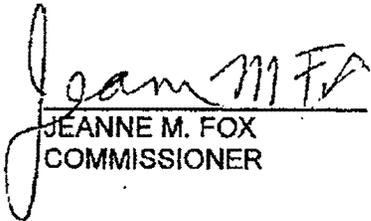
This Order shall be effective on the date this Order is served as required by N.J.S.A. 48:2-40.

DATED: 5/29/13

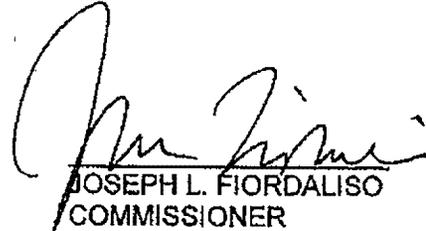
BOARD OF PUBLIC UTILITIES  
BY:



ROBERT M. HANNA  
PRESIDENT



JEANNE M. FOX  
COMMISSIONER



JOSEPH L. FIORDALISO  
COMMISSIONER

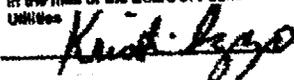


MARY-ANNA HOLDEN  
COMMISSIONER

ATTEST: 

KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF NEW JERSEY NATURAL GAS COMPANY'S REQUEST FOR  
DEFERRAL ACCOUNTING AUTHORITY FOR STORM DAMAGE RESTORATION COSTS  
RELATED TO HURRICANE SANDY - BPU DOCKET NO. GR12111036  
SERVICE LIST

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**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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ENERGY

IN THE MATTER OF PUBLIC SERVICE ELECTRIC	)	DECISION AND ORDER
AND GAS COMPANY'S PETITION TO RECOVER	)	AUTHORIZING RECOVERY
THE DEFERRED COSTS OF THE ENERGY	)	OF PILOT PROGRAM
INFORMATION AND CONTROL NETWORK	)	COSTS
PILOT PROGRAM THROUGH A TEMPORARY	)	
ELECTRIC SOCIETAL BENEFITS CHARGE	)	
COMPONENT, SPECIFICALLY, "THE myPOWER	)	DOCKET NOs. EO04060395,
PILOT PROGRAM CHARGE"	)	EO09060465

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated June 1, 2004, Public Service Electric and Gas Company ("PSE&G" or "Company") filed a letter petition requesting that the New Jersey Board of Public Utilities ("Board") authorize deferred accounting treatment for costs that the Company would incur for undertaking a pilot program entitled the Energy Information and Control Network ("EICN"), that would study the benefits of employing new technology in several areas of its customer operations and delivery service. The stated purpose of the pilot was to create opportunities for changing customers' understanding of energy delivery and consumption, and make available tools to manage energy usage. Originally consisting of five program segments to be offered to residential and small commercial customers, the Company, by letter dated July 15, 2004, withdrew its request for two of the five segments after the Staff of the Board (" Staff") expressed concerns about the impact the proposals could have on customers if they were implemented as proposed. The pilot, as modified, was estimated by the Company to cost approximately \$3.8 million.

The segments, consisting mostly of residential customer participants, were later classified as the following:

myPower Link:

A utility activated load management segment for residential and commercial customers where the Company installed an internet based communicating thermostat, control software, and wireless two-way communications equipment on participating residential and small commercial customers' central air conditioning units and electric heat pumps. The technology enabled the Company to cycle customers' equipments during designated

periods of high electricity demand while allowing pilot participants to maintain full flexibility to override curtailment events.

myPower Sense:

A TOU/Critical Peak Pricing ("CPP") segment without technology where the participants were not given programmable thermostats. They were responsible for managing their usage based upon pricing information during specific periods during the day. The participants were however given interval meters with two way communication. Participants were provided with educational information about methods for saving energy during peak and critical peak hours and were also alerted by PSE&G the day before a CPP event was initiated.

myPower Connection:

A TOU/CPP segment with in-home technology where participants were given programmable thermostats that could automatically adjust to set points for CPP events, obviating the need for any customer action for each event. Participants were provided with interval meters with two way communication and educational information about methods for saving energy during peak and critical peak hours and were also alerted by PSE&G the day before a CPP event was initiated.

myPower Manager:

A Day-Ahead Hourly Pricing ("DAP") segment with technology (ultimately withdrawn)

myPower Control:

A control group was not given any in-home technology or education other than interval meters.

On August 24, 2004, the Board authorized deferred accounting treatment for the actual incremental costs associated with the development and implementation of the TOU pricing, load management and demand response program segments for a total estimated budget of \$3.77 million. The Board did not place a cap on the deferred amount but reserved for future review all deferred pilot program costs, if requested for recovery by the Company, for prudence, reasonableness and appropriate manner of recovery.

Also, on July 12, 2004, PSE&G requested that the Board authorize deferred accounting treatment for costs to be incurred for membership in the Consortium for Electric Infrastructure to Support a Digital Society ("CEIDS"). The Company stated that CEIDS could lend its expert advice during implementation of programs to test and deploy advanced infrastructure technology, and could possibly help fund such efforts. On August 24, 2004, by a separate Order, the Board authorized deferred accounting treatment for the costs of CEIDS membership for two years, at a total estimated budget of \$1 million. PSE&G states that it subsequently joined CEIDS and paid \$500,000 for a one year membership.

In June 2005, PSE&G notified Staff and the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") that the original budget of \$3.8 million had increased to \$6.3 million. The Company stated that the increase was due to several factors unforeseen at the time the original budget was created.

Public notice was provided by publication in newspapers in general circulation in the Company's service territory, and six public hearings on the pilot program were held on the following dates at three locations in PSE&G's service territory: two hearings on September 4, 2008, in Mt. Holly, New Jersey; two hearings on September 9, 2008, in Hackensack, New Jersey; and two hearings on September 10, 2008, in Rahway, New Jersey. There were no appearances or comments at the public hearings.

**SUMMARY OF REQUEST:**

On February 29, 2008, PSE&G filed a petition with the Board requesting rate recovery of the deferred costs incurred to run the myPower pilot program. Specifically, PSE&G is requesting that the Board:

1. Find that the costs associated with all aspects of the myPower pilot program, approximately \$5.2 million, were prudently incurred, reasonable and in the interest of ratepayers;
2. Authorize PSE&G to recover all costs requested through a new, separate and temporary electric Societal Benefits Charge ("SBC") component, specifically, the myPower Pilot Program component;
3. Authorize PSE&G to make changes to its Tariff for Electric Service B.P.U.N.J. No. 14 pursuant to N.J.S.A. 48:2-21, 48:2-21.1 and 48:3-60.
4. Find that the carrying charge for the pilot program be set based upon PSE&G's SBC interest rate currently authorized by the Board.
5. Allow at the end of the twelve-month recovery period, this temporary rate recovery component to automatically terminate without further action by the Board and any over or under collected balance be transferred to the Energy Efficiency and Renewable Energy Component of the electric SBC

In its petition, the Company states that the actual costs incurred for the program were approximately \$5.2 million. During the course of this proceeding, the Company updated its actual costs from \$5.2 million to \$5.7 million as a result of an adjustment for carrying costs. As stated in the petition, the Company's actual costs of \$5.7 million were \$1.6 million below the June 2005 estimate of \$7.3 million including the \$1 million for CEIDS membership.

**STIPULATION:**

On June 31, 2009 PSE&G, Staff, and Rate Counsel executed a Stipulation of Settlement ("Stipulation") recommending that the Board issue a Final Decision and Order approving the Stipulation which provides for the following:

1. The parties agree that PSE&G should be permitted to recover \$4.728 million of costs associated with the Pilot Program. The parties further recommend that the Board grant PSE&G the approval to recover \$4.728 million of deferred Pilot Program costs from its electric customers.

2. Recovery of the \$4.728 million would be achieved by charging the stipulated myPower Program cost amount of \$4.728 million to the System Control Charge (SCC) deferred balance. As of May 31, 2009, the SCC is over collected by approximately \$7.0 million including accumulated interest.

**IMPACT TO RATES:**

As a result of the over collection in the SCC, the effect on rates of the stipulated myPower cost recovery of \$4.728 million will be zero. Thus there will be no rate impact due to this settlement,

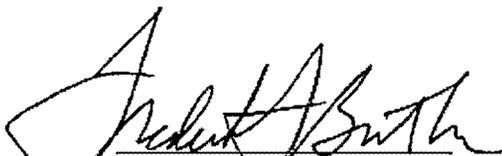
**DISCUSSION AND FINDING:**

The myPower Pilot has provided information that may prove useful to the Board and the other electric utilities as they continue to develop new solutions to the State's energy needs while meeting the mandates of the Energy Master Plan adopted in October 2008.

Therefore, the Board, having reviewed the previous Board Orders that approved PSE&G's myPower Pilot Program and associated request to defer the incremental costs, the petition and the attached Stipulation entered into by all the parties, **HEREBY FINDS** that the Stipulation is reasonable, is in the public interest and is in accordance with law. Accordingly, the Board **HEREBY APPROVES** the attached Stipulation in its entirety and **HEREBY INCORPORATES** its terms and conditions as if fully stated in this Order.

DATED: 7/31/09

BOARD OF PUBLIC UTILITIES  
BY:

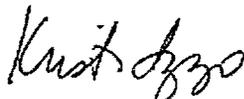
  
FREDERICK F. BUTLER  
COMMISSIONER

  
JEANNE M. FOX  
PRESIDENT

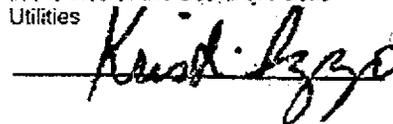
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:   
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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Assistant Corporate Rate Counsel

Public Service Electric and Gas Company  
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June 30, 2009

In the Matter of Public Service Electric and Gas Company's  
Request for Deferral Accounting Authority for the  
Energy Information and Control Network Pilot Program  
BPU Docket No. EO04060395

*VIA ELECTRONIC MAIL & HAND DELIVERY*

Kristi Izzo, Secretary  
Office of the Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

Dear Secretary Izzo:

Enclosed please find an original and ten copies of a Stipulation of Settlement (Stipulation) in the above referenced matter. The Stipulation was executed by Public Service Electric and Gas Company (Public Service), Board of Public Utilities (Board) Staff, and the Department of Public Advocate, Division of Rate Counsel. Public Service respectfully requests that this Stipulation be scheduled for consideration and decision at the Board's Agenda Meeting currently scheduled for July 1, 2009.

Very truly yours,

A handwritten signature in cursive script that reads "Andrew K. Dembia".

C Attached Service List

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION )  
OF PUBLIC SERVICE ELECTRIC AND ) STIPULATION OF  
GAS COMPANY'S REQUEST FOR ) SETTLEMENT  
DEFERRAL ACCOUNTING AUTHORITY )  
FOR THE ENERGY INFORMATION AND ) BPU DOCKET NO. EO04060395  
CONTROL NETWORK PILOT PROGRAM )

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

It is hereby AGREED, as of the 30<sup>th</sup> day of June 2009, by and between Public Service Electric & Gas Company (PSE&G, Public Service), the Staff of the Board of Public Utilities (Board Staff), and the Department of the Public Advocate, Division of Rate Counsel (Rate Counsel) (collectively referred to herein as the Parties) to execute this Stipulation of Settlement (Stipulation) for the Energy Information and Control Network (EICN) Pilot Program and to be bound according to its terms.

The Parties do hereby join in recommending that the Board of Public Utilities (Board) issue a Final Decision and Order approving this Stipulation.

**BACKGROUND**

1. On June 1, 2004, Public Service filed a letter petition requesting that the Board authorize approval of a pilot program and deferred accounting treatment of costs that the Company would incur for undertaking a pilot program that would study the benefits of employing new technology in several areas of its customer operations and delivery service territory. Public Service stated in the letter petition that one of

the purposes of the pilot program was to create opportunities for alternative ways for managing energy usage and changing the way customers think about energy delivery and consumption and to give customers more tools to manage their energy usage. At that time, Public Service's proposed pilot program was called the EICN pilot program. The pilot program was ultimately marketed to potential participants as myPower (hereinafter referred to as the myPower Pilot Program).

2. The EICN Pilot Program, as originally proposed by the Company, was comprised of five separate program segments, two of which were withdrawn pursuant to a July 15, 2004 letter by PSE&G. The three remaining programs for which approval and deferred accounting was sought were the following:
  - a. A Time of Use (TOU) pricing program in which approximately 1800 customers would receive two-way interval meters. One-half of these customers would be subject to TOU pricing and the other half would serve as a control group.
  - b. A Load Management Program in which approximately 100 customers would have utility-controlled load control equipment installed on specific types of customer equipment such as central air conditioning. The Company would use two-way communications to monitor and implement load reductions.
  - c. A Full Technology Demand Response Program in which in-home displays would be installed to provide price signals. Approximately 900 customers would be subject to TOU pricing and would also receive load control devices

that could be programmed by the customer or activated remotely by the Company.

3. By Order dated August 24, 2004, the Board found that each of the segments of the Pilot Program have the potential to improve electric customer service; increase customer satisfaction; reduce overall energy usage; and advance overall service reliability. The August 24, 2004 Order also recognized concerns that had been raised by the Ratepayer Advocate, including the amounts and types of the costs to be deferred, and the need to document the actual incremental costs incurred and evaluate such costs in light of the benefits actually accruing from the Pilot Program. See, I/M/O PSE&G's Request for Deferral Accounting Authority for the Energy Information and Control Network Pilot Program, BPU Dkt No.: EO04060395, August 24, 2004, pp. 4-5. The Board ordered that if PSE&G seeks rate recovery of any of the Pilot Program costs, Public Service shall submit all documentation supporting the accrued incremental costs associated with the segments of the Pilot Program for a review as to whether such costs are appropriate for inclusion in a future base rate or other appropriate proceeding, with potential cost recovery subject to a review of whether the incurred costs were prudent, reasonable and in the interest of ratepayers. See, Id., at p. 6. The Board directed that implementation of the program segments would be subject to prior Board review and approval of rates and tariffs associated with the program. On November 12, 2004, PSE&G filed for

approval of its proposed tariff sheets and associated revenue accounting treatment for the TOU pricing programs. At this point the EICN pilot program became known as the PSE&G myPower pilot programs.

4. The myPower Pilot Program divided the participants into the following groups:
  - a. myPower Link – This group included 100 residential and 100 small commercial customers participating in a utility activated load management segment. These customers received smart thermostats that could be controlled by the Company to implement direct load control.
  - b. myPower Sense – 379 residential customers participated in a TOU/Critical Peak Pricing (CPP) segment. These customers were subject to TOU/CPP pricing. This group of customers received educational materials, but did not receive automated load control devices.
  - c. myPower Connection – 319 residential customers participated in a TOU/CPP segment with in-home technology. These customers were subject to the same TOU/CPP tariffs as the myPower Sense group. This group received both educational materials and load-control devices that could be programmed by the customer.

The myPower Sense and myPower Connection segments are hereinafter collectively referred to as the "Pricing Segments."

- d. myPower Control Group – 450 residential customers with characteristics comparable to the customers participating in the Pricing Segments served as a control group. These customers remained subject to the Company's existing tariffs and received no in-home technology and no education.
  - e. The myPower Pilot Program as developed by the Company also included a "myPower Manager" segment. The proposed 450 participants in this segment were to have been subject to Day-Ahead Hourly Pricing (DAP) and CPP, and were to have received load control equipment that could be programmed to respond to price signals. The myPower Manager segment was subsequently eliminated pursuant to Board Order in this docket dated April 27, 2006 and the enrolled participants were re-assigned to the myPower Connection segment.
5. By letter dated July 12, 2004, Public Service requested that the Board authorize deferred accounting treatment for costs to be incurred for membership in the Consortium for Electric Infrastructure to Support a Digital Society (CEIDS). By Order dated August 18, 2004, the Board authorized deferred accounting treatment for the cost of CEIDS membership for two years, at a total estimated budget of \$1 million. That Board Order provided that the final determination of the appropriateness and prudence of the costs of CEIDS membership would be made at the conclusion of the Pilot Program if Public Service were to seek rate recovery of

such costs. Public Service subsequently joined CEIDS and paid \$500,000 for membership for one year.

6. The Pilot was commenced during the summer of 2005 and concluded at the end of the summer of 2007.
7. The Company filed with the Board a Final Evaluation Report dated December 27, 2006 for the myPower Link Utility Activated Load Management Pilot Program (myPower Link Final Report) as well as the Final Report For The myPower Pricing Segments Evaluation (myPower Final Pricing Segment Report) dated December 21, 2007.
8. On February 29, 2008, Public Service filed a Petition and accompanying exhibits requesting recovery of all costs associated with the Pilot Program.
9. Public Notice was provided and six public hearings on the Pilot Program filing were held on the following dates at three locations in Public Service's service territory: two hearings on September 4, 2008, in Mt. Holly, New Jersey; two hearings on September 9, 2008, in Hackensack, New Jersey; and two hearings on September 10, 2008, in Rahway, New Jersey. No members of the public appeared.
10. On August 11, 2008, an initial settlement conference was held among Public Service, Board Staff and Rate Counsel. Subsequently, several settlement conferences were held among the Company, Board Staff and Rate Counsel. Following said settlement conferences, Board Staff, Rate Counsel and Public

Service agreed to submit this Stipulation, the terms of which are set forth below.

Specifically, the Parties hereby **STIPULATE AND AGREE** to the following:

**STIPULATED MATTERS**

11. The parties agree that PSE&G should be permitted to recover \$4.728 million of costs associated with the Pilot Program. The parties further recommend that the Board grant PSE&G the approval to recover \$4.728 million of deferred Pilot Program costs from its electric customers.
12. Recovery of the \$4.728 million would be achieved by charging the stipulated myPower Program cost amount of \$4.728 million to the System Control Charge (SCC) deferred balance. As of May 31, 2009, the SCC is overcollected by approximately \$7.0 million including accumulated interest.
13. This Stipulation represents a mutual balancing of interests, contains interdependent provisions and, therefore, is intended to be accepted and approved in its entirety. In the event any particular aspect of this Stipulation is not accepted and approved in its entirety by the Board, any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right to litigate all issues addressed herein to a conclusion. More particularly, in the event this Stipulation is not adopted in its entirety by the Board, in any applicable Order(s), then any Party hereto is free to

pursue its then available legal remedies with respect to all issues addressed in this Stipulation as though this Stipulation had not been signed.

14. It is the intent of the Parties that the provisions hereof be approved by the Board as being in the public interest. The Parties further agree that they consider the Stipulation to be binding on them for all purposes herein.
15. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of these proceedings. Except as expressly provided herein, Public Service, Board Staff, and Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposed to underlie any agreement provided herein and, in total or by specific item. The Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

IN WITNESS WHEREOF, Board Staff, Rate Counsel and PSE&G have caused this Stipulation of Settlement to be duly executed on its behalf by its duly authorized counsel or other representative, as of the date set forth above.

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Attorney for the Staff of the New Jersey  
Board of Public Utilities

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Jessica L. Campbell  
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By: Sarah H. Steindel  
Sarah H. Steindel  
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In the matter of Public Service Electric and Gas Company's Request for Deferral Accounting  
Authority for the Energy Information and Control Network Pilot Program  
BPU Docket No. EO04060395

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**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
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IN THE MATTER OF THE PETITION OF AQUA, NEW JERSEY, INC., FOR APPROVAL OF AN INCREASE IN RATES FOR WATER SERVICE AND OTHER TARIFF CHANGES AND;	) ) ) ) )	<u>WATER</u>  ORDER MODIFYING IN PART AND ADOPTING IN PART INITIAL DECISION AND ADOPTING STIPULATION OF SETTLEMENT
IN THE MATTER OF THE PETITION OF AQUA, NEW JERSEY, INC., FOR APPROVAL OF DEFERRED ACCOUNTING TREATMENT FOR CERTAIN COSTS RELATED TO WATER QUALITY TREATMENT FOR RADIO NUCLIDES	) ) ) ) )	BPU DOCKET NO. WR05121022 OAL DOCKET NO. PUC 3338-06  BPU DOCKET NO. WR06120897

(SERVICE LIST ATTACHED)

BY THE BOARD:

On December 8, 2005, Aqua New Jersey, Inc. (f/k/a Consumers New Jersey Water Company) (Aqua or Company), a public utility corporation of the State of New Jersey subject to the jurisdiction of the Board of Public Utilities (Board) filed a petition with the Board pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.11 and 5.12 which requested an increase in rates and charges for water service. The Company proposed an increase in rates for the purpose of producing additional revenues of approximately \$4,162,884 or approximately 18.73% above the annual level of revenues for the pro forma test year ending April 30, 2006.

On December 29, 2006, the Company filed a petition with the Board (WR06120897) requesting permission for deferred accounting treatment for certain costs related to the treatment of affected wells in the Southern and Central Divisions for radium levels in excess of the maximum contaminant level (MCL) allowed by State and Federal environmental regulations.

The Company is engaged in the business of collecting, treating and distributing water for retail service to more than 44,000 customers. The Company is also engaged in the wastewater collection, treatment and transmission business and currently provides service to more than 4,000 customers. The rates for wastewater service are not the subject of this petition. The Company's customers are located in several municipalities in Warren, Hunterdon, Mercer, Burlington, Monmouth, Camden, Ocean, Sussex and Gloucester counties. The Company recently acquired the assets of the Berkeley Water Company (Berkeley) under Docket No. WM04121767 and dated October 18, 2005 (subsequently modified on November 14, 2005).

For the Company's residential customer service, the proposed increase would result in an increase in rates from the current annual charge of \$342.60 to \$418.96, a difference of \$76.36 per year (from \$85.65 to \$104.74 per quarter).

#### BACKGROUND/PROCEDURAL HISTORY

The matter was transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. On December 21, 2005, the Board issued an Initial Suspension Order suspending the proposed rates to May 9, 2006. On April 27, 2006, the Board issued a second Suspension Order suspending the proposed rates to September 9, 2006.

The matter was assigned to Administrative Law Judge (ALJ) Barry Frank. On April 7, 2006, Judge Frank held a telephone pre-hearing conference in which counsel for the Company and the statutory parties to the case, the Department of the Public Advocate, Division of Rate Counsel (DPA or Rate Counsel) and Board Staff (Staff) participated. A pre-hearing order was issued on April 11, 2006 setting forth, among other things, the issues to be litigated and the schedule going forward.

Two public hearings were conducted on May 25, 2006 in Bayville, New Jersey and Hamilton, New Jersey. One member of the public appeared at the Hamilton public hearing and the comments centered on the magnitude of the rate increase requested by the Company. Discovery proceeded in the normal course. Evidentiary hearings were held on July 12 and July 13, 2006 before Judge Frank in Newark, New Jersey.

The DPA recommended an overall increase in rates in the amount of \$476,501 or 2.17%. Through briefs, Board Staff recommended an overall increase in rates in the amount of \$1,152,924 or 5.25%. Initial Briefs were filed by all the parties on August 14, 2006. Reply Briefs were filed by all the parties on August 30, 2006. By letter dated September 7, 2006, the Company filed a Supplemental Brief to this proceeding. Board Staff filed a Supplemental Brief to this proceeding on September 19, 2005.

On November 29, 2006, ALJ Frank issued his Initial Decision in the matter. Based upon ALJ's Frank's recommendations, the overall increase in revenues would amount to \$2,806,501 or 12.60% above current rate revenues.

On December 21, 2006, the Board issued an Order of Extension extending the effective date for the ALJ's Initial Decision to February 26, 2007.

Exceptions to the Initial Decision were filed on December 12, 2006, by the Company, the DPA and Board Staff. Replies to the Exceptions were filed on December 19, 2006, by the Company, the DPA and Board Staff.

Subsequent to the filing of the Initial Decision the Parties, the DPA, Company and Board Staff (Signatory Parties) engaged in settlement negotiations. The Parties reached a Settlement on all issues and entered into a Stipulation of Settlement (Stipulation or Settlement) that result in an overall increase of \$2,500,000 representing an 11.22% above current revenues of \$22,276,658.

## STIPULATION

As more fully set forth in the attached Stipulation<sup>1</sup>, the Stipulation provides that:

1. The Company's total rate base as of October 31, 2006, is agreed to be \$78,000,000. (Settlement Paragraph 1).
2. The Signatory Parties agree that for the purposes of this proceeding only to utilize an overall rate of return of 8.14%, which would result in an overall additional revenue requirement of \$2,500,000. For the purposes of this proceeding only, this overall rate of return is calculated using the Company's current capital structure with long term debt calculated at a rate of 6.236% and equity calculated at a rate of 10.0%. (Settlement Paragraph 2).
3. The Signatory Parties stipulate that a revenue increase for the Company of \$2,500,000 or approximately 11.22% over present rate revenues of \$22,295,658 is an appropriate result of this matter. The Company anticipates this increase being effective on January 17, 2007. The Signatory Parties agree that this revenue requirement should represent a level of revenues necessary to ensure that the Company will continue to provide safe, adequate, and proper water service to its customers. (Settlement Paragraph 3).
4. The Signatory Parties agree that the attached tariff pages (included as Exhibit A), implementing the terms of this Stipulation, should be adopted by the Board in their entirety. The Signatory Parties agree that the consumption rates of the general metered service customers in all the Company's divisions will be made uniform in the Company's next base rate proceeding. Attached as Exhibit B is a Proof of Revenues for the Company. (Settlement Paragraph 4).
5. The Signatory Parties acknowledge that in a separately docketed matter (BPU Docket No. WR06120897) the Company has sought deferred accounting treatment for certain costs related to the treatment of affected wells in its Southern and Central Divisions for radium levels in excess of the maximum contaminant level ("MCL") allowed by state and federal environmental regulations. The Signatory Parties agree that the Company should be permitted to use deferred accounting to track its necessary expenditures. The prudence of these expenditures will be examined in the Company's next base rate proceeding. Further, as part of this Stipulation of Settlement, the Signatory Parties respectfully request that the Board approve the Company's request in the deferred accounting proceeding at the same time the Board considers this matter. The cumulative rate recovery of the \$105,000 of annualized 2006 expenses included in the rates resulting from this case shall be used as an offset to the total amount included in the deferral account so that customers only pay once for those expenses. (Settlement Paragraph 5).
6. The Signatory Parties recommend that the Board approve the proposed net acquisition adjustment (based upon the results of the original cost study related to the acquisition of the Berkeley Water Company's assets) in the amount of \$ 25,607 (to be amortized over 15 years). (Settlement Paragraph 6).

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<sup>1</sup> Cited paragraphs referenced are in the settlement documents. This is only a summary, the full settlement document controls, subject to the Board's findings and conclusions contained herein.

7. The Company agrees it will not file a base rate proceeding prior to the start of the fourth quarter of calendar year, 2007. (Settlement Paragraph 7).

#### DISCUSSIONS AND FINDINGS

The Board, having reviewed ALJ Frank's Initial Decision and the Stipulation of Settlement among the Signatory Parties to this proceeding, FINDS that the Signatory Parties have voluntarily agreed to the Stipulation, that the Stipulation fully disposes of all issues in this proceeding, and is consistent with the law. To the extent that the terms of the Initial Decision are inconsistent with the terms and conditions set forth herein, the Board HEREBY MODIFIES AND REJECTS the ALJ's Initial Decision and ADOPTS the Stipulation attached hereto, as its own, incorporating by reference the terms and conditions as if fully set forth at length herein, subject to the following:

- a. The Company's total rate base as of October 31, 2006, is \$78,000,000.
- b. The overall rate of return of 8.14% shall result in an overall additional revenue requirement of \$2,500,000. The overall rate of return shall include a long term debt rate of 6.236% and equity calculated at a rate of 10.0%.
- c. The revenue requirement increase shall be \$2,500,000 or approximately 11.22% over present rate revenues of \$22,295,658 and represents a level of revenues necessary to ensure that the Company will continue to provide safe, adequate, and proper water service to its customers.
- d. The attached tariff pages implementing the terms of this Stipulation, are hereby adopted by the Board in their entirety. The move to uniform rates with respect to the Company's consumption charges of the general metered service customers in all the Company's divisions will be determined in the Company's next base rate proceeding. The revenue requirement shall be allocated pursuant to the attached proof of revenues (Exhibit B).
- e. The Company shall be permitted to use deferred accounting to track its necessary expenditures related to certain costs to the treatment of affected wells in its Southern and Central Divisions for radium levels in excess of the maximum contaminant levels allowed by state and federal environmental regulations. The prudence of these costs shall be examined in the Company's next base rate proceeding. The cumulative rate recovery of the \$105,000 of annualized 2006 costs included in the rates resulting from this rate case filing shall be used to offset the total amount included in the deferred account so that if the deferred costs are found to be prudent and allowed in rates, customers only pay once for those expenses.
- f. The acquisition adjustment charge is a result of the difference between the purchase price of the assets acquired and the original cost of the assets sold which can result in either a positive acquisition adjustment or a negative acquisition adjustment. The net acquisition adjustment related to the acquisition of the Berkeley Water Company's assets shall be in the amount of \$ 25,607 and shall be amortized over a 15 year period.
- g. The Company shall not file a base rate proceeding prior to start of the fourth quarter of calendar year, 2007.

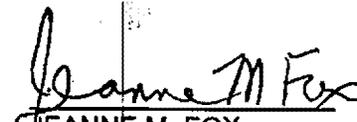
As a result of the Board's decision in this matter, a residential water customer (using 80,000 gallons of water per year) will experience an increase from \$342.60 per year (\$85.65 per quarter) to \$382.40 per year (\$95.60 per quarter), an increase of \$39.80 annually. This represents an annual increase of 11.61%.

Based upon the foregoing, the Board HEREBY APPROVES an overall increase in revenues in the amount of \$2,500,000 representing an 11.22% increase over current revenues.

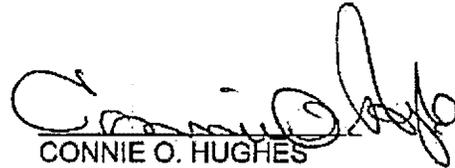
The Board HEREBY ORDERS the Company to submit a complete revised tariff conforming to the terms and conditions of the Stipulation and this Order within (10) days from the date of this Order.

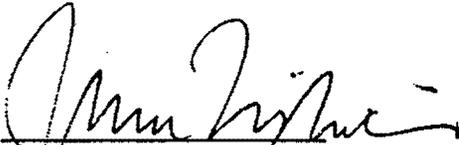
DATED: 1/17/07

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
CONNIE O. HUGHES  
COMMISSIONER

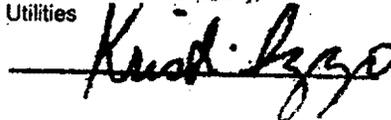
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
CHRISTINE V. BATOR  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



I/M/O THE PETITION OF AQUA NEW JERSEY, INC. FOR APPROVAL OF AN  
INCREASE IN RATES FOR WATER SERVICE AND OTHER TARIFF CHANGES  
BPU DOCKET NO. WR05121022  
OAL DOCKET NO. PUC 3338-06  
AND  
I/M/O THE PETITION OF AQUA, NEW JERSEY, INC., FOR APPROVAL OF  
DEFERRED ACCOUNTING TREATMENT FOR CERTAIN COSTS RELATED  
TO WATER QUALITY TREATMENT FOR RADIO NUCLIDES  
BPU DOCKET NO. WR06120897

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

**IN THE MATTER OF THE PETITION  
OF AQUA NEW JERSEY, INC. FOR  
APPROVAL OF AN INCREASE IN  
RATES FOR WATER SERVICE AND  
OTHER TARIFF CHANGES**

**BPU DOCKET NO. WR05121022  
OAL DKT. NO. PUCRS 3338-06**

**STIPULATION OF SETTLEMENT**

**APPEARANCES:**

Stephen B. Genzer, Esq., and Colleen A. Foley, Esq. Saul Ewing LLP, on behalf of Aqua New Jersey, Inc., Petitioner

Anne Marie Shatto, Esq., Deputy Attorney General, on behalf of the Staff of the Board of Public Utilities

Christine M. Juarez, Esq. Assistant Deputy Public Advocate, and Susan E. McClure, Esq., Assistant Deputy Public Advocate, on behalf of the Department of the Public Advocate, Division of Rate Counsel

Paul Adezio, Esq., on behalf of Participant, Hamilton Township

**TO THE HONORABLE BOARD OF PUBLIC UTILITIES:**

The Parties in this proceeding are as follows: Aqua New Jersey, Inc. (the "Company" or "Petitioner"), the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel"), the Staff of the Board of Public Utilities ("Board" or "Staff"), and Participant, Hamilton Township. As a result of an analysis of Petitioner's pre-filed testimony and exhibits, extensive discovery, evidentiary hearings, an Initial Decision issued November 29, 2006, negotiations, and two public hearings held on May 25, 2006, the Company, Board Staff and Rate

Counsel (collectively, the "Signatory Parties") have come to an agreement on the issues in dispute in this matter. The Signatory Parties hereto agree and stipulate as follows:

The procedural history of this matter is as follows:

On December 8, 2005, Petitioner, a public utility corporation of the State of New Jersey, pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.12 and 14:9-7.1 *et seq.*, filed a petition to increase rates for water service and to make other tariff changes. Specifically, the Company requested a rate increase of \$4,162,884 or approximately 18.73% above the adjusted annual level of revenues for the test year ending April 30, 2006. During the pendency of this proceeding, the Company's request was revised to reflect a rate increase of \$4,061,730 or approximately 18.40% above adjusted test year revenues.

On December 21, 2005, the Board entered an Order suspending until May 9, 2006 the implementation of changes Aqua sought to make to its tariffs. On February 8, 2006, the Board transmitted the matter to the Office of Administrative Law ("OAL"), and Administrative Law Judge ("ALJ") Barry N. Frank was assigned to hear the case. A Pre-Hearing Conference was convened by ALJ Frank on April 7, 2006, and a Pre-Hearing Order was issued on April 11,

On April 27, 2006, the Board issued a second order suspending the implementation of proposed rates until September 9, 2006. On May 25, 2006, ALJ Frank issued an order suspending implementation of the proposed rate increase until further order. ALJ Frank issued his Initial Decision on November 29, 2006. On December 21, 2006, the Board entered an Order which has the effect of extending the time for it to act on the Initial Decision until February 26, 2007.

Extensive discovery was conducted by the Parties with the Company providing responses to hundreds of data requests. After proper notice, two public hearings were held in the

service territory on May 25, 2006: one in the afternoon in Berkeley Township; and one in the evening in Hamilton, New Jersey. A member of the public appeared whose comments were heard by the Signatory Parties and the ALJ. The public comments generally concerned the magnitude of the increase requested by the Company.

Evidentiary hearings were held on July 12 and 13, 2006, at the OAL in Newark, New Jersey. During the course of those hearings, the Company presented the following witnesses: Sharon Schulman, Edward Rapciewicz, William Packer, Jack Schreyer, and Pauline Ahern. By agreement of the Parties, the testimony of the Company's witness Richard Russo was incorporated into the record without cross examination. Rate Counsel presented the testimonies of David Parcell and Robert Henkes. By agreement of the Parties, the testimony of Rate Counsel's witness Brian Kalcic was incorporated into the record without cross examination as well. The Staff of the Board did not present any witnesses.

The Signatory Parties filed Initial Briefs on August 14, 2006 and Reply Briefs on August 30, 2006. ALJ Frank issued his Initial Decision on November 29, 2006. The Signatory Parties filed Exceptions to the Initial Decision on December 12, 2006. Replies to Exceptions were filed by the Company and Rate Counsel on December 19, 2006, with Staff filing its Reply on December 20, 2006.

Settlement discussions were held, and the agreements reached during those discussions have resulted in the following stipulation by the Signatory Parties:

1. For purposes of this proceeding only, the Company's total rate base as of October 31, 2006, is agreed to be \$78,000,000.
2. The Signatory Parties agree that for the purposes of this proceeding only, they agree to utilize an overall rate of return of 8.14%, which would result in an overall additional

revenue requirement of \$2,500,000. For the purposes of this proceeding only, this overall rate of return is calculated using the Company's current capital structure with long term debt calculated at rate of 6.236% and equity calculated at rate of 0.0%.

3. The Signatory Parties stipulate that revenue increase for the Company of \$2,500,000 or approximately .22% over present rate revenues of \$22,295,658, is an appropriate result of this matter. The Company anticipates this increase being effective on January 17, 2007. The Signatory Parties agree that this revenue requirement should represent level of revenues necessary to ensure that the Company will continue to provide safe, adequate, and proper water service to its customers.

4. The Signatory Parties agree that the attached tariff pages included as Exhibit A), implementing the terms of this Stipulation, should be adopted by the Board in their entirety. Attached as Exhibit B is Proof of Revenues for the Company. The Signatory Parties agree that the consumption rates of the general metered service customers in all the Company's divisions will be made uniform in the Company's next base rate proceeding.

5. The Signatory Parties acknowledge that in separately docketed matter (BPU Docket No. WR06 20897) the Company has sought deferred accounting treatment for certain costs related to the treatment of affected wells in its Southern and Central Divisions for radium levels in excess of the maximum contaminant level ("MCL") allowed by state and federal environmental regulations. The Signatory Parties agree that the Company should be permitted to deferred accounting to track its necessary expenditures. The prudence of these expenditures will be examined in the Company's next base rate proceeding. Further, as part of this Stipulation of Settlement, the Signatory Parties respectfully request that the Board approve the Company's request in the deferred accounting proceeding at the same time the Board considers this matter.

Any of the \$105,000 of annualized 2006 expenses included in the rates resulting from this case shall be used as an offset to the total amount included in the deferral account so that customers only pay once for those expenses.

6. The Signatory Parties recommend that the Board approve the proposed net acquisition adjustment (based upon the results of the original cost study related to the acquisition of the Berkeley Water Company's assets) in the amount of \$ 25,607 (to be amortized over 15 years).

7. The Company agrees it will not file a base rate proceeding prior to the start of the fourth quarter of calendar year, 2007.

8. This Stipulation is the product of extensive negotiations by the Signatory Parties, and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its entirety without modification or condition. It is also the intent of the Signatory Parties to this Stipulation that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein. The Signatory Parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from the order adopting same as to those issues upon which the Signatory Parties have stipulated herein. The Signatory Parties agree that the within Stipulation reflects mutual balancing of various issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Signatory Parties hereto expressly and jointly state that they would not have signed this Stipulation had any terms been modified in any way. In the event any particular aspect of this Stipulation is not accepted and approved by the Board, then any Signatory Party hereto materially affected thereby shall not be bound to proceed under this Stipulation. The Signatory Parties further agree that the purpose of

bound to proceed under this Stipulation. The Signatory Parties further agree that the purpose of this Stipulation is to reach fair and reasonable rates, with any compromises being made in the spirit of reaching an agreement. None of the Signatory Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Board in any other proceeding, as such agreements pertain only to this matter and to no other matter.

9. This Stipulation may be executed in as many counterparts as there are Signatory Parties of this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

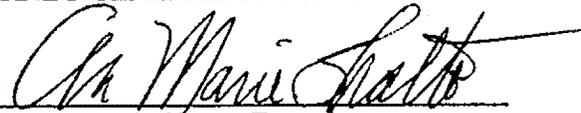
AQUA NEW JERSEY, INC.

1/12/07  
Date

By:   
Saul Ewing LLP  
Stephen B. Genzer, Esq.  
Attorney for Petitioners

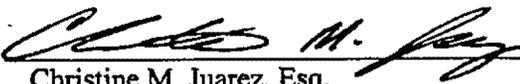
STUART RABNER, ESQ.  
ATTORNEY GENERAL OF NEW JERSEY

1/12/07  
Date

By:   
Anne Marie Shatto, Esq.  
Deputy Attorney General

RONALD K. CHEN  
PUBLIC ADVOCATE OF NEW JERSEY  
DEPARTMENT OF THE PUBLIC ADVOCATE  
SEEMA M. SINGH, ESQ.  
DIRECTOR, RATE COUNSEL

1/12/07  
Date

By:   
Christine M. Juarez, Esq.  
Assistant Deputy Public Advocate



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BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.

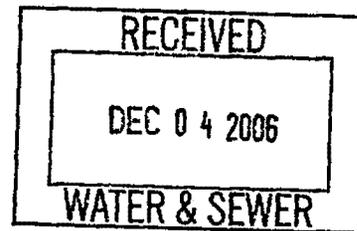
*State of New Jersey*  
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 3338-06

AGENCY DKT. NO. WR05121022

IN THE MATTER OF THE PETITION  
OF AQUA NEW JERSEY, INC., FOR  
APPROVAL OF AN INCREASE IN  
RATES FOR WATER SERVICE AND  
OTHER TARIFF CHANGES



**Stephen B. Genzer, Esq., and Colleen A. Foley, Esq.,** for petitioner  
(Saul Ewing LLP, attorneys)

**Susan E. McClure, Esq. and Christine M. Juarez, Esq.,** for Division of the  
Ratepayer Advocate (Seema H. Singh, Director)

**Anne Marie Shatto, Deputy Attorney General,** for Staff of Board of Public  
Utilities (Stuart Rabner, Attorney General of New Jersey, attorney)

Record Closed: September 28, 2006

Decided: November 28, 2006

BEFORE BARRY N. FRANK, ALJ :

STATEMENT OF THE CASE

Petitioner filed its petition with the Board of Public Utilities (BPU) December 8, 2005, seeking an increase in per annum revenues of approximately \$4,262,884 or approximately 18.73% using a test year ending April 30, 2006. The Petitioner also proposed several other accounting and cost recovery measures for consideration,

primarily regarding assets it has recently acquired, located in the eastern division, but also regarding a senior citizens program, private fire control tariffs, and smart growth compliance.

### PROCEDURAL HISTORY

On December 8, 2005, petitioner Aqua New Jersey, Inc. (hereinafter "Aqua" or "Company") filed a petition to increase rates for water service and to make other tariff changes. Pet. Initial Brief at 3. On December 21, 2005, the Board entered an Order suspending until May 9, 2006 the implementation of changes Aqua sought to make to its tariffs. Id. On April 27, 2006, the Board issued a second order suspending the implementation of proposed rates until September 9, 2006. Id.

On March 14, 2006, the Board transmitted the matter to the Office of Administrative Law ("OAL") for hearing, and the undersigned was assigned to hear the case. Id. A telephone prehearing conference was conducted April 7, 2006, and a Pre-Hearing Order was issued on April 11, 2006, in which the following issues were identified:

"Whether the Petitioner's proposals are reasonable and calculated so as to allow it to continue providing safe, adequate and proper service to its customers." I/M/O the Petition of Aqua New Jersey, Inc. For Approval of an Increase in Rates for Water Service and Other Tariff Changes, Prehearing Order, OAL Docket No. PUC 03338-06.

Two public hearings were conducted on May 25, 2006. The first public hearing was held in the afternoon at the Municipal Building, Berkeley Township, New Jersey, and the second, that evening, at the Hamilton Township Library, Hamilton, New Jersey. Pet. Initial Brief at 4. Only one member of the public at the two meetings spoke in opposition to the proposed rate increase.

Evidentiary hearings were conducted July 12 and 13, 2006 in Newark, New Jersey. Staff Initial Brief at 1. During the course of these hearings, the Company

presented five witnesses: Pauline M. Ahern, CRRA, Vice president, AUS Consultants-Utility Services; Sharon Schulman, President and CEO of the Company; William C. Packer, Jr., Regional Director of Accounting for the Company; Jack Schreyer, Manager of Rates for Aqua America, Inc. and its subsidiaries; and Edward A. Rapsiewicz, Vice President of Operations for the Company. Id. at 1-2. Rate Counsel presented two witnesses: David Parcell, Executive Vice President and Senior Economist of Technical Associates, Inc. and Robert J. Henkes, Principal and Founder of Henkes Consulting. Id. By agreement of the parties, the testimony of Rate Counsel's witness Brian Kalcic was incorporated into the record without cross-examination as well. Pet. Initial Brief at 4. The Staff of the Board did not present any witnesses. Id.

### FINDINGS OF FACT

Aqua New Jersey is a utility that provides water service to more than 44,000 customers in the State of New Jersey. Rate Counsel Initial Brief at 1. Aqua New Jersey is a subsidiary of Aqua America. Id. The Company's water customers are located in various municipalities in Warren, Hunterdon, Mercer, Burlington, Monmouth, Camden, Ocean, Sussex and Gloucester Counties. Id. Aqua also provides wastewater service to approximately 4,000 customers in New Jersey, however, rates for wastewater service are not the subject of this current petition. Id.

### ISSUES

1. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s capital Structure for purposes of this rate base proceeding?
2. Whether short-term debt, should be included in Aqua New Jersey, Inc.'s capital structure.
3. What is the appropriate rate of return on equity?
4. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s utility plant in service?

5. Whether Aqua New Jersey Inc is entitled to recover transaction costs for the acquisition of Berkeley Water Company
6. Whether Aqua New Jersey, Inc. is entitled to an unamortized acquisition adjustment from the acquisition of Berkeley Water Company.
7. Whether Aqua New Jersey Inc. is entitled to recover unamortized deferred rate case expenses.
8. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s reserve for depreciation?
9. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s balance of customer advances?
10. What is the appropriate date to be used for determining Aqua New Jersey Inc.'s balance of accumulated deferred income taxes?
11. What is the appropriate date to be used for determining Aqua New Jersey Inc.'s reserve balances (including pension and FAS 106 reserves, as well as tank maintenance reserves?
12. What is the appropriate date to be used for determining Aqua New Jersey Inc.'s balance of customer deposits?
13. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s balance of metered sales revenues?
14. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s balance of public and private fire revenues?
15. What is the appropriate date to be used for determining Aqua New Jersey Inc.'s balance of power and chemical expenses?

- 16 What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s balance of interest on customer deposits?

What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s balance of depreciation expense?

18. What is the appropriate date to be used for determining Aqua New Jersey, Inc.'s balance of non-income taxes (including GRAFT and property and labor related tax expenses)?

- 19 What percentage of antenna revenues Aqua New Jersey, Inc. is entitled to reflect in its operating income?

Whether Aqua New Jersey, Inc. is entitled to reflect in its operating income any O&M contract revenue.

21. What amount of Labor Expenses is Aqua New Jersey, Inc. entitled to include in its operating income?

What amount of Health, Life, LTD, Pension and OPEB Expenses is Aqua New Jersey, Inc. entitled to include in its operating income?

- 23 What amount of Insurance Expenses is Aqua New Jersey, Inc. entitled to include in its operating income?

What amount of Lease Expenses is Aqua New Jersey, Inc. entitled to include in its operating income?

25. What amount of rate case expense is Aqua New Jersey, Inc. entitled to recover?

26. What amount of other O&M expenses is Aqua New Jersey, Inc. entitled to recover?

27. What amount of Interest Expense is Aqua New Jersey, Inc. entitled to include in its operating income?
28. What is the proper Income Tax rate to be used by Aqua New Jersey, Inc.?
29. What is the appropriate rate structure that should be used by Aqua New Jersey, Inc. in this rate base proceeding?
30. Whether Aqua New Jersey, Inc.'s proposed Low Income Assistance Program should be implemented.
31. Whether this proceeding should be delayed pending the resolution of the Berkeley Water Company consent issue.

### DISCUSSION, FINDINGS AND CONCLUSION

#### **Appropriate Capital Structure**

Rate Counsel and Staff propose that the appropriate capital structure of Aqua New Jersey, Inc. for purposes of this rate base case is that structure which is in place on April 30, 2006, including long-term debt, short-term debt and equity. See Rate Counsel Initial Brief at 3; Staff Initial Brief at 5-6; Staff Reply Brief at 4. Rate Counsel also proposes that the appropriate rate of return on Equity should be 9.5%. See Rate Counsel Initial Brief at 7. Rate Counsel came to these conclusions because April 30, 2006 constitutes the end of the actual test year, and thus reflects the most substantial, credible evidence on the record, rather than mere speculation and estimation about what the structure will be in the future. Id. at 4-5. Rate Counsel also uses short-term debt in its structure due to the fact that on April 30, 2006, Aqua's actual capital structure does include short-term debt, and that the Company consistently uses this form of financing. Id. at 5-6. Additionally, Rate Counsel relies on Witness Parcell's calculations, using three approaches, to estimate that the appropriate rate of return on equity would be approximately 9.5%. Id. at 7.

Aqua New Jersey, on the other hand, proposes that the appropriate capital structure is that calculated to be in place on October 31, 2006, including *only* long-term debt and equity. See Pet. Initial Brief at 35-36. Aqua also proposes that the appropriate rate of return on Equity should be 11.5% (Id. at 35), which includes a .25% premium to recognize the Company's favorable policy of acquiring smaller troubled water companies throughout New Jersey. Ahern Direct Test. 2:26-3:3. The Company believes that October 31, 2006 is a better date to use for determining capital structure because, as the proposed rate changes would not go into effect until late 2006, October 31, 2006 would represent a more appropriate date for matching what customers are paying to actual rate base that is in effect. Pet. Initial Brief at 36. Additionally, Aqua argues that short-term debt is not appropriate for inclusion, as the Company uses short-term debt solely as a bridge to acquiring long-term debt financing, and that the rate base which will be in service by October 31 will not be funded at all by short-term debt. Ahern Rebuttal Testimony at 2:22-3:19. Lastly, in order to determine an appropriate rate of return on equity, Aqua relies on Witness Ahern's use of four approaches for determining the cost of equity. That estimation is also given a .25% premium in order to reward the company for implementing risky acquisitions which benefit the State in the long run. Ahern Direct Testimony 2:26-3:3.

The parties agree that the end of the test year is April 30, 2006, and that this test-year data may be adjusted only for "known and measurable" changes, which the Board has defined as "prudent and major in nature and consequence." In re Elizabethtown Water Co., BPU Docket No. WR8504330 (1985). Although the standard is fixed, the application of the standard has historically been flexible. Although Aqua Witness Rapiiewicz described the proposed changes as "regular, ongoing, commitments by the Company," he also stated that the investments are necessary to provide safe, adequate and proper service to its customers. Rapiiewicz, Hearing Transcript 1 (July 12, 2006), at 52-53. The Board has previously allowed such changes in similar investments when the facilities were essential to providing safe, adequate and proper service. See I/M/O the Petition of Gordon's Corner Water Company for Approval of an Increase in Rates for Water Service and Other Tariff Changes, BPU Docket No. WR00050304 (2001). As Aqua has been forthright about the progress and

costs of the projects with which they've engaged, and as October 31, 2006 will pass by the time this decision is entered, and as allowing these changes represents good policy in giving incentive to the Company to undertake and/or accelerate its new or replacement investments, I FIND that October 31, 2006 is the appropriate date for determining Aqua New Jersey's capital structure, for purposes of this rate case.

In a prior Board order, which adopted an OAL decision, it was held that "short-term debt should not be included in the capital structure unless there is clear and convincing evidence to prove that a portion of the jurisdictional rate base was actually financed by the short-term debt." I/M/O the Petition of Middlesex Water for Approval of an Increase in its Rates for Water Service and Other Tariff Changes, BPU Docket No. WR00060362 (2001). As the only evidence shown was that Aqua uses short-term debt to finance some daily operations of the Company, but not to finance any of the rate base, I FIND that short-term debt is not to be included in determining Aqua New Jersey, Inc.'s capital structure for purposes of this rate case.

Determining the cost of equity for Aqua New Jersey, Inc. is not a fixed science. Staff Initial Brief, at 6-7. Not only is the cost rate of equity not fixed when issued (unlike stocks or bonds), but a company such as Aqua is not publicly traded. Id. Both of these factors make it necessary to estimate the Company's cost of equity, based on comparisons to similar companies that are publicly traded. Id. Between Witness Parcell and Witness Ahern, seven different calculations were performed in order to attempt to determine an appropriate cost of equity. Id. at 7. Due to the fact that two distinguished economists, using roughly the same tests and methodologies, result in estimations of 9.5% and 11.5%, respectively, an equitable result would be to split the difference, resulting in a rate of return of 10.5%. I FIND that the appropriate cost rate of equity for Aqua New Jersey is 10.5%.

### Appropriate Rate Base

#### Timing

Rate Counsel proposes that the appropriate utility plant in service should be determined as of April 30, 2006. Rate Counsel Initial Brief at 22. They argue that the investments taking place after the April 30, 2006 test-year end are not major in nature or characteristic, but rather merely routine. Id. They also argue that the Company chose to file the rate base case when it did, and for that reason must live with that decision – knowing that post-April 30, 2006 investments would not be included in rate base. Rate Counsel Reply Brief at 3.

Aqua New Jersey proposes that the appropriate utility plant in service should be determined as of October 31, 2006, in order to match rate base with the actual costs and investments in place at the time the service is rendered to customers. Pet. Initial Brief at 10. Additionally, the allowance of utility plant in service on October 31, 2006 will serve as an incentive to investors by allowing an appropriate rate of return on more than \$6 million in investments. Id. at 11.

As discussed above, I find that the changes to the test year *are* appropriate as they are essential to providing safe, adequate and proper service to its customers. It is also appropriate to match the Company's utility plant in service and rate base with its capital structure that is in effect, and which was determined earlier to be October 31, 2006. Allowing a return on these investments is good policy in order to incentivize the Company to improve water service for all customers. **I FIND** that October 31, 2006 is the appropriate date for determining the Company's utility plant in service.

Accordingly, because the appropriate date of determining utility plant in service is October 31, 2006, I **FIND** that the appropriate date in determining the following figures<sup>1</sup> and balancing is also October 31, 2006:

- Aqua New Jersey, Inc.'s appropriate reserve for depreciation (See Pet. Initial Brief at 17; Staff Initial Brief at 20; Rate Counsel Initial Brief at 27).

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<sup>1</sup> The parties only disagreed on these figures based on the different cut-off points for recognizing and/or calculating these items. There was no disagreement as to calculations or that the figures should or should not be recognized. Pet. Initial Brief at 3.

- Aqua New Jersey, Inc.'s appropriate balance of customer advances (See Pet. Initial Brief at 17; Staff Initial Brief at 21; Rate Counsel Initial Brief at 27).
- Aqua New Jersey, Inc.'s appropriate balance of accumulated deferred income taxes (See Pet. Initial Brief at 17; Staff Initial Brief at 21; Rate Counsel Initial Brief at 28).
- Aqua New Jersey, Inc.'s appropriate reserve balances (including pension & FAS 106 reserves, as well as tank maintenance reserves (See Pet. Initial Brief at 18; Staff Initial Brief at 23; Rate Counsel Initial Brief at 29).
- Aqua New Jersey, Inc.'s appropriate balance of customer deposits (See Pet. Initial Brief at 18; Staff Initial Brief at 23; Rate Counsel Initial Brief at 29).

#### Acquisition of Berkeley Water Company

Aqua and Rate Counsel agree that Aqua is entitled to an unamortized acquisition adjustment for the acquisition of Berkeley Water Company. Pet. Reply Brief at 21. Aqua argues that it has been Board practice of allowing such an adjustment, and that doing so is in the public interest, giving utility companies an appropriate and reasonable incentive to acquiring troubled water systems. Pet. Initial Brief at 15.

Staff recommends that Aqua is not entitled to an adjustment because the Company was not urged by the Board to acquire the assets of Berkeley, but rather did so as an independent business decision, and that the acquisition did not have any positive benefits to the Company's customers located outside the Berkeley service territory. Staff Initial Brief at 18-19.

Staff concedes that the Board did find this transaction in the public interest and indicated that Aqua *may*, but is not guaranteed to recover some or all of the transaction costs. Staff Reply Brief at 11. Staff failed to point to any evidence that Aqua was not compelled to acquire the assets, nor that it had any positive benefit to Aqua customers. Petit. Reply Brief at 21. Aqua showed however, that the Board and its Staff did hold

that the transaction was expected to benefit the customers of Aqua. Id. at 22-23. I **FIND** that Aqua is entitled to an unamortized acquisition adjustment for the acquisition of Berkeley Water Company.

#### Unamortized Deferred Rate Case Expenses

Rate Counsel and Staff agree that Board policy has consistently been to exclude amortized deferred rate cases expense from rate base. See Staff Initial Brief at 19-20, citing I/M/O Environmental Disposal Corp., Docket No. WR99040249 (2000); I/M/O Elizabethtown Water Company, Docket No. 8312-1072 (1984). Rate Counsel Witness Henkes testified that to his understanding, the BPU has never previously allowed this inclusion for such unamortized cost balances. Henkes Direct Testimony at 14:1-5.

Aqua argues that this unamortized deferred rate case expense should be included in the Company's calculation of rate base because it represents an expenditure that was for the direct benefit of the Company's customers, and that the exclusion of which would constitute an unequitable forfeiture. Pet. Initial Brief at 16.

Board policy has been unwavering in holding that unamortized deferred rate case expenses should not be included in rate base. Staff Initial Brief at 19-20. I **FIND** that this case contains no exception to Board policy, and that unamortized deferred rate case expenses will not be included in Aqua's rate base.

### **Operating Income**

#### Timing

Again the parties argue about the appropriate date for determining certain items included in determining Aqua New Jersey Inc.'s operating income. Parties agree, however, that these items, for matching purposes, should be calculated on the same date as utility plant in service is calculated. Because, as discussed above, it has been determined that October 31, 2006 is the appropriate date for determining utility plant in

service, I FIND that the appropriate date for calculating the following figures and balances is also October 31, 2006:

- Aqua New Jersey, Inc.'s appropriate balance of metered sales revenues (See Pet. Initial Brief at 18-19; Staff Initial Brief at 24-25; Rate Counsel Initial Brief at 30-31).
- Aqua New Jersey, Inc.'s appropriate balance of public and private fire revenues (See Petit. Initial Brief, at 18-19; Staff Initial Brief, at 25-27; Rate Counsel Initial Brief, at 31).
- Aqua New Jersey, Inc.'s appropriate balance of power and chemical expenses (See Pet. Initial Brief at 24-25; Staff Initial Brief at 34-36; Rate Counsel Initial Brief at 36-37).
- Aqua New Jersey, Inc.'s appropriate balance of interest on customer deposits (See Pet. Initial Brief at 31; Staff Initial Brief at 51-52; Rate Counsel Initial Brief at 40).
- Aqua New Jersey, Inc.'s appropriate balance of depreciation expense (See Pet. Initial Brief at 32; Rate Counsel Initial Brief at 42).
- Aqua New Jersey, Inc.'s appropriate balance of non-income taxes (including GRAFT and property and labor related tax expenses) (See Pet. Initial Brief at 32-33; Rate Counsel Initial Brief at 42).

#### Antenna revenues

Rate Counsel and Staff propose that 100% of the Company's revenues from leasing the space atop water towers should be reflected entirely as benefits to the customers. Staff Initial Brief at 29. They argue that customers have shouldered all of the costs to construct and maintain the water towers, and that, as no risk was involved in the antenna endeavors, the Company and its investors hopes to benefit without incurring risk or cost. Rate Counsel Initial Brief at 33. Staff points to a prior Board decision which held that "the Company should not be permitted to use its regulated utility property to engage in unregulated activities without providing appropriate compensation to its ratepayers." Staff Initial Brief at 29-30, citing I/M/O the Petition of

Gordon's Corner Water Company for Approval of an Increase in Rates for Water Service and Other Tariff Changes, BPU Docket No. WR00050304 (2001).

Aqua proposes that revenue from antenna leases should be shared 50/50 between customers and Company investors. Pet. Initial Brief at 20. It argues that giving investors this return will encourage the Company to seek out additional sources of revenue and maximize benefits both to customer and shareholder. Id.

As is consistent with prior Board policy, as well as the principle that the customers who incurred the costs should also receive the benefits, I FIND that it is appropriate for 100% of the antenna revenues to be reflected for the benefit of Aqua's ratepayers for rate-making purposes. ■■■

O&M Contract Revenue

Rate Counsel and Staff propose that any O&M Contract Revenue that Aqua has received should be included as part of the Company's operating income. Staff Initial Brief at 30, 32. Rate Counsel argues that because these contract operations are performed by employees on Aqua's regulated payroll, customers are funding these employees and should enjoy the benefits of this expenditure. Rate Counsel Reply Brief at 6-7. They also point out that had Aqua used a non-regulated subsidiary for these contracts, this revenue would not be includable as part of Aqua's operating income. Id.

Aqua proposes that O&M Contract Revenue should *not* be calculated as part of the Company's operating income because this revenue arises from unregulated business arrangements, of which no burden is placed on the customers. Pet. Initial Brief at 20-21.

As Rate Counsel has shown that some of the burden of these contracts *is* placed on the customers, I FIND that it is equitable to include \$101,352 of O&M Contract Revenue, as calculated by Rate Counsel, in Aqua's total operating income.

Labor Expenses

Aqua proposes that the Company's labor expenses include an "incentive compensation" plan that awards employees for meeting certain goals. Pet. Initial Brief at 23-24. It argues that Board policy has not been entirely consistent with incentive compensation plans, as the Board in I/M/O the Verified Petition of Jersey Central Power & Light Company for Review and Approval of an Increase in and Adjustments to its Unbundled Rates and Charges, BPU Docket Nos. ER02080506, ER02080507, EO02070417 and ER02030173, Final Order (2004) allowed the inclusion of some incentive plans that were specifically negotiated between the union and management. Pet. Reply Brief at 34. Aqua also proposes that a 1.5% wage increase factor be applied in order to reflect wage increases which will be implemented in April 2007. Pet. Initial Brief at 22. Aqua argues that this wage increase factor is *not* a general inflation factor, which the Board consistently disallows, but rather a realistic estimate of the wage increases that the Company knows will take place. Pet. Reply Brief at 34.

Rate Counsel and Staff agree that neither the wage increase factor nor the incentive compensation plan should be included in the Company's operating income, due to consistent Board policies which refuse to include such figures. Staff Initial Brief at 33. In regards to the wage increase factor, Witness Henkes testified that a general inflation factor has never been allowed for ratemaking purposes and that even if the figure is not a general inflation factor, it still represents an expense increase projection falling 11 months beyond the end of the test year – a type of projection which the Board consistently refuses to allow. Henkes, Hearing Transcript 2 (July 13, 2006) at 120. In regards to the incentive compensation program, Rate Counsel and Staff pointed to several Board decisions which refused to include these payments in operating income calculations. Staff Initial Brief at 33, citing I/M/O Jersey Central Power and Light Company, Docket No. ER91121820J, dated June 15, 1993; and I/M/O Middlesex Water Company, Docket No. WR00060362, dated June 6, 2001 ("...ratepayers should not be paying additional costs to reward a select group of Company employees for performing the job they were arguably hired to perform in the first place").

FIND that neither the 1.5% wage increase factor nor the incentive compensation payment should be allowed in calculating Aqua's operating income, due to prevailing Board policies and procedures which Rate Counsel and Staff pointed out.

Health, Life, LTD, Pension and OPEB Expenses

Aqua proposes to include the projected cost of health, life, LTD, pension and OPEB as of April 30, 2007. Pet. Reply Brief at 37. The Company urges that this projection is accurate and that it is undisputed that costs of insurance and pension programs have been continually rising for several years. Id.

Rate Counsel and Staff argue that these expenses should be calculated as of the end of the test year, April 30, 2006, and that the projection of expenses to 2007 would be too speculative in nature and should not be allowed. Staff Initial Brief at 37.

In accordance with the matching principle, it is more appropriate to use the amount of expenses that will be in effect with the new rate. As Witness Schreyer has testified, and which neither Rate Counsel nor Staff dispute, the projected increases in costs were reasonable, and therefore I FIND that the projections as to April 30, 2007 should be included.

Insurance

Aqua proposes that the insurance expense to be included for operating income should be that in effect on April 30, 2006 plus 5% for increased premiums. Pet. Initial Brief at 25. The Company argues that this 5% increase is *not* speculative in nature, but rather based on information from the Company's insurance broker. Pet. Reply Brief at 37.

Rate Counsel and Staff argue that the 5% increase is inflationary in nature, which would be contrary to Board policy that rejects inflationary adjustments. Staff

Initial Brief at 38. They propose that the appropriate expense should be that in effect on April 30, 2006. Id.

I FIND that the 5% increase is not inflationary in nature, but rather based on information received from the Company's insurance broker, and thus it is appropriate.

#### Lease Expenses

Aqua and Rate Counsel agree that the appropriate figure for lease expenses should be \$161,327, which represents the Company's actual expenditures pursuant to the various lease agreements it has entered. Pet. Initial Brief at 27.

Staff argues that lease expenses should be reduced to account for the fact that Company's well #11 was not completed, nor in service on April 30, 2006. Staff Initial Brief at 43.

I FIND that \$161,327 is the appropriate figure for lease expenses based on the lease agreements already in place.

#### Rate Case Expenses

Aqua proposes that it is entitled to recover 100% of the reasonable costs of the current proceeding, arguing that public policy encourages settlement, and that if a company is unable to recover the costs of a proceeding, it becomes more difficult for a company to recoup costs, as a proceeding is the only way to do so. Pet. Reply Brief at 39-40.

Rate Counsel and Staff agree that the rate case expenses should be shared 50/50 between shareholders and ratepayers, due to the fact that the primary motivation in filing a rate case is to add shareholder value, and thus, some of the expenses should be born by the shareholders. Rate Counsel Initial Brief at 40. Staff also presented

several Board actions in which the Board ordered a 50/50 sharing of rate case expenses. Staff Initial Brief at 51.

As previously discussed, the Board is under no duty or obligation to settle a rate case.<sup>2</sup> Simply because the Company dislikes the fact or reason why this case did not quickly settle does not require the Board to go away from its general practice of splitting rate case expenses. A rate case arises for the benefit of a company's shareholders, who should then be required to shoulder some of the burden. Rate Counsel Initial Brief at 40. I FIND that the rate case expenses should be split 50/50 between shareholders and customers, with \$48,750 being applied to Aqua's operating income.

#### Amortization-Acquisition

As discussed earlier<sup>3</sup>, Aqua is entitled to recover an unamortized acquisition adjustment for the acquisition of Berkeley Water Company. The parties are not in dispute about the amount of this adjustment.

#### Other O&M Expenses

Aqua and Rate Counsel agree on the figure of \$266,278 for other operating and maintenance expenses. Pet. Reply Brief at 40. Staff, however, disallows \$60,000 of relocation expenses because such relocation had no significant benefit to the shareholders. Staff Initial Brief at 54-55.

I FIND that \$266,278 is the appropriate figure for other operating and maintenance expenses, as agreed to by Rate Counsel and Aqua. Relocation is a common practice and expense in corporate America and should be included as public policy dictates that the expense of acquiring quality employees and management is good for customers and benefits them in the long run. Pet. Reply Brief at 40.

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<sup>2</sup> See Letter to Counsel from Judge Barry N. Frank, dated September 25, 2006.

<sup>3</sup> Supra, page 7, "Acquisition of Berkeley Water Company."

Interest Expenses

Rate Counsel proposes that interest expenses should be calculated as of April 30, 2006 and should include interest on short-term debt. Pet. Initial Brief at 33. Aqua argues that October 31, 2006 is the appropriate date and that calculating the interest on short-term debt is not appropriate when short-term debt is not included in the Company's capital structure. Id.

As noted above,<sup>4</sup> October 31, 2006 is the more appropriate figure for calculating operating income. Furthermore, it has been noted that short-term debt should not be included in the Company's capital structure.<sup>5</sup> Based on these previous findings, I FIND that Aqua's calculation of interest expense at \$2,392,023, which is based on an October 31, 2006 balance, excluding short-term debt, is appropriate.

Income Taxes

The parties agree that the Internal Revenue Code provides that the first \$10 million of taxable income is taxed at a rate of 34%. Rate Counsel Initial Brief at 43. Rate Counsel argues that Aqua, as a stand-alone company, would have less than \$10 million in taxable income, and should thus be subject to a tax rate of 34%. Rate Counsel Reply Brief at 12. Rate Counsel continues that by participating in a consolidated filing, Aqua reaps the benefits of losses incurred by the Parent, and thus is subject to a tax rate of much less than 34%. Id.

Aqua, however, argues that it participates in a consolidated income tax filing of its parent company, Philadelphia Suburban Company (PSC), which due to consolidated PSC operations, has taxable income in excess of \$10 million, "thereby triggering a 35% income tax rate for all companies that participate in the consolidated tax filing." Rate Counsel Initial Brief at 43.

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<sup>4</sup> Supra, page 5, "Appropriate Capital Structure."

<sup>5</sup> Id.

Staff did not brief this issue, but uses a 35% income tax rate in its calculations. Pet. Reply Brief at 41.

As Rate Counsel itself pointed out, "...the consolidated PSC operations have taxable income in excess of \$10 million, thereby triggering a 35% income tax rate for all companies that participate in the consolidated tax filing." Rate Counsel Initial Brief at 43. As Aqua is a company that participates in the consolidated tax filing, the law is clearly stated and, therefore, I FIND that a 35% income tax rate is appropriate.

This 35% tax rate also effects the appropriate revenue conversion factor to be used in calculating Aqua's operating income. Rate Counsel Initial Brief at 44. Since Aqua's figure of 35% is appropriate, so is their revenue conversion factor of 1.79138.

#### **Appropriate Rate Structure**

The Company is proposing to implement the rate increase from this proceeding solely for General Metered Service customers, and not from public and private fire protection rates. Pet. Initial Brief at 42. The Company proposed this structure in order to address one of the financial pressures faced by many New Jersey municipal governments and fire districts. Id. Aqua also argues that by increasing the rates to municipal governments and fire districts, the taxpayers will end up footing the bill regardless, as the taxpayers depend on the services provided by these entities. Schulman Rebuttal Testimony at 11.

The Rate Counsel and Staff, on the other hand, wish to impose the rate increase across-the-board to all of Aqua's customers, not just the General Metered Service Customers, in order to minimize any increases in rates to any individual customer. Pet. Reply Brief at 42. Staff also believes that an across-the-board increase is more appropriate, as the Company has failed to provide a class cost of service survey. Staff Initial Brief at 56.

Had Aqua performed a class cost of service survey, they might be better able to argue who should shoulder what portions of the rate increase. Accordingly, without such a study, I **FIND** that it is more equitable to impose an across-the-board rate increase and consolidation, as Witness Kalcic recommended.

### **Low Income Assistance Program**

Aqua is proposing to implement a new program to make water services more affordable for low-income seniors and disabled individuals. Staff Initial Brief at 57-58. This program would allow 6,000 gallons of water to be provided quarterly to eligible customers. Id. While Rate Counsel and Staff are not opposed to such a program, they do agree that there are too many unanswered questions concerning the program, and that rather than allocating funds to experiment on the project, a working group should be formed, in which both Rate Counsel and Staff expressed willingness to participate. Id. at 58-59. Aqua agrees that a working group would be welcome, but believes, based on previous Rate Counsel and Staff inaction that the effort will not come to fruition until monies are actually allocated for its implementation. Pet. Initial Brief at 42.

As Staff pointed out, "the Company admitted that its proposal was offered in an effort to begin a dialogue on low-income issues with interested parties." Staff Initial Brief at 58. I, therefore, **RECOMMEND** that rather than allocating funds to an unknown, the parties continue this dialogue in the form of a working group being implemented for the purpose of creating a feasible program with limited unanswered questions.

### **Delay of Proceeding Pending the Resolution of the Berkeley Water Company (BWC) Consent Issue**

In November 2005, the Board issued an Order of Clarification conditionally allowing Aqua to continue serving the customers of BWC, but to act expeditiously to obtain the requisite municipal consent required to properly provide water. Staff Initial Brief at 59. Staff argues that no documentation has been provided by Aqua regarding any effort in resolving the issue, and that prior to adjudication, the Company should be

required to provide the Board and its Staff with copies of any correspondence dealing with the resolution of this matter. Id. at 61.

Aqua argues that attempts have been made to contact the Berkeley Township Municipal Utilities Authority (BTMUA), but as of yet, BTMUA has been uncooperative and any communication has only taken place via telephone – thus explaining the lack of documentation. Pet. Reply Brief at 43. Aqua points out that neither the Board, nor Aqua may force the BTMUA to resolve this issue, and that the threat of ceasing water service – as Staff proposes – would be “both irresponsible and inappropriate.” Id.

The BTMUA situation is a difficult one, which a court-appointed receiver described as being one that will not be consummated expeditiously. Id. at 43-44. The only party who can expedite this process is BTMUA itself, over whom neither Aqua nor the Board have authority. Id. I FIND that it would be inequitable to refuse the Company a reasonable rate of return on its investment based on a circumstance beyond their control. This proceeding will not be delayed pending the resolution of the BTMUA matter.

#### SUMMARY OF FINDINGS

I FIND that October 31, 2006 is the appropriate date for determining Aqua New Jersey’s capital structure, for purposes of this rate case.

I FIND that short-term debt is not to be included in determining Aqua New Jersey, Inc.’s capital structure for purposes of this rate case.

FIND that the appropriate cost rate of equity for Aqua New Jersey is 10.5%.

I FIND that October 31, 2006 is the appropriate date for determining the Company’s utility plant in service.

I FIND that the appropriate date in determining the following figures and balancing is also October 31, 2006:

- Aqua New Jersey, Inc.'s appropriate reserve for depreciation
- Aqua New Jersey, Inc.'s appropriate balance of customer advances
- Aqua New Jersey, Inc.'s appropriate balance of accumulated deferred income taxes
- Aqua New Jersey, Inc.'s appropriate reserve balances (including pension & FAS 106 reserves, as well as tank maintenance reserves)
- Aqua New Jersey, Inc.'s appropriate balance of customer deposits

I FIND that Aqua is entitled to an unamortized acquisition adjustment for the acquisition of Berkeley Water Company

I FIND that unamortized deferred rate case expenses will not be included in Aqua's rate base.

I FIND that the appropriate date for calculating the following figures and balances is also October 31, 2006:

- Aqua New Jersey, Inc.'s appropriate balance of metered sales revenues
- Aqua New Jersey, Inc.'s appropriate balance of public and private fire revenues
- Aqua New Jersey, Inc.'s appropriate balance of power and chemical expenses
- Aqua New Jersey, Inc.'s appropriate balance of interest on customer deposits
- Aqua New Jersey, Inc.'s appropriate balance of depreciation expense

- Aqua New Jersey, Inc.'s appropriate balance of non-income taxes (including GRAFT and property and labor related tax expenses)

I FIND that it is appropriate for 100% of the antenna revenues to be reflected for the benefit of Aqua's ratepayers for rate-making purposes.

I FIND that it is equitable to include \$101,352 of O&M Contract Revenue, as calculated by Rate Counsel, in Aqua's total operating income.

I FIND that neither the 1.5% wage increase factor nor the incentive compensation payment should be allowed in calculating Aqua's operating income.

I FIND that the projections in Health, Life, LTD, Pension and OPEB expenses as to April 30, 2007 should be included.

I FIND that the 5% increase in insurance expenses is appropriate.

I FIND that \$161,327 is the appropriate figure for lease expenses based on the lease agreements in place.

I FIND that the rate case expenses should be split 50/50 between shareholders and customers.

I FIND that \$266,278 is the appropriate figure for other operating and maintenance expenses, as agreed to by Rate Counsel and Aqua.

I FIND that Aqua's calculation of interest expense at \$2,392,023, which is based on an October 31, 2006 balance, excluding short-term debt, is appropriate.

I FIND that a 35% income tax rate is appropriate.

CONCLUDE that the appropriate rate structure is to impose an across-the-board rate increase and consolidation, as Witness Kalcic recommended. I

**RECOMMEND** that Petitioner receive an increase in per annum revenues of approximately \$2,806,501 or approximately 12.60% using a test year ending April 30, 2006. I also **RECOMMEND** that the Petitioner's proposed senior citizens program contains too many unanswered questions, and that money should not at this time be allocated to implement the program. In regards to these issues and the related accounting and cost recovery measures for consideration, a summary of my results is attached.

I **RECOMMEND** that rather than allocating funds to an unknown, the parties continue a dialogue regarding the low-income assistance program, and form a working group for the purpose of creating a feasible program with limited unanswered questions.

I **CONCLUDE** that this proceeding should not be delayed pending the resolution of the BTMUA matter.

**ORDER**

Accordingly, it is **ORDERED** that:

- 1 The rates proposed by Petitioner are **DENIED**.
2. Petitioner may file for the Board's consideration revised tariff sheets consistent with the rate design and findings set forth herein, to become effective on a date to be determined by the Board.

hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five (45) days and unless such time limit is otherwise extended, this

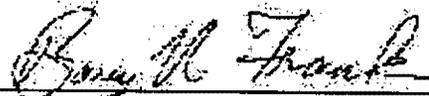
OAL DKT. NO. PUC 3338-06

recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen (13) days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 2 Gateway Center, Newark, NJ 07102**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 28, 2006

DATE



BARRY N. FRANK, ALJ

E-mail Receipt of Initial Decision Confirmed by the Board of Public Utilities on:

1-28-06

DATE

Mailed to Parties:

DATE

jb

OFFICE OF ADMINISTRATIVE LAW

**APPENDIX**

**Witnesses**

**For Petitioner:**

Pauline M. Ahern, CRRA, Vice president, AUS Consultants-Utility Services

Sharon Schulman, President and CEO

William C. Packer, Jr., Regional Director of Accounting

Jack Schreyer, Manager of Rates for Aqua America, Inc.

Edward A. Rapsiewicz, Vice President of Operations for the Company.

**For Ratepayer Advocate:**

David Parcell, Executive Vice President and Senior Economist of Technical Associates, Inc.

Robert J. Henkes, Principal and Founder of Henkes Consulting

Brian Kalcic

**For Staff of the Board:**

None

**List of Exhibits**

For Petitioner and Respondent: See attachment following Summary of Exhibits I to V

Summary of Exhibits I to VExhibit I: Income Statement in Comparison

	Company	Rate Counsel	BPU Staff	OAL
<b>OPERATING REVENUES</b>				
Metered Sales	\$19,332,054	\$19,041,642	\$19,041,642	\$19,332,054
Public Fire	\$1,639,844	\$1,627,227	\$1,627,227	\$1,639,844
Private Fire	\$912,008	\$897,393	\$897,393	\$912,008
Miscellaneous	\$35,000	\$35,000	\$35,000	\$35,000
Golf Course	\$26,000	\$26,000	\$26,000	\$26,000
Sales for Resale	\$7,500	\$7,500	\$7,500	\$7,500
Antennae Revenues	\$109,548	\$222,900	\$222,900	\$222,900
O&M Contract Revenue	\$0	\$101,352	\$101,352	\$101,352
<b>TOTAL OP. REVENUES</b>	<b>\$22,061,954</b>	<b>\$21,959,014</b>	<b>\$21,959,014</b>	<b>\$22,276,658</b>
<b>O&amp;M EXPENSES</b>				
Labor	\$3,115,380	\$2,961,759	\$2,961,759	\$2,961,759
Power	\$1,056,792	\$931,604	\$1,056,792	\$1,056,792
Chemicals	\$401,181	\$360,358	\$401,181	\$401,181
Health/Life/LTD/Pension	\$978,551	\$882,920	\$882,920	\$978,551
Insurance	\$261,363	\$240,682	\$240,682	\$261,363
Misc. Employee Benefits	\$64,528	\$64,528	\$64,528	\$64,528
Outside Services	\$508,870	\$508,870	\$508,870	\$508,870
Management Fees	\$724,281	\$724,281	\$724,281	\$724,281
Leases	\$161,327	\$161,327	\$58,542	\$161,327
Transportation	\$263,748	\$263,748	\$263,748	\$263,748
Sludge Removal	\$21,499	\$21,499	\$21,499	\$21,499
Supplies	\$196,741	\$196,741	\$196,741	\$196,741
Purchased Water	117,214	\$117,214	\$117,214	\$117,214
Bad Debt Expense	\$42,817	\$41,885	\$43,128	\$43,128
Tank Painting	\$200,000	\$200,000	\$200,000	\$200,000
Audit Fees	\$128,069	\$128,069	\$128,069	\$128,069
Lab Expense	\$231,158	\$231,158	\$231,158	\$231,158
Legal Expense	\$57,579	\$57,579	\$57,579	\$57,579
Rate Case Expense	\$97,500	\$48,750	\$48,750	\$48,750
Interest - Cust. Deposits	\$2,435	\$4,836	\$4,836	\$2,435
Acquisition Adjust	\$11,472	\$11,472	(\$43,521)	\$11,472
Other	\$266,278	\$266,278	\$206,278	\$266,278
<b>TOTAL O&amp;M EXPENSES</b>	<b>\$8,908,783</b>	<b>\$8,425,558</b>	<b>\$8,375,034</b>	<b>\$8,706,723</b>
Depreciation Expense	\$3,737,681	\$3,479,938	\$3,479,938	\$3,737,681
Income Taxes	\$1,251,302	\$1,411,856	\$1,482,953	\$1,700,966
Non-Income Taxes	\$3,578,230	\$3,527,042	\$3,533,398	\$3,578,230
<b>TOTAL OP. EXPENSES</b>	<b>\$17,475,996</b>	<b>\$16,844,394</b>	<b>\$16,871,323</b>	<b>\$17,723,600</b>
<b>UTILITY OPERATING INCOME</b>	<b>\$4,585,958</b>	<b>\$5,114,620</b>	<b>\$5,087,691</b>	<b>\$4,553,058</b>
<b>TOTAL OP. EXPENSES (pre-tax)</b>	<b>\$16,224,694</b>	<b>\$15,432,538</b>	<b>\$15,388,370</b>	<b>\$16,022,634</b>
Net Revenues before Income Tax	\$5,837,260	\$6,526,476	\$6,570,644	\$6,254,024
Income Tax	\$1,251,302	\$1,411,856	\$1,482,953	\$1,329,305
<b>After-Tax Operating Income</b>	<b>\$4,585,958</b>	<b>\$5,114,620</b>	<b>\$5,087,691</b>	<b>\$4,924,719</b>

**Exhibit II: Rate Base in Comparison**

<u>Rate Base</u>	<u>Aqua, NJ</u>	<u>Staff</u>	<u>Rate Counsel</u>	<u>OAL</u>
Utility Plant in Service	\$147,728,590	\$139,919,821	\$139,919,821	\$147,728,590
Working Capital	---	---	---	---
Materials and Supplies	\$1,244,144	\$1,244,144	\$1,244,144	\$1,244,144
Prepayments	\$241,693	\$241,693	\$241,693	\$241,693
Unamortized Acq. Adj.	\$81,085	(\$743,822)	\$81,085	\$81,085
Unamort. Mgmt. Audit.	---	---	---	---
Unamort. Rate Case Expense	\$94,762	\$0	\$0	\$0
<b>Subtotal</b>	<b>\$149,390,274</b>	<b>\$140,661,836</b>	<b>\$141,486,743</b>	<b>\$149,295,512</b>
Reserve for Depreciaton	\$31,989,224	\$30,091,725	\$30,091,725	\$31,989,224
Customer Advances	\$9,679,179	\$10,442,924	\$10,442,924	\$9,679,179
Contrib. Property	\$16,079,818	\$16,079,818	\$16,079,818	\$16,079,818
Deferred F.I.T.	\$11,901,347	\$11,498,747	\$11,498,747	\$11,901,347
Pension & FAS 106 Reserves	\$1,295,217	\$1,102,443	\$1,102,443	\$1,295,217
Tank Maintenance Reserve	\$433,506	\$333,506	\$333,506	\$433,506
Customer Deposits	\$82,820	\$164,492	\$164,492	\$82,820
<b>Subtotal</b>	<b>\$71,461,141</b>	<b>\$69,713,655</b>	<b>\$69,713,655</b>	<b>\$71,461,141</b>
<b>Rate Base</b>	<b>\$77,929,163</b>	<b>\$70,948,181</b>	<b>\$71,773,088</b>	<b>\$77,834,201</b>

**Exhibit III: OAL Cost of Capital Calculation**

As of October 31, 2006

	<u>Ratio%</u>	<u>Cost Rate</u>	<u>Weighted Cost Rate</u>
Long-Term Debt	49.30%	6.128%	3.02
Short-Term Debt	0%	0	
Equity	50.70%	10.5%	5.32
	100%		8.34%

**Exhibit IV: OAL Federal Income Tax Calculation**

Net Revenues before FIT	\$6,254,024	
Less: Pro Forma Interest	<u>\$2,392,023</u>	
Income Before FIT	\$3,862,001	
Add: Flow-Back Depreciation	<u>\$17,500</u>	(From Sch. RJH-14)
Taxable Income	\$3,879,501	
FIT Rate	<u>35%</u>	
Income Tax Prior to ITC Amort.	\$1,357,825	
ITC Amortization	<u>(28,520)</u>	(From Sch. RJH-14)
Net Pro Forma Income Taxes	\$1,329,305	

**Exhibit V: Aqua New Jersey Rate Adjustment**

	Company	Staff	Rate Counsel	OAL
Rate Base	\$77,929,163	\$70,948,181	\$71,773,088	\$77,834,401
Cost of Capital	<u>8.85%</u>	<u>8.09%</u>	<u>7.45%</u>	<u>8.34%</u>
Required Return	\$6,896,732	5,741,191	5,346,690	6,491,389
Utility Operating Income	<u>\$4,585,958</u>	<u>5,087,691</u>	<u>5,114,620</u>	<u>4,924,719</u>
Operating Income Deficiency	2,310,773	653,500	232,070	1,566,670
Revenue Multiplier	<u>1.79138</u>	<u>1.76423</u>	<u>1.76423</u>	<u>1.79138</u>
Revenue Requirement Increase	<u>\$4,139,473</u>	<u>\$1,152,924</u>	<u>\$409,425</u>	<u>\$2,806,501</u>
Present Revenues	\$22,061,954	\$21,959,014	\$21,959,014	\$22,276,658
Proposed Revenues	\$26,201,427	\$23,111,938	\$22,368,439	\$25,083,159
Percentage Increase	18.76%	5.25%	1.86%	12.60%