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IN THE MATTER OF THE PETITION OF 68-72 FRANKLIN PLACE, LLC AND THE VILLAGE COURTYARD CONDOMINIUM ASSOCIATION	STATE OF NEW JERSEY BOARD OF PUBLIC UTILITIES PETITION
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Petitioners, 68-72 Franklin Place, LLC and the Village Courtyard Condominium Association hereby petition this Honorable Board of Public Utilities (“BPU”) for relief from the industrial meter service charge set forth in New Jersey American Water Company, Inc.’s “Tariff for Water and Wastewater Service” for the reasons described herein.

RELEVANT PARTIES

1. 68-72 Franklin Place LLC is the developer (“Developer”) of condominium buildings located in the City of Summit, County of Union, New Jersey consisting of twelve (12) townhouse-style condominium units situated in two (2) multi-story buildings on the south side of Franklin Place, and two (2) duplex homes situated on the north side of Franklin Place (the entire project collectively known as the “Condominium”).
2. The Village Courtyard Condominium Association, Inc. (the “Association”) is a New Jersey non-profit corporation comprised of the individual unit owners of the Condominium (the “Association”) (the “Developer” and the “Association” collectively referred to herein as the “Petitioners”).
3. New Jersey American Water Company, Inc. (“NJAW”) is a regulated public utility having

its principal offices at 1025 Laurel Oak Road, Voorhees, New Jersey 08043 (“NJAW” or “New Jersey American Water”).¹

FACTUAL BACKGROUND

4. As noted, the Condominium consists of multiple buildings including, in pertinent part, two (2) multi-story “townhouse-style” buildings with a total of twelve (12) condominium units (six units in each building) (the “Condominium Units”).
5. The Condominium Units are the focus of this Petition.
6. The Condominium Units are situated on that certain parcel designated by the Summit Tax Assessment Map as Block 3401, Lot 4.01, known as 68-72 Franklin Place (the “Property”).²
7. The Property is an approximately 0.972-acre lot.
8. The Condominium was developed after over a decades-worth of efforts on the part of the Developer and its professionals, which incurred well over \$13 million in costs to convert a once dilapidated area into new housing and to develop off-tract affordable housing units for the City of Summit Housing Authority.
9. Specifically, the Developer retained professional planners, engineers and architects as early as 2008 to assist with securing the necessary governmental approvals and utility access to develop the Condominium.
10. The preliminary concept plans and designs evolved over time as the Developer obtained

¹ As used herein, the terms “NJAW” and “New Jersey American Water” refer to the public utility and its agents, representatives, members and employees.

² The remaining two dwelling units are situated in separate, detached duplexes located across the street from the Property on parcels designated by the Summit Tax Map as Block 2614, Lots 26.01 and 26.02.

feedback from Summit's planning and zoning officials as well as representatives of New Jersey American Water.

11. Between 2012 and 2017, the Developer secured several development approvals and amended approvals from the City of Summit Planning Board (the "Planning Board") and City of Summit Zoning Board of Adjustment (the "Zoning Board") to construct the Condominium (the "Condominium Project").
12. At or around the time of these proceedings, the Developer was informed by NJAW that the existing water system servicing the Property - a NJAW 4-inch water main on Franklin Place - was inadequate to support the 12 Condominium Units, and that certain upgrades and extensions would be required.
13. NJAW's representations led to a series of discussions concerning the necessary water improvements, such as an upgrade from the existing 4-inch water main to an 8-inch ductile iron water main, and related extensions and interconnections necessary to service the Condominium Units, which were originally estimated by NJAW to cost around \$155,000.
14. Over time, however, the Developer was induced into spending over \$300,000 in costs on:
(i) certain additional extension work to connect NJAW's water service lines to the Condominium Units, and (ii) other ancillary upgrades to NJAW's water system mains, lines and facilities situated in the general vicinity of Property (as more particularly described in Paragraphs 64-75 of this Petition as the "Extension Project").
15. The focus of this Petition is that portion of the Extension Project requiring a water main upgrade which, in turn, called for the installation of an 8-inch industrial meter (the "Industrial Meter") to monitor water flow to the 12 Condominium Units.

16. As detailed herein, NJAW and its representatives advised the Developer that the Industrial Meter was necessary to accommodate other upgrades that were being made in furtherance of the Extension Project.
17. NJAW and its officials also represented that the difference in cost between a residential meter and the Industrial Meter was nominal, thereby leading the Developer to believe the Industrial Meter was the better bargain.
18. The construction of the overall Condominium was completed on or around June 15, 2019, and the Extension Project was completed on or around October 25, 2018.
19. Throughout 2019 to 2020, the Condominium Units were sold to individuals who are a part of the Association (the “Unit Owners”).
20. Shortly thereafter, Petitioners learned that the Industrial Meter was substantially more expensive than represented by NJAW.
21. Pursuant to NJAW’s “Tariff for Water and Wastewater Service” (the “Tariff”), the current fixed service charge for an 8-inch industrial meter alone is \$1,348 per month (the “Service Charge”).
22. As applied to the Unit Owners, the Service Charge is unconscionable. The Industrial Meter itself results in a monthly water bill in excess of \$112 for each of the Unit Owners, which does not include the applicable water use charges and fees.
23. Moreover, and as alleged herein, the use of the Industrial Meter for a residential development of this size is wholly unnecessary.
24. As a result of NJAW’s actions, omissions and miscommunications, the Unit Owners have suffered, and will continue to suffer, a severe hardship by way of excessive monthly water

charges beyond accepted standards throughout the State of New Jersey.

25. Petitioners therefore respectfully urge the BPU to grant relief from the Service Charge pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:3-1.3(d), or to otherwise enter an appropriate order requiring New Jersey American Water to replace the Industrial Meter with a less costly meter or alternative option suitable to the residential development.

BACKGROUND OF THE EXPANSION PROJECT

26. As part of the Developer's efforts to advance the Condominium Project, the Developer inquired with New Jersey American Water regarding the existing water utility systems situated in, on and around the Property.
27. In or around 2014, NJAW informed the Developer of an existing 4-inch water main situated under Franklin Place between Summit Avenue and Irving Place.
28. Based on its review of the plans for the Condominium Project, NJAW advised that the existing water main was not adequate to service the Condominium Units and that certain upgrades and/or extensions would be required to advance the Condominium Project.
29. NJAW initially informed the Developer that it would need to upgrade approximately 500 linear feet (LF) of the existing water main from a 4-inch line to an 8-inch line to service the Condominium Units. NJAW directed the Developer to file an application for water service in accordance with these and other related modifications to the existing water utility systems.

The Original Application

30. On April 23 2014, the Developer filed a "New Service Application" with NJAW in accordance with the above-recommended modifications (the "Original Application"), and paid an application fee of \$2,500.

31. On February 18, 2015, NJAW informed the Developer that the proposed upgrade to the existing water main, together with certain ancillary improvements such as the installation of wet tap valves, dry valves and new fire hydrants (the “Original Proposal”) would cost around \$155,000.
32. The estimated costs of the Original Proposal were approximately twenty-thousand dollars (\$20,000) above what the Developer’s professionals had calculated.
33. New Jersey American Water would not consider cost estimates prepared by any contractors other than its preferred sources.
34. In any event, and as explained below, these costs were tailored to an Original Proposal which was quickly abandoned due to NJAW’s miscalculations and misunderstanding of its utility systems servicing the overall neighborhood in the vicinity of the Property.
35. After submitting the Original Application, it became apparent that NJAW’s recommendations were not based upon all relevant factors concerning the specifications and layout of the existing water utility systems, and the water demand that would result from the development of the Condominium Units.
36. For example, NJAW’s belief that an upgraded water main was required was based, in part, upon certain fire flow and fire hose allowance standards NJAW used to calculate the necessary water demand (“Needed Fire Flow Calculation”) for the Condominium Units.
37. According to NJAW, the Needed Fire Flow Calculation for the Condominium Units was 1,500 gallons per minute (GPM).
38. However, even the proposed upgrade to an 8-inch water main could not meet that demand, as it would enable only 1,300 GPM of water flow to the Condominium Units.

39. On or around September 21, 2015, the Developer's professionals met with a representative from NJAW to discuss the Original Proposal.
40. During that meeting, NJAW's representative asked whether the Condominium Units would have a sprinkler system.
41. The Developer confirmed that the plans for the Condominium Units, which had been previously sent to NJAW, contained a sprinkler system.
42. After nearly a year's worth of discussions, NJAW's representative then advised the Developer - for the first time - that the use of a sprinkler system alleviated the need to consider certain fire flow standards (see ¶ 36) as part of the Needed Fire Flow Calculation.
43. The Developer's professionals subsequently recalculated the water demand for the Condominium Units and concluded a maximum water demand of 655 GPM would suffice.
44. Discussions concerning the Original Proposal continued between 2015 and 2016 with little progress.
45. Ultimately, the Developer decided to reassess the necessary system upgrades in conjunction with its engineers and consultants.

The Revised Application

46. Between 2016 to 2017, the Developer realized that certain aspects of the Condominium Project required revisions, and sought and obtained an amended approval from the Summit Planning Board.
47. Around the same time, the Developer's professionals re-approached NJAW concerning the need to revisit the Original Proposal with respect to the Needed Fire Flow Calculation and the size and location of the fire services and hydrant locations.
48. In or around April 2017, the Developer sent a revised application for water service to

NJAW to reflect these changes (the “Revised Application”), and a new application fee of \$2,500.

49. The Revised Application was immediately met with resistance on the part of NJAW, which demanded further extensions of the 8-inch water main and additional valves and taps that were not previously requested or identified as necessary by NJAW.
50. Specifically, NJAW issued a May 22, 2017 deficiency letter stating that the proposed 8-inch water main needed to be extended an additional 215 LF beyond the 500 LF contemplated by the Original Proposal, and interconnected to different NJAW water mains than originally planned (the “Revised Proposal”).
51. In effect, the Revised Proposal called upon the Developer to pay for an additional 215 LF of upgrades beyond the general vicinity of its Property for the benefit of NJAW’s overall service area and other nearby property owners.
52. NJAW originally estimated that the Revised Proposal would cost \$208,156.77, an amount which, again, far exceeded the Developer’s calculation of about \$169,895 in costs.
53. In connection with the Revised Proposal, the Developer was advised to consult with City of Summit Fire Code Official’s regarding the Needed Fire Flow Calculation.
54. Between September and December 2017, the Developer and its engineers and consultants engaged in communications with the City of Summit’s Fire Official concerning the same.
55. The Summit Fire Code Official had numerous questions and comments regarding the size of the fire lines, number and location of hydrants, and fire-fighting flow availability, which were based on outdated plans and a prior erroneous calculation of the Needed Fire Flow. See ¶¶ 37-43.

56. Several meetings, phone calls and communications were required to explain to the Fire Code Official that NJAW's original Needed Fire Flow Calculation was erroneous and that the correct calculation was 655 GPM. See ¶ 43.
57. During that process, the Summit Fire Code Official also noted several other issues with the Revised Proposal.
58. For instance, the original plans that were submitted to the Planning Board in support of the Condominium Project (approved in 2013) depicted the upgrade of the existing 4-inch water main to an 8-inch water main as being interconnected with two 6-inch service lines (one for each driveway) and tapped off of the upgraded, 8-inch water main.
59. Those plans were later revised and approved by the Planning Board in 2016, albeit with a single 6-inch service line tapped off of the 8-inch water main.
60. The Fire Code Official indicated that, pursuant to the New Jersey Residential Site Improvement Standards, there could not be more than one hydrant on the 6-inch service line, whereas the plans depicted two hydrants.
61. The Fire Code Official therefore recommended that the 6-inch service line be increased to an 8-inch service line, which would cross Franklin Place from the new 8-inch water main, enter a meter vault in front of the Property and continue to the Condominium Project site, where it would be split into two, 6-inch service lines.
62. NJAW's representatives were consulted regarding the Fire Code Official's proposal and had no objection other than to note that the use of an 8-inch service line would require an 8-inch industrial meter.
63. NJAW's representatives advised the Developer that the larger sized meter would increase

monthly water fees by only a minimal amount, i.e., “a few hundred dollars.”

THE EXTENSION PROJECT

64. On November 15, 2017, after accounting for the changes to the Revised Proposal that were recommended by the Fire Code Official, NJAW sent the Developer a proposed “Extension Deposit Agreement” and seeking a deposit of \$203,586.55.
65. In light of its need to advance the Condominium Project without further delays or unnecessary expenses, the Developer again agreed to the terms of the proposed Extension Deposit Agreement and executed the same on December 19, 2017 (the “Final Extension Deposit Agreement”).
66. The Final Extension Deposit Agreement with NJAW incorporated the terms of the Revised Proposal, as amended by the Summit Fire Code Official’s recommendations.
67. Collectively, the agreed-upon “Extension Project” contemplated the following upgrades and improvements: (i) upgrade the existing 4-inch water main in Franklin Place to an 8-inch water main; (ii) extend the upgraded water main 500 LF to existing water mains at Summit Avenue and Irving Place; (iii) further extend the upgraded water main an additional 215 LF beyond the area adjacent to the Property; (iv) install nine appurtenances (wet tap valves, dry valves and hydrants) in the manner presented in the Revised Proposal; and (v) install the 8-inch “Industrial Meter” as noted at the outset of this Petition.
68. As required by the Final Extension Deposit Agreement, the Developer deposited a check with New Jersey American Water in the amount of \$203,586.55.
69. Shortly thereafter, on January 29, 2018, NJAW issued correspondence to the Developer stating that bids had been received and that the winning bid would cost \$318,838.56 to perform the work associated with the Extension Project.

70. The winning bid price greatly exceeded NJAW's estimated cost of the Extension Project of \$203,586.55 and was based upon material costs that clearly had no relation to actual market prices.
71. For example, the Developer's consultants estimated that installation cost for the 8-inch ductile iron water main could range from \$45 to \$75 per linear foot at most, yet NJAW's winning bidder estimated such work would cost \$245 per linear foot.
72. The Developer's attorney and consultants attempted to negotiate the costs of the Extension Project with NJAW with little success.
73. NJAW initially demanded that the Developer deposit an additional \$115,752.01 to match the winning bid cost (added to the Developer's original deposit of \$203,586.55), before the Extension Project could commence.
74. Following the negotiations, the additional deposit amount was minimally reduced to \$111,752.64.
75. Again, in light of the significant delays that the Extension Project caused dating back to the Original Proposal, and the Developer's need to advance the Condominium Project, the Developer agreed to provide the additional deposit money.

THE INDUSTRIAL METER

76. As part of the Extension Project, NJAW advised that the Industrial Meter was required to correspond with the 8-inch service line and valves.
77. The Developer expressed concern with the necessity of a large industrial meter to monitor the water flow to the 12 Condominium Units.
78. However, NJAW and its officials assured the Developer that the difference in cost between residential meters and the Industrial Meter was nominal.

79. As it turns out, NJAW's Tariff provides no distinction in the service charges between industrial meters and residential meters in the service area of the Property.
80. Rather, the service charges vary with size, not type, of meter.
81. With respect to eight (8) inch industrial meters, the Tariff imposes a fixed "Service Charge" of \$1,348 per month.
82. As applied here, the Service Charge for the Industrial Meter results in a monthly water bill in excess of \$112 for each of the 12 Unit Owners, not including the additional fees and costs associated with each unit's monthly water usage.
83. Such egregious costs were not properly disclosed to the Developer and have imposed a severe hardship on the 12 Unit Owners.

RELIEF REQUESTED

84. NJAW's acts, omissions and miscommunications concerning the necessity and costs of the Extension Project, including the Industrial Meter, induced the Developer into investing significant sums to its detriment as well as the detriment of the Association, while benefiting NJAW's physical assets.
85. During the years of approval processes, NJAW failed to apprise the Developer of all relevant, material information necessary to make an informed decision as to whether the Industrial Meter was appropriate for the 12 Condominium Units.
86. Petitioners respectfully request that under the circumstances described herein, relief is warranted.
87. Pursuant to N.J.A.C. 14:3-1.3(d), the BPU should order NJAW to not enforce the Industrial Meter Service Charge set forth in its Tariff as against the Unit Owners.
88. Relief is also warranted in accordance with N.J.S.A. 48-2-21, which authorizes the BPU

to order the application of special rates in cases where an existing rate is deemed unjust and unreasonable.

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By: _____
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DATED: