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June 18, 2018

David McMillin

Via Electronic Mail and Lawyers' Service Overnight Delivery

Clerk, Office of Administrative Law

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3444 Quakerbridge Road

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Re: **I/M/O the Petition of New Jersey American Water Company, Inc. for Approval of Increased Tariff Rates and Charges for Water and Wastewater Service, Change in Depreciation Rates and Other Tariff Provisions BPU Docket No. WR17090985 OAL Docket No. PUC 14251-2017 S**

Dear Clerk:

Enclosed please find an original and two copies of a Motion of Legal Services of New Jersey ("LSNJ") to Intervene in the above-referenced matter for the Limited Purpose of Supporting Rate Counsel's Motion to Issue an Order Rejecting New Jersey American Water's Proposed Provisional Rate Increase, together with LSNJ's Proposed Letter Brief in Support of Rate Counsel's Motion. Please file return a stamped filed copy in the enclosed self-addressed stamped envelope. LSNJ's motion was previously submitted for filing with the BPU, but Board Staff has indicated that it should be filed with the Office of Administrative Law, even though it solely addresses Rate Counsel's pending motion before the Board.

By copy of this letter, this Motion and the accompanying proposed Letter Brief are being forwarded this date via electronic mail to all persons whose names appear on the attached service list. A copy is also being sent via Lawyers' Service Overnight Delivery to Judge Gertsman, BPU Secretary Aida Camacho-Welch, DAGs Caroline Vachier, Alex Moreau, Andrew Kuntz, and Emma Xiao. Thank you for your attention to this matter.

Sincerely,
LEGAL SERVICES OF NEW JERSEY, INC.

By: 

David McMillin

Encl.

In the Matter of the Petition of New
Jersey American Water Co. Inc. for
Approval of Increased Tariff Rates and
Charges for Water and Wastewater
Service, Change in Deprecation Rates and
Other Tariff Modifications
BPU Docket No. WR17090985
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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

In the Matter of the Petition of New Jersey
American Water Company, Inc. for Approval
Of Increased Tariff Rates & Charges for
Water & Wastewater Service, Change in
Depreciation Rates & Other Tariff Provisions

**BPU Docket No. WR17090985
OAL Docket No. PUC 14251-2017 S
MOTION TO INTERVENE OR TO
PARTICIPATE FOR A LIMITED PURPOSE**

**MOTION OF LEGAL SERVICES OF NEW JERSEY TO INTERVENE OR TO PARTICIPATE
FOR A LIMITED PURPOSE**

On behalf of its low-income clients, Legal Services of New Jersey (“LSNJ”), hereby moves to intervene, or in the alternative, to participate, in the above-captioned proceeding, for the limited purpose of supporting Rate Counsel’s pending Motion to Issue and Order Rejecting New Jersey America Water’s (“NJAW’s”) Proposed Provisional Rate Increase by filing the accompanying proposed letter brief. In support of its motion, LSNJ states as follows:

1. LSNJ coordinates New Jersey’s Legal Services system, a network of six independent non-profit corporations providing free essential legal services in civil matters to low-income people through offices in all 21 counties. When appropriate, LSNJ makes available information and perspectives on matters of broad public importance in the lives of people in poverty based on its experience in representing tens of thousands of low-income people each year.

2. LSNJ and its clients have an interest in the outcome of this case because low-income households across the state will face increased economic hardship and potential loss of basic water service if NJAW’s unapproved 12% rate increase goes forward. Based on LSNJ’s research and experience representing low-income people in New Jersey, it is foreseeable that if an increase of this magnitude does go forward, hundreds of thousands of low-income New Jerseyans will have to divert

funds from other pressing needs to cover the increase, and many will lose their water service. Retroactive refunds will not undo the irreparable harm that results.

3. Low-income customers are especially vulnerable to high water charges, in part because they spend a greater proportion of their income on water service than higher-income households.

4. LSNJ's and its clients' interests are different from those of any other party because no other party expressly focuses on the interests and concerns of NJAW's low-income customers. Rate Counsel's statutory mandate is to represent the interests of all ratepayers (including, for instance, large commercial users); proposed intervenor AARP represents the interests of all of its members aged 50+ regardless of income level.


5. LSNJ will add measurably and constructively to the scope of this case because of its policy expertise and experience in matters raising issues of particular importance to low-income utility customers. Legal Services programs across New Jersey have represented many thousands of low-income clients in utility matters over the past 50 years. LSNJ played an active role in the establishment of New Jersey's Universal Service Fund in 2003 (BPU Docket No. EX0002019), was a party to the case arising from Bell Atlantic (Verizon) New Jersey's petition to deregulate its rates for basic telephone service (BPU Docket No. TO99120934), and was a member of the Board's Universal Service Working Group throughout its existence.

6. Granting leave to file LSNJ's proposed letter brief will not cause confusion or undue delay in the proceeding.

7. For all of the foregoing reasons, pursuant to N.J.A.C. 1:1-16.1, *et seq.*, LSNJ respectfully requests that it be permitted to intervene, or in the alternative, to participate, in the above-captioned proceeding, for the limited purpose of supporting Rate Counsel's pending Motion to Issue an Order

Rejecting NJAW's Proposed Provisional Rate Increase, and to file the accompanying proposed letter brief.

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY, INC.

By: 

David McMillin

Dated: June 18, 2018

CERTIFICATION

1. I am an attorney at Legal Services of New Jersey, Inc.
2. I have read the contents of the foregoing Motion and hereby certify that the statements contained therein are true and accurate to the best of my knowledge.




David McMillin

Dated: June 18, 2018

CERTIFICATION OF SERVICE

I, Dhairya Bhatia, hereby certify that I have served Legal Services of New Jersey's Motion to Intervene for the Limited Purpose of Supporting Rate Counsel's Motion to Issue an Order Rejecting New Jersey American Water's Proposed Provisional Rate Increase, LSNJ's Proposed Letter Brief in Support of Rate Counsel's Motion on BPU Secretary Aida Camacho-Welch, DAGs Caroline Vachier, Alex Moreau, Andrew Kuntz, and Emma Xiao by Lawyers Service Overnight Delivery, and on all parties on the attached service list by Electronic Mail.

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



Dhairya Bhatia
Administrative Assistant

Dated: June 18, 2018



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June 18, 2018

David McMillin

Via Electronic Mail and Lawyers' Service Overnight Delivery

Clerk, Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
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**Re: I/M/O the Petition of New Jersey American Water Company, Inc. for
Approval of Increased Tariff Rates and Charges for Water and Wastewater
Service, Change in Depreciation Rates and Other Tariff Provisions
BPU Docket Number: WR17090985
OAL Docket Number: PUC 14251-2017 S**

Dear Clerk:

Please accept for filing an original and two copies of this letter brief in support of Rate Counsel's pending Motion to Issue Order Rejecting New Jersey American Water's Proposed Provisional Rates in connection with the above-referenced matter. Please date stamp one copy as "Filed" and return in in the enclosed stamped, addressed envelope.

On behalf of the New Jersey's low-income residents, Legal Services of New Jersey ("LSNJ") strongly urges the Board to enjoin New Jersey American Water's ("NJAW's") unilateral implementation of an unapproved 12% rate increase. This precipitous increase in rates would place the health and safety of low-income New Jersey residents at great risk. Many low-income households will lose their water service if a rate hike of this magnitude is imposed, even temporarily – and those that do manage to keep their service on will be able to do so only by making a forced low-interest loan to NJAW, diverting funds that should be available to meet other pressing necessities.¹

As a preliminary matter, this is not a question that has been put beyond the reach of the Board, or beyond challenge by Rate Counsel or utility customers, by the adoption of administrative rules for provisional rates late last year. The Board's mandate includes an

¹ NJAW has ready access to capital markets at reasonable rates. Its low-income consumers do not.

overarching obligation to ensure that rates are just and reasonable for all customers, including those of low-income customers who cannot afford to pay the amount a utility seeks to charge.¹

The concerns of low-income customers are particularly acute in the present matter. If and when the Board determines that a 12% rate increase is unwarranted, retroactive refunds will do nothing to reverse the hardships endured by households that have lost their water service, or foregone other necessities, solely because of the increased provisional rates.

Approximately 25% of all New Jersey workers – more than a million people – earn less than enough to meet basic necessities.² Other households on limited fixed incomes also lack the resources to meet basic needs. Simply stated, for more than a quarter of residential water customers, funds to pay unilaterally-imposed and unapproved rate increases can only be found by forgoing other basic necessities. Nonetheless, even in the face of widespread affordability challenges, NJAW has implemented a self-designed low-income assistance program that reaches **only one out of every 309 (or about a third of a percent)** of its residential customers, according to the figures on its web site.³

At the same time, LSNJ is seeing more and more tenants with the risk of water bill increases shifted to them water via submetering and RUBS systems administered by landlords or their agents. While it may be a concept far removed from the experience of many well-to-do households, substantial numbers of New Jersey ratepayers live every day with the very real possibility of having to choose between food to eat and water for drinking and hygiene.

Recent events in Detroit and other communities throughout the country have brought the dire consequences of losing water service for low-income households to the forefront. *See, e.g., Experts See Public Health Crisis in Detroit Water Shutoffs*, Detroit Free Press, July 26, 2017; *UN Officials Criticise Detroit Water Shutoffs*, BBC News, Oct. 201, 2014 (noting the disproportionate effect of an 8.7% water rate increase on low-income and African-American households); Centers for Disease Control and Prevention, *Community Health Impact of Extended Loss of Water Service --- Alabama, January 2010* (finding a significantly higher prevalence of acute gastrointestinal illness where water service lost for a week or more). These threats are

¹ Unfortunately, the Board, in promulgating rules for provisional rate increases under a prior administration, simply ignored numerous comments addressing the particularized negative effects of unapproved provisional rates on low-income customers. *See, e.g.,* 50 N.J.R. 625(b), Response to Comments 2 through 20 (Dec. 19, 2017) (failing to respond to Comments 16-18 specifically addressing effects on low-income consumers).

² LSNJ Poverty Research Institute, *The Real Cost of Living in New Jersey: What It Takes To Meet Basic Needs and Avoid Deprivation* (2013) 21-22.

³ *See* New Jersey American Water “Get to Know Us” Brochure, available at <https://dnnh3qht4.blob.core.windows.net/portals/1/About%20Us/About%20Us%20-%20NJ%20-%202018.pdf?sr=b&si=DNNFileManagerPolicy&sig=ZRagLVwiRQJXdzwxlwjyiuQ%2FB%2FZlomr6SIS6xuffC8%3D> (631,000 water customers, 93% residential) ; <https://amwater.com/njaw/customer-service-billing/low-income-program> (1,900 customers enrolled in NJAW service charge discount program as of 12/31/16).

magnified in households with vulnerable members, who are at particular risk of adverse health consequences.¹


At the very least, the Board should ameliorate the effects of NJAW's unapproved rate increase on low-income customers by specifically exempting all households that have been identified as needing financial assistance to meet unaffordable utility costs. Because NJAW's self-designed rate assistance program is tiny and inadequate, the Board should, if it decides not to enjoin NJAW's provisional rate increase in its entirety, order that the unapproved rate increase shall not apply to any residential ratepayer who (a) has been determined to be eligible for USF, LIHEAP, Lifeline, or any other means-tested utility rate assistance program, including NJAW's, or (b) otherwise demonstrates that the unapproved increased rates would cause undue hardship.

Conclusion

For all of the foregoing reasons, LSNJ urges the Board reject or limit New Jersey American Water's unilateral adoption of its proposed provisional rate increase.

Thank you for your consideration and attention to this matter.

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY, INC.

By: 

David McMillin

Cc: Service List (via Electronic Mail)

¹ A 2005 study showed that 70% of low-income households in New Jersey that pay electric or gas bills face are vulnerable households with one or more members who are people with disabilities, elderly, or young children. APPRISE State Report – New Jersey, available at www.appriseinc.org/reports/MSS_NJ.pdf.