



A TRADITION OF LEGAL EXCELLENCE SINCE 1938

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April 22, 2022

VIA EMAIL AND N.J. LAWYER'S SERVICE

Hon. Gail Cookson, A.L.J.
Office of Administrative Law
33 Washington Street
Newark, NJ 07102
lla.Dhabliwala@oal.nj.gov

Re: Petition of 68-72 Franklin Place, LLC to the New Jersey Board of Public Utilities for Relief from Certain New Jersey American Water Company Tariff Charges
OAL Docket No. PUC 05592-2021 N
BPU Docket No. WO20110723
Our File No. 16565-119508

Dear Judge Cookson:

As you know, this firm represents 68–72 Franklin Place, LLC (“Petitioner”) in the above-captioned matter. Your Honor conducted a hearing in this matter on March 22, 2022, and at the end of that hearing, requested that supplemental submissions be sent to Your Honor concerning certain procedural issues raised by Your Honor *sua sponte*. Please accept this correspondence in lieu of a more formal brief in response to that request, and in further opposition to New Jersey American Water Company’s (“NJAW”) motion for summary judgment.

Your Honor raised several issues during the March 22nd oral argument. The first issue concerned Petitioner’s standing in this matter. Your Honor questioned by the Village Courtyard Condominium Association (“Association”) was not a party.

Respectfully, the answer to this question requires Your Honor review notes from the conference held on September 8, 2021, when counsel to the Association, Martin Cabalar, Esq., indicated that the Association supported the Petition as an interested party, but would not actively participate in the proceedings. Your Honor should be aware of the fact that the transition from the Petitioner-Developer to the Association only began in May of last year, after the Petition had already been filed. The fact of the matter is that it is the Association, which is made up of 12 condominium owners on the south side of Franklin Place, that will ultimately bear the long term cost of \$123+ per month for the 8-inch meter.

Your Honor also raised the issue of the OAL's jurisdiction to deal with the issue of past due meter fees. Your Honor seemed to suggest that this issue belonged before the BPU. Your Honor specifically referred to the New Jersey Supreme Court decision in Boss v. Rockland Electric Company, 95 N.J. 33 (1983). The case stands for the proposition that the BPU, rather than a court, should interpret an easement agreement between a landowner and a utility. While the present motion record refers to certain easement issues, these references merely provide context so that Your Honor may understand the convoluted background that led to the NJAW imposing an unduly burdensome, and improper tariff charge, against the Petitioner-Developer/Association. The ultimate relief at issue in this Petition concerns the propriety of the NJAW's selected Tariff rate under circumstances where a more favorable rate exists and must be applied in accordance with N.J.A.C. 14:3-1.3(g). Respectfully, the factual issues related to such relief do not require the "expertise" of the BPU. Your Honor, as we argued at the March hearing, should conduct a hearing with the key witnesses being the two people who submitted affidavits in support of and in opposition to the summary judgment proceedings.

Petitioner respectfully incorporates its January 14, 2022 opposition brief by reference, and reiterates only that NJAW had the statutory duty to "assist the customer in selecting the rate schedule most favorable for the customer." N.J.A.C. 14:3-1.3(g). That clearly did not happen here. I expect that NJAW will repeat the arguments made in support of its motion, and claim that the selected Tariff rate governs and that is the end of the case. This disregards the fact that NJAW dictated the terms which led to the needless 8-inch meter being installed, including the scope of the easement that excluded all other utilities from access to the subject property, and the demand that Petitioner upgrade NJAW's off-site water systems. To the extent these facts are in dispute, Your Honor must, at a minimum, conduct a hearing.

Lastly, and most importantly, I must bring to Your Honor's attention recent instances of bad faith that occurred on April 19 and April 20, 2022, while this motion has remained pending. On such dates, the Association's counsel advised me that it received a notice from NJAW indicating water service would be terminated on April 25, 2022 unless \$32,144.23 was paid before that date. I immediately called and left voicemail messages for the attorneys representing NJAW. I received an email from an attorney representing NJAW on April 20, indicating that he would call me on April 21, 2022. I called Mr. Contarino yesterday, and he told me that his client had placed a hold on the "turn off" order effective April 25, 2022. I asked for an email documenting our telephone call, and I received it yesterday just before noon. Last night, my client sent me the attached Notice of Intention to Terminate Water Service which was attached to the entry door on one of the two condominium units. (All of these documents are attached as Exhibit A). I bring this to Your Honor's attention to demonstrate that NJAW's outrageous conduct continues.

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In sum, Petitioner respectfully urges Your Honor to retain jurisdiction and hold the necessary evidentiary hearing as soon as practical. Thank you for your attention to this matter.

Respectfully submitted,

/s/ Robert L. Podvey
Robert L. Podvey

RLP/mzr
Enc.

cc: Service List for WO20110723

EXHIBIT A



**NEW JERSEY
AMERICAN WATER**

AMERICAN WATER, PO BOX 578, ALTON IL, 62002

For Service To: 82 FRANKLIN PL
SUMMIT, NJ 07901-3617

Account Number	1018-2200312533
Pay Before	04/25/2022
Total Due	32,144.23

68-72 FRANKLIN PLACE LLC
WILKIN MANAGEMENT / VILLAGE COURTYARD
1630 MILITARY CUTOFF RD
WILMINGTON, NC 28403-5719

TIME SENSITIVE NOTICE:

To ensure timely receipt of your payment, please use one of the payment options noted below. Do not mail your payment.

IMPORTANT: FINAL DISCONTINUANCE NOTICE
Please read and take the steps needed to avoid your service from being discontinued

PAY THIS AMOUNT \$32,144.23 PRIOR TO 04/25/2022

Payment on your water/waste water account is overdue. If payment is not received, your service may be shut off on or after 04/25/2022. You can prevent discontinuation of water service by paying the amount printed above. Please use one of our convenient payment options listed below to ensure your payment is applied to your account immediately.

TO STOP THE SHUT OFF, YOU MUST PAY THE AMOUNT OVERDUE OR YOU MUST CALL US AT 1-855-669-8753 if you have an overdue amount or have a question regarding your bill.

It is our sincere goal to work with you to correct this situation before further action becomes necessary. Please respond immediately so we can assist you as best as possible. If you do not respond to this notice and your service is disconnected, any installment plan will be considered in default and you may be required to pay the full amount due and a service charge of \$28.00 before service is reconnected.

New Jersey American Water is subject to the jurisdiction of:

New Jersey Board of Public Utilities
44 S. Clinton Ave 3rd Floor
PO Box 350
Trenton, NJ 08625-0350
Phone: 1-800-624-0241 or 609-341-9188



Tana Bucca
Shareholder



Becker & Poliakoff

Robert L. Podvey

From: Contarino, Josiah A. <jcontarino@archerlaw.com>
Sent: Thursday, April 21, 2022 11:51 AM
To: Robert L. Podvey
Cc: Herten, Thomas J.
Subject: RE: IMO Franklin Place PUC 5592-21 (Jd. Cookson)

External email: careful w/links or attachments.

Bob, nice speaking to you just now. As mentioned, we were advised this morning that NJAW placed a hold on the account this morning to nullify the turn off order scheduled for Monday, 4/25/22. I will ask whether there is some kind of entry that I can forward to you showing the hold and, if so, will send that along.

Regards,
Josiah

Josiah Contarino, Esq.

Archer & Greiner P.C.
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21 Main Street, Suite 353
Hackensack, NJ 07601-7095
201-498-8541
jcontarino@archerlaw.com
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-----Original Message-----

From: Contarino, Josiah A.
Sent: Wednesday, April 20, 2022 5:09 PM
To: 'Robert L. Podvey' <rpodvey@connellfoley.com>
Cc: Herten, Thomas J. <therten@archerlaw.com>
Subject: RE: IMO Franklin Place PUC 5592-21 (Jd. Cookson)

Bob, I received your message. I will plan to touch base with your tomorrow.

Regards,
Josiah

-----Original Message-----

From: Robert L. Podvey <rpodvey@connellfoley.com>
Sent: Wednesday, February 23, 2022 6:11 PM
To: Dhaliwala, Ila [OAL] <Ila.Dhaliwala@oal.nj.gov>
Cc: Contarino, Josiah A. <jcontarino@archerlaw.com>; McClure, Susan [RPA] <smcclure@rpa.nj.gov>; Simmons, Brandon (LPS) <Brandon.Simmons@law.njoag.gov>
Subject: [EXT MAIL] Re: IMO Franklin Place PUC 5592-21 (Jd. Cookson)

Ila—I can be available on all the dates and times that Judge Cookson has listed. I assume the oral argument will be virtual. Respectfully, Robert Podvey.

NOTICE OF INTENTION TO TERMINATE WATER SERVICE

This notice is to inform you that the water service to this property will be shut off on or around 4/15/22 for the following reason:

For non-payment of the water and/or wastewater bill by the landlord. If the water is turned off, water service will be restored when the outstanding balance, as well as the applicable reconnection fee, has been paid.

TO THE TENANT(S): Where feasible the New Jersey Board of Public Utility regulations allow a tenant to avoid service termination by assuming future payment responsibility. The tenant would not be responsible to pay the outstanding balance of the landlord. If you are interested in assuming payment responsibility for the water service to this property, please call our Customer Service Center at the toll free number listed below before the shut off date.

For failure to provide access to the meter. To avoid shut off, please call our Customer Service Center at the toll free number listed below to schedule a service visit before the shut off date.

No billing account found. During a routine inspection, our field service representative found that there was water usage at this property, however, our records indicate that we do not have a billing account set up for this property. Please call our Customer Service Center before the shut off date, so that we can set you up as a customer in our system.

Other _____

Thank you for your assistance in this matter.

Posting Date: 4/12/2022 Location: 82 Franklin Pl

Summit NJ 02 2021



CUSTOMER SERVICE

Carol Bradford Abruzzo
cbabruzzo@gmail.com
(908) 918-5355

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Michael Affrunti
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Attorneys for Petitioner

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**

OAL DOCKET NO. PUC 05592-2021 N

BPU DOCKET NO. WO20110723

CERTIFICATION OF SERVICE

Robert L. Podvey, Esq., an attorney at law of the State of New Jersey, certifies that:

1. On April 22, 2022, I caused a true and correct copy of Petitioner's supplemental letter brief in further opposition to New Jersey American Water's motion for a summary judgement to be filed with the Office of Administrative Law via email at Ila.Dhabliwala@oal.nj.gov and sent via NJ Lawyer's Service to the Hon. Gail Cookson, A.L.J., Office of Administrative Law, 33 Washington Street, Newark, NJ 07102.

2. A copy of the above opposition was also sent via email and New Jersey Lawyer's Service to:

Thomas J. Herten, Esq. (therten@archerlaw.com)
Josiah Contarino, Esq. (jcontarino@archerlaw.com)
Archer & Greiner
Court Plaza South – West Wing
21 Main Street – Suite 353
Hackensack, NJ 07602

3. Courtesy copies of the above were sent to the following via New Jersey Lawyer's Service.

Karriemah Graham, Chief
Bureau of Case Management
Board of Public Utilities
44 S. Clinton Avenue
Trenton, NJ 08625-0350

Christine Juarez
Assistant Deputy Rate Counsel
Division of Rate Counsel
140 East Front Street – 4th Floor
Trenton, NJ 08625

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.

CONNELL FOLEY LLP
Attorneys for Petitioner,
68-72 Franklin Place, LLC and The
Village Courtyard Condominium
Association

Dated: April 22, 2022

BY: /s/ Robert L. Podvey
Robert L. Podvey