



Agenda Date: 1/29/25
Agenda Item: 5A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu

WATER

IN THE MATTER OF THE PETITION OF NEW)
JERSEY-AMERICAN WATER COMPANY, INC.) DECISION AND ORDER
FOR: (1) APPROVAL OF ITS AGREEMENT WITH) APPROVING STIPULATION OF
SHREWSBURY TOWNSHIP, NEW JERSEY FOR) SETTLEMENT
THE PURCHASE AND SALE OF WATER) DOCKET NO. WM24100783
SYSTEM; (2) A DETERMINATION THAT THE)
PURCHASE PRICE IS REASONABLE; (3) A)
DETERMINATION THAT THE TRANSACTION)
COSTS ARE REASONABLE; AND (4) FOR SUCH)
OTHER APPROVALS AS MAY BE NECESSARY)
TO COMPLETE THE PROPOSED TRANSACTION)

Parties of Record:

Stephen R. Bishop, Esq., New Jersey-American Water Company, Inc.
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On October 7, 2024, New Jersey-American Water Company, Inc. (“NJAWC” or “Company”) filed a petition with the New Jersey Board of Public Utilities (“Board”) seeking: 1) approval pursuant to the provisions of the Water Infrastructure Protection Act, N.J.S.A. 58:30-1 et seq. (“WIPA”), of an agreement between Shrewsbury Township, Monmouth County (“Township”) and NJAWC (“Agreement”); 2) a determination that the purchase price pursuant to the Agreement is reasonable and thus the rate base of the Township water system; 3) approval that NJAWC’s transaction, closing, and transition costs are reasonable and prudent and may be deferred for recovery in a future base rate case; and 4) such other approvals as may be necessary to complete the proposed transaction (“Transaction”) (“Petition”). By this Decision and Order, the Board considers a stipulation of settlement (“Stipulation”) executed by NJAWC, Board Staff (“Staff”), and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, “Parties”).

BACKGROUND AND PROCEDURAL HISTORY

In 2015, the New Jersey Legislature passed WIPA, which authorizes certain owners of water or wastewater systems to enter into long-term lease contracts, or sell their water or wastewater assets to a capable private or public entity, without a referendum, if an emergent condition exists as defined in N.J.S.A. 58:30-5(b). In order to qualify for WIPA consideration, an owner must demonstrate the existence of at least one (1) of the five (5) emergent conditions specified by WIPA.

As noted in the Petition, NJAWC serves approximately 668,000 water and fire service customers and approximately 64,200 wastewater service customers. The Township currently owns and operates a potable water system (“System”), which serves 265 water service customers of the Alfred Vail Mutual Association located in the Township. The System includes 0.634 miles of eight (8)-inch diameter asbestos cement pipe, which the Township sought to sell to NJAWC pursuant to the Agreement.

Pursuant to N.J.S.A. 58:30-5, the Township engaged the engineering firm Colliers Engineering & Design (“Colliers”) to determine whether WIPA was applicable to its System. On September 21, 2021, Colliers completed its Emergent Condition Report, which found that the Township’s System met Emergent Conditions Nos. 4 and 5 as described by WIPA.¹ As stated in the Emergent Condition Report, the Township did not have a licensed operator until July 2020, and as a result, no maintenance of any sort was conducted prior to that date, including but not limited to, water main replacement since the 1940 installation, hydrant flushing, or valve exercising. On October 21, 2021, the Township accepted and adopted the Emergent Condition Report.

On July 19, 2022, following a procurement process, the Township approved the engagement of NW Financial Group, LLC (“NW Financial”) as its independent financial advisor pursuant to N.J.S.A. 58:30-5(c). On June 13, 2023, the Township adopted Resolution No. 2023-65 accepting the Emergent Condition Report prepared by Colliers and further adopted the Asset Valuation Report prepared by NW Financial.

On June 20, 2023, the Township submitted the Emergent Condition Report and the Asset Valuation Report to the New Jersey Department of Environmental Protection (“DEP”) pursuant to N.J.S.A. 58:30-5(e). On July 21, 2023, the DEP issued a determination that approved the Township’s certification as to the existence of Emergent Condition No. 4.

Pursuant to N.J.S.A. 58:30-5(f), on April 14, 2023, the Township issued a public notice regarding the DEP’s approval of Emergent Condition No. 4 and provided notice of the forty-five (45)-day petition period pursuant to N.J.S.A. 58:30-5(g) for the public to have the opportunity to protest the proposed sale of its System without referendum pursuant to WIPA. The petition period closed on May 29, 2023, without any protest having been filed.

¹ Emergent Condition No. 4 is met if “[t]here is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the department, or material damage to the infrastructure of the system.” Emergent Condition No. 5 is met if “[t]he system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.” See N.J.S.A. 58:30-5(b)(4) and (5).

Pursuant to N.J.S.A. 58:30-6, on September 16, 2023, the Township issued a Request for Qualifications. NJAWC was the only bidder respondent to the Request for Qualifications. On February 20, 2024, the Township unanimously adopted Resolution No. 2024-36 authorizing negotiations with NJAWC pursuant to N.J.S.A. 58:30-6(c). Thereafter, the Township began negotiations with NJAWC leading up to the Agreement.

On July 9, 2024, the Township adopted Resolution No. 2024-69 approving the execution of the Agreement, and authorizing NJAWC to file a petition for approval of the Agreement by the Board. Pursuant to the Agreement, the purchase price for the System is \$525,000. According to an appraisal conducted by Weinert Appraisal and Depreciation Services, LLC, the appraised value of the System is \$561,830.

As stated in the Petition, the Township is financially unable to properly operate and maintain the System for the proper benefit of the Township's residents. According to the Company, the financial resources and backing of NJAWC enhances its ability to access capital markets, which will be a benefit to the System's customers in the rehabilitation and replacement of infrastructure and compliance with environmental laws and regulations. Therefore, NJAWC stated that the Board should approve the Transaction pursuant to WIPA. Further, NJAWC stated that the Board should determine that the purchase price is reasonable and that the transaction costs (totaling \$18,976 as of November 30, 2024) should be deferred for recovery in a future base rate case.

By Order dated October 23, 2024, the Board determined that the Petition should be retained by the Board for hearing and, pursuant to N.J.S.A. 48:2-32, designated Commissioner Zenon Christodoulou as the presiding officer authorized to rule on all motions that arise during the pendency of the proceedings and modify any schedules.² Additionally, the October 2024 Order directed that entities seeking to intervene or participate in this matter file the appropriate application with the Board by November 8, 2024, and any party wishing to file a motion for admission of counsel pro hac vice do so concurrently with any motion to intervene or participate. No such motions were filed.

By correspondence dated November 26, 2024 and December 2, 2024, the Parties consented to toll the ninety (90)-day time period for the Board to issue a Final Decision in this matter for an additional thirty (30) days, or until February 4, 2025.³ By Order dated January 14, 2025, Commissioner Christodoulou directed the Parties to complete all proceedings in this matter to enable the Board to issue an Order by February 4, 2025.⁴

² In re the Petition of New Jersey-American Water Company, Inc. for: (1) Approval of its Agreement with Shrewsbury Township, New Jersey for the Purchase and Sale of Water System; (2) a Determination that the Purchase Price is Reasonable; (3) a Determination that the Transaction Costs are Reasonable; and (4) for Such Other Approvals as May Be Necessary to Complete the Proposed Transaction, BPU Docket No. WM24100783, Order dated October 23, 2024 ("October 2024 Order").

³ Pursuant to N.J.S.A. 58:30-7(c)(1) "[t]he [B]oard shall approve or reject the proposed contract within 90 days of receipt thereof. If no disposition is made within 90 days, the proposed contract shall be deemed approved."

⁴ In re the Petition of New Jersey-American Water Company, Inc. for: (1) Approval of its Agreement with Shrewsbury Township, New Jersey for the Purchase and Sale of Water System; (2) a Determination that the Purchase Price is Reasonable; (3) a Determination that the Transaction Costs are Reasonable; and (4) for Such Other Approvals as May Be Necessary to Complete the Proposed Transaction, BPU Docket No. WM24100783, Order dated January 14, 2025.

STIPULATION

Following a review of the Petition, conducting discovery, and settlement discussions, the Parties executed the Stipulation, which provides for the following:⁵

Financial Advisor Independence and Emergent Condition Certification

5. The Parties agree that the Asset Valuation Report was prepared by NW Financial, an independent financial advisor as contemplated under WIPA, and will not contest whether the statutory requirements related to its independence were satisfied here or in any future agency or legal proceeding related to the acquisition of the Township water system by NJAWC.
6. The Parties agree that an emergent condition exists under WIPA, N.J.S.A. 58:30-5, in this matter and will not contest whether statutory requirements of an emergent condition were satisfied here or in any future agency or legal proceeding related to the Transaction.

Initial Rates

7. The Parties agree that immediately after the Transaction, NJAWC will bill Township residents in accordance with its Rate Schedule A-1, including all applicable tariff schedules. Township residents will be subject to NJAWC's distribution system improvement charge, purchased water adjustment clause, special program charge, and lead service line replacement charge, either immediately after the Transaction or when assessed.
8. The Parties agree that NJAWC will charge the Township for twelve (12) public fire hydrants as defined by NJAWC's Rate Schedule M-1. The Township will be responsible for public fire protection charges for all existing and future public fire hydrants connected to the Township water system.

Purchase Price/Transaction Costs

9. The Parties agree that the purchase price of \$525,000 provided in the Agreement is reasonable and thus the rate base of the Township water system as of the Board's approval.
10. As of November 30, 2024, the recoverable transaction, closing and transition costs are \$18,976.
11. The Parties agree that at the time of closing, NJAWC will record on its books and records as utility plant in service an estimated amount of \$543,976, which includes system assets and organizational costs for the Transaction and which amount will be included in rate base in NJAWC's next base rate case.

⁵ Although summarized in this Order, should there be any conflict between this summary and the Stipulation, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Paragraphs are numbered to coincide with the Stipulation.

12. The Parties agree and recommend that the Board should approve, without modification, the Stipulation, determine that the purchase price provided in the Agreement is reasonable as required under WIPA and thus the rate base of the Township water system as of the Board's approval, and authorize NJAWC and the Township to enter into the Transaction subject to further approvals by the New Jersey Department of Community Affairs of the proposed use of funds as required under WIPA.

Customer Assistance Programs

13. Shortly after closing, NJAWC will provide information about its customer assistance programs to all Township residents via a direct mail packet ("Welcome Packet"). The Welcome Packet will include a contact number and website for the New Jersey Statewide Heating Assistance and Referral Energy Service and the customer bill of rights outlining, among others, the Winter Termination Program.
14. NJAWC will provide a copy of the Welcome Packet and confirmation of mailing to the Parties.

DISCUSSION AND FINDINGS

In evaluating a proposed settlement, the Board must review the record, balance the interests of the ratepayers and the shareholders, and determine whether the settlement represents a reasonable disposition of the issues that will enable the Company to provide its customers in this State with safe, adequate, and proper service at just and reasonable rates.⁶ After a review of the record in this proceeding, including the Petition, exhibits and the Agreement, the Board **HEREBY FINDS** the Stipulation to be reasonable, in the public interest, and in accordance with the law.

WIPA assigns duties to three (3) agencies: the Board, the DEP, and the Department of Community Affairs, Department of Local Government Services. Under WIPA, "[i]f an owner [of a water system] determines that emergent conditions exist, the owner may long-term lease or sell its water or wastewater assets to a capable private or public entity..." N.J.S.A. 58:30-4. After an owner determines that an emergent condition exists, the owner must certify that the condition exists, and submit that certification to the DEP for approval. N.J.S.A. 58:30-5(e). Additionally, the owner must retain the services of an independent financial advisor to "review, analyze and report on" the value of the system. N.J.S.A. 58:30-5(c). Yet WIPA circumscribes the Board's review to two (2) issues: whether the Board approves the contract, and whether the purchase price is reasonable. N.J.S.A. 58:30-7(c).

After the emergent condition is certified, the system owner may request qualified bids to purchase the system, and eventually negotiate a sale price. See N.J.S.A. 58:30-6, -7. After the system owner and system purchaser reach an agreement on a proposed contract to purchase the system, the system owner must submit the contract, together with "any appraisals supporting the rent or sale price, documentation regarding the defeasance of debt, and any other information requested by the [B]oard." N.J.S.A. 58:30-7(c)(1). Following receipt of this information, the Board is required under WIPA to approve or reject the proposed contract. After our review of the record, including the Stipulation and proposed contract for sale, the Board **HEREBY APPROVES** the contract consistent with N.J.S.A. 58:30-7(c)(1).

⁶ In re Petition of Pub. Serv. Elec. & Gas, 304 N.J. Super. 247 (App. Div.), cert. denied, 152 N.J. 12 (1997).

In addition to reviewing the contract for sale, WIPA also requires the Board to review the purchase price for reasonableness. N.J.S.A. 58:30-7(c)(2). The statute requires us to deem the purchase price reasonable if 1) the "rent or sale price is sufficient to defease the debt of the owner" and either 2a) the rent or sale price is "within the range of appraisals obtained" or 2b) "[i]f there is little or no established rate base...the rent or sale price is reasonably comparable to a proxy rate base equivalent to the rate base of the designated respondent." N.J.S.A. 58:30-7(c)(2)(a) and - 7(c)(2)(b). As noted in the Petition, the Township does not have any debt associated with the System. After our review of the record, the Board **HEREBY FINDS** that the purchase price is reasonable in that it is within the range of the appraisal obtained with respect to the sale of the assets.

Accordingly, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein, subject to any terms and conditions set forth in this Order. As such, the Board **HEREBY AUTHORIZES** the acquisition of the Township's System by NJAWC pursuant to WIPA.

The Board **HEREBY RATIFIES** the decisions made by Commissioner Christodoulou during the pendency of this proceeding for the reasons stated in his decisions and Orders.

The Company's costs will remain subject to audit by the Board. This Decision and Order shall not preclude, nor prohibit, the Board from taking any actions determined to be appropriate as a result of any such audit.

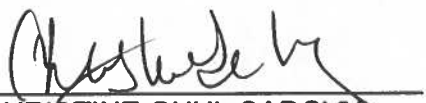
This Order shall be effective February 3, 2025.

DATED: January 29, 2025

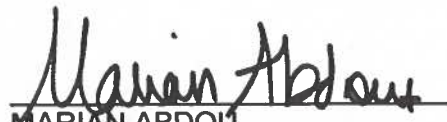
BOARD OF PUBLIC UTILITIES
BY:



DR. ZENON CHRISTODOULOU
COMMISSIONER



CHRISTINE GUHL-SADOVY
PRESIDENT



MARIAN ABDOU
COMMISSIONER



MICHAEL BANGE
COMMISSIONER

ATTEST:



SHERRI L. LEWIS
BOARD SECRETARY

IN THE MATTER OF THE PETITION OF NEW JERSEY-AMERICAN WATER COMPANY, INC.
FOR: (1) APPROVAL OF ITS AGREEMENT WITH SHREWSBURY TOWNSHIP, NEW
JERSEY FOR THE PURCHASE AND SALE OF WATER SYSTEM; (2) A DETERMINATION
THAT THE PURCHASE PRICE IS REASONABLE; (3) A DETERMINATION THAT THE
TRANSACTION COSTS ARE REASONABLE; AND (4) FOR SUCH OTHER APPROVALS AS
MAY BE NECESSARY TO COMPLETE THE PROPOSED TRANSACTION

DOCKET NO. WM24100783

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE PETITION OF NEW	:	
JERSEY-AMERICAN WATER COMPANY,	:	STIPULATION OF
INC. FOR: (1) APPROVAL OF ITS	:	SETTLEMENT
AGREEMENT WITH SHREWSBURY	:	
TOWNSHIP, NEW JERSEY FOR THE	:	
PURCHASE AND SALE OF WATER SYSTEM;	:	
(2) A DETERMINATION THAT THE	:	BPU Docket No. WM24100783
PURCHASE PRICE IS REASONABLE; (3) A	:	
DETERMINATION THAT THE	:	
TRANSACTION COSTS ARE REASONABLE;	:	
AND (4) FOR SUCH OTHER APPROVALS AS	:	
MAY BE NECESSARY TO COMPLETE THE	:	
PROPOSED TRANSACTION	:	

APPEARANCES:

Stephen Bishop, Esq., New Jersey-American Water, Inc.

Christine Juarez, Esq., New Jersey Division of Rate Counsel (**Brian O. Lipman, Esq.**,
Director, New Jersey Division of Rate Counsel)

Meliha Arnautovic, Deputy Attorney General, Staff of the New Jersey Board of Public Utilities,
Office of Attorney General (**Matthew J. Platkin**, Attorney General of New Jersey)

This Stipulation of Settlement (“Stipulation”) is hereby made and executed as of the dates indicated below, by and among the petitioner, New Jersey-American Water Company, Inc. (“NJAWC” or “Company”), the Staff of the New Jersey Board of Public Utilities (“Staff”), and the New Jersey Division of Rate Counsel (“Rate Counsel”) (collectively, “Parties”).

The Parties do hereby join in recommending that the New Jersey Board of Public Utilities (“Board”) issue an Order approving the Stipulation without modification, based upon the following terms:

Background

1. On October 7, 2024, NJAWC filed a petition (“Petition”) with the Board seeking the following relief: (1) approval pursuant to the provisions of the Water Infrastructure

Protection Act, N.J.S.A. 58:30-1 et seq. (“WIPA”) of an agreement between Shrewsbury Township, Monmouth County, New Jersey (“Township”) and NJAWC (“Agreement”); (2) a determination that the purchase price (“Purchase Price”) pursuant to the Agreement is reasonable and thus the rate base of the Township water system; (3) approval that NJAWC’s transaction, closing and transition costs (“Transaction Costs”) are reasonable and prudent and may be deferred for recovery in a future base rate case; and (4) such other approvals as may be necessary to complete the proposed transaction (“Transaction”).

2. The Petition outlined the steps the Township had taken to comply with the requirements under WIPA prior to seeking Board approval. The Petition was accompanied by (a) Township Resolution No. 2023-65 accepting and adopting the Emergent Condition Report prepared by Colliers Engineering and Design and the “Final Report, Township of Shrewsbury New Jersey Water System Asset Valuation” (“Asset Valuation Report”) prepared by NW Financial Group, LLC (“NW Financial”); (b) the New Jersey Department of Environmental Protection (“DEP”) certification of Emergent Condition No. 4 under WIPA; (c) Township Resolution No. 2023-91 seeking authorization to allow NJAWC to respond to a Request for Proposal for the purchase of the Township water system; (d) Township Resolution No. 2024-36 authorizing negotiations with NJAWC; (e) Township Resolution No. 2024-69 approving execution of the Agreement with NJAWC and authorizing NJAWC to bring this Petition before the Board; and (f) the “Fair Market Value Appraisal Report” of the Township water system by Weinert Appraisal and Depreciation Services, LLC.

3. On October 23, 2024, the Board entered an Order designating Commissioner Zenon Christodoulou as the presiding officer and directing that any entities seeking to intervene or participate file the appropriate application by November 8, 2024.¹

4. No parties sought to intervene or participate in this matter.

Stipulation

The undersigned Parties DO HEREBY STIPULATE AND AGREE as follows:

Financial Advisor Independence and Emergent Condition Certification

5. The Parties agree that the Asset Valuation Report was prepared by NW Financial, an independent financial advisor as contemplated under WIPA and will not contest whether the statutory requirements related to its independence were satisfied here or in any future agency or legal proceeding related to the acquisition of the Township water system by NJAWC.

6. The Parties agree that an emergent condition exists under WIPA, N.J.S.A. 58:30-5, in this matter and will not contest whether statutory requirements of an emergent condition were satisfied here or in any future agency or legal proceeding related to the Transaction.

Initial Rates

7. The Parties agree that immediately after the Transaction, NJAWC will bill Township residents in accordance with its Rate Schedule A-1, including all applicable tariff schedules. Township residents will be subject to NJAWC's distribution system improvement charge, purchased water adjustment clause, special program charge, and lead service line replacement charge, either immediately after the Transaction or when assessed.

¹ In re the Petition of New Jersey-American Water Company, Inc. for: (1) Approval of its Agreement with Shrewsbury Township, New Jersey for the Purchase and Sale of Water System; (2) a Determination that the Purchase Price is Reasonable; (3) a Determination that the Transaction Costs are Reasonable; and (4) for Such Other Approvals as May Be Necessary to Complete the Proposed Transaction, BPU Docket No. WM24100783, Order dated October 23, 2024.

8. The Parties agree that NJAWC will charge the Township for twelve (12) public fire hydrants as defined by NJAWC's Rate Schedule M-1. The Township will be responsible for public fire protection charges for all existing and future public fire hydrants connected to the Township water system.

Purchase Price/Transaction Costs

9. The Parties agree that the purchase price of \$525,000 provided in the Agreement is reasonable and thus the rate base of the Township water system as of the Board's approval.

10. As of November 30, 2024, the recoverable transaction, closing and transition costs are \$18,976.

11. The Parties agree that at the time of closing, NJAWC will record on its books and records as utility plant in service an estimated amount of \$543,976, which includes system assets and organizational costs for the Transaction and which amount will be included in rate base in NJAWC's next base rate case.

12. The Parties agree and recommend that the Board should approve, without modification, this Stipulation, determine that the purchase price provided in the Agreement is reasonable as required under WIPA and thus the rate base of the Township water system as of the Board's approval, and authorize NJAWC and the Township to enter into the Transaction subject to further approvals by the New Jersey Department of Community Affairs of the proposed use of funds as required under WIPA.

Customer Assistance Programs

13. Shortly after closing, NJAWC will provide information about its customer assistance programs to all Township residents via a direct mail packet ("Welcome Packet"). The Welcome Packet will include a contact number and website for the New Jersey Statewide

Heating Assistance and Referral Energy Service and the customer bill of rights outlining, among others, the Winter Termination Program.

14. NJAWC will provide a copy of the Welcome Packet and confirmation of mailing to the Parties.

15. The Parties agree that this Stipulation contains mutual balancing and interdependent clauses and is intended to be accepted and approved in its entirety. In the event any particular provision of this Stipulation is not accepted and approved in its entirety by the Board, or is modified by a court of competent jurisdiction, then any Party aggrieved thereby shall not be bound to proceed with this Stipulation and shall have the right, upon written notice to be provided to all other Parties within ten (10) days after receipt of any such adverse decision, 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 an appropriate Order, or is modified by a court of competent jurisdiction, then any Party hereto is free, upon the timely provision of such written notice, to pursue its then available legal remedies with respect to all issues addressed in this Stipulation, as though this Stipulation had not been signed. The Parties agree that this Stipulation shall be binding on them for all purposes herein.

16. The Parties agree that this Stipulation represents a negotiated agreement and, except as otherwise expressly provided for herein:

- a. By executing this Stipulation, no Party waives any rights it possesses under any prior Stipulation, except where the terms of this Stipulation supersede such prior Stipulation.
- b. The contents of this Stipulation shall not in any way be considered, cited or used by any of the undersigned Parties as an indication of any Party's position on any related

or other issue litigated in any other proceeding or forum, except to enforce the terms of this Stipulation.

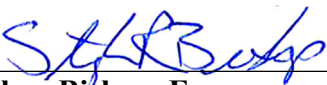
17. This Stipulation may be executed in any number of counterparts, each of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties. The Parties understand that the Board's Order approving this Stipulation shall become effective in accordance with N.J.S.A. 48:2-40.

CONCLUSION

WHEREFORE, the Parties hereto have duly executed and do respectfully submit this Stipulation to the Board and recommend that the Board enter an Order adopting and approving this Stipulation in its entirety and without modification in accordance with the terms hereof.

New Jersey American Water, Company, Inc.

**Brian Lipman, Esq.
Director, Division of Rate Counsel**

By: 

Stephen Bishop, Esq.


By: *Christine M. Juarez*

Christine Juarez, Esq.

Dated: 1/8/25

Dated: January 8, 2025

Matthew Platkin, Attorney General of New Jersey, Attorney for Staff of the Board of Public Utilities

By: 

Steven Chaplar, Esq.
Deputy Attorney General

Dated: January 7, 2025