



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF)	ORDER OF REMAND
UNITED WATER TOMS RIVER, INC. FOR)	
APPROVAL OF AN INCREASE IN RATES FOR)	
WATER SERVICE AND OTHER TARIFF)	BPU DKT. NO. WR08030139
CHANGES)	OAL DKT. NO. PUC03509-2008N

(SERVICE LIST ATTACHED)

BY THE BOARD:

On March 6, 2008, United Water Toms River, Inc., ("Petitioner" or "Company"), a public utility of the State of New Jersey, filed a petition with the Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-21 and N.J.A.C. 14:1-5.12 seeking to increase its rates and charges for water service. The Company requested an overall increase in revenues in the amount of \$14,919,238 or 91.92% over pro forma present rate revenues.

After transmittal to the Office of Administrative Law ("OAL") as a contested case, the Company, the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") and Board Staff ("Staff"), entered into a stipulation of settlement (the "Settlement"), by which they agreed to an increase of \$10,127,077, representing a 62.38% increase over total Company present rate revenues of \$16,232,570, and resulting in total Company revenues of \$26,359,647. The Settlement proposes that the resulting revenue increase be phased in over a two year period. The two municipal intervenors, the Township of Berkeley and the Township of Toms River (collectively, the "Intervenors"), objected to the proposed Settlement, both as to the amount of the requested increase and the proposed phase-in period.

In an Initial Decision dated September 19, 2008, the Administrative Law Judge ("ALJ") assigned to this matter, ALJ Walter M. Braswell, approved the Settlement as fully disposing of all issues in controversy and as consistent with the law, but noted that the Intervenors objected to the Settlement. The Intervenors filed exceptions with the Board contending that the ALJ did not properly consider the substance of their objections before approving the Settlement. By this Order, the Board remands this matter to the OAL for further findings and determinations as more fully discussed below.

BACKGROUND/PROCEDURAL HISTORY

Petitioner is a public water utility engaged in the business of collecting, treating and distributing water for retail service to approximately 50,000 customers in the central portion of Ocean County in the municipalities of Toms River Township, the Borough of South Toms River and in portions of Berkeley and Brick Townships.

The Board transmitted the matter to the Office of Administrative Law on March 11, 2008, as a contested case where the matter was assigned to the Honorable Walter M. Braswell, ALJ.

On March 28, 2008, a telephone pre-hearing conference was held in which counsel for the Company and the statutory parties to the case, Rate Counsel and Staff (collectively referenced herein as "the Signatory Parties") participated. ALJ Braswell scheduled the date for a public hearing, and dates for evidentiary hearings.

On April 9, 2008, the Board issued an Initial Suspension Order suspending the proposed rates until August 14, 2008, unless the Board prior to that date made a determination disposing of the petition.

After due notice published in newspapers of general circulation in the service territory and service on the relevant municipalities and Clerks of the Boards of Chosen Freeholders, on June 23, 2008, two public hearings were held at the Toms River High School North Ritacco Center. The first public hearing was held at 3:00 pm, and the second public hearing was held at 7:00 pm. ALJ Braswell presided over both hearings. Numerous members of the public appeared at both hearings and commented on the proposed rate increase, water quality concerns and water reliability issues.

On July 31, 2008, the Board issued an Order further suspending the proposed rates until December 14, 2008.

The Signatory Parties exchanged discovery throughout this proceeding. Subsequent to the public hearings and prior to the scheduled evidentiary hearings, the Signatory Parties held settlement. As a result of these settlement conferences, the Signatory Parties reached a settlement on all issues and entered into the Settlement which was signed on September 18, 2008.

On August 12, 2008, the Township of Berkeley ("Berkeley") filed a Notice of Motion for Intervention in this matter. On August 14, 2008, ALJ Braswell granted Berkeley intervenor status. On August 20, 2008, the Township of Toms River ("Toms River") filed a Notice of Motion for Intervention in this matter. On August 21, 2008, ALJ Braswell granted Toms River intervention status. On August 12, 2008, Robert K. Haelig, Jr., filed a Motion to Request Permission to intervene in this matter. On August 18, 2008, ALJ Braswell denied Mr. Haelig intervenor status, but granted him participant status.

On September 4, 2008, Toms River submitted a letter memorandum to ALJ Braswell objecting to the level of the revenue increase and the phase- in period as proposed by the Settlement. A copy of the Settlement had been provided to Toms River prior to its execution. Toms River requested that the ALJ order additional public hearings on the Settlement so that representatives of Rate Counsel and the Company "can fully explain and justify the proposed increase to the rate paying public."

On September 23, 2008, ALJ Braswell issued his Initial Decision recommending adoption of the Stipulation of Settlement executed by the Signatory Parties. He found that the Signatory Parties had voluntarily agreed to the Settlement and that the Settlement fully disposes of all issues in controversy and is consistent with the law. He also found that the Intervenors had not signed the Settlement and had submitted letters opposing it.

By letter dated October 1, 2008, Berkeley requested that the Board defer any decision on the Settlement until Berkeley receives information concerning calculation of the test year operating income and a more detailed schedule of legal expenses and litigation costs than that which had already been provided. By letter dated October 3, 2008, Toms River submitted its exceptions to the Initial Decision as failing to address the arguments raised by the Intervenors, and requested remand to the OAL for specific findings as to whether the requested rate increase and the phase-in period are reasonable. By letter dated October 8, 2008, the Township of Berkeley joined in Toms River's exceptions.

By letter dated October 16, 2008, Petitioner filed its reply to the exceptions of the Intervenors. Petitioner states that the Intervenors only came into the case six months after it was filed and after the other parties had reached an agreement in principle, and just as hearings were cancelled. According to the Company, the Signatory Parties had litigated the case for months and conducted extensive discovery and settlement meetings, and it is therefore "offensive to the due process rights of the signatory parties" to allow the Intervenors to raise issues which the Company characterizes as irrelevant at this point. According to the Company, the Board cannot delay "appropriate rate increases" based on generalized comments that the rate increase is too high since those complaints "are not based on facts," and the Board may not extend the phase-in period that was negotiated as the only alternative is no phase-in period. Petitioner states that the Signatory Parties examined the Petitioner's financial and operational activities and are satisfied that the rates under the Settlement are just and reasonable, and the ALJ agreed. Petitioner argues that, therefore, the Board can address the Intervenors' concerns through the exceptions, including objections and allegations which have also been raised in other pending proceedings, without remanding this matter.

DISCUSSION

Agencies are well within their authority to adopt non-unanimous stipulations, as long as they evaluate the stipulations and the non-consenting parties have had an opportunity to argue against them. *In re Petition of Pub. Ser. Elec. & Gas*, 304 N.J. Super. 247, 268-72 (App. Div.), cert. denied, 152 N.J. 12 (1997). In a rate case where there is opposition to a settlement, the evaluation must be based on an examination of the existing record and support a conclusion that the rates proposed are just and reasonable. Ibid.

Here, because no hearings were held and no evidence admitted into the record, the Board does not have a complete record on which to base its fact-findings. Having reviewed the Initial Decision and the Settlement among the Signatory Parties to this proceeding, and the exceptions and reply, the Board notes that the ALJ did not directly address the issues of whether the rates proposed by the Settlement are just and reasonable, including whether the proposed time period for implementation of those increases is reasonable, and did not address the reasons for rejecting the Intervenors' opposition.

Therefore, the Board, pursuant to N.J.A.C. 1:1-18.7(a), HEREBY REMANDS this matter to the OAL for further findings and determinations with regard to whether the rate increase proposed by the Settlement is just and reasonable, including whether the proposed phase-in period is appropriate.

DATED:

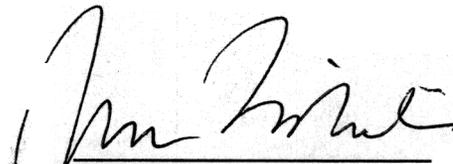
10/23/08

BOARD OF PUBLIC UTILITIES

BY:


JEANNE M. FOX
PRESIDENT

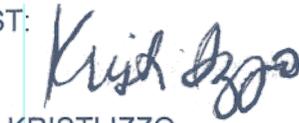

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JOSEPH L. FIORDALISO
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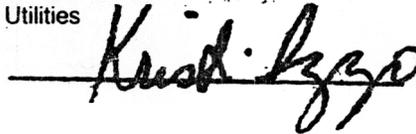

NICHOLAS ASSELTA
COMMISSIONER


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



In The Matter of the Petition of United Water Toms River, Inc.
For Approval of an Increase in Rates For Water Service and
Other Tariff Changes
BPU Docket No. WR08030139
OAL Docket No. PUC03509-2008N

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