



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 APPROVING
UNITED WATER TOMS RIVER, INC.)	PROVISIONAL RATES
FOR APPROVAL OF AN INCREASE IN)	
RATES FOR WATER SERVICE AND)	
OTHER TARIFF CHANGES)	BPU DKT. NO. WR08030139
)	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 ("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 Order dated October 23, 2008, the Board remanded 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.

After the Board's decision to remand this matter to the OAL, the Company filed a letter motion requesting that the Board implement the rates stated in the Settlement on an interim basis pursuant to N.J.S.A. 48:2-21.1. The Company asserts that the signatory parties expected the Board to make a final determination on the Settlement in September; however, the subsequent determination by the Board to remand this matter will likely result in Board consideration of the Settlement being delayed until December. According to the Company, this delay in implementation of the proposed rates will cause the Company irreparable harm through the loss of revenue of nearly \$550,000 per month or over \$1 million in revenues for September and October and over \$1.5 million in revenue loss if the matter is not heard until December. The Company maintains that it will have no opportunity to recover these "lost revenues," and that in circumstances like those presented here, it is appropriate for the Board to approve a rate increase on an interim basis subject to refund. The Company requested that the Board consider the motion at the November 7, 2008 Board agenda meeting to balance the interests of the Company and customers with those of the Intervenor while the matter remains under review.

On November 5, 2008, the Township of Toms River filed a letter with the Board opposing the motion filed by the Company. Toms River stated that given the magnitude of the proposed increase, all reasonable equitable considerations must weigh in favor of denying the requested interim increase. Toms River stated that the Company's argument that regulatory lag in the implementation of the new rates is extremely prejudicial to the Company must fail as it was the Company's decision not seek an increase for a period of 13 years. Toms River further stated that the proposed settlement is being actively and vigorously opposed by the Intervenor, Toms River and Berkeley, and that the proposed increase of 65% is unreasonable on its face. Therefore, the Board should be reluctant to move quickly, even on an interim basis, given that this increase is such a burden on United Water's ratepayers especially where the Board does not yet have an adequate record to review.

Toms River stated that it appears that ALJ Braswell, over the objections of the Intervenor, appears poised to complete the Court's review on remand so that this matter will be ready for review by the Board at its meeting of December 7, 2008. Toms River stated that the potential delay of only one month of the implementation of the proposed new rates is reasonable as weighted against the significant impact on the ratepayers if the interim relief is granted,

On November 6, 2008, the Township of Berkeley filed a letter opposing the motion filed by the Company, and joined in the opposition relying on the papers as submitted by Toms River.

Also by letter dated November 6, 2008, the Company responded to the Intervenor's opposition to the motion for interim rates. The Company maintains that it is appropriate for the Board to authorize such rates at this time as they are subject to refund if found to be excessive. Additionally, according to Petitioner, the Intervenor fail to understand that it is the Company's current finances, current rates and current expenses that are the basis for the request, and not the period of time since the Company's last rate case. Customers are not harmed by being required to pay for service that they are receiving based on investments made by the Company. By letter dated November 6, 2008, Rate Counsel stated that it did not object to the grant of interim rates as requested by Petitioner, provided they were subject to refund.

DISCUSSION AND FINDING

The Petitioner has requested that the rates proposed in the Settlement be implemented on an interim basis subject to refund, citing N.J.S.A. 48:2-21.1. In relevant part, the statute provides:

[t]he board may, during the pendency of any hearing instituted by it, on its own initiative or on petition, in which the approval or fixing of just and reasonable individual rates ... is in issue, or at any other time, negotiate and agree with any public utility for an adjustment of the individual rates ... Such adjustment may be for, or without a specified limit of time. In no event shall any such adjustment be regarded as contractual.

The New Jersey Supreme Court has described this statute as one of the “specific remedies for the problem of regulatory lag,” and thus the Board is authorized to “establish interim rates while a tariff application is pending.” In re Revision of Rates of Toms River Water Company, 82 N.J. 201, 210 (1980). Any temporary increase is subject to refund if the rates are not ultimately found to be just and reasonable. Ibid.

In this matter, Petitioner seeks interim rate relief pending return of the remanded Initial Decision and subsequent Board action. Petitioner claims that it is losing revenue of approximately \$550,000 per month based on the rates proposed in the Settlement, and implementation of the proposed rates subject to refund, balances the rights of all parties.

The Intervenors maintain that the request must be denied as the proposed increase is a burden on the Company’s ratepayers, and since the ALJ intends to rule on the underlying issues within a month, no interim relief is needed.

Rate Counsel does not object to the grant of interim rates as long as they are subject to refund.

Accordingly, having carefully considered the Petitioner’s request, the Intervenors’ responses, the Petitioner’s reply, and Rate Counsel’s comments, the Board, agrees with the Petitioner that the grant of some rate relief pending the return of the case to the Board reasonably balances the rights and interests of all parties. Therefore the Board HEREBY FINDS that the Company should be afforded the opportunity to increase its rates on a provisional basis, subject to refund, effective as of the date of the Order. As noted above, under N.J.S.A. 48:2-21.1, the Board may set a negotiated rate, subject to refund during the pendency of a rate proceeding. See, In re N.J. Power and Light Co., 15 N.J. 82, 96 (1954). As previously stated, such a negotiated rate remains subject to refund, and subject to final adjudication of just and reasonable rates. In re Intrastate Industrial Sand Rates, 55 N.J. 112 (1975). We emphasize that our granting provisional relief, subject to refund, should not be taken as a departure from the standards governing the granting of interim relief, See, In re Jersey Central Power and Light Company, BPU Docket No. 804-285, 38 PUR 4th 115 (1980). These standards remain fully intact and applicable to all utilities. Our action in this case is designed merely to set a provisional rate that is warranted to address the specific factual circumstances in this case. For these reasons, the Board HEREBY ORDERS that the Phase I rates as described in Paragraph 9 of the Settlement are to be implemented on a provisional basis, subject to refund, with interest, pending the final Board action in this matter.

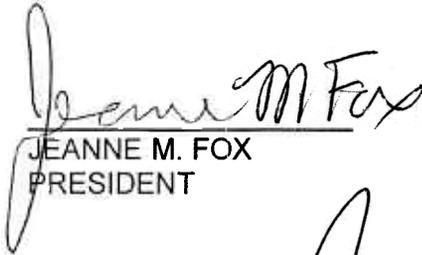
The Board FURTHER ORDERS that the provisional rates approved herein are approved for a period no greater than ninety (90) days on condition that the Company does not seek to implement any alternative rate prior to the end of that period.

The Board has received a copy of the transcript of the hearing which took place on November 3, 2008 before ALJ Braswell, and notes that he looked for clarification on the expected timing of his decision. The understanding that a decision on the issues remanded was requested in time for review by the Board at its December 8, 2008 agenda meeting was based on statements made prior to the filing of this motion for interim rates. The Board HEREBY CLARIFIES that, based on the actions taken in this Order, the ALJ is not foreclosed from taking such time on remand as he may determine to be reasonable and appropriate to make the findings and determinations concerning the proposed rates and phase-in period requested by the remand Order.

The HEREBY DIRECTS the Company to file tariff showing the provisional rates authorized herein within ten (10) days of the date of this Order.

DATED: 11/7/08

BOARD OF PUBLIC UTILITIES
BY:

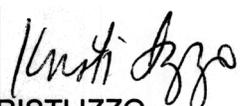

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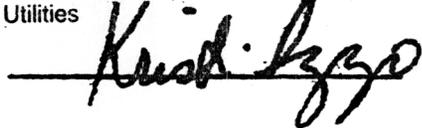

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COMMISSIONER

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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