



**STATE OF NEW JERSEY**  
Board of Public Utilities  
Two Gateway Center  
Newark, NJ 07102  
www.bpu.state.nj.us

NOTICE OF LEASE OF PROPERTY )  
IN THE TOWN OF CARLSTADT, )  
BERGEN COUNTY, BY UNITED WATER )  
NEW JERSEY, INC., TO NEXTEL )  
OF NEW YORK, INC., PURSUANT )  
TO N.J.A.C.14:1-5.6(d) )

WATER AND WASTEWATER

ORDER

DOCKET NO. WM99090684

(SERVICE LIST ATTACHED)

BY THE BOARD:

On September 1, 1999, United Water New Jersey, Inc., (UWNJ), a public utility of the State of New Jersey, with its principle office located at 200 Old Hook Road, Harrington Park, New Jersey, filed a notice with the New Jersey Board of Public Utilities (Board), pursuant to N.J.A.C. 14:1-5.6(d), stating that it had entered into a lease agreement with Nextel of New York, Inc., (Nextel). The lease agreement is for the installation and maintenance of a cellular telephone antenna and related equipment at an elevated water storage facility (tank storage facility) located at Summit Avenue and Madison Street, Block 39, Lot 1, in the Town of Carlstadt, Bergen County, New Jersey. UWNJ, as a public utility, is subject to the jurisdiction of the Board.

The cellular telephone antenna lease agreement is a 25-year lease that runs for an initial term of five years with a provision of four additional five-year terms. Pursuant to the lease agreement, Nextel will pay \$30,000 during the first year of the lease. The lease provides that the annual rental amount will be adjusted at a rate of Four Percent (4%) for each successive twelve-month period. The space to be leased on the water storage facility and the ground beneath said facility are not separately identified on the company books and records. The property upon which the tank is located is not income producing.

UWNJ determined the fair market value of the space to be leased on its water tanks through American Communication Facilities, L.L.C., which acts as a site manager for the Company and charges a management fee of 20% of annual revenue. UWNJ submitted a letter in which American Communication Facilities, L.L.C. indicated that the proposed rental reflects the appropriate market value for the lease. UWNJ opines that the \$30,000 fee represents the fair market value of the space to be leased because it is based on arm's-length negotiations between UWNJ and Nextel.

At the time of UWNJ's filing, this notice was required by N.J.A.C. 14:1-5.6 Petitions for the Sale or Lease of Property. At the Board's September 18, 2002, open public meeting, the Board approved the readoption of N.J.A.C. 14:1, Rules of Practice as proposed in the May 20, 2002, New Jersey Register at 34 N.J.R. 1769(a). Among other things, the revised rule at N.J.A.C. 14:1-5.6(d)(4) states that:

(T)he transactions which may be completed without petition to the Board are as follows:

4. The grant by a utility of easements, licenses, tower leases, and roof-top leases where such transactions do not compromise the needs of the utility and will not affect the utility's ability to provide safe, adequate, and proper service.

On April 15, 2002, the Division of Ratepayer Advocate (DRA) filed its comments with regard to the UWNJ application. The DRA noted that although the initial rental payment on the Nextel lease is less than \$50,000, the Lease Agreement provides for an annual adjustment to the rental payment. The rental payment also includes unspecified amounts for increased expenses incurred by the water utility and for additional taxes imposed as a result of the lease. While these adjustments are not quantifiable at this time, the potential for the annual rental payment to escalate beyond \$50,000 is clear. The DRA further noted that, "[a]ccordingly, it is imperative that the Board continues to scrutinize these contracts to ensure that the State's ratepayers are getting the full benefit of this valuable resource and that valuable contractual protections are in place. The DRA requested that the Board order the Company to file a formal petition for approval of the lease agreement pursuant to N.J.A.C. 14:1-5.6 (a) 1 through 15 when the annual rental payment exceeds the statutory threshold of \$50,000.

#### Discussion and Findings

At the time of UWNJ's filing, N.J.A.C. 14:1-5.6 included a threshold limit of \$50,000 for determining when a utility must file a petition for Board approval of a lease of utility property. As previously indicated, the Board, at its September 18, 2002, open public meeting, approved the readoption of N.J.A.C. 14:1 as proposed in the May 20, 2002, New Jersey Register at 34 N.J.R. 1769(a). N.J.A.C. 14:1-5.6 now provides that leases for cell tower leases that do not compromise the needs of the utility and which do no affect the utility's ability to provide safe, adequate and proper service may be consummated, without petition to the Board provided that the utility give written notice to the Board no less than 30 days prior to effective date of the proposed lease.

The Board, having reviewed the notice filed by UWNJ, HEREBY FINDS that approval of the lease is no longer required pursuant to N.J.A.C. 14:5-6.

This Order is subject to the following conditions:

1. This Order shall not affect or in any way limit the exercise of the authority of this Board, or the State of New Jersey in any further petition, or in any proceeding with respect to rates, franchises, services, accounting, capitalization, depreciation or in any other matters affecting NWNJ.
2. This Order shall not constitute approval of the accounting treatment related to this agreement. UWNJ shall demonstrate, in an appropriate subsequent rate proceeding whether and to what extent, any of the revenues, costs or expenses associated with this lease agreement should be allocated to ratepayers.

DATED:

1/13/03

BOARD OF PUBLIC UTILITIES

BY:



JEANNE M. FOX  
PRESIDENT



FREDERICK F. BUTLER  
COMMISSIONER



CAROL J. MURPHY  
COMMISSIONER



CONNIE O. HUGHES  
COMMISSIONER



JACK ALTER  
COMMISSIONER

ATTEST:



KRISTI IZZO  
SECRETARY