



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

WATER

IN THE MATTER OF THE APPLICATION) ORDER GRANTING
OF SHORELANDS WATER COMPANY) WAIVER REQUEST
FOR A WAIVER OR RELAXATION OF)
CERTAIN BOARD RULES AT N.J.A.C.) BPU DOCKET NO. WO09020145
14:9-7.3(a) 2 RELATED TO THE FILING OF)
A PURCHASED WATER ADJUSTMENT)
CLAUSE (PWAC)

(SERVICE LIST ATTACHED)

BY THE BOARD:

On February 18, 2009, Shorelands Water Company ("Shorelands" or the "Company") filed a motion with the New Jersey Board of Public Utilities ("Board") requesting a waiver or relaxation of the time limitations found at N.J.A.C. 14:9-7.3(a)2 so as to permit Shorelands to file a petition for a Purchased Water Adjustment Clause ("PWAC").

Shorelands is a regulated water utility that provides water service within its service territory of Hazlet Township and a portion of Holmdel Township, both in Monmouth County, New Jersey. The Company serves approximately 11,000 customers that are primarily residential. As part of its operations, Shorelands purchases water from New Jersey American Water Company ("NJAWC") and the New Jersey Water Supply Authority ("NJWSA").

Shorelands' last base rate case was decided effective November 9, 2004. In the years following this decision, Shorelands implemented operational efficiencies, controlled lost water and realigned its workforce. As a result, Shorelands did not elect to file either a base rate case or a PWAC during this time period.

However, on December 8, 2008, the Board granted NJAWC a rate increase that affected the rates Shorelands pays for bulk sales. Specifically, the volumetric rate paid by Shorelands increased from \$1.5185/1,000 gallons to \$1.5309/1,000 gallons. This increase will have an annual impact on Shorelands of approximately \$13,000 (in addition to a fixed cost increase). In addition, NJWSA noticed Shorelands that, on July 1, 2009, it intends to increase its base rate from \$884.11/million gallons to \$984.26/million gallons. The NJWSA increase will have an

annual impact on Shorelands of approximately \$70,500. These purchased water expenses represent 38% of Shorelands' operation and maintenance budget.

As a result, Shorelands now believes a PWAC would be appropriate. Because of the timing, however, Shorelands has filed a motion seeking to waive the requirement that the Board can only approve a petition for a PWAC if the Board has approved the utility's base rates through a rate case and order during the three years prior to submittal of the PWAC petition, as provided in N.J.A.C. 14:9-7.3(a) 2. Shorelands has requested that the Board allow this waiver pursuant to N.J.A.C. 14:1-1.2(b)(1), which allows the Board in special cases and for good cause shown to relax the rules if full compliance would adversely affect ratepayers, the ability of a utility to provide safe, adequate and proper service, or the general public. If granted, the waiver will allow Shorelands to file a petition requesting a PWAC even though it is outside the time frame required by the PWAC rules.

DISCUSSION AND FINDING

Under N.J.A.C. 14:9-7.3(a), a water utility may file for a PWAC if all of the following have been met: 1) its purchased water costs exceed ten percent (10%) of its total operating and maintenance expenses; 2) the Board has approved the utility's base rates through a rate case and order during the three years prior to submittal of the petition for an initial PWAC; and 3) the utility has received notice of an increase or decrease in cost of purchased water from its water purveyor. While the Company's purchased water expenses exceed the 10% threshold and it has received notice of an increase, Shorelands' last rate increase was effective on November 9, 2004, a date which is not within the three year time frame required by the rules for such a filing.

However, as Shorelands has argued in its motion, the Board has the power to relax or deviate from its rules for good cause. The Board's waiver provision at N.J.A.C. 14:1-1.2 (b)1 states:

(b) In special cases and for good cause shown, the Board may, unless otherwise specifically stated, relax or permit deviations from these rules.

1. The Board shall, in accordance with the general purposes and intent of its rules, waive section(s) of its rules if full compliance with the rule(s) would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public.

Shorelands has met the "good cause" requirement as provided in the Board's waiver provision. Because the Company's PWAC costs appear to be such a large percentage of its operation and maintenance budget (38%), the increase in costs associated with this aspect of the business are such that the Company would ordinarily be forced to file for a base rate petition, absent the PWAC, in order to continue to provide safe, adequate and proper service at a reasonable rate of return. This is unnecessary at this point because Shorelands is not seeking a full rate increase; instead, Shorelands believes it can be made whole in this situation through just the PWAC. Under a PWAC Shorelands is likely to propose, the rate increase is expected to be approximately 1.2% annually, an amount equivalent to \$5.42 per year (less than 1 and a half cents per day.) A full rate proceeding at this time would, by its nature, require the company to seek a larger increase.

Additionally, in the current economic situation in both the State and the nation, opportunities to limit increases in fixed-costs have a clear and obvious benefit. Filing a full rate case is a necessarily arduous process, and includes a number of costs associated with production and processing of the application on the part of the Company. These additional costs would likely be borne, in part, by ratepayers, thus causing a further adverse impact on ratepayers. As noted in In re: Shorelands Water Company, Docket Nos. WR91111689J and WR92010061J (1992), 93 N.J.A.R. 2d (BRC) 27, 28, "The purpose of the clause is to eliminate the need for a base rate case for expenses related to purchasing water. Additionally, the clause would expeditiously allow for the collection of uncontrollable expenses emanating from governmental agencies."

In addition, filing a base rate petition at this time would severely burden Shorelands' limited staff, take an extended period of time and expense to complete, and force the Company to undertake a process that it asserts is not necessary to result in expenses passed on to ratepayers. Finally, if the PWAC were approved by the Board and in place, it could offset other, lesser cost increases in labor, benefits, treatment costs and the like by instituting additional operation changes, thus avoiding a base case filing until late 2010. Therefore, Shorelands has met the "good cause" requirement under the waiver rules and should be allowed to file a PWAC petition.

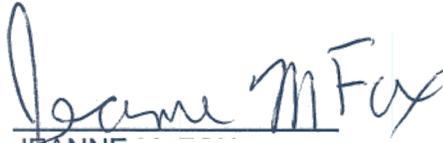
Nevertheless, Shorelands must have its rates tested in an appropriate rate-making procedure. Although Shorelands is not within the three year time frame provided in the rules to establish a link between a base rate case and the proposed PWAC filing, Shorelands has agreed to file a base rate case within two years of a final PWAC Board Order so that a "nexus" is established. One of the main purposes of the three year requirement in the PWAC rules is to link the interim rates of the PWAC to a base rate case so that, ultimately, the PWAC rates are reviewed in the context of a base rate proceeding which creates a legal "nexus". The Board's ability to set interim rates in conjunction with this "nexus" requirement has been addressed in several New Jersey Supreme Court cases. In In re Industrial Sand Rates, 66 N.J. 12 (1974), the Court made clear that the authority granted to the Board to negotiate with a utility for an adjustment of rates is confined to interim relief pending a proceeding to determine justness and reasonableness of an existing or proposed rate. Likewise, in In re Investigation of Tele. Cos., 66 N.J. 476 (1975), the Court upheld the Board's implementation of a "comprehensive adjustment clause" which permitted the company in that matter to recover certain expenses as they increased, finding that there was a nexus to the Board's review in that company's rate case. The Court acknowledged the Court's ruling in Industrial Sand that the "legal umbilical cord" between a "temporarily increased rate and the final adjudication of the firmly established and traditional components which enter into the determination of 'just and reasonable' rates" is indispensable. Id. at 495. Therefore, to ensure that a nexus exists, Shorelands will be required to file a petition for a rate adjustment within two years from the date of the final PWAC Board Order. Pushing the time and expense associated with a rate case out to 2010, while allowing Shorelands to seek a PWAC, balances the asserted need for a rate increase with the requirements that rates be directly set through appropriate ratemaking procedures. This balance provides a proper use of the Board's waiver authority.

The Board has reviewed Shorelands' motion, memo and attachments and based upon that review and the relevant rules and case law, the Board FINDS that good cause has been shown, coupled with the promise and requirement that a nexus will be established, such that the Board HEREBY WAIVES the three year requirement of N.J.A.C. 14:9-7.3(a) 2 as it relates to Shorelands' filing and ALLOWS Shorelands to file a petition for a PWAC.

The Board HEREBY ORDERS the Company to file a petition for a base rate case within two years from the date of the final PWAC Board Order. The Board FURTHER ORDERS that nothing in this Order shall be considered an approval of a specific PWAC amount or process, but shall only be limited to authorizing Shorelands to file for a PWAC without expressly satisfying the requirements of N.J.A.C. 14:9-7.3(a)2. Finally, the Board HEREBY ORDERS that the authorization provided for in this Order shall be rendered null and void if a complete and valid PWAC application is not filed with the Board prior to December 31, 2009.

DATED: 5/15/09

BOARD OF PUBLIC UTILITIES
BY:



JEANNE
PF



FREDERICK F. BUTLER
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER

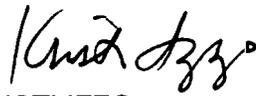


NICHOLAS ASSELTA
COMMISSIONER



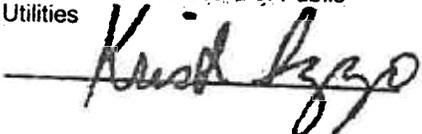
ELIZABETH RANDALL
COMMISSIONER

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 MOTION OF SHORELANDS WATER COMPANY
FOR A WAIVER OR RELAXATION OF CERTAIN BOARD RULES

BPU Docket No. WO09020145

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