



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

WATER

IN THE MATTER OF THE PETITION OF THE	)	DECISION AND ORDER
TOWNSHIP OF HAMILTON COMPLAINT/REQUEST	)	
FOR INVESTIGATION, PURSUANT TO	)	
N.J.S.A. 40A:31-23(e), REGARDING THE ALLEGED	)	
RATE INCREASE BY THE CITY OF TRENTON,	)	
PURSUANT TO THE COUNTY AND MUNICIPAL WATER	)	
SUPPLY ACT, <u>N.J.S.A. 40A:31-1 ET SEQ.</u>	)	DOCKET NO. WC06100708

(SERVICE LIST ATTACHED)

BY THE BOARD:

BACKGROUND/PROCEDURAL HISTORY

The City of Trenton, Trenton Water Works (Trenton), having its principal office at 333 Cortland Street, Trenton, New Jersey, 08609, provides water service to the City of Trenton (City) and to certain portions of the townships of Ewing, Hamilton, Hopewell and Lawrence (hereinafter collectively referred to as the Townships), in Mercer County, New Jersey. Trenton serves approximately 24,000 customers within the City and approximately 34,000 customers in the Townships.

On September 7, 2006, the City's governing body adopted Ordinance No. 06-70, which established new rates for water users within both the City and the Townships pursuant to N.J.S.A. 40A:31-1, et seq.

By letter dated September 13, 2006, the Township of Lawrence (Lawrence), requested that the Board of Public Utilities (Board) review Ordinance No. 06-70 in order to determine if it fully complied with the provisions of N.J.S.A. 40A:31-23(e). In its letter, Lawrence alleged that Schedule D, Public Fire Protection, of Ordinance No. 06-70, applied only to residents of the Townships, while all other schedules applied to "All Users"-- that is, residents of both the City and the Townships..." Lawrence further alleged that, as a result, the Townships were being charged a different rate for public fire protection than what was charged to the City, in violation of N.J.S.A. 40A:31-23(e).

By letter dated September 27, 2006, the Township of Hamilton (Hamilton), submitted a letter to the Board's Division of Water requesting that the Board conduct an investigation to determine if Ordinance No. 06-70 complied with the amended provisions of the Act, N.J.S.A. 40A:31-23.

Hamilton then filed a formal complaint with the Board on October 2, 2006 (October 2 complaint). In its October 2 complaint, Hamilton alleged that while Ordinance 06-70 on its face appeared to establish uniform rates to be charged to all users within and outside the City, a closer examination of this Ordinance revealed that with regard to the Public Fire Protection rates, the Ordinance establishes separate rates for customers within the Township of Hamilton. Hamilton concluded that "[s]ince disparate rates are apparently to be charged to Township users concerning public fire protection versus the rates to be charged to City residents for similar services, failing to proceed through the BPU review process is improper." (October 2 complaint at 2). Hamilton further notes in its October 2 complaint that Ordinance No. 06-70 was "silent as to the date when the new rates are proposed to go into effect." (Id. at 3).

Hamilton requested that the Board investigate the allegation raised in its complaint and issue an Order, pursuant to N.J.S.A. 48:2-21(d), suspending Trenton's new rates until the Board's investigation was complete. (Id. at 2-3).

On October 23, 2006, Trenton filed its response (Trenton Response) to the allegations raised by Lawrence and Hamilton. Trenton asserted that it had not raised its rates "for nearly eight years" and that it now needed a rate increase "in order to meet debt service and operating expenses for the 2007 fiscal year." (Trenton Response at 4). Trenton stated that "(r)ather than then go through a protracted proceeding to prove that, if anything, expenses for serving customers in the Townships exceeded expenses of serving customers in Trenton, Trenton Water Works availed itself of the procedure in N.J.S.A. 40A:31-23(e)" by adopting Ordinance No. 06-70 and adopting a rate increase on September 7, 2006. (Id. at 4). Trenton stated that it notified the Townships of the proposed rate increase by letters dated August 18, 2006, and that representatives from the Townships of Ewing, Hamilton, and Lawrence commented on the proposed rate increase at a September 7, 2006 public hearing on the proposed ordinance. Moreover, Trenton alleged that none of the Townships or their representatives "commented on the disparity in the Public Fire Protection Rates" during this public hearing. (Id. at 4-5).

Trenton further argued that:

[a]s a result of the rate increase authorized by the Ordinance, the rates for all billed services to all customer classes within and outside Trenton are identical. However, Trenton Water Works continued its practice of not charging Trenton for Public Fire Protection service, while increasing the then existing Board approved rate to the Townships for that service by slightly less than 10%. (Id. at 5).

With regard to Hamilton's request that the Board issue an Order suspending the rates adopted by Ordinance No. 06-70 pending a resolution of Hamilton's allegations, Trenton asserted that:

Hamilton's request for all of Trenton's new rates be suspended is draconian and without legal basis. It is draconian because Trenton Water Works will be unable to collect sufficient revenues to meet its costs. It is without legal basis because the Board has

never had jurisdiction over the rates charged customers in Trenton and under N.J.S.A. 40A:31.23(e), lacks jurisdiction over the rates charged customers in the Townships where the rates are same as those charged customers in Trenton. (Id. at 6).

Trenton also argued that:

[t]he more narrow request of Lawrence is the only issue over which the Board arguably has jurisdiction . . . at this time. Every rate charged by Trenton Water Works has been equalized. The only issue is whether Trenton Water Works must institute a charge for Public Fire Protection service for Trenton which is the same as the rate charged the townships in order to avail itself of N.J.S.A. 40A:31-23(e), and institute the new rate without Board approval. (Id. at 6).

Since the rates for all services, except Public Fire Protection, were identical in both the City and the Townships, Trenton further argued that the Board's jurisdiction is limited to Trenton's Public Fire Protection rates. Trenton stated that it would implement an identical Public Fire Protection rate for the City and the Townships should the Board determine that all rates, including Public Fire Protection rates, must be equalized. (Trenton Response at 6-7).

By letter dated January 17, 2007 (Trenton Follow-up Response), Trenton advised the Board that the City had adopted Ordinance No. 06-107 on December 21, 2006. Ordinance No. 06-107, provides in pertinent part as follows:

Section 1: Schedule D of Ordinance #06-70 adopted September 7, 2006 is hereby amended and shall read as follows:

Public Fire Protection for All Uses Within the Townships and the City

Quarterly charge per hydrant	\$42.96
Quarterly charge per inch-foot	\$20.56 per
	1,000 inch
	feet for all
	mains 6"
	diameter and
	over

As a result, Trenton has requested that the Board review Ordinance Nos. 06-70 and 06-107 to confirm that the rates for Trenton Water Works are the same for all customers. Trenton has further requested that, should the Board conclude that the rates are the same for all customers, it be exempted from Board rate regulation pursuant to N.J.S.A. 40A:31-23(e). (Trenton Follow-up Response at 1).

In response, by letter dated February 26, 2007, Hamilton stated that, based on the City's adoption of Ordinance No. 06-107, it "does not have any objection to the BPU's review of this matter to determine if Trenton has complied with the 2006 amendments to the County and Municipal Water Supply Act, N.J.S.A. 40A: 31-1, et seq."

By letter dated, May 9, 2007, Lawrence also stated it did not object "to the BPU's review of the above referenced matter to determine if the City of Trenton has complied with the 2006 amendments to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 et seq. Id. at 1.

DISCUSSION AND FINDINGS

On January 5, 2006, P.L.2005, c.267 was signed into law. The new statute amended portions of the County and Municipal Water Supply Act (the Act). Specifically, N.J.S.A. 40A:31-23(e) was revised to provide that:

- e. Notwithstanding any law, rule, order or regulation to the contrary, whenever any supplying local unit or units charge the same rates or rentals to the billed customers outside of the supplying local unit or units as are charged to customers within the supplying local unit or units, the local unit or units owning and operating water supply facilities in accordance with the provisions of N.J.S.A. 40A:31-4, shall, with respect to the rates or rentals to be charged to users of water supply services, be exempt from the jurisdiction, regulation and control of the Board of Public Utilities. Any increase in rates or rentals to be charged to users of water supply services shall be authorized by ordinance, in the case of a municipality, or ordinance or resolution, as appropriate, in the case of a county or parallel ordinances or resolutions of the governing body of each supplying local unit or units, as appropriate. Prior to adopting a resolution increasing the rates or rentals to be charged to users of water supply services, the governing body of a county shall hold a public hearing. Customers outside of the supplying local unit or units shall have an opportunity to be heard at the public hearing.

The Board has carefully reviewed the arguments raised by Lawrence and Hamilton and the responses submitted by the City of Trenton, Trenton Water Works. The Board has further reviewed Ordinance No. 06-70 and Ordinance No. 06-107. Based upon the Board's examination of all of these documents, it now appears that the rates charged by the City of Trenton, Trenton Water Works, for water service within the City and the Townships, including Pubic Fire Protection, have been equalized. In view of the foregoing, the Board HEREBY FINDS that all rates charged by the City of Trenton, Trenton Water Works are the same for customers inside the City and in the Townships. The Board HEREBY FINDS that it currently has no jurisdiction over of the rates charged by the City of Trenton, Trenton Water Works pursuant to N.J.S.A. 40A:31-23(e).

The Board HEREBY ORDERS the City of Trenton, Trenton Water Work to file tariffs which show the uniformity of its rates inside the City of Trenton and in the Townships of Ewing, Hamilton, Hopewell and Lawrence pursuant to Ordinance No. 06-70, which was adopted on September 7, 2006 and Ordinance No. 06-107, which was adopted on December 21, 2006 within 20 days from the effective date of this Order. The Board FURTHER ORDERS that the City of Trenton, Trenton Water Works file revised tariffs with the Board that show the rates that are effective both within the City of Trenton and the Townships of Ewing, Hamilton, Hopewell and Lawrence,

whenever a change in rates occurs. The Board FURTHER ORDERS that the City of Trenton, Trenton Water Works submit to the Board as part of any revised tariff filing such applicable ordinance whenever an ordinance is adopted that results in a change in rates for the City of Trenton, Trenton Water Works.

The Board FURTHER FINDS that the City of Trenton, Trenton Water Works shall be subject to the Board's jurisdiction with respect to service and reliability pursuant to N.J.S.A. 40A:31-23(f).

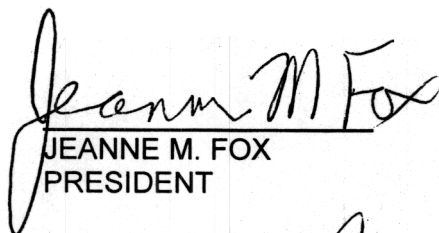
The Board FURTHER FINDS that the City of Trenton, Trenton Water Works shall continue to pay an assessment to the Board pursuant to N.J.S.A. 40A:31-23(g).

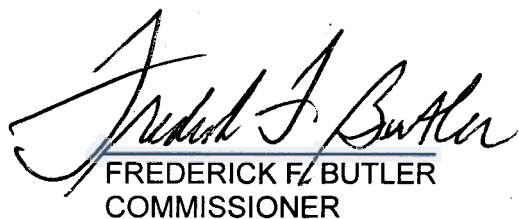
The Board FURTHER ORDERS the City of Trenton, Trenton Water Works to continue to file its BPU Annual Report and Statement of Gross Operating Revenues pursuant to N.J.A.C. 14:3-6.3 and N.J.S.A. 48:2-62.

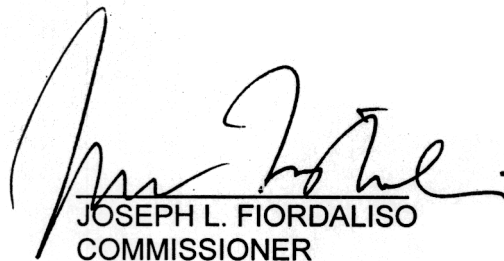
The effective date of this Order is as set forth below:

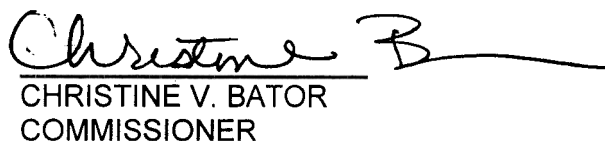
DATED: 7/12/07

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER

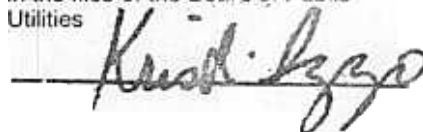

JOSEPH L. FIORDALISO
COMMISSIONER


CHRISTINE V. BATOR
COMMISSIONER

ATTEST:


CARMEN DIAZ
ACTING SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



I/M/O THE PETITION OF THE TOWNSHIP OF HAMILTON COMPLAINT/REQUEST FOR INVESTIGATION, PURSUANT TO N.J.S.A. 40A:31-23(e), REGARDING THE ALLEGED RATE INCREASE BY THE CITY OF TRENTON, PURSUANT TO THE COUNTY AND MUNICIPAL WATER SUPPLY ACT, N.J.S.A. 40A:31-1 ET SEQ.

DOCKET NO. WC06100708

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