



Agenda Date: 12/01/09

Agenda Item: 5A

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

www.nj.gov/bpu/

WATER

IN THE MATTER OF THE JOINT PETITION OF THE)	ORDER OF EXTENSION
CITY OF TRENTON, NEW JERSEY AND)	
NEW JERSEY-AMERICAN WATER COMPANY, INC.)	
FOR AUTHORIZATION OF THE PURCHASE AND)	
SALE OF THE ASSETS OF THE OUTSIDE WATER)	
UTILITY SYSTEM ("OWUS") OF THE CITY OF)	
TRENTON, NEW JERSEY AND FOR OTHER RELIEF)	DOCKET NO. WM08010063

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Stefanie A. Brand, Esq. for the Department of the Public Advocate, Division of Rate Counsel, Newark, New Jersey 07101

Caroline Vachier, DAG., for the Staff of the Board, Dept. of Law & Public Safety, Division of Law, Newark, New Jersey 07101

BY THE BOARD:

By motion dated October 29, 2009, New Jersey American Water Company ("NJAWC" or "Company") and the City of Trenton ("Trenton" or "City") (collectively the "Joint Petitioners") seek an extension of the time to consummate the transactions approved by the New Jersey Board of Public Utilities ("Board") in the April 3, 2009 Order Adopting the Initial Decision in the above-captioned matter ("April Order") from December 31, 2009 as stated in the Order to September 30, 2010. By this Order, the Board considers that extension request.

PROCEDURAL HISTORY:

On January 25, 2008, NJAWC, a public utility corporation of the State of New Jersey, and the City filed a joint petition ("Petition") seeking Board approval of the proposed sale and transfer of the City's water system assets located outside the City (the "Outside Water Utility System" or "OWUS") and within Ewing, Hamilton, Lawrence and Hopewell Townships (each a "Township" and collectively the "OWUS Townships") from the City to NJAWC (the "Transfer"). The City is to retain water system assets located within the City, the Inside Water Utility System ("IWUS").

Additionally, the Petition sought approval to utilize NJAWC rates of depreciation for ratemaking purposes for the appropriate components of the OWUS; adopt a monthly billing cycle for OWUS customers and the requisite tariff provisions; transfer to NJAWC of the City's existing municipal consents for provision of water service to each of the OWUS Townships; a finding that the Water Supply Agreement ("WSA") between the City and NJAWC is reasonable and prudent and that NJAWC may recover all costs incurred under and pursuant to the WSA through its traditional, Board-approved cost recovery mechanism (its Purchased Water Adjustment Clause or "PWAC") and that NJAWC may defer all WSA-related costs until NJAWC's next PWAC proceeding; and all other actions necessary to obtain the relief requested in the Petition.

The matter was transmitted to the Office of Administrative Law ("OAL") for hearing as a contested case. A notice of filing was issued by the OAL on February 11, 2008. The matter was assigned to Administrative Law Judge ("ALJ") Mumtaz Bari-Brown who convened a pre-hearing conference on April 2, 2008, and issued a pre-hearing Order dated April 21, 2008 which was later amended on May 20, 2008 and September 4, 2008.

Motions for Leave to Intervene were filed by: Rutgers, The State University of New Jersey; Johanna Foods, Inc.; Princeton University; ConocoPhillips Company; Cogen Technologies Linden Venture, L.P. ("OIW Customer Coalition"); Middlesex Water Company ("Middlesex"), the Townships of Hamilton, Lawrence, Hopewell and Ewing, and Aqua New Jersey, Inc. ("Aqua") (each an "Intervenor" and collectively, "Intervenors"). Those motions were granted through the various pre-hearing Orders.

After publication of notice in newspapers in general circulation, a public hearing was held in Hamilton Township on July 23, 2008. Numerous members of the public spoke at the public hearing including both officials and residents of the Townships, the Company and of the City.

Initial and Rebuttal Testimony was filed by Joint Petitioners. Testimony was filed by the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") and the Intervenors. Three valuation studies of the OWUS assets were submitted by Rate Counsel, the City and NJAW showing a value of the assets ranging from \$94,700,000 to \$124,286,000. Prior to scheduled evidentiary hearings, the Company, Trenton, Staff of the Board ("Staff"), Rate Counsel and the Intervenors participated in numerous settlement conferences and discussions. A Stipulation dated January 20, 2009 resulted from these settlement discussions which, among other things, set the purchase price at \$75,000,000.

ALJ Bari-Brown issued an Initial Decision accepting the Stipulation dated February 19, 2009. By the April Order, the Board accepted the Stipulation and Initial Decision finding that the proposed Transfer satisfies the requirements of both N.J.S.A. 40:62-3.1 and of N.J.S.A. 48:2-51.1. The April Order provided that the approval granted was effective upon issuance, but would be stayed if a timely appeal was taken in the Superior Court action described below, and would "expire on December 31, 2009, unless the proposed acquisition has been consummated or unless an extension or modification has been ordered by this Board."

By this motion, Joint Petitioners seek an extension of the time to consummate the Transfer until September 30, 2010.

SUPERIOR COURT PROCEEDINGS:

On February 5, 2009, an Ordinance approving the Transfer was executed by the Mayor of Trenton. On February 25, 2009, a group of Trenton residents ("Committee") filed a petition ("Committee Petition") with the Clerk of the City seeking to force a re-vote and possible referendum to repeal the Ordinance. The Ordinance was required pursuant to Section 3.1 of the Municipal Utilities Law ("MUL"), N.J.S.A. 40:62-3.1, for the City to consummate the Transfer.

On or about March 4, 2009, Trenton filed a Verified Complaint and an Order to Show Cause asking that the Superior Court declare the Committee Petition a nullity. NJAWC requested and was granted intervention. Because the City maintained that a portion of the sale proceeds was needed by the City for its fiscal 2008 budget, the trial court heard the Order to Show Cause on an expedited basis. After briefing from and oral argument by Trenton, the Committee and NJAWC, Judge Feinberg dismissed the Committee Petition on March 16, 2009, ruling that it was null and void. On March 17, 2009, Judge Feinberg issued a written decision finding, among other things, that the referendum exemption in Section 3.1 of the MUL barred the use of a Faulkner Act referendum by the Committee.

On April 6, 2009, the Committee filed a motion seeking reconsideration of Judge Feinberg's March 16, 2009 order. Trenton and NJAWC filed opposition to the Committee's motion on April 13, 2009. Judge Feinberg heard argument on the motion for reconsideration on May 18, 2009, and determined that the Committee had identified contested issues of fact which the trial court had to resolve before ruling on the Committee's motion. Judge Feinberg directed each of the parties to serve expert reports and conduct expert discovery on an expedited basis so that the trial court could conduct a hearing on the contested fact of whether the OWUS provided water utility service to 5% or more of the IWUS. The MUL, Section 3.1, is applicable when the water utility system being sold does not serve 5% or more of the population of the selling municipality. In short, if 5% or more of the IWUS is served by the OWUS, then Section 3.1 of the MUL would not apply, and a referendum would be required under the MUL.

On July 13, 2009, a plenary hearing was held before Judge Feinberg in which evidence and oral argument were presented by all parties. Following the hearing, Judge Feinberg announced an opinion from the bench affirming her March 16, 2009 decision, providing findings of fact, including:

- That the Trenton Water Works is comprised of the IWUS and OWUS;

- That the OWUS serves less than 5% of the Trenton population, and in fact does not serve Trenton at all; and
- The Committee's expert is "in line with the recommendation of conclusions" of NJAWC's expert.

An order from the trial court was issued July 13, 2009.

The Committee filed a Notice of Appeal on July 30, 2009, and an amended Notice of Appeal on August 5, 2009. With the consent of all parties, Trenton filed a Motion to Accelerate Oral Argument based on an agreed upon accelerated briefing schedule which was granted on August 11, 2009. The Committee filed its brief on August 14, 2009. NJAWC and Trenton each filed opposition briefs on August 28, 2009. The Committee filed its reply brief on September 4, 2009. On September 4, 2009, the Appellate Division granted leave to Food & Water Watch, Inc. ("FWW") to file an amicus curiae brief on or before September 11, 2009. On September 10, 2009 FWW filed its amicus curiae brief.

In accordance with the expedited schedule, oral argument was held on October 14, 2009. As of the date of this Order, the Appellate Division has not yet issued a decision on the appeal.

DISCUSSION AND FINDING:

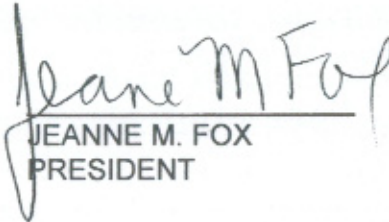
As stated above, in the April Order the Board found that "[t]he standards for approval of a transfer of control under N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14 have been satisfied by the proposed transaction, such that approval of the Transfer of control of the OWUS is appropriate under the circumstances, is in accordance with law and regulations, and is in the public interest."

The Board HEREBY FINDS that, based on the information provided, NJAWC and the City are proceeding to consummate the Transfer as expeditiously as possible. Both at the Superior Court trial level, and at the Appellate Division, the courts have acted to expedite proceedings. However, at this point, Joint Petitioners do not know when the Appellate Division will issue a decision. Likewise, it is unknown whether any further proceedings will develop following the issuance of that decision. It seems quite possible, that despite their best efforts, the Joint Petitioners may not be able to consummate the Transfer prior to December 31, 2009.

Therefore, sufficient cause having been shown, pursuant to N.J.A.C. 14:1-10.3, the Board HEREBY GRANTS the Joint Petitioners' request for an extension of time to consummate the Transfer until September 30, 2010.

DATED: 12/1/09

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

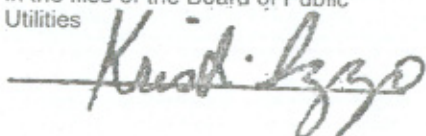

NICHOLAS ASSELTA
COMMISSIONER


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 Joint Petition of the City of Trenton, New Jersey and
New Jersey-American Water Company, Inc. for Authorization of the Purchase and
Sale of the Assets of the Outside Water Utility System ("OWUS") of the City of Trenton,
New Jersey and for Other Relief
BPU Docket No. WM08010063
OAL Docket No. PUC3514-08**

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