



Agenda Date: 1/29/14
Agenda Item: 5A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF LARRY S.)
LOIGMAN, PETITIONER V. NEW JERSEY)
AMERICAN WATER COMPANY, RESPONDENT)
)
) BPU DOCKET NO. WC12121070
) OAL DOCKET NO. PUC 00876-2013S

Parties of Record:

Larry S. Loigman, Esq., Petitioner
Kenneth Sheehan, Esq., Genova, Burns, Giantomasi & Webster, for Respondent, New Jersey American Water Company

BY THE BOARD:

The New Jersey American Water Company, Inc. ("NJAWC or Company") is a regulated public utility corporation involved in providing water service to over 600,000 customers throughout its defined franchise territory in New Jersey.

On June 29, 2012, a pipe bridge owned by NJAWC, crossing the Swimming River in Monmouth County, New Jersey, collapsed. The bridge had supported three water pipelines (a 30-inch potable water main, a 36-inch potable water main, and a 42-inch raw water main) carrying water to and from the Swimming River Treatment Plant. The incident resulted in approximately 95,000 NJAWC customers in twenty two (22) Monmouth County communities, being subject to a precautionary boil water advisory and outdoor water ban.

Due to this incident, on September 10, 2012, Mr. Loigman ("Petitioner") filed correspondence with the Board of Public Utilities ("Board") that he characterized as a request for a formal hearing regarding a claim for damages from the Swimming River incident. The Petitioner claimed that NJAWC failed to provide safe, adequate, and proper service due to the pipe bridge collapse, and subsequent loss of potable water service. After review, it was deemed that the correspondence did not meet the criteria for a formal hearing as set forth at N.J.A.C. 14:1-1 et seq.

The Board notified the Petitioner on November 7, 2012, that it is not empowered by the State Legislature to adjudicate claims for damages, and that if he wished to file a claim for damages in this instance, he had the option of pursuing the complaint through the appropriate court of

law. He was also told that a refund was being processed for his \$25 filing fee. Further, he was informed that the Board was currently conducting an investigation into the incident at the Swimming River Water Treatment Plant, and it would not determine what actions to take until that report had been received and considered.¹

The Petitioner filed an amended petition ("Petition") removing his damage claim on November 9, 2012. Mr. Loigman's Petition included the following allegations against the Company: that NJAWC's communication (via telephone and NJAWC's website) to the public was inadequate and misleading during the emergency (including the boil water notification); that the bridge collapse was due to inadequate maintenance and inspection of its facilities; that the restoration of service was mishandled; and that the locations for bottled water distribution were too remote.

Mr. Loigman sought the following sanctions against the Company: invoking financial sanctions; establishing procedures requiring customer calls to be connected to New Jersey based supervisors/managers within five minutes; and requiring American Water Works to divest itself of NJAWC to a company that solely operates in New Jersey.

On December 13, 2012, the Petition was forwarded to the Company. The Company could either contest the Petition or make representations to the Board in connection with the matter.

On January 2, 2013, the Company requested that the Petition be dismissed without prejudice, as the complaint alleged no fact or issue which was not already fully before the Board in the matter of the Board's Investigation into Reliability Issues Related to NJAWC's Swimming River Water Treatment Plant Bridge Failure (Board Docket No. WO12070659).

On January 16, 2013, the matter was transmitted to the Office of Administrative Law ("OAL") as a contested case.

On April, 3, 2013, Administrative Law Judge Elia A. Pelios ("ALJ Pelios") held a prehearing telephone conference with Mr. Loigman, NJAWC, and Board Staff.

On November 18, 2013, the Parties to the Stipulation of Settlement (Petitioner and NJAWC) filed a Stipulation of Settlement with ALJ Pelios, which resolved all issues in the proceeding. The terms of the Settlement are that the Company will convene a meeting at rotating locations within its "Coastal North" service territory², twice a year, and invite customer representatives, including local community leaders, customers, and other stakeholders. The meetings will include appropriate representatives from NJAWC, and will be designed to allow for the discussion and interplay between NJAWC and its customers to provide input and insight into Company operations. The meetings will continue through at least 2016, and it is expected these meetings will continue beyond this time, based on their value.

On November 25, 2013, ALJ Pelios rendered his Initial Decision for Board consideration. ALJ Pelios adopted the Stipulation of Settlement.

¹ On August 15, 2012, the Board had Ordered NJAWC to retain Jerry Notte, P.E. of CH2M Hill as a Special Reliability Master ("SRM"), and approved a scope of work to conduct a review of the collapse, including both the cause of the failure and the recovery post failure: Docket No. WO12070659. On May 29, 2013, the Board Ordered that all recommendations in the SRM's report be implemented.

² NJAWC's Coastal North service territory primarily consists of its customers in Monmouth and Ocean Counties.

At its December 18, 2013 Agenda Meeting, the Board requested and received a forty five (45) day extension on its ruling in this matter from the Office of Administrative Law. The extension was to allow the Board time to adequately review the record before issuing its Final Decision.

DISCUSSION AND FINDINGS

After review of the Initial Decision and entirety of the record in this matter, the Board **HEREBY FINDS** that ALJ Pelios correctly concluded that the terms of the Stipulation of Settlement fully dispose of all issues in controversy between the Parties and is consistent with the law.

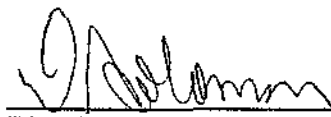
The Board also **HEREBY FINDS** as evidenced by the Parties' signatures on the Stipulation of Settlement, that the Parties voluntarily agreed to the terms and conditions of the Stipulation of Settlement.


Having reviewed the record in this matter, including ALJ Pelios' Initial Decision and the Stipulation of Settlement, the Board **HEREBY FINDS**, under the facts and circumstances of this case, the Initial Decision to be reasonable, in the public interest and in accordance with law. Therefore, the Board **HEREBY ADOPTS** the Initial Decision, attached hereto, as its own, incorporating it by reference into this Order as if fully set forth herein.


This Order shall be effective on February 7, 2014.

DATED: 1/29/14


BOARD OF PUBLIC UTILITIES
BY:



DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
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 LARRY S. LOIGMAN, PETITIONER V.
NEW JERSEY AMERICAN WATER COMPANY, RESPONDENT
BPU DOCKET NO. WC12121070
OAL DOCKET NO. PUC 00876-2013S

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Amended
Petition

LARRY S. LOIGMAN
110 STATE HIGHWAY 35
P.O. Box 97
MIDDLETOWN, NEW JERSEY 07748
(732) 842-9292
Attorney for Petitioner

LARRY S. LOIGMAN, Esq.,
Petitioner,

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

v.

DOCKET NO.

}

VERIFIED COMPLAINT

NEW JERSEY AMERICAN
WATER COMPANY,
Respondent

Larry S. Loigman, Esq., having an office address of 110 State Highway 35, Middletown, by way of Verified Complaint against Respondent, says:

1. New Jersey American Water Company ("NJAW") is a provider of water services regulated by the Board of Public Utilities.
2. Petitioner is a customer of NJAW's services. Specifically, Petitioner's residence in the Township of Ocean, County of Monmouth, New Jersey, is serviced by NJAW.
3. On or about June 29, 2012, Petitioner learned through reports in the news media (and not from Respondent) that a catastrophic failure in NJAW's distribution system had occurred at its Swimming River facility, located in Lincroft.
4. Such failure resulted solely and exclusively from NJAW's inept, incompetent, inadequate and inefficient maintenance and inspection of its own facilities.
5. Thereafter, Petitioner learned through reports in the news media (and not from

Respondent) that the water supplied by NJAW was not considered potable and had to be boiled prior to consumption.

6. Petitioner attempted to contact NJAW but its telephone lines were answered by individuals who had little or no knowledge of the situation, and who denied any knowledge of efforts being made by NJAW to manage the situation. These individuals claimed to be located in foreign states, that is, outside the State of New Jersey, and denied that any NJAW employee could be contacted by telephone.

7. NJAW mishandled and mismanaged the situation, delaying the restoration of a potable water supply for many days, and causing substantial inconvenience to Petitioner and to others.

8. During the situation, Petitioner made numerous inquiries to NJAW. Each inquiry was met with NJAW's steadfast and unwavering refusal to provide accurate and timely information as to the nature, duration and extent of the emergency.

9. Similarly, Petitioner viewed the "website" maintained by NJAW. It, too, provided inaccurate and outdated information.

10. NJAW arranged for distribution of bottled water, but only in locations that were remote from Petitioner's home. When questioned about the need for additional, less distant distribution locations, no person answering NJAW's telephones could provide any response whatever.

11. After the restoration of service, NJAW attempted to impose arbitrary, capricious, discriminatory and unreasonable restrictions on the use of water, which restrictions were needed solely and exclusively because of NJAW's inept and incompetent maintenance of its facilities.

12. NJAW continued, even after the restoration of service, to provide deliberately false, misleading, inaccurate, and untimely information to Petitioner and to others, through the news media, its "website," and through other means.

13. NJAW failed, refused and neglected to provide "safe, adequate and proper service"

(N.J.S.A. 48:2-23; N.J.A.C. 14:3-3.1) to Petitioner.

14. NJAW failed, refused and neglected to provide "information as is reasonable in order that the customers may obtain safe, adequate and proper service" (N.J.A.C. 14:3-3.3(a)).

15. NJAW failed, refused and neglected to "inform the customer as to how the customer can minimize the effect of such circumstances in order to secure sufficient and satisfactory service from the utility's system" (N.J.A.C. 14:3-3.3(c)).

WHEREFORE, Petitioner prays for an order:

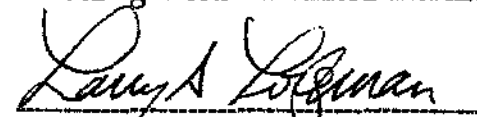
- A. [Deleted];
- B. Imposing financial sanctions against NJAW;
- C. Directing NJAW to establish procedures for connecting customer calls to supervisors or managers located within the State of New Jersey within five (5) minutes of a customer request;
- D. Directing NJAW to provide complete, accurate, timely and comprehensive information to customers as to any emergencies or deficiencies in service;
- E. Requiring that American Water, also known as American Water Works Company, Inc., divest itself of New Jersey American Water, such that water provided to consumers in New Jersey be furnished by a company solely operating in New Jersey;
- F. For costs and fees;
- G. For such other and further relief as may be appropriate.



LARRY S. LOIGMAN, Esq.
Attorney for Petitioner

I am the Petitioner in the foregoing Complaint. The allegations contained therein are true.

September 10, 2012
November 9, 2012



LARRY S. LOIGMAN

Paul
12/2/13
REC'D
2013 DEC 2 07:13:11
CASE NO. 00876-13



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION SETTLEMENT

OAL DKT. NO. PUC 00876-13

AGENCY DKT. NO. WC12121070

LARRY S. LOIGMAN,

Petitioner,

v.

NEW JERSEY AMERICAN WATER,

Respondent.

Larry S. Loigman, Esq., petitioner, pro se

Kenneth J. Sheehan, Esq., for respondent, New Jersey American Water
(Genova Burns Giantomasi & Webster, attorneys)

Alex Moreau, Deputy Attorney

Record Closed: November 20, 2013

Decided: November 25, 2013

BEFORE ELIA A. PELIOS, ALJ:

This proceeding involves Larry S. Logiman, petitioner disputing services from New Jersey American Water. The petition was transmitted to the Office of Administrative Law on March 13, 2013, for determination as a contested case.

The parties filed, on November 18, 2013, a Stipulation of Settlement (J-1) which resolves all issues in this proceeding. Said Stipulation of Settlement has been signed by all parties, indicates the terms of settlement, and is attached and fully incorporated herein.

I have reviewed the terms of settlement and I **FIND**:

1. The parties have voluntarily agreed to the settlement as evidenced by their signatures or their representatives' signatures on the attached document.
2. The settlement fully disposes of all issues in controversy between the parties and is consistent with the law.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

November 25, 2013

DATE



ELIA A. PELIOS, ALJ

Date Received at Agency:

November 26, 2013

Date Mailed to Parties:

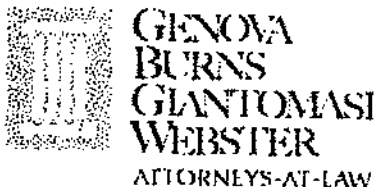
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EXHIBITS

Jointly Submitted

J-1 Stipulation of Settlement



**GENOVA
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GIANTOMASI
WEBSTER**
ATTORNEYS-AT-LAW

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Kenneth J. Sheehan, Esq.
Counsel
Member of NJ Bar
ksheehan@genovaburns.com
Direct 973-545-3275

November 18, 2013

Via Fax (609-689-4100) and U.S. Mail

The Honorable Elia A. Pelios
Administrative Law Judge
Office of Administrative Law
Quakerbridge Plaza – Bldg. 9
PO Box 049
Trenton, NJ 08625

Re: Loigman v. New Jersey American Water Co. – PUC 00876-2013-S

Dear Judge Pelios:

As discussed with your chambers this afternoon, the parties to this matter, Mr. Loigman and New Jersey American Water, have reached a settlement. A copy of the signed settlement is attached. I will provide a formal copy to the court by mail, but I wanted to provide this copy now in order to eliminate the need for the telephone settlement conference scheduled for Wednesday, November 20, 2013, at 4:00 p.m.

If you have any questions or need any additional information, please do not hesitate to let me know.

Very truly yours,

GENOVA BURNS GIANTOMASI WEBSTER LLC

KENNETH J. SHEEHAN

**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

**LOIGMAN V NEW JERSEY AMERICAN
WATER COMPANY**

**: BPU DOCKET NO. WC12121070
: OAL DOCKET NO. PUC-00876-2013-S
:
: STIPULATION OF SETTLEMENT
:**

APPEARANCES:

Larry S. Loigman, Esq. (The Law Office of Larry S. Loigman), Pro Se

Geoffery Gersten, Deputy Attorney General, and Alex Moreau, Deputy Attorney General (John J. Hoffman, Acting Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Kenneth J. Sheehan, Esq. (Genova Burns Giantomasi Webster, LLC), on behalf of New Jersey American Water Company

TO THE HONORABLE ELIA A. PELIOS, ADMINISTRATIVE LAW JUDGE:

The Parties to this proceeding are as follows: Larry S. Loigman, Esq. ("Loigman" or "Petitioner"), and the New Jersey American Water Company ("NJAWC"). The Parties to this matter hereby enter into the following Stipulation of Settlement.

1. Petitioner filed a verified complaint on September 10, 2012 with the New Jersey Board of Public Utilities ("NJBP"), based upon the Swimming River distribution line break on June 29, 2012. Petitioner claims that the failure was associated with a lack of maintenance and inspection, and that when Petitioner attempted to contact NJAWC, the individuals contacted had insufficient knowledge of the situation and were located outside of New Jersey. Additionally, Plaintiff alleges that NJAWC

failed to provide timely and accurate information, that the distribution of bottled water was inadequate, and, post-restoration, NJAWC imposed arbitrary and capricious restrictions on water usage. Based upon these allegations, Petitioner claims that NJAWC failed to provide safe, adequate and proper service and failed to provide sufficient information to its customers, in violation of regulation and statute. As such, Petitioner requested a number of remedies, including compensation, financial sanctions, additional notice obligations, and the divestiture of NJAWC from the overarching American Water family of companies.

2. NJAWC disputes the allegations made by Petitioner, and instead believes that the Complaint is preempted by the NJBPU's investigation into the events surrounding the partial bridge collapse, I/M/O the Board's Investigation into Reliability Issues Related to New Jersey American's Swimming River Treatment Plant Pipe Bridge Failure. BPU Docket No. WO12070659. Furthermore, NJAWC asserts that the complaint fails to state a claim, fails to provide a basis for relief, that Petitioner has failed to allege any actual damages, and that no request for relief can be found.
3. Following a scheduled conference call with the Office of Administrative Law, both parties, without prejudice, entered into discussions for possible settlement.
4. On July 1, 2013, the Parties entered into an oral settlement and Counsel for NJAWC submitted a letter to the Office of Administrative Law, noting the oral agreement, and requesting a cancellation of the scheduled Settlement Conference.
5. The Parties hereby agree that NJAWC will convene a meeting at rotating locations within the "Coastal North" service territory, twice a year, and invite customer representatives, including local community leaders, customers, and other

stakeholders. The meeting will include appropriate representatives from NJAWC, and will be designed to allow for the discussion and interplay between NJAWC and the customers to provide input and insight into the operation of the local water company.


6. NJAWC agrees to continue these meetings through at least 2016, and expects to continue beyond this time based upon the likely value of the meetings.
7. The execution of this Stipulation of Settlement shall neither be deemed an admission by NJAWC of any violation or failure, nor shall it be considered in any way to address the findings or position presented by NJAWC in the NIBPU's investigation into the events surrounding the partial bridge collapse, I/M/O the Board's Investigation into Reliability Issues Related to New Jersey American's Swimming River Treatment Plant Pipe Bridge Failure, BPU Docket No. WO12070659.
8. The Parties agree that, except as expressly provided herein, this Stipulation of Settlement has been made exclusively for the purpose of these proceedings and that the provisions contained herein, in total or by specific item, shall not be used against either of the Parties in any other proceedings, and the contents of this Stipulation of Settlement, in total or by specific item, by inference, inclusion, or deletion, shall not in any way be considered or used by any other Party as any indication of the positions of any Party hereto on any issue litigated or to be litigated in other proceedings. The Parties acknowledge that the terms of this Stipulation of Settlement shall not be effective until approved by the Office of Administrative Law.


9. This Stipulation of Settlement contains terms each of which is interdependent with the others and essential in its own right to the signing of this Stipulation of Settlement. Each term is vital to the agreement as a whole, since the Parties expressly and jointly state that they would not have signed the agreement had any term been modified in any way. Each Party is entitled to certain procedures in the event that any modification is made to the terms of this Stipulation of Settlement, pursuant to which each of the Parties hereto must be given the right to be placed in the position it was in before this Stipulation of Settlement was entered. Therefore, if any modification is made by the Office of Administrative Law to the terms of this Stipulation of Settlement, it is essential that each Party first be given the option either to modify its own position, to accept the proposed changes, or to resume the proceedings as if no agreement had been reached.

10. The Parties believe these provisions are fair to all concerned and therefore they are made an integral and essential element of this Stipulation of Settlement. This being the case, the Parties expressly agree to support the right of the other Party to this Stipulation of Settlement to enforce all terms and procedures detailed herein.

Larry S. Loigman, Esq.

New Jersey American Water Company

BY: 
Larry S. Loigman

BY: 
Kenneth J. Sheehan

Dated: Nov 11, 2013

9/26/13