



Agenda Date: 7/25/18
Agenda Item: 5A

STATE OF NEW JERSEY
Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES' CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017)	DECISION AND ORDER
)	APPROVING STIPULATION
)	DOCKET NO. AX18010001
)	
IN THE MATTER OF THE PETITION OF AQUA NEW JERSEY, INC. COMPLIANCE FILING)	DOCKET NO. WR18030237

Parties of Record:

Colleen A. Foley, Esq., Saul Ewing Arnstein & Lehr, LLP, on behalf of, Aqua New Jersey, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Decision and Order, the New Jersey Board of Public Utilities ("Board" or "BPU") considers a Stipulation of Settlement ("Stipulation") entered into by Aqua New Jersey, Inc., ("Aqua" or "Company"), the New Jersey Division of Rate Counsel ("Rate Counsel") and Board Staff (collectively, "Parties") which seeks to resolve all issues related to this matter.

BACKGROUND

By Order¹ ("Generic TCJA Order") dated January 31, 2018, the Board directed affected utilities² to file petitions proposing new rates reflecting the impacts from the Federal Tax Cuts and Jobs Act ("2017 Act") signed into law on December 22, 2017. The effective date of the 2017 Act is January 1, 2018. The 2017 Act set forth changes to the Federal Internal Revenue Tax Code ("Tax Code"), including a reduction in the maximum corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%). The Board is charged with the authority to ensure that the regulated utilities' rates charged to ratepayers are just and reasonable. N.J.S.A. 48:2-21.

¹ See In re the New Jersey Board of Public Utilities' Consideration of the Tax Cuts and Jobs Act of 2017, BPU Docket No. AX18010001 (January 31, 2018).

² The affected utilities are investor-owned gas, electric, water and wastewater companies under the jurisdiction of the Board. In addition, affected utilities shall be those with 2017 revenues equal to or greater than \$4.5 million.

When the Board sets rates in base rate cases and in certain annual/periodic clauses, utilities are permitted to gross up their revenue requirement as well as set other rate factors, including, the accumulated deferred income tax ("ADIT"), based on the then existing thirty-five percent (35%) corporate tax rate.

The Board issued the Generic TCJA Order which set all affected utility rates as interim and established a proceeding to consider the implications of the 2017 Act. Based upon the Board's review of the 2017 Act, the Board found in its Generic TCJA Order that the changes to the Tax Code will provide savings to the affected utilities and will result in an over-collection of tax revenue by the affected utilities that will not be paid in federal income taxes. The affected utilities were required to file amended tariffs reflecting a reduction in rates resulting from the reduction in the corporate tax rate effective April 1, 2018, as well as a plan to address other rate factors and to refund any over collection in rates.

Aqua Filing

On March 2, 2018, the Company filed its petition pursuant to the January 31, 2018 Generic TCJA Order, including proposed tariffs as well as a proposed plan. The Company's filing and proposed tariffs did not include an across-the-board rate reduction reflecting the reduction in the corporate tax rate from thirty-five percent (35%) to twenty-one (21%). Therefore, Aqua refiled its petition ("Tax Rate Adjustment Filing") which reflected the reduction in the corporate tax rate from thirty-five percent (35%) to twenty-one percent (21%) on March 19, 2018.³ The Tax Rate Adjustment Filing requested that the Board approve the Company's petition to implement the following:

1. A reduction in its base rates of \$2,614,507 to be effective April 1, 2018;
2. A refund of \$573,287 to customers for the difference between the April 1, 2018 effective rates and the current rates for the period commencing January 1, 2018 and ending March 31, 2018; and
3. Approval of \$9,495,469 of "protected" Excess Deferred Income Taxes which have been recorded as a regulatory liability to be amortized utilizing the Average Rate Assumption Method ("ARAM") as required by Internal Revenue Service ("IRS") regulations, and \$50,828 of non-plant or "unprotected" Excess Deferred Income Taxes which have been recorded as a regulatory asset to be amortized over three (3) years. The one-time refund will include interest at the Company's short-term debt rate as specified in the Company's last base rate case⁴ and is anticipated to be applied to customer accounts beginning in July 2018.

The Company represented that this rate change and one-time refund results in an overall rate decrease of approximately 6.8% to the average residential water customer using 5,000 gallons of water per month.

³ Aqua demonstrated that its wastewater operations do not meet the revenue threshold set by the Board in its Generic TCJA Order, and, as such, wastewater tariff rates have not been adjusted.

⁴ In re the Petition of Aqua New Jersey, Inc. for Approval of an Increase in Rates for Water Service and other Tariff Changes, BPU Docket No. WR16010089 (Order dated July 29, 2016).

By Order dated March 26, 2018 ("March 26 Order"), the Board directed the Company to implement its proposed base rate reduction on an interim basis, effective April 1, 2018.

STIPULATION:

Following a review of discovery and discussions, the Parties executed the Stipulation, which provides for the following:⁵

I. BASE RATE REDUCTION

The Parties agree that the Company's Pro-Forma Operating Income, Operating Income Deficiency, Revenue Factor and Revenue Requirement for the rate case settlement equate to a total revenue requirement reduction of \$2,614,507. This rate reduction, approved on an interim basis by BPU Order dated March 26, 2018, may be further reviewed in the Company's next base rate case which is anticipated to be filed no later than January 2019.

The Parties agree that Aqua's Revenue Factor of 1.7933 will be lowered to 1.4755 as a result of the 2017 Act.

The Parties agree that the Protected Excess Deferred Income tax balance, based on the Company's Accumulated Deferred Income Taxes from the Company's last base rate case and the associated balances as of December 31, 2017 with the effects of the 2017 Act, is currently estimated to be \$9.495 million. The Parties further agree that any change in this amount will be addressed in the Company's next base rate case.

The Parties agree that Aqua will reclassify the \$9.495 million of its rate base related deferred income taxes as a regulatory liability. The reclassification has no effect on rate base for purposes of this filing and any changes will be reflected in future rate cases. This regulatory liability is subject to the Internal Revenue Service normalization rules⁶ and will be amortized and returned to ratepayers over approximately thirty (30) years utilizing the ARAM. The amortization for this equates to \$312,480 per year.

The Parties agree that the billing determinants approved in the Company's last base rate proceeding will be used to determine how the \$2.6 million revenue requirement reduction will be reflected in the Company's rate classifications and associated base rates to be effective July 1, 2018 or as of the effective date specified in the Board Order in this proceeding on a final basis. The rate design and resulting tariff rates are set forth in Attachment A to the Stipulation.

II. REFUND OF JANUARY 1, 2018 THROUGH MARCH 31, 2018 OVER-COLLECTION

The Parties agree that Aqua will refund the January 1, 2018 through March 31, 2018 over-collection using the January 1, 2018 through March 31, 2018 billing determinants and applying the difference between the June 1, 2018 rates and the January 1, 2018 rates. The Company will apply the refunds to customer accounts beginning in July 2018 or as soon as possible after the receipt of a Board Order addressing the refunds in this proceeding. The total rate refund is

⁵ Although summarized in this Order, the detailed terms of the stipulation are controlling, subject to the findings and conclusions of this Order.

⁶ 26 U.S.C. § 168(i)(9).

estimated to be \$573,287. This results in an estimated one-time refund for a typical residential water customer of \$10.00 or twenty-two percent (22%) of an average monthly residential bill.

III. REFUND OF UNPROTECTED EXCESS DEFERRED INCOME TAX

The Parties agree that Aqua has already included in its rate reduction the Unprotected⁷ ADIT of \$50,828, which amount will be amortized over three (3) years. The Parties further agree that any change in this amount will be addressed in the Company's next base rate case.

IV. INTEREST ON REFUNDS

The Parties agree that the interest on the refund, specifically for the three (3) month over-collection, will be at the Company's short-term debt rate as specified in the Company's last base rate case.

V. OTHER ASSETS

The Parties agree that Aqua has already modified its Distribution System Improvement Charge ("DSIC") to reflect the changes resulting from the 2017 Act. Any additional changes necessitated by the 2017 Act will be incorporated in Aqua's upcoming semi-annual DSIC filing, which will be made in August 2018.

Due to the unusual circumstances created by the passage of the 2017 Act, the Parties agree to recommend to the Board that Aqua should be permitted to continue to use the DSIC revenue requirement recovery cap set in the Company's last base rate case. That authorized amount is \$1,952,105, and the Parties agree it shall continue to be the authorized recovery cap until the completion of the Company's next base rate case.

The 2017 Act eliminated the exemption for water utilities from recognizing Contributions in Aid of Construction as taxable income. Aqua had proposed to pay the income taxes on contributed property rather than requiring entities contributing property to also pay the tax consequences of that contribution. Aqua understands that the Board wishes this issue to be addressed uniformly by all New Jersey utilities, and that the "full gross-up" approach is the Board's preferred methodology. Therefore, Aqua withdraws its request to pay the income taxes on contributed property, and will implement the "full gross-up" approach for contributed property.

DISCUSSION AND FINDINGS:

Staff and Rate Counsel have reviewed the Company's filing, exchanged discovery and reached a resolution on all issues in this matter. The Company will apply the refunds to customer accounts beginning in July 2018 or as soon as possible after the receipt of a Board Order addressing the refunds in this proceeding. The total rate refund is estimated to be \$573,287. This results in an estimated one-time refund for a typical residential water customer of \$10.00 or twenty-two percent (22%) of an average monthly residential bill pursuant to the Board's March 26, 2018 Order. The Stipulation further addresses the other effects of the 2017 Act on Aqua's rate base, including protected and unprotected deferred income taxes. Finally, the Stipulation appropriately provides that additional review of any related refunds and rates may occur, as necessary, in future proceedings.

⁷ Certain excess deferred income taxes are referred to as "unprotected" and are not covered under IRS normalization rules.

The Board has reviewed the record in this proceeding, including the Tax Rate Adjustment Filing and the Stipulation. The Board **HEREBY FINDS** the Stipulation to be reasonable, in the public interest, and in accordance with the law. Therefore, the Board **HEREBY ADOPTS** the Stipulation in its entirety, and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein.

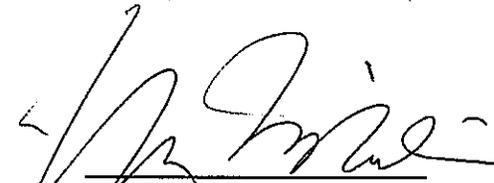
Aqua is **HEREBY DIRECTED** to file the appropriate tariff sheets conforming to the terms and conditions of this Order prior to August 4, 2018.

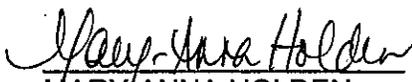
The Company's costs remain subject to audit by the Board. This Decision and Order shall not preclude or prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

This Order shall be effective August 4, 2018.

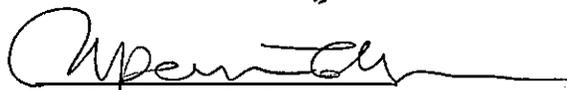
DATED: 7/25/18

BOARD OF PUBLIC UTILITIES
BY:

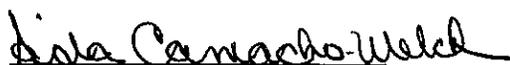

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PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities. 5

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