



Agenda Date: 08/04/10
Agenda Item: 5C

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu

WATER

IN THE MATTER OF THE PETITION OF
NEW JERSEY AMERICAN WATER COMPANY FOR
AUTHORIZATION TO IMPLEMENT A DISTRIBUTION
SYSTEM IMPROVEMENT CHARGE (DSIC)

) ORDER DENYING DSIC
) PETITION AND
) INSTITUTING STAKEHOLDER
) PROCESS

BPU DOCKET NO. WO08050358

Ira Megdal, Esq., Cozen O'Connor, for Petitioner, New Jersey American Water Company, Inc.

BY THE BOARD:

On May 23, 2008, New Jersey American Water Company ("Company" or "NJAW") filed a petition with the New Jersey Board of Public Utilities ("Board") requesting authorization to implement a Distribution System Improvement Charge ("DSIC"). As proposed by the Company, the DSIC mechanism would be a new clause which would allow the Company to recover the costs of certain listed infrastructure improvements based on quarterly, self-implementing filings that would be submitted to the Board. The Company claims that a DSIC clause is needed to allow the Company to accelerate the rate of replacement and/or rehabilitation of its water and wastewater infrastructure in response to growing infrastructure challenges. According to the Company, because the proposed DSIC clause would allow the Company periodic recovery of costs outside a base rate case proceeding, the Company would be able to devote additional resources to these infrastructure projects without having to carry the additional debt for the period until a decision is reached in a rate case.

Some form of a DSIC was supported by an association of water utilities, the New Jersey Chapter of the National Association of Water Companies ("NAWC")¹. NAWC submitted its own proposals for such a DSIC clause which differed from what the Company proposed, but also advocated periodic recovery for certain defined infrastructure improvements outside of a base rate case proceeding. These proposals were based on similar clauses that have been adopted in other states, primarily through legislation.

This petition was opposed by the Department of the Public Advocate, Division of Rate Counsel² and a group of municipalities and municipal water authorities, the Bulk Purchaser Coalition³

¹ The New Jersey Chapter of NAWC includes the following water utilities: United Water New Jersey, Middlesex Water Company, Aqua New Jersey, Inc., Roxiticus Water Company and Shorelands Water Company. United Water New Jersey, Middlesex Water Company and Aqua New Jersey, Inc. filed testimonies and fully participated in these proceedings.

² Now called the Division of Rate Counsel

("BPC"). Their position was that a DSIC clause constitutes single issue ratemaking and, unlike clauses to recover commodity costs, which are outside the control of the utility and provide no profit to the utility, infrastructure investments are within the utility's control and should be part of normal construction budgets. Further, Rate Counsel and the BPC argued that the Company failed to show any financial need for rapid recovery of these capital expenditures that are traditionally recovered in base rates given the Company's frequent rate case filings. Rate Counsel supported either a rulemaking or some other manner of generic proceeding if the Board determined that some form of a DSIC is appropriate but recommended that the Board deny the Company's petition. Board Staff ("Staff") recommended a limited pilot for NJAW pending a rulemaking proceeding if the Board determined that a DSIC is appropriate for the State at this time.

The Board, in making its determination, has carefully considered the Company's petition and the alternatives offered by NAWC, Rate Counsel, the BPC and Staff.

BACKGROUND/PROCEDURAL HISTORY

NJAW currently serves approximately 633,000 water customers and 34,000 wastewater customers in certain portions of Atlantic, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union, and Warren Counties, New Jersey.

The matter was retained by the Board for hearing and on October 6, 2008, Commissioner Frederick F. Butler was designated to preside over the proceeding. Motions for Leave to Intervene were filed by Cogen Technologies, Linden Ventures, L.L.P. ("Cogen") on July 15, 2008, and the NAWC on July 18, 2008. These motions were granted as part of the October 6 Order. The BPC filed a motion to intervene on January 13, 2009, which was granted by Commissioner Butler by Order dated February 11, 2009.

A pre-hearing conference was held on October 24, 2008, among the parties of record to the proceeding at that time (Staff, Rate Counsel, the Company, Cogen and the NAWC). A pre-hearing Order was signed by Commissioner Butler on January 14, 2009 setting, among other things, the issues to be litigated and the schedule going forward. The Pre-hearing Order stated the issues as follows: a) whether the Company can establish by a preponderance of the evidence that the implementation of a DSIC should be approved, the legal sufficiency of the DSIC and the reasonableness of the DSIC rate mechanism; b) the type of infrastructure to be included and allowed in a DSIC mechanism, if adopted; c) the methodology to be used in the computation of the DSIC rate; and d) the timing of the DSIC implementation.

Four (4) public hearings were held within the Company's service territory beginning on January 6, 2009, in Maplewood and Freehold, and on January 8, 2009, in Westfield and Westhampton, New Jersey. Members of the public attended and spoke at some of the public hearings voicing their concerns about the proposed DSIC.

Evidentiary hearings were held on March 4 and March 6, 2009, before Commissioner Butler in Newark, New Jersey. At the hearings, the Company presented two witnesses: Edward Rex, Principal Financial Analyst for the Company, and Suzanne Chiavari, Vice President of

³ The BPC represents the interests of the following entities: the Mount Laurel Municipal Utilities Authority, the Evesham Municipal Utilities Authority, the Monroe Township Municipal Utilities Authority, the Township of Haddonfield and the Township of Moorestown.

⁴ The Board takes notice of the proceeding currently pending before the New Jersey Clean Water Council within the New Jersey Department of Environmental Protection, "Water Infrastructure Management and Financing" available at www.nj.gov/dep/cleanwatercouncil.

Engineering for the Company. NAWC presented three witnesses as a panel: Mark A. Gennari, Vice President of the Regulatory Business Department for United Water Management Services, Inc., A. Bruce O'Connor, Vice President and Chief Financial Officer of Middlesex Water Company, and William C. Packer, Manager of Rates for Aqua New Jersey. The BPC presented one witness: Raymond Makul, Esq. for oral surrebuttal testimony. Rate Counsel presented two witnesses: Howard J. Woods, P.E. and Robert J. Henkes of Henkes Consulting. All parties waived cross-examination of the Company's witness, W. Andrew Clarkson, Senior Director of Field Operations for the Company. Cogen did not present any witnesses.

Initial Briefs were filed on April 17, 2009, with Reply Briefs filed on May 20, 2009.

DISCUSSION AND FINDING

The Board has carefully reviewed the lengthy record in this proceeding, including the testimony, transcript, and briefs filed by the parties. Each party effectively advocated for its position, and the Board believes that the process was beneficial in helping to crystallize the scope of the issues to be resolved. Based upon the review of the record and the positions raised, the Board has concluded that it cannot approve the particular DSIC proposed in this proceeding before it undertakes a broader examination of whether it is appropriate to adopt a DSIC type mechanism at all. Adoption of a DSIC mechanism as part of the rate structure of water and wastewater public utilities would be a departure from traditional rate making procedures in this State. But difficult problems require creative responses that respect the law but adapt to extraordinary circumstances. In the past, the Board has found that it has the power to act to meet such challenges. N.J.S.A. 48:2-13; In re Implementation of the Two Bridges/Ramapo Water Diversion Project, BPU Docket No. 8011-870 (March 17, 1981). The Board continues to have that power which it can exercise if persuaded that such action is necessary and appropriate.

This proceeding can only resolve the petition of a single company; yet it raises questions that extend beyond the Company requiring that the Board examine if a DSIC should operate at all, not on a company-by-company basis, but on an industry-wide basis, and if it should, then how. The record, through no fault of any party, is lacking in regards to this question.

The Board strongly believes that the need to replace infrastructure is not limited to the parties to this proceeding. In fact, replacement of ageing water and wastewater infrastructure is of significant concern to the State⁴. Some form of a DSIC type solution, which should promote faster replacement of ageing infrastructure, may be valuable in helping the water and wastewater utilities continue to provide safe, adequate and proper water and wastewater service at the lowest cost to ratepayers, and if it can, should be viewed on a global scale. Therefore, the Board HEREBY DECLINES to adopt the DSIC proposal presented by this petition, without prejudice. The Board's decision should not be considered a determination on the merits of any of the proposals presented in this matter; instead, it reflects the Board's recognition that discussion and analysis on an industry-wide basis represents the better approach.

The Board believes that further development of the current record through additional evidentiary hearings is not the optimum arrangement. The Board has flexibility to determine how to proceed in matters presented to it, and may use its discretion to choose the most appropriate manner including by contested case, rulemaking or informal process, based on the issues raised and the potential effects of the resolution. See, In re Request for Solid Waste Util. Customer Lists, 106 N.J. 508 (1987); In re the Petitions of MP Real Estate LP, Studebaker Submetering, Inc. and the New Jersey Apartment Association for Permission to Check-Meter Water Service, BPU Dkt Nos. WO00040254, WO00060360, WO00070510 (June 24, 2004)⁵. The Board HEREBY FINDS that the initiation of an open stakeholders' process will better serve

to provide the Board with the necessary foundation to determine if and how to implement a global DSIC program in some form.

Accordingly, the Board, for the reasons discussed above, HEREBY DENIES the Company's request to implement a DSIC at this time. In keeping with the intention to investigate and, if appropriate, develop a global solution, the Board DIRECTS Staff to open the stakeholder process described below to explore whether a DSIC is feasible and practical if applied to all regulated water and wastewater public utilities in New Jersey.

As part of the stakeholder process, the Board requests that participants discuss, at a minimum, the following issues: 1.) The need for a DSIC as opposed to existing mechanisms of cost recovery for infrastructure investments; 2.) Whether a DSIC should apply to all New Jersey regulated water and wastewater public utilities; 3.) What will be the cost of a DSIC to ratepayers and how can those costs be minimized or otherwise limited; and 4.) Whether the benefits of a DSIC to a regulated water or wastewater public utility can or should be offset by other elements of ratemaking, including but not limited to a corresponding lowering of the utility's return on investment on DSIC-eligible projects.


The Board looks forward to the continued discussion and review of this issue, and encourages all of the current parties, as well as other interested stakeholders, to participate fully throughout the stakeholder process.

DATED: 10/20/10

BOARD OF PUBLIC UTILITIES
BY:



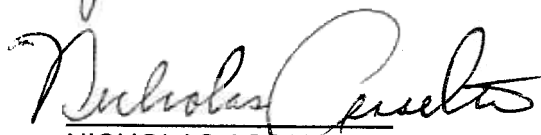
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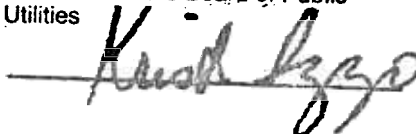
ELIZABETH RANDALL
COMMISSIONER

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



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