



State of New Jersey
DEPARTMENT OF THE PUBLIC ADVOCATE
DIVISION OF RATE COUNSEL
31 CLINTON STREET, 11TH FL
P. O. BOX 46005
NEWARK, NEW JERSEY 07101

JON S. CORZINE
Governor

RONALD K. CHEN
Public Advocate
STEFANIE A. BRAND
Director

October 25, 2007

VIA HAND DELIVERY

Hon. Kristi Izzo, Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**Re: In The Matter of the Petition of New Jersey-American Water Company, Inc. for Approval of Municipal Consent Granted by the Township of Westhampton, County of Burlington
BPU Docket No.: WE06110820**

Dear Secretary Izzo:

Please accept for filing an original and ten copies of the comments of the Department of the Public Advocate, Division of Rate Counsel ("Rate Counsel") regarding the above referenced matter. Please date stamp a copy as "filed" and return it in the enclosed, self-addressed, stamped envelope. Thank you for your consideration and attention to this matter.

Background

On November 17, 2006, the New Jersey-American Water Company, Inc. ("NJAWC" or "Company") filed a Petition with the State of New Jersey, Board of Public Utilities ("BPU" or "Board"), requesting its approval of a municipal consent, Ordinance No. 11-2006 ("Ordinance"), granted in perpetuity by the Township of Westhampton ("Westhampton" or "Township") on June 27, 2006, to extend the Company's water

Tel: (973) 648-2690 • Fax: (973) 624-1047 • Fax: (973) 648-2193
<http://www.state.nj.us/publicadvocate/utility> E-Mail: njratepayer@rpa.state.nj.us

service and facilities to a newly proposed residential development within the Township (“Development”).¹

The Company represents that approval of the municipal consent Ordinance will serve the public interest by permitting NJAWC to extend its service in order to make water service available to an area within the Township where there is no water system in place. The extension of the NJAWC franchise territory is necessary and proper for the public convenience and properly conserves the public interest by permitting the provision of water utility service to this new development located in Planning Area 2 within the Township where water utility service presently does not exist and allows for additional age-restricted and affordable age-restricted units to be built.²

The proposed franchise area is contiguous to an area of the Township served by the Mount Holly Water Company (“MHWC” or “Mount Holly”), which was an affiliate of NJAWC when the Petition was filed.³ By Order Adopting Stipulation dated November 15, 2006 (Docket No. WM06030253), the BPU approved the merger of MHWC into and with NJAWC (the “Merger”).⁴ By operation of the Merger, which occurred on December 31, 2006, NJAWC succeeded to all the rights of MHWC, including its rights in the Township.⁵

The Company is a regulated public utility of the State of New Jersey, subject to the jurisdiction of the BPU. The Company produces, treats and distributes water, and collects sewerage from customers within the state. NJAWC’s service territory, post Merger, includes portions of: Atlantic; Burlington; Camden; Cape May; Essex;

¹ Petition, preamble and Exh. A.

² Petition, para 6.

³ Petition, para. 3.

⁴ Petition, para. 4

⁵ *Id.* and Response to RCR-12.

Gloucester; Hunterdon; Mercer; Middlesex; Monmouth; Morris; Ocean; Passaic; Somerset; Union; and Warren Counties.⁶ In total, the Company serves approximately 590,250 water customers and 27,000 wastewater customers within these 16 counties.⁷

NJAWC is a wholly owned subsidiary of American Water (previously American Water Works Company, Inc.), which was acquired in 2003 by RWE AG, a German utility company.⁸ American Water serves over 18 million people in 29 states and Canada.⁹

Analysis

The Development will consist of 276 age-restricted single family detached homes, 228 market-rate town homes, and 24 affordable age-restricted attached rental units in one building, for an overall development of 528 residential units.

Construction of the Development has not begun, and OHB Homes, Inc. (the “Developer”) has not closed on any of the property parcels, pending receipt of certain government approvals, which the Developer expects will occur in the next 18 months.¹⁰ Following are the governmental approvals received by the Developer to date:¹¹

- Wetlands letter of interpretation from the New Jersey Department of Environmental Protection (“NJDEP”); and
- Preliminary Major Subdivision and Site Plan Approval for the Development from the Westhampton Land Development Board.

Assuming it receives the remaining governmental approvals within 18 months, the Developer anticipates full buildout to occur in approximately five years, and full

⁶ Response to RCR-13.

⁷ Response to RCR-14.

⁸ www.amwater.com.

⁹ *Id.*

¹⁰ Response to RCR-11 and Exh. S-BCE-23.

¹¹ Response to RCR-11.

occupancy to occur in five to seven years from the commencement of construction.¹² Once construction has begun, the Developer expects 80-100 closings per year (split between 40-50 age-restricted single units and 40-50 non age-restricted town homes).¹³

The proposed water system will be located within public rights of way or in easements within the Development.¹⁴ Water service to the Development will be through an interconnection with NJAWC's Mount Holly System at Woodland and Irick Roads, with water supply coming from the Company's Green Street and Woodlane Wells and its Mansfield Treatment Plant.¹⁵ Wastewater service to the Development will not be provided by the Company, but rather will be supplied by the Willingboro Municipal Utilities Authority.¹⁶ The supply that will be used to serve the proposed franchise area has a total system firm capacity of 11.23 MGD.¹⁷

Although capital costs have not been determined at this time, costs to construct both the proposed water system and all extensions serving the Development will be paid for by the Developer.^{18 19} NJAWC has not yet executed an Extension Deposit Agreement with the Developer ("Agreement"), but anticipates doing so after receiving "additional approvals, including this approval of the Township's municipal consent."²⁰ The Company did provide its standard draft Agreement with its Petition ("Draft

¹² Response to RCR-7 and RCR-11.

¹³ Response to S-BCE-1.

¹⁴ Response to S-BCE-2.

¹⁵ Response to RCR-3.

¹⁶ Response to S-BCE-3.

¹⁷ Note: In its Response to S-BCE-5, this number was 11.45 MGD of water per day, however, based on revised information provided in response to RCR-21 the number actually works out to 11.23 MGD.

¹⁸ Responses to RCR-4 and BCE-12.

¹⁹ Costs paid by the Developer may be subject to refund, pursuant to the final Extension Deposit Agreement executed between the Company and the Developer (hereinafter discussed).

²⁰ Response to RCR-15.

Agreement”).²¹ Pursuant to the Draft Agreement, the Company will not begin the installation of any extension (“Project”) until the Developer pays a deposit equal to the total estimated cost of the Project, as may be revised at the end of the bidding process.²² At the Company’s request, the Developer must also pay any additional deposits required to cover any increased costs due to Project changes occurring throughout the course of the Agreement, and NJAWC may suspend Project activities until any overdue payment is received.²³ The Company is required to reimburse the Developer the difference when actual Project costs are later determined to be less than the Developer’s deposits.²⁴ The Developer is likewise required to pay NJAWC any shortfall in deposits if the actual Project costs are greater than deposits paid. Failure to make up any shortfalls in the contractually agreed timeframe will result in the Developer forfeiting its right to any refunds (discussed below), and incurring interest charges on the unpaid balance.²⁵ Such failure will also allow the Company to suspend or deny water service to the Project.²⁶

Pursuant to the Draft Agreement, prior to the Company commencing any installation, the Developer must, to the Company’s satisfaction, furnish all plans approved by applicable governmental bodies; complete all necessary physical work; execute and deliver any perpetual and recordable easement(s) that may apply; provide all approved permits and approvals that are the responsibility of the Developer to obtain; and provide a final approved site plan.²⁷

²¹ Response to S-BCE-15.

²² Exh. S-BCE-15, para. 2.

²³ *Id.*

²⁴ *Id.*, para. 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, para. 3.

The Draft Agreement sets forth a refund methodology for Developer deposits depending upon how the Project is classified.^{28 29} Category I Projects are for domestic services for detached one-family residences, duplexes, town homes, condominiums or apartments where the service line is one (1) inch or less; Category II Projects are for services not meeting the standards of Category I.³⁰ In either case, under the Draft Agreement, NJAWC will refund to the Developer a one-time payment in an amount equal to the Designated Multiplier (discussed below) times the Estimated Annual Revenue for one year from each end use customer who: i) contracts to receive water service from NJAWC; ii) receives water on a permanent basis; and iii) whose service lines were installed pursuant to the Agreement.³¹ Estimated Annual Revenues will be based upon:³²

- Category I – the average annual revenues reflected in the Company’s last approved rate order.
- Category II – the actual revenues paid by all bona fide customers during the revenue year, defined as all revenues paid to the Company between Month 13 and Month 24 of actual service, where Month 1 begins following meter installation and service line activation.

The Designated Multiplier used will be based on the Project’s designated Refund Class:³³

- Refund Class A – For projects in designated growth areas as defined by N.J.A.C. 14:3-8.2, the multiplier will be 10.
- Refund Class O - For projects outside of designated growth areas as defined by N.J.A.C. 14:3-8.2, and for projects not governed by N.J.A.C. 14:3, the multiplier will be 0.

²⁸ *Id.*, para. 8.

²⁹ Note: The Company’s Petition does not indicate how the Development Project is classified.

³⁰ Exh. S-BCE-15, para. 8, Sch. B.

³¹ *Id.*, para. 8.

³² *Id.*

³³ *Id.*, para. 8, Sch. A.

- Refund Class X – For special projects not covered by the above stated Refund Classes.

The Company proposes to charge customers in the new franchise area the same rates as the former MHWC, whose tariff terms and conditions will not change for customers of the Development.³⁴ The rates, terms and conditions that will apply are those that were approved by the BPU on March 22, 2007.³⁵

Charges for general metered service for customers of the Development will consist of a Fixed Service Charge, a Water Charge, and a Purchased Water Adjustment Charge (“PWAC”).³⁶ Following are the Company’s rates, effective March 30, 2007.³⁷

1) FIXED SERVICE CHARGE (Rate Schedules A-6)

Meter Size	Non-Exempt		Exempt	
	Per Month	Per Quarter	Per Month	Per Quarter
? "	\$ 7.50	\$ 22.50	\$ 6.50	\$ 19.50
¾"	11.25	33.75	9.75	29.25
1"	18.75	56.25	16.26	48.78
1½"	37.50	112.50	32.51	97.53
2"	60.00	180.00	52.02	156.06
3"	112.50	337.50	97.54	292.62
4"	187.50	562.50	162.56	487.68
6"	375.00	1,125.00	325.13	975.39
8"	600.00	1,800.00	520.20	1,560.60
10"	750.00	2,250.00	650.25	1,950.75
12"	937.50	2,812.50	812.81	2,438.43

2) WATER CHARGE

	Rate per 100 Gallons*
Non-Exempt	<u>Rate Sch. A-6</u> \$0.36398
Exempt	\$0.31557

³⁴ Responses to S-BCE-19 and S-BCE-20.

³⁵ Response to RCR-19.

³⁶ Exh. RCR-1.

³⁷ *Id.* and RCR-17.

	<u>Rate per 10 Cubic Feet*</u>
	<u>Rate Sch. A-6</u>
Non-Exempt	\$0.272257
Exempt	\$0.236046

* Non-exempt consumption charges reflect a water tax of \$0.01 per 1,000 gals. (\$0.00748 per 100 c.f.) consumed pursuant to N.J.S.A. 58:12A-21(a). Exempt consumption charges reflect a water tax of \$0.01 multiplied by .867 per 1,000 gals. This water tax is not applicable for sales for resale service.

3) PWAC

	<u>Rate per 100 Gallons</u>
Non-Exempt	\$0.03458
Exempt	\$0.02998

	<u>Rate per 10 Cubic Feet</u>
Non-Exempt	\$0.25865
Exempt	\$0.22425

NJAWC believes full buildout will take about five years, with revenues increasing by approximately \$38,600 per year.³⁸ At full buildout, the Company estimates total revenues of about \$242,000 per annum, with approximately \$224,000 attributable to new residential customers, approximately \$1,500 to fire service, and approximately \$16,500 to hydrant charges.³⁹

Costs to operate the water system at full buildout (528 units) are expected to be \$118,800 per annum based on an estimated per customer cost of \$225 in NJAWC's Mount Holly System.⁴⁰ The Company, therefore, estimates \$18,000-\$22,500 of incremental operating costs per year assuming 80-100 units close per year.⁴¹

³⁸ Responses to RCR-6 and RCR-19.

³⁹ Response to S-BCE-13.

⁴⁰ Response to RCR-5.

⁴¹ *Id.*

NJDEP is awaiting Board approval prior to proceeding with the following approvals for the proposed franchise area.⁴²

1. Stream Encroachment Permit.
2. Treatment Works Approval.
3. General Wetlands Permits.

Following are other approvals that will be needed in order to provide service to the proposed franchise area:⁴³

4. License for water main to cross the New Jersey Turnpike (currently pending with the New Jersey Turnpike Authority).
5. New Jersey Department of Transportation approval to cross Route 295.
6. Township Final Subdivision and Site Plan Approval from Westhampton Land Development Board.
7. Preliminary and Final County Planning Board Approval.
8. County Soil Conservation Approval.
9. S-3 Approval from Willingboro Municipal Utilities Authority.

NJAWC currently has no non-NJDEP utility-related violations pending before any state or local agency,⁴⁴ however the Company has been issued several violations and/or associated fines or penalties by the NJDEP over the past 5 years:⁴⁵

The site of the proposed franchise area has an environmental concern with respect to groundwater contaminated by unleaded gasoline plus three small discrete areas of soil contaminated by heating (fuel) oil or hydraulic fluid (“Contaminated Areas”), which resulted from the presence of underground storage tanks at the site.⁴⁶ To address this, the Developer sought a “No Further Action” letter from the NJDEP pursuant to an NJDEP Memorandum of Agreement Application (“MOA”) executed by the Developer on December 4, 2006, wherein the Developer has agreed to remediate the Contaminated

⁴² Responses to S-BCE-6 and S-BCE-8.

⁴³ Responses to S-BCE-8.

⁴⁴ Response to S-BCE-7.

⁴⁵ Response to S-BCE-6.

⁴⁶ Exh. S-BCE-23 and Response to RCR-20.

Areas pursuant to the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, and has requested NJDEP oversight of such cleanup activities.⁴⁷ The MOA requires the Developer to pay for NJDEP's accrued oversight costs for such remediation.⁴⁸ The Company believes the Contaminated Areas have no impact on its source of supply, and, because "the NJDEP has issued a no further action letter NJAWC has undertaken no investigations in connection with this contamination."⁴⁹

NJAWC will incorporate the proposed franchise area into the MHWC Operations Center, which will handle any emergency in a manner consistent with BPU regulations.⁵⁰ The proposed franchise area is adjacent to the Company's existing franchise already located in the Township.⁵¹ Additionally, the Company serves customers in 16 municipalities located within ten (10) miles of the proposed franchise area, including four bulk water customers.⁵²

Recommendation

The Division of the Rate Counsel ("Rate Counsel") has reviewed the Petition and is not opposed to its approval. Following its merger with MHWC, the Company supplies water to over 590,250 customers in 16 New Jersey counties and can bring the necessary resources to bear in properly and adequately serving its customers. Also, as a subsidiary of American Water, the Company has access to additional managerial, technical, and financial resources furthering its ability to serve its customers in a safe and proper manner.

⁴⁷ Exh. S-BCE-23.

⁴⁸ *Id.*

⁴⁹ Response to RCR-20.

⁵⁰ Response to S-BCE-16.

⁵¹ Response to RCR-9 .

⁵² Response to RCR-9.

Approval of the Petition should not include authorization to include in rate base the specific assets that will be acquired as a result of this Petition. The determination of any assets to be included in rate base and the ratemaking impact of serving customers, therefore, should be addressed in a future base rate proceeding. Accordingly, Rate Counsel recommends that any Board Order approving the Company's Petition contain the following language:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
2. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting the Petitioner.

In addition, the Company should be required to provide the BPU and Rate Counsel with a copy of the Extension Deposit Agreement within fifteen days after it is executed by the Company and the Developer.

These provisions will satisfy the concerns of Rate Counsel that BPU approval is limited to the municipal consent, and should not indicate authorization to include any specific assets or amounts in rate base, or indicate authorization for any other ratemaking treatment. With these caveats, Rate Counsel is not opposed to approval of the Petition.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE OF NEW JERSEY

Stefanie A. Brand
Director, Rate Counsel

By:

Susan McClure
Asstant Deputy Public Advocate

cc: Jeanne M. Fox, President (via hand delivery)
Frederick F. Butler, Commissioner (via hand delivery)
Joseph L. Fiordaliso, Commissioner (via hand delivery)
Christine V. Bator, Commissioner (via hand delivery)
Service List *via hand delivery or regular mail*