



STATE OF NEW JERSEY
Board of Public Utilities
 44 South Clinton Avenue, 1st Floor
 Post Office Box 350
 Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF NEW JERSEY-)	ORDER ON MOTION TO
AMERICAN WATER COMPANY, INC. FOR RECOVERY)	INTERVENE OR
OF REGULATORY ASSET ESTABLISHED FOR)	PARTICIPATE AND
INCREMENTAL COVID-19 RELATED EXPENSES, AND)	SUSPENDING
FOR ESTABLISHMENT OF AN UNCOLLECTIBLE)	PROCEDURAL SCHEDULE
ADJUSTMENT CLAUSE)	
)	DOCKET NO. WR23050275

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Christopher M. Arfaa, Esq., Managing Counsel, New Jersey-American Water Company, Inc.
Martin C Rothfelder, Esq., on behalf of Cogen Technologies Linden Venture, L.P., Johanna Foods, Inc., Phillips 66 Company, and Princeton University

BY COMMISSIONER MARIAN ABDOU:

BACKGROUND

On July 2, 2020, the New Jersey Board of Public Utilities (“Board”) issued an Order authorizing the State’s utilities (“Utilities”) to create a COVID-19 regulatory asset by allowing the deferral of incremental and prudently incurred COVID-19-related costs.¹ The July 2020 Order further required:

1. Each utility with a COVID-19 regulatory asset account to file with the Board quarterly reports, together with a verification by an authorized representative, detailing its COVID-19-related costs and offsets; and
2. All affected utilities to file a petition with the Board by December 31, 2021, or within 60 days of the close of the Regulatory Asset Period, either addressing any potential rate recovery of the utility’s COVID-19 regulatory asset, including any prudence determinations, and the appropriate period of recovery for any approved amount of the regulatory asset and any associated savings; or requesting that the Board defer consideration of COVID-19 regulatory asset rate recovery until a future base rate case.

¹ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated July 2, 2020 (“July 2020 Order”).

Through a series of Orders, the Board extended the Regulatory Asset Period until March 15, 2023, and the deadline to file for recovery of costs until July 17, 2023, and directed the Utilities to each file a formal plan detailing certain information related to the Regulatory Asset Period.²

By Order dated June 7, 2023, the Board required that all filings for cost recovery of COVID-19 regulatory asset balances be evaluated on a case-by-case basis, whether as part of a base rate case or a separate proceeding, to ensure an equitable determination specifically tailored for each individual utility seeking cost recovery and further set forth requirements for such filings.³

On April 28, 2023, New Jersey-American Water Company, Inc. (“NJAWC” or “Company”) filed a petition with the Board seeking authorization to recover its COVID-19-related net deferred costs over a three (3)-year period through an annual Special Program Charge (“Petition”). By the Petition, NJAWC also requested approval to establish an Uncollectible Adjustment Clause (“UAC”) in response to effects of uncollectible expenses created by the COVID-19 moratorium.

On June 21, 2023, in accordance with the June 2023 Order, NJAWC filed an amended petition (“Amended Petition”), proposing to collect COVID-19-related net deferred costs over a three (3)-year period.

By Order dated December 20, 2023, the Board granted Cogen Technologies Linden Venture L.P., Phillips 66 Company, Princeton University, and Johanna Foods, Inc.’s Motions to Intervene in this matter and designated myself, Commissioner Marian Abdou, as presiding commissioner with authority to rule on all motions and set all schedules as necessary during the pendency of this proceeding.⁴ The Board also set January 8, 2024 as the bar date for filing of Motions to Intervene or Participate, or Motions for Admission of Counsel *pro hac vice* in this matter.

By letter dated February 9, 2024, with the consent of all parties, the Company submitted a proposed procedural schedule in this matter (“Procedural Schedule”), which I adopted by Order dated March 13, 2024.⁵

Motion to Intervene

By letter dated March 13, 2024, the Mount Laurel Township Municipal Utilities Authority (“MLMUA”) filed a late Motion to Intervene in this matter (“Motion”). By the Motion, the MLMUA identified that it is a large water purchaser that buys water and resale water from NJAWC under

² In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated September 14, 2021; In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated December 21, 2022; In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, Order Extending the Deadline for the Filing of Petitions for the Recovery of COVID-19 Regulatory Assets, BPU Docket No. AO20060471, Order dated May 10, 2023.

³ In re the New Jersey Board of Public Utilities’ Response to the COVID-19 Pandemic, BPU Docket No. AO20060471, Order dated June 7, 2023 (“June 2023 Order”).

⁴ In re the Petition of New Jersey-American Water Company, Inc. for Recovery of Regulatory Asset Established for Incremental COVID-19 Related Expenses, and for Establishments of an Uncollectible Adjustment Clause, BPU Docket No. WR23050275, Order dated December 20, 2023.

⁵ In re the Petition of New Jersey-American Water Company, Inc. for Recovery of Regulatory Asset Established for Incremental COVID-19 Related Expenses, and for Establishments of an Uncollectible Adjustment Clause, BPU Docket No. WR23050275, Order dated March 13, 2024 (“March 2024 Order”).

a specific tariff and contract, which sets it apart from other NJAWC customers and parties to this proceeding. The MLMUA further noted that it has been granted intervenor status in other NJAWC matters dating back to 1995 and that, because NJAWC is requesting an increase in its water rates, the MLMUA will be directly affected by the outcome of this proceeding. The MLMUA further noted that it would work cooperatively with the parties to this matter to avoid undue delay or confusion.

On March 13, 2024, I presided over two (2) duly noticed virtual public hearings at 4:30 and 5:30 pm, respectively, and at which one (1) member of the public attended to voice opposition to any NJAWC rate increases.

By letter dated March 20, 2024, NJAWC noted that the parties “have been engaged in fruitful settlement discussions and anticipate submitting a stipulation of settlement” shortly. NJAWC therefore requested, with the consent of all parties, that I suspend the procedural schedule in this matter to allow settlement discussions to continue unimpeded.

DISCUSSION AND FINDINGS

In ruling on a motion to intervene, N.J.A.C. 1:1-16.3(a) requires that the decision-maker consider:

1. The nature and extent of the moving party’s interest in the outcome of the case;
2. Whether that interest is sufficiently different from that of any other party so as to add measurably and constructively to the scope of the case;
3. The prospect of confusion or undue delay arising from inclusion of the party; and
4. Other appropriate matters.

If the standard for intervention is not met, N.J.A.C. 1:1-16.5 provides for a more limited form of involvement in the proceeding as a “participant” if, in the discretion of the trier of fact, the addition of the moving party is likely to add constructively to the case without causing undue delay or confusion. Under N.J.A.C. 1:1-16.6(c), such participation is limited to the right to argue orally, or file a statement or brief, or file exceptions, or all of these as determined by the trier of fact.

Application of these standards involves an implicit balancing test to weigh the need and desire for development of a full and complete record, which involves consideration of a diversity of interests, against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor’s interest be specific, direct, and different from that of the other parties so as to add measurably and constructively to the scope of the case.⁶

In this instance, the MLMUA filed its Motion to Intervene on March 13, 2024, two (2) months after the January 8, 2024 Board-set bar date for the filing of all Motions to Intervene or Participate. The MLMUA did not attend the duly noticed virtual public hearings held on March 13, nor has the MLMUA offered written comments in this matter. Moreover, the parties have already engaged in multiple rounds of settlement discussions. Because the MLMUA moved to intervene months after the bar date in this proceeding and the parties have already undergone multiple rounds of fruitful settlement discussions, I **HEREBY FIND** that the MLMUA’s inclusion as an intervenor in this matter would likely impede fruitful settlement discussions. As such, I **FURTHER FIND** that the

⁶ See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

inclusion of the MLMUA as an intervenor in this matter would likely cause undue delay and confusion and **HEREBY DENY** the Motion.

N.J.A.C. 1:1-16.5 provides that, if denied, Motions to Intervene should be treated, in the alternative, as Motions to Participate. Participants are limited to the right to argue orally, file statements or briefs, or to file exceptions, if such participation would not cause undue delay or confusion, as determined by the trier of fact. Because this matter has not concluded and a final settlement agreement has not been reached, I **FURTHER FIND** that the MLMUA's inclusion in this matter as a participant, to the limited extent set forth below, would not cause undue delay or confusion and, as such, **HEREBY GRANT** the MLMUA participant status in this proceeding. Specifically, unless a new procedural schedule is effectuated because the parties are unable to reach a settlement, I **HEREBY ORDER** that the MLMUA may participate by filing a statement or brief up to 10 days following the parties' filing of an executed stipulation of settlement with the Board.

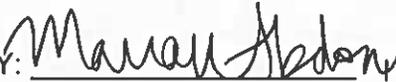
Additionally, I have reviewed the Company's March 20, 2024 letter requesting suspension of the Procedural Schedule as the parties work toward a possible settlement. With the consent of the parties, I **HEREBY SUSPEND** the Procedural Schedule set forth in the March 2024 Order.

In compliance with the Board's Orders in Docket No. EO20030254, I **HEREBY DIRECT** all parties to serve all documents electronically.

I **FURTHER DIRECT** that this Order be posted on the Board's website.

This provisional ruling is subject to ratification or other alteration by the Board as it deems appropriate during the proceedings in this matter.

DATED: April 3, 2024

BY: 
MARIAN ABDOU
COMMISSIONER

IN THE MATTER OF THE PETITION OF NEW JERSEY-AMERICAN WATER COMPANY, INC. FOR RECOVERY OF REGULATORY ASSET ESTABLISHED FOR INCREMENTAL COVID-19 RELATED EXPENSES, AND FOR ESTABLISHMENT OF AN UNCOLLECTIBLE ADJUSTMENT CLAUSE

BPU DOCKET NO. WR23050275

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