



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 NEW)
JERSEY-AMERICAN WATER COMPANY, INC. FOR)
APPROVAL OF MUNICIPAL CONSENT GRANTED BY)
THE TOWNSHIP OF FRANKLIN, COUNTY OF)
SOMERSET-RUSSO DEVELOPMENT)
)
) DOCKET NO. WE11070403

Parties of Record:

Jordan S. Mersky, Esq., on behalf of Petitioner, New Jersey-American Water Company, Inc.
Stefanie A. Brand, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") considers a letter brief filed as a "motion" by the Division of Rate Counsel ("Rate Counsel") asking the Board to reconsider its May 2, 2012 Order in Docket No. WE11070403. As explained below, the Board denies Rate Counsel's motion and reaffirms its May 2, 2012 Order in this matter.

BACKGROUND

At the Board's May 1, 2012 agenda meeting, the Board heard and voted on the above matter through its consent agenda. On May 2, 2012, effective May 11, 2012, the Board issued an order in the above matter approving the municipal consent, Ordinance No. 3750 dated April 28, 2008, granted to New Jersey-American Water Inc., by the Township of Franklin, Somerset County. On May 15, 2012, Rate Counsel filed a motion for reconsideration based on an alleged error of law, in the Board's "decision to approve this matter by way of the Board's Consent Agenda." No other party in this matter filed any papers with regard to this motion.

DISCUSSION AND FINDING

Reconsideration is reserved for those cases where (1) the decision is based upon a "palpably incorrect or irrational basis;" or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. E.g., Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the action was arbitrary, capricious or unreasonable. D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990).

N.J.A.C. 14:1-8.6 requires that a request for rehearing or reconsideration be done by a motion that enumerates the alleged errors of law or fact, and where an opportunity is sought to introduce additional evidence, that evidence shall be stated briefly with the reasons for failing to provide it previously. Rate Counsel alleged no error in law or fact as it relates to the Board's underlying decision. Instead, Rate Counsel alleged a procedural error in that the matter was voted on as part of the Board's consent agenda and not as part of the regular agenda.¹ While Rate Counsel stated its concern that the Board did not properly consider its position that the term of the municipal consent should be limited, it did not provide new facts or a legal basis which would justify the Board reversing its decision. Additionally, Rate Counsel's arguments were considered and addressed by the Board in its May 2, 2012 Order.

This Board will not modify an Order in the absence of a showing that the Board's action constituted an injustice or that the Board misunderstood or failed to take note of a significant element of fact or law. Here, the Board does not find that the procedural concern alleged by Rate Counsel warrants reconsideration or modification of its Order. N.J.S.A. 48:2-46.

Accordingly, the Board **FINDS** that nothing in Rate Counsel's request for reconsideration challenges the facts relied on by the Board or changes the conclusions reached. As set forth in the Board's May 2, 2012 Order, Rate Counsel's arguments were considered and Rate Counsel has not established any grounds for reconsideration. Therefore, for the reasons stated above and the reasons stated in the Board's May 2, 2012 Order, the Board **HEREBY DENIES** Rate Counsel's motion and **REAFFIRMS** its approval of the municipal consent, Ordinance No. 3750 dated April 28, 2008, granted to New Jersey-American Water Inc., by the Township of Franklin, Somerset County for the reasons set forth in its May 2, 2012 Order incorporating its reasons and restrictions as if set forth herein.

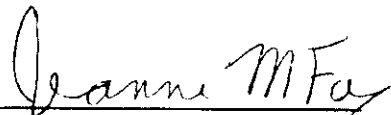
¹ The Board's Consent Agenda was considered and voted on by the Commissioners during its public session.


This order will be effective on June 28, 2012.

DATED: 6/18/12

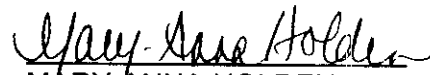
BOARD OF PUBLIC UTILITIES
BY:

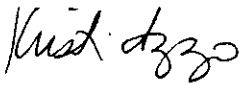

ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

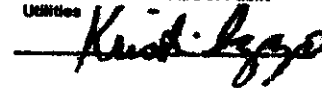

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
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



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FOR APPROVAL OF MUNICIPAL CONSENT GRANTED BY THE TOWNSHIP OF FRANKLIN,
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