



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF THE JOINT PETITION OF	)	ORDER APPROVING
AMERICAN WATER WORKS COMPANY, INC.,	)	TRANSFER OWNERSHIP
ENVIRONMENTAL DISPOSAL CORP., AND NEW	)	AND CONTROL
JERSEY-AMERICAN WATER COMPANY, INC. FOR	)	
APPROVAL OF A PLAN TO TRANSFER OWNERSHIP	)	
AND CONTROL OF ENVIRONMENTAL DISPOSAL	)	
CORP TO NEW JERSEY-AMERICAN WATER	)	
COMPANY, INC.	)	DOCKET NO. WM16100969

**Parties of Record:**

**Jordan S. Mersky, Esq.**, American Water Works Company, Inc. and Environmental Disposal Corp.

**Robert J. Brabston, Esq., Vice President and General Counsel**, New Jersey-American Water Company, Inc.

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On October 17, 2016, American Water Works Company, Inc. ("American Water"), Environmental Disposal Corp. ("EDC"), and New Jersey-American Water Company ("NJAW") (collectively, "Joint Petitioners") filed a verified joint petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.S.A. 48:3-10, N.J.A.C. 14:1-5.14, and such other statutes and regulations as may be deemed relevant to this matter, seeking approvals of the transfer of ownership and control of all of the issued and outstanding shares of capital stock of EDC to NJAW ("Transfer" or "Transaction"), with EDC remaining as a stand-alone operating subsidiary of NJAW.

**BACKGROUND**

EDC is a regulated public utility of the State of New Jersey and is in the business of collecting, treating and disposing of sewerage whose franchise area includes certain portions of the Township of Bedminster ("Bedminster") and the Township of Bernards ("Bernards"), in Somerset County. EDC provides service to approximately 5,300 customers within its franchise areas. EDC also provides wastewater treatment service to the Boroughs of Far Hills, Peapack, Gladstone and portions of Bedminster, adjacent to EDC's service territory, on the basis of long-term contracts.

NJAW services approximately 620,000 general metered water customers and approximately 41,000 sewer customers in all or part of 188 municipalities in 18 of the State's 21 counties. NJAW and EDC are currently subsidiaries of American Water ("American Subsidiaries").

The Board, in I/M/O the Joint Petition of American Water Works Company, Inc. and Environmental Disposal Corp., for Among Other Things, Approval of a Change in Control of Environmental Disposal Corp., Docket No. WM15040492, (Order dated December 16, 2015) ("EDC Order") approved a Stipulation that, among other things, agreed that the Board should approve the acquisition by American Water of all of the issued and outstanding capital stock of EDC from The Hills Development Company.

### **THE PROPOSED TRANSFER**

As a result of the Transaction, all of the issued and outstanding shares of EDC will be transferred from American Water to NJAW, with EDC remaining as a stand-alone operating subsidiary of NJAW. EDC and NJAW will both remain subject to the jurisdiction of the Board. The Petition was filed pursuant to N.J.S.A. 48:2-51.1, which requires written Board approval for any person to acquire control of a public utility, and N.J.S.A. 48:3-10, which requires Board approval for a public utility to transfer its stock to another corporation where the result of such transfer is to vest in such corporation a majority of the outstanding capital stock.

The Joint Petitioners state that the acquisition of control of EDC by American Water is consistent with the criteria of N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14 and should be approved because:

1. There will be no adverse impact on competition especially since both EDC and NJAW are subsidiaries of American Water. The classic concept of competition for customers does not exist in the regulated sewer utility industry, and EDC and NJAW will remain regulated public utilities with defined service areas.
2. The Transaction will not have an adverse impact on rates as EDC and NJAW will continue to operate and charge their current Board-approved tariff rates and their financial positions will not be subject to material change.
3. EDC has no employees, so the Transaction cannot adversely impact the ability of NJAW to fulfill its obligations of EDC with regard to employees and NJAW will continue to honor its existing collective bargaining agreement as a result of the Transaction. The American Subsidiaries are committed to ensuring the provision of safe, adequate and proper service and will continue to maintain sufficient operating personnel, post-transfer, to ensure the continued provision of safe, adequate and proper utility service by both EDC and NJAW.
4. NJAW and EDC will each continue to receive funding priorities that are consistent with their needs. NJAW and its operations Staff will continue to be located in New Jersey.
5. EDC will remain a standalone operating subsidiary of NJAW and the assets and liabilities of EDC will continue to be owned and controlled by EDC – including by not limited to all of EDC's franchises, consents, permits, contracts, licenses and certificates.
6. The Transfer of all of the outstanding capital shares of EDC to NJAW is a ministerial act that will complete the "change in control" transaction approved by the Board in the EDC Order.

7. Both American Water Subsidiaries will continue to operate under their current Board approved rate schedules. The Stipulation approved by Board in the EDC Order provided that EDC will not seek to increase its rates for a period of five (5) years after that closing. This condition is not affected by the proposed Transaction.
8. No property or municipal consents are being transferred from EDC, which will continue to own and maintain all of its assets and liabilities. The books and records of the American Subsidiaries will remain in New Jersey and will otherwise be unaffected.
9. The American Water Subsidiaries are now operating under the common ownership of American Water. Many significant functions of the American Water Subsidiaries are performed by American Water Works Service Company ("AWWSC") and financing thereof is obtained through American Water Capital Corp. ("AWCC"). The EDC Order authorized EDC to obtain management services from AWWSC and financial services from AWCC on an interim basis. Subsequent to the Transfer, NJAW will obtain all such services required by EDC through NJAW's current agreements with AWWSC and AWCC<sup>1</sup> and the interim agreements will be terminated.
10. The Transfer will not affect any of the other conditions or commitments made by American Water, NJAW or EDC in the EDC Order.
11. None of the municipal consents or franchises held by EDC requires the approval of the municipality as a condition of the transfer.
12. NJAW has already obtained all necessary New Jersey Department of Environmental Protection permit transfers during the course of providing management services to EDC.

### **The Division of Rate Counsel**

There were no intervenors in this proceeding. The Division of Rate Counsel ("Rate Counsel") has reviewed this matter and filed comments by letter dated March 29, 2017. Rate Counsel is not opposed to approval of the petition, but it seeks certain conditions. (Rate Counsel Comments at 1-4.) Among other things, Rate Counsel recommends that a Board order approving the petition should contain language that "Board approval is limited to approval of the Transfer, and does not indicate authorization to include any specific assets or amounts in rate base, or indicate authorization for any future ratemaking treatment." *Id.* at 3-4.

### **DISCUSSION AND FINDINGS**

As a result of the proposed transaction, American Water will acquire all of the issued and outstanding shares of EDC's stock. N.J.S.A. 48:2-51.1 provides:

---

<sup>1</sup> The Board re-approved the NJAW's existing management services agreement with AWWSC in I/M/O the Petition of New Jersey-American Water Company, Inc. for Review and Re-Approval of a Service Agreement with American Water Works Service Company, an Affiliate of Petitioner, Docket No. WO13050374, Order dated November 16, 2015. The Board approved the financial services agreement between NJAW and AWCC in I/M/O the Petition of New Jersey-American Water Company, Inc. for Approval of a Financial Services Agreement, Docket No. WF00040252, Order dated August 17, 2000.

[N]o person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

In addition to the statutory requirements, N.J.A.C. 14:1-5.14(c) provides:

The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.

The Board, having reviewed the Petition and the entire record, **FINDS** that the proposed Transfer of all of the issued and outstanding stock of EDC from American Water Works to NJAW will not adversely affect the public interest.

- A. Competition: There will be no adverse impact on competition. There is no retail competition in the water and wastewater utility industries. EDC will remain a stand-alone sewer utility, with a defined service territory and will be owned by a subsidiary of its current owner.
- B. Customer Rates: The Transaction will not have an adverse impact on rates as EDC will continue to operate and charge its current Board-approved tariff rates. The Stipulation adopted by the Board in the EDC Order provided that EDC will not file a petition with the Board seeking authority to increase rates for sewer service within its franchise service territory or under its bulk service contracts with municipal customers for a period of five (5) years from the closing date of the Transaction. EDC's financial position will not be subject to material change.
- C. Employees: EDC has no employees so the Transaction will not have an adverse impact on utility employees.
- D. Provision of Safe and Adequate Service: The American Subsidiaries are committed to ensuring the provision of safe, adequate and proper service and will continue to maintain sufficient operating personnel, post-transfer, to ensure the continued provision of safe, adequate and proper utility service by both EDC and NJAW.

Accordingly, the Board **FURTHER FINDS** that the proposed acquisition will not jeopardize EDC's ability to continue to render safe, adequate and proper utility service.

The Board **HEREBY APPROVES** the proposed transfer of all of the issued and outstanding shares of capital stock of EDC from American Water to NJAW with EDC remaining as a stand-alone operating subsidiary of NJAW.

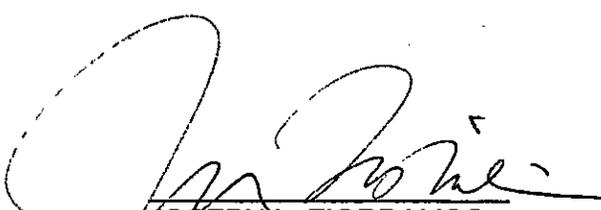
The Board **HEREBY APPROVES** the proposed journal entries. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the proposed acquisition is in the public interest subject to the following conditions:

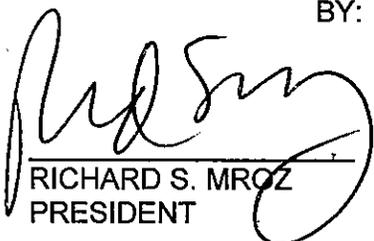
1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting EDC or NJAW.
3. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liabilities now owned or hereafter to be owned by the EDC or NJAW.
4. Within thirty (30) days of the date of the closing of this transaction, the Petitioner shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation, including selling expenses of the sale.

The Order shall be effective on May 1, 2017.

DATED: 4/21/17

BOARD OF PUBLIC UTILITIES  
BY:

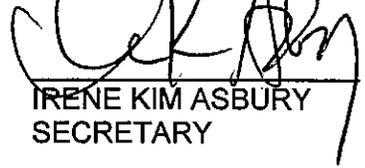
  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
RICHARD S. MROZ  
PRESIDENT

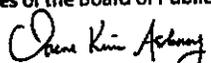
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

  
UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:  
  
IRENE KIM ASBURY  
SECRETARY

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



IN THE MATTER OF THE JOINT PETITION OF AMERICAN WATER WORKS COMPANY, INC., ENVIRONMENTAL DISPOSAL CORP. AND NEW JERSEY-AMERICAN WATER COMPANY, INC. FOR APPROVAL OF A PLAN TO TRANSFER OWNERSHIP AND CONTROL OF ENVIRONMENTAL DISPOSAL CORP TO NEW JERSEY-AMERICAN WATER COMPANY, INC.

DOCKET NO. WM16100969

SERVICE LIST

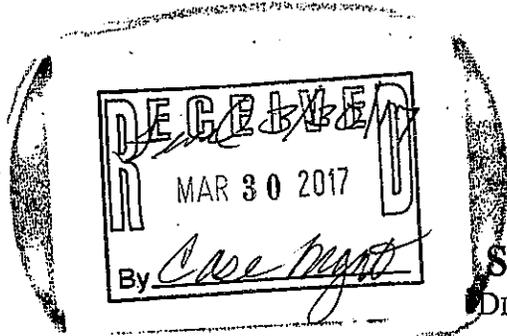
Robert J. Brabston, Esq.  
New Jersey-American Water Company  
1025 Laurel Oak Road  
Voorhees, NJ 08043  
[Robert.Brabston@amwater.com](mailto:Robert.Brabston@amwater.com)

Jordan S. Mersky, Esq.,  
American Water Works Company, Inc.  
1025 Laurel Oak Road  
Voorhees, NJ 08043  
[jordan.mersky@amwater.com](mailto:jordan.mersky@amwater.com)

Stefanie A. Brand, Esq., Director  
New Jersey Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Irene Kim Asbury, Esq.  
Secretary of the Board  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[irene.asbury@bpu.nj.gov](mailto:irene.asbury@bpu.nj.gov)

Maria Moran, Director  
Division of Water  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[maria.moran@bpu.nj.gov](mailto:maria.moran@bpu.nj.gov)



BOARD OF PUBLIC UTILITIES

MAR 29 2017

MAIL RECEIVED

State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P. O. Box 003  
TRENTON, NEW JERSEY 08625

CHRIS CHRISTIE  
Governor

KIM GUADAGNO  
Lt. Governor

March 29, 2017  
BOARD OF PUBLIC UTILITIES  
STEFANIE A. BRAND  
Director

Hand Delivery & First Class Mail

Irene Kim Asbury, Secretary  
Board of Public Utilities  
44 South Clinton Ave., 3<sup>rd</sup> Floor  
Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625

MAR 30 2017

DIVISION OF WATER

RE: I/M/O the Matter of the Joint Petition of American Water Works Company, Inc., Environmental Disposal Corp., and New Jersey American Water Company, Inc., for Approval of a Plan to Transfer Ownership and Control of Environmental Disposal Corp. to New Jersey American Water Company, Inc.  
BPU Docket No.: WM16100969

Dear Secretary Asbury:

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

On October 14, 2016, American Water Works Company, Inc. ("American Water"), Environmental Disposal Corp. ("EDC") and New Jersey-American Water Company, Inc. ("NJAW") (collectively, "Joint Petitioners"), petitioned the Board of Public Utilities ("BPU" or the "Board"), pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.S.A. 48:3-10, and N.J.A.C. 14:1-5.14, if applicable, or any other statute or regulation deemed relevant by the Board, for approval of the transfer of ownership and control of all of the issued and outstanding shares of

capital stock of EDC to NJAW (the "Transfer"), with EDC remaining as a stand-alone operating subsidiary of NJAW.

### **Background**

On December 16, 2015, in Docket No. WM15040492, the Board approved the purchase by American Water of all the issued and outstanding capital stock of EDC from The Hills Development Company. That prior proceeding is hereinafter referred to as the "Change in Control Proceeding." American Water also owns NJAW. Both EDC and NJAW are currently subsidiaries of American Water (hereinafter referred to jointly as "American Water Subsidiaries"). American Water is a publicly traded company. NJAW is a regulated public utility corporation engaged in the production, treatment and distribution of water, and the collection and treatment of sewage within its defined service territory within the State of New Jersey. NJAW's service territory includes portions of the following counties: Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren. As of December 31, 2015, NJAWC services approximately 620,000 water and fire service customers and 41,000 sewer service customers in 188 municipalities. EDC is a regulated public utility corporation providing wastewater service to more than 5,300 customer accounts in Bedminster and Bernards Townships in Somerset County, New Jersey. In addition, EDC also provides wastewater treatment service to the Boroughs of Far Hills, Peapack, Gladstone and portions of Bedminster, adjacent to EDC's service territory, on the basis of long term contracts.

Following the Transfer, the American Water Subsidiaries would continue to operate under their current tariffed rate schedules. Pursuant to the Stipulation approved in Docket No. WM15040492, EDC will not seek to increase its rates for a period of five (5) years after that

closing. This condition will not be affected by the Transfer. The assets and liabilities of EDC will continue to be owned and controlled by EDC, specifically including, but not limited to, all franchises, consents, permits, contracts, licenses and certificates of EDC.

The Division of Rate Counsel was extensively involved in the Change in Control proceeding and is a signatory to that Stipulation. Rate Counsel has reviewed the Joint Petition and the Joint Petitioner's responses to Board Staff's data requests SE-1 through SE-21 and SR-1 through SR-13. Based on that review and the Change in Control proceeding, Rate Counsel has concluded that the proposed Transfer is ministerial in nature and will have no substantive impact on the governance, management or operation of any of the corporate entities. The proposed transaction will also not have any adverse impact on competition, or the rates, service or employees of any of American Subsidiaries. Rate Counsel recommends that Board approval should not include authorization to allow any specific assets to be included in NJAW's or EDC's rate base. The determination of whether assets are appropriate for inclusion in rate base should be deferred to a future base rate case proceeding.

Rate Counsel further recommends that any Board Order approving the Transfer contain the following language:

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.

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.

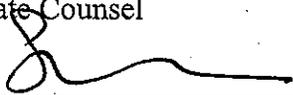
These provisions will satisfy the concerns of Rate Counsel that Board approval is limited to approval of the Transfer, and does not indicate authorization to include any specific assets or

Irene Kim Asbury, Secretary  
Board of Public Utilities  
Comment Letter

amounts in rate base, or indicate authorization for any future ratemaking treatment. With these caveats, Rate Counsel is not opposed to approval of the Petition.

Respectfully submitted,

STEFANIE A. BRAND  
Director, Rate Counsel

By: 

\_\_\_\_\_  
Susan E. McClure, Esquire  
Assistant Deputy Rate Counsel

C: Service List via e-mail and first class mail

I/M/O OF AMERICAN WATER WORKS  
COMPANY, INC. AND NEW JERSEY-  
AMERICAN WATER COMPANY, INC. FOR  
APPROVAL OF A PLAN TO TRANSFER  
OWNERSHIP AND OF CONTROL OF  
EDC TO NEW JERSEY-AMERICAN  
WATER COMPANY, INC.

DOCKET NO. WM16100969

Irene Kim Asbury, Secretary  
Board of Public Utilities  
44 South Clinton Ave., 3rd Floor  
Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625

Robert J. Brabston  
Vice President and General Counsel  
American Water & Northeast Division  
1025 Laurel Oak Road  
Voorhees, NJ 08043

Veronica Beke, DAG  
Board of Public Utilities  
44 South Clinton Ave.  
P.O. Box 350  
Trenton, NJ 08625

Mona Moser  
Board of Public Utilities  
44 South Ave., 3rd Floor  
Suite 314  
P.O. Box 350  
Trenton, New Jersey 08625

Jordan Mersky  
American Water & Northeast Division  
1025 Laurel Oak Road  
Voorhees, NJ 08043

Alex Moreau  
Board of Public Utilities  
44 South Clinton Ave.  
P.O. Box 350  
Trenton, NJ 08625

Maria Moran, Director  
Board of Public Utilities  
44 South Clinton, Ave., 3rd Floor  
Suite 314  
P.O. Box 350  
Trenton, New Jersey 06825

Andrew Kunts  
Division of Law  
124 Halsey Street  
P.O. Box 45029  
Newark, NJ 07101

Mike Kammer  
Board of Public Utilities  
44 South Clinton Ave., 9th Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

Magdy Mekhaeil  
Board of Public Utilities  
44 South Clinton Ave., 3rd Floor  
Suite 314  
P.O. Box 350  
Trenton, New Jersey 07101

Susan E. McClure, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, New Jersey 08625

Stefanie A. Brand, Director  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Charlene Good  
Board of Public Utilities  
44 South Clinton Ave., 3rd Floor  
Suite 314  
P.O. Box 350  
Trenton, New Jersey 07101

Kathryn A. Hart, Legal Assistant  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

\*Debra F. Robinson, Esq.  
Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Caroline Vachier, DAG  
NJ Dept. of Law & Public Safety  
124 Halsey St., 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101