



Agenda Date: 3/9/22
Agenda Item: 5A

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

KIMBERLY A. RATAI,
Petitioner

)
)

ORDER ADOPTING
INITIAL DECISION

v.

)
)

MIDDLESEX WATER COMPANY,
Respondent

)
)

DOCKET NO. WC20070488
OAL DOCKET NO. PUC 09146-20

Parties of Record:

Kimberly A. Ratai, Pro Se
Jay L. Kooper, Esq., on behalf of Middlesex Water Company
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND AND PROCEDURAL HISTORY

On July 15, 2020, Kimberly A. Ratai (“Petitioner”) filed a petition with the New Jersey Board of Public Utilities (“Board”) appealing the denial of her application for water service at her residential property located in Colonia, New Jersey (“Property”) by Middlesex Water Company (“Middlesex”, “Company”, “MWC”, or “Respondent”) (“Petition”).

Middlesex is a public utility organized and operating under the laws of the State of New Jersey and subject to regulation by the Board. Middlesex is the water service provider where the Property is located.

Petitioner currently utilizes a private well. When Petitioner sought to interconnect to Middlesex’s system, Middlesex determined that it could not provide water service to Petitioner’s residence until the private well was abandoned. Petitioner appealed this decision to the Board.

On July 27, 2020, Respondent filed an Answer to the Petition (“Answer”). Subsequently, the Board transmitted this matter to the Office of Administrative Law (“OAL”) for determination as a contested case on October 8, 2020. The matter was assigned to Administrative Law Judge (“ALJ”) Judith Lieberman.

Middlesex filed a motion to dismiss this matter on November 13, 2020. The Petitioner filed a cross motion opposing Middlesex's motion on November 16, 2020. Middlesex replied to Petitioner on November 19, 2020. The motions were denied by ALJ Lieberman on April 20, 2021. ALJ Lieberman conducted an evidentiary hearing on November 1, 2021 and the record closed on that day.

ALJ Lieberman filed her Initial Decision with the Board on December 9, 2021.

Respondent filed Exceptions to the Initial Decision on December 20, 2021.

The Petitioner filed Reply Exceptions on December 23, 2021.

The Board requested an additional 45-day extension of time for issuing its Final Decision in order to adequately review the record in this matter by Order dated January 12, 2022. The OAL granted the Board's request by Order dated January 12, 2022.

POSITIONS OF THE PARTIES

Petitioner

The Petitioner resides in a single-family house i Colonia, New Jersey. A private well has been the home's sole source of water since it was constructed in 1951. The Petitioner applied for water service from Middlesex on June 30, 2020. Middlesex denied Petitioner's request on July 10, 2020. Petition at 1.

The Petitioner argued that Middlesex' denial of her application for water service was improper. Id. at 2. The Petitioner further argued that Middlesex' requirement to abandon an active private well as a condition of water service is in violation of N.J.S.A. 48:3-2, which states that: "[n]o public utility shall adopt, maintain or enforce any regulation, practice or measurement which shall be unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory or otherwise in violation of law." Ibid.

The Petitioner further asserted that MWC's requirement that a homeowner abandon (and thus decommission and seal) an active private well is unreasonable because:

1. There is no New Jersey law or regulation that requires a homeowner to abandon an active private well as a condition of water service.
2. There is no New Jersey law or regulation that gives MWC the authority to require this as a condition of service.
3. New Jersey regulations [N.J.A.C. 7:10-10.2(e)] specifically allow public water supplies and unapproved water supplies (private wells) to coexist in a private residence.
4. No other water company in New Jersey requires the abandonment of an active private well as a condition of service. Suez and New Jersey American Water both explain the process for maintaining an active private well on their respective websites.
5. Abandoning (and thus decommissioning and sealing) a private well is an expensive, time-consuming, and disruptive process. And, because of the cost and complexity involved, this requirement disproportionately affects those of lower income and socioeconomic status.

6. This requirement is logistically impossible to implement. By requiring a customer to abandon their private well before even considering initiating service, a customer would be without water for an indeterminate amount of time between sealing the well and connecting to MWC's service.
7. This requirement is an anti-competitive business practice. This requirement essentially forces a customer to accept MWC as their sole water source, depriving the customer of their right and their choice to use their own well for non-potable purposes (for example, outside irrigation).
8. Finally, the Petitioner maintains that there will be no physical connection between MWC's Water System and her private well. Id. at 2 to 3.

The Petitioner further argued that there will be no physical connection between Middlesex' system and her private well. Id. at 3.

Middlesex Water Company

Middlesex argued that its statutory duty to provide safe, adequate and proper service pursuant to N.J.S.A 48:2-3 and N.J.A.C. 14:3-3.1(a) is not an equivalent of a blank check that requires the Company to accept every application for water service as a rubber stamp. Answer at 4. MWC stated that N.J.A.C. 7:10-10.2(e) does not compel a water utility to permit water utilities to connect to properties that operate private wells. Ibid. Middlesex further argues that the regulation grants the licensed operator discretion of approving or rejecting a physical connection to a residence that has a private well. Ibid. MWC stated that based upon a site visit, it cannot verify that any portion of the potable water plumbing system located on the property interconnected with the private well. According to Middlesex, this presents a number of risks to its water system, even if a reduced pressure zone ("RPZ") backflow prevention device ("BPD") is used.

The Initial Decision¹

On November 1, 2021, ALJ Lieberman rendered the Initial Decision in this matter and granted the relief sought by the Petitioner. Specifically, ALJ Lieberman concluded that a blanket prohibition on the provision of service to private residences with operating wells is inconsistent with the controlling law and, thus, an insufficient basis for denial of petitioner's application. The ALJ further found that Middlesex should evaluate petitioner's application, in conjunction with the controlling law, and, based on a particularized assessment of the facts specific to her property and well, determine whether it can safely and appropriately provide service to her home.

EXCEPTIONS

Middlesex filed Exceptions to the Initial Decision on December 20, 2021 ("Middlesex Exceptions"). Middlesex argued that there had been a change in the controlling law that the ALJ relied upon to reach her decision, as the Board had approved a revised tariff on December 15, 2021. Middlesex Exceptions at 1. Middlesex further argued that it provided robust testimonial evidence on the record to support its position. Middlesex also contended that the burden of proof was on Petitioner and not the Company. Ibid. Finally, Middlesex contended that recent changes to its tariff now strictly prohibits physical connections to residences with private wells located on the customer's premises. Id. at 3. Middlesex agreed with the ALJ's finding that its tariff, once approved by the

¹ Although summarized in this Order, the detailed findings and conclusions of ALJ Liberman control, subject to the findings and conclusions of this Order.

Board, is not a mere contract but the law and its provisions are binding on a customer whether they know of them or not. Accordingly, Middlesex requested that the Board reject the Initial Decision.

REPLY EXCEPTIONS

The Petitioner filed Reply Exceptions on December 23, 2021 (“Reply Exceptions”). Petitioner contends that there are several problems with Middlesex’s Exceptions. The Petitioner noted that Middlesex changed its tariff during the course of this proceeding. Petitioner argued that Middlesex shouldn’t have amended its tariff before a Final Decision had been rendered by the Board in this proceeding. Reply Exceptions at 1 to 2. Petitioner further contended that the revised tariff cites N.J.A.C. 7:10-10.2(e)(1)(i) which provides that no portion of the private residence is interconnected with an unapproved water supply (for example, private residence well). Id. at 2. Finally, the Petitioner argued that the mere presence of a private well at her residence is not sufficient for Middlesex’s denial of her application for water service, as the denial is not consistent with the controlling regulation. Id. at 3.

DISCUSSION AND FINDINGS

After review of the Initial Decision and the record in this matter, the Board **HEREBY FINDS** the following:

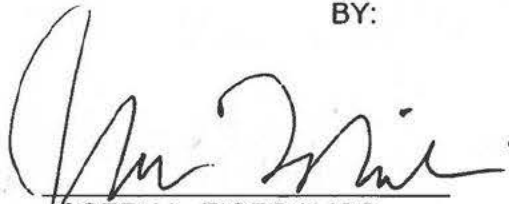
1. ALJ Lieberman correctly concluded that the Petitioner is entitled to obtain a water service.
2. Middlesex amended its tariff, to specifically prohibit the connections to private wells, during the course of this proceeding.
3. The Board **FINDS** that Middlesex is free to argue that its current tariff’s prohibition of connections to private wells should apply to future applications to extend water service to residences served by private wells. However, in this instance, the Board **FINDS** that the tariff that was in effect when Petitioner filed this petition shall apply to Petitioner’s application. See, e.g., Toms River Water Co. v. N.J. Bd. of Pub. Util. Comm’rs, 82 N.J. 201, 214 (1980) (holding that a utility’s newly-filed tariff may not be given retroactive effect).
4. Thus, the Board **HEREBY FINDS** the Initial Decision to be just a reasonable and in accordance with the law.

Accordingly, the Board **HEREBY ADOPTS** the Initial Decision in its entirety as its own and **HEREBY ORDERS** that the Parties comply with the Initial Decision.

The effective date of this Order is March 9, 2022.

DATED: March 9, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE PETITION OF KIMBERLY A. RATAI VS. MIDDLESEX WATER
COMPANY OFFICE OF ADMINISTRATIVE LAW- INITIAL DECISION
BPU DOCKET NO. WC20070488
OAL DOCKET NO. PUC 09146-20

SERVICE LIST

<p>Petitioner</p> <p>Kimberly A. Ratai [REDACTED]</p> <p>Middlesex, Respondent</p> <p>Jay L. Kooper, Esq. Vice President, General Counsel and Secretary Middlesex Water Company 485C Route One South Iselin, NJ 08830 jkooper@middlesexwater.com</p> <p>Division of Rate Counsel 140 East Front Street, 4th Floor Post Office Box 003 Trenton, NJ 08625-0003</p> <p>Brian Lipman, Esq., Director blipman@rpa.nj.gov</p> <p>Susan McClure, Esq. smclure@rpa.nj.gov</p> <p>Christine Juarez, Esq. cjuarez@rpa.nj.gov</p>	<p>Board of Public Utilities 44 South Clinton Avenue, 1st Floor Post Office Box 350 Trenton, NJ 08625-0350</p> <p>Aida Camacho-Welch, Secretary board.secretary@bpu.nj.gov</p> <p><u>Division of Water</u></p> <p>Mike Kammer, Director mike.kammer@bpu.nj.gov</p> <p>Magdy Mekhaeil magdy.mekhaeil@bpu.nj.gov</p> <p><u>Office of the Chief Counsel</u></p> <p>David Schmitt, Esq. david.schmitt@bpu.nj.gov</p> <p>Department of Law and Public Safety Division of Law – Public Utilities Section Richard J. Hughes Justice Complex 25 Market Street P.O. Box 112 Trenton, New Jersey 08625</p> <p>Meliha Arnautovic, DAG meliha.arnautovic@law.njoag.gov</p> <p>Brandon Simmons, DAG brandon.simmons@law.njoag.gov</p>
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State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. PUC 09146-20

AGENCY DKT. NO. WC20070488

KIMBERLY A. RATAI,

Petitioner,

v.

MIDDLESEX WATER COMPANY,

Respondent.

Kimberly A. Ratai, petitioner, pro se

Jay L. Kooper, Esq., for respondent, Middlesex Water Company

Record Closed: November 1, 2021

Decided: December 9, 2021

BEFORE: **JUDITH LIEBERMAN**, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Kimberly A. Ratai appealed the denial of her application for the provision of water service to her residence by respondent Middlesex Water Company. Petitioner currently utilizes a private well. Respondent determined that it could not provide water service to petitioner's residence until the private well is abandoned. Petitioner filed a timely appeal, which was transmitted to the Office of Administrative Law on October 28, 2020, for determination as a contested case. Respondent and petitioner filed cross motions for summary

decision, which were denied on April 20, 2021. A hearing was conducted on November 1, 2021, and the record closed that day.

FACTUAL DISCUSSION AND FINDINGS

The following is undisputed. I therefore **FIND** the following as **FACT**:

1. Petitioner is not a customer of Middlesex Water Company (respondent or MWC).
2. Petitioner resides in a single-family house at [REDACTED], Colonia, New Jersey. A private well has been the sole source of water to the home, since it was constructed in 1951.
3. Petitioner applied for water service from MWC on June 30, 2020.
4. On July 8, 2020, Gary Livett, a Sub-Forman in Middlesex's Distribution Department, conducted a site visit at petitioner's residence. A written report was not prepared.

Testimony

For petitioner:

Petitioner Kimberly Ratai testified that private wells are permitted when they are properly isolated and backflow protected. Abandonment of a well is not required before public service can be established. She noted that respondent previously permitted public water service while a private well remained on the property. Respondent did not provide a basis for reversing this policy and it demonstrated no willingness to work with her to find an appropriate solution. Moreover, New Jersey American Water (NJAW), a different public water utility, permits a customer to maintain and use private well on his property while

receiving water from the utility. Petitioner referenced NJAW's published answers to "frequently asked questions," which included a question about usage of private wells. NJWA's answer was:

To continue to use a private well, the homeowner must install a backflow prevention device on their service line, regardless of whether or not the well is connected to the household plumbing. A backflow device is NOT required if the well is fully sealed and abandoned (N.J.A.C. 7:10-10.2(e)1.) See below for the requirement of each option.

1. Abandonment: If the well is fully sealed and abandoned by a licensed well driller, a backflow device is not required. The customer must provide signed documentation of the abandonment to [NJAW] (N.J.A.C. 7:9D).
2. Keep Well Active: A double check valve or a reduced pressure zone backflow device must be installed on the service line, as close to the meter as is practical. The device must be inspected and tested annually to ensure that it is in proper working condition.

[P-1.]

NJAW's publication also addressed the customer's obligation to pay for equipment and failure to comply with its requirements:

Costs relating to purchasing backflow equipment, as well as the installation and maintenance, is the sole responsibility of the customer. It is recommended that customers obtain more than one cost estimate before installation.

Failure to comply with cross connection requirements can result in water service disconnection.

[ibid.]

On cross-examination, petitioner acknowledged that she did not apply to NJAW for water service, the company was distinct from respondent, and it was responsible for a different territory.

For respondent:

Jan Chwiedosiuk has been employed by respondent since June 2014. He currently serves as respondent's Licensed Operator. During the time at issue, he was respondent's Director of Distribution. He has a Masters' Degree in civil engineering, with a concentration in construction management, and a W-4 water operator license.

Petitioner contacted Chwiedosiuk by telephone on June 26, 2020, to discuss establishing service while maintaining the private on her property. She wanted to establish a connection to a customer-side service line that ran to the roadway, which had been installed by a prior owner of her home. Chwiedosiuk believed that MWC could not provide service to petitioner's home while her private well remained operational. The company was concerned about the operation of two active water systems at the same location, which could lead to a cross connection problem. A cross connection problem would be present if contaminants from the well entered MWC's system and impacted other customers. MWC's Operating Procedure concerning use of private wells addressed this. R-1.

Petitioner proposed a reduced pressure zone (RPZ) backflow prevention device (BPD). Chwiedosiuk believed the device was not feasible because an unsuspecting plumber or future homeowner would be able to connect the well to the public utility system. Also, respondent's Cross Connection Control Program (CCCP) does not permit the use of RPZ devices at residential properties. R-2.

Chwiedosiuk told petitioner to submit a formal application for installation of water service and to describe her proposal in detail. He advised her that he would review the application, schedule a site inspection and present his findings to his supervisor Robert Fullagar, Vice President of Operations.

Gary Livett conducted the site inspection. Chwiedosiuk discussed the inspection with Livett and then discussed it and petitioner's application with Fullagar. Fullagar denied the application because it could not be established that the two systems could not be connected

in the future. This possibility presented an unreasonable risk. Chwiedosiuk advised petitioner of Fullagar's determination on July 10, 2020. Chwiedosiuk explained that it was appropriate for MWC to have a different procedure than NJAW, which was a separate entity and served a different territory.

On cross-examination, Chwiedosiuk explained that there would be a significant risk of unintentional cross contamination if petitioner's home was attached to the public water system while retaining an operating well. A plumber could inadvertently cause cross connection while repairing a leak or modifying the home's plumbing. Similarly, a lawn hose could be connected to both systems. Also, water pressure caused by the private well could override a BPD and over pressurize respondent's distribution system. When asked if a flood could present a risk of backflow, he replied that the flood did not present a source of pressure. The CCCP addresses the risks associated with private wells.

New Jersey's Safe Drinking Water Act does not permit private wells with BPDs. Rather, it allows utilities to determine if a potential installation would present an unjustifiable risk. With respect to petitioner's site, the inspection shows that the two systems could not be separated for all future uses. There was no clear way to separate the systems such that all future homeowners, plumbers or others would be prevented from connecting them.

Gary Livett is a Subforeman in MWC's Distribution Department. He has been employed by MWC for over fifteen years. As Subforeman, he is responsible for oversight of the CCCP and field inspections, including of new application for water service. He reports to Chwiedosiuk. When inspecting a site to determine compliance with the CCCP, he conducts a visual inspection of the exterior site, to determine if a private well is present, and of the interior of the site, to look for connections to pumps or tanks that could present a risk. He cannot inspect below ground without excavating the site.

Livett did not inspect inside petitioner's home due to the restrictions associated with the COVID-19 pandemic. He could not conclude that there was no risk of a connection occurring between petitioner's well and a public water system. He explained that, even if he

were able to inspect inside the home and excavate and examine below ground, he would not be able to rule out possible connections.

If MWC were required to provide water service to petitioner, she would be required to purchase and install an RPZ. This would cost approximately \$2,000. Petitioner would be responsible for its operation and maintenance, which requires annual testing and submission of test results to the utility. MWC would be required to install a meter, which petitioner would be required to purchase and maintain. The estimated cost associated with the meter is approximately \$1,000 to \$2,000. Connection of the public water system to petitioner's home would cost approximately \$5,000. The average cost of decommissioning a well is between \$500 and \$1,000. MWC would not have unfettered access to the property to inspect and repair the device. This would be problematic.

On cross-examination, Livett explained that the CCCP addresses the use of BPDs at private residences. In establishing its policy concerning private wells, NJAW exercised its discretion, based upon its assessment of the risk of cross contamination. Livett acknowledged that petitioner was open to working with respondent to find a way to solve the problem she presented.

Robert Fullagar is a licensed professional engineer and operator and MWC's Vice President of Operations. He has worked for the company for twenty-four years. He formally served as MWC's licensed operator. Chwiedosiuk, the current licensed operator, now reports to him.

Fullagar explained that N.J.A.C. 7:10-10.2(e) is the controlling regulation. It does not apply to private residences. Rather, it grants the licensed operator discretion concerning private residences. Operation of a private well, while public water service is provided, presents numerous risks, even if an RPZ is utilized. First, other customers' drinking water can become contaminated because well water is not sampled every day. Respondent, however, samples its water multiple times each day. Second, prior customers have reconnected their wells and removed their RPZs. Third, respondent faces potential liability

if the RPZ were to fail, if it were removed, or if the well's pump pressure were to exceed that of MWC's system.

MWC's Operating Procedures prohibit the use of private wells on private property while service is provided by MWC. This policy was established in 2011. Fullagar did not know why the policy was established. However, he was aware that numerous customers in Iselin and Colonia, New Jersey, created cross connections. The problems were discovered when MWC changed the customers' meters, which MWC does routinely every ten years.

The CCCP mirrors the requirements in the regulations promulgated in conjunction with the Safe Drinking Water Act. The regulations require that when a utility establishes its own CCCP, it must comply with the requirements established by the United States Environmental Protection Agency.

MWC's decision concerning petitioner's well was appropriate notwithstanding that petitioner did not propose connecting a well line to MWC's system. There was still a risk that the well could subsequently be connected to MWC's service line. Fullagar noted that NJAW's policy does not contradict MWC's, as each company must determine its appetite for risk based upon its past experiences.

On cross-examination, Fullagar explained that BPDs can fail and thus create a risk of contamination of the system. MWC regularly tests BPDs used at its facilities. Those that fail are replaced. He did not know why the CCCP policy concerning private wells was not explicitly addressed in MWC's tariff at the time the policy was amended. He reiterated that MWC was authorized to prohibit private wells by virtue of the discretion given to it by the regulations. He did not believe that the Safe Drinking Water Act regulations address maintenance of private wells at private residences. He did not know how many times a cross connection was caused prior to the 2011 Operating Procedure amendments. He also did not know if the wells in those cases were properly isolated or if BPDs were used. He explained that, where a cross connection protection device is permitted, an RPZ is required because it provides the greatest protection.

In response to questions from this tribunal, Fullagar explained that the New Jersey Safe Drinking Water Act authorizes utilities to have their own cross connection control policies.

Additional Factual Findings

1. MWC rejected petitioner's application because a functional private well is on her property. MWC did not evaluate the well or whether cross connection between it and MWC's water supply system could be prevented by use of an RPZ or other BPD. MWC did not issue a report of its site inspection.
2. MWC previously allowed private wells to operate at properties where it provided service, subject to enumerated conditions. MWC's Operating Procedure amended this policy. The amendment was issued in response to incidents in which its system was contaminated by private wells present at sites served by MWC.
3. Respondent asserted that the CCCP does not permit use of a backflow prevention device at residential properties. The CCCP does not expressly establish this prohibition.

PARTIES' ARGUMENTS

Petitioner argues that the Operating Procedure does not have the force and effect of law and that respondent has violated its obligation to be "fair and reasonable." There are "fair" ways that it could provide service to her home that would not require her to give up a valuable asset.

Respondent argues that N.J.A.C. 7:10-10.2(e) gives it discretion to determine how to best manage the provision of its service. Its Tariff similarly grants it discretion to address circumstances in which a customer's lines have not been installed in accord with its regulations. Relying upon the testimony of its witnesses, who are experts in the field, MWC stressed that the public health can be seriously affected by cross contamination. Service

lines owned by residential customers can adversely impact MWC's lines and, thus, those of its other customers. It argues that, to mitigate the risk of cross contamination, it would be required to rely upon a private customer to maintain and inspect an RPZ. This presents an unjustifiable risk of cross contamination, regardless of whether other utilities permit ongoing operation of private wells.

LEGAL ANALYSIS AND CONCLUSION OF LAW

The Board of Public Utilities ("Board") has primary jurisdiction to resolve disputes involving proper utility service. See Muise v. GPU, Inc., 332 N.J. Super. 140, 159, 160 (App. Div. 2000)(questions involving the safe and adequate provision of service by a utility company are within the Board's primary jurisdiction and must be resolved by the Board). The Board is authorized to require each public utility to file "complete schedules of every classification employed and of every individual or joint rate, toll, fare, or change made, charged or exacted by it for any product supplied or service rendered within the State." N.J.S.A. 48:2-21(a). Public utilities are also required to submit a tariff or tariff amendment to the Board prior to offering a public utility service. N.J.A.C. 14:3-1.3. A tariff is a "published schedule of rates, filed by a public utility. . . applicable equally to all customers." In re Application of Saddle River, 71 N.J. 14, 29 (1976). A public utility must file all tariffs—including the applicable rates, rules, and regulations—with the Board and make them readily available to the public for public inspection wherever applications for service can be made. N.J.A.C. 14:11-7.2(a). Once a tariff is approved by the Board, it constitutes binding law on the customer. Country Gardens, Ltd. V. New Jersey American Water Co., 2015 N.J. Super. Unpub. LEXIS 47 (App. Div. 2015) (citing In re Application of Saddle River, 71 N.J. 14, 29 (1976)). A tariff is binding even if a customer is not aware of it. Essex Cnty. Welfare Bd. v. N.J. Bell Tel. Co., 126 N.J. Super. 417, 421-22 (App. Div. 1974).

MWC's Tariff provides that the BPU "is responsible for the final interpretation and enforcement of a utility's tariff provisions and rates. The utility is bound by New Jersey's statutes and the Board's regulations. If a conflict should exist, the Board's regulations supersede the tariff provision absent approval to the contrary by the Board." OAL-1.

Section 7 of the MWC Tariff, issued on October 10, 2017 and effective beginning April 1, 2018, addresses the provision of service to a customer's premises. Section 7.1 addresses connections between a customer's pipes and those maintained by the utility. It provides:

The Company may refuse to provide a water service connection with any customer's piping system or furnish water to any connecting pipe already installed, when the customer's piping system is not installed in accordance with the regulations of the Company (including but not limited to the Cross Connection Control Plan) and of the municipality in which the premises are located; or when the piping system on the premises has not been protected from allowing groundwater/soil to enter the connecting pipe or when it is not at sufficient depth to prevent freezing.

[Ibid.]

Section 7.7 provides, "All piping within a customer's premises shall comply with State, municipal and other regulations in force with respect thereto." Ibid. Section 7.8 provides, "Physical connections, such as cross connections, either permanent or temporary, between pipes on a customer's premises supplied by [MWC] and any unapproved source of supply are strictly prohibited." Ibid. (emphasis added). Section 7.10 provides, "No device or connection shall be permitted between pipes or fixtures carrying water from the mains of [MWC] and any portion of the plumbing system of the premises or any other piping system on the premises in cases where the system is not designed to prevent backflow or back-siphonage in accordance with [MWC's] Cross Connection Control Plan." Ibid. (emphasis added). Section 2.10 authorizes respondent to reject applications for service "where such service might affect the supply to other customers or for failure of the applicant to agree to comply with any of these standard terms and conditions." Ibid. (emphasis added).

The CCCP is intended to "protect the potable water system from the hazards originating on or in the customer's premise, through permanent or temporary connections, that may impair or alter the water quality in the potable water system." R-2. Prepared in "accordance with the New Jersey Safe Drinking Water Act," it provides that "the water utility

owner and the Distribution System Licensed Operator have the authority to require cross connection control by containment.” Ibid. Also, “[i]n accordance with the [BPU] approved tariff, the customer shall be responsible for the installation, maintenance and testing of cross connection control devices.” Ibid. In conjunction with this requirement, it authorizes the use of a RPZ backflow preventer device. A “backflow prevention device” is either a double check valve assembly or a reduced pressure zone assembly used for the purpose of preventing water flow in the opposite direction of normal flow pattern. N.J.A.C. 7:10-1.3. The CCCP does not expressly provide that it does not apply to residential facilities.

The Tariff does not reference respondent’s Operating Procedures, which prohibit the installation of a water system on a residential property that has a private well until after the private well has been decommissioned. The document provides:

1. When a new customer with an existing private well applies for service they shall be advised that the well must be abandoned and sealed in accordance with State and local requirements as a condition of receiving water service from MWC.
2. Existing customers that inquire regarding the installation of a private well shall be informed that MWC will not provide water service to a property with a private well.
3. When a cross connection (physical connection between a private well and the MWC water supply) is discovered during routine maintenance of the water meter or for any other reason, the customer will be given ten days to eliminate the interconnection and another thirty days to abandon the well in accordance with State and local requirements. If this permanent separation and abandonment of the private well does not occur within the thirty day time frame, [respondent] will terminate service until the customer can provide proof to the Licensed Operator that the well has been properly abandoned/sealed.

...

1. MWC will require proof of well abandonment and sealing by a New Jersey licensed well driller.

[R-1.]

The New Jersey Safe Drinking Water Act (“Act”), N.J.S.A. 58:12A-1 to -47 also applies to installations of water systems by commercial utility companies. N.J.A.C. 7:10-10.2(e), which was promulgated pursuant to the Act, permits installation of water systems in a private residence where a private well is located when specific conditions are met:

A physical connection installation shall not be installed in a private residence except as follows:

1. The licensed operator of the public community water system approves the installation and verifies that:

i. No portion of the potable water plumbing system of the private residence is interconnected with an unapproved water supply (for example, private residence well); and

ii. A reduced pressure zone backflow preventer assembly, a double check valve assembly, or similar backflow prevention device is installed on the public community water system service line. The supplier of water shall determine the type of device that must be installed.

[N.J.A.C. 7:10-10.2(e)(1)(i)-(ii)].

The Act defines “physical connection” as “a connection between a public community water system and any unapproved water supply.” N.J.A.C. 7:10-1.3. A “cross-connection” is defined as “any actual or potential connection between a public water system and a source of contamination, such as . . . an irrigation system.” Id. An “unapproved water supply” is defined as “any source of water which is not part of a public community water system.” Id.

The Tariff, CCCP and Safe Drinking Water Act permit a water utility company to install a system at a residential site where there is a private well when specific conditions have been met. The Operating Procedure, upon which MWC relies, is not referenced in the Tariff and contradicts these provisions. While the Safe Drinking Water Act, Tariff and Control Plan may authorize MWC to exercise some discretion, none authorizes a blanket policy

prohibiting the presence of private wells. Rather, each establishes a process for evaluating whether a public water system can appropriately and safely be installed at a site where a well is present. N.J.A.C. 7:10-10.2(e) requires utilities to inspect unapproved sources to ensure that no interconnection occurs between the unapproved source and the plumbing system.

Here, MWC did not conduct a full evaluation of the site and the well. Rather, its determination was based solely on the fact that the well is on the site. Moreover, an inspection report was not prepared or produced. There is no evidence that respondent's water system would be connected to petitioner's well or that a backflow prevention device, or other similar device, is impermissible or would be inappropriate. The record does not include underlying documentation, data or other evidence concerning petitioner's well, the proposed installation, and any potential connection or interaction between the two. There is no evidence in the record to support the conclusory statements that future homeowners or plumbers could inadvertently connect the two systems. Similarly, there is no evidence in the record concerning the proximity of the well to the residence or whether it is connected to the house's plumbing.

Further, respondent asserts that the Operating Procedures are controlling because they constitute a "regulation" that was implicitly accepted by the Board when it approved the Tariff. Respondent also references N.J.A.C. 14:3-2.6, which requires every utility to "have and maintain its entire plant in such condition as will enable it to furnish safe, adequate and proper service." It contends that the Operating Procedures' prohibition of interconnecting MWC's system with unapproved sources such as private wells is in furtherance of this safety requirement, given the risk of contamination.

Although respondent adopted the Operating Procedures prior to the Board's approval of its Tariff, the document's status as "regulation" such that it can be controlling here has not been adequately established. Unlike the CCCP¹, the Operating Procedure is an internal

¹ The Cross-Connection Control Plan is available on the MWC website for consumers to review. Middlesex Water Company Cross Connection Control Plan, <https://www.middlesexwater.com/developers-partners/new->

document that was not publicly available to consumers. N.J.A.C. 14:3-1.3(b)(2) requires tariffs to “clearly describe all services that the utility offers, and all terms and conditions regarding the services.” The Tariff does not reference this policy in any way and the Operating Procedures are neither referenced in the Tariff’s terms or conditions nor are they publicly available for customers to review. N.J.S.A. 14:1-5.11(a)(1) also requires utility companies to submit a tariff when there is a material change, including an “explanation of the manner in which the tariff or change differs from the existing or prior tariff.” The Operating Procedures indicate that respondent previously permitted provision of water service to premises with operating wells. It subsequently altered the policy such that such installations are now prohibited. There is no evidence in the record documenting this policy shift in the Tariff nor is there evidence of the Board’s implicit adoption of the policy when it approved the Tariff.

For all of the foregoing reasons, I **CONCLUDE** that a blanket prohibition on the provision of service to private residences with operating wells is inconsistent with the controlling law and, thus, an insufficient basis for denial of petitioner’s application. Respondent shall evaluate petitioner’s application, in conjunction with the controlling law, and, based on a particularized assessment of the facts specific to her property and well, determine whether it can safely and appropriately provide service to her home.

ORDER

I hereby **ORDER** that petitioner’s appeal is **GRANTED**.

I hereby **FILE** my initial decision with the **BOARD OF PUBLIC UTILITIES** for consideration.

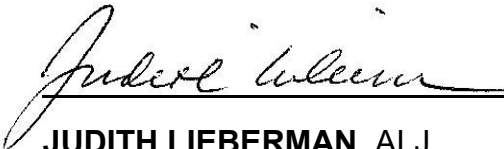
[jersey/cross-connection-controls/](#). When an applicant applies for water service with MWC, the application explicitly references the Control Plan and how to obtain the documentation.

This recommended decision may be adopted, modified or rejected by the **BOARD OF PUBLIC UTILITIES**, which by law is authorized to make a final decision in this matter. If the Board of Public Utilities does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **SECRETARY OF THE BOARD OF PUBLIC UTILITIES, 44 South Clinton Avenue, P.O. Box 350, Trenton, NJ 08625-0350**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

December 9, 2021

DATE



JUDITH LIEBERMAN, ALJ

Date Received at Agency:

December 9, 2021

Date Mailed to Parties:

December 9, 2021

JL/lam

APPENDIX
List of Witnesses

For petitioner:

Kimberly A. Ratai

For respondent:

Robert Fullagar
Jan Chwiedosiuk
Gary Livett

Exhibits in Evidence

OAL:

OAL-1 MWC Tariff for Water Service

For Petitioner:

P-1 NJAW “Prevent Cross Connections and Backflow”

For Respondent:

R-1 Operating Procedures
R-2 Cross Connection Control Program