



Agenda Date: 7/12/23
Agenda Item: 5B

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

WATER

IN THE MATTER OF THE PETITION OF AQUA NEW JERSEY, INC. FOR APPROVAL TO DEFER CERTAIN COSTS RELATED TO THE REPLACEMENT OF LEAD SERVICE LINES AND OTHER RELATED APPROVALS)	ORDER ADOPTING STIPULATION
)	DOCKET NO. WR22120745

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Courtney L Schultz, Esq., Saul Ewing, Arnstein, & Lehr, LLP on behalf of Aqua New Jersey Water Company

BY THE BOARD:¹

By this Order, the New Jersey Board of Public Utilities (“Board” or “BPU”) considers a stipulation of settlement (“Stipulation”) entered into by Aqua Water New Jersey Inc. (“Aqua” or “Company”), the New Jersey Division of Rate Counsel (“Rate Counsel”), and Board Staff (“Staff”) (collectively, “Parties”) seeking to resolve all issues related to this matter.

BACKGROUND AND PROCEDURAL HISTORY

Aqua New Jersey Inc. is a public utility corporation engaged in the business of treating and distributing water for retail service to approximately 55,000 customers located throughout Warren, Hunterdon, Mercer, Morris, Burlington, Monmouth, Camden, Atlantic, Ocean, Sussex and Gloucester Counties in New Jersey.² The Company also provides water service to 25 separate public water systems.

Service lines are individual pipes that run from the water main in the street to a building and consist of two (2) portions: 1) the section of the service line from the water main to the curb stop, owned by the Company; and 2) the section from the curb stop to the building, owned by the property owner. Service lines containing lead, and lines made from galvanized material, are considered lead service lines (“LSLs”).

¹ Commissioner Marian Abdou did not participate.

² Aqua is also engaged in the business of wastewater collection, treatment, and transmission, serving approximately 6,500 wastewater customers. This matter does not concern the Company’s wastewater services.

On July 22, 2021, Governor Phil Murphy signed P.L. 2021, c. 183 (“LSLR Law”), into law. The LSLR Law declared that the presence of lead in drinking water poses a significant threat to the health of New Jersey residents and therefore directed all public water systems in the State of New Jersey to inventory and replace all lead service lines, including those located on private property, and recoup the replacement costs in rates.³

The LSLR Law also requires that “[i]n order to recoup the costs of lead service line replacements from its customers an investor-owned public community water system shall submit to the board, for approval at its next general rate case proceeding, a petition that includes a proposal for cost recoupment.”⁴

PETITION

On December 23, 2022, pursuant to N.J.S.A. 48:2-21. N.J.S.A. 48:2-21.1. and N.J.A.C. 14:1, *et seq.*, Aqua filed a petition with the Board requesting that the Board authorize Aqua to defer certain costs related to the replacement of lead service lines and to treat such costs as a regulatory asset pending the Board’s decision in the Company’s next rate case filing (“Petition”). In addition, the Company noted that it would identify any LSL costs it intends to recover through its Distribution System Improvement Charge (“DSIC”).

By Order dated March 6, 2023, the Board retained jurisdiction over this matter for review and designated Commissioner Zenon Christodoulou as the Presiding officer.⁵

Following publication of an appropriate public notice in newspapers in the Company’s service territory, the Company held two (2) virtual public hearings, at 4:30 p.m. and 5:30 p.m., on May 10, 2023, over which Commissioner Christodoulou presided. No members of the public attended the hearings. Additionally, the Board received no written comments on this matter.

Stipulation

Following a review of the record in this matter, including the Petition and discovery, the Parties executed the Stipulation, which provides for the following:⁶

10. The Company is authorized to defer the following costs so that in its next base rate case (which Aqua anticipates will be filed in or about December 2023), the Board can consider whether, and to what extent such costs should be included in rates:

- a. the total cost of the replacement of customer-owned LSLs (N.J.S.A. 58:12A-45);⁷

³ N.J.S.A. 58:12A-40.

⁴ N.J.S.A. 58:12A-45B.

⁵ In the Matter of the Petition of Aqua New Jersey Inc. for Approval to Defer the Costs Related to the Replacement of Lead Service Lines and Other Related Approvals, BPU Docket No. WR22120745, Order dated March 6, 2023.

⁶ Although summarized in this Order, the detailed terms of the Stipulation are controlling, subject to the findings and conclusions of this Order. Paragraphs are numbered to coincide with the Stipulation.

⁷ The LSL Law refers to customer-owned service lines as the “property-owner side.”

- b. interest on the project costs of customer-owned LSL replacements [N.J.S.A. 58:12A-45(2)];
11. The Parties further agree that the deferral treatment agreed upon in Paragraph 10 of the Stipulation:
- a. is limited to customer-owned LSL replacement costs incurred on and after the effective date of the LSLR Law, *i.e.*, July 22, 2021;
 - b. is limited to actual costs incurred since July 22, 2021 for only those activities recognized in the LSLR Law for customer-owned replacements, provided however, that costs incurred for customer notification, inventorying premises, and other incremental costs incurred to comply with the LSL Law shall not be deferred (see Paragraph 12 of the Stipulation for recovery of these costs); and
 - c. does not guarantee that all claimed deferred costs will be recoverable in the Company's next base rate case, specifically recognizing that each party retains its right to challenge Aqua's deferred charges in its the next base rate case to the extent such costs are not consistent with the LSLR Law for customer-owned replacements or to the extent any party believes said costs were not prudently incurred.
12. With respect to recovery of LSL replacement costs in the Company's DSIC, the Parties agree that Aqua shall be permitted to seek recovery of the following replacement costs in the DSIC:
- a. the total cost of the replacement of Company-owned LSLs made since the filing of its DSIC Foundational Filing in Docket No. WR22050360 on May 31, 2022;
 - b. the total cost of customer notifications (N.J.S.A. 58:12A-43);
 - c. the costs of inventorying potential LSLs which require excavation in the event all normal methods of determining the composition of a service line have been exhausted [N.J.S.A. 58:12A-42(f)(2)]; and
 - d. other incremental costs required to comply with the LSL Law, including but not limited to the costs to complete the LSL inventory and implement the replacement planning process, even if said costs were incurred prior to the filing of Aqua's DSIC Foundational Filing.

DISCUSSION AND FINDINGS

The presence of lead in drinking water represents a grave threat to public health, especially to the children of the State of New Jersey, and prevents companies from providing safe drinking water to the citizens of New Jersey. One (1) of the more pressing issues facing the companies in removing the presence of lead in drinking water is the removal of all the lead service lines, with customer-owned lead service lines being the most difficult to replace. The LSLR Law presents a solution while enabling companies to recoup some of the costs associated with replacing customer-owned LSLs, thereby removing one of the main sources of lead-contaminated drinking water in the State.

The Board **HEREBY FINDS** that the Stipulation poses no immediate impact on customer rates. The anticipated average monthly bill impact from the replacement of customer-owned LSLs will vary depending on actual expenses incurred during the replacement period.

In reaching its decision, the Board must balance the needs of the ratepayers to receive safe, adequate, and proper service at reasonable rates, while allowing the Company the opportunity to earn a fair rate of return. As such, having reviewed the full record in this matter including the Petition and the Stipulation, the Board **FURTHER FINDS** that the Parties voluntarily agreed to the Stipulation, and the Stipulation fully disposes of all issues in this proceeding and is consistent with the law. Therefore, the Board **HERBY ADOPTS** the Stipulation in its entirety and **HEREBY INCORPORATES** its terms and conditions as though fully set forth herein.

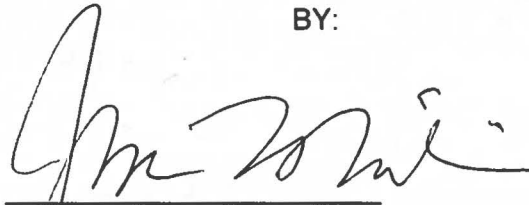
The Board **HEREBY RATIFIES** the decisions of Commissioner Zenon Christodoulou rendered during the proceedings for the reasons stated in his orders.

The rates and costs associated with the replacements remain subject to audit by the Board. This Decision and Order shall not preclude or prohibit the Board from taking actions determined to be appropriate as a result of any such audit.


The effective date of this Order is July 19, 2023.

DATED: July 12, 2023

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



DR. ZENON CHRISTODOULOU
COMMISSIONER



MARYANNA HOLDEN
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER

ATTEST: 

SHERRI L. GOLDEN
SECRETARY

IN THE MATTER OF THE PETITION OF AQUA NEW JERSEY INC FOR APPROVAL TO
DEFER CERTAIN COSTS RELATED TO THE REPLACEMENT OF LEAD SERVICE LINES
AND OTHER RELATED APPROVALS

DOCKET NO. WR22120745

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May 12, 2023

VIA ELECTRONIC MAIL and E-FILING

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Re: In the Matter of the Petition of Aqua New Jersey Inc. for Approval
to Defer the Costs Related to the Replacement of Lead Service Lines
and Other Related Approvals
BPU Docket No. WR22120745

Dear Secretary Golden:

On behalf of Petitioner, Aqua Water New Jersey Inc., attached for filing please find the Stipulation of Settlement, in the above-referenced matter. This matter was retained by the Board and is being presided over by Commissioner Christodoulou.

Thank you for your attention to this matter.

Respectfully submitted,



Courtney L. Schultz

CLS/jc

Enclosures

cc: Attached Service List (w/encls., via email only)

SERVICE LIST

In the Matter of the Petition of Aqua New Jersey Inc.
for Approval to Defer the Costs Related to the Replacement of
Lead Service Lines and Other Related Approvals
BPU Docket No. WR22120745

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

IN THE MATTER OF THE PETITION OF AQUA NEW JERSEY, INC. FOR APPROVAL TO DEFER CERTAIN COSTS RELATED TO THE REPLACEMENT OF LEAD SERVICE LINES AND OTHER RELATED APPROVALS	: : : : : : : : : : :
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: STIPULATION OF SETTLEMENT
: BPU DOCKET NO. WR22120745

APPEARANCES:

Courtney L. Schultz, Esq. and Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of the Petitioner, Aqua New Jersey, Inc.

Brian Lipman, Director; Susan E. McClure, Esq., Deputy Rate Counsel, Christine Juarez, Assistant Deputy Rate Counsel; and Emily Smithman, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel

Meliha Arnautovic, Deputy Attorney General, (Matthew J. Platkin, Attorney General of New Jersey), on behalf of the Staff of the New Jersey Board of Public Utilities

TO THE HONORABLE NEW JERSEY BOARD OF PUBLIC UTILITIES:

The parties in this proceeding are Aqua New Jersey, Inc. (“Aqua,” “Company,” or “Petitioner”), the Division of Rate Counsel (“Rate Counsel”), and the Staff of the Board of Public Utilities (“Staff”) (collectively, “Parties”). There were no intervenors in this proceeding. As a result of an analysis of Aqua’s Petition and exhibits, discovery conducted by Rate Counsel and Staff, conferences, and negotiations, the Parties hereto agree and stipulate as follows:

I. Background & Procedural History.

1. Petitioner is a public utility of the State of New Jersey, with its principal business office at 10 Black Forest Road, Hamilton, New Jersey 08691, subject to the jurisdiction of the Board of Public Utilities (the “Board”).

2. Petitioner is in the business of collecting, treating, and distributing water for retail service to approximately 55,000 customers located in several municipalities in Warren, Hunterdon, Mercer, Morris, Burlington, Monmouth, Camden, Atlantic, Ocean, Sussex and Gloucester Counties in New Jersey.¹

3. On December 23, 2022, pursuant to N.J.S.A. 58:12A-40 *et. seq.*, Aqua filed the above-captioned Petition with the Board, which was later assigned BPU Docket No. WR22120745, to seek approval from the Board to defer certain costs related to the replacement of lead service lines (“LSLs”) and to treat them as a regulatory asset pending the Board’s decision in its next base rate case filing. Aqua also noted that it would identify any LSL costs that it would recover through its Distribution System Improvement Charge (“DSIC”).

4. On July 22, 2021, Governor Murphy signed Act A5343/SS3398 (P.L. 2021, ch. 183) into law (the “LSL Law”). In the LSL Law, the State Legislature declared that:

public water systems should fully inventory all service lines and gradually replace all lead service lines, portions of which may exist on private property; and that, given the risk to public health and the resulting social costs that lead exposure imposes upon society as a whole, it is in the public interest that each public water system be obligated to replace lead service lines, including those that exist on private property, and be authorized to recoup the costs of lead service line replacements from all subscribers of the public water system.²

5. As stated in the Petition, Aqua has begun to inventory the LSLs in its 25 water systems and intends to gradually replace LSLs that are both customer-owned and Company-owned in order to comply with the LSL Law’s requirement that Aqua replace all LSLs regardless of

¹ The Company is also engaged in the wastewater collection, treatment and transmission business and currently serves approximately 6,500 wastewater customers; however, Aqua’s wastewater investments are not the subject of this proceeding.

² N.J.S.A. 58:12A-40.

ownership within 10 years of the LSL Law’s effective date – no later than July 22, 2031.³ Aqua submitted an updated LSL Inventory to the New Jersey Department of Environmental Protection, as required by the LSL Law, on July 22, 2022, which showed the Company had 1,682 “Lead” service and “unknown” services totaling 21,673. As of December 31, 2022, Aqua has replaced a total of 1,131 LSLs (of those, 996 were customer-owned and 301 were Company-owned). The Company is working diligently to ensure it meets the mandates for replacement contained within the LSL Law and expects to replace somewhere between 3,000 and 9,000 LSLs within the next nine years.

6. By Order dated March 6, 2023, the matter was retained by the Board for review and disposition, with Commissioner Zenon Christodoulou designated as the presiding officer.⁴

7. The Parties have engaged in full discovery. The request to defer LSL replacement costs in this proceeding has no impact on rates currently charged to customers. However, based on current estimates, once costs for customer-owned LSL replacements are included in base rates following the Company’s next base rate case filing, the average monthly impact for a residential customer (using 5,520 gallons per month) could increase by \$0.43 to \$7.75.

8. Virtual public comment hearings were held for this proceeding on May 10, 2023, at 4:30 pm and 5:30 pm following publication of notice in newspapers in the Company’s service territory. No members of the public appeared at the hearings. Additionally, no members of the public submitted written comments on this matter.

³ The statute includes service lines that are of a galvanized material as well.

⁴ In re the Petition of Aqua New Jersey Inc. for Approval to Defer Certain Costs Related to the Replacement of Lead Service Lines and Other Related Approvals, BPU Docket No. WR22120745, Order dated March 6, 2023.

II. Settlement Provisions.

9. For the reasons set forth in the following paragraphs, the Parties agree that the record herein supports the findings and conclusions set forth below.

10. The Company is authorized to defer the following costs so that in its next base rate case (which Aqua anticipates will be filed in or about December 2023), the Board can consider whether and to what extent such costs should be included in rates:

- (a). the total cost of the replacement of customer-owned LSLs (N.J.S.A. 58:12A-45);⁵
- (b). interest on the project costs of customer-owned LSL replacements (N.J.S.A. 58:12A-45(2));

11. The Parties further agree that the deferral treatment agreed upon in Paragraph 10 of this Stipulation:

- (a). is limited to customer-owned LSL replacement costs incurred on and after the effective date of the LSL Law, *i.e.*, July 22, 2021;
- (b). is limited to actual costs incurred since July 22, 2021 for only those activities recognized in the LSL Law for customer-owned replacements, provided however, that costs incurred for customer notification, inventorying premises, and other incremental costs incurred to comply with the LSL Law shall not be deferred (see Paragraph 12 for recovery of these costs); and
- (c). does not guarantee that all claimed deferred costs will be recoverable in the Company's next base rate case, specifically recognizing that each party

⁵ The LSL Law refers to customer-owned service lines as the "property-owner side".

retains its right to challenge Aqua's deferred charges in its the next base rate case to the extent such costs are not consistent with the LSL Law for customer-owned replacements or to the extent any party believes said costs were not prudently incurred.

12. With respect to recovery of LSL replacement costs in the Company's DSIC, the Parties agree that Aqua shall be permitted to seek recovery of the following replacement costs in the DSIC:

- (a). the total cost of the replacement of Company-owned LSLs made since the filing of its DSIC Foundational Filing in Docket No. 22050360 on May 31, 2022;
- (b). the total cost of customer notifications (N.J.S.A. 58:12A-43);
- (c). the costs of inventorying potential LSLs which require excavation in the event all normal methods of determining the composition of a service line have been exhausted (N.J.S.A. 58:12A-42(f)(2)); and
- (d). other incremental costs required to comply with the LSL Law, including but not limited to the costs to complete the LSL inventory and implement the replacement planning process, even if said costs were incurred prior to the filing of Aqua's DSIC Foundational Filing.

13. The Parties agree that the within Stipulation reflects a mutual balancing of various issues and positions, and that it is being entered into in the spirit of compromise and to avoid protracted and costly litigation.

14. This Stipulation is the product of negotiations by the Parties, and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its

entirety without modification or condition. It is also the intent of the Parties to this Stipulation that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to herein. The Parties to this Stipulation specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from the order adopting same as to those issues upon which the Parties have stipulated herein.

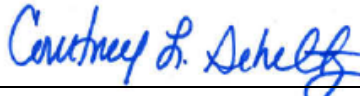
15. The Parties agree that each term within this Stipulation reflects a mutual balancing of various issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Parties hereto expressly and jointly state that they would not have signed this Stipulation had any terms been modified in any way. In the event any particular aspect of this Stipulation is not accepted and approved by the Board, then any Party hereto materially affected thereby shall not be bound to proceed under this Stipulation.

16. The Parties further agree that, with respect to any policy or other issues which were compromised in the spirit of reaching an agreement, none of the Parties shall be prohibited from, or prejudiced in, arguing a different policy or position before the Board in any other proceeding, as such agreements pertain only to this matter and to no other matter. It is specifically understood and agreed that this Stipulation represents a negotiated agreement and has been made exclusively for the purpose of this proceeding. Except as expressly provided herein, the Parties shall not be deemed to have approved, agreed to, or consented to any principle or methodology underlying or supposedly underlying any agreement provided herein in total or by specific item. The Parties further agree that this Stipulation is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

17. This Stipulation may be executed in as many counterparts as there are Parties to this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.


AQUA NEW JERSEY, INC.

5/12/23
Date

By: 
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Courtney L. Schultz, Esq.
Attorney for Petitioner

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the
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5/12/23
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By: 
Meliha Arnautovic
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.
DIRECTOR – RATE COUNSEL


Date

By: _____
Christine Juarez, Esq.
Assistant Deputy Rate Counsel

17. This Stipulation may be executed in as many counterparts as there are Parties to this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

AQUA NEW JERSEY, INC.

5/12/23
Date

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Attorney for the Staff of the
New Jersey Board of Public Utilities

Date

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Meliha Arnautovic
Deputy Attorney General

BRIAN O. LIPMAN, ESQ.
DIRECTOR – RATE COUNSEL

5/12/23
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