



Agenda Date: 12/20/23
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

IN THE MATTER OF THE PETITION OF NEW JERSEY-)
AMERICAN WATER COMPANY, INC. FOR RECOVERY)
OF REGULATORY ASSET ESTABLISHED FOR)
INCREMENTAL COVID-19 RELATED EXPENSES, AND)
FOR ESTABLISHMENT OF AN UNCOLLECTIBLE)
ADJUSTMENT CLAUSE) ORDER DESIGNATING)
COMMISSIONER, SETTING)
MANNER OF SERVICE AND)
BAR DATE)
DOCKET NO. WR23050275)

Parties of Record:

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

BY THE BOARD:

BACKGROUND

On July 2, 2020, the New Jersey Board of Public Utilities (“Board”) issued an Order authorizing the State’s utilities (“Utilities”) to create a COVID-19 regulatory asset by allowing the deferral of incremental and prudently incurred COVID-19-related costs.¹ The July 2020 Order provided that the deferral period began on March 9, 2020, and would conclude upon the latest of the following dates: 1) September 30, 2021; 2) 60 days after Governor Murphy declared that the COVID-19 Public Health Emergency was no longer in effect; or 3) in the absence of such a declaration, 60 days from the time the Public Health Emergency automatically terminated pursuant to N.J.S.A. 26:13-3(b) (“Regulatory Asset Period”). The July 2020 Order further required:

1. Each utility with a COVID-19 regulatory asset account to file with the Board quarterly reports, together with a verification by an authorized representative, detailing its COVID-19-related costs and offsets; and
2. All affected utilities to file a petition with the Board by December 31, 2021, or within 60 days of the close of the Regulatory Asset Period, either addressing any potential rate

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

recovery of the utility's COVID-19 regulatory asset, including any prudence determinations, and the appropriate period of recovery for any approved amount of the regulatory asset and any associated savings; or, in the alternative, requesting that the Board defer consideration of COVID-19 regulatory asset rate recovery until a future base rate case.

Through a series of Orders, the Board extended the Regulatory Asset Period until March 15, 2023, and the deadline to file for recovery of costs until July 17, 2023.² The Board further directed the Utilities to each file a formal plan detailing their access and use of State and federal funds, arrearage and disconnection reduction strategies, arrearage recovery efforts, savings due to COVID-19-related changes, and other details during the Regulatory Asset Period.

By Order dated June 7, 2023, the Board required that all filings for cost recovery of COVID-19 regulatory asset balances be evaluated on a case-by-case basis, whether as part of a base rate case or a separate proceeding, to ensure an equitable determination specifically tailored for each individual utility seeking cost recovery.³ The June 2023 Order requires that a utility must, as part of any filing for cost recovery of COVID-19 regulatory asset balances independent of a base rate case proceeding:

1. Propose a new, separate, special-purpose clause or rider that clearly defines the purpose and scope of the regulatory asset balances being proposed for recovery;
2. Propose rate design that applies a volumetric rate(s) to all applicable customer classes;
3. Propose a reasonable amortization period for the regulatory asset balances, taking into consideration the financial impact on ratepayers' bills;
4. Include carrying costs at a reasonable rate for any over- or under-recovery; and
5. Include all other necessary supporting documentation.

PETITION

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

On June 21, 2023, in accordance with the June 2023 Order, NJAWC filed an amended petition ("Amended Petition"), proposing to collect COVID-19-related net deferred costs over a three-year period, through an annual Special Program Charge of \$5,406,028, from all water and wastewater customers through a volumetric charge for General Metered Service ("GMS") of \$0.37 per month and a fixed, per-customer, charge for non-GMS customers of \$1.23 per month, to be reconciled annually.

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

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

The Company further requested to, under the proposed UAC, defer the difference between the amount of uncollectible expense authorized in the Company's most recent general rate case and the actual uncollectible expense incurred after March 31, 2023 on a calendar year period and collect or remit the difference through the UAC during the subsequent year, with any difference reconciled through a subsequent UAC filing. The Company further proposed that the UAC will reconcile the actual incurred uncollectible expense to the base level established in the Company's most recent general rate case.

The Company further proposed the addition of Rate Schedule O-3, the Societal Programs rider, to its tariff which would include two (2) components:

1. The "Special Program" charge which would be used to recover the deferred COVID-19 incremental costs; and
2. The UAC, which will be a charge or credit as related to the Company's uncollectible expense.

MOTIONS

Cogen Technologies Linden Venture, L.P.

On June 20, 2023, Cogen Technologies Linden Venture, L.P. ("Cogen Technologies") filed a motion to intervene in this matter. Cogen Technologies is the owner of the Linden Cogeneration Facility ("Facility"), an approximately 800 megawatt qualifying generation facility located on the site of the Phillips 66 complex in Linden, New Jersey. Cogen Technologies purchases water from NJAWC in connection with the operation of the Facility pursuant to Rate Schedule F, Optional Industrial Wholesale ("OIW") of NJAWC's tariff. Cogen Technologies argued that, because it is NJAWC's largest industrial customer with recent annual billings of approximately \$4.9 million, it will be directly and specifically affected by NJAWC's requested relief. Moreover, as a large volume purchaser of services in Rate Schedule OIW, Cogen Technologies argued that its interests are clearly distinct from other NJAWC customers and no other party can adequately represent its interests.

Cogen Technologies identified that it anticipates coordinating its representation and presentation of witnesses to the extent possible in this proceeding with other customers in the same OIW rate class ("OIW Customer Coalition").

Phillips 66 Company

On July 20, 2023, Phillips 66 Company ("Phillips 66") filed a motion to intervene in this matter. Phillips 66 is the owner of the Phillips 66 Bayway Refinery in Linden, New Jersey. Phillips 66 purchases water from NJAWC pursuant to Rate Schedule F, "OIW," of NJAWC's tariff. Phillips 66 argued that it will be directly and specifically affected by NJAWC's requested relief. As a large volume purchaser of services from NJAWC, Phillips 66 argued that its interests are clearly distinct from other NJAWC customers and no other party can adequately represent its interests.

Phillips 66 stated that it anticipates coordinating its representation and presentation of witnesses to the extent possible in this proceeding and will act in concert with the OIW Customer Coalition.

Princeton University

On July 27, 2023, Princeton University (“Princeton”), located in Princeton, New Jersey filed a motion to intervene in this matter. Princeton purchases water from NJAWC pursuant to Rate Schedule F, “OIW,” of the Company’s tariff. Princeton argued that it will be directly and specifically affected by NJAWC’s requested relief. Princeton asserted that that its interests are clearly distinct from other NJAWC customers and, as one of NJAWC’s largest OIW customers, no other party can adequately represent its interests.

Princeton stated that it anticipates coordinating its representation and presentation of witnesses to the extent possible in this proceeding with the OIW Customer Coalition.

Johanna Foods, Inc.

On August 25, 2023, Johanna Foods Inc. (“Johanna Foods”) filed a motion to intervene in this matter. Johanna Foods, located in Flemington, New Jersey, manufactures retail and private label brands of chilled juices and beverages, as well as aseptic beverages and yogurt. Johanna Foods purchases water from NJAWC pursuant to the Rate Schedule F, “OIW,” of the Company’s tariff. Johanna Foods argued that, as one of NJAWC’s largest OIW purchasers, it would be directly and specifically affected by NJAWC’s requested relief in a manner clearly distinct from other NJAWC customers and no other party can adequately represent its interests.

Johanna Foods stated that it anticipates coordinating its representation and presentation of witnesses to the extent possible in this proceeding with the OIW Customer Coalition.

DISCUSSION

Motions to Intervene

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

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

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

Application of these standards involves an implicit balancing test to weigh the need and desire for development of a full and complete record, which involves consideration of a diversity of interests, against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervenor's interest be specific, direct, and different from that of the other parties so as to add measurably and constructively to the scope of the case.⁴

After thoroughly considering the Motions to Intervene, and considering no parties objected to the motions, the Board **HEREBY FINDS**, pursuant to N.J.A.C. 1:1-16.3(a), Cogen Technologies, Phillips 66, Johanna Foods, and Princeton University ("Movants") will be directly affected by the outcome of this proceeding, and will contribute to the development of a full and complete record for review by the Board. Therefore, the Board **HEREBY FINDS** that the Movants met the standard for intervention in this matter because they each have a direct interest in this proceeding not represented by another party, and will add measurably and constructively to the proceeding without causing undue delay. Accordingly, the Board **HEREBY GRANTS** the motions for intervention filed by Cogen Technologies, Phillips 66, Johanna Foods, and Princeton University on the condition that, in accordance with its representations, they will adhere to the scope of the issues to be addressed in this proceeding.

Designation of Commissioner

The Board **HEREBY DETERMINES** that the Petition should be retained by the Board for hearing. Pursuant to N.J.S.A. 48:2-32, the Board **HEREBY DESIGNATES** Commissioner Abdou as the Presiding Officer with authority to rule on all motions that arise during the pendency of this proceeding and modify any schedules that may be set as necessary to secure a just and expeditious determination of the issues. Further, the Board **HEREBY DIRECTS** that any entity seeking to intervene or participate file the appropriate application with the Board on or before January 8, 2024. Any party wishing to file a motion for admission of counsel, *pro hac vice*, should do so concurrently with any motion to intervene or participate.

In addition, in compliance with the Board's Orders in Docket No. EO20030254, all parties are **HEREBY DIRECTED** to serve all documents electronically.⁵ No hard copies shall be filed until the Board lifts the restrictions imposed by the Orders. The Board **HEREBY DIRECTS** Staff to post this Order to the Board's website.

⁴ See In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, BPU Docket No. EM05020106, Order dated June 8, 2005.

⁵ In re the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of Requirements for Certain Non-Essential Obligations, BPU Docket No. EO20030254, Orders dated March 19, 2020 and June 10, 2020.

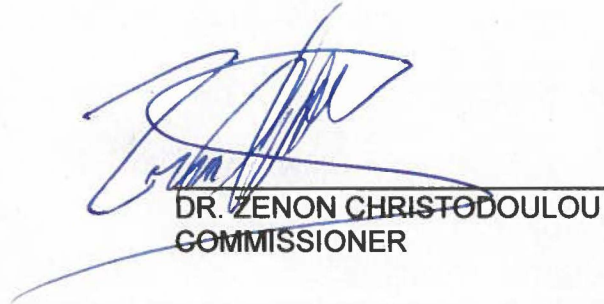
The effective date of this Order is December 27, 2023.

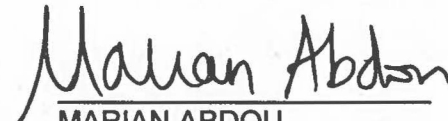
DATED: December 20, 2023

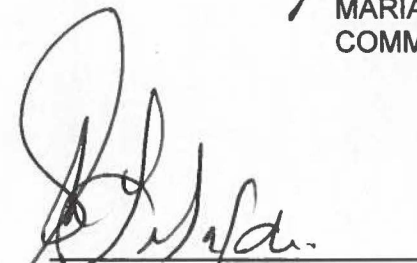
BOARD OF PUBLIC UTILITIES
BY:


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DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST: 
SHERRI L. GOLDEN
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 PETITION OF NEW JERSEY-AMERICAN WATER COMPANY, INC. FOR RECOVERY
OF REGULATORY ASSET ESTABLISHED FOR INCREMENTAL COVID-19 RELATED EXPENSES, AND FOR
ESTABLISHMENT OF AN UNCOLLECTIBLE ADJUSTMENT CLAUSE

BPU DOCKET NO. WR23050275

SERVICE LIST

Board of Public Utilities

44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0350

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Office of the General Counsel

Michael Beck, General Counsel
michael.beck@bpu.nj.gov

Carol Artale, General Counsel
carol.artale@bpu.nj.gov

Michael Hunter, Regulatory Officer
michael.hunter@bpu.nj.gov

Charles Gurkas, Paralegal
charles.gurkas@bpu.nj.gov

Division of Revenue and Rates

Anthony DeAnni
anthony.deanni@bpu.nj.gov

Bart Kilar
bart.kilar@bpu.nj.gov

New Jersey Division of Rate Counsel

140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625

Brian Lipman, Esq., Director
blipman@rpa.nj.gov

Emily Smithman
esmithman@rpa.nj.gov

Susan McClure
smcclure@rpa.nj.gov

Christine Juarez
cjuarez@rpa.nj.gov

New Jersey Division of Law

25 Market Street
Post Office Box 112
Trenton, NJ 08625

Pamela Owen, ASC, DAG
pamela.owen@law.njoag.gov

Meliha Arnautovic, DAG
Meliha.Arnautovic@law.njoag.gov

Terel Klein, DAG
terel.klein@law.njoag.gov

New Jersey-American Water Company, Inc

1 Water Street
Camden, NJ 08042

Christopher M. Arfaa, Esq, Managing Counsel
chris.arfaa@amwater.com

Jamie D. Hawn
jamie.hawn@amwater.com

Donna Carney, Paralegal
149 Yellowbrook Road
Farmingdale, NJ 07727
donna.carney@amwater.com

Cullen and Dykman LLP

The Legal Center
One Riverfront Plaza
Newark, New Jersey 07102

Bruce V. Miller
bmiller@cullenllp.com

**Rothfelder Stern, L.L.C., on behalf of Cogen
Technologies Linden Venture, L.P., Johanna Foods,
Inc., Phillips 66 Company, and Princeton University**
407 Greenwood avenue, Unit #301
Trenton, NJ 08609

Martin C Rothfelder, Esq.
mrothfelder@rothfelderstern.com

Bradford M Stern, Esq.
bstern@rothfelderstern.com

Rate Counsel's Consultants

Mr. Robert J. Henkes
Henkes Consulting
7 Sunset Road
Old Greenwich, CT 06870
rhenkes@optonline.net