



Agenda Date: 1/25/17
Agenda Item: 5D

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE JOINT PETITION OF)	ORDER DENYING MOTION
AMERICAN WATER WORKS COMPANY, INC.; NEW)	TO INTERVENE AND
JERSEY-AMERICAN WATER COMPANY, INC; AND)	GRANTING PARTICIPANT
SHORELANDS WATER COMPANY INC. FOR: (1))	STATUS
AMERICAN WATER WORKS COMPANY, INC. TO)	
ACQUIRE CONTROL OF SHORELANDS WATER)	
COMPANY, INC.; (2) FOR SHORELANDS WATER)	
COMPANY, INC. TO TRANSFER UPON ITS BOOKS)	
ALL OF ITS CAPITAL STOCK TO AMERICAN WATER)	
WORKS COMPANY, INC.; (3) SHORTLY)	
THEREAFTER FOR SHORELANDS WATER)	
COMPANY, INC. TO BE MERGED INTO NEW)	
JERSEY-AMERICAN WATER COMPANY, INC.; AND)	
(4) FOR SUCH OTHER APPROVALS AS MAY BE)	
NECESSARY TO COMPLETE THE PROPOSED)	
TRANSACTION)	DOCKET NO. WM16101036

Parties of Record:

Jay L. Kooper, Esq., Vice President, General Counsel & Secretary, Middlesex Water Company
Ira G. Megdal, Esq., Cozen O'Connor, on behalf of American Water Works Company, Inc. and New Jersey-American Water Company, Inc.
Bruce S. Edington, Esq., LeClairRyan, on behalf of Shorelands Water Company, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On November 2, 2016, American Water Works Company, Inc. ("American Water Works"), New Jersey-American Water Company ("NJAWC"), and Shorelands Water Company ("Shorelands") (collectively, "Joint Petitioners") filed a verified petition with the Board of Public Utilities ("the Board") for approval pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14 for American Water Works to acquire control of Shorelands. Shorelands seeks authority pursuant to N.J.S.A. 48:3-10 to transfer on its books and records all of its capital stock now held by Shorelands's current shareholders to American Water Works. At that point, Shorelands will be a wholly-owned subsidiary of American. And, shortly thereafter, Shorelands will be merged into NJAWC, pursuant to N.J.S. A. 48:3-7.

On December 8, 2016, Middlesex Water Company Inc. ("Middlesex") filed a motion to intervene asserting that it will be significantly affected by these proceedings. Middlesex states that the impact of costs associated with the acquisition are to be recovered and could affect the company's rates. Also, Middlesex has two water purchase contracts with NJAWC and the company's interests will not be advanced by any of the parties.

Middlesex states that it obtains water under contract with NJAWC through the Elizabethtown System of NJAWC. Middlesex is charged for purchased water under NJAWC Rate Schedule G entitled "Sales for Resale – Service to Other Systems" and Rate Schedule 0-1 entitled "Purchased Water Adjustment Clause (PWAC)". Under the contract currently in effect, Middlesex purchases a minimum of three (3) million gallons of water per day from NJAWC at an annual cost of over \$3.0 million dollars. As a contract customer affected by this request of NJAWC for approval of a plan to acquire and merge Shorelands Water Company into NJAWC, an approval that could impact how costs associated with the acquisition are to be recovered from NJAWC customers, Middlesex is entitled to intervene in this proceeding.

Joint Petitioner's Response

By letter dated December 22, 2016, the Joint Petitioners responded to Middlesex's motion to intervene by stating that the case at hand will not address how costs will be recovered from NJAWC customers, but seeks Board approval for the merger. Although Middlesex was granted intervenor status in NJAWC's previous rate proceedings, the fitting cases to address rate-making and cost allocation concerns, it is not appropriate in this proceeding. Joint Petitioners add that the acquisition will involve discovery into proprietary and trade-secret information, and they should not be exposed to the possibility that such information will be disclosed to Middlesex, a competitor of NJAWC and Shorelands, and thus the motion should be denied.

DISCUSSION AND FINDINGS:

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

- (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 for confusion and 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 and N.J.A.C. 1:1-16.6(c) provide 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.

As the Board has stated in previous proceedings, application of these standards involves an implicit balancing test. The need and desire for development of a full and complete record, which involves consideration of a diversity of interests, must be weighed against the requirements of the New Jersey Administrative Code, which recognizes the need for prompt and expeditious administrative proceedings by requiring that an intervener'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. See, Order, In re the Joint Petition of Public Service Electric and Gas Company and Exelon Corporation for Approval of a Change in Control, Docket No. EM05020106 (June 8, 2005).

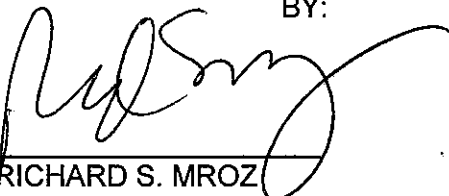
The Board will neither adjust any rate classification nor determine rates generally in this petition. Thus, Middlesex's full participation will not add measurably to the scope of this proceeding. Middlesex's ratemaking concerns over the purchase of Shorelands will be addressed in NJAWC's next base rate case, and it is anticipated that Middlesex will request and receive intervenor status then.

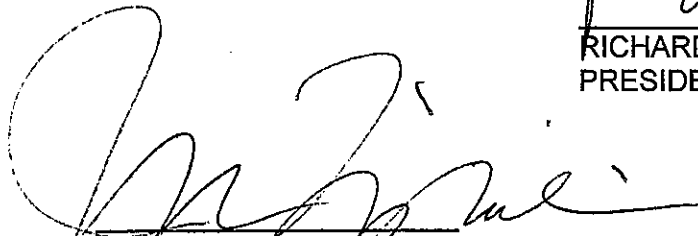
After consideration of the papers, the Board **HEREBY DENIES** Middlesex's motion to intervene, but **HEREBY FINDS** that its participation is likely to add constructively to the case without causing undue delay or confusion. Accordingly, the Board **HEREBY GRANTS** participant status to Middlesex, limited to the right to file a statement or brief as set out in N.J.A.C. 1:1-16.6(c)(2).

The Order shall become effective on February 4, 2017.

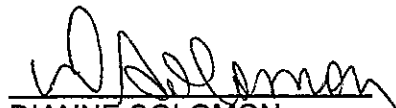
DATED: 1/25/17

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT

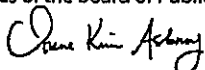

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COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 
IRENE KIM ASBURY
SECRETARY



IN THE MATTER OF THE JOINT PETITION OF AMERICAN WATER WORKS COMPANY, INC.; NEW JERSEY-AMERICAN WATER COMPANY, INC.; AND SHORELANDS WATER COMPANY, INC. FOR: (1) AMERICAN WATER WORKS COMPANY, INC. TO ACQUIRE CONTROL OF SHORELANDS WATER COMPANY, INC.; (2) FOR SHORELANDS WATER COMPANY, INC. TO TRANSFER UPON ITS BOOKS ALL OF ITS CAPITAL STOCK TO AMERICAN WATER WORKS COMPANY, INC.; (3)

SHORTLY THEREAFTER, FOR SHORELANDS WATER COMPANY, INC. TO BE MERGED INTO NEW JERSEY-AMERICAN WATER COMPANY, INC.; AND (4) FOR SUCH OTHER APPROVALS AS MAY BE NECESSARY TO COMPLETE THE PROPOSED TRANSACTION

BPU DOCKET NO. WM16101036

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