



Agenda Date: 12/17/14
Agenda Item: 5A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF UNITED)
WATER WEST MILFORD INC. FOR DEFERRAL)
ACCOUNTING AUTHORITY FOR THE FINANCIAL)
IMPACT OF THE SETTLEMENT OF LITIGATION WITH)
BALD EAGLE COMMONS BUILDING ASSOCIATION) ORDER ADOPTING
STIPULATION
DOCKET NO. WF14070804

Parties of Record:

Kelly K. Ruggiero, Esq., Corporate Attorney, on behalf of United Water West Milford
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD¹:

On July 29, 2014 pursuant to N.J.S.A. 48:2-16, N.J.S.A. 48:2- 21.1 and N.J.S.A. 48:2-23, United Water West Milford Inc. (“UWWM, Company, “Petitioner”), a public utility of the State of New Jersey, providing wastewater service to approximately 500 customers in certain portions of the Township of West Milford, Passaic, County, New Jersey and subject to the jurisdiction of the Board of Public Utilities (“Board”), filed a petition seeking authority from the Board to defer on its books the actually incurred costs resulting from the settlement of the litigation brought by Bald Eagle Commons Building Association (“BECBA” or “Bald Eagle Commons”) against UWWM in New Jersey Superior Court Document No PAS-L-4863-12 (the “Litigation Settlement”) that are not otherwise recovered through the Company’s currently approved Base rates. The Company proposed that the appropriate amortization period of such deferred costs be addressed in its next base rate case.

BACKGROUND/PROCEDURAL HISTORY

According to the petition, Bald Eagle Commons and Petitioner have been communicating since 2010 about the perceived movement of a stone retaining wall running along Richmond Road in BECBA’s residential development. Said retaining wall is situated adjacent to the property upon which UWWM’s sewer system disposal beds are located. The petition states that in February 2012, Bald Eagle Commons asserted that a portion of said retaining wall was failing and that the

¹ Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

retaining wall belonged to UWWM. The Petitioner states that it is unclear who owned the retaining wall or who was responsible for maintaining it. The Petitioner states that it offered temporary monitoring and safety measures for the retaining wall while the Company researched the ownership and maintenance issues. The Company states that in May 2012, Bald Eagle Commons notified UWWM that Bald Eagle Commons would take down the retaining wall if UWWM did not agree to take ownership of the wall in an easement from Bald Eagle Commons. UWWM asked for time to review the impact that the removal of the retaining wall would have on its disposal beds and reiterated its offer for temporary safety measures in the interim. Bald Eagle Commons filed a complaint seeking emergency injunctive relief against Petitioner in New Jersey Superior Court, Chancery Division in November 2012. Injunctive relief was denied and BECBA withdrew its complaint on November 27, 2012. Bald Eagle Commons refiled its complaint, in New Jersey Superior Court, Law Division in January 2013.

UWWM and Bald Eagle Commons subsequently engaged in settlement discussions and ultimately agreed to a settlement ("settlement") that among other things: resulted in Bald Eagle Commons voluntarily withdrawing its Law Division litigation in May 2013;² a settlement payment by UWWM to Bald Eagle Commons; provided that Bald Eagle Commons would replace/supplement the failing portions of the retaining wall; and that Bald Eagle Commons would acknowledge its ownership and maintenance obligations of the retaining wall on going forward basis. UWWM and Bald Eagle Commons executed a written settlement document in May 2014. The Petitioner states that while it is UWWM's position that the Company did not own the property the failing retaining wall sits on and was not responsible for maintaining that portion of the retaining wall itself; that BECBA has a different opinion as to ownership and maintenance of the retaining wall, and has demonstrated a clear intent to litigate; and that the Company has an obligation to ensure the UWWM sewer system drying beds adjacent to the failing retaining wall are not compromised. Finally, the Petitioner stated that it was the Company's estimate that total costs to UWWM may have exceeded \$1,000,000.

The Company estimated that the costs associated with the settlement amounted to \$293,633, which included the costs of the settlement, legal fees and engineering fees that would otherwise not have been incurred. The Petitioner maintains that these costs represent actual prudently incurred costs that were associated with resolving the costly ongoing property dispute and achieving the settlement.

This matter was retained by the Board.

STIPULATION

The Parties to this Stipulation, UWWM, the Division of Rate Counsel ("Rate Counsel"), and the Staff of Board of Public Utilities ("Staff") engaged in settlement discussions which resulted in the following Stipulation³:

1. UWWM may defer on its books and records \$293,980 for accounting purposes only, reflecting actual expenses incurred through October 31, 2014 (see Stipulation Exhibit A).

² An Order of Dismissal was entered on May 22, 2013.

³ Although described in this Order at some length, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

2. UWWM may defer any additional expenses for accounting purposes only associated with the settlement that incurred after October 31, 2014 and that are not reflected in base rates. These additional expenses are subject to a maximum cap of \$20,000.
3. No ongoing, routine expenses are included in the requested deferral accounts established for costs associated with the settlement.
4. The ratemaking treatment of the costs associated with the settlement will be determined in UWWM's next base rate case, at which time Rate Counsel and Staff will examine the reasonableness and prudence of such costs.
5. The amortization period for the costs listed on Stipulation Exhibit A will be addressed in UWWM's next base rate case.

DISCUSSION AND FINDINGS

The Board, having reviewed the petition and Stipulation settling the petition, **FINDS** that the Parties have voluntarily agreed to the Stipulation and that the Stipulation fully disposes of all issues in this proceeding and is consistent with the law. The Board **FINDS** that the Stipulation to be reasonable, in the public interest, and in accordance with the law. The Board **HEREBY ADOPTS** the Stipulation as its own, as if fully set forth here. The Board **HEREBY ORDERS** that Petitioner shall be allowed to defer on its books and records, for accounting treatment only, the above described costs associated with the litigation with Bald Eagle Commons.

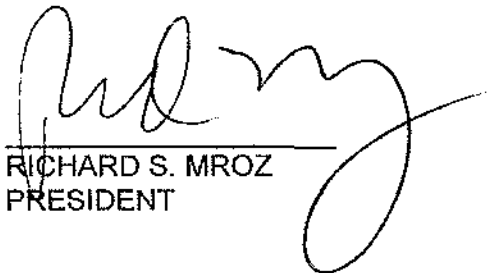
This Order is subject to the following additional conditions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets not owned or hereafter to be owned by Petitioner.
2. 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 matters affecting United Water West Milford, Inc.
3. Approval of this deferred accounting treatment request constitutes approval for accounting purposes only and does not constitute approval for ratemaking purposes; any determination of the appropriateness or reasonableness of the costs and expenses shall be made in an appropriate subsequent proceeding.

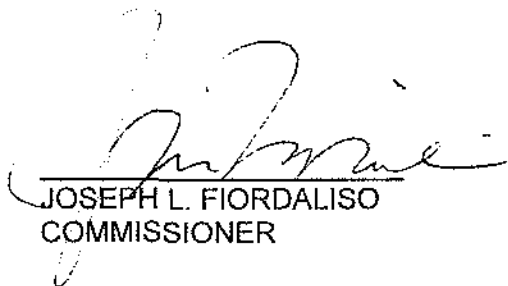
This Order is effective on December 26, 2014.

DATED: 12/17/14

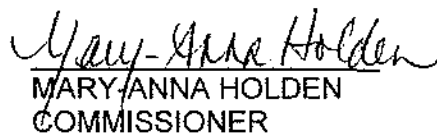
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER



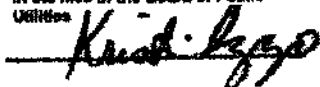
DIANNE SOLOMON
COMMISSIONER

ATTEST:



KRISTI IZZO
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 UNITED WATER WEST MILFORD INC. FOR
DEFERRAL ACCOUNTING AUTHORITY FOR THE FINANCIAL IMPACT OF THE
SETTLEMENT OF LITIGATION WITH BALD EAGLE COMMONS BUILDING ASSOCIATION
DOCKET NO. WF14070804

SERVICE LIST

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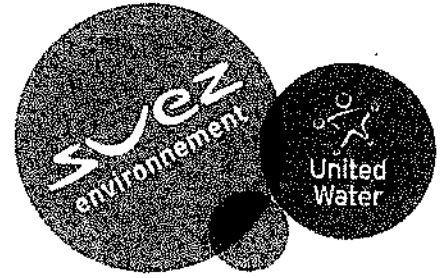
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GARY S. PRETTYMAN
Senior Director - Regulatory Business

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WWW.UNITEDWATER.COM



Via FedEx

November 24, 2014

Kristi Izzo, Secretary
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, NJ 08625-0350

RE: In The Matter of the Petition of United Water West Milford, Inc.
For Approval of Deferral Accounting Authority for the Financial Impact
of the Settlement of Litigation with Bald Eagle Commons Building Association
BPU Docket No. WF14070804

Dear Secretary Izzo,

Enclosed for filing please find an original and ten(10) copies, plus one additional copy, of a Stipulation of Settlement executed by Petitioners, United Water West Milford, Inc., The Division of Rate Counsel and the Staff of the Board of Public Utilities, in the above referenced matter. Please stamp the additional copy "filed" and return in the self-addressed, stamped envelop provided.

Thanks you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gary S. Prettyman', enclosed within a large, hand-drawn oval.

Gary S. Prettyman
Senior Director - Regulatory Business

Enclosure

Cc: Service List via e-mail

SERVICE LIST
I/M/O United Water West Milford Inc.
Deferral Petition
BPU Docket No. WF14070804

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

IN THE MATTER OF THE PETITION OF	:	STIPULATION OF SETTLEMENT
UNITED WATER WEST MILFORD, INC.	:	BPU DOCKET NO. WF14070804
FOR DEFERRED ACCOUNTING AUTHORITY:	:	
FOR THE FINANCIAL IMPACT OF THE	:	
SETTLEMENT OF LITIGATION WITH BALD	:	
EAGLE COMMONS BUILDING ASSOCIATION:	:	

APPEARANCES:

Kelly Ruggiero, Esq., on behalf of United Water West Milford Inc., Petitioner

Alex Moreau, Deputy Attorney General and Christopher Psihoules, Deputy Attorney General
(John J. Hoffman, Acting Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Debra F. Robinson, Esq., Deputy Rate Counsel, Christine M. Juarez, Esq., Assistant Deputy Rate Counsel, on behalf of the Division of Rate Counsel (Stefanie A. Brand, Director)

THE HONORABLE BOARD OF PUBLIC UTILITIES:

The Parties in this proceeding are United Water West Milford Inc. (the “Company” or “Petitioner”), the Division of Rate Counsel (“Rate Counsel”), and the Staff of the Board of Public Utilities (“Board Staff”).

On July 29, 2014, Petitioner, a public utility corporation of the State of New Jersey, filed a petition with the Board of Public Utilities (the “Board”) seeking permission to defer on its books the actually incurred costs of settlement of the litigation brought by Bald Eagle Commons Building Association (BECBA) against UWWM in New Jersey Superior Court, Docket No. PAS-L-4863-12 that are not otherwise recovered through its currently approved base rates. The Company proposed that the appropriate amortization period for such deferred costs will be addressed in the Company’s next base rate case.

As set forth in the petition, in November 2012, BECBA commenced a lawsuit against UWWM as a result of a dispute between the parties regarding ownership and maintenance responsibilities with respect to a failing retaining wall in BECBA's residential development. While it was UWWM's position that UWWM did not own the property the failing wall sits on and was not responsible for maintaining that portion of the wall itself, BECBA had a different opinion as to ownership and maintenance of the wall, and demonstrated a clear intent to litigate. Moreover, UWWM had an obligation to ensure the UWWM sewer system drying beds adjacent to the failing wall were not compromised. It was UWWM's estimate that absent settlement of the matter, the total costs that could have been incurred by UWWM may have exceeded \$1,000,000. UWWM and BECBA reached a mutually agreeable settlement of the litigation in the Spring of 2014. As noted above, UWWM filed the within petition seeking permission to defer on its books the actually incurred costs of settlement of the litigation with the Board on July 29, 2014.

Subsequent settlement discussions among the Parties hereto were held, and the agreements reached during those discussions have resulted in the following stipulations by the Parties:

1. The Parties agree that UWWM may defer on its books \$293,980 for accounting purposes only, reflecting actual expenses incurred through October 31, 2014 (see attached Exhibit A).
2. The Parties agree that UWWM may defer any additional expenses for accounting purposes only associated with the Litigation Settlement that are incurred after October 31, 2014 and that are not reflected in base rates. These additional expenses are subject to a maximum cap of \$20,000.
3. No ongoing, routine expenses are included in the requested deferral accounts established for costs associated with the Litigation Settlement.

4. The ratemaking treatment of the costs associated with the Litigation Settlement will be determined in UWWM's next base rate case, at which time Rate Counsel and Board Staff will examine the reasonableness and prudence of such costs.

5. The amortization period for the costs listed on Exhibit A attached to this Stipulation will be addressed in the Company's next base rate case.

6. 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. The Parties agree that the within Stipulation reflects 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. The Parties further agree that the purpose of this Stipulation is to reach fair and reasonable rates, with any compromises being made 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.

7. This Stipulation may be executed in as many counterparts as there are

Parties of this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

8. WHEREFORE, the Parties hereto do respectfully submit this Stipulation and request that the Board issue a decision and order approving this Stipulation in its entirety, in accordance with the terms hereof, as soon as reasonably possible.

UNITED WATER WEST MILFORD INC.

Nov. 21, 2014
Date

By: Kelly K. Ruggiero
Kelly Ruggiero, Esq.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Staff of the Board of Public Utilities

Date

By: _____
Alex Moreau, Esq.
Deputy Attorney General

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

Date

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

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UNITED WATER WEST MILFORD INC.

Nov. 21, 2014
Date

By: Kelly K. Ruggiero
Kelly Ruggiero, Esq.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Staff of the Board of Public Utilities

November 24, 2014
Date

By: [Signature]
Alex Moreau, Esq.
Deputy Attorney General

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

Date

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

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UNITED WATER WEST MILFORD INC.

Nov. 21, 2014
Date

By: Kelly K. Ruggiero
Kelly Ruggiero, Esq.

JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY
Attorney for Staff of the Board of Public Utilities

Date

By: _____
Alex Moreau, Esq.
Deputy Attorney General

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

11/21/14
Date

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

EXHIBIT A

Updated Actual Through October 31, 2014

**UW West Milford Sewer
Stone Wall (Deferred Costs)**

<u>AP Vendors</u>	<u>Cost Type</u>	<u>Actual Through October 31, 2014 Amount</u>
ARCHER & GREINER PC	Legal	\$39,503
ARCHER & GREINER PC	Settlement Cost	200,000
BALD EAGLE COMMONS BUILDING ASSOC.	Temporary Barrier	9,150
BALD EAGLE COMMONS BUILDING ASSOC.	Move Power Conduit (1)	
BUCK SEIFERT & JOST	Engineering	23,010
CREW ENGINEERS INC	Engineering	15,510
GARDELL LAND SURVEYING LLC	Survey	6,807
		<u>\$293,980</u>