



STATE OF NEW JERSEY
Board of Public Utilities
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WATER

TOWN OF CLINTON,)	ORDER AFFIRMING THE
Petitioner)	ADMINISTRATIVE LAW JUDGE'S
)	INTERLOCUTORY JURISDICTIONAL
v.)	RULING AND DENYING MOTION FOR
)	INTERLOCUTORY REVIEW
BOROUGH OF LEBANON,)	
Respondent)	BPU DOCKET NO. WO21060896
)	OAL DOCKET NO. PUC 05575-21

Parties of Record:

Richard P. Cushing, Esq., Gebhardt & Kiefer, P.C., for the Town of Clinton
John R. Lanza, Esq., Lanza & Lanza, L.L.P., for the Borough of Lebanon
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

This matter is before the New Jersey Board of Public Utilities ("Board" or "BPU") following remand from the Appellate Division. By Order dated January 4, 2022, the Appellate Division summarily reversed the Board's November 17, 2021 Order denying Respondent, the Borough of Lebanon's motion for interlocutory review of Administrative Law Judge ("ALJ") Jacob S. Gertsman's ruling on October 19, 2021. The Appellate Division directed the Board "to review the ALJ's holding that BPU has jurisdiction to consider and resolve Clinton's petition." The Appellate Division expressed no opinion on the merits of jurisdictional question but directed the matter to be heard expeditiously in the public interest. For the reasons noted herein, the Board holds it has jurisdiction, affirms the ALJ's order, and remands this matter to the Office of Administrative Law ("OAL").

Additionally, before the Board is a motion filed by the Town of Clinton ("Clinton" or "Petitioner") on January 11, 2022 seeking interlocutory review following a case management conference before ALJ Gertsman on January 4, 2022. For the reasons noted herein, the Board denies this motion and remands this case to the OAL for further proceedings.

BACKGROUND AND PROCEDURAL HISTORY

On June 9, 2021, Clinton filed a petition with the Board, pursuant to N.J.S.A. 48:19-17, seeking an order approving standards for the installation of a water main under Main Street in the Borough of Lebanon ("Lebanon"), a determination that Clinton's proposed work is reasonably necessary for the service, convenience or welfare of the public, and Board authorization for its proposed construction plan ("Petition").

Clinton operates a water utility with more than 1,250 customers outside of its borders subjecting it to the jurisdiction of the Board over all matters affecting service and reliability. In its petition, Clinton alleged that the mayor of Clinton made a courtesy call the mayor of Lebanon in June 2020, during which the mayor of Clinton informed the mayor of Lebanon of the planned water main replacement under Main Street in Lebanon. On July 15, 2020, Lebanon adopted Ordinance 2020-05, which imposed conditions for road openings in roadways, like Main Street in Lebanon, that have a concrete subbase. Clinton contended that Ordinance 2020-05 imposes unreasonable conditions on its proposed Main Street water main replacement, and Clinton's engineers estimated that strict compliance with Ordinance 2020-05 would increase the Main Street project cost by more than \$800,000. Clinton alleged that its representatives worked with representatives of Lebanon to resolve their differing positions as to road restoration standards following the water main replacement, but were unable to reach agreement. Clinton asserted that the delay occasioned by Lebanon's refusal to consent to its proposed project has prevented Clinton from correcting failing water lines which has the potential to harm the public safety and welfare.

Lebanon filed its answer to the Petition on June 24, 2021 asserting, among other things, that the Board did not have jurisdiction in this matter. The matter was transmitted to the OAL as a contested case on June 29, 2021 and was assigned to ALJ Jacob S. Gertsman for consideration and hearing.

On August 12, 2021, ALJ Gertsman conducted a status conference with Clinton, Lebanon, the New Jersey Division of Rate Counsel ("Rate Counsel") and Board Staff ("Staff"). Following the status conference, Clinton filed a motion to establish jurisdiction and Lebanon filed a cross-motion to dismiss for lack of jurisdiction. At ALJ Gertsman's direction, Staff and Rate Counsel also submitted briefs on the issue of jurisdiction. Clinton, Rate Counsel, and Staff filed briefs in favor of establishing jurisdiction on September 17, 2021 and Lebanon's response brief opposing jurisdiction was filed on September 29, 2021.

After reviewing the briefs, ALJ Gertsman conducted another status conference on October 18, 2021 during which he concluded that the Board had jurisdiction. ALJ Gertsman subsequently memorialized his decision via Letter Order on October 19, 2021, wherein he also directed Clinton to file an amended petition which specified that it was not seeking to overturn the Ordinance by November 2, 2021. ALJ Gertsman further directed Lebanon to file its amended answer on or before November 16, 2021.

On October 22, 2021, pursuant to N.J.A.C. 1:1-14.10(a) and (b), Lebanon filed a Motion for Interlocutory Review of the ruling made by ALJ Gertsman memorialized in his Letter Order dated

October 19, 2021. By Order dated November 17, 2021, the Board denied Lebanon's motion for interlocutory review.¹

Lebanon filed a motion for leave to appeal the Board's November 17, 2021 Order with the Superior Court, Appellate Division, which was granted on January 4, 2022. In the order disposing of the appeal, the Appellate Division summarily reversed the Board's denial of Lebanon's motion for interlocutory review, and directed the Board to review the ALJ's holding that the Board has jurisdiction to consider and resolve Clinton's petition alleging Lebanon has effectively denied consent to the Clinton Water Department by insisting that, following replacement of the water main under the road surface, Main Street be restored in accordance with Lebanon ordinance 2020-05. The Appellate Division expressed no opinion on the issue of jurisdiction or the overall merits of Clinton's petition, and did not retain jurisdiction.

A case management conference was held on January 4, 2022 before ALJ Gertsman, within hours after the parties received the Appellate Division's order remanding the case to the Board. The ALJ did not adopt a procedural schedule at this conference or otherwise suspend or compel discovery obligations. Instead, ALJ Gertsman scheduled another case management conference for April 12, 2022, by which time it was anticipated that the Board would have resolved the jurisdictional dispute. The parties were also encouraged to exchange discovery among themselves, but ALJ Gertsman stated that he would not be entering a procedural schedule or otherwise compel answers to discovery until the jurisdictional issue had been resolved by the Board. Clinton filed a motion for interlocutory review of the ALJ's actions regarding the January 4, 2022 case management conference on January 11, 2022. Lebanon opposed Clinton's motion on January 13, 2022.

Clinton filed an amended petition on January 13, 2022, which included a request that the Board approve the work as proposed by Clinton or, in the alternative, determine that the excess costs of restoration be imposed solely on Clinton Water Department's ratepayers residing in Lebanon. Lebanon filed an amended answer on February 10, 2022.

Following the remand order from the Appellate Division, we directed the Board Secretary to issue a request for supplemental briefs from the parties on the issue of jurisdiction. The parties were directed to file any supplemental briefs by January 21, 2022. The Board received submissions from Clinton, Lebanon, Rate Counsel and Board Staff.

In this Order, the Board will review the jurisdictional holding reached by ALJ Gertsman. As stated above, the Board agrees with ALJ Gertsman's legal conclusions regarding the Board's jurisdiction over the instant dispute. As the ALJ held, and we conclude, our general supervisory powers over utilities, including our powers to resolve disputes regarding service between water utilities and municipalities they serve, are sufficiently broad to create subject matter jurisdiction over this dispute. Furthermore, as the ALJ held, we conclude that the Legislature specifically granted the Board jurisdiction to hear this dispute where Lebanon has withheld consent from Clinton to the work Clinton deems necessary for its corporate purposes.

¹ In re Town of Clinton, Petitioner v. Borough of Lebanon, Respondent – Order Denying Motion for Interlocutory Review, BPU Docket No. WO21060896, Order dated November 17, 2021.

The Board, in this order, will also address Clinton's motion for interlocutory review of ALJ Gertsman's rulings at the January 4, 2022 case management conference. As explained below, we deny that motion and, consistent with the Appellate Division's remand order directing that the matter be heard expeditiously in the public interest, remand this matter as a contested case to the OAL for entry of a procedural schedule and prompt disposition.

THE PARTIES' SUBMISSIONS

Clinton filed a letter-brief on January 21, 2022. In its brief, Clinton argued that summary decision under N.J.A.C. 1:1-12.5 is appropriate on the issue of jurisdiction because the relevant facts establishing the Board's jurisdiction are undisputed. Clinton argued that the Board has broad jurisdiction over the issues to be resolved in this case, pursuant to N.J.S.A. 48:2-13 and 14, and N.J.S.A. 40A:31-23(d)(1), as well as extensive case law. Clinton further contended that N.J.S.A. 48:19-17 vests the Board with jurisdiction to hear this dispute where Lebanon has refused to permit Clinton to replace the water main according to its plan.

Lebanon filed a brief on January 21, 2022 arguing that the Board is without jurisdiction to hear the dispute between it and Clinton. Lebanon argues that it has plenary authority to decide which materials are to be used in municipal roads. Lebanon additionally argued that it has not withheld consent to the water main replacement that Clinton plans, but insists that the roadway be restored consistent with its recently-enacted Ordinance 2020-05. Next, Lebanon contended that any challenge to Ordinance 2020-05 must be heard as an action in lieu of prerogative writs in Superior Court, and that the Board, if it ultimately accepts jurisdiction of this case, is constrained to apply the same standard as would the Superior Court in a prerogative writs facial challenge to Ordinance 2020-05. Lebanon further asserted that Clinton has not actually sought Lebanon's consent, and that Lebanon therefore could not have withheld or refused said consent. With respect to the jurisdictional question before the Board, Lebanon contended that the Board has no jurisdiction over the instant dispute, and that if the Legislature intended to give the Board jurisdiction to, as Lebanon frames the issue, invalidate a municipal road ordinance, it would have explicitly done so.

Rate Counsel filed a brief on January 21, 2022 arguing that the Board has jurisdiction to hear this dispute. Rate Counsel contended that the Legislature granted BPU ultimate authority over the laying of pipes where a municipality fails to provide consent to a water company, referencing N.J.S.A. 48:19-17. Rate Counsel further argued that the Legislature has indirectly granted jurisdiction to the Board to hear this dispute through other provisions of Title 48, including N.J.S.A. 48:1-14, 48:2-23, 48:2-21, and 48:2-13.

Board Staff filed a brief on January 21, 2022 arguing that the Board has jurisdiction to hear the present dispute. Staff noted that the Board has been entrusted with the general supervision and regulation of all utilities, and that our Supreme Court has expansively defined the limits of the Board's jurisdiction. Staff disagreed with Lebanon's contention that this matter should be heard in Superior Court, as the Legislature has conferred jurisdiction on the Board to hear disputes between water utilities and the municipalities that they serve, and prerogative writs actions in Superior Court may not be maintained if there is any unexhausted right of review before an administrative agency. See R. 4:69-5.

DISCUSSION AND FINDINGS

After careful review of the parties' submissions, the Board concludes that we have jurisdiction to hear this dispute. The Board's review of the record indicates that there is no "genuine issue as to any material fact challenged," that the Board may summarily dispose of the jurisdictional issue, and that Clinton "is entitled to prevail as a matter of law." See N.J.A.C. 1:1-12.5. For purposes of the Board's review of the jurisdictional dispute, we make the following factual findings, which we find are not subject to any genuine material dispute:

1. Clinton Water Department is a water utility with more than 1,250 customers outside of its borders subject to the Board's jurisdiction in all matters affecting service and reliability. See N.J.S.A. 40A:31-23(d) and (f).
2. Clinton charges all customers the same rate whether the customer resides in Clinton or not, exempting it from Board jurisdiction over rate setting. See N.J.S.A. 40A:31-23(e).
3. On March 19, 1941, Lebanon entered into a franchise agreement with the Beaver Brook Water Company for provision of water to customers located in Lebanon, Clinton, and Clinton Township; this agreement was submitted to the State Water Policy Commission on March 21, 1941.
4. In December 1948, the Town of Clinton purchased Beaver Brook Water Company and assumed its franchise providing water to customers in Lebanon, Clinton, and Clinton Township as the Clinton Water Department. This purchase was approved by the Board.
5. Clinton deems replacement of the ductile iron water main beneath Main Street in Lebanon to be necessary for its corporate purposes, and cites public health and safety reasons in addition to maintenance of the integrity of the water system as justifications for the work.
6. Between July 15, 2020, the date of enactment of Ordinance 2020-05, and June 9, 2021, the date Clinton filed the Petition, representatives from Clinton and Lebanon were unable to come to an agreement regarding how the roadway will be restored following replacement of the ductile iron water main.
7. Main Street in Lebanon is a roadway with an asphalt surface with a concrete subbase.
8. After learning of Clinton's plans to replace the water main beneath Main Street, Lebanon passed Ordinance 2020-05, which was enacted on July 15, 2020.
9. Clinton's water main replacement plan included a plan to restore the Main Street road surface using a bituminous concrete, or asphalt, base course restoration.
10. Lebanon's Ordinance 2020-05 requires enhanced backfill and concrete base course restoration methods for all linear construction road openings along Main Street, where Clinton proposes to replace a water main.
11. Lebanon contends that it consents to the replacement of the water main provided that Main Street is restored in accordance with Ordinance 2020-05.
12. Clinton estimates that the cost of compliance with Ordinance 2020-05 would increase construction costs by over \$800,000 beyond what was contemplated in Clinton's original proposal.

The Legislature has entrusted the Board with the general supervision, regulation, control and jurisdiction over all public utilities. N.J.S.A. 48:2-13; see also N.J.S.A. 40A:31-23(d)(1). Our Supreme Court explained the Legislative grant of power and jurisdiction to BPU as follows:

[T]his State has delegated in most sweeping terms "general supervision and regulation of and jurisdiction and control over all

public utilities” and “their property, property rights, equipment, facilities and franchises” to the Board. N.J.S.A. 48:2-13. More specifically, the Board is empowered to direct utilities to furnish safe, adequate and proper service, R.S. 48:2-23, and to that end it may fix just and reasonable standards and practices. R.S. 48:2-25. We find in these statutes, and throughout Title 48 of the Revised Statutes (1937), a legislative recognition that the public interest in proper regulation of public utilities transcends municipal or county lines, and that a centralized control must be entrusted to an agency whose continually developing expertise will assure uniformly safe, proper and adequate service by utilities throughout the State. Our courts have always construed these legislative grants to the fullest and broadest extent.

[In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 371 (1961).]

Clinton Water Department, as a municipally-owned water system that supplies water to more than 1,000 billed customers in another municipality, is subject to our jurisdiction over all matters affecting service and reliability. See N.J.S.A. 40A:31-23(d)(1). The dispute between Clinton and Lebanon is a matter affecting service and reliability, as it concerns a water main which needs to be replaced, the manner in which the utility may complete the proposed ductile iron water main replacement, and demands our consideration of the public necessity of the proposed work. Accordingly, the Board **HEREBY FINDS** that the instant dispute implicates our jurisdiction over all matters affecting utility service and reliability.

Clinton serves Lebanon as its water utility pursuant to a municipal grant of a water utility franchise, which is subject to the Board’s approval pursuant to N.J.S.A. 48:2-14. Under that statute, “[t]he Board may, in approving a franchise or privilege, impose conditions which in its expertise the public convenience requires. It follows, then, that the Board has a veto power over conditions imposed by governmental agencies which may inhibit the Board’s regulatory control over public utilities.” Marlboro v. Village Water Co., 72 N.J. 99, 108 (1976). Despite Lebanon’s contention that its ordinance only applies to road repair materials, Lebanon has applied it in a manner which has prevented the utility from opening the road and replacing the water main. Lebanon’s ordinance accordingly inhibits our regulatory control over the Clinton Water Department. As N.J.S.A. 48:2-14 permits the Board, not a municipality, to impose conditions on a franchise as the public convenience may require, **WE HEREBY FIND** the instant dispute between Clinton and Lebanon falls within our jurisdiction over the municipal grants of franchises to public utilities.

Clinton’s amended petition seeks a determination that the work it proposes to do is reasonably necessary for the service, convenience, and welfare of the public, and the Board’s authorization to complete said work. Alternatively, Clinton requested that the Board determine that the costs of restoration in accordance with Ordinance 2020-05, an amount exceeding \$800,000, be imposed on the ratepayers of Lebanon through a special assessment on rates charged to Clinton customers residing in Lebanon. Currently, Clinton is not subject to the Board’s jurisdiction regarding rates as it supplies water to customers outside its municipal boundaries at the same rates as customers within its municipal boundaries. See N.J.S.A. 40A:31-23(e) (exempting municipal-owned utilities serving customers in other municipalities from the Board’s rate regulation where the rates charged to customers are the same, regardless of the location of the customer). While Clinton’s request for the Board to approve its proposed work implicates our jurisdiction over all matters affecting utility service, Clinton’s alternative proposal would create a

separate rate class for Clinton's customers residing in Lebanon and, accordingly, **WE HEREBY FIND** it implicates the Board's jurisdiction over rates.

Where, as here, "the [S]tate has . . . established an agency of its own with plenary power to regulate utilities, it is universally recognized that municipalities cannot properly interpose their local restrictions unless and only to the extent any power to do so is expressly reserved to them by statute." In re Pub. Serv. Elec. & Gas Co., 35 N.J. 358, 372 (1961) (hereinafter In re PSE&G). Our Supreme Court explained in In re PSE&G that Title 48 embodies "a legislative recognition that the public interest in proper regulation of public utilities transcends municipal or county lines, and that a centralized control must be entrusted to an agency whose continually developing expertise will assure uniformly safe, proper and adequate service by utilities throughout the State." Id. at 371.

In In re PSE&G, a municipality passed two (2) ordinances. The first was a zoning ordinance, which required a permit before erecting poles or towers for the transmission of electric current. The second ordinance was a police power ordinance, which provided that transmission lines of over 33,000 volts must be installed underground. In re PSE&G, 35 N.J. at 361-63. Our Supreme Court noted that municipalities, being creatures of the State, have only those powers delegated to them by the state and that said "power is restricted to those matters which are of purely local concern, and even where the State Legislature has not spoken, some matters, inherently in need of uniform treatment, are not a proper subject for municipal legislation." Id. at 371. The Court searched for statutory authority to justify the two (2) ordinances, but found none, explaining its reasoning as follows:

It is rather difficult to conceive of a subject which more requires uniform regulation at a high and broad level of authority than the method of transmission of electric power, especially where it must be generated in a single location and distributed and used in many and distant places. Were each municipality through which a power line has to pass free to impose its own ideas of how the current should be transmitted through it, nothing but chaos would result, and neither the utility nor the state agency vested with control could be assured of ability to fulfill its obligations of furnishing safe, adequate and proper service to the public in all areas. The matter is clearly one for Board control alone, which it has exercised . . . This [] ordinance is clearly beyond municipal power.

. . . .

Perhaps at this point it would not be amiss to say something, from the standpoint of municipal power, about the legal comparability of this [] zoning ordinance amendment and . . . [the] police power ordinance There is a striking similarity in purpose and effect between the two regulations. Each basically seeks to assert municipal control over the method of transmission of electric power anywhere within the borough, the first by an absolute prohibition of overhead transmission of more than 33,000 volts, and the second by requiring municipal permit for any tower transmission under standards of local agency judgment confined to detrimental effect upon or necessary convenience of the single community. If, as we

have held, the prohibitory legislation is bad for the reason we have given, it is difficult to see why the permissive regulation is not also basically invalid for the same reason.

[Id. at 373-74.]

Just like transmission of electric power, our Supreme Court has characterized the distribution of water as “indispensable to the functioning of civil society” and “is essentially an enterprise of a public nature.” Hackensack Water Co. v. Ruta, 3 N.J. 139, 146-47 (1949). A water utility’s privilege to lay pipes beneath roadways comes via legislative grant of power, and municipal consent to a franchise. Id. at 144-45. A municipality’s authority in this regard “if not purely administrative, is but a portion of the police power to serve the common interest in a limited sphere.” Id. at 145. Our Supreme Court explained the public obligations of water utilities as follows:

[O]rdinarily the holder of the franchise undertakes to provide a service reasonably adequate for the needs of the community, not only at the outset, but thereafter as community growth demands an expansion of the facilities. There is every indication, from the frame of the Act and the language used to express the legislative purpose, that the expansion of the company’s facilities should not be made to depend upon the arbitrary will of the local governing body. The normal development of such companies as instruments of public service may not be arrested by caprice. The unit of service in the legislative concept is not the municipality, but the area of need; and the need is not for the judgment of the municipality.

[Id. at 147.]

Following the Supreme Court’s opinion in Hackensack Water Co., the Legislature passed two (2) amendments to Title 48 in 1962 and 1966. See L. 1962, c. 198; L. 1966, c. 233. These amendments contained a specific grant of jurisdiction to the BPU to adjudicate disputes between water utilities and municipalities they serve where the municipality has denied or withheld consent to the water utility. See N.J.S.A. 48:19-17. While the general jurisdictional grants in Title 48 we have discussed above are sufficient to establish the Board’s jurisdiction over all facets of this dispute, our jurisdiction over this dispute has been specifically delegated to us by N.J.S.A. 48:19-17. The statute permits each water utility to “lay its pipes beneath such public roads, streets, and places as it may deem necessary for its corporate purposes” Ibid. When pipes are laid beneath streets, “[t]he consent of the public body charged with the repair and maintenance of such public roads . . . shall first be obtained.” The Legislature contemplated that there might be circumstances where a public body does not consent to a water company’s plan to install pipes underneath a roadway. In such circumstances, the Legislature has expressly provided a right to appeal to this Board:

If such public body shall refuse or fail to give its consent, the water company may appeal to the Board of Public Utility Commissioners of the State of New Jersey. A hearing thereon shall be had on notice to all parties in interest, who shall be afforded an opportunity to be heard. If, after such hearing the Board of Public Utility Commissioners shall determine that the installation of such pipes

or hydrants is reasonably necessary for the service, convenience or welfare of the public, the water company shall be authorized to proceed in accordance with such determination.

[N.J.S.A. 48:19-17.]

Clinton filed a petition pursuant to N.J.S.A. 48:19-17 seeking the Board's determination that its proposed plan was reasonably necessary for the service, convenience or welfare of the public. Lebanon advances numerous arguments against our jurisdiction pursuant to N.J.S.A. 48:19-17, none of which have merit. First, Lebanon contends that it has authority over roads, which the Board cannot override. This argument, in our view, ignores a fundamental aspect of this dispute. The dispute between the Clinton Water Department and Lebanon Borough regarding the way to repair Main Street would not be happening but for the presence of Clinton's pipes beneath Main Street. While the Legislature did grant municipalities various authorities over roadways within their municipal boundaries, the Legislature did the opposite with respect to the provision of water. Instead of permitting municipal regulation of the distribution of water, the Legislature granted that right to the water utility in the first instance, with ultimate recourse to this Board when faced with a municipality denying or withholding consent. While our appellate courts have held that the utility's rights may be subject to reasonable municipal regulation, they are not dependent on the arbitrary will of a municipality like Lebanon. See Hackensack Water Co., 3 N.J. at 147. Indeed, it is the Board, not the municipality served by the water utility, who has ultimate authority over all issues affecting service, including the proposed project to replace the water main beneath Main Street.

Lebanon argues that the Board is without jurisdiction over this dispute under N.J.S.A. 48:19-17 because it has not denied consent to Clinton.² We reject this argument. Lebanon claims that it consents to the replacement of the work provided that Clinton accepts its demands regarding road restoration. Clinton, for its part, seeks approval of its project as originally conceived. It is beyond dispute that Lebanon and Clinton are not in agreement regarding this project. For all these reasons, the Board **HEREBY FINDS** that Lebanon has refused or failed to give its consent to Clinton within the meaning of N.J.S.A. 48:19-17, and we therefore have jurisdiction to hear this dispute.

Having disposed of the jurisdictional issue in accordance with the Appellate Division's remand instructions, the Board next considers Clinton's motion for interlocutory review. An order or ruling of an ALJ may be reviewed on an interlocutory basis by an agency head at the request of a party. N.J.A.C. 1:1-14.10(a). Any request for interlocutory review shall be made to the agency head no later than five (5) working days from the receipt of the order. N.J.A.C. 1:1-14.10(b). Pursuant to N.J.A.C. 1:14-14.4(a), a rule of special applicability that supplements N.J.A.C. 1:1-14.10, the Board shall determine whether to accept the request and conduct an interlocutory review by the later of (i) 10 days after receiving the request for interlocutory review or (ii) the Board's next regularly scheduled open meeting after expiration of the 10-day period from receipt of the request for interlocutory review.

In addition, under N.J.A.C. 1:14-14.4(b), if the Board determines to conduct an interlocutory review, it shall issue a decision, order, or other disposition of the review within 20 days of that

² We note that Lebanon's consent argument, if accepted, is not dispositive to the jurisdictional issue, as we have held above that our general supervisory powers over utilities and franchise disputes are sufficiently broad to cover this dispute.

determination. Under N.J.A.C. 1:14-14.4(c), if the Board does not issue an order within the timeframe set out in N.J.A.C. 1:14-14.4(b), the judge's ruling shall be considered conditionally affirmed. However, the time period for disposition may be extended for good cause for an additional 20 days if both the Board and the OAL Director concur. Finally, it should be noted that N.J.A.C. 1:1-14.10(i) in relevant part provides that:

[A]ny order or ruling reviewable interlocutorily is subject to review by the agency head after the judge renders the initial decision in the contested case, even if an application for interlocutory review:

1. Was not made;
2. Was made but the agency head declined to review the order or ruling; or
3. Was made and not considered by the agency head within the established time frame.

Here, ALJ Gertsman did not issue a decision, but instead conducted a case management conference on January 4, 2022. Clinton filed a motion for interlocutory review on January 11, 2022, which is five (5) working days from January 4, 2022, the date of the case management conference.

Our Supreme Court has held that an agency has the right to review ALJ orders on an interlocutory basis "to determine whether they are reasonably likely to interfere with the decisional process or have a substantial effect upon the ultimate outcome of the proceeding." In re Uniform Administrative Procedure Rules, 90 N.J. 85, 97-98 (1982). The Court held that the agency head has broad discretion to determine which ALJ orders are subject to review on an interlocutory basis. However, it noted that the power of the agency head to review ALJ orders on an interlocutory basis is not itself totally unlimited, and that interlocutory review of ALJ orders should be exercised sparingly. Id. at 100. In this regard, the Court noted.

In general, interlocutory review by courts is rarely granted because of the strong policy against piecemeal adjudications. See Hudson v. Hudson, 36 N.J. 549 (1962); Pennsylvania Railroad, 20 N.J. 398. Considerations of efficiency and economy also have pertinency in the field of administrative law. See Hackensack v. Winner, 82 N.J. at 31-33; Hinfey v. Matawan Reg. Bd. of Ed., 77 N.J. 514 (1978). See infra at 102, n.6. Our State has long favored uninterrupted proceedings at the trial level, with a single and complete review, so as to avoid the possible inconvenience, expense and delay of a fragmented adjudication. Thus, "leave is granted only in the exceptional case where, on a balance of interests, justice suggests the need for review of the interlocutory order in advance of final judgment." Sullivan, "Interlocutory Appeals," 92 N.J.L.J. 162 (1969). These same principles should apply to an administrative tribunal.

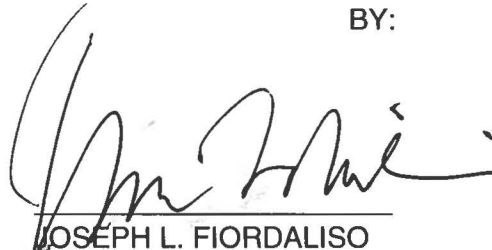
[90 N.J. at 100].

As set forth above, the decision to grant interlocutory review is committed to the sound discretion of the Board, and may be granted in the interest of justice. Having reviewed Clinton's motion, Lebanon's response, and considering the procedural posture of this case, the Board **HEREBY DENIES** Clinton's motion for interlocutory review. Following the January 4, 2022 case management conference, ALJ Gertsman did not enter a procedural schedule, enter an order compelling responses to discovery, or otherwise render a reviewable decision other than scheduling a case management conference in April in order to permit the Board time to rule on the jurisdictional issue. Consequently, there is no order for us to review on an interlocutory or final basis. Instead, we remand this matter to the OAL for further contested case proceedings with instructions from the Appellate Division's remand order that the matter be heard expeditiously in the public interest.

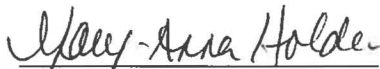
The Order shall become effective on March 16, 2022.

DATED: March 9, 2022

BOARD OF PUBLIC UTILITIES
BY:



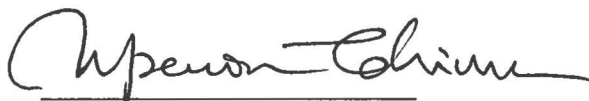
JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

TOWN OF CLINTON V. BOROUGH OF LEBANON
 BPU DOCKET NO. WO21060896 & OAL DOCKET NO. PUC 05575-21

SERVICE LIST

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