



Agenda Date: 1/19/11  
Agenda Item: 7B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center, Suite 801**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

CUSTOMER ASSISTANCE

NEAL E. BRUNSON,	)	ORDER
Petitioner,	)	
	)	
v.	)	
	)	
UNITED WATER NEW JERSEY,	)	BPU Dkt. No. WC09120998U
Respondent.	)	OAL Dkt. No. PUC 05707-10

Neal E. Brunson, Esq., Rutherford, New Jersey, Petitioner  
John P. Wallace, Esq., Ridgewood, New Jersey, on behalf of Respondent, United Water New Jersey

**BY THE BOARD:**

A request by United Water New Jersey (United Water or Respondent) for interlocutory review of a December 6, 2010 Order by Administrative Law Judge Kimberly A. Moss partially granting and partially denying United Water's motion to strike discovery requests served by Neal E. Brunson, Esq., (Petitioner) has been received by the New Jersey Board of Public Utilities (Board).

**BACKGROUND**

On or about December 17, 2009, Petitioner filed a petition, disputing a bill by United Water requiring him to pay \$2,763.27 for under-billed water consumption. The Board transmitted this matter to the Office of Administrative Law (OAL) for hearing and initial disposition as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. In connection with the hearing at the OAL, Petitioner propounded discovery requests on Respondent, including Document Production Request Number 4, seeking a list of names and addresses of other United Water customers who were back billed for more than three (3) years.

On October 26, 2010, Respondent moved to strike Petitioner's discovery requests, including Production Request Number 4. After considering the arguments advanced by Petitioner and Respondent, on December 6, 2010, ALJ Moss issued an order partially granting and partially denying Respondent's motion. Specifically as to Production Request Number 4, ALJ Moss

determined that information requested in Production Request Number 4 (i.e., the names and addresses of other United Water customers) could lead to discoverable admissible evidence but restricted the information to be produced by Respondent to the addresses of other United Water customers, who have been charged with back water payments of more than three (3) years during the past three (3) years.

On December 9, 2010, Respondent filed a request for interlocutory review of the Order by ALJ Moss directing Respondent to produce the addresses of all customers who were back billed for more than three (3) years over the past three (3) years. Respondent claims that the disclosure of the addresses of its customers would violate the privacy of those uninvolved customers. Respondent also claims that publishing the identity of such persons reveals the possible existence of a debt owed by non parties to this matter. Respondent further claims that its customer records should be regarded as confidential pursuant to Lamorte Burns & Co. v. Walters, 167 N.J. 285 (2001). Finally, Respondent claims that the Board has the authority to safeguard customer lists pursuant to In re Solid Waste Util. Cust. Lists, 106 N.J. 508 (1987). Petitioner has not filed any opposition to Respondent's request for interlocutory review.

## DISCUSSION

Pursuant to N.J.A.C. 1:1-14.10(c), within ten days of the request for interlocutory review, the agency head must decide if the order or ruling will be reviewed. With regard to the Board, pursuant to N.J.A.C. 1:14-14.4, the Board is to determine at its next regularly scheduled meeting whether the order or ruling will be reviewed. If the agency determines to grant and conduct an interlocutory review, a party opposed to the grant of interlocutory review may, within three days of receiving notice that review was granted, submit to the agency head arguments in favor of the order or ruling being reviewed. N.J.A.C. 1:1-14.10(d). The Board is to decide the review no later than twenty days from its determination to grant the request for interlocutory review. N.J.A.C. 1:14-14.4(b). The time period for disposition may be extended for good cause for an additional twenty days if both the Board and the Director of the Office of Administrative Law concur. N.J.A.C. 1:14-14.4(c).

The legal standard for accepting a matter for interlocutory review is set forth in In re Uniform Administrative Procedure Rules, 90 N.J. 85 (1982). In that case, the Court concluded that the 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." Id. at 98. The Court indicated that the agency head has broad discretion to determine which ALJ orders are subject to review on an interlocutory basis, noting that an agency has the sole authority to effectuate regulatory policy. 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. In this regard, the Court noted:

In this respect, the analogy to the courts is appropriate. 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.

[Uniform Administrative Procedure Rules, *supra*, 90 N.J. at 100].

The Court held that in the administrative arena, as in a court case, interlocutory review may be granted "only in the interest of justice or for good cause shown." *Ibid.* Good cause will exist whenever, in the sound discretion of the agency head, there is a likelihood that an interlocutory order will have an impact upon the status of the parties, the number and nature of the claims or defenses, the nature or scope of issues, the presentation of evidence, the decisional process or the outcome of the case. *Ibid.*

In light of the assertions made by United Water regarding the privacy interests of its other customers, the Board **HEREBY GRANTS** Respondent's request for interlocutory review of the ALJ's decision. It is anticipated that the matter will be returned to the Board's February 10, 2011 agenda for a ruling on the merits of the underlying motion to strike Production Request Number 4 and the ALJ's ruling thereon. Pursuant to N.J.A.C. 1:1-14.10(c) and N.J.A.C. 1:14-14.4(a), the Board **HEREBY DIRECTS** the Board Secretary to issue a letter notifying the Director of the Office of Administrative Law and the Service List of the Board's determination to review the December 6, 2010 Order by ALJ Moss.


DATED: 1/19/11

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

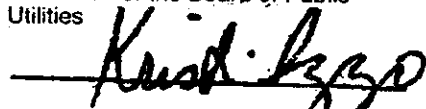
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

  
NICHOLAS ASSELTA  
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



**NEAL E. BRUNSON**

**v.**

**UNITED WATER NEW JERSEY**

**BPU DOCKET NO. WC09120998U**

**OAL DOCKET NO. PUC 05707-10**

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