



Agenda Date: 2/17/21
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 DONNA BARONE, ON BEHALF)
OF HERSELF AND ALL OTHERS SIMILARLY)
SITUATED, PLAINTIFFS,)
Petitioners,)
)
v.)
)
AQUA NEW JERSEY, INC.,)
Respondent.)

ORDER

DOCKET NO WC21020108

Parties of Record:

Stephen P. DeNittis, Esq., DeNittis Osefchen Prince, P.C., on behalf of Donna Barone and all others similarly situated
Dante C. Rohr, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., on behalf of Aqua New Jersey, Inc.
Stefanie Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD:

On April 5, 2020, Donna Barone (“Plaintiffs”) and other unnamed Plaintiffs filed a complaint, In the Matter of Donna Barone, on behalf of herself and all others similarly situated v. Aqua New Jersey, Inc. This matter was filed in the Law Division, Superior Court – Camden County.

Petitioners are customers of Aqua New Jersey, Inc. (“Aqua”) and received water service in December 2019 or January 2020 in Blackwood Township, New Jersey. Plaintiffs filed a class action alleging that they incurred out-of-pocket expenses for medical evaluations or treatment after receiving a boil water notice from Aqua.¹ Plaintiffs seek to recover compensation for medical evaluations and care, as well as injunctive relief to require specific protocols be established in regard to incidences requiring boil water orders.² The Plaintiffs also are seeking to bar Aqua from billing them for water service rendered in December 2019 or January 2020, or a refund of payments made to Aqua during that time period. Aqua moved for entry of orders dismissing

¹ Plaintiffs’ complaint at 8.
² Plaintiffs’ complaint at 12.

Plaintiffs' complaint or in the alternative referring certain issues to the New Jersey Board of Public Utilities ("BPU" or "Board") pursuant to the doctrine of primary jurisdiction.

By Order dated February 1, 2021, the Honorable Michael J. Kassel, J.S.C., denied the motion to dismiss, but granted the motion to refer the matters to the BPU pursuant to the doctrine of primary jurisdiction. The Order further stayed the Superior Court actions pending a determination by the BPU as to whether it intends to exercise jurisdiction as to factual determinations regarding any of the issues raised in the complaint.

The doctrine of primary jurisdiction applies

when a case is properly filed in the New Jersey Superior Court but the court declines original jurisdiction, referring specific issues to the appropriate administrative body. The court gives deference to the administrative body's interpretation of its own regulations and findings of fact on particular issues that are within the special competence of the agency pursuant to applicable statutes. Essentially, the court retains jurisdiction but defers action until the agency has reviewed the case and employed its expertise. That doctrine is especially important for promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties.

Magic Petroleum Corp. v. Exxon Mobil Corp., 218 N.J. 390, 405 (2014) (citations omitted) (internal quotation marks omitted).

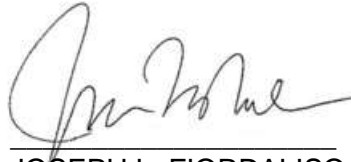
The BPU has jurisdiction and control over public utilities. See N.J.S.A. 48:2-13(a); 48:2-16. The Legislature has endowed the BPU with broad powers and discretion to regulate public utilities. In re Pub. Serv. Elec. & Gas Co.'s Rate Unbundling, 167 N.J. 377, 384 (2001). The Board has the authority to require any public utility to furnish safe, adequate and proper service, N.J.S.A. 48:2-23, and to regulate rates for such service. N.J.S.A. 48:2-21. Judicial deference to administrative agencies stems from the recognition that agencies have specialized expertise. In re Adoption of Amendments to Water Quality Management Plans, 45 N.J. Super. 571, 583 (App. Div. 2014). In this case, the Board has the statutory authority as well as expertise to consider whether Aqua failed to provide safe, adequate and proper service under the circumstances then existing to the Plaintiffs in the underlying action. Therefore, the Board accepts primary jurisdiction in order to consider that issue or any other that it deems appropriate.

The Board, having reviewed the Court's Order and the preliminary documents it has received from the parties, **HEREBY FINDS** issues in the complaint that are within the Board's jurisdiction. As such, the Board accepts primary jurisdiction and will review the matter referred pursuant to Judge Kassel's Order. In addition, this matter will be transmitted to the Office of Administrative Law for hearings as a contested case.

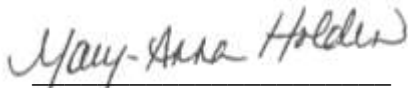
This Order shall be effective on February 27, 2021.

DATED: February 17, 2021

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

IN THE MATTER OF DONNA BARONE, ON BEHALF OF HERSELF AND ALL OTHERS
SIMILARLY SITUATED, PLAINTIFFS V. AQUA NEW JERSEY, INC.

DOCKET NO. WC21020108

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