Agenda Date: 2/27/19
Agenda Item: 5E

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 NEW JERSEY BOARD OF PUBLIC UTILITIES' CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017	)	ORDER DOCKET NO. AX18010001
IN THE MATTER OF THE ATLANTIC CITY SEWERAGE COMPANY'S PETITION WITH CALCULATION OF RATES UNDER THE TAX CUTS AND JOBS ACT OF 2017	)	DOCKET NO. WR18030234

Parties of Record:

Ira G Megdal, Esq, Cozen O'Connor, on behalf of the Atlantic City Sewerage Company
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On December 22, 2017, the Tax Cuts and Jobs Act of 2017 ("2017 Tax Cut Act") was signed into law with an effective date of January 1, 2018. The 2017 Tax Cut Act sets forth changes to the Federal Internal Revenue Tax Code ("Tax Code"). One significant change is the reduction in the maximum corporate tax rate from 35% to 21% which took effect January 1, 2018.

On January 31, 2018, the New Jersey Board of Public Utilities ("Board') issued the Generic Tax Order[1] in BPU Docket No. AX18010001, captioned In the Matter of the New Jersey Board of Public Utilities' Consideration of the Tax Cuts and Jobs Act of 2017, concerning the effects of the corporate tax rate charge from 35% to 21% and other adjustments as set forth in the 2017 Tax Cut Act. Based on the Board's review of the 2017 Tax Cut Act, the changes to the Tax Code will provide savings to New Jersey public utilities and result in an over-collection of tax revenue by the public utilities that will not be paid in federal income taxes. Id. at 2. The Board stated, "To ensure that ratepayers receive the appropriate benefit from the reduction in taxes collected in rates that will no longer be paid, it is necessary for rates to be adjusted so that utility rates reflect the effective federal corporate tax rate." Id.

[1] See, In the Matter of the New Jersey Board of Public Utilities' Consideration of the Tax Cuts and Jobs Act of 2017, BPU Dkt No. AX10010001 (Jan. 31, 2018) ("Generic Tax Order").

PETITIONER'S FILING

By letter dated May 31, 2018, Atlantic City Sewerage Company ("ACSC", "Company" or "Petitioner") advised the Board that it was in the process of conducting a comprehensive review of its deferred income tax records. ACSC further advised the Board that it was in the process of determining the appropriate level of amortization of the regulatory liability, to insure compliance with IRS normalization. The Petitioner stated that it estimated that this review process would be completed by September 2018. The Petitioner stated that it would engage in settlement discussions with the parties,[2] once this review process had been completed. In view of the foregoing, the Petitioner respectfully requested that the Board extend the procedural schedule for this matter to permit the Board to issue a decision no later than its November 2018 public agenda meeting.

ACSC further stated that this request was in the public interest, as it would allow Petitioner to ensure that its deferred income tax records were complete and accurate by category, determine the appropriate level of amortization of the regulatory liability, and insure compliance with IRS normalization regulations. The Petitioner also stated that extending the procedural schedule would provide the parties with additional time to focus on a mutually agreeable resolution of this matter. By Order in this matter dated June 22, 2018, the Board granted ACSC's request, and ACSC provided updates by letters dated November 8, 2018 and January 10, 2019.

By further Order in this proceeding dated March, 26, 2018, the Board adopted tariffs that became effective on April 1, 2018, which implemented a rate decrease resulting from the Board's initial review of the 2017 Act on Petitioner. Upon further review, ACSC has determined that the April 1, 2018 rate decrease was insufficient. Specifically, the amount that should have been returned to ratepayers should have been $449,350 (before gross up), rather than $319,945 (before gross up), which had previously been returned to ratepayers. The Petitioner's updated filings proposed to correct this error and addressed the other issues that remained open in this matter.

The Parties have reviewed the Company's updates and agreed to the following Stipulation:

- That an additional $150,792 resulting from the April 1, 2018 rate decrease must be returned to customers as of March 1, 2019.

- With regard to unprotected ADIT, there is a $162,225 regulatory asset that is due from Ratepayers. There is a remaining balance of $3,711 due to ratepayers for the period January 1, 2018 through March 31, 2018. The net amount due from ratepayers from the April 1, 2018 rate decrease is $7,542. This amount will be recovered from ratepayers over three years based on the assumption that the Company will have a rate case resulting in rates in effect by 2021.This results in an annualized recovery of $2,514.

- The foregoing requires a total annual rate reduction, before gross up, of $190,107. After applying the gross up factor the result is the company's proposal of a rate reduction of $280,954 to be effective on March 1, 2019.

[2] The Parties to this matter are Petitioner, the Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff").

DISCUSSION AND FINDINGS

Having reviewed the record in this matter, including the Stipulation, the Board **HEREBY FINDS** that the Parties have voluntarily agreed to the Stipulation[3], the Stipulation fully disposes of all issues in this proceeding and is consistent with the law. The Board **FURTHER FINDS** the Stipulation to be reasonable, in the public interest, and in accordance with the law. Therefore, the Board **HEREBY ADOPTS** the Stipulation, attached hereto, including all attachments and schedules, as its own, incorporating by reference the terms and conditions of the Stipulation, as if they were fully set forth at length herein.

This Order shall be effective on March 1, 2019.

DATED: 2\27\19

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

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

[3] Although summarized in this Order, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusion in this Order.

DOCKET NO. AX18010001 – IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES' CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017; AND

DOCKET NO. WR18030234 – IN THE MATTER OF THE ATLANTIC CITY SEWERAGE COMPANY'S PETITION WITH CALCULATION OF RATES UNDER THE TAX CUTS AND JOBS ACT OF 2017

SERVICE LIST

Board of Public Utilities
Post Office Box 350
Trenton, NJ 08625-0350

Aida Camacho-Welch, Secretary
board.secretary@bpu.nj.gov

Division of Water

Mike Kammer, Director
mike.kammer@bpu.nj.gov

Megan Lupo, Bureau Chief
megan.lupo@bpu.nj.gov

Kyle Felton, Rate Analyst
kyle.felton@bpu.nj.gov

Office of Chief Counsel

Suzanne N. Patnaude, Legal Specialist
suzanne.patnaude@bpu.nj.gov

Ira Megdal, Esq.
Cozen O'Connor
457 Haddonfield Road, Suite 300
P.O. Box 5459
Cherry Hill, New Jersey 08002
imegdal@cozen.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.nj.gov

Patricia Krogman, Esquire
Deputy Attorney General
Division of Law
Post Office Box 45029
Newark, NJ 07101-45029
patrica.krogman@law.njoag.gov

STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW

IN THE MATTER OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES' CONSIDERATION OF THE TAX CUTS AND JOBS ACT OF 2017	:	BPU DOCKET NO. AX18010001
IN THE MATTER OF THE ATLANTIC CITY SEWERAGE COMPANY'S PETITION WITH CALCULATION OF RATES UNDER THE TAX CUTS AND JOBS ACT OF 2017	:	BPU DOCKET NO. WR18030234 **STIPULATION**

APPEARANCES:

Ira G. Megdal, Esquire (Cozen O'Connor, attorneys) for The Atlantic City Sewerage Company, Petitioner;

Brian O. Lipman, Esquire and Susan E. McClure, Esquire, Division of Rate Counsel; (Stefanie A. Brand, Director, Division of Rate Counsel); and

Renee Greenberg, Esquire, Deputy Attorney General, (Gurbir S. Grewal, Attorney General of the State of New Jersey) on behalf of the Staff of the Board of Public Utilities ("Board Staff").

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

I. INTRODUCTION

1. The Atlantic City Sewerage Company ("ACSC" or the "Company") is a public utility corporation of the State of New Jersey, with its principal office at Suite 300, 1200 Atlantic Avenue, Atlantic City, New Jersey 08404.

2. The Company operates a sewage collection and transmission system within its defined service territory, consisting of the City of Atlantic City, New Jersey. Within its service territory, ACSC serves approximately 7,500 customers. The Company purchases its sewerage treatment from the Atlantic County Utilities Authority (the "ACUA").

3. The Tax Cuts and Jobs Act ("TCJA") was signed into law by President Trump on December 22, 2017.

4. The TCJA, *inter alia*, reduced the maximum corporate tax rate from thirty-five-35% to 21%, effective January 1, 2018.

5. On January 31, 2018, the New Jersey Board of Public Utilities ("BPU" or "Board") issued a Generic TCJA Order in BPU Docket No. AX18010001 ("January 31, 2018 Order") to commence a proceeding addressing the impact of the TCJA on New Jersey's public utilities and treatment of the tax savings that will accrue to the utilities as a result of the TCJA.

6. The January 31, 2018 Order, *inter alia* required utilities with 2017 revenues equal to or greater than $4.5 million to (i) file a petition with the BPU by March 2, 2018, detailing the impact of the TCJA and proposing final rates incorporating the effects of the TCJA; (ii) defer the effects of the TCJA upon their books and records as of January 1, 2018 (consistent with the effective date of the TCJA), with interest at the utility's approved overall weighted average cost of capital ("WACC") on the portion related to the accumulated deferred income taxes; and at the utilities short term debt rate for the portion related to the adjustment for grossing up the revenue requirement; (iii) provide tariff rates reflecting the new maximum corporate tax rate of 21%; and (iv) continue to defer the effects of the TCJA on the Company's federal income tax expense and accumulated deferred income taxes in its books and records until rates reflecting the effects become effective.

7. The Board's implementation of the TCJA affects the Company in, *inter alia*, four major areas: (i) impact of the reduction in federal income tax expense on ACSC's current revenue requirement; (ii) the tariff design for the implementation of the proposed rate reduction;

and (iii) the federal income tax differential for the period January 1, 2018 through March 30, 2018 (the "Stub Period") which was to be deferred and credited to customers with interest.

8. The Company filed a petition, docketed at BPU Docket No. WR18030234 (the "Petition") on March 2, 2018, pursuant to the Order.

9. The petition described the impact of the TCJA on the Company and included revised tariff rates, with supporting work papers that reflected the new lower corporate tax rate.

10. The Company deferred the effects of the TCJA on its federal income tax expense and accumulated deferred income taxes in its books and records, as ordered by the Board.

11. In the petition, ACSC calculated its income tax expense under the old tax rate of 34% and the new rate under the TCJA of 21%. ACSC is subject to a 34% tax rate, below the maximum corporate tax rate of 35% because its taxable income is less than $10 million. The recalculation resulted in an income tax expense reduction of $319,945. ACSC applied its gross up factor to reach the annual revenue reduction of $472,838.

12. Because the January 31, 2018 Order directed ACSC to provide tariff sheets reflecting the new tax rate at 21% to be effective on April 1, 2018, the Company supplied the same, along with detailed work papers showing how each rate was developed. ACSC proposed to implement the revenue reduction through both its fixed customer charges and its volumetric collection rate proportionately to provide the benefits of the TCJA equally among customers.

13. ACSC deferred with interest the impact on income tax expense resulting from the difference between the tax rate of 34% and of 21%, for the Stub Period. The Company proposed to record a deferral of the over collection evenly from January 1 through March 31, 2018, utilizing one-twelfth of $472,838 or $39,403 each month. The calculation of the total deferral

during the Stub Period totaled $119,096 including interest of $887. In arriving at the interest due as a result of the over collection, ACSC applied its actual short term borrowing rate of 4.5%.

14. In the petition, the Company proposed to refund the over-recovery through a bill credit to customers' accounts during the first possible month following the Board's authorization of the rate mechanism.

15. Relative to excess protected ADIT, the Company was only able to perform a high-level estimate. ACSC was not in a position to provide a rate mechanism related to refunding the excess ADIT to ratepayers. ACSC could not propose such a rate mechanism in the petition without potentially violating Internal Revenue Service ("IRS") normalization rules.

16. ACSC did not have personnel to perform the calculations, and engaged the firm of Deloitte and Touche ("Deloitte") to perform the ADIT calculations.

17. Relative to excess unprotected ADIT the Company again performed a high level calculation. The high level calculation demonstrated that ACSC's unprotected ADIT due from ratepayers totaled $240,242.

18. As noted, ACSC engaged Deloitte to perform detailed calculations of the protected ADIT, unprotected was calculated internally. Deloitte performed its calculations, and by letter dated November 9, 2018, ACSC filed an update with the BPU demonstrating the effects of calculations performed by Deloitte.

19. However, with the passage of time, the information contained in the November 9, 2018 update letter became outdated.

II. PRIOR BPU ORDERS IN THIS MATTER

20. The Board issued an Order in this matter dated March 26, 2018 ("March 26, 2018 Order").

21. The March 26, 2018 Order adopted the tariffs filed by ACSC, to be effective April 1, 2018. The Board noted that the rates set forth in said tariffs are interim, subject to refund, pending the outcome of this proceeding.

22. The March 26, 2018 Order also directed the Company to file tariff pages within five days of the effective date of the March 26, 2018 Order. The Company complied with the March 26, 2018Order, and those rates were made effective April 1, 2018, and at that time the Company returned the Stub Period over-recovery with interest via a bill credit.

23. The Board issued a subsequent Order on June 22, 2018 ("June 22, 2018 Order").

24. The June 22, 2018 Order directed the parties to submit all necessary information to the Board so as to allow the Board to consider final rates no later than the Board's November 2018 Public Agenda Meeting, or as soon thereafter as the Board may deem appropriate.

25. ACSC submitted an update by letter dated November 9, 2018, pursuant to this directive.

III. THE JANUARY 10, 2019 UPDATE

26. By letter dated January 10, 2019 ("Update"), ACSC updated the information contained it its November 9, 2018 letter. In the Update, ACSC requested that this matter will be considered on the Board's February 27, 2019 Agenda. The Update also requested that, if considered on the Board's February 27, 2010 Agenda, the effective date of the Board's February 27, 2019 Order be March 1, 2019.

27. The Update noted that effective April 1, 2018, ACSC implemented a rate decrease, to reflect the fact that the tax expense reflected in ACSC's rates had been calculated at the statutory 34% rate. The new rates, made effective April 1, 2018, were based upon the new statutory rate of 21%.

28. The Update noted that the April 1, 2018 rate reduction was based upon a reduction in income tax expense of $319,945.00. After applying ACSC's gross up factor, the rate decrease became an annual revenue reduction of $472,838.00.

29. ACSC has determined that the April 1, 2018 rate decrease was insufficient. Rather than $319,945.00 before gross up, it should have been $449,350.00 before gross up. By the Update, the Company proposed to correct this error, and address other issues remaining open in this matter.

IV. SUMMARY OF ACSC'S PROPOSAL

30. The Company's proposal in this matter is summarized as follows:

31. The Company's rate reduction effective April 1, 2018 was deficient by $129,405.00 before gross up. This additional amount must be returned to customers.

32. Deloitte determined that the Company had insufficient records as to assets placed into service prior to January 1, 1992 to apply the Average Rate Assumption Method ("ARAM") to Pre-1992 assets. As a result, ACSC applied the Reverse South Georgia Method ("RSGM") to Pre-1992 assets. As a result, for Pre-1992 assets, the RSGM results in an annualized return to customers of excess protected ADIT of $42,353.00.

33. Relative to Post-1991 additions, the Company was able to apply ARAM, in Deloitte's view. As a result, the Company proposes the return of excess protected ADIT of $20,863.00 utilizing the ARAM Method for Post-1991 assets.

34. The Company has calculated that $150,792.00 represents the deficiency in the rate reduction dated April 1, 2018, which must be returned to customers as of March 1, 2019.

35. Concerning unprotected ADIT, in ACSC's case, that amount is a regulatory asset, and is actually due from rate payers. That amount is $162,225.00. The remaining balance of the amount due to ratepayers as a bill credit for the period January 1, 2018 through March 31, 2018 is $3,711.00. The net amount due from rate payers from the April 1, 2018 rate decrease is $7,542.00. It is proposed that this amount will be recovered from customers over three (3) years, based upon the assumption that ACSC will have a rate case resulting in rates in effect by 2021.

36. This is an annualized recovery of $2,514.00.

37. The result is a total annual rate reduction required before gross up of $190,107.00. After applying the gross up factor, the result is the Company's proposal of a rate reduction to be effective March 1, 2019 of $280,954.00.

V. STIPULATED MATTERS

38. The Company, the New Jersey Division of Rate Counsel and Board Staff (collectively, "Parties") hereto have reviewed the Update, and agree that the Company's proposals therein are reasonable, and accept the same.

39. Attached to this stipulation of settlement ("Stipulation") as Exhibit A are tariff sheets which will implement this Stipulation, and applies the rate reduction of $280,954.00 after gross up. The Parties to this Stipulation agree that these tariff pages are reasonable, and should be accepted by the Board effective March 1, 2019.

40. Within 10 days of a Board Order accepting this Stipulation, the Company will make a compliance filing with the Board of final tariff sheets reflecting this Stipulation.

41. This Stipulation resolves all matters in this docket.

VI. MISCELLANEOUS

42. This Stipulation shall be binding on the Parties on approval of the Board. This Stipulation shall bind the Parties in this matter only and shall have no precedential value.

43. This Stipulation contains terms, each of which is interdependent with the others and essential in its own right to the signing of this Stipulation. Each term is vital to the agreement as a whole, since the Parties expressly and jointly state that they would not have signed the agreement had any term been modified in any way. Since the Parties have compromised in numerous areas, each is entitled to certain procedures in the event that any modifications whatsoever are made to this Stipulation.

44. If any modification is made to the terms of this Stipulation, the Parties each must be given the right to be placed in the position it was in before the Stipulation was entered into. It is essential that each Party be given the option, before the implementation of any new rate resulting from any modification of this Stipulation, either to modify its own position to accept the proposed changes, or to resume the proceeding as if no agreement had been reached.

45. The Parties believe that these procedures are fair to all concerned, and therefore, they are made an integral and essential element of this Stipulation.

46. This Stipulation may be executed in as many counterparts as there are signatories of this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

[SIGNATURES APPEAR ON NEXT PAGE]

THE ATLANTIC CITY SEWERAGE COMPANY

By: Ira G. Megdal
Ira G. Megdal, Esquire

Dated: February 6, 2019

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
ATTORNEY FOR STAFF OF THE NEW JERSEY
BOARD OF PUBLIC UTILITIES

By: Renee Greenberg
Renee Greenberg, Esquire
Deputy Attorney General

Dated: February 6, 2019

STEFANIE A. BRAND
DIRECTOR, DIVISION OF RATE COUNSEL

By: Brian O. Lipman
Brian O. Lipman, Esquire
Assistant Deputy Rate Counsel

Dated: February ~~6~~ 7, 2019

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EXHIBIT A

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Date of Issue: January 23, 2019
Issued by: THOMAS S. KAVANAUGH, President & General Manager
1200 Atlantic Avenue
Atlantic City, New Jersey

Effective for Service rendered on and after March 1, 2019.

Filed Pursuant to Decision and Order of the Board of Public Utilities in Docket No. WR18030234 dated February 27, 2019.

SCHEDULE OF RATES

Annual Rates

Fixed Charge

All customers shall pay the following annual fixed charge, based on the size of the water meter used in the rendering of water service:

Size of Meter	Total Annual Fixed Charge
5/8”	$254
3/4	441
1	1,298
1-1/2	3,200
2	6,344
3	15,455
4	32,505
6	105,079
8	154,523
10 or larger	248,329

Volumetric Collection Charge

In addition to the annual fixed charge, all customers shall pay $7.991 for each 1,000 cubic feet of metered water, measured to the nearest one-tenth.

Purchased Sewerage Treatment Adjustment Clause (PSTAC) Charge

In addition to the annual fixed charge and the volumetric collection charge, all customers shall pay $24.610 for each 1,000 cubic feet of metered water, measured to the nearest one-tenth, for sewerage treatment costs assessed the Company by the relevant treating wastewater facility.