

Matter of Incorporated Vil. of Sea Cliff v Public Serv. Commn. of the State of N.Y.
2018 NY Slip Op 33740(U)
May 9, 2018
Supreme Court, Albany County
Docket Number: 906087-17
Judge: Christina L. Ryba
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STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY :

In the Matter of the Application of INCORPORATED
VILLAGE OF SEA CLIFF, BOARD OF TRUSTEES
OF THE VILLAGE OF SEA CLIFF and EDWARD

DECISION/JUDGMENT

Index No. 906087-17

~~LIEBERMAN, Individually and as Mayor of the~~
Incorporated Village of Sea Cliff,

~~RJI No. 01-17-ST9036~~

Petitioners,

-against-

PUBLIC SERVICE COMMISSION OF THE STATE OF
NEW YORK, and NEW YORK AMERICAN WATER
COMPANY,

Respondents.

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Public Service Commission
Office of Counsel

APPEARANCES:

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RYBA, J.,

Petitioner Incorporated Village of Sea Cliff (hereinafter the Village) is a municipal corporation located within the service territory of respondent New York American Water District (hereinafter NYAW), which provides water services to approximately 124,000 customers located in Nassau, Putnam, Sullivan, Ulster, Washington and Westchester counties. Due to its acquisition of various other water companies over the years, NYAW operated under four separate tariffs covering a dozen water supply districts, including the

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Sea Cliff District which includes the Village. Pursuant to a 2012 acquisition order permitting NYAW to acquire the water works corporation that previously provided water service in the Sea Cliff District, respondent Public Service Commission of the State of New York (hereinafter the Commission) approved a moratorium prohibiting NYAW from imposing rate increases until March 31, 2015 and directing that NYAW consider establishing consolidated uniform rates within all of its service territories. In April 2016, NYAW applied to the Commission for (1) certain tariff revisions designed to increase revenues by approximately \$8.5 million for the rate year ending in March 2018, (2) consolidation of its various service territories into two territories with proposed increased revenues for both, and (3) consolidation of the terms and conditions of its tariffs covering these territories.

After the Commission and NYAW entered into a Joint Proposal to address various issues related to the rate change application, lengthy settlement negotiations ensued resulting in multiple adjournments of the evidentiary hearing on the application. Ultimately, the evidentiary hearing was conducted and the Commission thereafter issued an "Order Establishing Rates for Water Service" (hereinafter the Order), dated May 18, 2017, in which it approved the rate change application in part through the adoption of a four-year rate plan for the 12 water districts served by NYAW. The Order consolidated the non-contiguous Merrick District and Sea Cliff District into NYAW Service Area 2 and approved a rate increase, largely due to the heavy property tax burden affecting the area. However, in approving the rate increase, the Commission declined to require the Merrick District to share the higher property tax expenses of the Sea Cliff District, resulting in higher rate increases for the Village.

Petitioners subsequently commenced this hybrid CPLR Article 78 proceeding and action for a declaratory judgment seeking to annul the Order on the ground that it requires rate payers in the Village to pay charges that are unjust, unreasonable, unlawful and discriminatory. Presently before the Court are

separate motions by the Commission and NYAW to dismiss the petition, a motion by nonparty Town of Oyster Bay to file an amicus brief, a motion by nonparty North Shore Central School District to intervene, and a cross motion by the Commission for a stay. The Court conducted oral argument and has considered all papers submitted in opposition to the petition, the motions and the cross motion.

In support of its motion for a stay, the Commission submits an "Order Initiating Investigation", issued by the Commission on January 18, 2018. In this document, the Commission directs the initiation of an investigation into certain computational errors made by NYAW in the calculation of property tax values which formed the basis for rate increases in the Sea Cliff District. These computational errors were disclosed to the Commission in a December 2017 Petition to Reconcile filed by NYAW for the purpose of addressing property value calculation errors which had apparently resulted in inflated tax expenses and customer overcharges in the Sea Cliff District. In the Order Initiating Investigation, the Commission directed its staff to conduct an administrative investigation into NYAW's disclosures and report on its findings no later than April 30, 2018. Significantly, the investigation and report was required to include a review to ensure that NYAW's customers were not being billed for property tax overcharges.

By letter dated May 4, 2018, the Court was advised that the Commission's staff completed its investigation and issued a report dated April 30, 2018 which discussed the accuracy of NYAW's tax calculations and the resulting effect of its alleged error on customers in the Sea Cliff District. The staff report, which among other things found that NYAW's erroneous tax calculations caused a \$2.3 million overpayment by Sea Cliff customers, is scheduled for publication on May 23, 2018 followed by a 60-day period for public comment in accordance with the State Administrative Procedure Act. At the conclusion of the comment period, the Commission must address the public comments as well as the recommendations set forth in the staff report and render a final determination in the matter. The Commission contends that a

stay of the present proceedings is required while the underlying matter before the Commission is still pending.

The Court is vested with the discretion to stay an action pending the resolution of another matter, provided that doing so would preserve judicial resources and advance the interests of justice without creating any significant prejudice to the opposing party (see, CPLR 2201; Concord Assoc. v EPT Concord LLC, 101 AD3d 1574, 1575 [2012]). In its discretion, the Court concludes that a stay of the present proceedings until the matter pending before the Commission is resolved would promote judicial economy by avoiding the potential duplication of effort and waste of judicial resources that would occur in the event that the Commission's determination renders some or all of the issues raised in this proceeding moot. Furthermore, the Court is not persuaded that the parties opposing the stay have demonstrated any significant prejudice that would result therefrom. Accordingly, the cross motion for a stay is granted and determination of the present proceeding and all remaining motions are hereby held in abeyance pending further order of the Court.

ORDERED that the cross motion to stay the proceedings is granted, and it is further

ORDERED that this proceeding and all pending motions are hereby stayed pending further order of the Court, and it is further

ORDERED that respondent Public Service Commission of the State of New York is directed to notify the Court in writing of the status of the proceeding pending before the Commission no later than September 4, 2018.

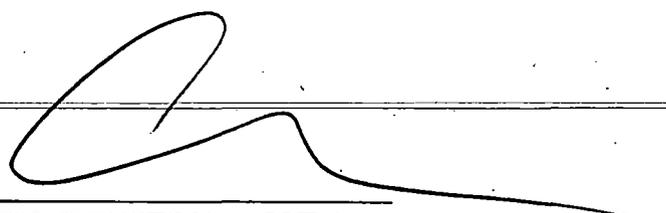
This Memorandum constitutes the Decision and Order of the Court. This original Decision and Order is being returned to the attorney for the respondent Public Service Commission of the State of New York. The below referenced original papers are being transferred to the Albany County Clerk. **The**

signing of this Decision and Order shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the provision of that rule regarding filing, entry, or notice of entry.

SO ORDERED.

ENTER.

Dated: *May 9, 2018*



HON. CHRISTINA L. RYBA
Supreme Court Justice

