



STATE OF NEW JERSEY
Board of Public Utilities
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WATER

IN THE MATTER OF THE PETITION OF NEW)
JERSEY-AMERICAN WATER COMPANY, INC. FOR)
APPROVAL OF A MUNICIPAL CONSENT)
GRANTED BY THE TOWNSHIP OF LONG HILL,)
COUNTY OF MORRIS)

ORDER

DOCKET NO. WE20020117

Parties of Record:

Stephen R. Bishop, Esq., New Jersey-American Water Company, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this matter, the New Jersey Board of Public Utilities ("Board") considers a petition filed by New Jersey-American Water Company Inc. ("NJAWC" or "Company" or "Petitioner") for approval of a municipal consent granted by the Township of Long Hill, County of Morris ("Township").

BACKGROUND

On February 6, 2020, NJAWC filed a verified petition with the Board pursuant to N.J.S.A. 48:2-14, N.J.S.A. 48:13-11, N.J.A.C. 14:1-5.5, and N.J.A.C. 14:1-5.11 to -15, seeking approval of the following: (1) a municipal consent, Ordinance No. 450-20 ("Ordinance"), adopted January 22, 2020 by the Township to allow Petitioner to provide wastewater service to the customers in the Township ("Proposed Franchise Area"); and (2) the expansion of NJAWC's service territory to include customers in the Proposed Franchise Area.

NJAWC is a regulated public utility corporation engaged in the production, treatment, and distribution of water and the collection and treatment of sewage within its defined service territory, which includes portions of the following counties: Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union, and Warren.

The Township encompasses 12 square miles and has a population of approximately 8,702 residents. The Township, through its Public Works Department, operates and maintains a wastewater management system that includes a wastewater treatment plant, eight sanitary pump stations, and a wastewater collection system including 286,290 linear feet of sanitary sewers, 1,260 sanitary manholes, 15,200 linear feet of force mains, and 221,325 linear feet of privately owned service laterals (collectively, "Wastewater System"). The Township's treatment plant, located at 1223 Valley Road (Block 10411, Lot 6), was built in the 1930s and expanded in 1975, 1984, and 1991. Approximately 88% of the Township's residential units and nearly 100% of the commercial and industrial properties in the Township are connected to the Wastewater System, which serves 2,800 customers, most of whom already receive water service from NJAWC.

THE PROPOSED TRANSFER AND FRANCHISE AREA EXPANSION

On December 30, 2019, NJAWC and the Township executed an Asset Purchase Agreement ("Agreement") for the sale and purchase of the Wastewater System serving the customers of the Township of Long Hill. The Agreement provides for the purchase of the Wastewater System, subject to various contingencies, including the approval by the Board of the municipal consent, but is not contingent on the rate treatment granted by the Board.

The Township determined that the bid submitted by NJAWC in the amount \$12,700,000 was the highest responsible (and only) bid. Pursuant to N.J.S.A. 40:62-5, on November 5, 2019, the Township held a referendum on whether or not to approve the acquisition of the Wastewater System by the Petitioner. The referendum resulted in an overwhelming approval of the acquisition.

Petitioner has obtained consent from the Township to construct, lay, maintain, and operate the necessary wastewater treatment facilities, main, pipes and appurtenances throughout the geographical area of the Township and to provide wastewater services within the Township. The Township passed the Ordinance providing consent on January 22, 2020.

NJAWC provides drinking water services to the Township. In the event of an emergency, NJAWC would follow similar procedures and protocols to that of drinking water emergencies for sewer emergencies. When an emergency is reported to the Company's 24/7 Hotline, necessary responders would be dispatched from NJAWC's Short Hill's operations center.

IMPACT ON NEW JERSEY-AMERICAN WATER COMPANY, INC.

The Company represents that the expansion of its service territory will not impose any negative impacts on current NJAWC customers or its ability to provide safe and adequate service. It also indicates that it has successfully owned and operated wastewater systems in New Jersey for many years. This franchise expansion and transfer will allow NJAWC, a company with extensive resources, to use its knowledge, expertise, and access to capital to operate the Township's system in a way that will ensure safe and dependable service to its customers and moderate future rate impacts. It will also result in operational and administrative efficiencies and enable NJAWC to maintain economies of scale as the Township's former customers and assets are integrated into NJAWC's system.

IMPACT ON THE LONG HILL TOWNSHIP SYSTEM CUSTOMERS

NJAWC is requesting that the Township Wastewater Systems be merged into NJAWC. The Petitioner proposes that it charge the Township's customers the current rates of the Township until the next base rate proceeding.

SPECIFIC BENEFITS TO CUSTOMERS OF THE WASTEWATER SYSTEM

The Petitioner states that the Agreement will promote the public interest and result in the following positive benefits:

1. NJAWC's size and scale enable the Company to address the wastewater needs of the Township customers well into the future.
2. The customers of the Township will benefit from becoming a part of NJAWC, a substantially larger utility regulated by the Board. These customers will receive the benefits of industry standard best practices in the areas of planning, research, environmental compliance, customer service, finance, risk management, operations, service delivery, and management.
3. After the approval of the Agreement, the Township customers will have access to NJAWC's customer service call center to resolve any customer service issues that may arise.

THE MUNICIPAL CONSENT

The Ordinance provides the Petitioner with "an exclusive and perpetual franchise to provide sewer service within Township, and the municipal consent of the Township to permit said Company to extend sewer service and its related facilities to the Township." Id. at 1. With regard to the use of the streets, the Ordinance provides in part as follows:

[T]he Company has requested the consent of the Township as required by N.J.S.A. 48:3-11 and 48:3-15 for the use of the streets, with such consent limited to the fifty (50) year duration set forth in N.J.S.A. 48:3-15, including the consent of the Township pursuant to N.J.S.A. 48:13-11, as amended, to lay its pipes, valves, pumps, manholes and other equipment beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for such privilege . . .

[ibid.]

NJAWC intends to operate the Wastewater System pursuant to the existing municipal consent granted under the Ordinance. The municipal consent, adopted on January 22, 2020, by the Township, allows the Petitioner to lay, maintain, and operate the necessary wastewater treatment facilities, mains, pipes, and appurtenances throughout the Township and to provide wastewater service within the Township.

On April 2, 2020, a duly noticed municipal consent hearing on the Company's petition was held via teleconference. Suzanne Patnaude, Esq., Legal Specialist, presided over the hearing at which representatives of the Company, the New Jersey Division of Rate Counsel ("Rate Counsel"), and Staff appeared. No members of the public appeared at the hearing or filed written comments.

THE WATERSHED PROPERTY REVIEW BOARD

The Watershed Property Review Board ("WPRB") consists of the President of the Board, the Commissioner of the New Jersey Department of Environmental Protection ("NJDEP"), and the Commissioner of the New Jersey Department of Community Affairs ("NJCA").

The Township seeks to sell its assets, including certain property containing its sewer systems located in the Township of Long Hill, Morris County, to NJAWC. The Township and NJAWC, by way of a joint application dated March 11, 2020, requested an exemption from the WPRB to allow this sale to proceed. Without the exemption, conveyance of the property may be prohibited by the Watershed Protection and Moratorium Act, P. L. 1998, c. 163, as amended by P.L. 1990, c. 19.

WPRB Staff thoroughly investigated the Wastewater System property for sale. On April 21, 2020, the WPRB issued the attached Order Granting Exemption.

THE NEW JERSEY DIVISION OF RATE COUNSEL ("RATE COUNSEL") COMMENTS

By letter dated April 28, 2020, Rate Counsel submitted its comments to the petition and stated that, subject to certain conditions, it is not opposed to the request for approval of the municipal consent. In sum, Rate Counsel recommends that the Board modify the term of the municipal consent to 50 years for the specific authorization to provide sewer service within the Township. In addition, Rate Counsel recommends that the Board condition its approval of the petition to specify that transaction costs cannot be recovered in rates; namely, that there be no authorization to include any specific assets or amounts in rate base, or authorization for any other ratemaking treatment.

On May 1, 2020, the Company filed a response to Rate Counsel's comments, asserting that there is no legal bar to the granting of a municipal consent with an unlimited duration for the provision of wastewater services. The Company further stated that such grant is reasonable and prudent for the provision of such services. NJAWC added that it believes that it has demonstrated that approval of the municipal consent will serve the public convenience and properly service the public interest. NJAWC indicated that will address any other issues raised in an appropriate subsequent proceeding before the Board.

DISCUSSION AND FINDINGS

The consent granting a utility the right to provide service within the municipality is governed by N.J.S.A. 48:2-14. N.J.S.A. 48:2-14 does not impose a limitation on the duration of the municipal consent granting a utility the right to provide service and provides in part as follows:

No privilege or franchise granted after May first, one thousand nine hundred and eleven, to any public utility by a political subdivision of this state shall be valid until approved by the board. Such approval shall be given when, after hearing, the board determines that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests. In granting its approval the board may impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require.

In the same vein, N.J.S.A. 48:13-11 states in part as follows:

Every sewerage company organized under the laws of this State may lay its pipes and conduits beneath such public roads, streets, avenues and alleys as it may deem necessary for its corporate purposes, upon complying with the terms and conditions upon which the consent of the corporate authorities to the organization of the company shall have been obtained, provided that the consent to the laying of such pipes shall be obtained of any municipality through which the same may be laid.

The Board has reviewed Rate Counsel's recommendations and the response filed by NJAWC and has determined that there is no legal bar to the grant of a municipal consent for the provision of service with an unlimited duration. See In the Matter of the Petition of New Jersey-American Water Company, Inc. for Approval of a Municipal Consent Granted by the Borough of Mount Ephraim, County Of Camden, Docket No. WE19010117, Order dated June 21, 2019; 2019 N.J. PUC LEXIS 148, *4 (N.J. P.U.C. June 21, 2019) ("NJAW has agreed to the Borough's franchise term for the provision of service, which is perpetual, as well as the use of the streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which limits the use to a term of 50 years."); In the Matter of the Petition of Suez Water New Jersey Inc. for the Approval of Municipal Consent to Own and Operate Water and Sewer Systems in the Township of West Milford and Approval of the Issuance of Revised Tariff Sheets Setting Forth Suez Water New Jersey Inc.'s Expanded Service Area Related to the Transfer of Water and Sewer Assets from the Township of West Milford to Suez Water New Jersey Inc., Docket No. Order dated October 29, 2018; 2018 N.J. PUC LEXIS 235, *12-13 (N.J. P.U.C. October 29, 2018) ("Although the Ordinance does not specify a period for the use of the streets, a municipality may consent to the use of its streets or surfaces, but only for a period not exceeding 50 years. N.J.S.A. 48:3-15. However, N.J.S.A. 48:2-14 sets no limit for the duration of the municipal consent or franchise for the provision of service."); In re City of Trenton and New Jersey-American Water Company, Inc., BPU Docket No. WM08010063, Order dated April 3, 2009 (approving three municipal consents of perpetual duration).

The Board notes that NJAWC represents it will continue to charge the Township customers' existing rates until at least NJAWC's next base rate case.

The Board, having reviewed the petition and the entire record, **FINDS** that the municipal consent is necessary and proper for the public convenience and properly conserves the public interest.

Accordingly, the Board **HEREBY APPROVES** the municipal consent, Ordinance No. 450-20, adopted January 22, 2020, granted to NJAWC by the Township. The Board **HEREBY APPROVES** an initial tariff for the Township customers to be incorporated into the NJAWC tariff.

The Board **HEREBY APPROVES** the continuation of the current Wastewater System rates charged by the Township.

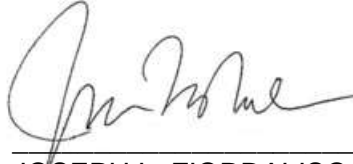
The Board **FURTHER APPROVES** the proposed merger of the Wastewater System into NJAWC as more fully described in the petition. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the proposed acquisition is in the public interest subject to the following conditions.

1. This Order is based upon the specific and particular facts of the Agreement and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any matter affecting the Company.
3. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liabilities now owned or hereafter to be owned by NJAWC.
4. The Petitioner shall not depreciate any portion of the wastewater system expansion that is funded by Contributions in Aid of Construction.
5. As required by N.J.S.A. 48:3-15, the municipal consent for the use of streets is limited to a term of 50 years.
6. Approval of this municipal consent does not constitute approval by the Board of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, cost of construction, contributions in aid of construction, depreciation of contributed plant, the cost of connection or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding.
7. Approval of this municipal consent does not constitute approval of any specific main extension or plan for service. In extending service, NJAWC must comply with all applicable laws.
8. Within 30 days of the date of the closing, the Petitioner shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation of all expenses related to the proposed Agreement.
9. Within 10 days of the date of the closing, NJAWC shall submit any revised tariff pages that may be necessary as a result of the proposed Agreement.
10. Board Staff is authorized to approve, subject to comments filed by Rate Counsel, any written request by the Petitioner for additional time to comply with any applicable items above.

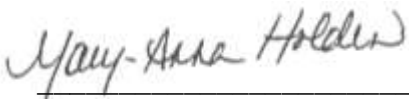
The Order shall be effective on May 30, 2020.

DATE: May 20, 2020

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

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