



Agenda Date: 02/11/15  
Agenda Item: 5A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF THE PETITION FOR APPROVAL ) ORDER OF APPROVAL  
OF THE ACQUISITION OF THE ASSETS OF THE )  
SEAVIEW HARBOR WATER COMPANY, LLC AND )  
OTHER REQUIRED APPROVALS ) DOCKET NO. WM13100957

**Parties of Record:**

**Colleen A. Foley, Esq. Saul Ewing LLP**, on behalf of Aqua New Jersey, Petitioner  
**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

**BY THE BOARD<sup>1</sup>:**

Aqua New Jersey, Inc. ("Aqua" or "Company" or "Petitioner") is a public utility corporation of the State of New Jersey and it is engaged in the distribution of water subject to the jurisdiction of the Board of Public Utilities ("Board"). Aqua's principal place of business is located at 10 Black Forest Road, Hamilton, New Jersey. Aqua provides water distribution and related services to approximately 50,900 residential, commercial and industrial customers located in Mercer, Burlington, Camden, Hunterdon, Gloucester, Sussex, Monmouth and Ocean Counties. Aqua also provides wastewater collection, treatment and transmission for approximately 5,430 wastewater customers.

Seaview Harbor Water Company, LLC ("Seaview Harbor" or "Seller") is a small water production and distribution public utility presently serving 93 residential customers and a municipal customer in the Seaview Harbor section of Egg Harbor Township ("Township"). On August 28, 2013, the Township granted a municipal consent to the Petitioner for the provision of water service to the Seaview Harbor section of the Township ("Franchise Area") through Ordinance No. 28-2013.

On October 17, 2013, Aqua filed a petition with the Board pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.S.A. 48:2-24, N.J.S.A. 48:2-14, N.J.A.C. 14:1-5.5 and N.J.A.C. 14:1-5.14 requesting approval of the following: (a) the municipal consent of August 28, 2013, granting Aqua a franchise to operate and maintain the Seaview Harbor water facilities and provide water

<sup>1</sup> Commissioner Upendra J. Chivukula recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

service to the designated Franchise Area in the Township; (b) monthly billing, upon completion of the asset sale transaction; (c) the abandonment of fire protection service by Seaview Harbor<sup>2</sup> and the discontinuance of utility service by Seaview Harbor in the Franchise Area; and (d) the acquisition of certain assets now owned by Seaview Harbor.

The Township encompasses 74.943 square miles of which 66.598 square miles of it is land and 8.336 square miles of it is water. It has a population of approximately 43,323 people. Seaview Harbor is a section of the Township located in Atlantic County, New Jersey.

On February 22, 2013, the Petitioner and the Seller entered into an Asset Purchase Agreement ("Agreement") regarding the sale of Seaview Harbor's water system assets to Aqua. The purchase price for the water system is \$225,000. According to paragraph 1.1(b) of the Agreement, Seaview Harbor will sell the Petitioner the portion of land that contains the various components of the water system facilities. Seaview Harbor intends to retain the remaining undeveloped portion of the land for possible future development. These two lots front Longport-Somers Point Boulevard. The purchase price when the current Seaview Harbor owners bought the utility was \$425,000. The asset sale price for the water system assets being sold to Aqua is \$225,000, representing a loss of \$200,000. Seaview Harbor will survive the sale transaction and continue to own the two lots.

In paragraph 1.3 (c), the Agreement further provides in that the Petitioner will pay the Seller a fee of \$2,000 per new residential connection to the water system within the next ten years. Aqua will need to comply with the main extension rules were it to connect the two undeveloped residential lots or any other properties to the Seaview Harbor water system. In approving this docketed matter, the Board is not approving any ratemaking treatment of the transaction.

There will be no impact on the Company's ability to provide safe, adequate and reliable service. The new customers will have customer assistance through the Southern Division's office located in Blackwood, including a 24 hour emergency line. The Company will provide daily on-site visits by a Licensed Operator to operate and supervise system operations.

Aqua will operate the water system on a standalone basis. Plant maximum output is estimated at 720,000 gallons per day (gpd) when combining the outputs of wells #1 and #2. These wells provide water to the system through a 10,000 gallon hydropneumatic tank. The system demand on average is 20,000 gpd with a monthly maximum demand of 42,000 gpd. There are eight fire hydrants in the system which are currently used to provide public fire service. According to paragraph 5.6 (b), the Agreement, the Seller is presently providing fire protection service, but the water system is not fully capable of doing so due to the limited water storage capacity of the water system. The Agreement also provides that: (1) the Seller and Aqua will jointly petition the Board; (2) the asset purchase will not take place until the Board authorizes the termination of the provision of public fire protection service; and (3) Seller provides timely written notice to the residents of the Township and the municipal fire department of the abandonment of public fire protection service. Therefore, the Seller should cease charging the municipality for public fire protection service under its current tariff<sup>3</sup>. According to a statement made by Joe Stewart, Managing Partner of Seaview Harbor in an email dated December 31, 2014, the fire protection

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<sup>2</sup> The Petition provides, "[a]s further noted in Section 5.6(b), [of the Agreement] Seller and Aqua also seek the Board's approval to terminate the provision of public fire protection service by Seaview Harbor."

<sup>3</sup> A hydrant test report was submitted on December 31, 2014, indicating that the fire hydrants meet the minimum criteria of a Class 8B rating.

system meets the minimum criteria of an insurance service office standard Class 8B rating. There is a Mutual Aid Agreement which the Township is a party to in Atlantic County. This Mutual Aid Agreement is comprised of the neighboring towns of Longport, Somers Point and Margate to act as first responders in the event of a fire in the Franchise Area. While the existing fire hydrants are not capable of providing adequate water volume to meet complete fire protection needs, they are capable of providing flows of 350 gpm for a period of 20 to 30 minutes. The Company intends to remove the existing eight fire hydrants from the system, as soon as practicable and install flush mount hydrants instead.<sup>4</sup>

Aqua intends to make capital investments to the water system of approximately \$300,000 over a five year period which will benefit the Seaview Harbor customers. The \$300,000 includes the installation of Radio Frequency meter technology, supervisory control and data acquisition, the addition of chemical feed to implement chlorination, chlorine contact line and implementation of main repairs and replacements.

Upon the closing of the sale of Seaview Harbor's water utility operations will be taken over by Aqua and Seaview Harbor will terminate its franchise. Seaview Harbor's customers will become Aqua customers, and there will be no interruption of service. After reviewing the petition and investigation the Board **FINDS** that the discontinuance of service to residential customers by Seaview Harbor will not have an adverse impact on public convenience and necessity. The Board **HEREBY APPROVES** the discontinuance of service pursuant to N.J.S.A. 48:2-24.

Pursuant to Paragraph 5.6 (a) of the Agreement, Aqua will continue charging residents the same tariff rates that are currently in effect to Seaview Harbor's residential customers with the right to convert to monthly billing for such customers. In I/M/O the Petition of Seaview Harbor Water Company, LLC (Docket No. WE05090784, November 30, 2007), the Board approved the acquisition of Seaview Harbor from its predecessor company Seaview Water Company. The Board also approved Seaview Harbor's request "to continue unchanged the present rates" of Seaview Water Company. Seaview Water Company's then current rates were approved by the Board in I/M/O the Petition of Seaview Water Company (Docket No. WR98040193, October 1, 1999). As provided in its tariff, Seaview Harbor currently bills its customers quarterly. Aqua will continue to charge Seaview Harbor's current rates but, as provided by the Agreement, has reserved the right to convert from quarterly to monthly billing. The Board **HEREBY APPROVES** Aqua's newly filed Seaview Harbor Tariff which will continue Seaview Harbor's current rates.

On December 9, 2014, a duly noticed public hearing on the petition was held at the Board's Trenton office. Legal Specialist, William Agee, Esq. presided over the hearing at which representatives of the Company, Division of Rate Counsel and Board Staff appeared. Additionally, some members of the public attended the public hearing. The Petitioner submitted both Rate Counsel's and Staff's discovery requests and responses to be placed into the record. After the conclusion of the hearing, Staff submitted additional discovery requests to Petitioner on December 12, 2014. All the material submitted at the hearing and the post hearing discovery questions and responses are included as part of the record. The following exhibits were marked into evidence:

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<sup>4</sup> As per response to SE-33

P-1. The Petition and attached exhibits including the Asset Purchase Agreement (Exhibit A), Municipal Ordinance granting the franchise (Exhibit B), Background Information (Exhibit C) and the Inspection Summary Report (Exhibit D).

P-2. The published Public Notice.

P-3. The responses to discovery including SE-1 to SE-39, SR-1 to SR-3, RCR-1 to RCR-34. Additionally, the Seller and the Petitioner did not object to the inclusion of the responses to SE-40 to SE-42.

At the December 9, 2014 hearing, Peter Miller, the Township Administrator for the Township of Egg Harbor, testified that the fire protection service provided to the Seaview Harbor residents was inadequate for years. He testified that while inadequate, the hydrants were capable of providing water flow for a short period of time and, as such, were useful and beneficial for the initial stages of firefighting. He requested that the Petitioner provide, to the Volunteer Fire Company, any special equipment needed to connect to the proposed flush mount hydrants. In response to this request and concerns raised by Board Staff, the Petitioner agreed to: (1) to provide the connecting apparatus to the Volunteer Fire Company, which Petitioner asserts will not require any maintenance except to keep it clean; (2) provide a flag or other reference marker for firefighters to locate these flush mount hydrants; and (3) work with the Volunteer Fire Company on the appropriate use of the connecting apparatus to the flush mount hydrants.<sup>5</sup> Mr. Miller further testified that any distribution of assets from the sale should be shared with ratepayers.

At the December 9, 2014 hearing, Ed McGlinchey, a resident in the Township, spoke favorably of the proposed transaction between Seaview Harbor and Aqua.

The Seaview Harbor residents will be charged at Seaview Harbor's existing rates for service, as set forth in its Board approved tariff. These residents will be billed monthly at a consumption charge of \$9.602 per 1,000 gallons, with a fixed monthly charge of \$36.44 for customers with a 5/8 inch size meter.

By letter dated January 30, 2015, Rate Counsel submitted its comments on the Petition and is not opposed to its approval. Rate Counsel recommends that the Board not authorize the inclusion in rate base of any asset and any associated ratemaking determination should be addressed in a future base rate proceeding. Rate Counsel further recommends the inclusion of specific language in any Board Order approving the Petition, which is incorporated in this Order.

The Board is mindful of the unique nature of this transaction, which includes Seaview Harbor discontinuing Utility Service, but continuing to exist and retaining two pieces of real property. The Board is also mindful of the \$200,000 difference between the purchase price of Seaview Harbor and the current asset sale price without the two pieces of real property. As Seaview Harbor will survive this transaction, the Board will not speculate as to the effect of any future sale of any asset not transferred to Aqua through the Asset Purchase Agreement.

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<sup>5</sup> As per responses to SE-40 and SE-41.

With regard to the information evaluation required under N.J.S.A. 48:2-51.1 and based upon the Petition, discovery, and information in the record, the Board **HEREBY FINDS** as follows:

**Competition:** The transaction contemplated by the Agreement will not adversely impact competition because there is limited competition between water utilities in New Jersey and Seaview Harbor's customers will continue to be served by the same water system in an identical franchise territory, but with the benefit of Aqua's management experience and planned improvements.

**Customer Rates:** The proposed transaction will not have any adverse impact on the existing rates as Aqua's newly filed tariffs will charge the same rates as were previously charged by Seaview Harbor. There will be no rate increases to customers as a result of the proposed transaction.

**Employees:** The transaction will have no adverse impact on employees as Seaview Harbor currently does not have any employees.

**Provision of Safe and Adequate Service:** Aqua will see to it that the system is upgraded to provide safe, adequate and proper service to its customers in fulfillment of its obligations under New Jersey law. The Board believes that the asset acquisition and provision of service by Aqua, including the above improvements, as well as the benefits of being part of a large investor owned utility, benefit the current customers of Seaview Harbor, by giving them access to a bigger more robust utility that is able to make necessary investments in its system.

The Board **HEREBY APPROVES** the Municipal Consent, Ordinance No. 28-2013 dated August 28, 2013, granted to Aqua New Jersey, Inc. by Egg Harbor Township. Based on the foregoing discussion, the Board **HEREBY APPROVES** the implementation of monthly billing as part of the closing of the proposed asset sale. The Board **HEREBY APPROVES** the abandonment of fire protection service by Seaview Harbor. The Board, however, **HEREBY NOTES** that Aqua has agreed to provide the local volunteer fire department with the necessary equipment to connect to any newly installed flush mount fire hydrants. The Board **HEREBY APPROVES** the acquisition of certain utility assets now owned by Seaview Harbor. The Board **HEREBY APPROVES** the discontinuance of utility service by Seaview Harbor in the Franchise Area upon closing of the proposed asset sale.

The approvals granted, hereinabove, shall be subject to the following provisions:

1. This Order shall not be construed as directly or indirectly fixing for any purposes, whatsoever, the value of any tangible or intangible assets now owned or hereafter to be owned by the Company.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any future proceeding, with respect to rates, franchise, services, financing, accounting, capitalization, depreciation or in any other matters affecting the Company.

3. In an appropriate subsequent proceeding, the Company shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this Petition shall be allocated to ratepayers. Approval of this municipal consent does not include authorization to include in rate base the specific assets that are or will be completed as a result of the new franchise area.
4. 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.
5. Approval of this municipal consent does not constitute approval of any specific main extension or plan for service. In extending service, Aqua must comply with all applicable laws.
6. Petitioner shall notify the Board, in writing of the closing date within thirty (30) days of closing.
7. Seaview Harbor shall file with the Board its 2014 Annual Report pursuant to N.J.A.C. 14:3-6.3.
8. Seaview Harbor shall file with the Board, within thirty (30) days of closing, its Statement of Gross Intrastate Operating Revenues for the Year Ended December 31, 2014 (Form AR-3-1).
9. Pursuant to the applicable statutes, Seaview Harbor shall be responsible for the Board of Public Utilities' and the Division of Rate Counsel's assessment liability based upon Seaview Harbor's 2014 Gross Operating Revenues.
10. Aqua shall apply the rates currently charged by Seaview Harbor to its residential customers within thirty (30) days of the date of this Order.
11. Aqua shall submit tariff pages reflecting the addition of Seaview Harbor to its service territory.
12. Aqua shall submit tariff pages reflecting the addition of Seaview Harbor to its rate schedules.
13. Aqua has reserved the right to convert the rates currently charged Seaview Harbor from quarterly billing to monthly billing. Aqua shall notify the Board thirty days (30 days) prior to the conversion from quarterly to monthly billing. In addition, Aqua shall submit tariff pages which reflect the conversion from quarterly billing to monthly billing for Seaview Harbor's customers.
14. The Board's decision in this matter to permit Seaview Harbor to discontinue utility service to residential customers pursuant to N.J.S.A. 48:2-24 is based solely upon the

finding that there will be a continuity of service to those residential customers previously served by Seaview Harbor who will now be served by Aqua.

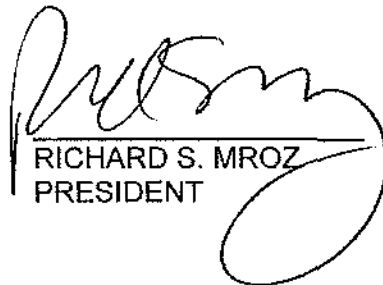
15. The request to discontinue public fire protection service is **HEREBY APPROVED.**

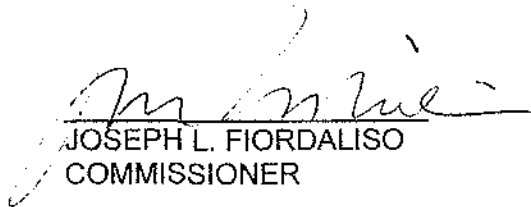
16. Pursuant to its agreement at the public hearing, Aqua shall provide the local fire department the appropriate equipment to connect to the flush mount hydrants being installed by Aqua.

This Order shall be effective on February 23, 2015.

DATED: 2/11/15


BOARD OF PUBLIC UTILITIES  
BY:

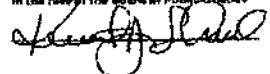
  
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JOSEPH L. FIORDALISO  
COMMISSIONER

  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

ATTEST:  
  
KENNETH J. SHEEHAN  
SECRETARY

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


IN THE MATTER OF THE PETITION FOR APPROVAL OF THE ACQUISITION OF THE  
ASSETS OF THE SEAVIEW HARBOR WATER COMPANY, LLC AND OTHER REQUIRED  
APPROVALS - DOCKET NO. WM13100957

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