



Agenda Date: 3/18/15  
Agenda Item: 5C

**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/**

WATER

IN THE MATTER OF THE APPLICATION OF FAYSON )  
LAKE WATER COMPANY FOR THE *NUNC PRO TUNC* )  
APPROVAL OF ENTRY INTO A LOAN AGREEMENT; )  
ISSUANCE OF A NOTE; GRANT OF SECURITY AND )  
OTHER APPROPRIATE RELIEF )

ORDER

DOCKET NO. WF14121444

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Thomas C. Kelly Esq.**, Russo Tumulty Nester Thompson & Kelly, LLP, for Petitioner

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

On December 28, 2014, Fayson Lake Water Company (“Petitioner”), a public utility in the State of New Jersey, subject to the jurisdiction of the Board of Public Utilities (“Board”) filed a petition (“Petition”) seeking *nunc pro tunc* approval, pursuant to N.J.S.A. 48:3-7, N.J.S.A. 48:3-9 and N.J.A.C. 14:1-5.9, of a Loan Agreement including the issuance of a long term notes; the grant of a mortgage, security and other related actions. In addition, Petitioner seeks approval to convert the intended short-term loan into a 15 year long-term loan.

Petitioner is water public utility providing water service to several residential communities in Kinnelon, Morris County, New Jersey. Petitioner serves approximately 900 residential customers in those communities. Following the filing of the Petition, Staff issued data requests on January 21, 2015. Among other issues, Board Staff sought clarity on issues surrounding the duration of the intended short term loan. The Petitioner provided responses on January 25, 2015.

Pursuant to N.J.A.C. 14:1-5.9(a), a public utility must seek Board approval prior to entering into stocks, bonds, notes, mortgages or similar instruments which is “payable in more than one year from the date thereof.”

On or about April 30, 2014, Petitioner entered into a Loan Agreement with Highlands State Bank, Vernon, N.J. for loan or loans totaling \$1,550,000. The initial loan was intended to be a short term note (less than 365 days) for which no Board approval would have been necessary. However, through a scrivener’s error the term of the initial loan exceeded the approval free short

<sup>1</sup> President Richard S. Mroz recused himself due to a potential conflict of interest and as such took no part in the discussion or deliberation of this matter.

term by two days. It was dated April 30, 2014 and due May 1, 2015. The language of the Loan Agreement clearly contemplated that the initial loan was intended to be short term, with Petitioner then seeking Board of Public Utilities approval to convert the intended short term loan into a long term loan with a fifteen year term.

The Petitioner seeks to convert the intended short term loan into a fifteen year term for which Board approval is required and is sought by the Petition. The interest rate for the debt will be 300 basis points above the Federal Home Loan Bank of New York fixed rate advanced for five (5) year maturities. This rate will be adjusted on the five year anniversary date of the permanent loan.

The Petitioner also seeks the approval of the Board to issue security to the lender in the form of a mortgage on its real property and the grant of security in its personal property. As part of the April 30, 2014 financing, the Petitioner granted a mortgage and other security interests to the lender without seeking Board approval. Thus, the Petitioner is making the current request for nunc pro tunc approval.

Petitioner used the proceeds to pay off the balance of an existing loan (for which Board approval had been obtained); construction improvements of utility facilities; and compliance with Department of Environmental Protection requirements.

On February 27, 2015, the Division of Rate Counsel provided the Board with its comments on the proposed financing. Rate Counsel recommended certain language be contained in the Order of approval, and that language has been included herein. Rate Counsel does not object to approval of the petition.

Having reviewed the record, it appears the Petitioner intended to enter into a short-term loan for which Board approval would not have been necessary. Nonetheless, the error resulted in a loan which required Board approval. Additionally, the mortgage and security interests issued by Petitioner required prior Board approval, whether they were associated with short-term or long-term debt. The Board **HEREBY ORDERS** that any such future transactions shall be made in accordance with Law.

Given Petitioner's intent, as well as the fact that the intended short-term loan and security interests will be encompassed within the long-term debt which Petitioner concurrently seeks approval of through this Petition, the Board **HEREBY FINDS** that the proposed transactions are in the public interest, and thus, the April 30, 2014 loan and associated indebtedness is **HEREBY APPROVED**, as within time. Additionally, the Board **HEREBY FINDS** that the proposed long-term transactions, as indicated above and subject to the conditions described below, are to be made in accordance with the law, and are in the public interest and the purposes thereof, and are thus **HEREBY APPROVED**. Therefore the Board **HEREBY ORDERS** that Fayson Lake Water Company is **HEREBY AUTHORIZED** to enter into the Loan Agreement, to issue the appropriate notes, give security and to take other such actions reasonable inferred therefrom.

This Order is subject to the following provisions:

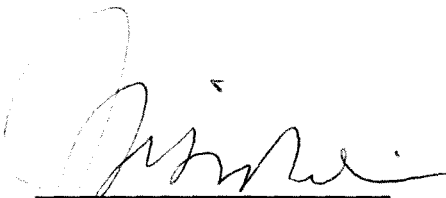
1. Petitioner shall furnish the Board with executed copies of the loan documents referenced herein within ten days of closing, noting all changes in said documents from those upon which this Order is based, and there shall be no material substantive changes without prior approval of the Board.

2. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.
3. This Order shall not affect or in any way limit the exercise of the authority of this Board or this State in any pending or future petition or in any proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation or any other matters affecting Fayson Lake Water Company.
4. Fayson Lake Water Company shall, at the request of the Board, submit to the Board copies of financial statements or other documents submitted to the lender in connection with the Loan Agreement.
5. Fayson Lake Water Company shall notify the Board within 15 days of a continuing event of default which will allow the Board to determine the impact of such default upon the Petitioner's obligations to provide safe, adequate, and proper service.
6. Notwithstanding anything to the contrary in the Loan Agreement or the security instruments issued thereunder, no change in ownership of operating authority or assets of the water utility shall occur unless and until such actions have been approved by the Board pursuant to law.
7. The Board's approval is expressly limited to the Agreement, Note and Mortgage described herein and as more fully described in the Petition and supporting documents.
8. This Order shall not be construed as certification that the loan herein authorized will be represented by tangible or intangible assets of commensurate value or investment cost.
9. Petitioner shall take all reasonable steps to prevent any future violation of law or regulation; by obtaining such approvals as may be required prior to commencing actions requiring Board approval.
10. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised within sixty (60) days of the effective date of this Order.


This Order will be effective April 1, 2015.

DATED: 3/19/15

BOARD OF PUBLIC UTILITIES  
BY:



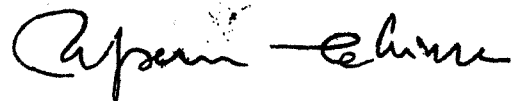
JOSEPH L. FIORDALISO  
COMMISSIONER



MARY-ANNA HOLDEN  
COMMISSIONER

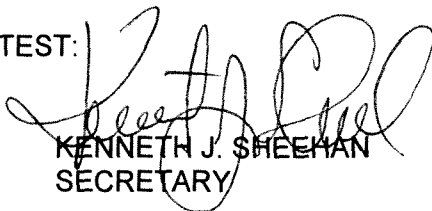


DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
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 APPLICATION OF FAYSON LAKE WATER COMPANY FOR THE  
NUNC PRO TUNC APPROVAL OF ENTRY INTO A LOAN AGREEMENT; ISSUANCE OF A  
NOTE; GRANT OF SECURITY AND OTHER APPROPRIATE RELIEF –  
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