



**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

|   |   |                           |
|---|---|---------------------------|
| PETITION FOR CONTRACT APPROVAL BY               | ) | ORDER APPROVING A PUBLIC- |
| TOWNSHIP OF EAST BRUNSWICK UNDER                | ) | PRIVATE CONTRACT BETWEEN  |
| NEW JERSEY WATER SUPPLY PUBLIC-                 | ) | THE TOWNSHIP OF EAST      |
| PRIVATE CONTRACTING ACT, <u>N.J.S.A. 58:26-</u> | ) | BRUNSWICK AND UTILITY     |
| <u>19 ET SEQ.</u>                               | ) | SERVICE CO., INC.         |
|   | ) |                           |
|   | ) | DOCKET NO. WO15080961     |

**Parties of Record:**

**Jean Cipriani, Esq., Gilmore & Monahan**, on behalf of the Township of East Brunswick,  
**Diana New, Esq.**, Utility Service Co., Inc.  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

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

On August 14, 2015, pursuant to the New Jersey Water Supply Public-Private Contracting Act (the "Water Act"), N.J.S.A. 58:26-19 et seq., the Township of East Brunswick (the "Petitioner" or "East Brunswick") submitted an application (the "Petition"), which was subsequently verified, for approval of a contract with Utility Service Co., Inc. ("Utility Service") for water tank maintenance.

Petitioner agrees to engage Utility Service to provide the professional service needed to maintain and sustain its three (3) water storage tanks as identified below:

- Fern Road Tank
- Summerhill Tank
- Tices Lane Tank

The Petitioner makes this application in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25, to the New Jersey Board of Public Utilities ("Board"), the New Jersey Department of

---

<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.

Community Affairs, Division of Local Government Services, Local Finance Board ("DCA") and the New Jersey Department of Environmental Protection ("DEP") (collectively, the "Agencies").

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services. Water supply services, as defined by the Water Act, mean "the financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a water supply facility which services are provided pursuant to [the Water Act]." N.J.S.A. 58:26-21. Public-Private Contracts for water supply services must be submitted to the Board for review and approval. However, N.J.S.A. 58:26-25 confines the scope of the Board's review of such contracts to four specific areas. In its review of the contract, the Board shall apply the following criteria in determining whether to approve the contract:

1. The private firm entering into the contract has the financial capacity and technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.
2. The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private firm and all the benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate based rate of return methodology.
3. The franchise customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the Board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.
4. The contract contains the provisions required by paragraphs (1), (2) and (6) of subsection e. of section 5 of P.L. 1995, c. 101 (C. 58:26-23).

[N.J.S.A. 58:26-25(c)]

The Water Act further states that once the Board approves a proposed contract, the jurisdiction of the Board terminates until or unless the contract is amended to change the formula or other basis of determining charges contained therein. N.J.S.A. 58:26-25(c)(4).

The Courts have held that the Legislature has not conferred any jurisdiction on the Board to regulate water utilities operated by municipalities, as distinct from those privately owned, except in certain circumstances where such municipalities undertake to service residents in other municipalities. See Petition of South Lakewood Water Co., 61 N.J. 230 (1972). Pursuant to N.J.S.A. 40A:31-23(d)(1), the Board does not have regulatory oversight with respect to the setting of rates if the municipality services 1,000 customers or less outside its jurisdictional boundaries. In addition, it has been held that the sovereign powers of a municipality should not be subordinated to Board jurisdiction "by inference" or "lightly implied." Jersey City Incinerator

Authority v. Dept. of Pub. Util., 146 N.J. Super. 243, 255-56 (App. Div. 1976). Rather, a grant of such power “must be firmly anchored in some clear legislative delegation of jurisdiction.” Id. at 256. Furthermore, the Board’s own enabling statute expressly limits the Board’s jurisdiction over contracts of the type under review here to the parameters of the Public-Private Contracting Act. N.J.S.A. 48:2-13 states:

Except as provided in [N.J.S.A. 58:26-25] the Board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to [N.J.S.A. 58:26-19 et seq.] in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the Board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to [N.J.S.A. 58:28-19 et seq.].

In accordance with this legal mandate, the Board has limited the scope of its review to the four criteria set forth above and, for reasons discussed below, concludes that the contract meets the applicable criteria. Because the Legislature has carefully circumscribed our authority over the rates to be charged to end-use customers and other issues, the Board does not make any determination with respect to issues related to the ultimate rates to be charged by the Petitioner to its residents for services.

### **BACKGROUND/PROCEDURAL HISTORY**

The Petitioner is located in Middlesex County. The Township of East Brunswick is a municipal corporation within the County of Middlesex. One operating Division is the East Brunswick self-liquidating Water Utility (“Water Utility”), which provides water service to East Brunswick and bulk sales of water to Spotswood, South River and Helmetta. As the owner and operator of a water supply, transmission and distribution system, pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 et seq. East Brunswick provides services to its citizens.

East Brunswick has absolute jurisdiction pursuant to N.J.S.A. 40A:31-1 et seq., to determine the terms and conditions under which it supplies water to customers within its municipal limits. East Brunswick determined to enter into a contract for water tank maintenance pursuant to N.J.S.A. 58:26-19 et seq., the Water Act.

On July 29, 2014, East Brunswick notified DCA, the DEP and the Board of its intent to enter into a contract with a private firm for the provision of water supply services pursuant to N.J.S.A. 58:26-23(a).

On August 7, 2014, East Brunswick issued a notice of its request for proposals (“RFP”) of vendors interested in providing water tank maintenance services and published same in The Home News Tribune, a newspaper of general circulation and on the Township’s website. The RFP was made available for public examination at the East Brunswick Municipal Clerk’s Office.

All proposals were received by the September 10, 2014 deadline. Three proposals (Utility Service Group, US Tank Painting, Inc. and Corrosion Control Corp) were received and reviewed shortly thereafter.

East Brunswick negotiated a contract with Utility Service on July 28, 2015, which included the required provisions pursuant to N.J.S.A. 58:26-23(e). East Brunswick chose Utility Service for the following reasons:

1. Utility Service has a track record of successful performance not only in New Jersey, but in numerous states.
2. Utility Service provided detailed and thorough inspection reports and recommendations for each tank.
3. Utility Service's corporate company has the assets to provide backing in the event of an unstable economy and has the greatest amount of experience and qualifications.

Provided with the above information, East Brunswick agreed to enter into a 40-year contract with Utility Service to provide it with a long-term tank maintenance plan on the three storage tanks.

East Brunswick obtained a written opinion from its bond counsel, Archer & Greiner, on August 6, 2015 in accordance with N.J.S.A. 58:26-23(g).

A resolution was adopted on August 10, 2015 (Resolution No. 15643) by the East Brunswick Township Council authorizing the process for a public private contract with Utility Service for tank maintenance in accordance with N.J.S.A. 58:26-23 et seq.

A public hearing on the proposed contract with Utility Service was scheduled for August 31, 2015. Notice of the public hearing was published in The Home News Tribune, a newspaper of general circulation, on August 13, 2015. This notice was published pursuant to N.J.S.A. 58:26-24(b).

A public hearing was conducted on August 31, 2015 at 8 pm in the courtroom of the municipal building located at One Civic Center Drive in East Brunswick. A verbatim record of the hearing was produced as required pursuant to N.J.S.A. 58:26-24(d). A hearing report was prepared by East Brunswick on August 14, 2015 to address the statutory requirements established pursuant to N.J.S.A. 58:26-24(d). The mayor and township officials spoke at the public hearing and their main issues dealt with scheduling/timing of the repairs, impact on water quality and cost.

### **TERMS OF THE PUBLIC-PRIVATE CONTRACT**

East Brunswick established a contract with Utility Service to provide professional services needed to maintain its three water storage tanks over a 40-year period as identified herein, located in East Brunswick, NJ.

Utility Service will provide East Brunswick with innovative and practical approaches to maintaining its water quality. Utility Service will provide services that include, but are not limited to, bio-film removal, active mixing systems, elimination of thermal stratification, proper lowering of trihalomethanes (THMs), ice pigging for line cleaning, and leak detection to determine water losses in the system. Utility Service is responsible for the care and maintenance of the three East Brunswick Tanks which include the following:

- a) Inspect and service the tanks annually. The tanks and towers will be thoroughly inspected to ensure that the structures are in a sound, watertight condition. Utility Service shall provide a copy of the completed annual inspection checklist for each tank to apprise East Brunswick of its findings. Utility Service shall inspect the integrity of any insect screening on all vents and overflow piping to prevent the entrance of insects and birds. Every four years Utility Service will perform a washout

inspection. During washout inspections, the tank will be completely drained and cleaned to remove all mud, silt, and other accumulations that might be harmful to the tank or its contents. After cleaning is completed, the interior will be thoroughly inspected and disinfected with a National Science Foundation approved chemical disinfectant prior to returning the tank to service. In every year that a washout inspection is not performed, Utility Service will perform a robotic inspection on the tanks. East Brunswick is responsible for draining and filling the tanks and conducting any required testing of the water. A written report will be mailed to East Brunswick after each inspection. East Brunswick shall also conduct its own independent routine inspections of the tanks.

- b) Furnish engineering and inspection services needed to maintain and repair the tanks and towers during the term of this contract. The repairs include: steel parts, expansion joints, water level indicators, sway rod adjustments and manhole covers/gaskets.
- c) Install a lock on the roof hatch of the tanks.
- d) Clean and repaint the interior and/or exterior of the tanks at such time as complete repainting is needed. The need for interior painting is to be determined by the thickness of the existing liner and its protective condition. When interior painting is needed, procedures as outlined in American Water Works Association ("AWWA") D102 specifications for cleaning and coating of potable water tanks will be followed. Only material approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting is to be determined by the appearance and protective condition of the existing paint. At the time the exterior requires repainting; Utility Service agrees to paint the tanks with the same color paint and to select a coating system which best suits the site conditions, environment, and general location of the tanks. When painting is needed, all products and procedures will be equal to or exceed the requirements of the AWWA and the Society for Protective Coatings as to surface preparation and coating materials. Notwithstanding anything in this Section 1(D) to the contrary, the exterior of the tanks will be overcoated at least once every 12 years, and the interior of the tanks will be renovated at least once every 15 years.
- e) Provide emergency services, when needed, to perform all repairs covered under this Contract. East Brunswick shall immediately isolate the tank, if necessary, to allow for performance of emergency services. Utility Service shall contact East Brunswick regarding the emergency within four hours of report. Utility Service and East Brunswick shall agree upon the nature and urgency of the emergency service, and Utility Service shall mobilize and work to complete emergency service within 24 to 48 hours of report.
- f) Furnish current certificates of insurance coverage to East Brunswick.
- g) Renovation work and ongoing services described are not being performed by employees of East Brunswick.
- h) East Brunswick shall retain control over the sales of water to others.
- i) In the event of an extraordinary failure of the coating systems, to include premature delamination, blistering, or excessive corrosion, Utility Service will be responsible for the remedy, up to and including full removal of the coatings by abrasive blast cleaning and application of new coating for the term of the contract.
- j) East Brunswick and Utility Service agree that the tanks shall not be taken out of service for washout inspections or painting between the months of May through September.

- k) East Brunswick has advised Utility Service that East Brunswick is pursuing the addition of antennae on the tanks. Any antennae addition shall be reviewed and approved as to placement and mounting by both Utility Service and East Brunswick.

The total cost to optimally renovate, maintain, and sustain the three storage tanks will be spread over a 40-year period. East Brunswick has good working equipment, is fully funded and there are no open obligations. The painting and maintenance of the tanks is a cost which will be funded and paid for with short-term obligations and will not result in bonding or burdensome cost on the Water Utility. The Water Utility has operated with a positive Fund Balance for years and the signing of this contract with Utility Service by East Brunswick through the Water Utility will have minimal or marginal impact on the rate structure of East Brunswick. The total cost for the first 20 years of the contract will be approximately 12 million dollars to maintain all of the tanks. The cost after the 20<sup>th</sup> year shall be adjusted every three years by the change which takes place between the 20<sup>th</sup> year and the 23<sup>rd</sup> year based upon the Engineering News Review Construction Cost Index (CCI) for New Jersey every three years. This method will be followed every three years for the balance of the 40-year agreement. Both parties in the Agreement will confirm the CCI index ratio at the end of the 20<sup>th</sup> year which will become a base for the first change to take place three years hence. If there is no increase during the three year period, the present rate will apply. Furthermore, if East Brunswick elects to terminate this 40-year contract they need to do so by providing 120 days of written notice to Utility Service.

The municipal employees will not be affected by this water tank maintenance contract.

By letter dated October 28, 2015, the New Jersey Division of Rate Counsel advised the Board that it did not object to the Public-Private contract and was not opposed to the Board's approval of the Petition.

### **DISCUSSIONS AND FINDINGS**

After review of the record herein, the Board **FINDS** that the statutory criteria listed hereinabove have been met.

1. Utility Service has the financial capacity, technical and administrative experience to ensure continuity of service over the term of the contract. N.J.S.A. 58:26-25(c)(1). The main office for Utility Service is 1230 Peachtree Street, NE, Suite 1100, Atlanta GA 30309. In 2008, Utility Service was acquired by Suez Environnement, SA ("Suez"), which is a publicly traded company with operations in over 50 countries. Suez provides a suite of additional global solutions, technologies, information systems and approaches to real-life challenges facing U.S. water and wastewater utilities. Utility Service as the company was known prior to its acquisition by Suez, began business in 1963 and covers most of the 48 contiguous states with plans to expand into remaining states. Now referred to as Utility Service Group, currently it has 492 employees and serves more than 2,000 communities. Utility Service Group protects nearly 6,000 tanks nationally with its Full-Service Asset Management and Maintenance program.
2. The terms of the contract are not unreasonable given the services that are to be performed by Utility Service. N.J.S.A. 58:26-25(c)(2). The Board believes that under the circumstances of this matter and as set forth in the contract, a 40-year term is appropriate.

3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of East Brunswick. All of East Brunswick's customers are located within East Brunswick's boundaries. Thus, there is no subsidization of customers outside the municipal boundaries.

4. The contract contains provisions addressing the following:

N.J.S.A. 58:26-23(e)(1): The charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the public entity for the water supply services to be provided.

N.J.S.A. 58:26-23(e)(2): The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated; and

N.J.S.A. 58:26-23(e)(6): The employment of current employees of the public entity whose positions of employment will be affected by the terms of the contract are addressed.

On August 14, 2015 the Petitioner submitted a Hearing Report to the DEP, which pursuant to N.J.S.A. 58:26-25(a) must complete its review and submit its comments to the Board and DCA within 60 days of its receipt thereof.

On September 23, 2015 the DEP completed its review of East Brunswick's Hearing Report and provided comments on this matter in accordance with N.J.S.A. 58:26-25(a). The NJDEP provided three revisions to the original contract:

- 1) The Tices Lane Tank is listed as a 10 MG (not 8 MG) ground storage tank.
- 2) The schedule of maintenance has been amended so the initial washout of the Tices Lane Tank will occur in 2018 to abide by AWWA D-100 inspection standards that all water storage tanks should be thoroughly inspected at intervals of not more than five years.
- 3) Joe Jasinski of Utility Service has provided a copy of a "Water Storage Tank Condition Assessment Report", which Utility Service will utilize for tank inspections.

NJDEP has no issues with this contract as thus amended.

Therefore, based upon the above, the Board **HEREBY APPROVES** the Public-Private Contract between the Township of East Brunswick and Utility Service Co., Inc. subject to the following provisions:

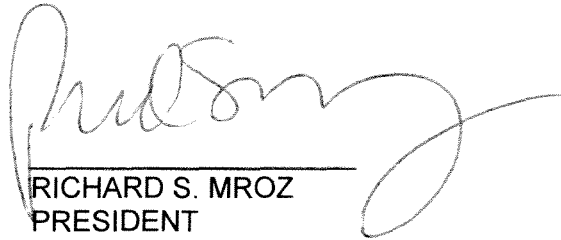
1. East Brunswick, within ten (10) days of receipt of this Order, shall submit the approval of the Local Finance Board within the Division of Local Government Services in the Department of Community Affairs, as required by N.J.S.A. 58:26-25(a).
2. East Brunswick shall obtain the final opinion of Bond Counsel, pursuant to N.J.S.A. 58:26-23(g) and submit the same to the Board within thirty (30) days of closing on the proposed Public-Private Contract.

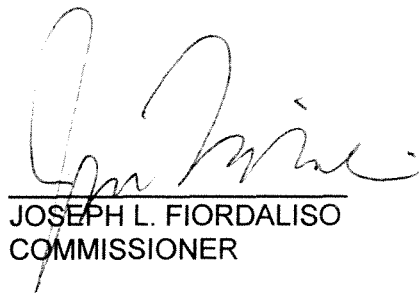
3. East Brunswick shall notify the Board if the proposed Public-Private Contract is not executed within forty-five days (45) of the date of this Order and advise as to why such contract has not been executed.
4. Any extension of the contract beyond the 40-year term shall be subject to Board review and approval.

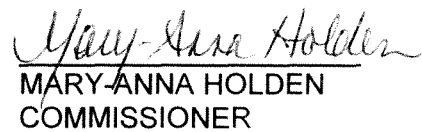
This Order shall be effective on November 26, 2015.

DATED: 11-16-15

BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

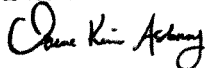
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
DIANNE SOLOMON  
COMMISSIONER

ATTEST:

  
IRENE KIM ASBURY  
SECRETARY

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





PETITION FOR CONTRACT APPROVAL BY THE TOWNSHIP OF  
EAST BRUNSWICK UNDER NEW JERSEY WATER SUPPLY PUBLIC PRIVATE  
CONTRACTING ACT, N.J.S.A. 58:26-19 ET SEQ.

BPU Docket No. WO15080961

SERVICE LIST

Jean Cipriani, Esq.  
Gilmore & Monahan  
10 Allen Street, PO Box 1540  
Toms River, NJ 08754

Diana New, Esq.  
Utility Service Group  
535 Courtney Hodges Boulevard  
P.O. Box 1350  
Perry, GA 31069

Stefanie A. Brand, Esq., Director  
Division of Rate Counsel  
140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Patricia McNamara, Executive Secretary  
Local Finance Board  
Department of Community Affairs  
101 South Broad Street  
PO Box 800  
Trenton, NJ 08625

Robert Martin, Commissioner  
Department of Environmental Protection  
401 East State Street, 7th Floor  
PO Box 402  
Trenton, NJ 08625