



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

WATER

JOINT PETITION OF SUEZ WATER TOMS RIVER INC.) ORDER OF APPROVAL
AND SBW&S CORP. FOR AUTHORIZATION (i) FOR)
SBW&S CORP. TO DISCONTINUE THE SERVICE OF)
ITS UTILITY COMPANIES AND SELL UTILITY)
ASSETS, AND (ii) FOR SUEZ WATER TOMS RIVER)
INC. TO ACQUIRE CONTROL OF SBW&S CORP.'S)
UTILITY ASSETS AND TO EXPAND ITS SERVICE)
AREA RELATED TO THE ACQUISITION OF ASSETS) DOCKET NO. WM16030197

Parties of Record:

Kelly K. Ruggiero, Esq., SUEZ Water Toms River Inc.
William F Ziegler, Esq., Holston, Mac Donald, Uzdevinis, Ziegler, Lodge & Myles, on behalf of SBW&S Corp.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On March 3, 2016, SUEZ Water Toms River, Inc. ("SWTR" or "Company") and SBW&S Corp. ("SB") (collectively, "Joint Petitioners"), filed a verified joint petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-14, N.J.S.A. 48:2-24, N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.A.C. 14:1-5.5, N.J.A.C. 14:1-5.6, and N.J.A.C. 14:1-5.14, seeking approval of the proposed acquisition of the S.B. Water Company, Inc. and S.B. Sewer Company, Inc.

SWTR, a wholly-owned subsidiary of SUEZ Water Resources Inc., a Delaware corporation, presently provides water service to approximately 50,000 customers located in the central portion of Ocean County, specifically in the municipalities of the Township of Toms River, the Borough of South Toms River, a portion of Berkeley Township, and a small portion of Brick Township.

SB through its utility companies S.B. Water Company, Inc. and S.B. Sewer Company, Inc. (collectively, "SBW&S") presently provides water and wastewater service to approximately 275 customers in Colts Neck Township, Monmouth County, New Jersey.

The current Board approved tariffs for SWTR and SBW&S are on file with the Board.

THE PROPOSED TRANSACTION

The Petition was filed pursuant to, among other things, N.J.S.A. 48:2-51.1, which requires written Board approval for any person to acquire control of a public utility. The Joint Petitioners are seeking approval of a transaction ("proposed Transaction") that is set forth in an Assets Purchase Agreement ("Agreement") between the Joint Petitioners dated August 19, 2015. The Agreement provides that, subject to obtaining regulatory approvals and the satisfaction of certain other conditions, SWTR shall acquire from SB all of the assets of SBW&S for a purchase price of seven hundred and fifty thousand dollars (\$750,000). The Joint Petitioners state that at the closing, the assets of SBW&S will be combined with the assets of SWTR. The Joint Petitioners further state that SBW&S will be served by SWTR's offices in Ocean County, New Jersey; that SWTR will continue to operate SBW&S as a standalone system; and that SWTR will amend its certificate of incorporation to include the provision of sewer services in its stated business purpose.

IMPACT ON SWTR

The Joint Petitioners state that the proposed Transaction will have no adverse impact on the Company as set forth below. There will be no impact on SWTR's current rates. SWTR will continue to operate under the existing Board-approved tariffs and rate structures until such time as such tariffs and rate structures are revised in accordance with New Jersey law. Also, the proposed Transaction will cause no material changes in the balance sheet or financial position of SWTR because all of the outstanding debts of SWTR will continue to be liabilities and obligations of the Company.

In addition, there will be no impact on SWTR's employees. There will be no change in SWTR's collective bargaining agreement as a result of the proposed Transaction. SWTR will have no adverse impact to its present or future service levels and will continue to provide safe, adequate and reliable service to its customers. The Joint Petitioners state that SBW&S is located approximately 25 miles from SWTR's existing service territory, which means that SBW&S systems can easily be included in the existing daily rounds of SWTR maintenance personnel and can quickly be reached by SWTR staff in the event of any emergency.

Furthermore, the proposed Transaction will not adversely impact competition because SWTR will continue to service its customers in its current franchised service territories. The classic competition for customers does not exist in the regulated water utility industry. Finally, SWTR will continue to pursue opportunities to provide water service throughout the State, including opportunities to acquire other water systems as those opportunities arise.

IMPACT ON SB and SBW&S

The Joint Petitioners state that there will be no impact on SB because SB agreed to sell all of its assets to SWTR in exchange for cash representing the value of those assets. The proposed Transaction provides liquidity to the shareholders of SB. Also, the proposed Transaction will have no adverse impact on SBW&S's existing rates as SWTR will adopt SBW&S's existing Board-approved tariffs and rate structures until such time as such tariffs and rate structures are revised in SWTR's next base rate proceeding. The proposed Transaction will cause no material changes in the balance sheet or financial position of SBW&S.

SPECIFIC BENEFITS TO CUSTOMERS OF SB SYSTEMS

The Joint Petitioners state that the proposed Transaction will have no adverse impact on the criteria set forth in N.J.S.A. 48:2-51.1. The Joint Petitioners further state that the proposed Transaction will promote the public interest and result in the following positive benefits:

1. The need to comply with increasingly stringent environmental standards has created substantial demands for capital investment for water utilities. The financial resources and backing of SWTR will be a benefit to SBW&S customers in the replacement of infrastructure and compliance with existing statutes.
2. SWTR size and scale enable the Company to address the water needs of SBW&S customers well into the future.
3. The customers of SBW&S will benefit from becoming part of SWTR, a substantially larger regulated company. These customers will receive the benefits of industry standard best practices in the areas of planning, research, environmental compliance, water quality, customer service, finance, risk management, operations and service delivery and management.
4. After the approval of the proposed Transaction, the SBW&S customers will have access to SWTR customer service call center to resolve any customer service issues that may arise.
5. After the closing of the proposed Transaction, customers of SBW&S will also have access to SWTR's customer assistance payment assistance programs – H2O Help to Others and Low Income Payment Plan, which seek to help customers during times of need.

THE MUNICIPAL CONSENT

On May 14, 1987, the Township of Colts Neck granted municipal consents and franchises ("Franchises") to SBW&S to provide water and sewer services within that portion of the Township described as Lot two (2) of Block 41.01 of the Colts Neck Tax Map; and to own, operate, construct, maintain, and repair a water supply and distribution system and a sewer supply and distribution systems and such other and related capital facilities, including mains, service lines, storage facilities, pipes, valves, and appurtenances thereto as are necessary to enable it do so. By Resolution No. 2016-14, dated March 9, 2016, the Township of Colts Neck consented and agreed to the assignment of the Franchises from SBW&S to SWTR, subject to conditions, one of which is that the Township's consent shall be effective upon Board approval of the sale of SBW&S's assets to SWTR.

SWTR intends to operate the assets of SBW&S pursuant to the existing municipal consent granted under Resolution No. 2016-41. The Municipal Consent, adopted on March 9, 2016 by the Township of Colts Neck, will allow SWTR to: (1) provide water and sewer service within the portion of the Township described as Lot two (2) of Block 41.01; and (2) expand the SWTR service territory; (3) transfer assets of SBW&S to SWTR; and (4) file a revised tariff sheet.

On July 6, 2016, a duly noticed public hearing on the Company's petition was held at the Board's Trenton office. Legal Specialist James Kane presided over the hearing at which representatives of the Company, Rate Counsel, and Staff appeared. No members of the public appeared at the hearing, and the Board received no written comments from the public.

The DISCONTINUANCE OF SERVICE

SB requested permission for SBW&S to discontinue service to their customers as of the day of closing at which time SWTR will provide service to all of the existing customers. Since the exact date of the closing is uncertain, SB requested that Board approval of the discontinuance of service be effective as of the actual closing date. The Joint Petitioners stated that all necessary steps will be taken to implement the transfer of service in a smooth and efficient manner with no inconvenience or interruption of service to customers. The Joint Petitioners further stated that SB intends to dissolve SBW&S after the closing.

THE DIVISION OF RATE COUNSEL

The Division of Rate Counsel ("Rate Counsel") has reviewed this matter and filed comments by letter dated July 11, 2016. Rate Counsel does not object to the petition, but it seeks certain conditions. (Rate Counsel Comments at 6-7.) Among other things, Rate Counsel recommends that a Board order approving the petition should contain language that the municipal consent for the use of the streets, to provide water service, and to lay pipes should be limited to a reasonable term not to exceed fifty years. *Id.* at 7. As to the potential obligations of ratepayers, Rate Counsel proposes that Board approval be "limited to the specific approvals requested, and that there is no authorization to include any specific assets or amounts in rate base, nor authorization for any other ratemaking treatment." *Ibid.*

DISCUSSION AND FINDINGS

N.J.S.A. 48:3-7(a) provides in pertinent part that "no public utility shall, without the approval of the board, sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility."

N.J.S.A. 48:2-14 provides in part:

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.

Also, N.J.S.A. 48:2-24 provides in part: "No public utility shall discontinue, curtail or abandon any service without obtaining permission from the board after notice. The board may withhold permission until after hearing to determine if the discontinuance, curtailment or abandonment will adversely affect public convenience and necessity."

Thus, "[p]ublic utilities must obtain permission from the Board before discontinuing, curtailing or abandoning any service. N.J.S.A. 48:2-24." In re Petition of South Jersey Gas Co., 116 N.J. 251, 259 (1989).

N.J.S.A. 48:2-51.1 provides in part:

[N]o person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

In addition to the statutory requirements, N.J.A.C. 14:1-5.14(c) provides:

The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.

Thus, in considering a request for approval pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c), the Board looks to determine whether positive benefits will flow to customers and the State and that the proposed Transaction will not adversely impact any of the four factors set forth under N.J.S.A. 48:2-51.1.

The Board, having reviewed the Petition and the entire record, **FINDS** that positive benefits will flow to customers and the State from the proposed Transaction and that the proposed Transaction will not adversely impact any of the factors set forth under N.J.S.A. 48:2-51.1 and it will not adversely affect the public interest.

There will be no adverse impact on competition. The proposed Transaction will have no adverse impact on the existing SBW&S rates as SWTR will adopt the existing Board-approved tariffs and rate structures, until such time as such tariffs and rate structures are revised in accordance with New Jersey law. The proposed Transaction will not have an adverse impact

on utility employees. SBW&S will be managed by experienced SWTR personnel. SWTR will continue to operate under its existing Board-approved tariffs and rate structures, until such time as tariffs and rate structures are revised in accordance with New Jersey law.

The proposed Transaction will cause no material changes in the balance sheet or financial position of SWTR. All of the outstanding debts of SWTR will continue to be liabilities and obligations of SWTR. The need to comply with increasingly stringent environmental standards, while also rehabilitating and replacing aging infrastructure, has created substantial demands for capital investment by utilities. The financial resources and backing of SWTR will be a benefit to SBW&S customers in the replacement of infrastructure and compliance with existing statutes. After the completion of the proposed Transaction, customers of SBW&S will have access to SWTR's customer service call center to resolve customer service issues. Customers will also have access to SWTR's customer payment assistance program – H2O Help to Others and Low Income Payment Plan, which seek to help customers during times of need. And, the Board notes that S.B. Water Company, Inc. purchases water from the Township of Freehold Water Department.

Nevertheless, although the petition invokes N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c), and the positive benefits to the State and customers from the proposed Transaction are apparent, the Board notes that those statutory and regulatory provisions do not apply to the proposed Transaction, as it does not involve a change in control or merger of SBW&S, but a sale and purchase of the SBW&S water and sewer system assets.

As to the municipal consent, although the Resolution 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 fifty years. However, N.J.S.A. 48:2-14 sets no limit for the duration of the municipal consent or franchise.

Accordingly the Board **FINDS** that the Municipal Consent is necessary and proper for the public convenience and properly conserves the public interests and that the proposed acquisition will not jeopardize SWTR's ability to continue to render safe, adequate and proper utility service. The Transaction will have no adverse impact on the provision of safe, adequate and proper service by SWTR to its customers.

As to N.J.S.A. 48:2-24, the discontinuance of service by SBW&S will cause no interruption of service, as customers affected by the transfer will continue to be provided with safe, adequate and proper service by SBW&S until the date of closing and by SWTR subsequent to the closing. SBW&S will not discontinue service until SWTR takes over the provision of water and wastewater service to SBW&S customers and all necessary steps will be taken to implement the transfer of service in a smooth and efficient manner with no inconvenience or interruption of service to customers.

After reviewing the record and based upon Staff's investigation of this matter, the Board **FINDS** that the discontinuance of water and wastewater service by SBW&S will not have an adverse impact on the public convenience and necessity, as there will be no interruption of service to customers.

Therefore, the Board **HEREBY ORDERS** that the discontinuance of water and wastewater service by SBW&S be **APPROVED** effective on the day of the closing for the proposed Transaction. The Board expressly notes that its decision in this matter to permit SBW&S to discontinue water and wastewater utility service under N.J.S.A. 48:2-24 is based upon the

finding that there will be a continuity of service provided by SBW&S before and after the transfer of SBW&S to SWTR.

All things considered, the Board **HEREBY FINDS** that Petitioners have substantially complied with all the statutory and regulatory requirements for the requested reliefs. Accordingly, the Board **HEREBY APPROVES** the Municipal Consent, Resolution No. 2016-41 dated March 9, 2016, granted to SWTR by the Township of Colts Neck. The Board **HEREBY APPROVES** the proposed acquisition of SBW&S by SWTR and property interests as more fully described in the Petition. The Board **HEREBY APPROVES** the Company's proposed journal entries. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the proposed acquisition and the discontinuance of service are in the public interest subject to the following conditions.

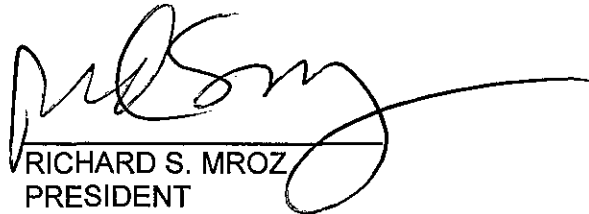
1. Customers affected by the transfer will continue to be provided safe, adequate and proper service by SBW&S until the transfer of ownership and operation of the system takes place.
2. This Order is based upon the specific and particular facts of the Transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
3. 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 matters affecting the Company.
4. 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 SWTR.
5. Within thirty (30) days of the date of the closing of the proposed Transaction, the Joint Petitioners 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 Transaction.
6. Within thirty (30) days of the date of the closing of the proposed Transaction, SWTR shall submit any revised tariff pages that may be necessary as a result of the proposed Transaction.
7. SBW&S shall file with the Board its 2015 and 2016 Annual Reports pursuant to N.J.A.C. 14:3-6.3.
8. SBW&S shall file with the Board, within thirty (30) days of closing, its Statement of Gross Interstate Operating Revenues for the Years Ended December 31, 2015 and December 2016 (Form AR-3-1).
9. Pursuant to the applicable statutes, SBW&S shall be responsible for the Board of Public Utilities' and the Division of Rate Counsel's assessment liability for Fiscal Year 2017 and Fiscal Year 2018 based upon SBW&S's 2015 and 2016 Gross Operating Revenues.

10. 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.
11. Approval of this municipal consent does not constitute approval of any specific main extension or plan for service. In extending service, SWTR must comply with all applicable laws.

The Order shall be effective on August 8, 2016.

DATE: 7/29/16

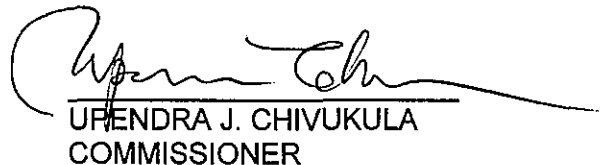
BOARD OF PUBLIC UTILITIES
BY:

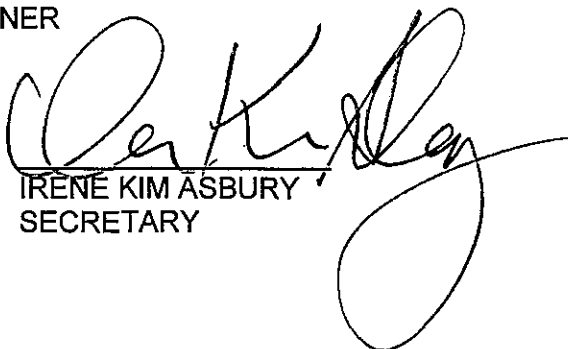

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

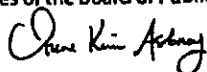

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UFENDRA J. CHIVUKULA
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



**IN THE MATTER OF THE JOINT PETITION OF SUEZ WATER TOMS RIVER INC.
AND SBW&S CORP. FOR AUTHORIZATION (i) FOR SBW&B CORP. TO DISCONTINUE
THE SERVICE OF ITS UTILITY COMPANIES AND SELL UTILITY ASSETS, AND (ii)
FOR UNITED WATER TOMS RIVER INC. TO ACQUIRE CONTROL OF SBW&S CORP.'S
UTILITY ASSETS AND TO EXPAND ITS SERVICE AREA RELATED TO THE
ACQUISITION OF ASSETS**

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