



Agenda Date: 10/20/17
Agenda Item: 5A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF NEW)
JERSEY-AMERICAN WATER COMPANY, INC. FOR) DECISION AND ORDER
APPROVAL TO SELL REAL PROPERTY LOCATED AT)
100 JAMES STREET IN THE TOWNSHIP OF)
LAKEWOOD, COUNTY OF OCEAN) DOCKET NO. WM17070746

Parties of Record:

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

BY THE BOARD:¹

On July 13, 2017, New Jersey-American Water, Inc. ("NJAW", "Petitioner", or "Company"), a public utility of the State of New Jersey, subject to the jurisdiction of the New Jersey Board of Public Utilities ("Board"), filed a verified petition pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, seeking approval to sell real property owned by the Company.

NJAW provides water service to approximately 631,000 water and fire service customers and 41,000 sewer service customers in Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren counties.

DESCRIPTION AND HISTORY OF THE PROPERTY

The property being sold is known and designated as 100 James Street, Lot 10 in Block 345 ("Property"), in the Township of Lakewood, County of Ocean, New Jersey. The Company acquired the Property, totaling approximately 6.996 acres, for \$70,000 in 1983. The Company has used the Property as a district operations center and statewide meter shop since 1983. The Company determined that the operations center and meter shop are no longer used for utility purposes and should be moved to a more convenient and accessible location. The Company is actively looking for a new site in the surrounding area for its new operations center. The

¹ Commissioner Dianne Solomon did not participate.

Property is being sold to Enchante Realty Associates ("Enchante" or "Purchaser") for \$5,800,000.

BACKGROUND FOR BOARD REQUESTED RELIEF

The Petitioner is requesting approval for the sale of the Property pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, based on the following:

1. The sale of the Property shall not adversely affect the public interest;
2. The Property is no longer used or useful for utility purposes and is not income producing;
3. The Property is not now nor has it in the past been used for the protection of a public water supply;
4. The sale of the Property will not compromise the ability of the Company to render safe, adequate and proper service to its customers;
5. The Property is not subject to the jurisdiction of the Watershed Property Review Board ("WPRB");
6. The proposed use by the Purchaser as an office building will not adversely impact the water supply;
7. The sale of the Property will not impact the State's open space, conservation and recreation requirements;
8. The selling price represents the fair market value of the Property to be sold based on a current independent appraisal; and
9. There is no relationship between the parties, other than that of transferor and transferee, or lessor and lessee.

In its petition, the Company states that the Property is located in an industrial area and is not income producing. In its petition, the Company further states that it currently uses the Property as an operations center for its Coastal North Operating District and as its statewide meter shop. As part of an operations assessment, the Company determined that the interests of its customers, the Lakewood community, and the Company's own interests were best served by relocating this operations center and meter shop to a more convenient and accessible location. The Company is actively looking for a new site in the surrounding area for its new operations center. NJAW states that pursuant to N.J.A.C. 14.1-5.6, it advertised the proposed sale of the Property in the Asbury Park Press on April 28, 2017 and May 5, 2017. The Company further states it listed the Property for sale with an experienced real estate broker, ReMAX Paradigm Realty Group, ("ReMAX" or "broker") to obtain the highest price for the Property. The broker evaluated potential uses and buyers for the Property. The sale of the Property is subject to a competitive bidding process. The public bid process elicited nine bids for the Property from the following: Onyx Partners, LLC (\$2,000,000 and \$4,500,000); Atlantic Partners, LLC (\$3,500,000 and \$5,600,000); 1325 Hwy 34, LLC (land swap with bidder's property and leaseback at \$20 per square foot for office and \$10 per square foot for warehouse); 100 James Street, LLC

(\$3,000,000); Enchante Realty Associates, LLC (\$5,800,000 and leaseback at \$0 for first six months; additional six months at market value); Empire State Holdings, LLC (\$5,600,000); and Moshe David Perlstein (\$5,900,000).

The Company states that it accepted Enchante's bid because it provided the best overall value for price, beneficial lease terms to enable the Company flexibility in its transaction plan, affirmative acceptance of the Company's contract terms and proof of funds to complete the transaction. While the bid from Enchante was slightly lower than the bid from Moshe David Perlstein, the leaseback offer of six months no rent, six months at market price, no contract contingencies and proof of funds demonstrated an overall better value and ease to close. Enchante was fully engaged in the bid process, conducting several site visits and asking follow-up questions. The Company was confident that Enchante Realty was a serious bidder, committed to seeing the process through to conclusion. Moshe David Perlstein obtained the bid information later in the process, did not schedule any site inspections and apparently only viewed the Property from outside the security fence. The bid only included a price and did not address other areas of importance to the Company.

The Company entered into a Contract of Sale on June 8, 2017 to sell the Property to Enchante. NJAW further states that this Contract of Sale constitutes a sealed bid pursuant to N.J.A.C. 14:1-5.6(b). NJAW further states that this Contract of Sale is an arms-length transaction and there is no relationship between the parties other than that of the proposed buyer and seller. The Company will provide copies of the journal entries that record the transaction. Enchante has paid a ten percent (10%) cash deposit of \$100,000 that is being held in escrow by the Company's real estate broker for this sale, ReMAX Paradigm Realty Group, which is acting as escrow agent. The Contract contains various contingencies, fully described and defined in paragraph 5 of the Contract, that must be satisfied for closing of the transaction to incur, including, among other things, Enchante's due diligence evaluation and Board approval of the sale of the Property.

Board Staff and the New Jersey Division of Rate Counsel ("Rate Counsel") served numerous interrogatories on the Company, and the parties held several meetings to discuss the Company's responses to interrogatories and to explore the possibility of settlement.

RATE COUNSEL COMMENTS

By letter dated September 20, 2017, Rate Counsel submitted comments in this matter. Rate Counsel stated that based on its review of the petition and discovery, it accepts the Company's claim that the sales price of \$5.8 million is the best price attainable by the Company. Rate Counsel further stated that this price is substantially above the appraised market value of \$3.6 million and compares favorably with the other bids received.

Rate Counsel also stated that the Company has complied with the requirements of N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6 in connection with the request for Board approval of the sale of real property.

Rate Counsel further states that it does not object to the Company's currently projected total net pre-tax gain amount calculation of \$4,622,567 and the Company's proposal to flow 50% of this net gain to the stockholders and reserve the other 50% for disposition in the next rate case in a Regulatory Liability account. This gain on sale sharing approach is currently applied by the

Board for all major New Jersey water and sewer utilities and should also be applied to this particular gain on sale transactions.

DISCUSSION AND FINDINGS

The Board is required to review the proposed sale of the property at issue here under N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6. N.J.S.A. 48:3-7(a) provides in pertinent part:

[N]o 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.

The Board, having reviewed the record, including Rate Counsel's comments, **HEREBY FINDS** that under the Agreement, the best price was obtained and represents the fair market value for the Property. The Board **FURTHER FINDS** that:

1. The Property is no longer used or useful for utility purposes.
2. The actual sale price of the Property is \$5,800,000. The appraisal report submitted by Petitioner states that the Property is valued at \$3,600,000.
3. The Property is not located in the watershed and is not subject to the jurisdiction of the WPRB.
4. In determining what offer had the best obtainable price, NJAW had to be cognizant of the necessary approvals to consummate the proposed sale.
5. NJAW engaged an experienced real estate broker to market the Property to obtain the highest sale price for the Property.
6. NJAW advertised the proposed sale of the Property in the Asbury Park Press on April 28, 2017 and May 5, 2017.
7. NJAW received nine bids by the May 24, 2017 deadline for submission ranging from \$2,000,000 to \$5,900,000.
8. Seven of the nine offers for the Property were lower than Enchante's accepted offer. Thus further review of these bids was unnecessary.
9. The seven offers that were submitted by Onyx Partners, LLC, Atlantic Partners, LLC, 1325 Hwy 34, LLC, 100 James Street, LLC, and Empire State Holdings, LLC were not the highest price obtainable. When compared to these seven offers as well as the offer received from Moshe David Perlstein, Enchante's offer provided the best overall value for price, beneficial lease terms for flexibility in the Company's transaction plan and affirmative acceptance of the Company contract terms and proof of funds to complete the transaction.

10. Enchante proposes to use the Property as an office building.

Based on the foregoing, and considering the factors associated with Enchante's proposed project to use the Property as an office building, the Board, having reviewed the entire record, **HEREBY FINDS** that:

- 1) The sale will not adversely affect the public interest, and the Property is no longer used or useful for utility purposes.
- 2) The sale and conveyance of the Property under the terms proposed will not adversely affect the ability of the utility to render safe, adequate, and proper service.
- 3) The actual sale price of \$5,800,000, coupled with the favorable leaseback provisions mentioned above and detailed in the petition, is the best price obtainable and represents fair market value for the Property.

The Board **HEREBY FINDS** that any rate related issues associated with the sale of the Property should be addressed in NJAW's next base rate case.

The Board **HEREBY APPROVES** the sale and conveyance of the Property and property interests as more fully described in the Petition. The Board **HEREBY APPROVES** the Company's proposed journal entries. Having considered the petition, the Board **HEREBY FINDS** that the sale of the Property is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future land transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect nor 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.
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 the Petitioner.
4. Within thirty (30) days of the date of the closing of this transaction, the Petitioner shall file with the Board proof of the closing, net transaction costs, and the final journal entries along with a detailed calculation, including selling expenses, of the sale.

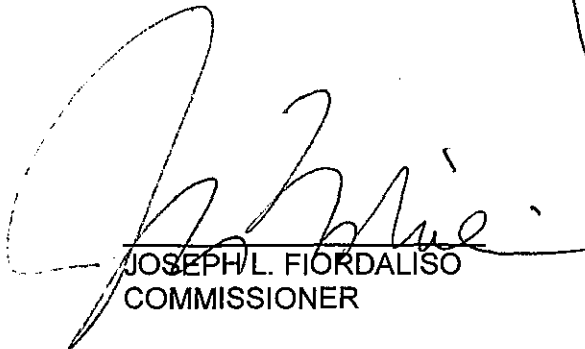
This Order shall be effective on October 30, 2017.

DATED: 10/20/17

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



JOSEPH L. FIORDALISO
COMMISSIONER



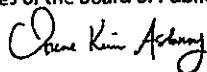
MARY-ANNA HOLDEN
COMMISSIONER



UPENDRA 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 PETITION OF NEW JERSEY-AMERICAN WATER COMPANY,
INC. FOR APPROVAL TO SELL REAL PROPERTY LOCATED AT 100 JAMES STREET IN
THE TOWNSHIP OF LAKEWOOD, COUNTY OF OCEAN**

DOCKET NO. WM17070746

SERVICE LIST

Stephen R. Bishop, Esq.
New Jersey-American Water Company, Inc.
1025 Laurel Oak Road
Voorhees, NJ 08043
Stephen.bishop@amwater.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.nj.gov

Debra F. Robinson, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
drobinson@rpa.nj.gov

Irene Kim Asbury, Esq.
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Irene.asbury@bpu.nj.gov

Maria L. Moran, Director
Division of Water
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
maria.moran@bpu.nj.gov