



Agenda Date: 7/22/15  
Agenda Item: 5B

**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 OF THE )  
TOWNSHIP OF MAHWAH WATER UTILITY )  
REQUIRING APPROVAL OF A CONTRACT FOR )  
WATER TANK MAINTENANCE WITH UTILITY )  
SERVICE CO., INC., PURSUANT TO THE NEW )  
JERSEY WATER SUPPLY PUBLIC PRIVATE )  
CONTRACTING ACT, N.J.S.A. 58:26-19 ET SEQ. ) ORDER APPROVING A PUBLIC-  
PRIVATE CONTRACT BETWEEN  
THE TOWNSHIP OF MAHWAH  
WATER UTILITY AND UTILITY  
SERVICE CO., INC.  
DOCKET NO. WO15050548

**Parties of Record:**

**Brian M. Chewcaskie, Esq., Gittleman, Muhlstock & Chewcaskie**, on behalf of the Township of Mahwah  
**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 May 8, 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 Mahwah Water Utility (the "Petitioner" or "Mahwah") submitted an application with the New Jersey Board of Public Utilities ("Board"), by a verified petition (the "Petition"), for approval of a contract with Utility Service Co., Inc. ("Utility Service") for water tank maintenance pursuant to N.J.S.A. 58:26-19.

Petitioner agrees to engage Utility Service to provide the professional service needed to maintain and sustain its four (4) water storage tanks as identified below:

- 1.0 million Gallon Stag Hill Steel Tank
- 1.5 Million Gallon Nilsen Steel Tank
- 2.0 Million Gallon East Slope Steel Tank
- 3.0 Million Gallon Rio Vista Concrete 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 Board, the New Jersey Department of Community Affairs, Division of Local

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<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.

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

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services. The term, "water supply services," as defined by the Water Act, means "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]." 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 expertise to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning 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 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 paragraph (1), (2) and (6) of subsection e. of section 5 of P.L. 1995, c. 101 (C. 58:26-23).

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. 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 Bergen County. Mahwah is a municipal corporation duly created and existing pursuant to the laws of the State of New Jersey, and performs essential governmental functions for the public health, benefit and welfare of its citizens. 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., Mahwah provides services to its citizens. The Mahwah Water Department services approximately 8,315 customers within Mahwah.

Mahwah 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. Mahwah determined to enter into a contract for water tank maintenance pursuant to N.J.S.A. 58:26-19 et seq.

On January 15, 2015, Mahwah 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 January 23, 2015, Mahwah published its Notice of Intention in The Record and Star Ledger, newspapers of general circulation and posted same on the Mahwah's website, [www.mahwahtwp.org](http://www.mahwahtwp.org).

On January 31, 2015, Mahwah issued a notice of its request for proposals of vendors interested in providing water tank maintenance services and published same in The Record and Star Ledger, newspapers of general circulation and posted on the Mahwah's website, [www.mahwahtwp.org](http://www.mahwahtwp.org). Proposals were received on February 26, 2015 and reviewed on that same date. One proposal was received from Utility Service.

Mahwah negotiated a contract with Utility Service on March 6, 2015, which included the required provisions pursuant to N.J.S.A. 58:26-23(e). In addition to being the only bidder, there were other factors that entered into the decision of selecting Utility Service. Mahwah has

utilized its services for repair and maintenance services as well as for professional inspection services on the Mahwah Water Department Storage Tanks since the year 2012. Utility Service provided detailed inspection reports/recommendations for each tank and also performed overdue and necessary repair and maintenance activities. Mahwah did not have a long-term maintenance and repair program in place and there was still a substantial amount of deferred maintenance to be fixed. Mahwah agreed to enter into a contract with Utility Service to provide it with a long-term maintenance plan on the four (4) Storage Tanks.

Mahwah obtained a written opinion from its bond counsel, McManimon Scotland Baumann on March 31, 2015 in accordance with N.J.S.A. 58:26-23(g).

A public hearing on the proposed contract with Utility Service was scheduled for April 9, 2015. Notice of the public hearing was published in The Record, a newspaper of general circulation, on March 26, 2015. This notice was published pursuant to N.J.S.A. 58:26-24(b).

A public hearing was conducted on April 9, 2015. A verbatim record of the hearing was produced as required pursuant to N.J.S.A. 58:26-24d. A hearing report was prepared by Mahwah on April 20, 2015 to address the statutory requirements established pursuant to N.J.S.A. 58:26-24(d). A few people spoke at the public hearing and their main issues dealt with scheduling/timing of the repairs, impact on water quality and cost.

A resolution was adopted on April 23, 2015 (Resolution No. 112-15) by the Mahwah Township Council approving the contract with Utility Service.

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

Mahwah established a contract with Utility Service to provide professional services needed to maintain its four (4) water storage tanks over a twenty year period as identified herein, located in Mahwah, NJ.

Utility Service will provide Mahwah 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 four (4) Mahwah Storage 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 Mahwah 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. Mahwah 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) Provide emergency services when needed to perform all repairs covered under this contract. Mahwah shall immediately isolate the tank, if necessary, to allow for

performance of emergency services. Utility Service shall contact Mahwah regarding the emergency service within four hours of report. Utility Service and Mahwah 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.

- e) Furnish pressure relief valves, if requested by Mahwah, so that Mahwah can install the valves in its water system while the tanks are being serviced.
- f) Furnish current certificates of insurance coverage to Mahwah.
- g) Renovation work and ongoing services described are not being performed by employees of Mahwah.
- h) Mahwah 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.

The total cost to optimally renovate, maintain, and sustain the four storage tanks will be spread over a twenty year period and will cost less than 9 million dollars. The cost will be funded out of the municipality's operating budget. The annual maintenance charge would be no more than an average of \$500,000 a year for performed said services. The annual fee for Contract Year 1, plus all applicable taxes, shall be due and payable upon completion of the initial exterior and interior renovations on the Stag Mill 1 MG Ground Storage Tank. Each subsequent annual fee, plus all applicable taxes, shall be due and payable on the first day of the Contract Year, of each Year thereafter. Beginning in Contract Year 2, the annual fee shall be paid quarterly. Furthermore, if Mahwah elects to terminate the contract prior to remitting the first ten (10) annual fees, then the cancellation fee amount for each tank shall be due and payable within thirty (30) days of the Company's receipt of Mahwah's notice to terminate. There are no rate increases anticipated in the next few years as a result of this contract.

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

Should changes by the DEP affect the terms of this Contract, Utility Service will negotiate in good faith to amend the contract to comply with the new regulations. If the new regulations add cost to the services provided, Utility Service will provide sufficient information to determine the costs and reasonable profit, and present an amendment to the contract upon agreement with Mahwah.

By letter dated July 1, 2015, the 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.

By letter dated July 2, 2015, Mahwah submitted to the Board a revised contract as of June 25, 2015, and requested that it replace the original contract that was submitted with the Petition filed on May 8, 2015. The contract was revised to address concerns raised by the DCA and the DEP, and the revisions do not affect the Board's review under the Water Act.

### **DISCUSSIONS AND FINDINGS**

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

1. Utility Service Company, Inc. 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))]. Mahwah entered into the agreement with Utility Service, which will rely on its management and expertise. 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 US water and wastewater utilities. Utility Service Co., Inc. 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 under this asset management agreement, which makes it the industry leader in water tank maintenance. As part of its mission to address critical water resources challenges facing the planet, the company is organized to deliver advanced services for water and wastewater utility providers to minimize capital and operation expenses, improve system operations and performance, extend the useful lives of utility assets and improve water quality. 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 twenty-year term is appropriate.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Mahwah. All of Mahwah’s customers are located within Mahwah’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 May 21, 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 June 5, 2015 the DEP completed its review of the Township of Mahwah’s Public Hearing Report and provided comments on this matter in accordance with N.J.S.A. 58:26-25(a).

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

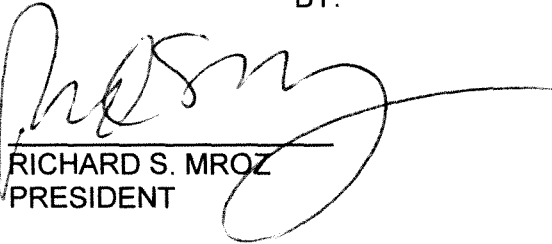
1. Mahwah, within ten (10) days of receipt of this Order, shall submit the approval of the Local Finance Board within the Division of Local Government Services in the Department of Community Affairs, as required by N.J.S.A. 58:26-25(a).
2. Mahwah shall obtain the final opinion of Bond Counsel, pursuant 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. Mahwah 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 twenty-year term shall be subject to Board review and approval.

This Order shall be effective on August 1, 2015.

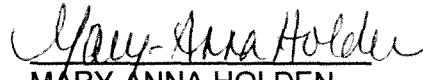
DATED:

*July 23, 2015*

BOARD OF PUBLIC UTILITIES  
BY:

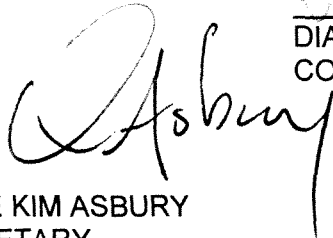
  
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PRESIDENT

  
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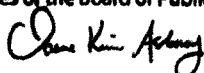
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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



IN THE MATTER OF THE PETITION OF THE TOWNSHIP OF MAHWAH WATER UTILITY  
REQUIRING APPROVAL OF A CONTRACT FOR WATER TANK MAINTENANCE WITH  
UTILITY SERVICE CO., INC., PURSUANT TO THE NEW JERSEY WATER SUPPLY PUBLIC  
PRIVATE CONTRACTING ACT, N.J.S.A. 58:26-19 ET SEQ.  
BPU Docket No. WO15050548

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