



Agenda Date: 10/20/17

Agenda Item: 5B

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)
APPROVAL TO SELL REAL PROPERTY LOCATED AT)
116 DEL MONTE ROAD IN THE TOWNSHIP OF TOMS)
RIVER, COUNTY OF OCEAN)

DECISION AND ORDER

DOCKET NO. WM17070747

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 116 Del Monte Road, Lot 19 in Block 944.02 ("Property"), in the Township of Toms River, County of Ocean, New Jersey ("Township"). The Company seeks approval to sell the Property, totaling approximately .18 acres, located in the Township. The Company acquired the Property for \$1.00 on May 24, 1952. The Company has never used the Property for any operations and it is vacant land. NJAW seeks approval to sell the Property to Three M Development, LLC ("Three M" or "Purchaser"). The sale price is \$655,555.

¹ Commissioner Dianne Solomon did not participate.

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 not 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 a two-family dwelling 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, NJAW states that the Property is located in a residential area and is not income producing. NJAW states that it advertised the proposed sale of the Property in the Asbury Park Press, pursuant to N.J.A.C. 14:1-5.6, on May 17, 2017 and May 24, 2017. The Company further states it listed the Property for sale with an experienced real estate broker, ReMAX Paradigm Realty Group, ("ReMAX" or "broker") in an effort 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 five bids for the Property from the following: Three M Developers, LLC (\$655,555), Atlantic Property Development (\$625,000), Ocean Bay Developers (\$570,000), and Daniel and Kimberly Mercuri (\$625,000 and \$600,000). The Company accepted Three M's bid because it provided the best overall value for the price, affirmative acceptance of the Company's contract terms and proof of funds to complete the transaction.

The Company entered into a Contract of Sale on June 15, 2017 to sell the Property to Three M. 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. Three M has paid a three percent (3%) cash deposit of \$20,000 that is being held in escrow by the Company's 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 in order for closing of the transaction to incur, including, among other things, Three M Development, LLC's due diligence evaluation and Board approval of the sale of the Property. There will be no immediate rate impact on rates as a result of the transaction.

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, the current book value of the Property is \$6,052 and the Property has always been recorded in Account 121-Nonutility Property – Land. Rate Counsel further states that the Property has never been included in NJAW's rate base and has always been booked in a non-utility property account.

Rate Counsel states that it sees no issue with the Company's claim that the sale price is the best price attainable by the Company. The sale price of \$655,555 is substantially above the appraised market value of \$300,000 and compares favorably with the other bids received. Rate Counsel further states that there is no issue with the Company's currently projected total net pre-tax gain amount of \$62,831 and the Company's proposal to flow 100% of this net gain to the stockholders without any sharing of the net gain with the ratepayers. Rate Counsel is aware that it is Board policy not to apply the 50/50 sharing approach in cases involving a gain on the sale of non-utility property that has never previously been included for ratemaking purposes in the utility's rate base.

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, this is the best price obtainable and represents the fair market value for the Property. The Board **FURTHER FINDS** that:

1. The Property is not used or useful for utility purposes.
2. The actual sale price of the Property is \$655,555. The appraisal report submitted by Petitioner states that the Property is valued at \$300,000.
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 in an effort to obtain the highest sale price for the Property.
6. NJAW advertised the proposed sale of the Property in the Asbury Park Press on May 17, 2017 and May 24, 2017.
7. NJAW received five bids by the June 7, 2017 deadline for submission ranging from \$570,000 to \$655,555.
8. Four of the five offers for the Property were lower than Three M's accepted offer. Thus further review of these bids is unnecessary.
9. The four offers that were submitted by the Atlantic Property Development, Ocean Bay Developers and Daniel and Kimberly Mercuri were not the highest price obtainable and could not provide the best overall value for price, affirmative acceptance of the Company's contract terms and proof of funds to complete the transaction.
10. Three M proposes to develop the Property as a two-family dwelling.

Based on the foregoing, and considering the factors associated with Three M's proposed project to construct a two-family dwelling, the Board, having reviewed the entire record, **HEREBY FINDS** that:

- 1) The sale will not adversely affect the public interest, and the Property is not 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.

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 **NOTES** that the Property has never been included in NJAWC's rate base and has always been booked in a non-utility property account.

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:

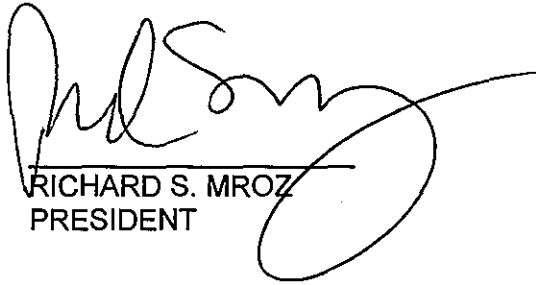
1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future land transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect nor in any way limit the exercise of the authority of the 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



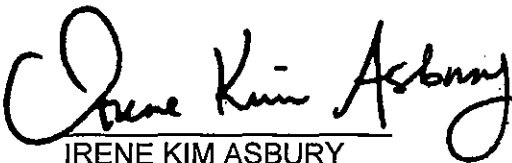
JOSEPH L. FIORDALISO
COMMISSIONER



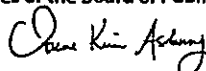
MARY-ANNA HOLDEN
COMMISSIONER



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



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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](mailto:drobenson@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