



STATE OF NEW JERSEY
Board of Public Utilities
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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 OF A MUNICIPAL CONSENT GRANTED)
BY THE BOROUGH OF BOUND BROOK, COUNTY)
OF SOMERSET)
ORDER
DOCKET NO. WE22020072

Parties of Record:

Stephen R. Bishop, Esq., New Jersey-American Water Company, Inc.
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this matter, the New Jersey Board of Public Utilities (“Board”) considers a petition filed by New Jersey-American Water Company Inc. (“NJAWC”, “Company” or “Petitioner”) for approval of a municipal consent granted by the Borough of Bound Brook (“Borough”).

BACKGROUND

NJAWC is a regulated public utility corporation engaged in the production, treatment, and distribution of water and the collection and treatment of sewage within its defined service territory, which includes portions of the following counties: Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union, and Warren.

On February 17, 2022, NJAWC filed a verified petition with the Board pursuant to N.J.S.A. 48:2-14, N.J.S.A. 48:3-11 to 15, N.J.S.A. 48:19-17 and 48:19-20 and N.J.A.C. 14:1-5.5, seeking approval of the following: (1) a municipal consent, Ordinance No. 2022-08 (“Ordinance”), adopted May 10, 2022 by the Borough to allow Petitioner to provide wastewater service to the customers in the Borough (“Proposed Franchise Area”); and (2) the expansion of NJAWC’s service territory

to include customers in the Proposed Franchise Area.¹ The municipal consent adopted by the Borough was a part of the sale process conducted in compliance with, and pursuant to, the procedures set forth in N.J.S.A. 40:62-3 through 40:62-6, in which the Borough sought public bids for the sale of its wastewater system (“System”). Pursuant to the petition, NJAWC is only seeking Board approval of the municipal consent and does not seek the Board’s determination on any ratemaking treatment related to the purchased utility system.

The Borough encompasses approximately 1.7 square miles and has a population of approximately 10,288 people. The Borough currently owns and operates the System servicing the residents and property owners within the Proposed Franchise Area. The system serves approximately 2,900 connections, including approximately 400 connections in Bridgewater Township. The Borough accepts and bills wastewater flow from Bridgewater on a bulk basis; the Borough does not own assets in Bridgewater and the residents in Bridgewater who are served by the Borough are not Borough customers. NJAWC intends to continue this practice post-closing of the transaction.

According to the petition, the extension of the NJAWC franchise territory is necessary and proper for the public convenience and properly conserves the public interest by permitting the provision of sewer utility service to allow for the Mansfield Warehouse project to proceed.

THE PROPOSED FRANCHISE AREA EXPANSION

The municipal consent adopted by the Borough was part of a sale process conducted in compliance with and pursuant to procedures set forth in N.J.S.A. 40:62-3 through 40:62-6, in which the Borough sought public bids for the sale of its wastewater system. The Borough awarded the contract to NJAWC.

Petitioner has obtained the municipal consent adopted by the Borough to own and operate the wastewater system, add to, extend, replace, operate and maintain said system in the public property described in Ordinance No. 2022-08 in order to provide said wastewater collection, and conveyance service. Petitioner has permission to lay pipes beneath the public roads, streets, public property and public places.

NJAWC agreed to Borough’s franchise term, which shall be perpetual and the use of surrounding streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which is limited by a statute to 50 years.

NJAWC is the franchised water provider for the Borough. The Borough’s wastewater system conveys wastewater to Middlesex County Sewerage Authority, which provides treatment for the wastewater. In the event of an emergency, NJAWC would follow similar procedures and protocols of their existing operations. Emergencies will be addressed through the Company’s 24/7 customer call center, and contact information will be supplied to each customer and all municipal entities including the Police and Fire Departments.

¹ An ordinance (2021-032) was approved by the Borough on December 14, 2021, however upon further review of N.J.S. A. 48:3-14, it was determined that additional public notice was required prior to adoption of the ordinance. The Borough re-advertised and re-adopted Ordinance No. 2022-08 in compliance with N.J.S.A. 48:3-14. The Borough adopted Ordinance No. 2022-08 on May 10, 2022.

IMPACT ON NEW JERSEY-AMERICAN WATER COMPANY, INC.

The Company represents that the expansion of its service territory will serve the public interest by permitting NJAWC to begin providing wastewater utility service within the Borough, and to leverage its experience, expertise and economies of scale to benefit the customers of the Borough and of NJAWC. NJAWC's significant resources will support more efficient service as well as provided additional system reliability to the Borough.

IMPACT ON RATES

NJAWC will continue the rates that were charged by the Borough for wastewater service. The rates to the customers of the Borough's System will be maintained at the current rates for a minimum of two (2) years and may increase by no more than 3% each year for the next three (3) years. In a future base rate case proceeding, the Company will propose to increase rates in accordance with agreement of sale following the initial two-year rate freeze beginning at the date of the closing. At that time, the Company will reflect in its tariff the respective annual increase on the anniversary date of each year the respective rate.

NJAWC proposed Rate Schedule 19-A is applicable for general residential, commercial, industrial and municipal wastewater service to customers in the Borough who receive volume-based water service billings from NJAWC. The rate to be charged for wastewater service shall be \$6.40 per thousand gallons per month. A fixed service charge of \$5.00 per month shall be charged to each user of wastewater service.

NJAWC proposed Rate Schedule 18-A is applicable for general residential, commercial, industrial and municipal wastewater service to customers in the Borough of Bound Brook who do not receive volume-based water service billings from NJAWC. The rate to be charged for wastewater service shall be a flat rate service charge of \$39.58. Bridgewater customers are billed directly by Bridgewater Township under the August 25, 2009 Interlocal Service Agreement. The Borough has continued to accept wastewater flow from the Township and bills the Township a negotiated rate annually.

SPECIFIC BENEFITS TO CUSTOMERS OF THE WASTEWATER SYSTEM

The Petitioner stated that the Agreement will promote the public interest and result in the following positive benefits:

1. NJAWC's size and scale enable the Company to address the wastewater needs of the Borough's customers well into the future.
2. The customers of the Borough will benefit from becoming a part of NJAWC, a substantially larger utility regulated by the Board. These customers will receive reasonable and prudent practices to ensure safe and reliable service.
3. After the approval of the agreement, the Borough customers will have access to NJAWC's customer service call center to resolve any customer service issues that may arise.

THE MUNICIPAL CONSENT

The Ordinance provides the Petitioner with an exclusive and perpetual franchise to provide sewer service within Borough, and the municipal consent of the Borough to permit said Company to extend sewer service and its related facilities to the Township. With regard to the use of the streets, the Ordinance provides in part as follows:

That exclusive consent and permission is given to NJAW, its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit NJAW to own and operate the System, add to, extend, replace, operate and maintain said System in the public property described herein in order to provide said wastewater collection and conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places.

NJAWC intends to operate the Wastewater System pursuant to the existing municipal consent granted under the Ordinance. The municipal consent, adopted on May 10, 2022, by the Borough, allows the Petitioner to lay, maintain, and operate the necessary wastewater treatment facilities, mains, pipes, and appurtenances throughout the Borough and to provide wastewater service within the Township.

On June 15, 2022 a duly noticed municipal consent hearing on the Company's petition was held via teleconference. David Schmitt, Esq., Legal Specialist, presided over the hearing at which representatives of the Company, the New Jersey Division of Rate Counsel ("Rate Counsel"), and Staff appeared. No members of the public attended and no written comments from the public were submitted.

RATE COUNSEL COMMENTS

By letter dated June 30, 2022, Rate Counsel submitted its comments to the petition and stated that, subject to certain conditions, it is not opposed to the request for approval of the municipal consent. In sum, Rate Counsel recommends that the Board modify the term of the municipal consent to 50 years for the specific authorization to provide sewer service within the Township. In addition, Rate Counsel also recommends that the Board condition its approval of the petition to specify that transaction costs cannot be recovered in rates; namely, that there be no authorization to include any specific assets or amounts in rate base, or authorization for any other ratemaking treatment.

DISCUSSION AND FINDINGS

The Board, having reviewed the Petition and the entire record, **FINDS** that the municipal consent is necessary and proper for the public convenience and properly conserves the public interests.

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

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.

In the same vein, N.J.S.A. 48:13-11 states in part as follows:

Every sewerage company organized under the laws of this State may lay its pipes and conduits beneath such public roads, streets, avenues and alleys as it may deem necessary for its corporate purposes, upon complying with the terms and conditions upon which the consent of the corporate authorities to the organization of the company shall have been obtained, provided that the consent to the laying of such pipes shall be obtained of any municipality through which the same may be laid.

See also I/M/O the Petition of New Jersey-American Water Company, Inc. for Approval of a Municipal Consent Granted by the Borough of Mount Ephraim, County Of Camden, No. WE19010117, 2019 N.J. PUC LEXIS 148 at *4 (June 21, 2019) (“NJAW has agreed to the Borough's franchise term for the provision of service, which is perpetual, as well as the use of the streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which limits the use to a term of 50 years.”); I/M/O the Petition of Suez Water New Jersey Inc. for the Approval of Municipal Consent to Own and Operate Water and Sewer Systems in the Township of West Milford and Approval of the Issuance of Revised Tariff Sheets Setting Forth Suez Water New Jersey Inc.'s Expanded Service Area Related to the Transfer of Water and Sewer Assets from the Township of West Milford to Suez Water New Jersey Inc., No. WE17111189, 2018 N.J. PUC LEXIS 235 at *12-13 (Oct. 29, 2018) (“Although the Ordinance 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 50 years. N.J.S.A. 48:3-15. However, N.J.S.A. 48:2-14 sets no limit for the duration of the municipal consent or franchise for the provision of service.”).

Accordingly, the Board **HEREBY APPROVES** the municipal consent, Ordinance No. 2022-08, adopted May 10, 2022, granted to NJAWC by the Borough, and the expansion of NJAWC's service territory to include customers in the Proposed Franchise Area. The Board **FURTHER APPROVES** the use of NJAWC's existing wastewater tariff applicable in the new service territory. The Board **HEREBY FINDS** that the rates set forth above and included in the provisional initial tariff to be just and reasonable and necessary to permit NJAWC to provide safe, adequate and proper service. The approvals granted, hereinabove, shall be subject to the following provisions:

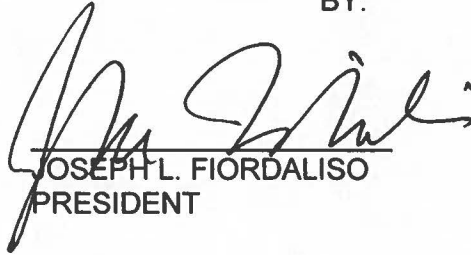
1. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any matter affecting the Company.
2. This 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 NJAWC.
3. The Petitioner shall not depreciate any portion of the wastewater system expansion that is funded by Contributions in Aid of Construction.

4. As required by N.J.S.A. 48:3-15, the municipal consent for the use of streets is limited to a term of 50 years.
5. 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.
6. Approval of this municipal consent does not constitute approval of any specific main extension or plan for service. In extending service, NJAWC must comply with all applicable laws.
7. The negotiated rates described in Section 8.3 of the Agreement of Sale between the Borough of Bound Brook, New Jersey and New Jersey-American Water Company, Inc. shall take effect upon closing as the Company's initial tariff for sewer service in the area now served by the Borough of Bound Brook. All other rate making issues associated with this transaction shall be held for consideration in the Company's next base rate proceeding following the conclusion of Docket No. WR22010019.
8. Tariff pages conforming to the terms of this Order must be submitted within five (5) business days of the effective date of this Order.
9. Board Staff is authorized to approve, subject to comments filed by Rate Counsel, any written request by the Petitioner for additional time to comply with any applicable items above.

The Order shall be effective on July 20, 2022.

DATE: July 13, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



CARMEN D. DIAZ
ACTING 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 OF A MUNICIPAL CONSENT GRANTED BY THE BOROUGH OF BOUND
BOOK, SOMERSET COUNTY

DOCKET NO. WE22020072

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