



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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) ORDER
APPROVAL OF A MUNICIPAL CONSENT GRANTED)
BY THE TOWNSHIP OF MULLICA, ATLANTIC)
COUNTY, NEW JERSEY) DOCKET NO. WE21091146

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:¹

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 Township of Mullica (“Mullica”).

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 September 30, 2021, 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, N.J.S.A. 48:19-20 and N.J.A.C. 14:1-5.5, and such other regulations and statutes as may be deemed applicable and appropriate by the Board, for approval of Municipal Consent Ordinance No.14-2021 (“Ordinance”), adopted August 31, 2021 by Mullica to allow NJAWC to serve the portion of Mullica (“Proposed Franchise Area”) currently served by Egg Harbor City (“City”). The Ordinance adopted by Mullica was in part anticipation of

¹ Commissioner Zenon Christodoulou abstained from voting on this matter.

the sale of the City's potable water system and a wastewater collection and conveyance system (collectively, "Systems") in compliance with and pursuant to the procedures set forth in Water Infrastructure Protection Act, N.J.S.A. 58:30-1 et seq, et seq. ("WIPA").² 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 on the to be purchased utility system.

Through the Systems, the City serves approximately 1,562 water service and 1,405 wastewater service customers in the City, as well as small portions of Mullica and the Township of Galloway. The Systems serve five (5) wastewater customers in Mullica along Hamburg Avenue from US Route 30 to West Moss Mil Road in Mullica.

According to the petition, approval of the Municipal Consent will serve the public interest by permitting NJAWC to begin providing water and wastewater utility service within Mullica and to leverage its experience, expertise, and economies of scale to benefit the customers of those systems and of NJAWC. NJAWC's significant resources will help provide safe, efficient service as well as additional system reliability to Mullica.

THE PROPOSED FRANCHISE AREA EXPANSION

The Municipal Consent was granted in anticipation of a sale process conducted in compliance with and pursuant to the procedures set forth in the WIPA.

Petitioner has obtained the Municipal Consent adopted by Mullica to construct, lay, maintain and operate the Systems through the Proposed Franchise Area and to provide water and wastewater service within the Proposed Franchise Area.

NJAWC agreed to Mullica'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.

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.

IMPACT ON NEW JERSEY-AMERICAN WATER COMPANY, INC.

The governing body of Mullica recognized that, as a result of the acquisition, the facilities will be operated by a company that is subsidiary of the largest provider of regulated water and wastewater services in the United States and concluded that it is in the public interest for the Facilities to be owned and operated by Petitioner. In essence, the City determined that NJAWC was best positioned to address Emergent Condition No. 5, as determined by the New Jersey Department of Environmental Protection, the City's lack of financial, technical or managerial capacity to adequately address necessary investment, repairs or maintenance on sustainable basis or own, operate the Systems in a way that supports economic activity on sustainable basis.

² NJAW is seeking approval of a petition, which is pending before the Board: In re the Petition of New Jersey American Water Company, Inc. for (1) Approval of its Agreement with Egg Harbor City, New Jersey for the Purchase and Sale of Systems; (2) a Determination that the Purchase Price is Reasonable; (3) For Such Other Approvals as May Be Necessary to Complete the Proposed Transaction, BPU Docket No. WM21091150, OAL Docket No. PUC 08739-2021S.

According to the Petitioner, approval of the Municipal Consent will serve the public interest by permitting NJAWC to begin providing water and wastewater utility service to those customers in Mullica currently served by the City Systems, and to leverage its experience, expertise and economies of scale to benefit the customers of those systems and of NJAWC. NJAWC's significant resources will help provide safe, efficient service as well as additional system reliability to Mullica.

IMPACT ON RATES

Currently the City of Egg Harbor charges the Township for water and wastewater service. According to Section 5.12 of the sale agreement between the City and Petitioner, the Petitioner shall adopt the City's adjusted water and wastewater rates upon Closing and shall hold said rates for a minimum of two (2) years. Thereafter, the City's rate would change at the same time and frequency of petitioner's general rate case proceedings.

The city charges the same rates to all of its water and wastewater customers regardless of which municipality in which they reside. Chapter 255, Section 14 of the City's Municipal Code contains the currently effective rates in regards to utility fee, water and sewer Charge, all fire services, sprinkler meters annual fee and fire hydrants. The quarterly water service charge for ¾ inch meter is \$102.50. Water charge \$7.00 per 1,000 gallons and Sewer charge \$7.50 per 1,000 gallons.

SPECIFIC BENEFITS TO CUSTOMERS OF THE WATER and WASTEWATER SYSTEM

The Petitioner stated that approval of the Municipal Consent will promote the public interest and result in the following positive benefits:

1. NJAWC's size and scale enable the Company to address the water and wastewater needs of Mullica's customers well into the future.
2. The customers of Mullica 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, Mullica 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 water and wastewater sewer service within Mullica, and the Municipal Consent of Mullica to permit said Company to extend water and wastewater service and its related facilities to Mullica. With regard to the use of the streets, the Ordinance provides in part as follows:

Mullica grants unto the Company the municipal consent to use the streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, with such consent limited to the fifty (50) year duration set forth in N.J.S.A. 48:3-15, as well as the municipal consent as required pursuant to N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that said pipes installed

after the date of this ordinance shall be laid at least three feet (3') below the surface and shall not in any way unnecessarily obstruct or interfere with the public travel or cause of permit other than temporary damage to public or private property.

NJAWC intends to operate the Systems pursuant to the existing municipal consent granted under the Ordinance. The municipal consent, adopted on August 31, 2021 by Mullica, allows the Petitioner to lay, maintain, and operate the necessary water and wastewater treatment facilities, mains, pipes, and appurtenances throughout Mullica and to provide water and wastewater service within Mullica .

On June 23, 2022, a duly noticed municipal consent hearing on the 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 July 12, 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 along with use of streets is limited to a term of 50 years. 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. 14-2021, adopted August 31, 2021, granted to NJAWC by Mullica, and the expansion of NJAWC’s service territory to include customers in the Proposed Franchise Area. The Board **HEREBY FINDS** that the Municipal Consent is necessary and proper for the public convenience and properly conserves the public interest, and that the Company has the ability to provide safe, adequate and proper service in Mullica. The approvals granted, hereinabove, shall be subject to the following provisions:

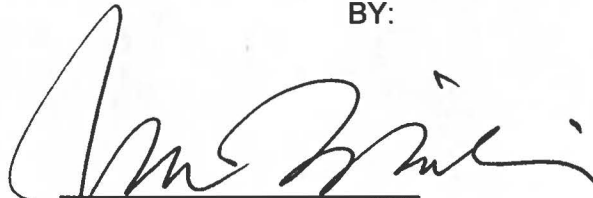
1. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any matter affecting the Company.
2. This 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 water and wastewater system as it may be expanded after completion of acquisition of the City of Egg Harbor systems under WIPA 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. Within 30 days of the date of the closing of sale, the Petitioner 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 Agreement.
8. Within 10 days of the date of the closing of sale, NJAWC shall submit any revised tariff pages that may be necessary as a result of the proposed Agreement.
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 August 24, 2022.

DATE: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

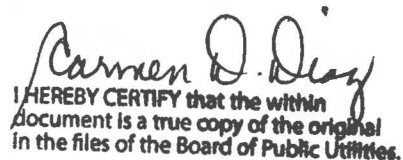


ROBERT M. GORDON
COMMISSIONER

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 TOWNSHIP OF MULLICA, ATLANTIC
COUNTY
DOCKET NO. WE21091146

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