

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)
APPROVAL OF A MUNICIPAL CONSENT GRANTED)
BY THE BOROUGH OF SOMERVILLE, COUNTY OF)
SOMERSET)
ORDER APPROVING)
MUNICIPAL CONSENT)
DOCKET NO. WE23030197)

Parties of Record:

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

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities (“Board”) considers a petition filed pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5 by New Jersey-American Water Company, Inc. (“NJAWC,” “Company,” or “Petitioner”) on March 29, 2023 for approval of a municipal consent granting the Company authority to provide wastewater services throughout the geographical area of the Borough of Somerville (“Borough”), Somerset County, New Jersey (“Proposed Franchise Area”) granted by the Borough on March 6, 2023 via Ordinance No. 2694-23-0221 (“Municipal Consent Ordinance”) (“Petition”).

BACKGROUND

The Petitioner 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 throughout the State of New Jersey including portions of Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union, and Warren counties.

The Borough encompasses approximately 2.4 square miles and has a population of approximately 12,599 people. The Borough currently owns and operates its wastewater system (“System”) servicing the residents and property owners throughout the geographical area of the Borough. The System serves approximately 3,800 connections in the Borough and approximately

43 connections in Bridgewater Township (“Bridgewater”), most of which already receive water service from NJAWC.¹

The Municipal Consent Ordinance was introduced and adopted pursuant to N.J.S.A. 48:3-11 to 15, N.J.S.A. 48:19-17, and N.J.S.A. 48:19-20 to permit the Petitioner to construct, lay, maintain, and operate the necessary wastewater mains, pipes and appurtenances throughout the geographical area of the Borough. In addition to the Municipal Consent Ordinance, the Borough adopted a separate ordinance, No. 2678-22-0718, which approved the sale of the System by the Borough to NJAWC as part of a sale process conducted pursuant to N.J.S.A. 40:62-1 *et seq.*, and authorized the placement of the proposed sale on the ballot for the next general election. The sale agreement was reached after the Borough sought public bids for the sale of the System. The Borough awarded the contract to NJAWC, subject to approval by voters and the Board. Pursuant to N.J.S.A. 40:62-3 through 40:62-6, on November 8, 2022, the Borough held a referendum on whether to approve the acquisition of the System by Petitioner, whereby the Borough’s voters approved the referendum. NJAWC and the Borough have agreed to a purchase price of \$7.0 million.

PETITION

By the Petition, NJAWC sought Board approval of the Municipal Consent Ordinance. The Company indicated it would seek ratemaking treatment as part of a future base rate proceeding under a separate docket.

By the Petition, the Company noted that the Municipal Consent Ordinance would not have an adverse impact on the provision of safe, adequate, and proper service to NJAWC’s present customers. According to NJAWC, the addition of customers within the Proposed Franchise Area should not have an adverse impact on the service provided to current customers in other portions of the Company’s service territory.

The Company noted that customers in the Proposed Franchise Area will pay general service tariff rates for all wastewater service provided by the Company, subject to any changes to those tariffs when, and if, the Board approves any such modifications by regulation or Order.

The Company further noted that expanding franchise territory to the Borough is necessary and proper for public convenience and to properly conserve the public interest by providing wastewater utility service to the Proposed Franchise Area.

On August 23, 2023, the Board conducted a duly noticed virtual municipal consent hearing on the Petition. Michael Hunter, Regulatory Officer, presided over the hearing at which representatives of the Company, the New Jersey Division of Rate Counsel (“Rate Counsel”), and Board Staff (“Staff”) appeared. No members of the public attended the hearing, and the Board received no written comments from the public.

¹ Bridgewater has provided NJAWC with a municipal consent to serve the wastewater customers who are currently customers of the Borough. It is contemplated that these customers will become customers of NJAWC as part of this transaction, and NJAWC has filed a petition for approval of its municipal consent with Bridgewater for this service territory. See In re Petition of New Jersey-American Water Company, Inc. for Approval of a Municipal Consent Granted by the Township of Bridgewater, Somerset County, BPU Docket No. WE23040233.

COMMENTS

By letter dated September 14, 2023, Rate Counsel submitted its comments on the Petition noting that, subject to certain conditions, it did not oppose the Municipal Consent Ordinance. Rate Counsel identified that the Municipal Consent Ordinance grants the Company a perpetual franchise and access to streets and public places with no duration. Rate Counsel noted that N.J.S.A. 48:3-15 limits such grants to 50 years and, as such, recommended that the Board limit the term of the Municipal Consent Ordinance to a term of 50 years. Rate Counsel further recommended that the Board condition its approval on the requirement 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

No municipality or other political subdivision of the State may grant a privilege or franchise to any public utility unless approved by the Board. N.J.S.A. 48:2-14. The Board will grant approval when, after a duly notice public hearing, it determines the franchise is necessary and proper for the public convenience, and properly conserves interests of the public. Ibid. The Board may impose conditions on its approval as the public convenience and interest may require. Id.

The Board, having reviewed the Petition and the entire record in this matter, **HEREBY FINDS** the Municipal Consent Ordinance is necessary and proper for the public convenience and properly conserves the interest of the public.

Accordingly, the Board **HEREBY APPROVES** the Municipal Consent Ordinance and the expansion of NJAWC's service territory to include the Proposed Franchise Area. The Board **FURTHER FINDS** that the Company has the ability to provide safe, adequate, and proper service in the Borough. The approvals granted hereinabove shall be subject to the following provisions:

1. This Order shall not affect or in any way limit the Board's, or the State's, exercise of authority, 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 System expansion funded by Contributions in Aid of Construction.
4. This Order applies only to the approval of the Municipal Consent Ordinance and shall not be construed as approving any ratemaking issues.
5. Pursuant to N.J.S.A. 48:3-15, the Municipal Consent Ordinance for the use of streets is limited to a term of 50 years.
6. Approval of the Municipal Consent Ordinance does not constitute Board approval of any costs or expenses associated with the Petition. Any determination as to reasonableness of costs and expenses related to the franchise, including, but not limited to, cost of construction, Contributions in Aid of Construction, depreciation of

contributed plant, cost of connection or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding.

7. Approval of the Municipal Consent Ordinance does not constitute approval of any specific main extension or plan for service. In extending service, NJAWC must comply with all applicable laws.
8. Within 10 days of the signed order, NJAWC shall submit any revised tariff pages.
9. Staff may approve, subject to comments filed by Rate Counsel, any written request by the Petitioner for additional time to comply with these conditions.

This Order shall be effective on September 27, 2023.

DATED: September 27, 2023

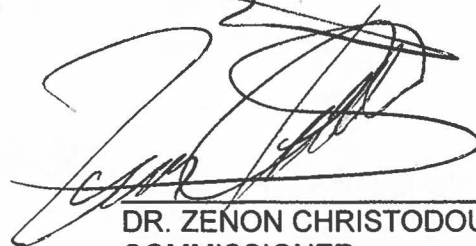
BOARD OF PUBLIC UTILITIES
BY:



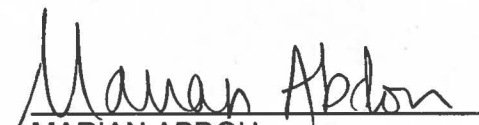
CHRISTINE GUHL-SADOVY
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
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MARIAN ABDOU
COMMISSIONER

ATTEST:



SHERRI L. GOLDEN
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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OF A MUNICIPAL CONSENT GRANTED BY THE BOROUGH OF SOMERVILLE, COUNTY OF SOMERSET

DOCKET NO. WE23030197

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