



Agenda Date: 6/18/25

Agenda Item: 5A

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)	ORDER APPROVING SALE OF
JERSEY-AMERICAN WATER COMPANY, INC.,)	REAL PROPERTY
FOR APPROVAL TO SELL A PORTION OF REAL)	
PROPERTY LOCATED AT 185 JOHN F.)	DOCKET NO. WM24090724
KENNEDY PARKWAY IN THE TOWNSHIP OF)	
MILLBURN, COUNTY OF ESSEX)	

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:

On September 19, 2024, New Jersey-American Water Company, Inc. ("NJAWC" or "Company") filed a petition with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.6, seeking to sell a portion of real property known as Lot 5 in Block 5302 on the tax map of the Township of Millburn, County of Essex, New Jersey ("Petition"). The proposed portion of Block 5302, Lot 5 to be sold consists of approximately eight (8) acres of vacant land ("Property"). Additionally, NJAWC requested that the Board grant a waiver of N.J.A.C. 14:1-5.6(b), which requires that the advertisement for the sale of the Property be conducted within 150 days immediately prior to the filing of the Petition.

PETITION

According to the Petition, the entirety of Block 5302, Lot 5 encompasses approximately 558.42 acres located at 185 John F. Kennedy Parkway, Millburn, New Jersey. The Company indicated that, following the sale, the Property would be subdivided from the remainder of Block 5302, Lot 5, upon which NJAWC's Canoe Brook Water Treatment Plant and two (2) pump storage raw water reservoirs will continue to be located and operated. The Company additionally indicated that the Property is not now nor prospectively required or useful for utility purposes.

NJAWC commissioned CBRE, Inc. to appraise 4.66 acres of the Property. The appraisal of the Property, with an effective date of March 19, 2018, determined that the market value of the 4.66 acres of undeveloped land under then-existing zoning was \$500,000. The Company advertised the sale of the 4.66-acre portion of the Property in a local daily newspaper on May 2, 2018 and May 9, 2018. After receiving only one (1) bid from Woodmont Properties, L.L.C. ("Woodmont" or

“Buyer”), the Company and Woodmont executed a Contract of Sale on November 13, 2018 for a purchase price of \$8,700,000. The agreed upon consideration for the vacant land was increased by \$33,000 when, pursuant to an amended Contract of Sale dated June 21, 2019, Woodmont elected to acquire approximately 3.33 additional acres, with the stipulation that the additional vacant land would be subject to a water quality conservation easement retained by NJAWC and would otherwise remain undeveloped. By the Petition, NJAWC requested that the Board approve the sale of the Property. NJAWC stated that the sale of the Property will not compromise the ability of the Company to render safe, adequate, and proper service to its customers.

Given that the advertisement for the sale of the Property was not conducted within 150 days immediately prior to the filing of the Petition as required by N.J.A.C. 14:1- 5.6(b), NJAWC further requested that the Board grant a waiver of these requirements. According to the Company, the intended use of the Property is unique since it contemplates the sale of land with appropriate responsible planning to allow for affordable housing in furtherance of longstanding public purpose pronouncements from the New Jersey Supreme Court. To accomplish such development goals, Woodmont was required to engage in lengthy litigation with the Township of Millburn, ultimately settling its lawsuit on July 30, 2021. Therefore, NJAWC opined that this procedural history could not have been accomplished within the time limits set forth in N.J.A.C. 14:1-5.6(b).

The Petition indicated, pursuant to N.J.A.C. 14:1-5.6(a)(5), that Block 5302, Lot 5 is used for the protection of a public water supply and is subject to the jurisdiction of the Watershed Property Review Board (“WPRB”). The proposed subdivision and transfer of the Property leaves approximately 550 acres of the Canoe Brook Water Treatment Plant complex remaining as regulated lands under the jurisdiction of the WPRB. As noted by documentation submitted with the Petition, the WPRB approved NJAWC’s request for an exemption from the Watershed Protection and Moratorium Act, L. 1988, c. 163, as amended by L. 1990, c. 19, on March 26, 2024. Additionally, the WPRB found that there is a compelling need for the proposed development of affordable housing on the Property, and that sufficient mitigation of any potential water quality impacts had been provided. As such, the WPRB determined that the proposed development of the Property would be protective of the watershed and would not pose a threat to the water supply.

Rate Counsel Comments

On February 26, 2025, the New Jersey Division of Rate Counsel (“Rate Counsel”) submitted comments in this matter indicating that it did not object to the sale of the Property. Rate Counsel also stated that it did not object to the Company’s request for a waiver of the advertising requirements of N.J.A.C. 14:1-5.6(b). However, Rate Counsel indicated that it did object to the Company’s proposed accounting treatment for the gain on the sale.

Rate Counsel also determined that the Company had met its burden of proof in satisfying the three (3) requirements of the Erie-Lackawanna test.¹ Specifically, Rate Counsel stated that: 1) there is no indication that the Property is presently used and useful for utility services; 2) there is no reason to doubt the Company’s representation that the sale of the Property would not compromise the ability of the Company to render safe, adequate, and proper service; and 3) the sale price appears reasonable in light of the appraisal submitted and the fact that Woodmont is willing to pay such a substantial sum for the Property.

¹ In re Erie-Lackawanna Ry. Co., 75 P.U.R. 3d 246, 247 (N.J. Bd. of Pub. Util. 1968) (“Erie-Lackawanna”).

Rate Counsel then addressed NJAWC's proposed accounting treatment for the sale of the Property. Specifically, Rate Counsel objected to NJAWC's proposal to return fifty percent (50%) of the net gain to customers in its next base rate case subsequent to the closing of the sale, while the remaining fifty percent (50%) of the net gain would be awarded to shareholders. Rate Counsel instead proposed that the Board award 100% of the proceeds to ratepayers.

Rate Counsel further recommended that any Order approving the sale include the following language: 1) approval under this Order is contingent on a purchase price of at least \$8,733,000; and 2) the net gain on the sale is to be awarded 100% to customers and included in Account 253 (Regulatory Liability) to be awarded to ratepayers in the next base rate case.

NJAWC Reply Comments

On March 12, 2025, NJAWC submitted a response to the comments filed by Rate Counsel. Specifically, NJAWC stated that its requested 50/50 sharing of the net gain among shareholders and ratepayers is appropriate due to the significant public benefit which will be achieved through the Company's efforts. NJAWC argued that, without its efforts to obtain WPRB approval, the Property would remain in an internal Company account without any present ability to discuss the net gain. Additionally, NJAWC stated that its creative efforts to negotiate and advocate to make the Property available for affordable housing benefited the citizens of New Jersey, as well as the Company's shareholders and customers.

NJAWC further stated that Rate Counsel's proposal to return 100% of the gains to ratepayers is contrary to existing Board policy as well as Rate Counsel's recommendations regarding the sale of property in other matters. In support of its position, NJAWC referenced Board proceedings in which Rate Counsel did not object to the Company's proposal to allow, or specifically recommended that the Board allow, fifty percent (50%) of the net gain from a sale of its property to flow to the Company's shareholders.² Further, NJAWC stated that the philosophy of the Board on this issue can best be seen in previous Board Orders.³

NJAWC stated that Rate Counsel's proposed departure from Board policy that encourages regulated utilities to pursue challenging property sales for public benefit through net gain sharing is short sighted and contrary to public welfare in this matter. The Company further stated that the Board should not adopt a policy whereby shareholders of regulated utilities receive nothing in return for a utility's significant time and effort required to effectuate the sale of encumbered utility-owned property, as proposed by Rate Counsel. Therefore, NJAWC requested that the Board approve the 50/50 share of net gains associated with the Property sale as proposed in its Petition.

² In re the Petition of New Jersey-American Water Company, Inc. for Approval to Sell Real Property Located at 100 James Street in the Township of Lakewood, County of Ocean, BPU Docket No. WM17070746, Order dated October 20, 2017; In re the Petition of New Jersey-American Water Company, Inc. for Approval to Sell Real Property Located at 500 Grove Street in the Borough of Haddon Heights, County of Camden, BPU Docket No. WM04111373, Order dated August 18, 2005.

³ See In re Hackensack Water Company, 147 P.U.R. 4th 294 (N.J. Bd. of Pub. Util. 1993); In re the Petition of the Atlantic City Sewerage Company for Authorization to Make, Execute and Implement an Agreement of Sale and to Implement a Plan of Distribution of the Net Proceeds Therefrom, BPU Docket No. WM98090790, Order dated January 14, 1999.

DISCUSSION AND FINDINGS

In reviewing the sale of utility property under the authority given to it by N.J.S.A. 48:3-7(a), the Board must ensure that the sale meets the criteria set forth in Erie-Lackawanna. Specifically, the Board must consider three (3) factors:

1. The property must be no longer used or useful, presently or prospectively, 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.
3. The proposed sale price is the best price obtainable and represents fair market value for the property.⁴

As noted in the Petition, the Property consists of vacant land that is not now nor prospectively required or useful for utility purposes. The Petition also indicated that the sale of the Property will not compromise the ability of the Company to render safe, adequate and proper service to its customers. As further noted in the Petition, approximately 3.33 acres of the Property will remain undeveloped pursuant to a water quality conservation easement. While the appraisal of the Property was conducted in 2018 and included only a portion (4.66 acres) of the Property proposed to be sold in this matter, the Board is **SATISFIED** that the agreed-upon sales price significantly exceeds the appraised value and **HEREBY AGREES** that the purchase price is the best price obtainable and represents the fair market value of the Property. Therefore, the Board **HEREBY FINDS** that the sale of the Property is in conformance with the requirements of Erie-Lackawanna. The Board additionally **FINDS** that NJAWC has met the relevant requirements of N.J.A.C. 14:1-5.6(a).

N.J.A.C. 14:1-5.6(b) requires that the Property be advertised for sale “within 150 days immediately prior to the filing of the petition for the approval of the sale.” Pursuant to N.J.A.C. 14:1-5.6(i), the Board shall grant a waiver of the advertisement requirement if the utility fulfills the relevant factors. Given that NJAWC made reasonable attempts to meet the intent of N.J.A.C. 14:1-5.6(b) by advertising the Property for sale twice in a local newspaper, and that the agreed-upon sales price significantly exceeds the appraised value of the Property, the Board believes that the requested waiver will not adversely affect the public interest. Additionally, as found by the Board above, the Property is not now nor prospectively useful for utility purposes; the sale of the Property will not compromise the ability of the Company to render safe, adequate and proper service; and the purchase price represents the fair market value of the Property based upon an independent appraisal. NJAWC also indicated that there is no relationship between the Company and the Buyer, other than that of transferor and transferee in this transaction. The Board notes that NJAWC’s reason for requesting such waiver is based on the unique intended purpose of the Property, which required lengthy litigation and the grant of an exemption by the WPRB. Therefore, the Board, having found that the requirements of N.J.A.C. 14:1-5.6(i) have been satisfied, **HEREBY APPROVES** the Company’s request for a waiver of the advertising requirements as set forth in N.J.A.C. 14:1-5.6(b).

⁴ In re Atl. City Elec. Co., No. A-5711-09T3, No. A-5890-09T3 (App. Div. July 17, 2013).

The Board is cognizant of Rate Counsel's position that 100% of the net gain on sale should be returned to ratepayers, as opposed to NJAWC's proposal to return fifty percent (50%) of the net gain on sale to ratepayers. The Board declines to make any determinations regarding the treatment of the sales proceeds at this time. Rather, the Board **HEREBY FINDS** that any rate related issues associated with the sale of the Property should be addressed in NJAWC's next base rate case. However, the Board agrees that Rate Counsel's recommendation to condition approval of the sale on a purchase price of at least \$8,733,000 is reasonable and has included such condition herein.

Accordingly, the Board **HEREBY APPROVES** the sale of the Property by NJAWC to the Buyer in the amount of \$8,733,000. The approval granted herein shall be subject to the following provisions:

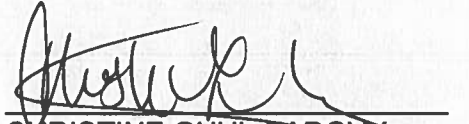


1. Approval under this Order is contingent on a purchase price of at least \$8,733,000.
2. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future land transactions that may come before the Board and shall not be relied on as such.
3. NJAWC shall notify the Board and Rate Counsel if it anticipates any material changes in the sale.
4. The Board and Rate Counsel retain all rights to review all costs and proceeds related to the purchase, ownership, and sale of the Property as part of NJAWC's next base rate case or another appropriate proceeding.
5. Approval of the sale does not include or imply any position as to the prudence, recoverability, or allocation of costs of acquiring, owning, managing, or selling the Property.
6. This Order shall not affect nor in any way limit the exercise of the authority of the Board, or of this State, in any future petition or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or any other matter affecting NJAWC.
7. Within thirty (30) days of the date of closing on this transaction, the Company shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation, including selling expenses, of the sale.

The Company's costs remain subject to audit by the Board. This Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

This Order shall be effective on June 25, 2025.

DATED: June 18, 2025

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT
DR. ZENON CHRISTODOULOU
COMMISSIONER
MARIAN ABDOU
COMMISSIONER
MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRIL L. LEWIS
BOARD 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
TO SELL A PORTION OF REAL PROPERTY LOCATED AT 185 JOHN F. KENNEDY PARKWAY IN THE
TOWNSHIP OF MILLBURN, COUNTY OF ESSEX

DOCKET NO. WM24090724

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