



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

WATER

IN THE MATTER OF THE PETITION OF AQUA )  
NEW JERSEY, INC., FOR APPROVAL OF A ) ORDER  
MUNICIPAL CONSENT TO PROVIDE WATER )  
SERVICE TO A PORTION OF UPPER FREEHOLD ) DOCKET NO. WE08040230  
TOWNSHIP )

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

Petitioner, Aqua-New Jersey, Inc. ("Aqua-NJ" or "Company"), is a public utility operating in the State of New Jersey with its principal office located at 10 Black Forest Road, Hamilton New Jersey. The Company provides water and/or wastewater service to nearly 50,000 customers in municipalities located in Warren, Hunterdon, Mercer, Burlington, Monmouth, Camden, Ocean, Sussex, and Gloucester Counties, New Jersey. Through its Central Division headquartered in Hamilton, New Jersey, the Company provides water service to franchise areas including a portion of Upper Freehold Township ("Upper Freehold" or "Township"), in Monmouth County. Water service to the Township is made pursuant to municipal consents previously granted by the Township to Aqua-NJ and approved by the Board of Public Utilities ("Board" or "BPU") in BPU Docket Nos. WE96010026 and WE05100882.

By letter dated April 14, 2008, Aqua-NJ petitioned the Board, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, for approval of a municipal consent granted by the Township through Ordinance No. 196-08 dated February 21, 2008. Under the terms of the municipal consent, the Company is authorized to construct, maintain, and operate a water-works distribution system for the purpose of supplying, distributing, and selling water in the contemplated franchise area which, as described in the Ordinance, includes those lots along Yardville-Allentown Road on the southerly side from Block 46, Lot 15 down to and including Block, 46, Lot 4.01. On the northerly side, it includes all the properties from Block 44, Lot 4.01 down to and including Block 44, Lot 13.

Ordinance No. 196-08 notes that the Township's grant of the franchise further extending the Company's service territory in the Township was in response to a request by the Upper Freehold Regional School District ("School District") to have the Company provide water service to a new middle school planned for a site on Breza Road which is located entirely in the

Township. Previously, the Township granted Aqua-NJ a franchise extension to serve a middle school which was to be built on a site located on Ellisdale Road. This municipal consent was approved by the Board in BPU Docket No. WE05100882. The Ellisdale Road site is no longer under consideration for construction of the middle school and is replaced by the Breza Road site. The Company advises that construction for the middle school is scheduled to begin shortly and it must be prepared to construct its water supply facilities in the August/September 2008 timeframe. For this reason, the Company seeks an expedited review of its petition.

The proposed middle school is located in Planning Area 3. The Company believes that Board approval of the franchise is justified in light of the need to serve the new middle school, the construction of which is intended to relieve overcrowding. The school is expected to open for the school year beginning September 2010.

The Company proposes to charge rates for water service to the new franchise area according to its tariffs approved and on file with the Board. These tariffed rates apply to other divisions of the Company, including areas of the Township currently being served by Aqua-NJ. The additional franchise area will be included in, and served by, the Company's Central Division, located in Hamilton Township. Aqua-NJ employees work in the vicinity of the additional franchise area on a daily basis serving the adjacent territory already within the Company's service area. Any customer service issue in the proposed franchise area will be handled in the same manner as are now handled in the Company's existing service territory. A 24-hour emergency assistance call line is available to all customers of the Central Division.

In order to supply water service to the additional service area, Aqua-NJ will need to install approximately 6,100 feet of main and will also install about 10 hydrants. The estimated cost of \$500,000 associated with construction of the main will be entirely borne by the Upper Freehold Regional School District and subsequently fully contributed to Aqua-NJ. The Company will not need to make any other investment in infrastructure or facilities in order to provide water service to the planned middle school.

The Company's central division has a current capacity of about 10 million gallons (mg) per day. Maximum day usage is about 6.5 mg. Serving the middle school will require approximately 18,000 gallons per day. This allows for an approximate capacity cushion of 3.5 mg.

By letter dated March 25, 2008, Allentown Borough ("Allentown") filed with the Board a certified copy of its Resolution R-47-2008 entitled "Resolution Objecting to the Franchise of Water by Upper Freehold Township, Monmouth County to Aqua Water Company" ("Resolution"). Allentown, along with Upper Freehold and Millstone Township, constitute the school population of the School District. Allentown presently supplies water service to the schools in the School District from a municipal system located in Allentown. Allentown will provide wastewater service to the new middle school. As noted above, the new middle school will be located entirely within Township boundaries. The Resolution asserts that both the School District and Allentown desire to maintain water service from Allentown. Allentown believes that the grant of the municipal consent by the Township to Aqua-NJ is not in the best interests of the citizens of the School District; will not serve the health, welfare and safety of the citizens of Allentown or the Township; and is contrary to good business practice. Additional correspondence on behalf of Allentown was received from Donald Driggers, Esq., who by letter dated July 17, 2008, voiced the objection of Allentown Borough to approval of the municipal consent, requested a hearing and included a memo prepared by the Borough of Allentown's engineer, Eric Betz.

On July 24, 2008, public notice entitled "Notice of the Filing of a Petition for Approval of a Municipal Consent to Provide Water Service to a Portion of Upper Freehold Township" advising of the public hearing to be conducted regarding the petition filed by the Company was published in Messenger Press, a newspaper of local circulation (Exhibit P-2). By letter dated July 22, 2008, the Company notified the Clerk of Upper Freehold Township and Clerk of the Monmouth County Board of Chosen Freeholders of the upcoming public hearing. The mailing was made via certified mail and included a copy of the actual public notice.

After being duly noticed, a public hearing on the petition was held at the Board's Newark office on August 14, 2008. The public hearing was conducted by Joseph Quirolo, Esq., the Board's designated hearing officer. Attending the public hearing were representatives of the Company, the Department of Public Advocate—Division of Rate Counsel ("Rate Counsel"), and Board Staff. No other person attended.

The Company produced one witness, James C. Barbato, Regional Engineer for Aqua-NJ. Mr. Barbato testified to matters relating to the petition including: the franchise, water facilities needed to serve the middle school, and the current state of the project.

On August 21, 2008, Mr. Driggers sent a letter to Board Staff concerning the public hearing held on this matter and a purported lack of notice;<sup>1</sup>

On August 25, 2008, Rate Counsel submitted its comments to the proposed municipal consent. In its comments, Rate Counsel expressed no opposition to the approval of the municipal consent granted to Aqua by Upper Freehold.

By letter dated September 9, 2008, Mayor Fierstein provided comments and objections to the proposed provision of water service by Aqua to the planned middle school and requested the Board, at its September 12 agenda meeting, deny Aqua the municipal consent and grant Allentown authority to provide water service to the middle school to be located in Upper Freehold.

By letter dated September 10, 2008, Mr. Driggers requested that the matter be deferred from consideration by the Board at its scheduled September 12, 2008, agenda meeting and included a certified statement from Stuart Fierstein, Allentown's Mayor. On September 12, 2008, at its regularly scheduled agenda meeting, the Board deferred this matter until a future agenda meeting to consider Allentown's submissions and to provide additional opportunity for the record to be supplemented. (Item VA listed on the consent agenda).

On September 26, 2008, Aqua-NJ filed comments in response to the various materials filed by Allentown. In its comments, Aqua-NJ addressed seven main areas: (1) both Upper Freehold and the School District support the franchise grant to Aqua-NJ; (2) Aqua-NJ has obtained the necessary DEP permits needed to provide water service to the middle school; (3) Aqua-NJ has sufficient water supply capacity and transmission facilities to provide water service to the middle school site immediately; (4) proper legal notice was given for the public hearing held at the Board; (5) Allentown's claims that granting the franchise to Aqua-NJ would negatively impact the school district are refuted and that Allentown provided no support for the statement; (6) Allentown's request to have the Board grant Allentown a franchise is beyond the Board's

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<sup>1</sup>After a telephone discussion on August 28, 2008 between Mr. Driggers and Board Staff, copies of the proof of notice and notice for the public hearing conducted at the Board's Newark office on August 14, 2008, were faxed that day to Mr. Driggers.

authority in this instance; and (7) the Board reject Allentown's claims and interjections of irrelevant and extraneous issues and approve the franchise grant to Aqua-NJ. Attached to the comments filed was a letter dated September 10, 2008, from Upper Freehold Township confirming that the franchise was granted to Aqua NJ and reaffirming that the franchise grant would not be amended.

Also on September 26, 2008, correspondence was received on behalf of the School District from Joseph E. Stampe, President of the School District. This letter advised that the board of the School District passed a resolution on September 17, 2008, expressing the desire of the School District to have Aqua provide potable water service to the planned middle school and further noted that the middle school project has experienced significant delays and in order to meet upcoming fire suppression, geothermal, and other plumbing requirements requested that the Board consider this matter without delay.

### Discussion

Aqua-NJ has provided water service to portions of Upper Freehold since 1995. The Company currently serves approximately 500 customers located within the Township. The pending municipal consent would grant a third additional parcel to the Company within the Township and would permit service to the planned middle school as well as some potential new homes and businesses. The water plant installation project is in its final planning stages and the Company has received the necessary safe drinking water approval from the New Jersey Department of Environmental Protection. The Company has adequate water supply capacity, no water quality issue in the current Upper Freehold franchise area, and its long history of providing water service to the citizens of the State of New Jersey demonstrates a proven ability to provide high quality water service at just and reasonable rates. There will be no change to the Company's current tariffed rates, charges or nature of service. Customers located within the contemplated new service area will be charged the same rates as other similar customers located in the Central Division for the same quality of service.

All costs for construction to provide service to the new middle school will be borne by the School District and Aqua-NJ will not need to construct any additional facilities to provide water service. Consequently, there will be no impact to existing Aqua-NJ customers.

Customer assistance and emergency assistance will be handled by the Company's Central Division in a manner identical to that now provided to customers located with the Township.

The location of the middle school is as noted in Planning Area 3. It appears that the location of the school is appropriate given the genuine need for the new school and a corresponding need for safe, adequate, and proper water service to meet the health and safety concerns of the students and faculty of the new middle school.

The municipality, in this case, Upper Freehold Township, has the authority to approve or refuse to approve a franchise in the first instance. Pursuant to N.J.S.A. 48:2-14, the Board then has the authority to approve the franchise when, after hearing, the Board determines that the franchise is "necessary and proper for the public convenience and properly conserves the public interest." The Board finds that Aqua has adequate water supply capacity, and has no water quality issue in the current Upper Freehold franchise area. Further, there will be no change to the Company's current tariffed rates, charges or nature of service. Customers located within the contemplated new service area will be charged the same rates as other similar customers

located in the Central Division for the same quality of service. Both Upper Freehold and the School District support the franchise grant to Aqua. By letter dated September 10, 2008, Upper Freehold Township confirmed that on February 21, 2008, the township committee adopted an ordinance expanding the franchise area for Aqua in order to accommodate the new school. By letter dated September 26, 2008, the School District stated that it had passed a resolution at its September 17, 2008, meeting in support of Aqua obtaining the franchise to serve the school.

Based upon overcrowding issues, Upper Freehold and the School District are working on a very strict timeline and anticipate having the school completed and in service by September 2010. Aqua has in place the necessary New Jersey Department of Environmental Protection permits and has sufficient water supply capacity and transmission facilities to provide water service to the site immediately. Allentown admits that it would require capital investment and a construction schedule into 2009.

After providing ample opportunity for all interested persons to comment and a careful review of the record to this proceeding, the Board determines that Aqua-NJ has the ability to provide safe, adequate, and proper water service to the new middle school, that the franchise is necessary and proper for the public convenience and properly conserves the public interest and that the granting of the municipal consent by Upper Freehold to Aqua-NJ was lawful. Accordingly, the Board **HEREBY APPROVES** the municipal consent, Ordinance 196-08 dated February 21, 2008, granted to Aqua New Jersey by the Township of Upper Freehold. The Board **FURTHER APPROVES** the use of Aqua New Jersey's existing tariff. Pursuant to N.J.S.A. 48:2-14, the Board **FURTHER DENIES** Allentown's request that the Board permit Allentown to serve the School District as it has failed to secure the municipal consent in the first instance from Upper Freehold.

The approvals granted, hereinabove, shall be subject to the following provisions:

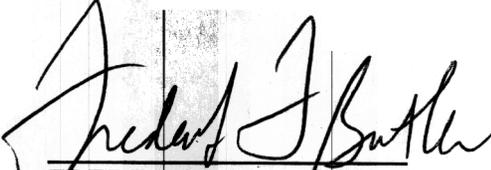
1. This Order shall not be construed as directly or indirectly fixing for any purposes, whatsoever, the value of any tangible or intangible assets now owned or hereafter to be owned by Aqua New Jersey, Inc.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board or of this State, in any future petition or in any future proceeding, with respect to rates, franchise, services, financing, accounting, capitalization, depreciation or in any other matters affecting Aqua New Jersey, Inc.
3. In an appropriate subsequent proceeding, Aqua New Jersey, Inc. shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers. Approval of this municipal consent does not include authorization to include in rate base the specific assets that are or will be completed as a result of the new service territory.

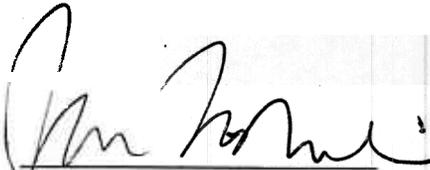
4. Approval of these municipal consents does not constitute approval by the Board of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, cost of construction, contributions in aid of construction, depreciation on 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.

DATED: 10/7/08

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

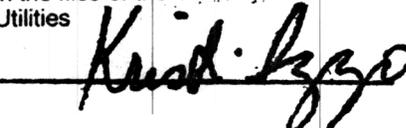
  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
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 AQUA NEW JERSEY, INC.  
FOR APPROVAL OF MUNICIPAL CONSENT TO PROVIDE WATER SERVICE  
TO A PORTION OF UPPER FREEHOLD TOWNSHIP

BPU Docket No. WE08040230

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