



Agenda Date: 2/19/14
Agenda Item: 5A

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF AQUA NEW)
JERSEY, INC. FOR APPROVAL OF A RESTATED)
MUNICIPAL FRANCHISE TO SERVE THE TOWNSHIP)
OF CHESTERFIELD, BURLINGTON COUNTY, STATE)
OF NEW JERSEY)

ORDER

DOCKET NO. WE13111058

Parties of Record:

Steven S. Goldenberg, Esq., Attorney for Aqua New Jersey, Inc.- Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Aqua New Jersey, Inc. ("Aqua" or "Company") is a corporation duly organized under the laws of the State of New Jersey and is a public utility engaged in the distribution of water subject to the jurisdiction of the Board. Aqua's principal place of business is located at 10 Black Forest Road, Hamilton, New Jersey. Aqua provides water distribution and related services to approximately 57,000 residential, commercial and industrial customers located in Mercer, Burlington, Camden, Hunterdon, Gloucester, Sussex, Monmouth and Ocean Counties.

On November 7, 2013, the Company filed a Petition with the New Jersey Board of Public Utilities ("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 Ordinance No. 2013-10 adopted on July 25, 2013, by the Township of Chesterfield, Burlington County ("Chesterfield" or "Township"), granting Aqua the franchise to serve and permission to construct, operate, and maintain water facilities in the Township's "Rights-of-Way. As Aqua is presently serving the Township, the Company's Petition requested a restatement of Aqua's franchise to provide potable water, fire protection and related services to Chesterfield.

Aqua currently provides potable water, fire protection and related distribution services to customers located in Chesterfield pursuant to a franchise originally issued in 1910 to Aqua's corporate predecessor, the Crosswicks Water Company ("Crosswicks"). The franchise authorized Crosswicks to construct, maintain and operate a water company located in or near the Village of Crosswicks ("Village") to supply the Village and its inhabitants. The Village was described as situated partly in the Township of Chesterfield, located in Burlington County ("Chesterfield"), and partly in the Township of Hamilton, located in Mercer County ("Hamilton").

The Certificate of Incorporation of Crosswicks was duly filed with the Secretary of State on July 26, 1910, in accordance with then-applicable law.

On December 18, 1956, the Board granted an application by Crosswicks to approve Ordinances approved by Hamilton and Chesterfield to extend Aqua's franchise service territory to provide service to additional customers located within Hamilton and Chesterfield. As part of the franchise extension, Chesterfield also authorized Aqua to lay water pipes and mains under the public roads.

Since its original franchise was issued, Crosswicks has undergone a series of corporate restructurings, mergers and name changes. Aqua is the corporate successor to Crosswicks that currently holds the franchise to serve Chesterfield, and has provided water and fire protection services to Chesterfield and certain of its municipal subdivisions pursuant to the franchise.

Over the past several years, a payment dispute arose with regard to monies due and owing to Aqua for certain of the fire protection and other services provided to Chesterfield. After trying unsuccessfully to amicably resolve the payment dispute, Aqua brought an action against Chesterfield and certain municipal co-defendants in the Superior Court of New Jersey, Law Division, Burlington County, captioned *Aqua New Jersey, Inc. v. Township of Chesterfield et al*, Docket No. L-2507-1 (the "Litigation"), to recover the monies due. In defense of the Litigation, Chesterfield interposed a counterclaim that, among other things, alleged that Aqua's provision of water service to Chesterfield and its co-defendants was unauthorized because the franchise awarded to Aqua's predecessor had expired. Chesterfield predicated its arguments on the expiration of the fifty year road opening permit that had been issued to Aqua in 1956 in connection with the extension of Aqua's franchise. Chesterfield sought a declaratory ruling that Aqua no longer had a franchise to distribute and sell water within Chesterfield, and that Chesterfield was therefore free to enter into negotiations with another water purveyor for the provision of water services without compensation or further obligation to Aqua. Aqua denied the allegations of the counterclaim.

Aqua moved to stay further proceedings in the Superior Court and remand the franchise-related issues to the Board to enable the Board to exercise its primary jurisdiction with regard to the utility franchise issues, as required by N.J.S.A. 48:2-14. The Superior Court denied Aqua's application. Aqua then moved in the Appellate Division for leave to appeal the denial of the stay. Aqua's motion was supported by Board Staff and the New Jersey Utilities Association, who intervened in the appeal application as *amici curiae* and filed supporting briefs. The Appellate Division granted leave to appeal.

During the pendency of the appeal, captioned Aqua New Jersey, Inc. vs. Township of Chesterfield, Superior Court of New Jersey, Appellate Division, Docket No. A-0262-12T1, the parties (Aqua and Chesterfield) executed a Settlement Agreement that resolved all issues in the proceeding. Among other things, the Settlement Agreement authorized a restated Franchise Agreement and a related Right of Way Consent. The franchise was approved by the Chesterfield Township Committee by Ordinance 2013-10. The Franchise Ordinance incorporated the terms of the "Agreement between the Township of Chesterfield and Aqua New Jersey, Inc. granting the franchise to serve and municipal consent and permission to construct, operate and maintain water facilities in the Township's Rights-of-Way". Aqua duly accepted the terms and conditions of the restated franchise and Ordinance 2013-10 by letter of Nicholas V. Asselta, President, dated August 30, 2013. The Settlement Agreement was approved by the Chesterfield Township Committee by Resolution 2013-06-18.

The Settlement Agreement reached between the Parties is not before the Board. However, the Settlement Agreement is dependent on the Board's approval of the Municipal Consent Petition. The Appellate Division has stayed the appeal pending action by the Board.

The Settlement Agreement resolves all issues relating to Aqua's claims for past due invoices for water services. The Settlement Agreement also restates Aqua's franchise to provide water services within an expanded "Franchise Area", as described in the Franchise Agreement, and authorizes a Right of Way Consent that would permit Aqua to construct, operate and maintain water facilities in Chesterfield's public rights of way. The Settlement Agreement is conditioned upon approval of the Franchise Agreement as incorporated into Ordinance 2013-10 by the Board.

The Franchise Agreement contains the following material terms:

- a) Pursuant to N.J.S.A. 48:2-14, Chesterfield grants Aqua, its successors and assigns, a non-exclusive franchise to install, construct, operate, maintain, replace and manage a water works and distribution system within the limits of Chesterfield, to serve all persons and organizations, public and private, located within the redefined Franchise Area with potable water, related fire and other related water services. The Franchise Area refers to the municipal boundaries of the Township of Chesterfield together with any enlargements or extensions to the Franchise Area that are approved by Chesterfield and any other agency with jurisdiction over Aqua. This definition clarifies Aqua's right to serve the entire Township of Chesterfield, thereby resolving an ambiguity that currently exists due to changes that have occurred to certain municipal boundary lines since the franchise was awarded to Crosswicks.
- b) Chesterfield grants Aqua a renewed Right of Way Consent for Aqua to use the rights of way within Chesterfield for the laying of pipes above or beneath the public roads, streets and places as Aqua may deem necessary for its corporate purposes attendant to the franchise in accordance with the Franchise Agreement, N.J.S.A. 48:3-15 and N.J.S.A. 48:19-17. Pursuant to N.J.S.A. 48:3-15, the initial term of the Right of Way Consent is to be 50 years, retroactive to August 1, 2006, the expiration date of the prior consent. The Right of Way Consent may be extended by Chesterfield upon expiration of the initial term and the written request or application of Aqua in accordance with applicable law. The prior Right of Way Consent granted to Aqua in 1956 expired on August 1, 2006.
- c) The term of the franchise is clarified to be perpetual unless terminated in accordance with the provisions of the Franchise Agreement or by the Board pursuant to its authority under N.J.S.A. 48:2-14.
- d) The Franchise Agreement will become effective on the date it is approved by the Board, with the restated franchise to be deemed effective retroactive to August 1, 2006.
- e) The Franchise Agreement supersedes and replaces all prior agreements between the parties with regard to the subject matter of the Franchise Agreement.

As evidenced by the foregoing, the statutory requirements regarding consent by the municipality to the restated franchise appear to have been met. The continuing, restated franchise is necessary and proper for the public convenience, so as to allow Aqua to maintain water service to Chesterfield.

On January 29, 2014, a duly noticed public hearing on the Company's Petition was held at the Board's Trenton office. Legal Specialist, James Kane, Esq., presided over the hearing at which representatives of the Company, Division of Rate Counsel ("Rate Counsel") and Board Staff appeared. No members of the public appeared at the hearing.

By letter dated February 6, 2014, Rate Counsel submitted its comments to the Petition and stated that it is not opposed to its approval. However, Rate Counsel recommends that the Board condition its approval on limitation of the municipal consent to a reasonable period not exceeding fifty years. The Board acknowledges Rate Counsel's recommendations; however, Ordinance 2013-10 adopted by the Township purports to provide municipal consent for water service in perpetuity.

The Board has reviewed Rate Counsel's recommendations and has determined not to limit the term of the municipal consent to operate in the franchise area.

Based on the foregoing and a thorough review of the record to this proceeding, the Board **HEREBY APPROVES** the restated Municipal Consent, Ordinance No. 2013-10 dated July 25, 2013, granted to Aqua New Jersey, Inc. by the Township of Chesterfield.

The Board **FURTHER APPROVES** the continued use of Aqua New Jersey, Inc.'s existing water tariff applicable in the service territory.

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 the Company.
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 the Company.
3. In an appropriate subsequent proceeding, the Company shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers.
4. 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 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.

5. As set forth in Ordinance 2013-10, the Municipal Consent for the use of the Township's streets is limited to a term of fifty (50) years, retroactive to August 1, 2006. The Ordinance also provides municipal consent for Aqua to provide water service to Chesterfield in perpetuity.

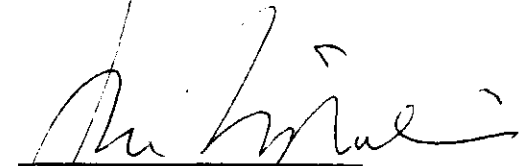
This Order shall be effective on March 1, 2014.

DATED: 2/19/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

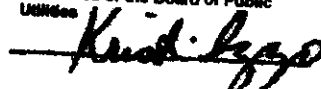

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
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 A
RESTATED MUNICIPAL FRANCHISE TO SERVE THE TOWNSHIP OF
CHESTERFIELD, BURLINGTON COUNTY, STATE OF NEW JERSEY
BPU DOCKET NO. WE13111058**

SERVICE LIST

AQUA NJ-PETITIONER

Andrew P. Henry, Esq.
Assistant General Counsel
Aqua New Jersey, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
aphenry@aquaamerica.com

Steven S. Goldenberg, Esq.
Fox Rothschild LLP
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648
sgoldenberg@foxrothschild.com

TOWNSHIP OF CHESTERFIELD

John C. Gillespie, Esq.
Parker McCay P.A.
9000 Midlantic Drive, Suite 300
Mt. Laurel, NJ 08054

RATE COUNSEL

Stefanie A. Brand, Esq., Director
Susan McClure, Esq.
Brian O. Lipman, Esq.
Division of Rate Counsel
140 East Front Street 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

DIVISION OF LAW

Marisa Slaten, Esq.
Alex Moreau, Esq.
David Wand, Esq.
Geoffrey Gersten, Esq.
Dept. of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029

NJBPU

Maria Moran, Director
Mike Kammer, Chief
Mona Mosser, Chief
Jim Kane, Legal Specialist
Ken Welch, Administrative Analyst
Board of Public Utilities
Division of Water
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350