



Agenda Date: 8/23/17  
Agenda Item: VA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://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 TOWNSHIP OF EASTAMPTON, COUNTY OF )  
BURLINGTON )  
ORDER  
DOCKET NO. WE17020139

**Parties of Record:**

**Stephen R. Bishop, Esq.**, New Jersey-American Water Company, Petitioner  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

In this matter, the Board of Public Utilities ("Board") considers a petition filed by New Jersey-American Water Company, Inc. ("NJAWC" or "Company") for Board approval of a municipal consent granted by the Township of Eastampton ("Eastampton Township" or "Township") 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 and 48:19-20, and N.J.A.C. 14:1-5.5, to construct, lay, maintain, and operate the necessary mains, pipes and appurtenances to extend its existing partial franchise in the Township to include Block 700, Lot 9 and Block 800, Lot 9.03, for the purposes of adding to, extending, operating and maintaining water facilities for the rendering of water services to this portion of the Township (the "Proposed Franchise Area").

**BACKGROUND**

NJAWC is a regulated public utility corporation engaged in the production, treatment and distribution of water and collection of sewage within its defined service territory within the State of New Jersey. Petitioner serves approximately 612,791 water and fire service customers and approximately 35,987 sewer service customers in all or part of 189 municipalities in 18 of the State's 21 counties. On November 28, 2016, the Company petitioned Eastampton Township for authority to provide water service within the Proposed Franchise Area. On December 19, 2016, the Township's governing body adopted Ordinance No. 2016-14, granting NJAWC a franchise and authorizing the Company to add to, extend, maintain and operate water service facilities within the Proposed Franchise Area for the purpose of providing water to that area. The municipal consent extends the presently existing territory of the Company in the Township to

include Block 700, Lot 9 and Block 800, Lot 9.03. Per Ordinance 2016-14, the franchise is offered "in perpetuity" to New Jersey- American Water Company, "its successors and assigns".

On February 17, 2017, NJAWC filed a petition with the Board requesting the Board's approval of the consent granted by Eastampton Township in accordance with N.J.S.A. 48:2-14, N.J.S.A. 48:3-11 to 15, N.J.S.A. 48:19-17 and 48:19-20 and N.J.A.C. 14:1-5.5. According to the Petition, there is currently no public water in the Proposed Franchise Area. The Proposed Franchise Area encompasses the proposed residential development identified as "Lennar at Rancocas Creek": Block 700, Lot 9 and Block 800, Lot 9.03 on the Tax Map of the Township bounded by Smithville Road, US-206, Woodlane Road, and Monmouth Road. The Proposed Franchise Area is located in the Planned Retirement Community Residential District of the Township. Currently, the proposed development includes 452 age-restricted homes consisting of 334 single-family dwellings and 118 duplex dwellings, 15,500 square feet of commercial space, a 10,500 square foot clubhouse, a 1,500 square foot pool and a variety of additional recreation areas on 148 acres of property to be constructed on the Block 700, Lot 9 portion of the development. The Mount Holly Municipal Utilities Authority provides wastewater service to the Proposed Franchise Area and owns and maintains the conveyance lines and the sewage treatment plant.

The Company will construct an interconnection to mains in its existing franchise service area in the Township to serve the Proposed Franchise Area, which interconnection will allow the Lennar at Rancocas Creek development to proceed. This interconnection could also serve other projects as they are built within the Township. NJAWC's Mt. Holly System has three (3) well station treatment plants and a bulk transfer interconnect with NJAWC's Delaware River System. The Mt. Holly system's firm capacity is 14.392 million gallons per day ("MGD"). The Mt. Holly System currently has approximately 6.192 MGD in excess firm capacity, which will be sufficient to serve the proposed new franchise area and proposed development. No additional plant capacity is needed to serve the new development in Eastampton Township other than the requisite water main extension. According to the report by the developer's engineer, this development will generate an average daily water demand of 135,190 gallons per day ("gpd") residential and 175,862 gpd nonresidential. Twenty-nine (29) new public fire hydrants are proposed.

The Company plans to maintain the same level of service it provides in its existing service territories. The Company will charge for water service according to its Board approved tariff for Service Area 3 rates as outlined in the tariff currently on file.

The Company asserts that its request is in the public interest. It explains that the extension of the NJAWC franchise territory is necessary and proper for the public convenience and properly conserves the public interest by the provision of water utility service to allow for other identified or approved developments in the Township in a designated Smart Growth area. Approval will ensure that water service to residents in the Proposed Franchise Area will be provided by an experienced owner/operator under the jurisdiction of the New Jersey Department of Environmental Protection and the Board.

On July 20, 2017, a duly noticed public hearing on the Company's petition was held at the Board's Trenton office. Board Staff Legal Specialist James P. Kane presided over the hearing at which representatives of the Company, the developer, the New Jersey Division of Rate Counsel ("Rate Counsel") and Board Staff appeared. No other members of the public attended the hearing.

On July 25, 2017, Rate Counsel submitted written comments concerning the Company's petition. In its comments, Rate Counsel indicated that it does not object to the Company's

request for approval of the Eastampton municipal consent subject to the recommendation that the Board modifies the term of the consent and limits the Petitioner's right to the use of the streets to 50 years from the date of the grant, and require the Company to request a renewal of that right subject to Township and Board approval. Rate Counsel comments that the ordinance grants the Company a franchise in perpetuity but is silent on the duration of the use of public streets and places. Rate Counsel argues that the Board should limit the use of the streets, pursuant to N.J.S.A. 48:3-15, to 50 years. Rate Counsel further argues that the franchise should also be limited, preferably to 50 years and that the Board should not allow a municipal consent in perpetuity. According to Rate Counsel, under both N.J.S.A. 48:2-14 and N.J.S.A. 48:3-11, et seq., a municipality and the Board must consider a utility's request to do business within the municipality. If such consents were given perpetual effect, then there would be no such role for future governing bodies of the municipality, or for future Boards. It is Rate Counsel's position that the Legislature did not intend to enable municipalities, or the Board, to take action that would be binding on future municipal officials, and future Boards, in perpetuity. Rate Counsel requests that any approval of the Petition include certain restrictions, some of which are incorporated into this Order.

### **DISCUSSION AND FINDINGS**

Pursuant to N.J.S.A. 48:2-14, the Board is statutorily required to approve a utility's franchise before it can be considered valid. The Board shall grant approval when, after hearing, it 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 is entitled to impose conditions as to construction, equipment, maintenance, service or operation that the public convenience and interests may reasonably require. Although the Ordinance specifies "in perpetuity" for both the use of the streets and the municipal consent, a municipality may only consent to the use of the streets for a period not exceeding 50 years (N.J.S.A. 48:3-15). However, neither N.J.S.A. 48:2-14 nor N.J.S.A. 48:19-20 set any limit for the duration of the municipal consent or franchise.

After a review of the record, the Board **HEREBY FINDS** that the municipal consent, which is the subject of this matter, is necessary and proper for the public convenience and properly conserves the public interests, and that NJAWC will continue to have the ability to provide safe, adequate and proper service to its customers located in its designated service territories.

Based on the foregoing and a thorough review of the record to this proceeding, the Board **HEREBY APPROVES** the Township of Eastampton Ordinance No. 2016-14 adopted on December 19, 2016, for the provision of water service in the Proposed Franchise Area within Eastampton Township at the Company exists and approved tariff rates.

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

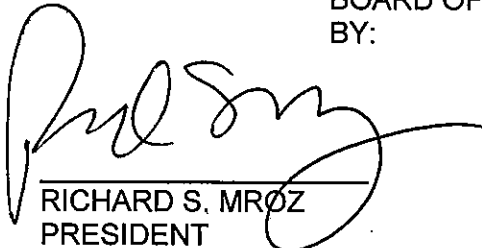
1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by NJAWC.
2. This Order shall not affect nor in any way limit the exercise of the authority of this Board or of this State in any future petition or in any proceedings with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or in any other matters affecting NJAWC.

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. 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 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. 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.
6. As required by N.J.S.A. 48:3-15, the municipal consent for the use of public streets and the right to lay pipes under N.J.S.A. 48:19-17 is limited to a term of 50 years from the effective date of this Order.

This Order shall be effective on September 2, 2017.

DATED: 8/23/17

BOARD OF PUBLIC UTILITIES  
BY:



RICHARD S. MROZ  
PRESIDENT



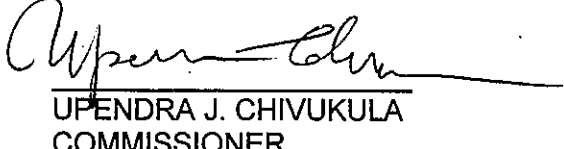
JOSEPH L. FIORDALISO  
COMMISSIONER



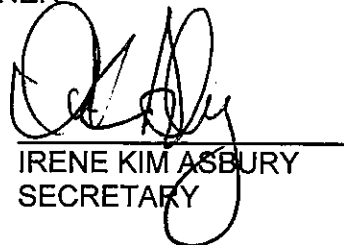
MARY-ANNA HOLDEN  
COMMISSIONER

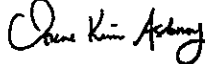


DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
IRENE KIM ASBURY  
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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THE TOWNSHIP OF EASTAMPTON, COUNTY OF BURLINGTON**

**BPU Docket No. WE17020139**

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