



Agenda Date: 4/25/18
Agenda Item: VA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
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 TOWNSHIP OF HOWELL, COUNTY OF)
MONMOUTH) **ORDER**

DOCKET NO. WE17111148

Parties of Record:

Stephen R. Bishop, Esq., Corporate Counsel, New Jersey-American Water Company Inc.,
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 Howell ("Township") to permit the Company to construct, install and maintain sanitary sewer infrastructure facilities and to expand the Company's existing franchise to provide sanitary sewer service in the Township to Block 135 Lot 26, which shall be subdivided and known as Lot 26.01 ("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. Said service territory includes portions of the following counties: Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren.

On November 13, 2017, the Company filed a petition with the New Jersey Board of Public Utilities ("Board") 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 and such other regulations and statutes as may be deemed applicable and appropriate by the Board, for approval of Municipal Consent Ordinance No. O-17-29 ("Ordinance") adopted September 5, 2017, by the Township. This Ordinance allows NJAWC to construct, install and maintain sanitary sewer infrastructure facilities and to expand NJAWC's existing franchise to provide sanitary sewer service to the Proposed Franchise Area.

The Proposed Franchise Area encompasses the proposed residential development identified as "Cornerstone at Howell"; Block 135, Lot 26 on the Tax Map of the Township. Currently, the proposed development includes approximately 72 residential units with a total sewer demand of 16,275 gallons per day. The proposed development consists of 14 one-bedroom apartments, 43 two-bedroom apartments and 15 three-bedroom apartments.

It is the intention of the Company that gravity sewer mains will be constructed. The mains to be installed in the Proposed Franchise Area will connect to the existing NJAWC wastewater conveyance system in the existing franchise area. The NJAWC wastewater system flows to the Manasquan River Sewerage Authority within the Township, which then flows to the Ocean County Utility Authority ("OCUA") conveyance system and ultimately treated by OCUA.

The Company proposes to charge rates for wastewater services according to its tariffs already on file with, and approved by, the Board for another wastewater service area of the Township already served by the Company. Residents will be charged under Rate Schedule 3A for sewer usage of \$5.5060 per 1,000 gallons for Non-Exempt and \$4.7480 per 1,000 gallons for Exempt customers.

According to the petition, the extension of the NJAWC franchise territory is necessary and proper for the public convenience and properly conserves the public interest by permitting the provision of sewer utility service to allow for the Cornerstone at Howell project to proceed.

NJAWC has agreed to the Township's franchise term, which is perpetual, as well as the use of surrounding streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which limit the use to a term of 50 years.

On March 20, 2018, 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. Appearances were made on behalf of the Company, the Division of Rate Counsel ("Rate Counsel") and Board Staff. No other party participated in the hearing or filed any written submission with the Board related to this proceeding.

At the hearing, the Company relied on its petition and exhibits filed with the Board and presented the statement of Steven Bishop, its Corporate Counsel. Mr. Bishop testified that the extension of the franchise area is necessary and proper for the public convenience and properly conserves the public interest by permitting the provision of waste water utility service to allow for the approved development in the Township. Mr. Bishop also stated that the approval of the municipal consent will ensure that waste water service to residents in the Proposed Franchise Area will be provided by an experienced owner/operator under the jurisdiction of the Board and the New Jersey Department of Environmental Protection.

By letter dated April 3, 2018, Rate Counsel submitted its comments to the petition and stated that it is not opposed to its approval with certain conditions, some of which are contained in this Order. Rate Counsel comments that under N.J.S.A. 48:3-15, a municipal grant to a utility of the right to use the municipality's streets must be limited to a period not exceeding 50 years. Rate Counsel recognizes that the Ordinance gives NJAWC a perpetual franchise term, although it does limit the use of streets to 50 years. Although N.J.S.A. 48:2-14 sets no limit on the duration of a franchise term, Rate Counsel asserts 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 therefore recommends that the Board condition its approval on limitation of the franchise term to a reasonable period not exceeding 50 years.

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 the franchise term, the Ordinance implements the statutory mandate that a municipality may only consent to the use of the streets for a period not exceeding 50 years, citing N.J.S.A. 48:3-11 and 15. 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 in this proceeding, the Board **HEREBY APPROVES** the Municipal Consent, Ordinance No. O-17-29 adopted September 5, 2017, granted to New Jersey-American Water Company, Inc. by the Township of Howell. The Board **FURTHER APPROVES** the use of New Jersey-American Water Company, Inc.'s existing applicable wastewater tariff in the new service territory. The Board **HEREBY FINDS** the rates set forth above to be just, reasonable and necessary to permit NJAWC to provide safe, adequate and proper service. 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. Approval of this municipal consent does not include authorization to include in rate base the costs of the asset purchase or 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 franchises, 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.

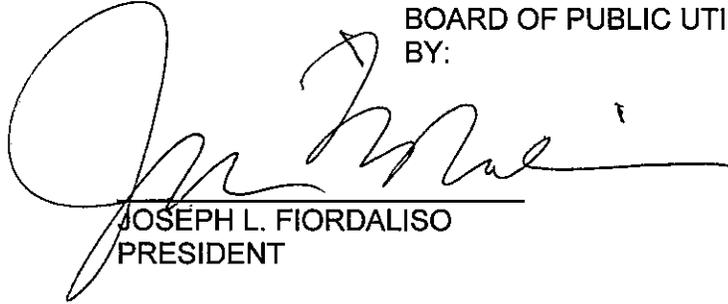
5. Approval of this municipal consent does not constitute approval of any specific main extension or plan for service. In extending service, NJAWC must comply with all applicable laws and regulations.

Tariff pages conforming to the terms of this Order must be submitted within five business days of the effective date of this Order.

This Order shall be effective on May 5, 2018.

DATED: 4/25/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



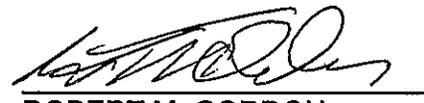
MARYANNA HOLDEN
COMMISSIONER



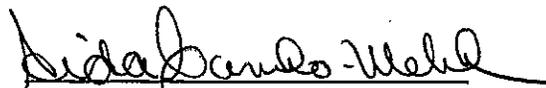
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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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FOR APPROVAL OF A MUNICIPAL CONSENT GRANTED BY THE TOWNSHIP OF HOWELL,
COUNTY OF MONMOUTH

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