



Agenda Date: 5/5/2020

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 APPLICATION FOR)	DECISION AND ORDER
APPROVAL PURSUANT TO N.J.S.A. 40:14B-20(6) OF)	
A RESOLUTION BY THE TOWNSHIP OF)	
PARSIPPANY-TROY HILLS REQUESTING THE)	
SOUTHEAST MORRIS COUNTY MUNICIPAL)	
UTILITIES AUTHORITY TO SELL WATER WITHIN THE)	
TOWNSHIP AT RETAIL)	DOCKET NO. WM20030235

Parties of Record:

Edward K. DeHope, Esq., Riker, Danzig, Scherer, Hyland & Perretti, LLP, on behalf of the Township of Parsippany-Troy Hills

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND

On March 12, 2020, the Township of Parsippany-Troy Hills, (“Township” or “Petitioner”), a municipality in the County of Morris, filed a verified petition with the New Jersey Board of Public Utilities (“Board” or “BPU”), pursuant to N.J.S.A. 40:14B-20(6), for approval of the Township’s Resolution No. 2019-224 (“Resolution”) requesting the provision of retail water service into the Township by the Southeast Morris County Municipal Utilities Authority (“Authority”), as necessary and proper for the public convenience pursuant to N.J.S.A. 40:14B-20(6).

According to the petition, the Authority was established in 1976 pursuant to the Municipal and County Utilities Authority Law, N.J.S.A. 40:14B-1 et seq., by the Town of Morristown (“Town”), the Townships of Morris and Hanover, and the Borough of Morris Plains, all in Morris County (collectively, “Creating Municipalities”), to acquire and operate the water system then owned by the Town. The Authority acquired the Town’s water system in 1977, subsequent to the Board’s approval by Order dated November 3, 1976 in Docket No. 976- 930 (“1976 Order”) granting the Town permission to discontinue service provided that the Authority assumed the operation of the water system and continued uninterrupted service to customers previously served by the Town.

The petition states that the Authority presently provides water service to approximately 18,000 billed customers¹ within its District, consisting of the territorial limits of the Creating Municipalities. It also provides or has contracted to provide water service to approximately 580 billed customers outside of its District to customers in the Township, the Boroughs of Florham Park and Wharton, and the Townships of Mendham, Chatham, Harding, and Randolph². All customers of the Authority outside the District are served at bulk sale (wholesale) rates pursuant to bulk sale agreements with the municipal entities at retail rates pursuant to resolutions approved by the Board pursuant to N.J.S.A. 40:14B-20(6) or pursuant to the 1976 Order, which required the continuation of service to the existing customers of the Town.

The petition indicates that the Authority has provided water to properties within the Township previously served by the Town and properties in discrete areas within the Township which were developed subsequent to 1977 and are in closer proximity to the Authority's water system infrastructure than to the Township's water system infrastructure. One such property includes the Morris County Police and Fire Academy ("Police and Fire Academy Property") located at 500 Hanover Avenue, Block 7, Lot 2 on the tax map of the Township.

The petition also indicates that the Township is attempting to facilitate the development and redevelopment of an area known as the District at 1515, located at 1515 Route 10 East (Block 200, Lots 1.02 and 1.03), and which consists of a project known as the Stanbery Development, which includes approximately 441 residential apartment units and approximately 100,000 square feet of commercial space. The Township wishes to facilitate the further development and redevelopment of three nearby commercial properties, including a property upon which approximately ninety units of multifamily housing is proposed to be built. The redevelopment of these properties will result in increased water usage. The Township has concluded that these properties, the Police and Fire Academy Property, and 59 Koch Avenue, where the wastewater treatment plant for the Greystone Park Hospital is located (collectively, "Retail Service Properties"), would most appropriately be served as direct retail customers of the Authority.

The Township represents that the Authority currently provides the water supply to the existing structures on the Retail Service Properties and other properties within a limited area of the Township pursuant to Agreement for Supply of Water dated January 21, 1977 ("Bulk Sale Agreement"). The Bulk Sale Agreement is a wholesale water supply agreement whereby the charges for water supplied to such structures by the Authority are billed to and paid by the Township. The Township has no water system infrastructure near any of the Retail Service Properties and will have none, as these properties are further developed and redeveloped. The Bulk Sale Agreement will continue in full force and effect, and, except for the Retail Service Properties, other properties in the Township will continue to be served and billed pursuant to the Bulk Sale Agreement. The Township has requested that the Authority agree to provide retail service to the Retail Service Properties.

The Authority and the Township negotiated an agreement setting forth the terms upon which the Authority is willing to provide retail service within the Township ("Retail Water Service Agreement"). The Retail Water Service Agreement provided, among other items, that the

¹ According to its website, located at <https://smcmua.org>, the Authority serves over 15,000 residential and 2,500 billed commercial/industrial accounts in its service territory.

² The Authority also sells and purchases water from the Morris County Municipal Utilities Authority and has contracted for the supply and exchange of water in emergency situations with the Borough of Madison, both at negotiated rates.

Authority charge its retail water customers in Parsippany at its standard retail rates, which are the same retail rates as it charges customers within the Creating Municipalities which constitute its District and the other municipalities in which it provides retail water service.

On June 25, 2019, the Township passed Resolution 2019-139, which authorized the Authority to provide retail water service within the Township to the Retail Service Properties. Resolution 2019-139 also authorized the Township to enter into the Retail Water Service Agreement with the Authority and to seek Board approval of the Authority's provision of retail water service within the Township.

On June 27, 2019, the Board of Members of the Authority passed Resolution 59-19 ("Authority Resolution"), authorizing the Authority to enter into the Retail Water Service Agreement with the Township and, upon Board approval of Resolution 2019-139, to take steps to provide retail water service within the Township to the Retail Service Properties in accordance with the Retail Water Service Agreement. However, the Authority Resolution as well as the Retail Water Service Agreement provided that the Authority's approval of the Retail Water Service agreement was conditioned upon its approval by each of the Creating Municipalities and the Authority.

The Authority determined that it will require new service connections and main extensions outside its District to provide water service to the further development and redevelopment of the Retail Service Properties which the Township has requested it service on a retail basis. The Township is advised that a Service Contract between the Authority and its Creating Municipalities generally prohibits new service connections and main extensions (with certain exceptions not here relevant) outside the District without the consent of each of the Creating Municipalities authorizing the Authority to provide such service.

New main extensions outside the Authority's District are also subject to approval of the Morris County Municipal Utilities Authority ("MCMUA") under the terms of MCMUA's consent to the creation of the Authority pursuant to N.J.S.A. 40:14B-9. The Authority requested that the Creating Municipalities and the MCMUA review and consent to the services and main extensions provided for in the Retail Water Service Agreement. These reviews resulted in amendment of the Retail Water Service Agreement as set forth in the previously referred to Amended Retail Water Service Agreement. The Amended Retail Water Service Agreement principally made certain revisions to the properties to be included in the Schedule of Retail Service Properties and clarified that any future service to other properties in the Township would require the further consents of the Creating Municipalities and such other consents as may be required by law or contract.

The Amended Retail Water Service Agreement was approved by the Authority by way of Resolution 111-19 on November 21, 2019 and by the Township by way of Resolution 2019-224 on December 3, 2019. A copy of Resolution 2019-224 is attached as Exhibit A. The Creating Municipalities also each passed a resolution consenting to the provision of retail service by the Authority within the Township in accordance with the Amended Retail Water Service Agreement.

On January 7, 2020, the MCMUA passed a resolution authorizing the Authority to extend its mains outside its District in order to provide retail water service in the Township to properties listed in the Amended Retail Water Service Agreement.

The petition further states that the Authority's water system is the sole source of water supply to the Retail Service Properties because its existing water mains are the only water system mains to which service lines to the Retail Service Properties can be feasibly connected. Since the Township has water system infrastructure in the area to which the Retail Service Properties can

be reasonably connected, the proposed development or redevelopment of the Retail Service Properties is wholly dependent upon the availability of a water supply from the Authority.

The Township asserts that the Authority's sale of water at retail within the Township in accordance with the Amended Retail Water Service Agreement will serve the public convenience by ensuring that customers within the Stanbery Development and other developed, to-be-developed, or redeveloped properties which constitute the Retail Service Properties deal directly with the only entity providing their water service. The appropriateness of this arrangement is recognized by the Township, the Creating Municipalities, the MCMUA, and the Authority, all of which have endorsed the Authority's provision of retail water service to the Retail Service Properties which the Township has requested that it serve.

NEW JERSEY DIVISION OF RATE COUNSEL ("RATE COUNSEL") COMMENTS

By correspondence dated April 17, 2020, Rate Counsel indicated that it defers to the Board on the issue of jurisdiction in this matter.

DISCUSSIONS AND FINDINGS

The Authority is a municipal water authority created by the New Jersey Municipal and County Utilities Authorities Law ("MCUAL"), N.J.S.A. 40:14B-1 to -78. Generally, a municipal utility authority is granted independent authority by the Legislature and "shall not subject to regulation as to its service charges by any other officer, board, agency, commission or other office of the State . . ." N.J.S.A. 40:14B-68.

The MCUAL grants various powers to every municipal authority, including "[t]o produce, develop, purchase, accumulate, distribute and sell water and water services, facilities and products within or without the district, provided that no water shall be sold at retail in any municipality or county without the district unless the governing body of such municipality or county shall have adopted a resolution requesting the municipal authority to sell water at retail in such municipality or county, and the board of public utility commissioners shall have approved such resolution as necessary and proper for the public convenience." N.J.S.A. 40:14B-20(6). See also Freehold Borough v. Freehold Twp., 193 N.J. Super. 724, 727 (App. Div. 1984) (noting that the MCUAL authorizes the Board to approve a request by a municipality to purchase water at retail from a municipal water authority.); Wash. Twp. Mun. Utils. Auth. v. Brennan-Brooks, No. A-4286-02T3, 2007 N.J. Super. Unpub. LEXIS 2769, at *1-2 (App. Div. Jan. 8, 2007) ("the New Jersey Board of Public Utilities approved the Tewksbury resolution 'as necessary and proper for the public convenience.'").

In the matter at hand, the record reflects that the Authority's water system is the only source of water service to the Retail Service Properties and the proposed development of the Retail Service Properties is dependent upon the availability of this water service. The new development and redevelopment of the properties will also result in increased water usage. The Authority already provides water supply to the existing structures on the retail service properties through a bulk sale agreement with the Township. The Authority also has existing water system infrastructure in place in the area, while the Township does not provide such infrastructure. Accordingly, the Township has concluded that the Retail Service Properties would be best served as direct retail customers of the Authority. As direct retail customers of the Authority, customers will be allowed to interact explicitly with their water service provider. Of note, two such customers included in the Retail Service Properties are the Morris County Policy and Fire Academy and the Greystone Hospital wastewater treatment plant. For the aforementioned reasons, the Township has

determined that the provision of water service by the Authority, in accordance with the Amended Retail Water Service Agreement, will best serve the public convenience.

Therefore, the Board, based on the foregoing representations, **HEREBY FINDS** that Resolution No. 2019-224 adopted by the Township, requesting that the Authority extend and provide retail water service within the Township to the Retail Service Properties or those properties designated on Exhibit A to the Amended Retail Water Service Agreement, is necessary and proper for the public convenience. The Township and the Authority are further advised that this opinion is limited specifically to the facts presented and that changing conditions, including an expansion of service beyond what is described in the petition, which should be reported immediately to the Board, could subsequently lead to the modification of the Board's decision.

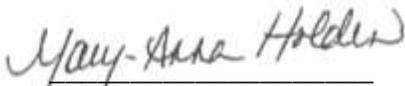
The effective date of this Order is May 15, 2020.

DATED: May 5, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

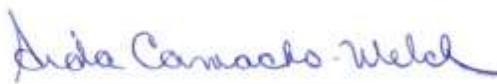


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE APPLICATION FOR APPROVAL PURSUANT TO N.J.S.A. 40:14B-20(6) OF A RESOLUTION BY THE TOWNSHIP OF PARSIPPANY-TROY HILLS REQUESTING THE SOUTHEAST MORRIS COUNTY MUNICIPAL UTILITIES AUTHORITY TO SELL WATER WITHIN THE TOWNSHIP AT RETAIL

BPU DOCKET NO. WM20030235

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EXHIBIT A

**TOWNSHIP OF PARSIPPANY-TROY HILLS
MORRIS COUNTY, NEW JERSEY**

RESOLUTION

R2019-224: RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS, COUNTY OF MORRIS, STATE OF NEW JERSEY, APPROVING AN AMENDED RETAIL WATER SERVICE AGREEMENT WITH THE SOUTHEAST MORRIS COUNTY MUNICIPAL UTILITIES AUTHORITY AND AUTHORIZING THE FILING OF A PETITION WITH THE NEW JERSEY BOARD OF PUBLIC UTILITIES PURSUANT TO N.J.S.A. 40:14B-20(6)

WHEREAS, by way of Resolution of 2019-139 adopted on June 25, 2019, the Township of Parsippany-Troy Hills ("Township") approved an Agreement For Sale of Water at Retail Within the Township of Parsippany-Troy Hills ("Retail Water Service Agreement") whereby the Southeast Morris County Municipal Utilities Authority ("Authority") would provide retail water service to certain designated properties within the Township which currently receive water from the Authority under an Agreement for Supply of Water dated January 21, 1977, by which the Authority provides the water on a bulk sale (wholesale) basis ("Bulk Sales Agreement"); and

WHEREAS, the Authority approved the Retail Water Service Agreement and said Retail Water Service Agreement was entered into on July 9, 2019, with its effectiveness contingent on approval of the Authority's creating municipalities, the Morris County Municipal Utilities Authority and the New Jersey Board of Public Utilities ("BPU") pursuant to N.J.S.A. 40:14B-20 (6), and;

WHEREAS, after review of the Retail Water Service Agreement by the Authority's creating municipalities, the Authority was requested to secure certain modifications to the Retail Water Service Agreement whereby (1) one of the properties currently served under the Bulk Sale Agreement, 1900 Route 10 East (Block 176, Lot 8) (Zinburger restaurant site), will continue to be served under that agreement until it is disconnected from the Authority's water system and served by the Township water system, (2) two properties which currently are not being provided water by the Authority, 119 Johnson Road (Block 100, Lot 4) and 159 Johnson Road (Block 200, Lot 5) were deleted from the schedule of properties to receive retail water service from the Authority, and (3) a clarification was added that the addition of other properties in Parsippany to become retail water service customers of the Authority is subject to approval of the Authority's creating municipalities; and

WHEREAS, the Authority also has added 59 Koch Avenue to the list of retail service properties in the Township to reflect the fact that the Authority currently serves the wastewater treatment plant for the Greystone Park Hospital facility and is the emergency water supplier to the Hospital; and

WHEREAS, by way of Resolution No. 111-19 on November 21, 2019, the Authority approved an Amended Agreement for Sale of Water at Retail Within the Township of Parsippany-Troy Hills By and Between the Southeast Morris County Municipal Utilities Authority and the Township of Parsippany-Troy Hills ("Amended Retail Water Service Agreement"), a copy of which is attached as Exhibit A to this Resolution; and

WHEREAS, Resolution 111-19 of the Authority, a copy of which is attached as Exhibit B to this Resolution, refers to a Supplemental Certification of its Chief Engineer that the proposed service and main extension are feasible and will not substantially impair the ability of the Authority to meet existing and reasonably foreseeable service requirements within its service district; and

WHEREAS, the Township has concluded that the Amended Retail Water Service Agreement, which wholly replaces the Retail Water Service Agreement, is in the best interest of the Township; and

NOW, THEREFORE, BE IT RESOLVED, by the Parsippany-Troy Hills Township Council, County of Morris, State of New Jersey, that:

1. An Amended Retail Water Service Agreement with the Southeast Morris County Municipal Utilities authority, substantially in the form submitted to the Township Council and attached hereto as Exhibit A, is hereby approved; and the Mayor and Township Clerk are hereby authorized and directed to execute said agreement on behalf of the Township of Parsippany-Troy Hills;

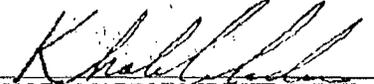
2. The Township is hereby authorized to make application to the New Jersey Board of Public Utilities in accordance with N.J.S.A. 40:14B-20(6) to secure approval for the Southeast Morris County Municipal Utilities Authority to provide retail water service to designed properties within the Township;

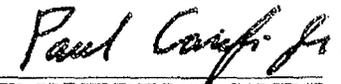
3. The Mayor and Township Clerk are further authorized and directed to approve any amendments or revisions to the Bulk Sale Agreement as the Mayor, in consultation with the Municipal Council, shall deem are reasonably necessary for compliance with the Amended Retail Service Agreement hereby approved.

Exhibits A and B to Resolution 111-19 are Omitted

COUNCIL MEMBER	Aye	Nay	Abstain	Absent	Motion	Second
Mr. Carifi	X					
Mr. dePiero	X					X
Mrs. Gragnani	X				X	
Mrs. McCarthy	X					
Mrs. Peterson	X					

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND LAWFUL COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS, COUNTY OF MORRIS, STATE OF NEW JERSEY AT ITS MEETING OF DECEMBER 3, 2019.


KHALED MADIN TOWNSHIP CLERK


COUNCIL PRESIDENT PAUL CARIFI JR.