



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

WATER

IN THE MATTER OF THE PETITION OF THE)	ORDER APPROVING A PUBLIC-
MERCHANTVILLE-PENNSAUKEN WATER)	PRIVATE CONTRACT BETWEEN
COMMISSION FOR APPROVAL OF A WATER)	THE MERCHANTVILLE-
MAIN ASSET MANAGEMENT AND)	PENNSAUKEN COMMISSION AND
MAINTENANCE SERVICES AGREEMENT)	ADVANCED WATER
PURSUANT TO THE NEW JERSEY WATER)	SOLUTIONS/USCI, INC.
SUPPLY PUBLIC PRIVATE-CONTRACTING)	
ACT, N.J.S.A. 58:26-19 <u>ET SEQ.</u> & N.J.S.A.)	
58:26-25)	DOCKET NO. WO21020617

Parties of Record:

Karl McConnell, Esq., General Counsel, Merchantville-Pennsauken Commission
Diana Riner, Esq., Advanced Water Solutions/Utility Service Co., Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

BACKGROUND/PROCEDURAL HISTORY

On February 22, 2021, pursuant to the New Jersey Water Supply Public-Private Contracting Act (“Water Act”), N.J.S.A. 58:26-19 et seq., the Merchantville-Pennsauken Commission (“Petitioner,” “Merchantville” or “Owner”) submitted an application with the New Jersey Board of Public Utilities (“Board”), by way of a verified petition (“Petition”), for approval of a contract with Advanced Water Solutions/Utility Service Co., Inc. (“SUEZ” or “Company”) for a long-term water main asset management and maintenance program agreement (“Public-Private Contract”).

The Petitioner makes this application, in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25, to the Board, the New Jersey Department of Community Affairs, Division of Local Government Services, Local Finance Board (“DCA”) and the New Jersey Department of Environmental Protection (“DEP”).

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services. The term, “water supply services,” as defined by the Water Act, means “the financing, designing, construction, improvement, operation, maintenance, administration, or

any combination thereof, of a water supply facility which services are provided pursuant to [the Water Act].” Public-private contracts for water supply services must be submitted to the Board for review and approval. However, N.J.S.A. 58:26-25 confines the scope of the Board’s review of such contracts to four specific areas. In its review of the contract, the Board shall apply the following criteria in determining whether to approve the contract:

1. The private firm entering into the contract has the financial capacity and technical and administrative expertise to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.
2. The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private firm and all benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate based rate of return methodology.
3. The franchise customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the Board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.
4. The contract contains the provisions required by paragraphs (1), (2) and (6) of subsection e. in section 5 of P.L. 1995, c. 101 (C. 58:26-23).

The Water Act further states that once the Board approves a proposed contract, the jurisdiction of the Board terminates until or unless the contract is amended to change the formula or other basis of determining charges. N.J.S.A. 58:26-25(c)(4).

The Legislature has not conferred any jurisdiction on the Board to regulate water utilities operated by municipalities, as distinct from those privately owned, except in certain circumstances where such municipalities undertake to service residents in other municipalities. See Petition of South Lakewood Water Co., 61 N.J. 230 (1972). N.J.S.A. 40A:31-23 (d)(1) also provides that the Board does not have regulatory oversight with respect to the setting of rates if the municipality services 1,000 customers or less outside its jurisdictional boundaries. In addition, it has been held that the sovereign powers of a municipality should not be subordinated to Board jurisdiction “by inference” or “lightly implied.” Jersey City Incinerator Authority v. Dept. of Pub. Util., 146 N.J. Super. 243, 255-56 (App. Div. 1976). Rather, a grant of such power “must be firmly anchored in some clear legislative delegation of jurisdiction.” Id. at 256. Furthermore, the Board’s own enabling statute expressly limits the Board’s jurisdiction over contracts of the type under review here to the parameters of the Public-Private Contracting Act. N.J.S.A. 48:2-13 states:

Except as provided in [N.J.S.A. 58:26-25] the Board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to [N.J.S.A. 58:26-19 et seq.] in connection with the performance of their respective

obligations thereunder. Nothing contained in this title shall extend the powers of the Board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to [N.J.S.A. 58:28-19 et seq.].

In accordance with this legal mandate, the Board has limited the scope of its review to the four criteria set forth above and, for reasons discussed below, concludes that the contract meets the applicable criteria. Because the Legislature has carefully circumscribed our authority over the rates to be charged to end-use customers and other issues, the Board does not make any determination with respect to issues related to the ultimate rates to be charged by the Petitioner to its customers for services.

Petitioner is located in Camden County. MPWC is a regional municipal water authority created and existing pursuant to the laws of the State of New Jersey, and performs essential governmental functions for the public health, benefit and welfare of its citizens. As the owner and operator of a water supply, transmission and distribution system pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 et seq., MPWC provides services to customers in Pennsauken, Merchantville, Cherry Hill and Camden, New Jersey.

Petitioner has absolute jurisdiction pursuant to N.J.S.A. 40A:31-1 et seq., to determine the terms and conditions under which it supplies water to customers within its municipal limits. MPWC determined to enter into the Public-Private Contract for water main asset and management maintenance pursuant to N.J.S.A. 58:26-19 et seq.

On October 2, 2019, Petitioner notified DCA, the DEP and the Board of its intent to enter into a contract with a private firm for the provision of water main asset management services pursuant to N.J.S.A. 58:26-23(a).

On October 14, 2019 and October 16, 2019, Petitioner published its Notice of Intention as well as a request for proposal ("RFP") in the Philadelphia Inquirer and the Courier Post, newspapers of general circulation within its service territory.

Proposals were due before the deadline of November 26, 2019 and only one proposal was received from SUEZ. SUEZ, the only respondent, put forth a proposal which complied with all the specifications required by the RFP and exceeded the minimum score set in advance by the Committee, as well as displayed vast experience and knowledge in an area where MPWC requires its expertise.

Provided with the above information, MPWC agreed to enter into a 10-year contract with SUEZ for water main asset management and a maintenance services agreement.

MPWC obtained a written opinion from its bond counsel, Parker McCay, on December 29, 2020 in accordance with N.J.S.A. 58:26-23(g).

A public hearing on the Public-Private Contract was scheduled for January 14, 2021. Notice of the public hearing was published in the Courier Post, and the Retrospect, newspapers of general circulation in Petitioner's service territory, on December 30, 2020 and January 1, 2021. This notice was published pursuant to N.J.S.A. 58:26-24(b).

A public hearing was conducted on January 14, 2021. A verbatim record of the hearing was produced as required pursuant to N.J.S.A. 58:26-24(d). No members of the public appeared and/or spoke at the hearing.

TERMS OF THE PUBLIC-PRIVATE CONTRACT

MPWC agrees to engage SUEZ to provide the professional and requisite services needed to manage the water main assets and distribution systems. The salient terms of the Public-Private Contract include the following:

SUEZ Responsibilities:

- The Company will undertake an annual network condition assessment with machine learning on the 235 miles of the water distribution system. The Company will study and complete where gaps exist in the Water Commission's GIS information to perform a likelihood of failure ("LOF") study, consequence of failure study ("COF"), and risk analysis. The Company will develop a LOF map using machine learning analysis to improve results year by year with the capacity to use multiple layers on top of the utility data. This map and information shall be updated as the Company proceeds. Deliverables to the Owner include a hard copy report on the machine learning details, findings, and map. Company will develop a COF map using an analysis including critical information. The Company will develop a risk map using an evaluation combining COF and LOF and select each year's focused area for field condition assessment.
- The Company will complete a minimum of 15,000 feet of non-intrusive pipeline field condition assessment per each year. The Company will identify pipe defects. The Company will confirm pipe condition to determine the pipes most in need of immediate attention. The Company will provide an annual update of the overall risk study and machine learning system. The Company will provide statistics to measure the performance of the asset management program.
- Development of pipe rehabilitation and maintenance plan will include the selection of pipes to be rehabilitated and replaced each year and selection of pipe replacement/renewal method. The Company will use previous results to develop each year's rehabilitation and replacement plan. Each Contract Year, the Company will develop a site-specific project plan for approval by MPWC's Project Manager. The Company and Owner have established a rehabilitation target of approximately 7,500 feet of pipe on an annual average over the course of the agreement. Final distance will be determined every year depending on LOF/Field Assessment analysis. The parties agree that there is a WATER MAIN ASSET MANAGEMENT AND MAINTENANCE AGREEMENT FOR A N.J. PUBLIC-PRIVATE WATER SERVICES CONTRACT PROCESS 2 proposed 85:15 design ratio of SIPP to Dig and Replace rehabilitation, with Dig and Replace rehabilitation not to exceed 15%, and this ratio will be based upon the contract price, not lineal feet of pipe. The parties understand and agree that the final distance each year may vary based upon pipe size, type, and location. Final decision for replacement or rehabilitation shall be made based upon the assessment, budget, and in conjunction with MPWC's Project Manager, and the agreed-upon scope of work for each Contract Year shall be based upon the contract price as defined in Section K.

- The services include the LOF/Field Assessment analysis and Owner and Suez/USCI cooperative decision making for the determination as to the type and ratio of services to be executed each year. Engineering estimates, design work, ancillary services, temporary water bypass, traffic control, Temporary Office Trailer and all necessary material testing shall be part of the contract price for the Services provided as necessary, and if required, the cost thereof shall be charged against the then-current Contract Year's total amount available for rehabilitation as defined in the site-specific project plan. However, the plan excludes Emergency Services not required or caused by Company's activities. The scope of work and pricing for any Emergency Services not required or caused by the Company's activities will be addressed via a mutually negotiated Change Order.
- The warranty for each project or main section is for material and work for 1 Year from date of completion of each rehabilitation/service executed.

Annual Fees/Payments

- The annual fee for each Contract Year shall be divided into 12 equal monthly payments, and each invoice shall be due and payable on or within 45 days of receipt of the Invoice. Furthermore, if the Owner elects to terminate this Contract prior to remitting the current annual fee, the balance for work completed shall be due and payable as set forth in the Amendment and Supplement portion of the contract.
- First Year Annual Contract Price shall be \$1,200,000.00.
- Each subsequent term of a contract year shall include the First Year Annual Price Budget and shall be \$1,200,000.00 + APA.

In addition, no employees will be affected by the Public-Private Contract.

DIVISION OF RATE COUNSEL ("RATE COUNSEL") COMMENTS:

By letter dated April 8, 2021, Rate Counsel stated that it had no objection to the Board rendering a final decision in this matter.

DISCUSSION AND FINDINGS

After review of the record herein, the Board **FINDS** that the statutorily-imposed criteria listed hereinabove have been met.

1. Utility Service Company, Inc./Advanced Solutions have the financial capacity, technical and administrative experience to ensure continuity of service over the term of the Public-Private Contract as required by N.J.S.A. 58:26-25 (c)(1). MPWC entered into the agreement with SUEZ, which will rely on its management and expertise. The main office for Utility Service Company, Inc. is 1230 Peachtree Street, NE, Suite 1100, Atlanta GA 30309. In 2008, Utility Service Company, Inc. was acquired by Suez Environment, S.A., which is a publicly traded company with operations in over 50 countries. Suez Environment, S.A. provides a suite of additional global solutions, technologies, information systems and approaches to real-life challenges facing United States water and wastewater utilities. Utility Service Company, Inc. as the company was known prior to its acquisition by Suez Environment, S.A., began business in 1963 and conducts business in

most of the 48 contiguous states with plans to expand into the remaining states. Now referred to as Utility Service Group, it currently it has 492 employees and serves more than 2,000 communities under this asset management agreement, which makes it the industry leader in water tank maintenance. As part of its mission to address critical water resources challenges facing the planet, Utility Service Company, Inc. is organized to deliver advanced services for water and wastewater utility providers to minimize capital and operation expenses, improve system operations and performance, extend the useful lives of utility assets and improve water quality.

SUEZ Advanced Solutions, LLC (a wholly owned subsidiary of SUEZ North America Inc., which was formerly named SUEZ Environment North America, Inc.) has the financial capacity, technical and administrative experience to ensure continuity of service over the terms of the contract. N.J.S.A. 58:26-25(c)(1). SUEZ North America, Inc. is a wholly owned subsidiary of SUEZ Group SAS, a French corporation, which is itself a wholly owned subsidiary of SUEZ S.A., a French limited liability company. SUEZ Advanced Solutions, LLC (and its predecessors) has demonstrated over the years that it has the financial capacity, and technical and administrative expertise to meet all the demands of the Public-Private Contract.

2. The terms of the Public-Private Contract are not unreasonable given the services that are to be performed by Utility Service Company, Inc. N.J.S.A. 58:26-25(c)(2). The Board believes that under the circumstances of this matter and as set forth in the contract, a 10-year term is appropriate.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Merchantville, Pennsauken, Cherry Hill and Camden. All of the Petitioner's customers are located within the aforementioned municipal boundaries. Thus, there is no subsidization of customers outside the municipal boundaries.
4. The Public-Private Contract contains provisions addressing the following:

N.J.S.A. 58:26-23(e)(1): The charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the public entity for the water supply services to be provided;

N.J.S.A. 58:26-23(e)(2): The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated; and

N.J.S.A. 58:26-23(e)(6): The employment of current employees of the public entity whose positions of employment will be affected by the terms of the Public-Private Contract are addressed.

On February 22, 2021 the Petitioner submitted a hearing report to the DEP, which pursuant to N.J.S.A. 58:26-25(a) must complete its review and submit its comments to the Board and DCA within 60 days of its receipt thereof. To date, the Board has received no comments from the DEP and is unaware of any prevailing issues.

The Local Finance Board approved the Public-Private Contract at its April 14, 2021 agenda meeting. Due to the timing of the filing of the Petition, the 60-day time-period set forth in the

Water Act for the Board to make a determination in this matter expired prior to the date of the Board's first regularly scheduled April Agenda Meeting. In light of these circumstances, MPWC filed a letter with the Board on April 8, 2021 agreeing to an extension for the Board to act on this matter by April 30, 2021.

Therefore, based upon the above, and the lack of any objections by Rate Counsel, the Board **HEREBY APPROVES** the Public-Private Contract between the Merchantville-Pennsauken Water Commission and Advanced Water Solutions/Utility Service Company, Inc. subject to the following provision:

Any extension of the Public-Private Contract beyond the initial term or, pursuant to N.J.S.A. 58:26-25(c)(4), any amendment of the contract to change the formula or other basis of determining charges contained therein shall be subject to Board review and approval.

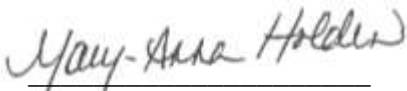
This Order shall be effective on April 27, 2021.

DATED: April 27, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

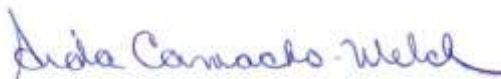


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

IN THE MATTER OF THE PETITION OF THE MERCHANTVILLE-PENNSAUKEN WATER
COMMISSION FOR APPROVAL OF A WATER MAIN ASSET MANAGEMENT &
MAINTENANCE SERVICES AGREEMENT PURSUANT TO THE
NEW JERSEY WATER SUPPLY PUBLIC
PRIVATE-CONTRACTING ACT, N.J.S.A. 58:26-19 ET SEQ. & N.J.S.A. 58:26-25

BPU DOCKET NO. WO21020617

SERVICE LIST

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