Agenda Date: 11/12/26
Agenda Item: 2A

STATE OF NEW JERSEY

Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

REVENUE AND RATES

IN THE MATTER OF TOWNSHIP OF PARSIPPANY-TROY HILLS, IN COUNTY OF MORRIS, NEW JERSEY LOCAL FINANCE BOARD APPLICATION FOR PUBLIC PRIVATE PARTNERSHIP CONTRACT PURSUANT TO N.J.S.A. 58:26-19 ET SEQ.	))))))	ORDER APPROVING A PUBLIC-PRIVATE CONTRACT DOCKET NO. WO26080465

Parties of Record:

Joe DeMarco., Esq., Scarinci Hollenbeck, LLC, on behalf of the Township of Parsippany-Troy Hills
Diana Riner, Esq., on behalf of Utility Service Company, Inc.
Brian Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On August 12, 2026, the Township of Parsippany-Troy Hills ("Township") filed a petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 58:26-19 et seq., seeking authorization to enter into a contract ("Contract") with Utility Service Company, Inc. ("Company" or "USC") for water storage tank asset rehabilitation, management and maintenance ("Petition"). By this Order, the Board considers the requests in the Petition.

BACKGROUND

The New Jersey Water Supply Public-Private Contracting Act ("Water Act") authorizes public entities to enter into contracts with private firms for the provision of water supply services following Board review and approval.[1] The Water Act confines Board review of such contracts to certain criteria including the financial and technical capacity of the private firm, the reasonableness of the contract terms, the degree to which franchise customers are protected from the contract's risks, and whether the contract contains the provisions required by N.J.S.A. 58:26-23(e)(1), (2), and (6).[2]

[1] N.J.S.A. 58:26-19 et seq.

[2] N.J.S.A. 58:26-25(c).

The Township owns and operates a municipal water utility within Morris County. 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., the Township has jurisdiction to determine the terms and conditions under which it supplies water to customers within its municipal limits.

On December 8, 2025, the Township solicited proposals from qualified vendors for a public-private agreement for water storage tank maintenance in accordance with the Water Act. The Township received one (1) proposal from USC. Following proper notice to the public in newspapers of general circulation in the Township's service territory pursuant to N.J.S.A. 58:26-24, the Township held a public hearing regarding the proposed Contract on April 7, 2026. No comments from the public were made at the hearing.

On August 12, 2026, the Township filed an application with the Local Finance Board ("LFB") within the New Jersey Department of Community Affairs ("DCA") and the Board for approval of the Contract pursuant to N.J.S.A. 58:26-24(f).

On August 13, 2026, the Township provided the New Jersey Department of Environmental Protection ("DEP") with a report pertaining to its April 7, 2026 public hearing on the proposed Contract. Pursuant to N.J.S.A. 58:26-25(a), DEP must complete its review and submit any comments to the Board and DCA within sixty (60) days of receipt of the hearing report. As of the date of this Order, the Board has not received comments from the DEP.

On August 19, 2026, the Township consented to a twenty (20)-day extension of the Board's sixty (60)-day review period to November 1, 2026, as permitted by N.J.S.A. 58:26-25(a).

The LFB approved the Contract at its September 9, 2026 agenda meeting.

On October 15, 2026, the Township consented to a second extension of thirty (30) additional days to bring the review period to December 1, 2026, as permitted by N.J.S.A. 58:26-25(a).

TERMS OF CONTRACT

The Contract is a twenty (20)-year agreement, set to commence when the Contract is executed by the Township, under which USC would manage ten (10) Township-owned potable water storage tanks:

1. 1,000,000-Gallon Ground - Route 10 Tank
2. 2,000,000-Gallon Standpipe – Brooklawn Tank
3. 1,000,000-Gallon Standpipe – Mountain Way Tank
4. 500,000-Gallon Standpipe – Puddingstone Tank
5. 500,000-Gallon Elevated – Vail Road Tank
6. 500,000-Gallon Elevated – Powder Mill Tank
7. 1,000,000-Gallon Elevated – Route 287 Tank
8. 1,000,000-Gallon Elevated – Lackawanna Avenue Tank
9. 1,000,000-Gallon Standpipe – Hector Road Tank
10. 2,000,000-Gallon Elevated – Knoll Road Tank

As detailed in the Petition, the Contract is comprised of ten (10) separate scopes of work ("SOW") contract documents.[3] Below is a breakdown of key points from the Contract:

1. **Scope.** The Company agrees to provide the Township with the services relating to the managed proposed and as more particularly set forth on each properly executed SOW attached to the Contract. Each time the Township engages Company to perform services, a new SOW shall be prepared specifying the scope of services specific to that engagement. Unless otherwise indicated in any given SOW, Company shall be responsible for furnishing all labor, materials and tools to perform the services. Each new SOW represents a separate contract between Company and the Township that incorporates the terms and conditions and is governed by the Contract. All changes to any SOW may only be made by a written amendment to such SOW and signed by an authorized representative of each party. The Township may terminate a SOW in accordance with the terms of each SOW. In the event there is a conflict between any term of an SOW and the Contract, the term(s) of the SOW shall control.

2. **Term.** The term of the Contract shall commence on the effective date and shall continue in full force and effect until there are no outstanding SOWs. The term of a SOW shall begin on the commencement date provided in that SOW and continue in effect for the agreed term provided in that SOW. The term of a SOW shall not commence until the Township issues a Notice to Proceed to Company following the Township's receipt of all governmental and/or regulatory approvals. No work shall proceed under any SOW until such time as the Township issues a Notice to Proceed to Company.

[3] Although summarized in this Order, the detailed terms of the Contract control, subject to the findings and conclusion of the Order. Paragraphs are numbered to coincide with the Contract.

3. **Fees**. Subject to the preconditions set forth in paragraph 2 of the Contract, for all services performed, the Township shall pay Company in accordance with the terms of the Contract as further set forth in each SOW. The fees paid in accordance with each SOW shall constitute the full and complete compensation to the Company for the services performed pursuant to the SOW. Unless otherwise expressly set forth in any given SOW, the Company shall be responsible for expenses it incurs in connection with its provision of the services.

   Prior to the commencement of any work in any given year, the Company shall provide the Township with a list of all capital items required for the upcoming year by October 1 prior to the commencement of the upcoming year for each year of the Contract. The projected schedule of SOWs to be performed in each year of the Contract is attached to the Contract as Exhibit C. The fees payable under the Contract are an aggregate amount of operating/maintenance expenses and capital expenses for each year, which are allocated as follows:

	Operating/Maintenance	**Capital**
Year 1	$344,571	$1,655,429
Year 2	$344,571	$1,655,429
Year 3	$344,571	$1,655,429
Year 4	$179,006	$1,820,994
Year 5	$118,042	$1,481,959
Year 6	$200,020	$735,067
Year 7	$207,101	$735,067
Year 8	$214,432	$735,067
Year 9	$222,023	$735,067
Year 10	$229,882	$735,067
Years 11-20*	$678,243*	$0

*subject to annual escalation as defined in each SOW

By letter dated October 16, 2026, the New Jersey Division of Rate Counsel ("Rate Counsel") stated that it had no objection to Board approval of the Contract, but included two (2) recommendations for the Township. Rate Counsel recommended that the Township make some inquiries as to why no other potential providers of the Services submitted proposals. Rate Counsel stated this recommendation is intended to potentially improve future procurements and is in no way intended to delay approval of the Agreement between the Township and USC. Rate Counsel also recommended that mid-way through the Contract and upon completion of the Contract Services by USC, the Township conduct reviews and determine whether these expectations of reduced water tank painting and the debt service were achieved. Or, if not achieved, the Township should determine what specific factors prevented them from being achieved.

DISCUSSION AND FINDINGS

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services ("Public-Private Contracts"). N.J.S.A. 58:26-20. Such Public-Private Contracts may include services related to financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a water supply facility (i.e., water system). Ibid. 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(c) confines the scope of the Board's review to the following criteria:

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 base/rate of return methodology.

3. The franchised 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. of section 5 of 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).

Courts have held that the New Jersey 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). Pursuant to N.J.S.A. 40A:31-23(d)(1), 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 that Board jurisdiction should be "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 which 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] 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]. N.J.S.A. 48:2-13 (c).

In accordance with this legal mandate, the Board has limited the scope of its review to the four (4) 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.

After review of the record, the Board **FINDS** that the statutory requirements listed above have been met. Specifically, the Board **FINDS** as follows:

1. USC has the financial capacity, technical and administrative experience, to ensure continuity of service over the term of the Contract pursuant to N.J.S.A. 58:26-25(c)(1). USC is a national provider focused on water-tank asset management and rehabilitation with decades of experience and a long operating history in steel/concrete tank inspection, coatings, structural repair, and long-term maintenance programs for municipal systems. Also, the requirements contained in the application documents concerning the financial, technical, and administrative capacity of USC are necessary and sufficient to protect the public interest.

2. The terms of the Contract are reasonable given the services to be performed by USC pursuant to N.J.S.A. 58:26-25(c)(2). Given the circumstances of this matter, the terms set forth in the Contract are appropriate.

3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of the Township. In this instance, the franchise customers are protected from the risks of the Contract and customers outside the municipal boundaries are not subsidizing the Contract.

4. The Contract contains provisions addressing the following:

   N.J.S.A. 58:26-23(e)(1): The charges, rates, fees, or formulas 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(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): Current employees of the public entity whose positions of employment will be affected by the terms of the Contract are adequately addressed.

Therefore, based upon the above, the Board **HEREBY APPROVES** the Contract between the Township and USC subject to the following:

> Any extension of the contract beyond the twenty (20)-year 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 November 19, 2026.

DATED: November 12, 2026

BOARD OF PUBLIC UTILITIES
BY:

BEN HERTZ-SHARGEL
PRESIDENT

CHRISTINE GUHL-SADOVY
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

EMMA REBHORN
COMMISSIONER

JOSEPH COVIELLO
COMMISSIONER

ATTEST:

SHERRI L. LEWIS
BOARD 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 TOWNSHIP OF PARSIPPANY-TROY HILLS, IN COUNTY OF MORRIS, NEW JERSEY LOCAL FINANCE BOARD APPLICATION FOR PUBLIC PRIVATE PARTNERSHIP CONTRACT PURSUANT TO N.J.S.A. 58:26-19 ET SEQ.

BPU DOCKET NO. WO26080465

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