



Agenda Date: 4/29/13
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 PETITION OF NEW)
JERSEY-AMERICAN WATER COMPANY, INC. FOR)
APPROVAL OF A MUNICIPAL CONSENT GRANTED)
BY THE TOWNSHIP OF ELK, COUNTY OF)
GLOUCESTER, STATE OF NEW JERSEY)

ORDER

DOCKET NO. WE12070661

Parties of Record:

Jordan S. Mersky, Esq., Deputy General Counsel, New Jersey-American Water Company, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

New Jersey-American Water Company, Inc. ("NJAWC" or "Company") 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 July 13, 2012, the Company filed a petition with the 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 20 and N.J.A.C. 14:1-5.5 for approval of a municipal consent granted on May 3, 2012, by the Township of Elk ("Township") to allow NJAWC to construct, lay, maintain and operate the necessary mains, pipes and appurtenances for the rendering of water and sewer services within the Township.

The Township encompasses approximately 20 square miles and has a population of approximately 4,200 people. The Township has no municipal water or sewer system. The Township created the Elk Township Municipal Utilities Authority ("Elk MUA") in 1975. However, the Elk MUA never purchased and/or installed any water or sanitary sewer infrastructure nor provided any service.

On December 11, 2012, a duly noticed public hearing on the Company's petition was held at the Board's Trenton office. Legal Specialist, James Kane, Esq., presided over the hearing at

which representatives of the Company, Division of Rate Counsel ("Rate Counsel") and Board Staff appeared. No members of the public appeared at the hearing.

According to the petition, on May 3, 2012, the Township of Elk adopted Ordinance O-1-2012 dissolving the Elk MUA. Also on May 3, 2012, the Township adopted Ordinance O-2-2012 granting NJAWC consent and permission to lay and maintain water and sewer pipes beneath and along such public roads, streets and alleys as may be necessary and to extend its franchise, subject to such additional approvals or consents as required by law. Additionally, it states that the impetus for the dissolution of the Elk MUA and the adoption of the Ordinance is to ensure that any future development within the Township will be served by a professional water and sewer service provider. Currently, the only planned development is the Union Grove development, proposed by Canglo LLC, to consist of 343 single family detached homes and 44 multi-family affordable housing units in the Township.

If approved by the Board, Ordinance O-2-2012 will allow NJAWC to extend water service to the Township which is currently served by private wells, and will allow NJAWC to extend its regional transmission mains. The current wells in the Township exhibit high levels of radium rendering them unusable for expansion.

According to the petition, the expansion of the Company's service territory will not impose any negative impact on current customers and will not cause any adverse consequences on these customers or the Company's ability to provide safe, adequate and proper service. NJAWC's regional transmission main already extends to the Township's border and provides bulk quantities of water to the Township of Glassboro ("Glassboro") as well as to NJAWC's existing franchise service area in the Township of Harrison. NJAWC will construct an interconnection to service the Township.

The Company represents that it will serve the Township as part of its Western Division – Delaware System (the "Delaware River System"). The Delaware River System has a firm capacity of 79.90 million gallons per day ("MGD"), with a daily demand of 65.264 MGD. NJAWC asserts that the Delaware River System has sufficient capacity to serve the development by using 14.636 MGD of excess capacity for the proposed franchise area. The Company will charge for water service according to its current approved tariff. Consumption is expected to be 4.298 million gallons per day.

The Township's wastewater will be collected by gravity sewers and flow to a proposed lift station that will serve the Township. The wastewater collection system and one pump station will be located entirely within the development and will be pumped directly to Glassboro's wastewater collection system where it will be transmitted to the Gloucester County Utility Authority's ("GCUA") West Deptford wastewater treatment plant. The GCUA has authorized 112,800 gallons per day of wastewater treatment capacity. The wastewater collected and/or treated is expected to be 112,800 gallons per day.

NJAWC maintains a 24/7 customer call center in which customers can contact the Company for service concerns or issues. The day to day operation of the distribution system falls under the responsibility of the Delaware River System Operations Center located in Delran, New Jersey, which is approximately 30 miles from the proposed franchise area.

¹ On March 11, 2013, a comment from Silvergate Associates was received by the Board. On March 15, 2013, NJAWC submitted a response. This correspondence is discussed below.

The proposed rates for water service will be at the Company's existing Rate Schedule A-1. The current effective rate per thousand gallons is \$5.98 which includes the Purchased Water Adjustment Clause ("PWAC") charge, with a monthly fixed service fee of \$10.60.² The Company has yet to develop a rate structure for sewer service; hence, approval of rates for service herein is limited to the provision of water service only.

By letter dated December 28, 2012, Rate Counsel submitted its comments to the petition and stated that it is not opposed to its approval. Rate Counsel recommends that the Board condition its approval on limitation of the municipal consent to a reasonable period not exceeding fifty years. The Board acknowledges Rate Counsel's recommendations; however, Ordinance 0-2-2012 adopted by the Township purports to provide municipal consent for water and sewer service in perpetuity to the Company.

The Board has reviewed Rate Counsel's recommendations and has determined not to limit the term of the municipal consent to operate in the franchise area.

By letter dated March 11, 2013, Richard M. Hluchan, Esq. of Hyland Levin, submitted a letter on behalf of Silvergate Associates addressed to the Board. The letter states that Silvergate Associates generally supports the NJAWC municipal consent, but believes that it should be conditioned on the "strict adherence" to a prior agreement entered into by the dissolved Elk MUA with Silvergate, OHI NJ, Inc. and CAN2 LLC. In its letter, Silvergate further alleges that NJAWC should be bound by the contract signed by the Elk MUA. . By letter dated March 15, 2013, NJAWC disputes the assertions in the March 11, 2013 letter and rejects any assertion that any obligations are imposed on NJAWC by such an agreement. NJAWC states that it stands ready to serve Silvergate under its tariff, when Silvergate applies for service. On April 24, 2013, Richard M. Hluchan, Esq. of Hyland Levin submitted an additional letter to the Board requesting that the Board delay action on NJAWC's petition or condition approval on the terms and conditions of the 'Developers Agreements and Cost Sharing Agreements'. This letter further objects to factual assertions in NJAWC's March 15, 2013 letter and asserts that on April 23, 2013 Silvergate submitted an application for service to NJAWC.

The Board notes that approval of this municipal consent, in accordance with applicable statutes, merely authorizes NJAWC to operate within the Township, and does not approve any specific main extension or service agreements. NJAWC has indicated that it has sufficient capacity to serve the current and future needs of the Township. With regard to the contract referenced in Silvergate's comment, the Board takes no position on agreements signed by entities not before it. Any dispute among developers and the former Elk MUA may be addressed in an appropriate forum. The Company, with the granting of this municipal consent has the obligation to serve applicants within the Township. Additionally, N.J.S.A. 48:2-27 and applicable Board rules at N.J.A.C. 14:3-8.1 et seq. and applicable Board Orders, govern main extension issues.

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 water and sewer utility service to allow for other identified or approved developments in the Township. NJAWC must comply with all applicable laws when extending service, including to Canuso, Orleans, Silvergate, and any other extension in their service territory must be reasonable and prudent.

² On March 20, 2013, in Docket WR12111019 the Board approved a reduction in NJAWC PWAC. The reduced effective rate which will be applicable to the Township is set forth in Docket WR12111019.

Based on the foregoing and a thorough review of the record to this proceeding, the Board **HEREBY APPROVES** the municipal consent, Ordinance O-2-2012 dated May 3, 2012, granted to New Jersey-American Water Company, Inc. by the Township of Elk, Gloucester County. The Ordinance encompasses service provided for both water and sewer. The Board **FURTHER APPROVES** the use of New Jersey-American Water Company, Inc.'s existing water tariff applicable in the new service territory. Prior to commencing sewer service, NJAWC must file a formal initial sewer tariff for Board approval.

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

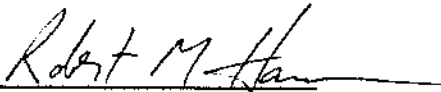
1. This Order shall not be construed as directly or indirectly fixing for any purposes, whatsoever, the value of any tangible or intangible assets now owned or hereafter to be owned by the Company.
2. This Order shall not effect nor in any way limit the exercise of the authority of this Board or of this 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 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 set forth in Ordinance O-2-2012, the municipal consent for the use of streets is limited to a reasonable term not to exceed 50 years.


This Order shall be effective on May 3, 2013.

DATED: 4/29/13

BOARD OF PUBLIC UTILITIES³
BY:


ROBERT M. HANNA
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
Utilities



³ Commissioner Jeanne M. Fox abstained on this matter.

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COUNTY OF GLOUCESTER

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