



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
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www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF THE)	ORDER APPROVING AN
BOROUGH OF HO-HO-KUS TO ENTER INTO A)	AMENDMENT TO THE PUBLIC-
MAINTENANCE CONTRACT WITH A PRIVATE FIRM))	PRIVATE CONTRACT WITH THE
SUEZ ADVANCED SOLUTIONS (UTILITY SERVICE)	BOROUGH OF HO-HO-KUS AND
CO., INC.) FOR THE PROVISION OF WATER)	SUEZ ADVANCED SOLUTIONS
SUPPLY SERVICES)	
)	DOCKET NO. WO21091144

Parties of Record:

Timothy J. Wiss, Esq., Wiss & Bouregy, P.C., on behalf of the Borough of Ho-Ho-Kus
Diana Riner, Esq., on behalf of SUEZ Advanced Solutions/Utility Service Co., Inc.
Brian Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

BACKGROUND

On August 12, 2021, pursuant to the New Jersey Water Supply Public-Private Contracting Act (“Water Act”), N.J.S.A. 58:26-19 to 27, the Borough of Ho-Ho-Kus (“Petitioner,” “Ho-Ho-Kus,” or “Borough”), submitted an application (“Petition”) for approval of a maintenance contract with Suez Advanced Solutions (“SUEZ” or “Company”), specifically the maintenance and management of two (2) water storage assets. Thereafter, on September 29, 2021, the Borough supplemented the Petition and completed its application.

The two (2) water storage vessels in Ho-Ho-Kus are as follows:

- 250,000 Gallon Welded Steel elevated tank; and
- 500,000 Gallon Welded Steel elevated tank.

The Petitioner made the application in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25, to the New Jersey Board of Public Utilities (“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”) (collectively, “Agencies”). On

¹ Commissioner Zenon Christodoulou abstained from voting on this matter.

October 28, 2021, the Board approved the Services Agreement in this docket, with an effective date of November 4, 2021 (“October 2022 Order”).

On June 22, 2022, the Borough requested an amendment to the October 2021 Order to proceed with an additional Scope of Work (“SOW”) with respect to repairs to a 1,000,000 Gallon Reservoir – Bridle Way Concrete Tank (“Tank 3”), which forms part of the Borough’s water storage assets.

June 2022 Request

Subsequent to the issuance of the October 2021 Order, Ho-Ho-Kus and SUEZ Advanced Solutions began strategizing about the work approved and it became apparent that the water storage assets would need to be taken “offline” in order to safely and efficiently complete the approved work. While the “Master Service Agreement” submitted for prior approval contemplates adding additional items, however, there were only two (2) specific SOWs attached at that time. The Borough did not feel it would be appropriate to proceed with engaging SUEZ to take additional water assets offline and cleaned, beyond those set forth in the October 2021 Order without vetting by all interested parties in the prior process.

After considering the above in more details, the Borough did not want to be in a position where large volumes of water would be released from existing storage tanks without the ability to move water to tanks that were not already “washed” because the process might negatively impact large volumes of water from a “washed” tank. The Borough was advised that such process could lead to unanticipated costs and duplicative work, which all parties are attempting to avoid.

As a result, it was suggested that the best way to minimize any issues would be to utilize Tank 3 (the subject 1,000,000 tank) to store the water from Tank 1 and Tank 2 while they were being washed. Tank 3 has additional storage capacity, which would be beneficial to the process. Given that that washing process occurs on an ongoing basis, the Borough would likewise need to wash Tank 3 to ensure that it was appropriately cleaned. While the Borough hoped to avoid servicing Tank 3 on a present basis, it does recognize that servicing Tank 3 would be the best way to proceed to avoid any future issues down the line.

The Borough is a municipal corporation within the County of Bergen. 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., Ho-Ho-Kus provides services to its citizens. Ho-Ho-Kus also 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.

Terms of the Amendment to the Private-Public Contract

- A. The Company shall perform an annual inspection of the Asset to assess its sanitary condition, as well as, the condition of the interior and exterior coatings. In addition, the Asset will be inspected to ensure that the structure is in watertight condition.
- B. Every 4 years, beginning in Contract Year 9, the Company shall perform chemical washouts of the Asset. The Asset will be completely drained and cleaned to remove all mud, silt, and other accumulations that might be harmful to the Asset or its contents. The Company will apply an NSF 60 approved chemical cleaning agent to the interior walls and floor surfaces of the Asset to treat mineral build-up and bio-film that form on the interior Asset surfaces. After

cleaning is completed, the interior will be thoroughly inspected and disinfected prior to returning the Asset to service; however, the Owner is responsible for draining and filling the Asset and conducting any required testing of the water. A written report will be mailed to the Owner after each inspection.

- C. The Company will clean and recoat the interior and/or exterior of the Asset at such time as complete recoating is needed. The need for interior coating is to be determined by the thickness of the existing liner and its protective condition. When interior recoating is necessary, procedures as outlined in A.W.W.A. D-102 specifications for cleaning and coating of potable water tanks will be followed, if applicable. The need for exterior coating is to be determined by the appearance and protective condition of the existing coating. At the time the exterior requires recoating, the Company agrees to recoat the Asset with coatings of the same color and to select a coating system which best suits the site conditions, environment, and general location of the Asset. When recoating is needed, all products and procedures will be equal to, or exceed the requirements of the Assets location, the American Water Works Association, and the Society for Protective Coatings as to surface preparation and coating materials.
- D. If applicable to the Asset, and if requested by the Owner, the Company will mobilize a crew to paint over graffiti, but the Owner must allow the Company a reasonable amount of time to mobilize a crew.
- E. For storage independent tanks, a lock will be installed on the roof hatch of the Asset.
- F. The Company will furnish a certificate of insurance to the Owner evidencing the Company's insurance coverage.
- G. In the event that the Owner will not release the Asset for service or is the cause of unreasonable delay in the performance of any service herein, the Company reserves the right to renegotiate the annual fees, and the Owner agrees to renegotiate the annual fees in good faith. In addition, the Owner hereby agrees that the Company can replace a washout inspection with a visual inspection, ROV inspection, or UAV inspection without requiring modification of this Contract.
- H. Mixing System Installation and Service.
 - 1. The Company shall install an active mixing system in the Asset.
 - a. Owner will be required to provide 120 VAC, 15 Amp GFCI – Protected, 15 Amp Circuit power supply at the tank with a disconnect switch, and will be required to supply a certified electrician to make the final connection between the PAX Mixer and the power supply during the installation.
 - b. Owner will be responsible for all trenching, conduit, and electrical connections outside the tank, unless otherwise specified by this agreement.

- c. Upon completion of PAX installation, Company will power up the PAX Active Mixing system and complete electrical system check/IAR on PAX Control Center to verify proper operation.
2. The particular unit that will be installed in the Tank is a NSF Approved PAX 150 active mixing system along with its component parts.
 3. The Company will inspect and service the active mixing system each year. The active mixing system will be thoroughly inspected to ensure that the active mixing system is good working condition. The Company shall furnish engineering, inspection, and maintenance services needed to maintain and repair the active mixing system during the term of this Contract.
 4. Every third year, or as determined necessary by the Company due to operational problems with the mixing system, the tank will be completely drained and cleaned to remove all mud, silt, and other accumulations that might be harmful to the tank or its contents. After cleaning is completed, the interior will be disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water. A written report will be mailed to the Owner after each inspection.
- I. In the event that after providing written notice with a reasonable time to cure, the Owner will not release the tank for service or is the cause of unreasonable delay in the performance of any service herein, the Company reserves the right to renegotiate the annual fees based upon such delay, and the Owner agrees to renegotiate the annual fees in good faith. Likewise, if the Company causes any unreasonable delays, the Owner shall be permitted to negotiate the cost of any such delays. In addition, the Owner hereby agrees that the Company can replace a washout inspection with a visual inspection, ROV inspection, or UAV inspection without requiring modification of this Contract, so long as the replacement of such inspection would not violate any other provision of this Agreement.
 - J. Company is denied any authority to initiate, negotiate, and finalize the terms for a bulk sale of surplus water.

Annual Fees/Contract Price

The tank shall receive repairs and PAX active mixer installation prior to the end of Contract Year 1. The annual fee for Contract Years 1 and 2 shall be \$1,609.00 per Contract year. The annual fee for Contract Year 3 shall be \$4,194.00. The annual fee for Contract Years 4 and 5 shall be \$1,609.00 per Contract year. The annual fee for Contract Year 6 shall be \$172,666.00. The annual fee for Contract Year 7 shall be \$173,910.00. The annual fee for Contract Year 8 shall be \$175,197.00. The annual fee for Contract Year 9 shall be \$176,530.00. The annual fee for Contract Year 10 shall be \$177,910.00. The Annual Fee for Contract Year 11 shall be \$41,792.00. Each anniversary thereafter, the Annual Fee shall be adjusted to reflect the current cost of service. The adjustment of the Annual Fee shall be limited to a maximum of 5% annually. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this SOW3.

The SOW will automatically renew for successive one-year-terms unless terminated as set forth in Section 9 of the Master Services Agreement.

The LFB's Staff advised Board Staff that they are awaiting responses to discovery that was served on Ho-Ho-Kus. They further advised that this matter will not be considered by the LFB until their review is complete.

New Jersey Division of Rate Counsel Comments

By letter dated August 8, 2022, the New Jersey Division of Rate Counsel ("Rate Counsel") filed comments regarding their analysis of the amended SOW and their opinion on whether the Board should approve it. Rate Counsel's comments explained that the Amended SOW was work that was already contemplated by the already Board approved Master Agreement between Ho-Ho-Kus and Veolia. According to Rate Counsel, the Amended SOW does not change ownership, compliance responsibility, or give rate setting authority to Veolia. Rate Counsel also stated that the fees for the Amended SOW are paid by Ho-Ho-Kus through its payment of an annual fee to Veolia. Next, Rate Counsel noted that Veolia as one of the biggest private operators of water utilities in North America and thus possess the needed expertise to protect the public interest as contemplated by N.J.S.A. 58:26-25(c)(1). Therefore, Rate Counsel believes that the Amended SOW is not unreasonable and that New Jersey ratepayers served by Veolia would not be subsidizing this contract. While Rate Counsel believes that Board approval of the Amended SOW is not needed, Rate Counsel states that in the event of the Board's determination that the Board's approval is needed, the Board would be required to review the amendment under the standards in N.J.S.A. 58:26-25(g). Therefore, Rate Counsel stated that it has no objection to the Board approving the contract amendment but recommends that Board include language stating that the Board's jurisdiction over the entire contract terminates unless and until the contracted is subsequently amended.

DISCUSSION AND FINDINGS

The Acts provide for amendments of private public contracts following approval of same by the Board and the DCA. Specifically, the Water Act states:

If the public entity and private firm would like to amend a contract after approval of an application by the board and division, the public entity shall submit proposed amendments to the board and the division for approval and to the department for review. At the next public meeting of the board and of the division after receipt of proposed amendments, the board and the division shall determine whether the proposed amendments are substantial. If the amendments are substantial in nature as determined by either the board or the division, the public entity shall conduct a public hearing pursuant to [N.J.S.A. 58:26-24]. Within 60 days of the receipt of proposed amendments that are not determined to be substantial, or within 60 days of the receipt of an application for approval of proposed amendments that are determined to be substantial, the board and division shall approve or conditionally approve the amendments in accordance with the applicable procedures established for approval of an original contract pursuant to [N.J.S.A. 58:26-25].

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

Similarly, the Wastewater Act states:

If the public entity and private firm or public authority would like to amend a contract after approval of an application by the division, the public entity shall submit proposed amendments to the division for approval and to the department for review. At the next public meeting of the division after receipt of proposed amendments, the division shall determine whether the proposed amendments are substantial. If the amendments are substantial in nature as determined by the division, the public entity shall conduct a public hearing to [N.J.S.A. 58:27-24]. Within 60 days of the receipt of proposed amendments that are not determined to be substantial, or within 60 days of the receipt of an application for approval of proposed amendments that are determined to be substantial, the division shall approve or conditionally approve the amendments in accordance with the applicable procedures established for approval of an original contract pursuant to this section.

[N.J.S.A. 58:27-25(f).]

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 contained therein. N.J.S.A. 58:26-25(c). Additionally, 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.].

Additionally, the Water Act provides that “[i]f the contracting unit is subject to the jurisdiction of the Board of Public Utilities, the board . . . shall approve or conditionally approve the proposed contract if the board finds the proposed contract to be in the public interest.” N.J.S.A. 58:26-13(c).

In accordance with these legal mandates, the Board has limited the scope of its review of Amendment to the Services Agreement to determine only whether the proposed changes are “substantial” or “change the formula or other basis of determining charges contained therein” pursuant to the criteria set forth above, and, for reasons discussed below, concludes that Amendment 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 residents for services.

After review of the record herein, the Board **FINDS** that the statutory requirements listed above have been met provided that the Local Finance Board also approves Private-Public Contract. Specifically, the Board **FINDS** as follows:

1. The proposed amendments to the contract are “not substantial.” See N.J.S.A. 58:26-25(g).

2. SUEZ has the financial capacity, technical and administrative experience to ensure continuity of service over the term of the contract [N.J.S.A. 58:26-25(c)(1)]. SUEZ provides a suite of additional global solutions, technologies, information systems and approaches to real-life challenges facing U.S. water and wastewater utilities.
3. The terms of the contract are not unreasonable given the services that are to be performed by SUEZ (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, the term is appropriate.
4. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Ho-Ho-Kus. All of Ho-Ho-Kus's customers are located within Ho-Ho-Kus's boundaries.
5. That the Local Finance Board has not approved the amended Public-Private contract. The contract contains provisions addressing the following:

N.J.S.A. 58:26-23(e)(1): There is no subsidization of customers outside the municipal boundaries.

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.

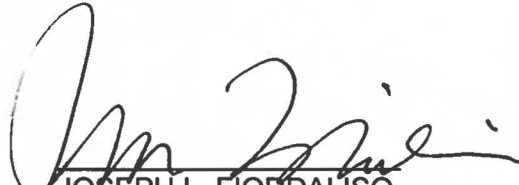
Therefore, based upon the above, the Board **HEREBY CONDITIONALLY APPROVES** the amended Public-Private Contract between the Borough of Ho-Ho-Kus and SUEZ Advanced Solutions., Inc. in order to review DCA's determination at a public agenda meeting and subject to the following provisions:

- (1) That the Petitioner notified the Board in writing of either the Local Finance Board's acceptance of or rejection of the Public-Private contract; and
- (2) That the Petitioner updates the Board on any other changes, acceptance, or rejection of the contract.

This Order shall be effective on August 22, 2022.

DATED: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT


MARY ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
CARMEN D. DIAZ
ACTING 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 THE PETITION OF THE BOROUGH OF HO-HO-KUS TO ENTER INTO A
MAINTENANCE CONTRACT WITH A PRIVATE FIRM SUEZ ADVANCED SOLUTIONS (UTILITY SERVICE CO.,
INC.) FOR THE PROVISION OF WATER SUPPLY SERVICES

BPU DOCKET NO. WO21091144

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