



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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[www.nj.gov/bpu/](http://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 EGG HARBOR CITY, ATLANTIC COUNTY, NEW )  
JERSEY ) DOCKET NO. WE21091147

**Parties of Record:**

**Stephen R. Bishop, Esq.**, New Jersey-American Water Company, Inc.  
**Brian O. Lipman, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:<sup>1</sup>

In this matter, the New Jersey Board of Public Utilities (“Board”) considers a petition filed by New Jersey-American Water Company Inc. (“NJAWC” or “Company” or “Petitioner”) for approval of a municipal consent granted by Egg Harbor City (“City”).

**BACKGROUND**

NJAWC is a regulated public utility corporation engaged in the production, treatment, and distribution of water and the collection and treatment of sewage within its defined service territory, which 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 September 30, 2021, NJAWC filed a verified petition with the Board pursuant to N.J.S.A. 48:2-14, N.J.S.A. 48:3-11 to 15, N.J.S.A. 48:13-11, N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5, seeking approval of the following: (1) a municipal consent, Ordinance No. 2-2021 (“Ordinance”), adopted March 11, 2021 by the City to allow Petitioner to provide water and wastewater service to the customers in the City (“Proposed Franchise Area”); and (2) the expansion of NJWAC’s service territory to include customers in the Proposed Franchise Area. The Municipal Consent adopted

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<sup>1</sup> Commissioner Zenon Christodoulou abstained from voting on this matter.

by the City was, in part, in anticipation of the sale of the City's potable water system and a wastewater collection and conveyance system (collectively, "Systems") in compliance with and pursuant to the procedures set forth in the Water Infrastructure Protection Act ("WIPA").<sup>2</sup> Pursuant to the petition, NJAWC is only seeking Board approval of the Municipal Consent and does not seek the Board's determination on any ratemaking treatment on the to be purchased utility system.

The City, which is located in Atlantic County, was incorporated as a city by an act of the New Jersey Legislature on June 15, 1858. The City was reincorporated on February 13, 1868. The 2010 United States Census counted 4,243 people in the City. The City owns and operates the Systems. Through the Systems, the City serves approximately 1,562 water service and 1,405 wastewater service customers in the City, as well as small portions of the Township of Mullica ("Mullica") and Township of Galloway ("Galloway").<sup>3</sup>

According to the petition, approval of the Municipal Consent will serve the public interest by permitting NJAWC to be providing water and wastewater utility service within the City and to leverage its experience, expertise, and economies of scale to benefit the customers of those systems and of NJAWC. NJAWC's significant resources will help with the continuation of providing safe, efficient service as well as additional system reliability to the City.

#### **THE PROPOSED FRANCHISE AREA EXPANSION**

The Municipal Consent was granted in anticipation of a sale process conducted in compliance with and pursuant to the procedures set forth in the WIPA.

Petitioner has obtained the Municipal Consent adopted by the City to construct, lay, maintain and operate the Systems through the Proposed Franchise Area and to provide water and wastewater service within the Proposed Franchise Area.

NJAWC agreed to City's franchise term, which shall be perpetual and the use of surrounding streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which is limited by a statute to 50 years.

In the event of an emergency, NJAWC would follow similar procedures and protocols of their existing operations. Emergencies will be addressed through the Company's 24/7 customer call center, and contact information will be supplied to each customer and all municipal entities including the Police and Fire Departments.

#### **IMPACT ON NEW JERSEY-AMERICAN WATER COMPANY, INC.**

The governing body of the City recognized that, as a result of the acquisition, the Facilities will be operated by a company that is subsidiary of the largest provider of regulated water and

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<sup>2</sup> NJAW is seeking approval of the following petition which is pending approval with the Board: In re the Petition of New Jersey American Water Company, Inc. for (1) Approval of its Agreement with Egg Harbor City, New Jersey for the Purchase and Sale of Systems; (2) a Determination that the Purchase Price is Reasonable; (3) For Such Other Approvals as May Be Necessary to Complete the Proposed Transaction, BPU Docket No. WM21091150;OAL Docket No. PUC 08739-2021S.

<sup>3</sup> The Systems serve five (5) wastewater customers in Mullica along Hamburg Avenue. The Systems also serve approximately 75 water customers and one (1) wastewater customer in Galloway. Galloway and Mullica have each granted municipal consents to NJAWC.

wastewater services in the United States and concluded that it is in the public interest for the Facilities to be owned and operated by Petitioner. In essence, the City determined that NJAWC was best positioned to address Emergent Condition No.5, as determined by the New Jersey Department of Environmental Protection, the City's lack of financial, technical or managerial capacity to adequately address necessary investment, repairs or maintenance on sustainable basis or own, operate the Systems in a way that supports economic activity on sustainable basis.

### **IMPACT ON RATES**

According to Section 5.12 of the sale agreement between the City and Petitioner, the Petitioner shall adopt the City's adjusted water and wastewater rates upon closing and shall maintain said rates for a minimum of two (2) years. Thereafter, the City's rate would change at the same time and frequency of Petitioner's general rate case proceedings.

The City charges the same rates to all of its water and wastewater customers regardless of which municipality in which they reside. Chapter 255, Section 14 of the City's Municipal Code contains the currently effective rates in regards to utility fee, water and sewer Charge, all fire services, sprinkler meters annual fee and fire hydrants. The quarterly water service charge for ¾ inch meter is \$102.50. Water charge \$7.00 per 1,000 gallons and Sewer charge \$7.50 per 1,000 gallons.

### **SPECIFIC BENEFITS TO CUSTOMERS OF THE WATER and WASTEWATER SYSTEM**

The Petitioner stated that the approval of the Municipal Consent will promote the public interest and result in the following positive benefits:

1. NJAWC's size and scale enable the Company to address the water and wastewater needs of the City's customers well into the future.
2. The customers of the City will benefit from becoming a part of NJAWC, a substantially larger utility regulated by the Board. These customers will receive reasonable and prudent practices to ensure safe and reliable service.
3. After the approval of the agreement, the City customers will have access to NJAWC's customer service call center to resolve any customer service issues that may arise.

### **THE MUNICIPAL CONSENT**

The Ordinance provides the Petitioner with an exclusive and perpetual franchise to provide water and wastewater sewer service within City, and the municipal consent of the City to permit said Company to extend water and wastewater service and its related facilities to the City. With regard to the use of the streets, the Ordinance provides in part as follows:

The City grants unto the Company the municipal consent to use the streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, with such consent limited to the fifty (50) year duration set forth in N.J.S.A. 48:3-15, as well as the municipal consent as required pursuant to N.J.S.A. 48:19-17 and 48:19-20, as amended, to lay its pipes beneath and restore such public roads, streets and places as it may deem necessary for its corporate purposes, free from all charges to be made for said privilege (except that fees for road opening permits shall be paid), provided that said pipes installed after the date of this ordinance shall be laid at least three feet (3') below the surface and shall not in any way unnecessarily obstruct or interfere

with the public travel or cause of permit other than temporary damage to public or private property.

NJAWC intends to operate the Systems pursuant to the existing municipal consent granted under the Ordinance. The Municipal Consent, adopted on March 11, 2021 by the City, allows the Petitioner to lay, maintain, and operate the necessary water and wastewater treatment facilities, mains, pipes, and appurtenances throughout the City and to provide water and wastewater service within the City .

On June 23, 2022 a duly noticed municipal consent hearing on the Company's petition was held via teleconference. David Schmitt, Esq., Legal Specialist, presided over the hearing at which representatives of the Company, the New Jersey Division of Rate Counsel ("Rate Counsel"), and Board Staff appeared. No members of the public attended and no written comments from the public were submitted.

### **RATE COUNSEL COMMENTS**

By letter dated July 12, 2022, Rate Counsel submitted its comments to the petition and stated that, subject to certain conditions, it is not opposed to the request for approval of the municipal consent. In sum, Rate Counsel recommended that the Board modify the term of the municipal consent to 50 years for the specific authorization to provide water and sewer service within the Township along with use of streets is limited to a term of 50 years. In addition, Rate Counsel also recommended that the Board condition its approval of the petition to specify that transaction costs cannot be recovered in rates; namely, that there be no authorization to include any specific assets or amounts in rate base, or authorization for any other ratemaking treatment.

### **DISCUSSION AND FINDINGS**

The Board, having reviewed the Petition and the entire record, **FINDS** that the municipal consent is necessary and proper for the public convenience and properly conserves the public interests.

N.J.S.A. 48:2-14 provides in part as follows:

No privilege or franchise granted after May first, one thousand nine hundred and eleven, to any public utility by a political subdivision of this state shall be valid until approved by the board. Such approval shall be given when, after hearing, the board determines that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests. In granting its approval the board may impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require.

In the same vein, N.J.S.A. 48:13-11 states in part as follows:

Every sewerage company organized under the laws of this State may lay its pipes and conduits beneath such public roads, streets, avenues and alleys as it may deem necessary for its corporate purposes, upon complying with the terms and conditions upon which the consent of the corporate authorities to the organization of the company shall have been obtained, provided that the consent

to the laying of such pipes shall be obtained of any municipality through which the same may be laid.

See also In the Matter of the Petition of New Jersey-American Water Company, Inc. for Approval of a Municipal Consent Granted by the Borough of Mount Ephraim, County Of Camden, Docket No. WE19010117, Order dated June 21, 2019; 2019 N.J. PUC LEXIS 148, \*4 (N.J. P.U.C. June 21, 2019) (“NJAW has agreed to the Borough’s franchise term for the provision of service, which is perpetual, as well as the use of the streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which limits the use to a term of 50 years.”); In the Matter of the Petition of Suez Water New Jersey Inc. for the Approval of Municipal Consent to Own and Operate Water and Sewer Systems in the Township of West Milford and Approval of the Issuance of Revised Tariff Sheets Setting Forth Suez Water New Jersey Inc.’s Expanded Service Area Related to the Transfer of Water and Sewer Assets from the Township of West Milford to Suez Water New Jersey Inc., Docket No. Order dated October 29, 2018; 2018 N.J. PUC LEXIS 235, \*12-13 (N.J. P.U.C. October 29, 2018) (“Although the Ordinance does not specify a period for the use of the streets, a municipality may consent to the use of its streets or surfaces, but only for a period not exceeding 50 years. N.J.S.A. 48:3-15. However, N.J.S.A. 48:2-14 sets no limit for the duration of the municipal consent or franchise for the provision of service.”).

Accordingly, the Board **HEREBY APPROVES** the Municipal Consent, Ordinance No. 2-2021, adopted March 11, 2021, granted to NJAWC by the City, and the expansion of NJWAC’s service territory to include customers in the Proposed Franchise Area. The Board **HEREBY FINDS** that the Municipal Consent is necessary and proper for the public convenience and properly conserves the public interest, and that the Company has the ability to provide safe, adequate and proper service in the City. The approvals granted, hereinabove, shall be subject to the following provisions:

1. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any matter affecting the Company.
2. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liabilities now owned or hereafter to be owned by NJAWC.
3. The Petitioner shall not depreciate any portion of the water and wastewater system expansion that is funded by Contributions in Aid of Construction.
4. As required by N.J.S.A. 48:3-15, the municipal consent for the use of streets is limited to a term of 50 years.
5. 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 of 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.
6. 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.


7. Within 30 days of the date of the closing of sale, the Petitioner shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation of all expenses related to the proposed Agreement.
8. Within 10 days of the date of the closing of sale, NJAWC shall submit any revised tariff pages that may be necessary as a result of the proposed Agreement.
9. Board Staff is authorized to approve, subject to comments filed by Rate Counsel, any written request by the Petitioner for additional time to comply with any applicable items above.

The Order shall be effective on August 24, 2022.

DATE: August 17, 2022

BOARD OF PUBLIC UTILITIES  
BY:

  
JOSEPH L. FIORDALISO  
PRESIDENT

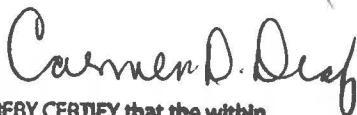
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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 NEW JERSEY-AMERICAN WATER COMPANY, INC. FOR  
APPROVAL OF A MUNICIPAL CONSENT GRANTED BY EGG HARBOR CITY, ATLANTIC COUNTY,  
NEW JERSEY

DOCKET NO. WE21091147

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