



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE AMENDMENT TO THE)	ORDER APPROVING AN
SERVICES AGREEMENT FOR THE)	AMENDMENT TO THE PRIVATE
OPERATION, MANAGEMENT, MAINTENANCE)	PUBLIC CONTRACT BETWEEN
AND REPAIR OF THE CITY OF CAMDEN'S)	THE CITY OF CAMDEN AND
WATER SUPPLY AND SEWER COLLECTION)	AMERICAN WATER OPERATIONS
SYSTEMS)	AND MAINTENANCE, INC.
)	
)	DOCKET NO. WO18060672

Parties of Record:

Ryan J. Scerbo, Esq., DeCotiis, FitzPatrick & Cole, LLP, on behalf of the City of Camden
Gregory Samuels, Esq., Corporate Counsel, American Water Enterprises Group, on behalf of American Water Operations and Maintenance, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On October 6, 2015, pursuant to the New Jersey Water Supply Public-Private Contracting Act ("Water Act"), N.J.S.A. 58:26-19 et seq., and the New Jersey Wastewater Treatment Public-Private Contracting Act, N.J.S.A. 58:27-19 et seq. ("Wastewater Act") (collectively, "Acts"), the City of Camden ("Petitioner" or "Camden") filed a petition with the New Jersey Board of Public Utilities ("Board"), which was subsequently certified, for approval of a private-public contract ("Services Agreement") with American Water Operations and Maintenance, Inc., ("American Water") for the operation, management, maintenance, and repair of the City of Camden's water supply and sewer collection systems.

Camden also 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 Department of Community Affairs, Division of Local Government Services, Local Finance Board ("DCA") and the New Jersey Department of Environmental Protection ("DEP") in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25. On December 16, 2015, the Board approved the Services Agreement in BPU Docket No. WO15101178, with an effective date of December 26, 2015.

Subsequent to the Board's approval of the Services Agreement, Camden and American Water have implemented the terms and conditions of the Services Agreement, now in contract year

three of an initial 10-year term. During these first three years of operation, Camden and American Water have identified multiple provisions in the Services Agreement that require revision, correction or amendment. Following negotiations, the Petitioner and American Water agreed to an amendment ("Amendment No. 1") to the Services Agreement. Resolution No. MC-18:6405 was adopted on June 12, 2018 by the Camden Township Council authorizing the filing of an application with the Local Finance Board ("LFB") for approval of Amendment No. 1 to the Services Contract pursuant to the Acts and on June 25, 2018, Camden filed a subsequent petition ("Petition") with the Board for approval of Amendment No. 1 to the Services Agreement. The LFB thereafter advised the Petitioner that a public hearing would be necessary with regard to Amendment No. 1, as it was under the impression that the proposed changes were substantial in nature.

After proper notice, the Petitioner conducted a public hearing on September 7, 2018 regarding the Services Agreement at Camden City Hall in Camden. No members of the public attended the hearing. Subsequent to the public hearing, by letter dated September 18, 2018 ("September 18, 2018 Submission"), Camden submitted the following:

- Exhibit A – Notice of Public Hearing;
- Exhibit B – A copy of the presentation that was prepared for the public hearing ("Public Hearing Presentation"); and
- Exhibit C – A copy of the transcript of the public hearing.

As required under the Water Act, the public comment was held open for seven additional days beyond the public hearing to allow the public to provide written comments. Immediately following the public hearing, the public hearing presentation was posted on Camden's website. No written comments were received.

The Petitioner, in its September 18, 2018 Submission, stated that it was not proposing any changes to the Service Agreement and respectfully requested that its application be considered by the LFB at its October 10, 2018 meeting and by the Board at its October 29, 2018 public agenda meeting.

The Petitioner is located in Camden County and is a municipal corporation within the County of Camden. 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., Camden provides services to its residents.

Camden 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. Camden determined to enter into the Services Agreement and Amendment No. 1 for services pursuant to the Acts.

Terms of Amendment No. 1 to the Private-Public Contract

Camden agreed to the terms of Amendment No. 1 to the Services Contract with American Water for the operation, management, maintenance and repair of Camden's water and sewer collection systems located in Camden, New Jersey.

American Water will continue to provide Camden with an operation, management and maintenance agreement of its water supply operations. Amendment No. 1 provides for non-substantial changes to the terms of the Services Agreement with respect to the operations,

management, maintenance and repair of the systems, capital improvements, billing/collections, scope of services, and computer information systems.

With respect to customer rates, Camden represents that Amendment No. 1 to the Services Agreement will impact customer rates, but it is in the process of commencing a rate study. If the rate study dictates that rates must be increased, it will be due to a variety of reasons, including capital improvements, regulatory requirements and increased operational costs.

With respect to staffing, no employees will be negatively affected by Amendment No. 1. All employees working for American Water pursuant to the Services Agreement are all American Water employees.

Camden shall pay American Water an annual service fee (which includes the fixed management fee) of \$12,330,769.

On June 25, 2018, 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 sixty (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 LFB approved Amendment No 1 to the Services Agreement at its October 10, 2018 agenda meeting.

Due to the timing of the filing of the Petition, the 60-day time-period set forth in the Acts for the Board to make a determination in this matter expired prior to the date of the Board's August Agenda meeting. In light of these circumstances, Camden filed a letter with the Board on July 26, 2018 agreeing to an extension to the Board to act on this matter by September 10, 2018.

Rate Counsel Comments:

By letter dated October 17, 2018, the New Jersey Division of Rate Counsel stated that it would defer to the Board in rendering a final decision in this matter.

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). 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 these legal mandates, the Board has limited the scope of its review of Amendment No. 1 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 No. 1 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 criteria listed hereinabove have been met and Amendment No. 1 to the Services Agreement contains non-substantial changes and does not change the formula or other basis of determining charges contained in the Services Agreement.

1. American Water Operations and Maintenance, Inc. 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). American Water Operations and Maintenance, Inc., is a Texas corporation whose offices are located at 1025 Laurel Oak Road, Voorhees, NJ 08043. American Water was formed in 1996 and has been providing contract operations to municipal clients since its formation. American Water has operated water treatment plans and distribution systems and wastewater collection systems and treatment plants of various sizes across the United States, from plants rated at over 100 million gallons per day to facilities serving small residential communities. In addition, American Water is an operating entity for American Water's Contract Service group, which currently manages more than 40 operation and maintenance contracts across the United States.
2. The terms of the amended contract are not unreasonable given the services that are to be performed by American Water. N.J.S.A. 58:26-25(c)(2).
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Camden. All of Camden's customers are located within Camden's boundaries. Thus, there is no subsidization of customers outside the municipal boundaries.
4. The Services Agreement 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.

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

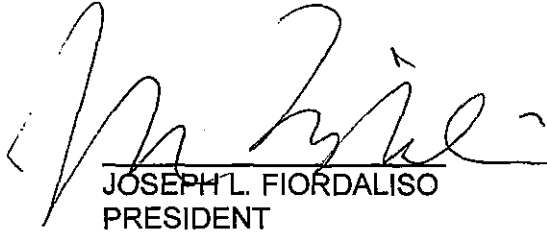
Therefore, based upon the above, the Board **HEREBY APPROVES** Amendment No. 1 to the Services Agreement between the City of Camden and American Water Operations and Maintenance, Inc. subject to the following provision:


Any extension of the contract beyond the initial term (with an additional five-year option), 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 8, 2018.

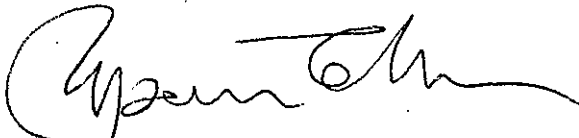
DATED: 10/29/18

BOARD OF PUBLIC UTILITIES
BY:


JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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 DRAFT AMENDMENT TO SERVICES AGREEMENT FOR THE
OPERATION, MANAGEMENT, MAINTENANCE AND REPAIR OF THE CITY OF CAMDEN'S
WATER SUPPLY AND SEWER COLLECTION SYSTEMS**

DOCKET NO. WO18060672

SERVICE LIST

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.nj.gov

Ryan Scerbo, Esq.
Decotiis, FitzPatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard, Suite 31
Teaneck, NJ 07666
rscerbo@decotiislaw.com

Gregory Samuels, Esq.
American Water Enterprises Group
1025 Laurel Oak Road
Voorhees, NJ 08043
gregory.samuels@amwater.com

Patricia McNamara, Executive Secretary
Local Finance Board
Department of Community Affairs
101 South Broad Street
Post Office Box 800
Trenton, NJ 08625
patricia.mcnamara@dca.state.nj.us

Catherine R. McCabe, Commissioner
Department of Environmental Protection
401 East State Street, 7th Floor
Post Office Box 402
Trenton, NJ 08625
catherine.mccabe@dep.nj.gov

Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
board.secretary@bpu.nj.gov

Maria L. Moran, Director
Division of Water
Aida Camacho-Welch
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Maria.moran@bpu.nj.gov

Alex Moreau, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
alex.moreau@law.njoag.gov