

Agenda Date: 06/21/19
Agenda Item: 5A

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 PETITION OF)	ORDER
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

Parties of Record:

Stephen R. Bishop, Esq., New Jersey-American Water Company, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this matter, the New Jersey Board of Public Utilities ("Board") considers a petition filed by New Jersey-American Water Company, Inc., ("Petitioner," "Company" or "NJAW") for Board approval of a municipal consent granted by the Borough of Mount Ephraim ("Borough" or "Seller") to permit the Company to provide wastewater service in the Borough.

BACKGROUND

On January 25, 2019, NJAW filed a petition with the Board pursuant to N.J.S.A. 48:2-14 and N.J.A.C.14:1-5.5 seeking approval of the municipal consent, Ordinance No. 15-18 ("Ordinance"), adopted December 6, 2018, by the Borough to allow the Petitioner to provide wastewater service to customers in the proposed franchise area.

NJAW is a public utility organized and operating under the laws of the State of New Jersey. The Borough is a public body corporate and politic in Camden County in the State of New Jersey and is not subject to the jurisdiction of the Board. The Borough currently owns and provides wastewater service to approximately 1,800 customers through two sanitary sewer pump stations and a wastewater collection system ("Mount Ephraim System").¹

¹ Per the Company's response to discovery request SE-29, NJAW represents that it will not be acquiring the mains or appurtenances located outside the municipal boundaries of the Borough. However, the Borough currently provides wastewater service to 13 wastewater customers in the Township of Haddon Heights ("Township"). The Borough directly bills the Township a total of \$1,300 annually for these accounts. (T10:16-12:1) ("T" refers to the transcript of the public hearing in this matter dated May 9, 2019") The Company proposes to continue to bill the Township directly for wastewater service and will enter into an agreement with the Township regarding the same following the closing. (T12:18-13:23). The Company submitted a copy of the proposed agreement with the Township to Staff to on June 7, 2019.

NJAW 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. Said service territory includes portions of Atlantic, Bergen, Burlington, Camden, Cape May, Essex, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Ocean, Passaic, Salem, Somerset, Union and Warren Counties. On March 22, 2007, the Board approved a municipal consent in Docket No. WE06060431, that allows the Company to provide water service in the Borough.

THE PROPOSED TRANSFER AND FRANCHISE AREA

On January 15, 2019, NJAW entered into an Asset Purchase Agreement ("Agreement") with the Borough which provides for NJAW to purchase the Seller's wastewater collection system assets serving the customers of the Borough for \$1,400,000. In addition, the Company has agreed to pay up to \$100,000 in seller transaction expenses.

The Company states the sales transaction is subject to public referendum and the transfer is appropriate pursuant to N.J.S.A. 40:62-5. The Borough adopted Ordinance No. 08-18 approving the Agreement between the Borough and NJAW on August 2, 2018.

NJAW will be acquiring two sanitary sewer pump stations and a wastewater collection system from the Borough. The recorded average gallon per day wastewater treated in the proposed franchise area in 2017 was approximately 0.36 million gallons per day. NJAW indicates it will not be treating the wastewater. All the wastewater is conveyed to the Camden County Municipal Utilities Authority ("CCMUA") collection system and is treated at the CCMUA treatment facility in Camden.

The Petitioner indicates that given its proximity to the sewer system of NJAW's affiliate, the Haddonfield sewer system, the Mount Ephraim System can easily be included in the existing daily rounds of NJAW maintenance personnel to NJAW systems and can quickly be reached by NJAW staff in the event of an emergency.

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.

IMPACT ON NJAW CUSTOMERS

The Company states that the expansion of Petitioner's service territory will not impose any negative impacts on current NJAW customers or its ability to provide safe and adequate service.

According to the Company, approval of the municipal consent granted by the Borough is in the interest of the current customers of NJAW because the addition of approximately 1,800 wastewater customers enhances the Company's economies of scale and supports the capital investments and fixed costs. NJAW adds that the approval will also allow the wastewater collection system to be better managed and maintained, thus reducing the risk posed to the potable water supply in the franchise area.

The Mount Ephraim System customers presently receive water service from NJAW. The approval will benefit these customers by allowing them to have a single utility provider for both water and wastewater service.

IMPACT ON THE BOROUGH CUSTOMERS

NJAW is requesting that the Mount Ephraim System be merged into NJAW. The Company will continue to charge the Seller customers the current rates of the Mount Ephraim System sewer rates until the next rate proceeding. The rates will freeze for a two year period and will increase three percent for years three through five after the closing of the Agreement. NJAW will seek ratemaking recognition for the acquisition of the Seller's assets in the next base rate proceeding.

The proposed Agreement further provides that the Petitioner will undertake capital improvements to the Mount Ephraim System in the next two to five years after the closing. The Company will spend a total amount of \$5,520,000 in the next five years.²

SPECIFIC BENEFITS TO CUSTOMERS OF THE BOROUGH WASTEWATER COLLECTION SYSTEM

The Petitioner states that the proposed Agreement will promote the public interest and result in the following positive benefits:

1. The need to comply with increasingly stringent water quality and environmental standards has created substantial demands for capital investment for water and wastewater utilities. The financial resources and backing of NJAW will be a benefit to the Borough customers in the replacement of infrastructure and compliance with the Safe Drinking Water Act.
2. NJAW's size and scale enable the Company to address the water and wastewater needs of the Mount Ephraim System well into the future.
3. The customers of the Borough will benefit from becoming part of NJAW, a substantially larger utility regulated by the Board. These customers will receive the benefits of industry standard best practices in the areas of planning, research, environmental compliance, water quality, customer service, finance, risk management, operations and service delivery and management.
4. After the approval of the proposed Agreement, the customers of the Borough will have access to NJAW's customer service call center to resolve any customer service issues that may arise.

THE MUNICIPAL CONSENT

NJAW intends to own and operate the Mount Ephraim System pursuant to the existing municipal consent granted by the Ordinance. The municipal consent, adopted on December 6, 2018 by the Borough, will allow the Petitioner to construct, lay, maintain and operate its wastewater mains, pipes and appurtenances and to provide wastewater service to the Borough.

On May 9, 2019, a duly noticed municipal consent hearing with regard to the petition was held at the Board's offices in Trenton, New Jersey. Suzanne Patnaude, Esq., Senior Counsel at the Board, presided over the hearing at which representatives of NJAW, the New Jersey Division of Rate Counsel ("Rate Counsel") and Staff appeared. No members of the public appeared at the hearing or filed written comments with the Board related to this proceeding.

² Per the Company's response to discovery request SE-28.

RATE COUNSEL COMMENTS

By letter dated May 30, 2019, Rate Counsel submitted its comments to the petition and stated that it is not opposed to its approval with certain conditions, some of which are contained in this Order. However, Rate Counsel recommends that the Board condition its approval on a limitation of the municipal consent for the provision of service to a reasonable period not exceeding 50 years, which is the maximum period allowed for the right to use the streets in a municipality under N.J.S.A. 48:3-15. Rate Counsel further notes that the right to lay pipes under N.J.S.A. 48:3-15 is also limited to the same period as the municipal consent for the use of streets and other places. Although N.J.S.A. 48:2-14 sets no limit on the duration of a franchise term, Rate Counsel asserts that the Legislature did not enable municipalities or the Board to take action that would be binding on future municipal officials and future Boards in perpetuity.

Rate Counsel further states that the Mount Ephraim system acquisition will create a rate increase in excess of 260%, and it will result in a significant financial burden for the Company and its existing ratepayers. The Company indicated that it will invest \$5,560,450 over the next five years. Rate Counsel believes that the present rates revenue from the Mount Ephraim system is inadequate to support the acquisition price as a result of this transaction. Rate Counsel also notes that there will be no adverse rate impact on customers in the Borough on the legacy customers of the Company only because the Company has not yet filed for another base rate increase. Rate Counsel asserts that the Company does not claim or prove that this transaction will have any benefits for customers outside of the Borough, and that the acquisition will serve to increase the cost of service for the Company's other water and sewer customers. Rate Counsel recommends that the Board not authorize the inclusion in rate base of any asset and argues that any associated ratemaking determination should be addressed in a future base rate proceeding.

NJAW RESPONSE

By email correspondence dated May 31, 2019, the Company indicated to Staff that it would not be filing a formal response to Rate Counsel's comments.

DISCUSSIONS AND FINDINGS

The Board has reviewed the entire record, including Rate Counsel's comments, and has determined that there is no legal bar to the granting of a municipal consent with an unlimited duration for the provision of service. Accordingly, the Board, pursuant to N.J.S.A. 48:2-14, **HEREBY APPROVES** the consent granted to NJAW by the Borough as sought in the Company's petition. The Board also **HEREBY FINDS** that the municipal consent is necessary and proper for the public convenience properly serves the public interest and that NJAW has the ability to continue to provide safe, adequate and proper service.

The Board notes that NJAW will continue to charge the Mount Ephraim System customers the existing sewer rates until at least NJAW's next base rate case. Moreover, the proposed Agreement will cause no material changes in the balance sheet or financial position of NJAW. The need to comply with increasingly stringent water quality and environmental standards, while also rehabilitating and replacing aging water and wastewater infrastructure, has created substantial demands for capital investments by water and wastewater utilities. The financial resources and backing of NJAW will be a benefit to the customers of the Borough in the replacement of infrastructure and compliance with the Safe Drinking Water Act. After the completion of the proposed Agreement, customers of the Borough will have access to the NJAW customer service call center to resolve customer service issues.

Accordingly, the Board **HEREBY APPROVES** the municipal consent, Ordinance No. 15-18, December 6, 2018, granted to NJAW by the Borough. The Board **HEREBY APPROVES** the existing tariff for the Seller's customers to be incorporated into the NJAW tariff. The Board **HEREBY APPROVES** the continuation of the current Mount Ephraim System sewer rates.

The Board **FURTHER APPROVES** the proposed acquisition of the Mount Ephraim System by NJAW as more fully described in the Petition. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the proposed acquisition is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of the petition and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
2. 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 matters affecting the Company.
3. 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 NJAW.
4. The Petitioner shall not depreciate any portion of the wastewater collection system expansion that is funded by Contributions in Aid of Construction.
5. 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 from the effective date of this Order. The term of the consent as to the right to provide wastewater service is not limited by this Order, and shall be effective as granted by the Borough.
6. 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.
7. Approval of this municipal consent does not constitute approval of any specific main extension or plan for service. In extending service, NJAW must comply with all applicable laws.
8. Within 30 days of the date of the closing, 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.
9. Within 10 days of the date of the closing, NJAW shall submit any revised tariff pages that may be necessary as a result of the proposed Agreement.

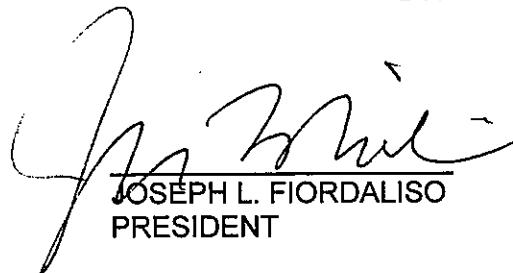
10. Board Staff is authorized to approve, subject to comments filed by Rate Counsel, any written request by the Petitioner for additional time to comply with items 8 and 9 above.

11. The Company shall file an executed agreement to provide wastewater service to the Township of Haddon Heights customers with the Board 90 days after the closing.

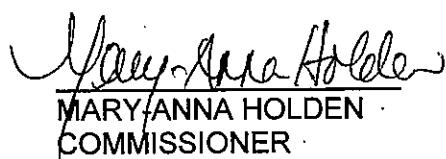
This Order shall be effective on July 1, 2019.

DATED: 6/21/19

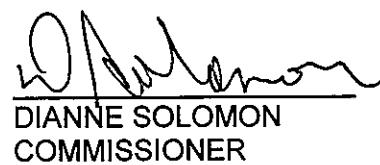
BOARD OF PUBLIC UTILITIES:
BY:



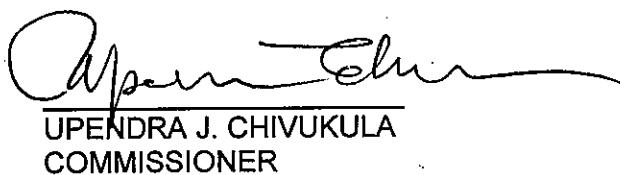
JOSEPH L. FIORDALISO
PRESIDENT



MARY ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

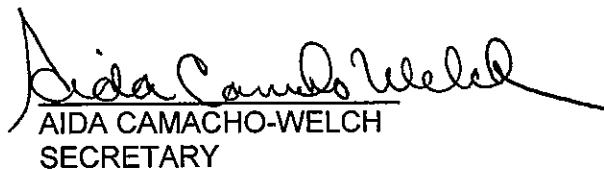


UPENDRA J. CHIVUKULA
COMMISSIONER



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 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

BPU DOCKET NO. WE19010117

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SEWER COLLECTION SERVICES AGREEMENT

THIS Sewer Collection Service s Agreement ("Agreement") is made this _____ day of _____, 2019, between the Borough of Haddon Heights, a Municipal Corporation in the County of Camden and State of New Jersey (the "Haddon Heights") and New Jersey-American Water Company, Inc., a New Jersey Public Utility Corporation ("NJAW").

WITNESSETH:

WHEREAS, the Borough of Mt. Ephraim ("Mt. Ephraim") owned and operated a sanitary sewer system in the limits of the Mt. Ephraim; and

WHEREAS, Mt. Ephraim and Haddon Heights entered into an arrangement which permitted certain properties in Haddon Heights (such properties, as listed in Schedule A, the "Properties") to be connected to Mt. Ephraim's sewer system (the "System"); and

WHEREAS, NJAW is in the process of purchasing the System from Mt. Ephraim, and NJAW and Haddon Heights would like to agree on the terms under which the Properties will continue to be connected to the System.

NOW, THEREFORE: in consideration of the promises and covenants herein set forth and of mutual benefits and advantages accruing to the parties hereto, it is agreed by and between the parties hereto as follows:

1. Until the termination of this Agreement, the Properties may continue to be connected to the System.
2. If NJAW and Haddon Heights determine that additional properties in Haddon Heights are also connected to the System, such properties will be added to Schedule A and be treated as "Properties" pursuant to the terms and conditions of this Agreement.
3. In exchange for allowing the Properties to be connected to the System, Haddon Heights shall pay to NJAW an annual fee for each Property connected to the

System, which NJAW shall invoice to Haddon Heights on a monthly basis in equal installments. The fee shall be calculated as follows:

- a. Haddon Heights will pay NJAW \$100.00 annually for each Property for the two (2) years following the closing date of NJAW's purchase of the System;
- b. NJAW agrees not to increase the fee more than three percent (3%) each year for the years three (3) through five (5) following the closing date; and
- c. any increases following year five (5) would be equivalent to the rates for the other users of the System as approved by the New Jersey Board of Public Utilities.
- d. NJAW shall provide Haddon Heights with at least thirty (30) days prior notice of any fee increase.

4. NJAW shall not be responsible or liable for the furnishing, installation or maintenance of such pipes, mains, vents and appurtenances equipment as may be required to connect the Properties to the System or to continue connection of the Properties to the System, or for the servicing of such connections, or for any expense involved in connecting or disconnecting the Properties to or from the System or in the maintenance or servicing of such connections.

5. NJAW, by its employees or agents, shall have the right and privilege to enter upon all properties, now connected or hereafter to be connected to the said sewer system, for the purpose of inspection or for any other lawful purposes; and Haddon Heights shall afford all reasonable protection to such employees and agents while so engaged. Prior to making any such entry, NJAW will provide a Certificate of Insurance to the Township showing coverage in an amount reasonably acceptable to the Township. Additionally, NJAW will agree to indemnify and hold the Township harmless from any damages which are caused by NJAW's inspection or other activities performed upon entrance to the Properties.

6. The amounts that may become due or owing to NJAW under the terms hereof shall be deemed to be an obligation of Haddon Heights and the payment thereof by Haddon Heights to NJAW shall not be dependent upon the collection thereof from the owners or occupants of the Properties or from the taxpayers of Haddon Heights of any amounts or upon any other contingency. No responsibility to make collection from the owners or occupants of said properties shall rest upon NJAW.

7. This Agreement may be terminated mutually by both parties or by either party, providing such party provides reasonable notice to the other party to allow the non-terminating party to take the needed action to either connect the Properties to Haddon Heights system (in the case of a termination by NJAW) or disconnect the Properties from the NJAW system (in case of a termination by Haddon Heights). The parties agree to work cooperatively in any termination to minimize the disruption to the owners of the Properties. Upon the termination of this Agreement, Haddon Heights shall pay to NJAW all charges, apportioned to the date of disconnection, that may be due and owing for sewer services under the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their corporate seals and have caused these presents to be signed and attested by their respective officers, dated the day and year first written above.

BOROUGH OF HADDON HEIGHTS

ATTEST: _____

By: _____

NEW JERSEY-AMERICAN WATER
COMPANY, INC.

ATTEST: _____

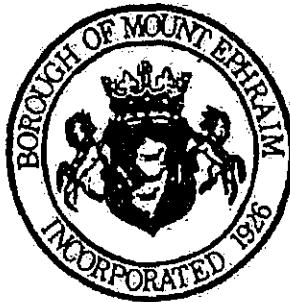
By: _____

SCHEDULE A

See attached.

BOARD OF COMMISSIONERS

JOSEPH E. WOLK, Mayor
Director of Finances
WILLIAM G. EGGERS, III
Director of Public Safety
JOSEPH W. BLOCKLINGER
Director of Public Works



Phone: (609) 931-1546
Mount Ephraim
New Jersey 08059

CATHERINE PEPE
Borough Clerk
Collector of Taxes
Chief Financial Officer

March 12, 1996

Borough of Haddon Heights
625 Station Ave
Haddon Heights NJ 08035

Re: Sewer Charges

Dear Ms. Young,

Catherine Pepe gave me the list of the properties serviced by the Borough of Mt Ephraim for sewer. The properties are:

1-9 Black Horse Pike	3 Units
1906 W Kings Highway	1 Unit✓
1939 New Jersey Ave	1 Unit✓
2000 New Jersey Ave	1 Unit✓
2008 New Jersey Ave	1 Unit✓
2012 New Jersey Ave	1 Unit✓
2016 New Jersey Ave	1 Unit✓
2020 New Jersey Ave	1 Unit✓ 1927 Wayne
2028 New Jersey Ave	1 Unit lot
2032 New Jersey Ave	1 Unit✓
2036 New Jersey Ave	1 Unit✓

If you have any further questions please feel free to contact me any afternoon from 1 - 5 P.M.

Very truly yours,

Barbara
Barbara Valentino
Sewer Clerk