



Agenda Date: 10/28/20

Agenda Item: VA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

IN THE MATTER OF THE PETITION OF THE )  
ATLANTIC CITY SEWERAGE COMPANY FOR )  
APPROVAL OF A FINANCING PROGRAM INVOLVING )  
THE ISSUANCE OF LONG-TERM DEBT THROUGH )  
JUNE 30, 2024 )

ORDER

DOCKET NO. WF20080534

**Parties of Record:**

**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel  
**Wendy E. Stewart, Treasurer and President Elect**, Atlantic City Sewerage Company  
**Courtney Schultz, Esq.**, Saul Ewing Arnstein and Lehr LLP, on behalf of Atlantic City Sewerage

BY THE BOARD:

The Atlantic City Sewerage Company (“Company” or “Petitioner”), a public utility of the State of New Jersey, filed a petition dated August 16, 2020, pursuant to N.J.S.A. 48:3-7 and 48:3-9 and N.J.A.C. 14:1-5.9, requesting authority to:

1. Issue and sell Long-Term Debt in one or more offerings from time to time, and not later than June 30, 2024, in an aggregate principal amount not to exceed \$10,000,000, consisting of one or more series of First Mortgage Bonds, or other evidences of indebtedness;
2. To execute and deliver one or more supplemental mortgage indentures and such other documents as may be necessary or appropriate to effectuate the issuance of Long-Term Debt; and
3. To take such actions as Petitioner determines may be necessary or appropriate to effectuate the transactions described in the Petition.

Petitioner states that it contemplates issuance of new Long-Term Debt through tax exempt issuances in conjunction with issuances by the New Jersey Economic Development Authority (“EDA”) or taxable issuances through bank loans. Petitioner states that it may issue Long-Term Debt in the form of secured or unsecured bonds. If secured, Petitioner will execute one or more supplemental indentures to the original mortgage indenture dated December 31, 1991, as amended and supplemented (“Mortgage Indenture”), thereby granting a mortgage lien on

substantially all of its property. Petitioner further states that it will also issue replacement Long-Term Debt in circumstances where it is economically advantageous to do so.

Petitioner states that the proceeds from Petitioner's issuance of new Long-Term Debt will be used for the construction, rehabilitation, upgrade and expansion of various sections and components of its sanitary sewer system, as may be required to meet the needs and demands of its service territory, Atlantic City, while maintaining the environmental integrity of the region.

Petitioner proposes to issue the Long-Term Debt for sale through a private placement using a competitive bidding process to ensure the lowest cost and most economically advantageous terms. Specifically, Petitioner states that it will solicit bids from a minimum of three (3) prospective purchasers for the purchase of the Long-Term Debt through a Request for Proposals ("RFP") process. The interest rate and other terms of any Long-Term Debt issuance will be determined by analysis of any and all proposals received in response to the RFPs.

By comments dated October 16, 2020, the New Jersey Division of Rate Counsel ("Rate Counsel") notified the Board that, after reviewing the Petition, supporting documents, and discovery responses, it is not opposed to its approval. However, Rate Counsel recommends that Board approval be limited to the transactions specified in the Petition, not indicate authorization to include any specific assets or amounts in rate base, or any other ratemaking treatment, and not establish any precedent with regard to approval of future financing petitions.

## **DISCUSSION AND FINDINGS**

Regarding the proposed transactions, N.J.S.A. 48:3-7(a) provides in pertinent part that "a public utility shall not, without the approval of the board, sell, lease, mortgage, or otherwise dispose of or encumber its property, franchises, privileges, or rights, or any part thereof; or merge or consolidate its property, franchises, privileges, or rights, or any part thereof, with that of any other public utility." Also, N.J.S.A. 48:3-9(a)(2) provides in part: "The board shall approve any such proposed issue, with or without hearing at its discretion, when satisfied that such issue is to be made in accordance with law and the purpose thereof is approved by the board." In addition, N.J.A.C. 14:1-5.9(a) sets forth the required information to be submitted with a petition "for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages." And N.J.A.C. 14:1-5.9(b) provides: "Whenever approval is granted under the provisions of N.J.S.A. 48:3-9 for the issue of stocks, notes, bonds or other evidences of indebtedness, the company securing such approval shall semiannually file with the Board a statement setting forth: 1. The amount of stocks, notes, bonds or other evidences of indebtedness, issued under the order of approval; and 2. The extent to, and in detail, the manner in which the proceeds thereof have been disbursed."

The policy of the Board has been to encourage competitive bidding for the sale of a utility's securities unless it can be shown that through another method of sale, such as a negotiated public offering or private placement, there would be significant cost savings. These savings should be to the benefit of the ratepayers and the method of sale should be advantageous to the utility.

Based on its review of the proposed financing, the Board concludes that the proposed issuance of the Long-Term Debt under the terms of the financing plan set forth in the Petition will be in the best interest of Petitioner's customers. The proposed method of using either secured or unsecured bond issuances should provide maximum flexibility at the lowest cost, based upon the factors present at the time of the issuances.

The Board, after investigation into this matter, being satisfied with the action sought to be taken by Petitioner, **FINDS** that the proposed transactions are to be made in accordance with law, are in the public interest, and approving the purposes hereof, **HEREBY ORDERS** that Petitioner be, and is **HEREBY AUTHORIZED** to issue Long-Term Debt in a principal amount of up to \$10,000,000.

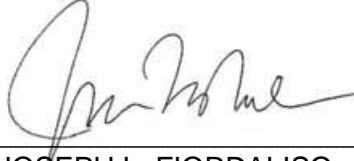
This Order is subject to the following provisions:

1. The Board's approval is expressly limited to the issuance of Long-Term Debt upon the following conditions:
  - a) Whether secured or unsecured, taxable or tax exempt, all bond issuances shall be by private placement and the Company shall solicit bids from a minimum of three (3) prospective purchasers for the purchase of the Long-Term Debt through a Request for Proposals ("RFP") process.
  - b) Prior to incurring indebtedness through the execution of one or more supplemental mortgage indentures, or other document for indebtedness, the Company shall solicit bids from a minimum of three (3) prospective purchasers for the purchase of the Long-Term Debt through a RFP process.
  - c) Upon selection of the successful bidder for the bond issuance, the execution of one or more supplemental mortgage indentures, or other document for indebtedness, the Company shall provide to the Board (i) a copy of the winning bid, (ii) the terms upon which the debt will be issued, and (iii) a summary of the terms of the other bids received.
2. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.
3. This Order shall not be construed as a certification that the securities offered for sale will be represented by tangible or intangible assets of commensurate value or investment cost.
4. This Order shall not affect or in any way limit the exercise of the authority of this Board, or of this State, in any future petition or in any proceedings with respect to rates, franchises, services, financing (including the method of sale of securities), accounting, capitalization, depreciation, or in any other matters affecting Petitioner.
5. The authority granted in this Order shall become null and void and of no effect with respect to any portion thereof which is not exercised by June 30, 2024.

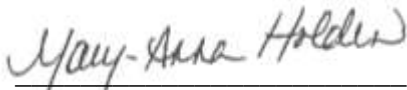
This Order shall become effective on November 7, 2020.

DATED: October 28, 2020

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

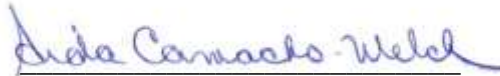


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

IN THE MATTER OF THE PETITION OF THE ATLANTIC CITY SEWERAGE COMPANY FOR  
APPROVAL OF A FINANCING PROGRAM INVOLVING THE ISSUANCE OF LONG-TERM  
DEBT THROUGH JUNE 30, 2024

DOCKET NO. WF20080534

SERVICE LIST

Wendy E. Stewart  
Treasurer and President-Elect  
Atlantic City Sewerage Company  
1200 Atlantic Avenue, suite 300  
Atlantic City, NJ 08404  
[WStewart@acsewera.com](mailto:WStewart@acsewera.com)

Thomas Kavanaugh, President  
Atlantic City Sewerage Company  
1200 Atlantic Avenue, suite 300  
Atlantic City, NJ 08401  
[TKavanaugh@acsewera.com](mailto:TKavanaugh@acsewera.com)

Courtney Schultz, Esq.  
Saul Ewing Arnstein and Lehr LLP  
Centre Square West  
1500 Market Street, 38<sup>th</sup> Floor  
Philadelphia, PA 19102  
[courtney.schultz@saull.com](mailto:courtney.schultz@saull.com)

Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, NJ 08625-0350

Aida Camacho-Welch, Secretary  
[board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

**Office of the Economist**

Dr. Benjamin Witherell  
Chief Economist  
[Benjamin.Witherell@bpu.nj.gov](mailto:Benjamin.Witherell@bpu.nj.gov)

Christine Lin  
[christine.Lin@bpu.nj.gov](mailto:christine.Lin@bpu.nj.gov)

Division of Rate Counsel  
Post Office Box 003  
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director  
[sbrand@rpa.nj.gov](mailto:sbrand@rpa.nj.gov)

Brian Lipman, Esq.  
[blipman@rpa.nj.gov](mailto:blipman@rpa.nj.gov)

Susan McClure, Esq.  
[smcclure@rpa.nj.gov](mailto:smcclure@rpa.nj.gov)

Christine Juarez, Esq.  
[cjuarez@rpa.nj.gov](mailto:cjuarez@rpa.nj.gov)

Marylin Silva, Legal Assistant  
[msilva@rpa.nj.gov](mailto:msilva@rpa.nj.gov)

Division of Law  
Hughes Justice Complex  
25 Market Street, Post Office Box 112  
Trenton, NJ 08625

Pamela Owen, DAG, Assistant Section Chief  
[Pamela.Owen@law.njoag.gov](mailto:Pamela.Owen@law.njoag.gov)

Alex Moreau, DAG  
[Alex.Moreau@law.njoag.gov](mailto:Alex.Moreau@law.njoag.gov)

Daren Eppley, DAG, Section Chief  
[Daren.Eppley@law.njoag.gov](mailto:Daren.Eppley@law.njoag.gov)

Meliha Arnautovic, DAG  
[Meliha.arnautovic@law.njoag.gov](mailto:Meliha.arnautovic@law.njoag.gov)

**Division of Water**

Michael Kammer, Director  
[mike.kammer@bpu.nj.gov](mailto:mike.kammer@bpu.nj.gov)

Megan Lupo, Bureau Chief  
[megan.lupo@bpu.nj.gov](mailto:megan.lupo@bpu.nj.gov)

Justin Cederberg  
[justin.cederberg@bpu.nj.gov](mailto:justin.cederberg@bpu.nj.gov)

**General Counsel's Office**

Suzanne Patnaude, Esq.  
[suzanne.patnaude@bpu.nj.gov](mailto:suzanne.patnaude@bpu.nj.gov)