



STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF SUEZ WATER)
NEW JERSEY, INC. FOR APPROVAL OF AN AFFILIATE) ORDER OF APPROVAL
CONTRACT TO PAINT THE HAMPTON STORAGE)
TANKS IN HAMPTON, NEW JERSEY) DOCKET NO. WO20090593

Bryant Gonzalez, Esq., Corporate Attorney Operations, SUEZ Water & Management Services, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On September 15, 2020, Suez Water New Jersey, Inc. ("SWNJ" or "Petitioner") filed a verified petition pursuant to N.J.S.A. 48:3-7.1 seeking approval from the New Jersey Board of Public Utilities ("BPU" or "Board") of an intercompany contract ("Affiliate Agreement") with its affiliate, Utility Service Company, Inc. ("USC") for the painting of two storage tanks in Hampton, New Jersey ("Hampton Tank Project").

The Petitioner is a public utility corporation of the State of New Jersey subject to the jurisdiction of the Board with its principal office location at 461 From Road, Suite 400, Paramus New Jersey 07652. SWNJ is engaged in the business of collecting, treating and distributing water for retail service and wastewater collection to approximately more than 256,000 customers located in portions of Bergen, Hudson, Hunterdon, Monmouth, Middlesex, Morris, Passaic, Ocean, Sussex, and Warren Counties in the State of New Jersey.

USC is an affiliate of SWNJ. The American parent company of both USC and SWNJ is SUEZ North America, Inc. ("SUEZ NA"). SUEZ NA is the direct parent of SUEZ Advanced Solutions, LLC which is the direct parent of USC. SUEZ NA is the ultimate parent company of SWNJ. USC and SWNJ do not share any corporate officers or directors.

According to the petition, USC is a corporation authorized to conduct business in the State of New Jersey and is the largest tank service firm in the United States. It maintains thousands of tanks under full service maintenance contracts coast to coast. USC's range of integrated water tank services includes professional maintenance solutions for existing tanks antenna site marketing and management communication site construction. Its clients include some of SWNJ's competitors that have utilities in other States. The Petitioner points out that the Board has in the

past approved petitions regarding affiliate agreements between SWNJ and USC for work on SWNJ's Carlstadt Elevated Tank in Carlstadt, New Jersey in 2018 and the Cottonwood Tank in Franklin Lakes, New Jersey in 2015.

The Hampton Tank Project consists of two tanks at the same location that will be painted consecutively. The ground storage tank is a 50,000-gallon tank and the pedestal tank is a 50,000-gallon tank. The bids were sent to four vendors, three of which replied. Originally, the bids were separate for each tank, however the Petitioner decided that it would be beneficial to paint the tanks consecutively in order to take advantage of savings by not have additional startup costs. As a result of combining the two tank bids, USC was the lowest bidder from the other two bidders.

Rate Counsel Comments¹

By letter dated December 4, 2020, the New Jersey Division of Rate Counsel ("Rate Counsel") filed comments in response to the petition, stating that it was opposed to the petition because SWNJ did not accept the lowest bid, on a separate basis, for each tank. Rate Counsel indicates that, although the Petitioner indicated that painting the tanks consecutively would avoid "additional start-up costs," those savings were not reflected in the bids received, and all anticipated startup costs associated with painting each tank are included in each vendor's bids. Rate Counsel argues that there does not appear to be any startup cost discounts factored into any of the cost estimates that assumed painting was to be done on a consecutive basis. Based on its review, Rate Counsel believes that SUEZ's procurement processes were fair and unbiased and that no preferential treatment in the procurement process was given to its affiliate, USC; however, the Petitioner did not provide a compelling reason for not accepting the lowest bid for painting each tank separately.

Absent compelling justification, Rate Counsel recommends the Board reject the affiliate contract proffered by SWNJ. Instead, Rate Counsel asserts that the Board should require that separate contracts be awarded based on the lowest bid for painting each tank, separately. To the extent that approval requires approval of an affiliate contract, Rate Counsel believes the requirements for approval have been met.

SWNJ Response

On December 11, 2020, the Petitioner filed its response to Rate Counsel's comments. The Petitioner responded that it needs to complete the painting of both tanks in the spring of 2021 before summer season when water usage generally increases, and awarding the Hampton Tank Project to a single contractor allows for an uninterrupted and quick transition from rehabilitation of one tank to the other without delay since that contractor will have all of the equipment and resources already deployed to the site. Awarding this work to two separate contractors will lengthen the time in between the completion of one tank and the start of the other tank. This time is estimated to be several weeks, and with this delay, if the second tank could not be completed before the summer season, this work would have to be postponed to the fall or later.

SWNJ also argues that the tanks are located immediately adjacent to each other on the same site, and the site is very small and would not allow two contractors with two sets of equipment working alongside each other to reduce the period of demobilization of one contractor and mobilization of the other contractor. The first contractor would have to completely vacate the site

¹ Redacted version.

before the other contractor could start. The water system relies on both tanks to be in service to maintain domestic water availability, fire flows and pressures. While the tanks are offline, SWNJ's replacement strategy implements temporary system improvements to be able to take the tanks offline for painting. During this period according to SWNJ, there will not be sufficient volume for fire flows, and therefore the Petitioner is coordinating with the local fire department to implement a "tanker task force" during this time for which the fire hydrants will not be available for use.

SWNJ further states that it is in the best interest of the public from a risk perspective to limit the length of time that the fire hydrants will not be available. Completing both tanks consecutively, without delay in between, will reduce this timeframe. SWNJ states that it needs both tanks to be online during the summer months in order to provide the needed fire flows to provide adequate water flow for public safety while also providing normal water service to customers during higher use summer months. Additionally, if the two tanks were not done consecutively, the "tanker task force" which also involves neighboring towns would need to be activated twice.

With the tanks offline and the temporary system in place, SWNJ represents that it will try to limit disruptions to water service; however, the risk of a disruption is higher than when the tanks are unavailable. Therefore, reducing the timeframe of the Hampton Tank Project would reduce the overall risk of disruption of water service to its customers, according to SWNJ. The Petitioner believes it is in its customers' best interest to reduce the disturbance to nearby residents from the noise associated with this work which can be quite significant at times. Any unnecessary time added in between the two tanks will only lengthen the overall schedule, and therefore the noise and disturbance to the customers six months later, which would not be desirable.

SWNJ concludes that the benefits to the public by awarding the Hampton Tank Project to a single contractor outweigh the relatively low cost differential, which will be more than mitigated by way of reduced risk of water disruptions, fire suppression availability, and disturbance to residents by completing both tanks by a single contractor as efficiently as possible. For these reasons, SWNJ requests that the Affiliate Agreement be approved by the Board.

DISCUSSION AND FINDINGS:

N.J.S.A. 48:3-7.1 provides in part as follows:

The board shall disapprove such contract if it determines that such contract violates the laws of this state or of the United States, or that the price or compensation thereby fixed exceeds the fair price or fair compensation for the property to be furnished or the work to be done or the services to be rendered thereunder or is contrary to the public interest: otherwise the board shall approve such contract.

The Board has carefully reviewed the record in this matter, including the petition and SWNJ's responses to discovery. Concerning the procurement process, the Petitioner's corporate parent, SUEZ NA, has a formal "Procurement Policy," which has been adopted by SWNJ. The Procurement Policy, among other things, specifies when competitive bids should be solicited (i.e., all purchases that are equal to or greater than \$25,000) and that when competitive bids are required, a minimum of two quotes or bids, but preferably three or more should be obtained. The record before the Board reflects that bids were solicited in an appropriate and fair manner, and Rate Counsel does not dispute the fairness of the Petitioner's procurement process. SWNJ solicited competitive bids from four known tank companies. In return, SWNJ received and

evaluated bids from three qualified firms, including a bid from its affiliate, USC. The same pre-bid information was available to all bidders. A review of the record also indicates that the Affiliate Agreement involves a fair price for the services to be rendered. Accordingly, based on its review, the Board **HEREBY FINDS** that the Petitioner's procurement process was fair, unbiased and that no preferential treatment was given to its affiliate, USC.

However, Rate Counsel argues that SWNJ neglected to obtain separate bids for the painting of each storage tank. Initially, SWNJ sought separate bids for painting each tank and bids were received from three vendors. Thereafter, SWNJ determined it would be beneficial to paint the tanks consecutively to avoid additional start-up costs. The Petitioner then evaluated each bid on both a separate and combined basis.

In addressing Rate Counsel's assertion that SWNJ failed to accept the lowest bids separately for the painting of the tanks, the Board notes that it generally defers to a utility in making its management decisions concerning the provision of safe, adequate and proper service and will not scrutinize its affiliate contracts. Nonetheless, SWNJ has provided compelling justifications for its decision to accept the bids on a combined basis, including fewer water and fire suppression service interruptions and less disturbance to local residents.

Moreover, if the Petitioner were to resolicit separate bids at this juncture, it would further delay the completion of the Hampton Tank Project, potentially leading to greater disruptions of service during the peak usage season in the summer months.

Therefore, in accordance with N.J.S.A. 48:3-7.1, the Board **HEREBY FINDS** that the Affiliate Agreement does not violate the laws of the State of New Jersey or of the United States, does not contain a price or compensation that exceeds the fair price or fair compensation for the work to be done or the services to be rendered, and is not contrary to the public interest. The Board **HEREBY FINDS** that the proposed Affiliate Agreement is in the public interest and will facilitate the Petitioner's ability to provide safe, adequate and proper utility service at just and reasonable rates.

The Board **HEREBY APPROVES** the Affiliate Agreement between SWNJ and USC and **HEREBY AUTHORIZES** USC to render services outlined in the Affiliate Agreement for the Hampton Tank Project.

The approval granted herein shall be subject to the following provisions:

1. This Order shall not affect or in any way limit the exercise of the authority of this Board in any future petition or in any proceeding with respect to rates, financing, accounting, capitalization, depreciation, or in any other matter affecting the Petitioner.
2. Approval of this petition does not constitute approval by the Board of any costs or expenses associated with this petition. In an appropriate subsequent proceeding, the Petitioner shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers.

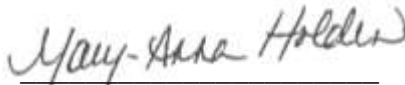
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of the tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
4. The Board reserves the right to conduct future reviews of the Affiliate Agreement to evaluate whether the Affiliate Agreement remains reasonable.
5. The Petitioner will notify the Board if the Affiliate Agreement is altered or terminated within 20 days of such action.
6. The Petitioner shall submit to the Board fully executed copies of the Affiliate Agreement within 20 days of Board approval.

DATED: February 17, 2021

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 SUEZ WATER NEW JERSEY INC. FOR APPROVAL
OF AN AFFILIATE CONTRACT TO PAINT THE HAMPTON STORAGE TANKS IN
HAMPTON, NEW JERSEY**

DOCKET NO. WO20090593

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