



Agenda Date: 12/15/2021  
Agenda Item: 5B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 1<sup>st</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 APPLICATION OF	)	ORDER APPROVING A RENEWAL
SUEZ WATER ENVIRONMENTAL SERVICES,	)	AGREEMENT BETWEEN THE TOWN
INC. FOR THE APPROVAL OF SERVICES	)	OF KEARNY AND SUEZ WATER
RENEWAL AGREEMENT FOR THE OPERATION	)	ENVIRONMENTAL SERVICES INC.
AND MANAGEMENT OF THE TOWN OF	)	
KEARNY’S WATER SYSTEM	)	
	)	DOCKET NO. WE21101185

**Parties of Record:**

**Brian Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Michelle F. Spencer, Esq.**, Castano Quigley, LLC, on behalf of the Town of Kearny  
**Jonathan M. Prince, Esq.**, SUEZ Environmental Services, Inc.

BY THE BOARD:

On October 14, 2021, pursuant to the New Jersey Water Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et seq. (“Water Act”), the Town of Kearny (“Petitioner,” Kearny,” or “Town”), by a verified application, requested approval of a services renewal contract (“Public-Private Contract”) with SUEZ Environmental Services Inc. (“Company” or “SUEZ”) for the operation and management of its water system.

The Petitioner makes this application in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25 to the New Jersey Board of Public Utilities (“Board”), the New Jersey Department of Community Affairs, Division of Local Government Services, Local Finance Board (“DCA”) and the New Jersey Department of Environmental Protection (“NJDEP”).

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services. Water supply services, as defined by the Water Act, means “the financing, designing, construction, improvement, operation, maintenance, administration, or any combination thereof, of a water supply facility which services are provided pursuant to [the Water Act].” N.J.S.A. 58:26-21. Public-private contracts for water supply services must be submitted to the Board for review and approval. However, N.J.S.A. 58:26-25 confines the scope of the Board’s review of such contracts to four specific areas. In its review of the contract, the Board shall apply the following criteria in determining whether to approve the contract:

1. The private firm entering into the contract has the financial capacity and technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.
2. The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private firm and all the benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate based rate of return methodology.
3. The franchise customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the Board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.
4. The contract contains the provisions required by paragraphs (1), (2) and (6) of subsection e. of section 5 of P.L. 1995, c. 101 (C. 58:26-23).

[N.J.S.A. 58:26-25(c)].

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)(4).

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 this legal mandate, the Board has limited the scope of its review to the four (4) criteria set forth above and, for reasons discussed below, concludes that the contract meets the applicable criteria. Because the Legislature has carefully circumscribed the Board's 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.

### **BACKGROUND/PROCEDURAL HISTORY**

Kearny is a municipal corporation within the County of Hudson. 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., Kearny provides services to its residents. Kearny has approximately 8,300 customer accounts including residential, commercial, and industrial.

Kearny has 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. Kearny determined to enter into a contract for services pursuant to the Water Act.

On January 1, 2021, Kearny issued a notice of its request for proposals ("RFP") of vendors interested in providing a service agreement for the operation and management of Kearny's water system in the Jersey Journal. SUEZ was the only entity that provided a bid.

On September 7, 2021, Kearny notified DCA, NJDEP, and the Board of its intent to enter into a renewal contract with a private firm for a service agreement for the operation and management of Kearny's water system pursuant to N.J.S.A. 58:26-23(a).

Kearny chose SUEZ because of its financial proposal, technical criteria, financial strength as well as its experience in operating 20 water and five (5) wastewater facilities throughout New Jersey, with 84 contracts nationwide as well as proven capability in operating water supply systems, including membrane filtration systems. SUEZ has also performed successfully in Kearny through a water services agreement, which will help to provide a seamless transition. Its familiarity with the system since running it on an emergency basis, and the fact that SUEZ was providing Kearny with water meter reading, billing, collections, and customer service since 2007 independently justified the award of the contract to SUEZ.

Provided with the above information, Kearny elected to renew its five (5) year contract with SUEZ for the operation and management for its water system.

A public hearing on the Public-Private Contract with SUEZ was noticed in the Star Ledger on August 27, 2021. This notice was published pursuant to N.J.S.A. 58:26-24(b).

A public hearing was conducted on September 7, 2021 as part of Kearny's governing body's regularly scheduled meeting. A verbatim record of the hearing was produced as required pursuant to N.J.S.A. 58:26-24(d). No members of the public requested to speak at the public hearing and Kearny received no public comments in writing.

A resolution was introduced on September 7, 2021 (Ordinance 2021-394) by the Town Council authorizing and directing the execution of the Public-Private Contract with SUEZ, to provide contractor operator services in connection with Kearny's water system in accordance with the Water Act.

**TERMS OF THE PUBLIC-PRIVATE CONTRACT**

Kearny renewed a previous contract with SUEZ to provide operation and management for its water system for a five (5) year period, in which the Town has the option to offer up two (2) five (5) year extensions at the Town's option.

In summary, SUEZ will provide Kearny with any and all services needed to operate the system as well as make capital improvements as requested by the Town, which includes the following:

- a) Basic operation and maintenance of bulk sale interconnections, maintaining compliance with the Bulk Sale Agreements.
- b) Annual flushing of distribution system (development of unidirectional flushing plan) and interconnections.
- c) Completion and filing of all NJDEP reports as required by licensed operators (i.e. distribution and other compliance reports).
- d) Compliance with all applicable NJDEP standards and requirements for operation of a Public Community Water Supply System including, but not limited to record keeping, sampling and testing, public notifications, maintenance and updating of the Operations and Maintenance Manual, Emergency Plan, Vulnerability Assessment, Best security practices, water conservation plan, Ops plan, testing of backflow devices/Cross connection program, upkeep of safety plans/procedures.
- e) Maintain and update water system mapping; provide fire hydrant status to the Police and Fire Departments.
- f) Repairs to water mains and installation of service connections as required.
- g) Data to be transferred in file format agreed upon.
- h) Kearny customers to have separate customer service access phone numbers, email addresses and the Company shall provide timely written response to all correspondence from regulatory agencies and customers.
- i) Company shall establish a written plan for complaint management and resolution.
- j) Copies of all reports, records, operation summaries, water quality data and reports, and all other records relating to this Operations Contract shall be maintaining at the existing Water Department offices at 237 Laurel Ave/570 Elm Street.
- k) Perform utility mark-outs as required.
- l) Perform fire hydrant maintenance, painting and exercising.
- m) Perform bulk meter testing/replacements and maintenance.
- n) Perform inspections of new and replacement water service connections.

- o) Develop and implement a valve exercising program to ensure proper operation and maintenance of all water system valves.
- p) Preparation and distribution of the annual consumer confidence report consistent with the format of previous Kearny Consumer Confidence Reports.

The base compensation in the first agreement year paid to SUEZ is \$2,629,000. The annual fee consists of a labor cost component, a non-labor cost component, and an energy/chemicals component. The annual fee for years two and beyond shall be increased through the application of a set of readily available and national cost indices, as follows:

- a) Labor Cost Component, representing 29.4% of the Base Fee shall be escalated each year based upon the "ECI Index" for price-level changes.
- b) Non-Labor Costs Component, representing 70.6% of the Base Fee shall be escalated each year based upon the "CPI Index" for price-level changes.
- c) Escalation for Growth of Services. Each year, the Total Annual Cost shall be increased based upon the percentage of new customers added to the system.

The Public-Private Contract further provides that the costs for non-routine services provided by SUEZ as described previously shall be paid by Kearny to SUEZ separately on a time and expense basis, including overtime. Materials and subcontractors will be invoiced to Kearny by SUEZ at cost, plus 10% on the actual cost of materials to reimburse SUEZ for administrative expenses. For labor not regularly assigned to the system, Kearny shall pay SUEZ actual wages plus benefits at 35% plus 20% for overhead and administration. There will be no additional charge for SUEZ labor regularly assigned to the system performing non-routine services during the course of their normal working shift; however, if such employee performs services on an overtime basis, Kearny shall pay SUEZ actual wages plus 50% for overtime plus 20% for overhead and administration.

On October 14, 2021, the Petitioner submitted a hearing report to the NJDEP, 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 60 days of its receipt thereof. To date, the Board has received no comments from the NJDEP and is unaware of any prevailing issues.

The DCA approved the renewal contract at its December 8, 2021 agenda meeting.

By letter dated December 2, 2021, the New Jersey Division of Rate Counsel filed comments and advised the Board that based on its review of the application and discovery responses provided by both Kearny and SUEZ, it has no objection to Board approval of the Public-Private Contract.

### **DISCUSSIONS AND FINDINGS**

After review of the record herein, the Board **FINDS** that the statutory criteria listed herein above have been met.

1. SUEZ Water Environmental Services Inc. (formerly named United Water Environmental Services Inc.) has the financial capacity, technical, and administrative experience to ensure continuity of service over the terms of the contract (N.J.S.A. 58:26-25(c)(1)). SUEZ Water Environmental Services, Inc. is a wholly owned subsidiary of SUEZ Water, Inc., ("Parent Company") which in turn owns SUEZ Water Resources, a Delaware

Corporation, of which certain of its subsidiaries are Board regulated entities. SUEZ Water, Inc. is a wholly owned subsidiary of SUEZ North America Inc., which is itself a wholly owned subsidiary of SUEZ Groupe SAS, a French corporation which is a wholly owned subsidiary of SUEZ SA, a French limited liability company. SUEZ Water Environmental Services, Inc. (and its predecessors) has demonstrated over the years that it has the financial capacity, technical, and administrative expertise to meet all the demands of the proposed contract.

2. The terms of the Public-Private Contract are not unreasonable given the services that are to be performed by SUEZ. N.J.S.A. 58:26-25(c)(2). The Board believes that under the circumstances of this matter and as set forth in the contract, a five (5) year renewal term is appropriate, which the Town has the ability to extend.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Kearny. Kearny does not have any customers outside the municipal boundaries, but it does supply bulk water to East Newark, a neighboring municipality. East Newark pays a bulk rate as per an agreement with Kearny.
4. The Public-Private Contract 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 current employees of the public entity whose positions of employment will be affected by the terms of the contract are addressed.

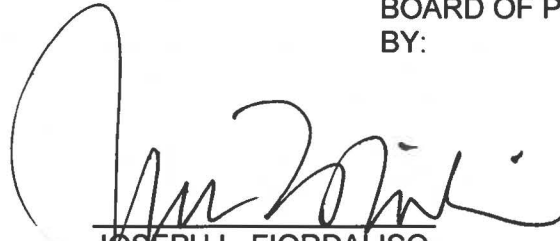
Therefore, based upon the above, the Board **HEREBY APPROVES** the Public-Private Contract between Kearny and SUEZ subject to the following provision:

Any extension of the Public-Private Contract beyond the renewal five (5) year term pursuant to N.J.S.A. 58:26-25(c)(4), and 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 December 22, 2021.

DATED: December 15, 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 APPLICATION OF SUEZ WATER ENVIRONMENTAL SERVICES,  
INC. FOR THE APPROVAL OF SERVICES RENEWAL AGREEMENT FOR THE OPERATION  
AND MANAGEMENT OF THE TOWN OF KEARNY'S WATER SYSTEM  
BPU DOCKET NO. WE21101185

SERVICE LIST

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