



Agenda Date: 4/21/17  
Agenda Item: 5A

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

WATER

CITY OF RAHWAY	)	ORDER APPROVING A PUBLIC-
DRAFT SERVICES AGREEMENT FOR THE	)	PRIVATE CONTRACT BETWEEN
OPERATION, MANAGEMENT, MAINTENANCE	)	THE CITY OF RAHWAY AND SUEZ
AND REPAIR OF THE CITY OF RAHWAY'S	)	WATER ENVIRONMENTAL
WATER SUPPLY SYSTEM APPLICATION FOR	)	SERVICES INC.
APPROVAL OF SERVICES AGREEMENT	)	
	)	DOCKET NO. WO17020135

**Parties of Record:**

**Ryan J. Scerbo, Esq.,** DeCotiis, FitzPatrick, Cole & Giblin, LLP, on behalf of the City of Rahway  
**Carla E. Hjelm, Esq.,** Corporate Counsel, SUEZ Water Environmental Services Inc.  
**Stefanie A. Brand, Esq.,** Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On July 19, 2016, pursuant to the New Jersey Water Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et seq. ("Water Act"), the City of Rahway ("Petitioner" or "Rahway") requested approval of an executory contract with SUEZ Water Environmental Services Inc. ("Company" or "SUEZ") for the operation, management, maintenance and repair of the Rahway water supply system, which was entitled "Services Agreement for the Operation, Management, Maintenance and Repair of the City of Rahway's Water Supply System By and Between City of Rahway and SUEZ Water Environmental Services Inc." ("Services Agreement"). The Petitioner requested approval from 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" or "DEP"), in accordance with N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25.

At its September 23, 2016 meeting, following discovery and the development of a record, the Board approved the contract ("Agreement"). Initially, the contract structure selected by Rahway included a concession fee. Subsequent to this approval, Rahway submitted an updated or revised contract package under a cover letter dated February 14, 2017, whereby Rahway advised the reviewing State agencies: "Representatives from the Office of the Attorney General assisting [DCA] . . . although not objecting to the concession fee itself, did question the process

the City intended to utilize to finance the concession fee. As a result, the City and SUEZ reevaluated the contract structure. Ultimately, the parties decided to move forward with a contract structure that does NOT include a concession fee. To be clear the only substantive change to the Agreement since the time of the City's initial application to the agencies is the removal of the concession fee component." (Letter at 2.)

## **BACKGROUND/PROCEDURAL HISTORY<sup>1</sup>**

Rahway is a municipal corporation within the County of Union. 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., Rahway provides services to its residents.<sup>2</sup>

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

Provided with the above information, Rahway agreed to enter into a 20-year contract with SUEZ for operation, management, maintenance and repair services for its water supply system.

A new public hearing on the proposed contract with SUEZ was noticed in the Star Ledger, a newspaper printed and circulated daily in the City of Rahway, on January 11, 2017. This notice was published pursuant to N.J.S.A. 58:26-24(b).

A public hearing was conducted on January 26, 2017 at 6:30 p.m. at the Rahway Public Library. A verbatim record of the hearing was produced as required pursuant to N.J.S.A. 58:26-24(d). A few members of the public requested to speak at the public hearing and a few comments were made concerning the time allotted for public comment concerning the revised Agreement. The individuals felt the seven days provided by Rahway for the public to provide written comments following the close of the public hearing was not sufficient. Also, it is noted that Rahway allowed the public to submit written comments for a period of two weeks following the date of the public hearing, and no written comments or statements were received.

## **TERMS OF THE PUBLIC-PRIVATE CONTRACT**

Due to the concession fee change, the Fixed Management Fee for the Contract Year beginning on the Commencement Date shall be \$3,517,017. The Fixed Management Fee shall be increased each Contract Year by the Index Factor. A portion of the Fixed Management Fee includes an Annual Maintenance Cap. For the avoidance of doubt, Rahway and SUEZ acknowledge that the Annual Maintenance Cap is not an additional amount, but is part of the

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<sup>1</sup> Because the concession fee is the only substantive change to the Services Agreement approved by the Board in its September 23, 2016 Order, the Board incorporates herein all relevant and applicable findings of facts and discussions from said Order.

<sup>2</sup> Rahway has 8,259 customers located within its boundaries. In addition, 79 customers are located outside of Rahway's boundaries. All of these customers will be affected by the draft Services Agreement and are billed individually at the same rates applied to customers located within Rahway's boundaries. The customers located outside of the boundaries of Rahway are located in the following communities: Avenel (22), Clark (5), Colonia (46), Linden (5), and Woodbridge (1).

Fixed Management Fee. As of the Commencement Date, the Annual Maintenance Cap is \$500,100. The Annual Maintenance Cap shall be increased each Contract Year by the Maintenance Index Factor.

Additionally, the Fixed Management Fee shall be increased each Contract Year, beginning January 1, 2018, to reflect any documented increases or decreases in electric rates for the prior contract year, with such change to be implemented on the first day of the contract year following such increase. For the avoidance of doubt, any increase in electric rates is a pass-through and not subject to escalation by the Maintenance Index Factor.

Rahway established a new one-time rate increase effective April 1, 2017, which is effectively a \$6 dollar per quarter increase to the typical residential user. Rahway retains responsibility for setting rates and charges. SUEZ agrees to implement revised rates and charges on a date specified by Rahway within 30 days after notification from Rahway; except for structural rate changes, which shall be implemented within 60 days after notification from Rahway.

Effective on the Commencement Date and as of each annual anniversary thereafter throughout the term of the Agreement, Rahway agrees, to the extent permitted by law, to increase its rates for the supply of water services to customers of the water supply system to at least the rates required to cover the Annual Service Fee to be paid to SUEZ for services provided. Nothing herein shall be construed to restrict Rahway from establishing rates for the supply of water service to the customers of the water supply system that are in excess of the rates required to cover the Annual Service Fee.

On January 26, 2017, 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 60 days of its receipt thereof. To date, the Board has received no comments from the DEP and is unaware of any prevailing issues.

By letter dated February 28, 2017, Petitioner consented to an extension for the Board to act on its application through May 1, 2017.

The revised contract was approved at the DCA's March 8, 2017 agenda meeting.

By letter dated March 30, 2017, the New Jersey Division of Rate Counsel filed comments and advised the Board that it did not object to the Public-Private contract and was not opposed to the Board's approval of the Petition.

### **DISCUSSIONS AND FINDINGS**

N.J.S.A. 58:26-25(c)(4) 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.

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., 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, and technical and administrative expertise to meet all the demands of the proposed contract.
2. The terms of the 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 20-year term is appropriate.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Rahway. Ninety-nine percent of Rahway's customers are located within Rahway's boundaries. Thus, there is no subsidization of customers outside the municipal boundaries.
4. The 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.

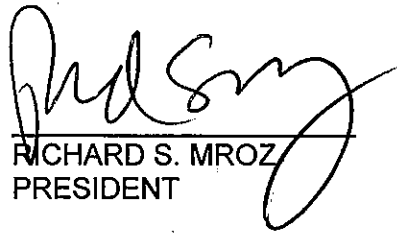
Therefore, based upon the above, the Board **HEREBY APPROVES** the amended Public-Private Contract between the City of Rahway and SUEZ Water Environmental Services Inc. subject to the following provision:

Any extension of the contract beyond the 20-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.

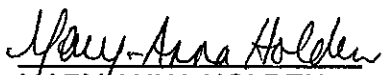
This Order shall be effective on May 1, 2017.


DATED: 4/21/17

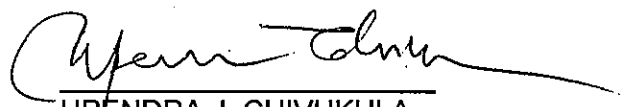
BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

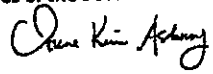
  
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UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:   
IRENE KIM ASBURY  
SECRETARY

I HEREBY CERTIFY that the within  
document is a true copy of the original  
in the files of the Board of Public Utilities  


CITY OF RAHWAY  
DRAFT SERVICES AGREEMENT FOR THE OPERATION, MANAGEMENT, MAINTENANCE  
AND REPAIR OF THE CITY OF RAHWAY'S WATER SUPPLY SYSTEM APPLICATION FOR  
APPROVAL OF SERVICES AGREEMENT  
BPU DOCKET NO. WO17020135

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