

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE PETITION OF SUEZ)
WATER NEW JERSEY INC. FOR THE APPROVAL)
OF MUNICIPAL CONSENT TO OWN AND OPERATE)
WATER SYSTEM IN THE BOROUGH OF)
ALLENDALE AND APPROVAL OF THE ISSUANCE)
OF REVISED TARIFF SHEETS SETTING FORTH)
SUEZ WATER NEW JERSEY INC.'S EXPANDED)
SERVICE AREA AND RATES RELATED TO THE)
TRANSFER OF WATER ASSETS FROM THE)
BOROUGH OF ALLENDALE TO SUEZ WATER NEW)
JERSEY INC.)

ORDER

DOCKET NO. WE22030200

Parties of Record:

Bryant Gonzalez, Esq., on behalf of SUEZ Water Management & Services, Inc.
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Ryan Cerbo, Esq., Borough of Allendale

BY THE BOARD:

In this matter, the New Jersey Board of Public Utilities ("Board") considers a petition filed by SUEZ Water New Jersey Inc. ("SWNJ", "Company", or "Petitioner") for approval of a municipal consent granted by Borough of Allendale ("Borough").¹

¹ By Order dated December 16, 2021, the Board approved the Joint Petition of Veolia Environment S.A., Veolia North America, Inc., Suez S.A., and Suez Water New Jersey Inc., for Approval of a Change of Control of Suez Water New Jersey, Inc., and Other Related Approvals; BPU Docket No. WM21060909 as modified by the Stipulation of Settlement. The Veolia Environment S.A. ("Veolia") and SUEZ S.A. ("SUEZ") merger closed on January 18, 2022. The Competition and Markets Authority ("CMA") provided antitrust clearance for the transaction in the United Kingdom on March 10, 2022 clearing the way for Veolia and SUEZ to commence the integration of the Veolia North America ("VNA") and SUEZ North American ("SNA") business, which include SUEZ Water New Jersey Inc.

BACKGROUND

Petitioner is a regulated public utility corporation engaged in the business of treating and distributing water for retail service and wastewater collection service to customers located in portions of Bergen, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Sussex and Warren Counties. SWNJ also supplies water service to municipalities including the Borough of Allendale, the Borough of Fairlawn, Township of Freehold, Gordon's Corner Water Company, the Borough of Mahwah, the Township of Manalapan, the Borough of Ramsey, the Village of Ridgewood, the Township of Saddle Brook, and the Borough of Saddle River.

On April 7, 2021 the Borough issued a Request for Proposal for the sale of the Borough's water utility assets. SWNJ responded on May 24, 2021 and offered to purchase Allendale's water system assets serving the customers of the Borough for \$18,000,000. The Borough determined SWNJ to be the prevailing bid. The sale was contingent upon approval of the voters which occurred on November 2, 2021 whereby the voters approved the referendum. The Borough approved the sale between the Borough and SWNJ for the Sale of the Borough's Water Supply Treatment and Distribution System in municipal consent Ordinance 21-10 dated July 22, 2021.

Ordinance 21-10 authorizes the sale of the system assets to the Company but it did not provide the grant of franchise or the municipal consent to access public streets and places for maintenance and operation of the system. On December 16, 2021, the Borough adopted Ordinance 21-12 granting the Borough's consent to both franchise and street access. While the Borough adopted this ordinance at a regular meeting of the governing body, the Ordinance was reissued as Ordinance 22-02 and adopted on May 12, 2022. This re-adoption was done to ensure that the public notice requirements of N.J.S.A. 48:3-13 and N.J.S.A. 48:3-14 were satisfied.

Ordinance 22-02 ("Municipal Consent") grants municipal consent to construct and maintain water facilities and provide water service as defined in N.J.S.A. 48:2-14, N.J.S.A. 48:3-11, N.J.S.A. 48:3-15, N.J.S.A. 48:19-17 and N.J.S.A. 48:19-20.

On March 30, 2022, SWNJ filed the instant petition with the Board pursuant to N.J.S.A. 48:2-14, N.J.A.C. 14:1-5.5, and N.J.A.C. 14:1-5.11, seeking approval of the following: (1) Asset Purchase Agreement and related Municipal Ordinances adopted by the Borough of Allendale to allow Petitioner to provide water service to the customers in the Borough ("Proposed Franchise Area"), authorizing the sale of the Borough's water system ("System"); and (2) the expansion of SWNJ's service territory to include customers in the Proposed Franchise Area.

On April 19, 2022, the Borough filed a motion to intervene. The Borough argued that it should be permitted to intervene as the subject of the petition directly impacts the Borough.

Pursuant to the petition, SWNJ is seeking Board approval of the Municipal Consent and does not seek the Board's determination on any ratemaking treatment for the acquired utility system.

THE PROPOSED FRANCHISE AREA EXPANSION

The Borough provides water service to 2,535 customers, of which 2,403 are residential and 132 are commercial through 1 treatment plant, 5 wells, 2 storage tanks, various mains and service lines and a Bulk Water Purchase Agreement with SWNJ.

Petitioner has obtained the Municipal Consent adopted by the Borough to construct, lay, maintain and operate the Systems through the Proposed Franchise Area and to provide water service within the Proposed Franchise Area.

The Municipal Consent grants the Company perpetual consent of the proposed franchise area to provide water service to all residents, business and government buildings within the Borough. SWNJ agreed to the Borough's franchise term and the use of surrounding streets pursuant to N.J.S.A. 48:3-11 and 48:3-15, which is limited by statute to 50 years.

In the event of an emergency, SWNJ would follow similar procedures and protocols of their existing operations. Emergencies would be addressed through the Company's customer call center.

IMPACT ON SUEZ WATER COMPANY INC.

The expansion of Petitioner's service territory will not impose any negative impacts on current SWNJ customers or SWNJ's ability to provide safe and adequate service. The franchise expansion and transfer will allow SWNJ, a company with extensive resources, to use its knowledge, expertise and access to capital to operate the System in a way that will ensure safe and dependable service to its customers and moderate future rate impacts.

IMPACT ON RATES

According to sale agreement between the Borough and Petitioner, the Petitioner shall maintain the Borough's current rate until the Petitioner's next rate case.

SPECIFIC BENEFITS TO CUSTOMERS OF THE WATER SYSTEM

The Petitioner stated that the approval of the Municipal Consent will promote the public interest and result in the following positive benefits:

1. SWNJ's size and scale enable the Company to address the water service needs of the Borough's customers well into the future.
2. The customers of the Borough will benefit from becoming a part of SWNJ, a substantially larger utility regulated by the Board. These customers will receive reasonable and prudent practices to ensure safe and reliable service.

MUNICIPAL CONSENT

Ordinance 22-02 provides the Petitioner with an exclusive and perpetual franchise to provide water service within the Borough, and the Municipal Consent of the Borough to permit said Company to extend water service and its related facilities to the Borough. With regard to the use of the streets, the Ordinance provides in part as follows:

That exclusive and perpetual consent and permission to furnish water conveyance to the Borough and all residents, businesses and government buildings therein is hereby given and granted to [SWNJ], its successors and assigns the maximum duration permitted by law, subject to the permission by the Board of Public Utilities of the State of New Jersey. That exclusive consent and permission is given to [SWNJ], its successors and assigns, under the provisions of N.J.S.A. 48:19-17 and

N.J.S.A. 48:19-20, as amended, without charge therefore, (except fees for road opening permits which shall be paid) as the same may be required in order to permit [SWNJ] to own and operate the System, add to, extend, replace, operate and maintain said System in the public property described herein in order to provide said wastewater conveyance service. This shall include permission to lay pipes beneath the public roads, streets, public property and public places.

According to the petition, SWNJ intends to operate the System pursuant to the existing municipal consent granted under the Ordinance. The Municipal Consent, adopted on May 12, 2022 by the Borough, allows the Petitioner to lay, maintain, and operate the necessary water treatment facilities, mains, pipes, and appurtenances throughout the Borough and to provide water service within the Borough.

On August 10, 2022 a duly noticed municipal consent hearing on the Company's petition was held via teleconference. David Schmitt, Esq., Legal Specialist, presided over the hearing at which representatives of the Company, the New Jersey Division of Rate Counsel ("Rate Counsel"), and Board Staff appeared.² No members of the public attended and no written comments from the public were submitted.

RATE COUNSEL COMMENTS

By letter dated August 19, 2022, Rate Counsel submitted its comments to the petition and stated that, subject to certain conditions, it is not opposed to the request for approval of the Municipal Consent. In sum, Rate Counsel recommended that the Board modify the term of the Municipal Consent to be limited to 50 years for the specific authorization to provide water service and to access public streets and places within the Borough. In addition, Rate Counsel also recommended that the Board condition its approval of the petition to specify that transaction costs cannot be recovered in rates; namely, that there be no authorization to include any specific assets or amounts in rate base, or authorization for any other ratemaking treatment.

DISCUSSION AND FINDINGS

The Board, having reviewed the petition and the entire record, **FINDS** that the Municipal Consent is necessary and proper for the public convenience and properly conserves the public interests.

N.J.S.A. 48:2-14 provides in part as follows:

No privilege or franchise granted after May first, one thousand nine hundred and eleven, to any public utility by a political subdivision of this state shall be valid until approved by the board. Such approval shall be given when, after hearing, the board determines that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests. In granting its approval the board may impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interests may reasonably require.

² No Parties objected at the hearing regarding the Borough's Motion to Intervene.

In the same vein, N.J.S.A. 48:13-11 states in part as follows:

Every sewerage company organized under the laws of this State may lay its pipes and conduits beneath such public roads, streets, avenues and alleys as it may deem necessary for its corporate purposes, upon complying with the terms and conditions upon which the consent of the corporate authorities to the organization of the company shall have been obtained, provided that the consent to the laying of such pipes shall be obtained of any municipality through which the same may be laid.

See also 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, Docket No. WE19010117, Order dated June 21, 2019; 2019 N.J. PUC LEXIS 148, *4 (N.J. P.U.C. June 21, 2019) (“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.”); In the Matter of the Petition of Suez Water New Jersey Inc. for the Approval of Municipal Consent to Own and Operate Water and Sewer Systems in the Township of West Milford and Approval of the Issuance of Revised Tariff Sheets Setting Forth Suez Water New Jersey Inc.’s Expanded Service Area Related to the Transfer of Water and Sewer Assets from the Township of West Milford to Suez Water New Jersey Inc., Docket No. Order dated October 29, 2018; 2018 N.J. PUC LEXIS 235, *12-13 (N.J. P.U.C. October 29, 2018) (“Although the Ordinance does not specify a period for the use of the streets, a municipality may consent to the use of its streets or surfaces, but only for a period not exceeding 50 years. N.J.S.A. 48:3-15. However, N.J.S.A. 48:2-14 sets no limit for the duration of the municipal consent or franchise for the provision of service.”).

Accordingly, the Board **HEREBY APPROVES** the Municipal Consent, Ordinance No. 22-02, adopted May 12, 2022, granted to SWNJ by the Borough, and the expansion of SWNJ’s service territory to include customers in the Proposed Franchise Area. The Board **HEREBY FINDS** that the Municipal Consent is necessary and proper for the public convenience and properly conserves the public interest, and that the Company has the ability to provide safe, adequate and proper service in the Borough. The approvals granted, hereinabove, shall be subject to the following provisions:

1. 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 matter affecting the Company.
2. 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 SWNJ.
3. The Petitioner shall not depreciate any portion of the water system expansion that is funded by Contributions in Aid of Construction.
4. This Order only applies to the approval of the Municipal Consent and shall not be construed as approving the sale of or any ratemaking issues associated with the sale of the Borough’s assets to SWNJ.

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.
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, SWNJ must comply with all applicable laws.
8. Within 30 days of the date of the closing of sale, 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 of sale, SWNJ 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 any applicable items above.

Additionally, after consideration of the Borough's Motion to Intervene, the Board **HEREBY GRANTS** the Motion to Intervene pursuant to N.J.A.C. 1:1-16.3(a) as the factors for intervention have been satisfied, and the Borough of Allendale is **HEREBY GRANTED** Intervenor Status in the matter.

The Order shall be effective on October 5, 2022.

DATED: September 28, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



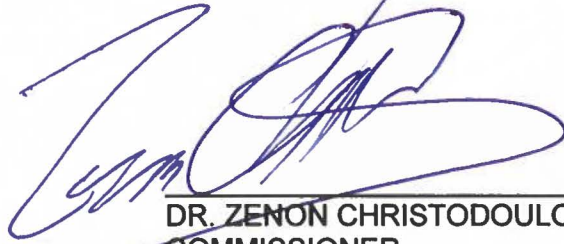
MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER

ATTEST: 

ROBERT M. GORDON
COMMISSIONER



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 SUEZ WATER NEW JERSEY INC. FOR THE APPROVAL OF MUNICIPAL CONSENT TO OWN AND OPERATE WATER SYSTEM IN THE BOROUGH OF ALLENDALE AND APPROVAL OF THE ISSUANCE OF REVISED TARIFF SHEETS SETTING FORTH SUEZ WATER NEW JERSEY INC.'S EXPANDED SERVICE AREA AND RATES RELATED TO THE TRANSFER OF WATER ASSETS FROM THE BOROUGH OF ALLENDALE TO SUEZ WATER NEW JERSEY INC.

DOCKET NO. WE22030200

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