



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 TOWNSHIP OF)
ROCKAWAY'S ASSET MANAGEMENT) ORDER APPROVING A PUBLIC-
PROGRAM WITH UTILITY SERVICE CO., INC.) PRIVATE CONTRACT
)
)
) DOCKET NO. WO23050294

Parties of Record:

John M. Iacofano, Esq., Iacofano and Perrone, on behalf of the Petitioner
Diana Riner, Esq., for Utility Service Company, Inc.
Brian Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

On May 16, 2023, pursuant to the New Jersey Water Supply Public-Private Contracting Act ("Water Act"), N.J.S.A. 58:26-19 *et seq.*, the Township of Rockaway ("Petitioner," "Owner," or "Rockaway"), filed a verified petition ("Petition") in accordance with the requirements of N.J.S.A. 58:26-24(f) and N.J.S.A. 58:26-25, with 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 ("DEP") for approval of a contract with Utility Service Co., Inc. ("Utility Service," or "Company") for tank maintenance services ("Contract").²

BACKGROUND

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services following Board review and approval. The Water Act confines Board review of such contracts to certain criteria including the financial and technical capacity of the private firm, the reasonableness of the contract terms, the degree to which franchise customers are protected from the contract's risks, and whether the contract contains the provisions required by N.J.S.A. 58:26-23(e)(1), (2), and (6).³

¹ Commissioner Marian Abdou did not participate.

² Utility Service Co., Inc. submitted its bid through Veolia Water New Jersey, Inc.

³ N.J.S.A. 58:26-25(c).

The Petitioner is a municipal corporation located in Morris County, New Jersey and the owner and operator of a water supply, transmission, and distribution system that provides services to citizens of Rockaway pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 *et seq.* Rockaway has absolute jurisdiction, pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 *et seq.*, to set the terms and conditions under which it supplies water to customers within its municipal limits.

On July 31, 2022, Rockaway published Notice of its Request for Proposals (“RFP”) from vendors interested in providing tank maintenance services in The Daily Record, a newspaper of general circulation in Rockaway’s service territory.

Per the RFP, bidders submitted bids in August 2022, which were subsequently reviewed by three (3) independent evaluators. Rockaway received proposals from two bidders: Alpine and Utility Service. The Township performed a summary evaluation and the evaluators submitted a written recommendation to award the contract to Utility Service based on its higher technical and management score compared to Alpine.

Following publication of notice in the Star Ledger on November 29, 2022 pursuant to N.J.S.A. 58:26-24(b), the Petitioner held a public hearing on the Petition on December 13, 2022. No comments were submitted.

On January 3, 2023, Rockaway notified DCA, DEP and the Board of its intent to enter into a contract with a private firm for the provision of tank maintenance services pursuant to N.J.S.A. 58:26-23(a).

On January 17, 2023, the Township Council of the Township of Rockaway adopted Resolution No. 23-40 approving the Contract.

By the Petition, Rockaway identified that it chose Utility Service because they were deemed to have the necessary qualifications and expertise for the performance of the services. Rockaway and Utility Service subsequently entered into the Contract for management and full-service tank maintenance services with respect to the following seven (7) tanks:

- Low Erie Old Tank – 1,000,000 Gallon Ground Storage Tank
- Green Pond Tank – 500,000 Gallon Ground Storage Tank
- Cayuga Tank - 2,000,000 Gallon Ground Storage Tank
- Sanders Tank - 100,000 Gallon Standpipe Storage Tank
- Fleetwood Tank – 750,000 Gallon Standpipe Tank
- High Erie Tank – 320,000 Gallon Standpipe Tank
- Low Erie New Tank – 320,000 Gallon Ground Storage Tank

CONTRACT TERMS

The terms of the Contract are as follows:⁴

Scope of Work No. 1A - 2,000,000 GALLON GROUND – CAYUGA TANK

- The Owner agrees to engage the Company to provide the professional service needed to install and maintain a PAX mixing system in its 2,000,000-gallon water storage tank located at 47 Cayuga Avenue, Rockaway, New Jersey 07866.
 - a. The tank shall receive a PAX PWM 400/405 mixing system installation prior to the end of Contract Year 1.
 - b. The Company will inspect and service the active mixing system each year. The active mixing system will be thoroughly inspected to ensure that the active mixing system is in good working condition. The Company shall furnish engineering and inspection services needed to maintain and repair the active mixing system during the term of this Contract.
- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one year.⁵ This scope of work will automatically renew for 19 successive one-year terms unless terminated.

Scope of Work No. 1B - 2,000,000 GALLON GROUND – CAYUGA TANK

- The Owner agrees to engage the Company to provide the professional services needed to service and inspect its 2,000,000-gallon water storage tank located at 47 Cayuga Avenue, Rockaway, New Jersey 07866. The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include tank repairs and a washout inspection prior to the end of Contract Year 1.
 - b. The Company will annually inspect the tank. The tank shall receive a Remotely Operated Vehicle (“ROV”) inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
 - c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter “Washout Inspection”). During each Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.

⁴ Although summarized in this Order, the detailed terms of the Contract are controlling, subject to the findings and conclusions in this Order. Subsections are numbered and titled to coincide with the Contract.

⁵ The “Effective Date” is defined separately for each scope of work and has not been established pending Board approval of the Contract.

- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for nine (9) successive one-year terms unless terminated.

Scope of Work No. 2A - 100,000 GALLON STANDPIPE – SANDERS TANK

- The Owner agrees to engage the Company to provide the professional services needed to install and maintain a PAX mixing system in its 100,000-gallon water storage tank located at 44 Sanders Road, Rockaway, New Jersey. The services that the Company will provide include the following:
 - a. The tank shall receive a PAX PWM 150/155 mixing system installation prior to the end of Contract Year 1.
 - b. The Company will inspect and service the active mixing system each year. The active mixing system will be thoroughly inspected to ensure that the active mixing system is good working condition. The Company shall furnish engineering and inspection services needed to maintain and repair the active mixing system during the term of this Contract.
- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This scope of work will automatically renew for 19 successive one-year terms unless terminated.

Scope of Work No. 2B - 100,000 GALLON STANDPIPE – SANDERS TANK

- The Owner agrees to engage the Company to provide the professional services needed to service and inspect its 100,000-gallon water storage tank located at 44 Sanders Road, Rockaway, New Jersey 07866 The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include tank repairs and a chemical washout inspection prior to the end of Contract Year 1.
 - b. The Company will annually inspect the tank. The tank shall receive an ROV inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
 - c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter "Washout Inspection"). During each Chemical Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.

- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for nine (9) successive one-year terms unless terminated.

Scope of Work No. 3 - 750,000 GALLON STANDPIPE – FLEETWOOD TANK

- The Owner agrees to engage the Company to provide the professional services needed to service and inspect its 750,000-gallon water storage tank located at 48 Robin Street, Rockaway, New Jersey 07866. The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include tank repairs and a chemical washout inspection prior to the end of Contract Year 1.
 - b. The Company will annually inspect the tank. The tank shall receive an ROV inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
 - c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter “Washout Inspection”). During each Chemical Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.
- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for nine (9) successive one-year terms unless terminated.

Scope of Work No. 4 - 320,000 GALLON STANDPIPE – HIGH ERIE TANK

- The Owner agrees to engage the Company to provide the professional services needed to service and inspect its 320,000-gallon water storage tank located at 37 Erie Avenue, Rockaway, New Jersey 07866. The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include tank repairs and a chemical washout inspection prior to the end of Contract Year 1.
 - b. The Company will annually inspect the tank. The tank shall receive an ROV inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the

Owner following each inspection.

- c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter "Washout Inspection"). During each Chemical Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.
- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for nine (9) successive one-year terms unless terminated.

Scope of Work No. 5 - 320,000 GALLON STANDPIPE – LOW ERIE TANK

- The Owner agrees to engage the Company to provide the professional services needed to service and inspect its 320,000-gallon water storage tank located at 37 Erie Avenue, Rockaway, New Jersey 07866. The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include tank repairs and a chemical washout inspection prior to the end of Contract Year 1.
 - b. The Company will annually inspect the tank. The tank shall receive an ROV inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
 - c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter "Washout Inspection"). During each Chemical Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.
- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for nine (9) successive one-year terms unless terminated.

Scope of Work No. 6 - 1,000,000 GALLON GROUND – LOW ERIE OLD TANK

- The Owner agrees to engage the Company to provide the professional services needed to maintain its 1,000,000-gallon water storage tank located at 37 Erie Avenue, Rockaway, New Jersey 07866. The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include exterior renovation, interior renovation, repairs and mixing system installation prior to the end of Contract Year 1.
 - b. The Company will annually inspect the tank. The tank shall receive an ROV inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
 - c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter “Washout Inspection”). During each Chemical Clean Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.
 - d. The Company shall provide the engineering and inspection services needed to maintain and repair the tank during the term of this scope of work. The repairs include: the tank’s expansion joints, water level indicators, sway rod adjustments, vent screens, manhole covers/gaskets, and the tank’s other steel parts not otherwise excluded hereinafter.
 - e. The Company will clean and repaint the interior and/or exterior of the tank at such time as complete repainting is needed. The need for interior painting of the tank is to be determined by the thickness of the existing liner and its protective condition. Only materials approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting of the tank is to be determined by the appearance and protective condition of the existing paint. At the time that the exterior requires repainting, the Company agrees to paint the tank with a coating that is the same color as the existing coating and to select a coating system which best suits the site conditions, environment, and general location of the tank. When interior or exterior painting of the tank is needed, all products and procedures as to coating systems will be equal to or exceed the requirements of the State of New Jersey and the American Water Works Association’s D102 standard in effect.
- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for 19 successive one-year terms unless terminated.

Scope of Work No. 7 - 500,000 Gallon Ground Storage Tank – Green Pond Tank

- The Owner agrees to engage the Company to provide the professional services needed to maintain its 500,000-gallon water storage tank located at Commons Way, Rockaway, New Jersey 07866. The services that the Company will provide include the following:
 - a. The tank shall receive an Upfront Renovation, which will include exterior renovation, interior renovation, repairs and mixing system installation prior to the end of Contract Year 2.
 - b. The Company will annually inspect the tank. The tank shall receive an ROV inspection every two (2) years. The tank shall receive a Chemical Clean Washout inspection every four (4) years. The tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
 - c. Every four (4) years, after the tank is drained by the Owner, the Company will clean the interior of the tank and perform a condition assessment on the tank (hereinafter “Washout Inspection”). During each Chemical Clean Washout Inspection, the tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the tank. After a Washout Inspection is completed, the interior of the tank will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water before returning the tank to service.
 - d. The Company shall provide the engineering and inspection services needed to maintain and repair the tank during the term of this scope of work. The repairs include: the tank’s expansion joints, water level indicators, sway rod adjustments, vent screens, manhole covers/gaskets, and the tank’s other steel parts not otherwise excluded hereinafter.
 - e. The Company will clean and repaint the interior and/or exterior of the tank at such time as complete repainting is needed. The need for interior painting of the tank is to be determined by the thickness of the existing liner and its protective condition. Only materials approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting of the tank is to be determined by the appearance and protective condition of the existing paint. At the time that the exterior requires repainting, the Company agrees to paint the tank with a coating that is the same color as the existing coating and to select a coating system which best suits the site conditions, environment, and general location of the tank. When interior or exterior painting of the tank is needed, all products and procedures as to coating systems will be equal to or exceed the requirements of the State of New Jersey and the American Water Works Association’s D102 standard in effect.

- This scope of work shall commence on the Effective Date and shall continue in full force and effect for one (1) year. This will automatically renew for 19 successive one-year terms unless terminated.

Through its responses to discovery, Rockaway noted that municipal employees will not be affected by this full-service tank maintenance services contract.

On May 16, 2023, the Petitioner submitted a hearing report to the DEP. Pursuant to N.J.S.A. 58:26-25(a), the DEP must complete its review and submit its comments to the Board and DCA within 60 days of its receipt thereof. The Board received no comments from the DEP.

The DCA approved the Contract at its June 12, 2023 agenda meeting.

By letter dated June 23, 2023, the New Jersey Division of Rate Counsel advised that it has no objection to the Board with respect to the approval of the Contract.

DISCUSSION AND FINDINGS

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services ("Public-Private Contracts"). N.J.S.A. 58:26-2. Such Public-Private Contracts may include services related to financing, designing, construction, improvement, operation, maintenance, administration or any combination thereof, of a water supply facility (i.e., water system). See N.J.S.A. 58:26-3. 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 expertise to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning 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 benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate base/rate of return methodology.
3. The franchised 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 paragraph (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. Id.

Courts have held that the Legislature has not conferred any jurisdiction on the Board to regulate water utilities operated by municipalities, as distinct from those privately owned, except in certain circumstances where such municipalities undertake to service residents in other municipalities. See Petition of South Lakewood Water Co., 61 N.J. 230 (1972). Pursuant to N.J.S.A. 40A:31-23(d)(1), the Board does not have regulatory oversight with respect to the setting of rates if the municipality services 1,000 customers or less outside its jurisdictional boundaries. In addition, it has been held that the sovereign powers of a municipality should not be subordinated to Board jurisdiction “by inference” or that Board jurisdiction should be “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] 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].

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 our 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.

Following review of the record, the Board **HEREBY FINDS** that the statutory requirements listed above have been met. Specifically, the Board **FURTHER FINDS** as follows:

1. Utility Service has the financial capacity, and technical and administrative experience, to ensure continuity of service over the term of the Contract pursuant to N.J.S.A. 58:26-25(c)(1). Utility Service provides a suite of additional global solutions, technologies, information systems, and approaches to real-life challenges facing United States water and wastewater utilities.
2. The terms of the Contract are reasonable given the services to be performed by Utility Service pursuant to N.J.S.A. 58:26-25(c)(2). Given the circumstances of this matter, the terms set forth in the Contract for each tank are appropriate.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Rockaway. In this instance, all of Rockaway’s customers are located within Rockaway’s boundaries

and, therefore, this portion of the statute is not applicable. 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 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(e)(2): The allocation of risk of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated; and

N.J.S.A. 58:26-23(e)(6): Current employees of the public entity whose positions of employment will be affected by the terms of the Contract are adequately addressed.

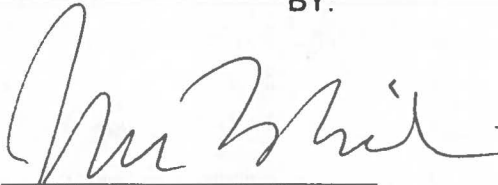
Therefore, based upon the above, the Board **HEREBY APPROVES** the Contract, subject to the following :

Any extension of the Contract beyond the scope of work for each tank or, pursuant to N.J.S.A. 58:26-25(c)(4), 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.

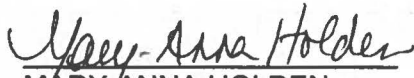
This Order shall be effective on July 14, 2023.

DATED: July 12, 2023

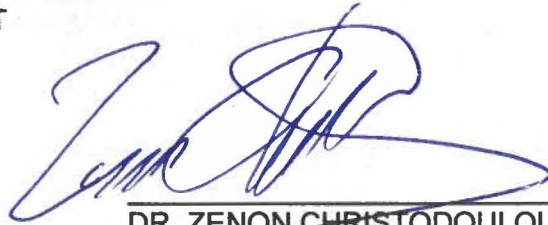
BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



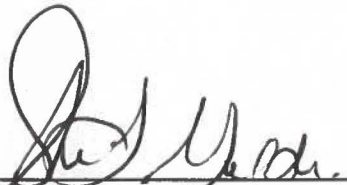
MARY-ANNA HOLDEN
COMMISSIONER



DR. ZENON CHRISTODOULOU
COMMISSIONER



CHRISTINE GUHL-SADOVY
COMMISSIONER



ATTEST:

SHERRIL L. GOLDEN
SECRETARY

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 TOWNSHIP OF ROCKAWAY'S ASSET MANAGEMENT PROGRAM WITH
UTILITY SERVICE CO., INC.

BPU DOCKET NO. WO23050294

SERVICE LIST

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