



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE APPLICATION OF)	ORDER APPROVING AN
THE BOROUGH OF ALLENDALE REQUESTING)	AGREEMENT TO ESTABLISH A
APPROVAL OF AN AGREEMENT BETWEEN)	PUBLIC-PRIVATE CONTRACT
ALLENDALE AND UNITED WATER)	BETWEEN THE BOROUGH OF
OPERATIONS, INC. IN CONNECTION WITH)	ALLENDALE AND UNITED WATER
THE OPERATION AND MAINTENANCE)	OPERATIONS, INC.
INCLUDING BILLING AND COLLECTIONS OF)	
THE BOROUGH'S WATER FACILITY)	
PURSUANT TO THE PROVISIONS OF THE)	
NEW JERSEY WATER SUPPLY PUBLIC-)	
PRIVATE CONTRACTING ACT <u>N.J.S.A. 58:26-19</u>)	
<u>ET SEQ.</u>)	DOCKET NO. WO13040341

Parties of Record:

David B. Bole, Esq. Winne, Dooley & Bole, P.C., on behalf of the Borough of Allendale
Kelly Ruggiero Esq., on behalf of United Water Operations, Inc.

BY THE BOARD:

On April 22, 2013, pursuant to the New Jersey Water Supply Public-Private Contracting Act (the "Water Act") N.J.S.A. 58:26-19 et. seq., the Borough of Allendale (the "Petitioner" or the "Borough"), submitted an application (the "Petition") for approval of a proposed agreement (the "Agreement") for water facility contract operation, maintenance, billing and collections with United Water Operations, Inc. ("United Water").

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 ("DEP") (collectively, the "Agencies").¹

¹ Pursuant to N.J.A.C. 14:1-5.2(a) (2), the Borough of Allendale filed a separate application with the Local Finance Board of the DCA.

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, mean the financing, designing, construction, improvement, operation, maintenance, administration or any combination thereof, of a water supply facility (i.e., water system). 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).

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.

The 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 "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 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 Borough to its residents for services.

BACKGROUND/PROCEDURAL HISTORY

The Petitioner is located in Bergen County. It operates under the Borough form of Government consisting of a Mayor and six council members who are elected at large. The Borough encompasses 2.8 square miles and consists of 25.93 miles of municipal roads and 8.22 miles of county roads. It has approximately 2,107 homes and a population 6,700 persons.

The Petitioner's water system consists of a total of five water supply wells ranging in capacity from 100-250 GPM and according to the Petition; they are receiving and treating water from three of them. Supply from the wells is limited in accordance with the requirements of the DEP Water Allocation Permit No. 5092. Water from well numbers 2, 4 and 15 are treated at the New Street treatment plant for the removal of VOC's and treated water is pumped to the Borough water distribution system. The Borough may add 1-3 wells during the term of the proposed contract.

The Petitioner's water system is also supplied bulk water from an interconnection with United Water New Jersey at Boroline Road. From the United Water New Jersey interconnection, water flows through a 16-inch diameter transmission main to the Fairhaven complex, where it is repumped to the Borough distribution system. The Petitioner maintains a bulk sale purchase agreement with United Water New Jersey which provides for a minimum daily purchase of 300,000 gallons and a maximum purchase of 1,250,000 gallons per day. Operations of the system are based upon maximizing the use of the Borough's well supplies, while maintaining the minimum daily purchase of water from United Water New Jersey as required by the bulk sale purchase agreement.

The water system includes two water storage tanks. The Fairhaven tank is located at the Fairhaven complex and is a 1.0 MG ground level storage tank. It provides storage for water supplied by United Water New Jersey and serves as a suction storage for the Fairhaven booster pump station. The Petitioner's system also includes a 400,000 gallon elevated storage tank located adjacent to Biscayne Drive in Ramsey, an adjacent municipality. This tank provides distribution, equalization and fire storage for the system.

The Petitioner issued a public notice of intent to contract for a water supply service contract for the complete operation and maintenance of its water supply, wells, water storage tanks, booster pumping station, water treatment plant and water distribution systems as well as customer

service, metering, billing and collections. The Request For Proposals ("RFP") was published pursuant to N.J.S.A. 58:26-19 et seq., on August 30, 2012, in the Star-Ledger as well as The Record. Prior to receipt of bids, a Pre-Bid conference was held with six potential bidders. Subsequently, written questions were received from potential bidders and formal responses were sent to each interested party. Prospective bidders inspected and toured Allendale's water facilities. When the bids were finally received, three companies (United Water, Ridgewood Water, and Newark Watershed Conservation & Development Corporation) responded with formal bids.

The United Water bid of \$590,000 compares favorably to Allendale's current water operating budget which is \$783,000. At present levels, the United Water bid provides a savings of approximately \$193,000 annually and \$965,000 over the five (5) year term of the proposed contract. The RFP provided that the Borough would select the lower bidder and proceed to finalize terms and conditions of the Contract. United Water was selected primarily because its bid was significantly lower than the other two bidders.

In addition to being the lowest bidder, there were other factors that entered into the decision of selecting United Water such as an assessment of work through key performance indicators which reflect operational performance of Allendale's facility against target standards, the ability to provide daily and weekly operational reports, routine maintenance utilizing a computerized management system, an enhanced emergency preparedness plan, a master control plan utilizing computerized data management tracking to insure water quality, providing engineering specialists to assess and make recommendations regarding our system, providing engineering and operations support for capital improvements planning, the ability to be on-call and have repair crews problem-solve immediately, and an enhanced customer service experience.

The Borough specifically excluded capital infrastructure expenditures from this contract. Allendale will continue to own the infrastructure and wants to insure that it would be maintained to its specifications. The Borough plans to expend the same amount of funds for capital improvements as today. Additionally, the Borough will have the added benefit of not having to spend capital dollars on vehicles and equipment. United Water will be providing its own vehicles and equipment. As a consequence, the entire budget can be spent on water system infrastructure.

Terms of the Public-Private Contract

United Water will undertake a contract for water facility operation, maintenance, billing and collections of the Allendale System for a five year period. The Borough and United Water may enter into additional five year extensions of the proposed Agreement on mutually acceptable terms and conditions.

The charges, rates and fees to be used to determine charges, rates and fees to be charged by the public entity for water supply services are set forth in the Water Rate Ordinances adopted by the Borough and amended from time to time to reflect any adjustments in water rates that may be required. The current water rates are attached to the addendum to the proposed Agreement and incorporated herein.

The Borough finances and performs capital improvements on an "as needed basis". The Borough may borrow funds through a bond ordinance. The procedure will be no different from what has occurred historically.

There is a provision in the proposed agreement (Section III-Responsibilities) whereby United Water provides a minimum notification of six months for minor capital improvements and 12 months for major capital improvements in order to provide the Borough with adequate time for planning and execution of required capital improvements. If the Borough does not approve the capital improvements recommended by United Water, the Borough must indemnify and hold United Water harmless from any damages or enforcement actions and also to reimburse United Water for additional costs incurred to operate or maintain the system resulting from the Borough's rejection of United Water's recommended capital improvements.

The Borough is generally responsible for payment of all permit fees, police protection for services as required, maintenance of its facilities (i.e., snowplowing and landscaping), facilities insurance, capital improvements to the system, maintenance of all existing easements, licenses and warranties. The Borough is also responsible for the costs of upgrading the existing SCADA system, any sales and use tax assessed and payment of Public Community Safe Water Tax.

United Water is generally responsible for facility performance compliance, complete operation and administration of the water system as detailed in scope of services. United Water is responsible for any and all income taxes associated from performance of services under the Agreement. United Water is further responsible for customer service, meter reading, billing and collections including delinquencies, final reads and closings.

There is a mutual indemnification for breach of any representations, warranties or covenants under the Agreement. The Borough indemnifies United Water for any storage or hazardous or toxic substances found or identified at any site. Neither party is liable for special, punitive, consequential, indirect or incidental damages to the other.

The Water Superintendent of the Borough has been offered a position with United Water which he has agreed to accept. The two remaining employees of the Borough's Water Department will become employed with the Borough's Department of Public Works ("DPW"). One of the employees has been with the Borough for 25 years and holds water licenses. These two employees will be full time and will replace two existing retirements in the DPW so there will be no increase in the DPW's budget nor any loss of jobs.

The base compensation in the first Agreement year is \$590,000. The annual fee consists of a labor cost component and a non-labor cost component. The annual fee for years two and beyond is adjusted through the application of a set of readily available national cost indices and the application of a growth formula based upon the new consumers added to the system. The adjustment mechanisms included a weighted average of the following two US Department of Labor, Bureau of Labor Statistics Indices: Employee Cost Index ("ECI") and Consumer Price Index ("CPI"). The weights used in the adjustment formula are 60% ECI and 40% CPI, respectively in any year during which the customer base increases by 5% or more, the total annual cost shall be increased based upon the actual percentage of new customers added to the system.

By letter dated June 25, 2013, the Division of Rate Counsel 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

After review of the record herein, the Board **FINDS** that the statute-imposed criteria listed, hereinabove, has been met.

1. United Water Operations, Inc. has the financial capacity, technical and administrative experience to ensure continuity of service over the term of the contract [(N.J.S.A. 58:26-25 (c) (1)]. The Borough of Allendale entered into the Agreement with United Water Operations, Inc., which will rely on the management and expertise of United Water Operations Contract, Inc. The main office for United Water Operations Contract is 200 Old Hook Road, Harrington Park, NJ, 07640. United Water Operations is an entity within the United Water group's organizational structure that holds contracts for similar non-regulated projects such as Jersey City, Hoboken, and Rahway. United Water Operations Contract, Inc. 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. United Water, Inc. is the parent company of United Water Operations Contract, Inc., as well as certain regulated entities, including United Water New Jersey. United Water, Inc. is a wholly owned subsidiary of Suez Environmental North America, Inc., which is itself a wholly owned subsidiary of Suez Environmental SA, a French societe` anonyme. Suez Environmental is controlled by GDF Suez SA, also a French societe` anonyme. United 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 United Water Operations, Inc. (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 year term is appropriate.
3. N.J.S.A. 58:26-25(c) (3) is intended to protect franchise customers outside the Borough of Allendale. All of Allendale's customers are located within Allendale's 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 utility for the water supply services to be provided are incorporated. Allendale fixes the rates for the water service pursuant to N.J.S.A. 40:14B-21. There is no subsidization of customers outside the municipal boundaries.
 - N.J.S.A. 58:26 (e)(2): The allocation of the risks 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): The employment of current employees of the public entity whose positions of employment will be affected by the terms of the contract are addressed.

On April 22, 2013, 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 the New Jersey Division of Local Government Services within 60 days of its receipt thereof.

On June 20, 2013, the Department of Environmental Protection completed its review of the Borough of Allendale Public Hearing Report and provided comments on this matter in accordance with N.J.S.A. 58:26-25(a).

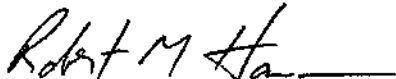
Therefore, based upon the above, the Board **HEREBY APPROVES** the Public-Private Contract between the Borough of Allendale and United Water Operations, Inc. subject to the following provisions:


1. The Borough of Allendale, within ten (10) days of receipt of this Order, shall submit the approval of the Local Finance Board within the Division of Local Government Services in the Department of Community Affairs, as required by N.J.S.A. 58:26-25 (a).
2. The Borough of Allendale shall obtain the final opinion of Bond Counsel, pursuant to N.J.S.A. 58:26-23(g) and submit the same to the Board within thirty (30) days of closing on the proposed Public-Private Contract.
3. The Borough of Allendale shall notify the Board if the proposed Public-Private Contract is not executed within forty-five days (45) of the date of this Order and advise as to why such contract has not been executed.
4. Any extension of the contract beyond the five year term shall be subject to Board review and approval.

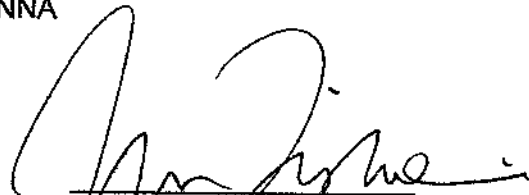
This Order shall be effective on July 29, 2013.

DATED: 7/19/13

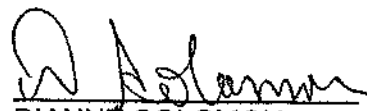
BOARD OF PUBLIC UTILITIES
BY:



ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

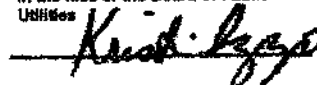

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER

ATTEST:

KRISTI IZZO
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 APPLICATION OF THE BOROUGH OF ALLENDALE REQUESTING APPROVAL OF AN AGREEMENT BETWEEN ALLENDALE AND UNITED WATER OPERATIONS, INC. IN CONNECTION WITH THE OPERATION AND MAINTENANCE INCLUDING BILLING AND COLLECTIONS OF THE BOROUGH'S WATER FACILITY PURSUANT TO THE PROVISIONS OF THE NEW JERSEY WATER SUPPLY PUBLIC-PRIVATE CONTRACTING ACT N.J.S.A. 58:26-19 ET SEQ. - BPU Docket No. WO13040341

SERVICE LIST

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