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December 2, 2021

Via Electronic Mail

Ms. Aida Camacho-Welch, Secretary
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor
Trenton, New Jersey 08625-0350

**Re: In the Matter of the Petition of Village Utility, LLC for *Nunc Pro Tunc* Approval for Entry into \$2,410,000.00 Principal Amount of Debt with First Bank, Grant of Mortgage Interest, Security, and Other Appropriate Relief
BPU Docket No.: WF21091134**

Dear Secretary Camacho-Welch:

Please accept for filing in the above-referenced matter the New Jersey Division of Rate Counsel's ("Rate Counsel") comments concerning Village Utility, LLC's ("Village Utility" or "the Company") September 15, 2021 petition to the New Jersey Board of Public Utilities ("Board") for authority, *nunc pro tunc*, to enter into a Construction Loan, Term Loan, and Mortgage in the amount of \$2,410,000.

Consistent with the Order issued by the Board in connection with *In the Matter of the New Jersey Board of Public Utilities' Response to the COVID-19 Pandemic for a Temporary Waiver of the Requirements for Certain Non-Essential Obligations*, BPU Docket No EO20030254, dated March 19, 2020, these documents are being electronically filed with the Secretary of the Board and the service list. No paper copies will follow.

A. Background

Village Utility is a regulated public utility that provides wastewater collection and treatment services to businesses and residents in North Village, New Jersey. The Board

approved Village Utility's initial service and service rates by order dated March 29, 2019.¹ Upon completion of Village Utility's proposed buildout, it intends to serve a ShopRite supermarket/liquor store, eight buildings for commercial use by multiple tenants, an assisted living facility, a 60-unit apartment building, 58 townhouses and 92 single family homes located in Sparta Township.² In order to build the infrastructure necessary to provide wastewater services to these entities Village Utility required external financing in the amount of \$2.41 million, in addition to its owners' equity.

Therefore, On September 15, 2021, Village Utility filed a petition ("Petition") and supporting documentation seeking an Order from the Board that:

- a) Grants *nunc pro tunc* approval for the Construction Loan as of March 2, 2018;
- b) Grants *nunc pro tunc* approval for conversion of the Construction Loan to a Term Loan as of March 2, 2021;
- c) Finds that the requirements of N.J.S.A. 48:3-9(a)(1) and N.J.A.C. 14:1-5.9 are met;
- d) Finds that the requirements of any other relevant state statute or regulation have been met;
- e) Determines to retain this matter for processing by the Board directly, with a decision to be rendered both to permit the infrastructure improvements to proceed as soon as possible and the conversion of the construction loan into permanent financing to occur;
- f) Grants *nunc pro tunc* approval for the mortgage and security interests to First Bank; and
- g) Grants such other relief as may be reasonable and necessary.³

¹ See *I/M/O Petition of Village Utility LLC for Approval of a Municipal Consent to Provide Sewerage Service to a Portion of the Township of Sparta, for Implementation of an Initial Tariff for Wastewater Service within the Township of Sparta, and for other Required Approvals*, BPU Docket No. WE18080926.

² See Village Utility's response to Staff OE-7.

³ Petition, para. 39 and para. 47.

Analysis

Village Utility first seeks the Board's approval for a short-term Construction Loan from First Bank in the principal amount of \$2.41 million. The Construction Loan was necessary to provide funding for Village Utility to acquire property for the plant site and to finance construction of the plant facilities. Village Utility's land acquisition and construction costs were \$4,021,425.⁴ The Construction Loan agreement was signed on March 2, 2018.⁵ The term of the Construction Loan was to extend to March 2, 2020 or March 2, 2021, if a one-year extension was exercised.⁶ A floating interest rate was set for the Construction Loan at the Prime Rate plus 50 basis points.⁷ The Construction Loan Agreement requires Village Utility to maintain a Debt Service Coverage Ratio of at least 1.25 during the Term Loan.⁸ Debt service on the Construction Loan is guaranteed by NV Retail Holdings, LLC and certain individuals who have indirect ownership interests in Village Utility.⁹

Village Utility's collection and treatment plant began operations on July 19, 2019.¹⁰ On March 2, 2021, the Construction Loan converted into a Term Loan with a maturity date of March 2, 2031.¹¹ The initial interest rate for the Term Loan was set at 3.25 percent.¹² On March 2, 2026, the interest rate on the Term Loan will convert to a floating rate to be set at the prevailing Federal Home Loan Bank of New York 5-year amortizing advance rate plus 225 basis points.¹³ The floor interest rate will remain at 3.25 percent throughout the life of the Term Loan.¹⁴ Village Utility incurred total transaction fees associated with the Construction Loan and the Term Loan of \$35,511.¹⁵

⁴ Petition, para. 22.

⁵ Petition, para. 10.

⁶ Petition, para. 12.

⁷ Petition, para. 13.

⁸ Petition Exhibit A, Section 6.22 Financial Covenants.

⁹ Petition, para. 16 and Exhibit E, Confidential Debt Service Guarantee.

¹⁰ See Village Utility's response to Staff OE-6.

¹¹ Petition, para. 14.

¹² *Id.*

¹³ Petition, para. 15.

¹⁴ *Id.*

¹⁵ See Village Utility response to Staff OE-1.

Village Utility states that its target capital structure is 60 percent debt and 40 percent equity.¹⁶ Thus far in 2020 and 2021, the Company's actual capital structure has met its targeted objective.¹⁷

Upon full buildout of Village Utility's customer base, the Company anticipates \$658,000 in annual revenues.¹⁸ Based on this level of annual revenues, the Company believes that it will internally generate cash through the depreciation expense and net income sufficient to make all debt service requirements.¹⁹ Specifically, Village Utility has projected a debt service coverage ratio for 2021 of 1.66x, which is significantly greater than the 1.25x minimum coverage ratio required by First Bank as a prerequisite for granting the Construction Loan. Village Utility projects that its Debt Service Coverage Ratio will increase to 2.52x upon full buildout of its customer base.

Findings and Recommendations

Based on the representations and considerations provided by Village Utility as discussed above, the Division of Rate Counsel does not object to the Board granting the authorizations requested in the Petition. The transaction fees incurred to secure the loans appear reasonable. Moreover, the Company's projected coverage ratios provide reasonable assurance that Village Utility will be able to meet its debt service obligations without jeopardizing its ability to provide safe, adequate, and reliable service to customers. Approval of the Petition, however, should not include authorization to include in rate base any specific assets that will be acquired as a result of this financing. Nor should it be construed as acceptance for ratemaking purposes of the resulting capital structure and capital costs. The determination of any assets to be included in rate base and the ratemaking impact of serving customers, including the impact of the transaction(s) on Village Utility's capital costs should be addressed in a future base rate proceeding.

Board approval of the Petition should include the following conditions:

¹⁶ See Village Utility response to Rate Counsel RCR-3.

¹⁷ See Village Utility response to Rate Counsel RCR-2, Attachment.

¹⁸ See Village Utility's response to Staff OE-7.

¹⁹ See Village Utility's response to Staff OE-8.

- The authority granted by the Board in this proceeding should be restricted to fund utility operations and investments only, not to fund affiliated entities.
- The Company should be obligated to issue long-term debt at the lowest reasonable cost.
- The Company should be obligated to utilize a prudent and cost-effective capital structure and mix of capital to finance its utility rate base at the lowest reasonable cost.
- Finally, Rate Counsel reserves all rights to take appropriate positions in future Board proceedings involving the Company, including any such proceeding pending before the Board at this time.

Approval by the Board of these recommendations will satisfy the concerns of Rate Counsel that the Board's approval is limited to the transactions as herein described, does not indicate authorization to include any specific assets or amounts in rate base, does not indicate authorization for any other ratemaking treatment, and does not establish any precedent with regard to approval of future financing petitions.

Respectfully Submitted,

Brian O. Lipman, Esquire
Director, Rate Counsel

By:

Susan E. McClure
Susan McClure, Esquire

SEM/ms
C: Service List