



Agenda Date: 1/12/22
Agenda Item: VB

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 VILLAGE)
UTILITY, LLC FOR NUNC PRO TUNC APPROVAL FOR) ORDER
ENTRY INTO \$2,410,000.00 PRINCIPAL AMOUNT OF)
DEBT WITH FIRST BANK, GRANT OF MORTGAGE)
INTEREST, SECURITY, AND OTHER APPROPRIATE)
RELIEF) DOCKET NO. WF21091134

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Stephen B. Genzer, Esq., and Shane P. Simon, Esq., Saul Ewing Arnstein & Lehr LLP for
Petitioner

BY THE BOARD:¹

On September 15, 2021, Village Utility, LLC (“Petitioner”), a public utility in the State of New Jersey, subject to the jurisdiction of the Board of Public Utilities (“Board”) filed a petition seeking nunc pro tunc approval, pursuant to N.J.S.A. 48:3-9(a)(1), of certain financing arrangements (“Petition”). Petitioner is a wastewater public utility providing service to a mixed-use development, the North Village at Sparta (“North Village”) in the Township of Sparta (“Township”). North Village includes a ShopRite supermarket/liquor store, eight (8) buildings for commercial use by multiple tenants, an assisted living facility, a 60 unit apartment buildings, 58 townhouses and 92 single family homes. There is no other public sewer service inside Petitioner’s franchise area, and no such service is offered by the Township in that area.

On or about March 2, 2018, Petitioner entered into a Loan Agreement with First Bank, Hamilton, New Jersey for a loan totaling \$2,410,000.00 (“Construction Loan”). The Construction Loan was necessary for Petitioner to acquire property for and to finance a portion of the construction costs of a wastewater collection and treatment facility (“Plant”) servicing the needs of the citizens of North Village. The Plant became operational and was in service as of July 19, 2019. As part of the Construction Loan, Petitioner granted mortgage and security interests to First Bank.

On March 2, 2021, the Construction Loan converted to a term loan (“Term Loan”) due March 2, 2031. Petitioner states that the delay in seeking the Board’s pre-approval for the Construction

¹ Commissioner Upendra J. Chivukula did not participate.

Loan, the conversion of the Construction Loan into the Term Loan, and the granting of mortgage and security interests was due to the uncertainty of timing with respect to the conversion, as well as the challenges posed by the COVID-19 pandemic. Pursuant to N.J.A.C. 14:1-5.9(a), a public utility must seek Board approval prior to entering into stocks, bonds, notes, mortgages, or any similar instrument which is “payable in more than one year from the date thereof.” See also N.J.S.A. 48:3-9(a)(1). Pursuant to N.J.S.A. 48:3-7(a), a public utility must seek Board approval prior to selling, leasing, mortgaging, or otherwise disposing of or encumbering its property, franchises, privileges, or rights.

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed this matter and, by letter dated December 2, 2021, stated that it does not object to approval of the Petition, subject to provisions outlined below.

DISCUSSION AND FINDINGS

Having reviewed the record, the Board concludes that the Construction Loan was necessary to finance a portion of the costs related to the acquisition of land for the Plant and construction costs associated with the Plant. In turn, the Plant was consistent with its Board-approved initial tariff and plan to serve customers and necessary to provide safe, proper and adequate service to the citizens of North Village. Nonetheless, the Construction Loan required Board Approval, as did the mortgage and security interests issued by Petitioner, whether they were associated with short-term or long-term debt. The Board **HEREBY ORDERS** that any such future transactions shall be made in accordance with the applicable timing requirements.

However, given these circumstances and timing and that the construction of the Plant was necessary for the provision of safe, proper and adequate service to the residents of North Village, the Board **HEREBY FINDS** that the Construction Loan and Term Loan were in the public interest, and that these loans satisfied the requirements of N.J.S.A. 48:3-9(a)(1) and N.J.A.C. 14:1-5.9(a). Accordingly, the Board **HEREBY FINDS** that the indebtedness associated with the Construction Loan and Term Loan, as well as the mortgage and security interests granted to First Bank under those loans, are **HEREBY APPROVED** as within time. Further, the Board **HEREBY FINDS** that the foregoing transactions, as described herein and in the Petition, are in the public interest and the purposes thereof, and thus are **HEREBY APPROVED**.

This Order is subject to the following provisions:

1. This Order is based upon the specific and particular facts of the Petition in this matter and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
2. The Construction Loan, as described in the Petition, is approved as within time as under N.J.S.A. 48:3-9(a)(1) and N.J.A.C. 14:1-5.9(a).
3. The conversion of the Construction Loan into the Term Loan, as described in the Petition, is approved as within time, as under N.J.S.A. 48:3-9(a)(1) and N.J.A.C. 14:1-5.9(a).
4. The Petitioner’s grant of mortgage and security interests under the Construction Loan and Term Loan is approved, as within time, as under N.J.S.A. 48:3-7(a).
5. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs

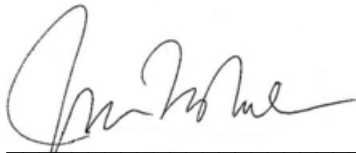
of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting Petitioner.

6. Notwithstanding anything to the contrary in the Loan Agreement or the security instruments issued thereunder, no change in ownership, of operating authority, or of the Petitioner's assets shall occur unless and until such actions have been approved by the Board pursuant to law.
7. Petitioner shall notify the Board within 15 days of a continuing event of default which will allow the Board to determine the impact of such default upon the Petitioner's obligations to provide safe, adequate, and proper service.
8. The Board's approval is expressly limited to the Agreement, Note, and Mortgage described herein and as more fully described in the Petition and supporting documents.
9. This order shall not be construed as certification that the loan herein authorized will be represented by tangible or intangible assets of commensurate value or investment cost.
10. Petitioner shall take all reasonable steps to prevent any future violation of law or regulation by obtaining such approvals as may be required prior to commencing actions requiring Board approval.
11. The authority granted by the Board in this proceeding should be restricted to fund utility operations and investments only, not to fund affiliated entities.
12. The Company should be obligated to issue long-term debt at the lowest reasonable cost.
13. 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.
14. 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.
15. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.

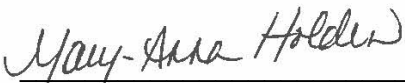
This Order shall become effective January 19, 2022.

DATED: January 12, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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 - DOCKET NO. WF21091134

SERVICE LIST

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