



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN LIPMAN
DIRECTOR

September 21, 2022

VIA Electronic Mail

The Honorable Carmen Diaz
Acting Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave., 10th Fl.
P.O. Box 350
Trenton, NJ 08625-0350

**RE: In the Matter of the Petition of the Township of North Brunswick Requiring Approval of a Public-Private Contract for Water Supply Services with Veolia Water North America Operating Services, LLC., 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.: WO22080477**

Dear Acting Secretary Diaz:

Please accept, for filing, the Division of Rate Counsel's ("Rate Counsel") comments in connection with the above-referenced matter. Thank you for your consideration and attention to this matter.

Background

On August 4, 2022, the Township of North Brunswick ("Township") filed a petition and supporting documents in the above referenced matter. The Township is seeking the Board's approval of an agreement between itself and Veolia Water North America Operating Services, LLC ("Veolia") under the New Jersey Water Supply Public-Private Contracting Act (N.J.S.A. 58:26-19, et. seq.). The agreement, titled "Public-Private Partnership Agreement for the

Operation, Maintenance, Management, and Repair of the Township of North Brunswick Municipal Water System” (the “Agreement”), is a twenty-year agreement, set to commence on October 1, 2022, under which Veolia will manage, operate, and maintain, subject to Township approval, the Township-owned water treatment plant and water distribution system. The Township will retain responsibility for rate setting, budgeting for the water utility as a component unit of the Township government, customer service, billing and collecting. The Township will pay a fixed annual fee, subject to annual price adjustments. In addition, certain specified expenses, like the cost of purchasing chemicals, will represent a pass-through charge from Veolia to the Township. Defined pass-through charges are to be burdened with a specified mark-up. Heretofore, the Township has engaged American Water Works Company to operate its system. American did not offer a bid when the Township initiated the procurement to obtain operating service for the proposed contract period.

Analysis

The contractual arrangement described in the Agreement has been under development in an open and public process since the February 2022. The Agreement will utilize Veolia’s operating and management services to operate the Township-owned water treatment plant and manage the water distribution system. The scope of services includes operating and maintenance activities as required by the Water Quality Accountability Act (“WQAA”). Veolia was the only respondent to the open bidding process and, subsequent to receiving the Veolia bid, a final agreement was negotiated as allowed by the Act. (Hearing Report dated August 2, 2022, Page 1, second paragraph). The proposed Agreement is provided as Exhibit A with a rider to the Agreement included as Exhibit B to the Hearing Report.

Rate setting authority is retained by the Township (Hearing Report dated August 2, 2022, Page 2, Section II, last paragraph). The assets now comprising the water system and any improvements constructed under the contract will be owned by the Township at all times (Exhibit A, Agreement, Section 1.2). The Agreement does not create any Veolia ownership interest in the work.

While the Agreement is a 20-year agreement, the basic relationship between an owner and contractor is being maintained. Veolia will provide personnel with appropriate licenses, as required by the State of New Jersey, to maintain, operate, and manage the Township's water treatment plant and water distribution system (Exhibit A, Agreement, Sections 2.1, 4, 5, and 6). The Township will continue to own the assets and it will have authority to direct the extent of the capital improvement program, which will be developed by the Township in consultation with Veolia (Exhibit A, Agreement, Section 7.1).

The Township will pay Veolia an annual fee for these services and the initial annual fee will be \$1,635,500. The annual fee will be adjusted for each contract year based on changes to the Consumer Price Index ("CPI") and the Employment Cost Index ("ECI") (Exhibit A, Agreement, Appendix A, Section A.3.). In addition to the Annual Fee, the Township will pay for certain expenses including a mark-up as specified in the Agreement at Section 8.2. Paragraphs K.(2) and L and Veolia Proposal). The scope of work and the annual fee includes emergency repairs or replacements except for certain specified extraordinary events (Exhibit A, Agreement, Section 8.4).

Veolia and its affiliates represent one of the largest privately-owned water utilities and integrated water service businesses in North America. Veolia Water North America Operating Services, LLC is a wholly-owned subsidiary of Veolia North America, Inc. along with the Board regulated water utility Veolia Water New Jersey. Veolia Water North America has over 10,600 employees in 50 states and Canada. In New Jersey, Veolia provides water service to over 1.4 million people. Rate Counsel believes that Veolia has the managerial, financial and technical strength to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the financial, technical and administrative capacity of the private firm are sufficient to protect the public interest as required by N.J.S.A. 58:26-25c(1).

It is Rate Counsel's conclusion that the terms of the Agreement are not unreasonable (N.J.S.A. 58:26-25c(2)). The Agreement has a duration of 20 years with appropriate termination and cancellation provisions. The annual fee is limited to specific maintenance and operating functions and is adjusted annually based on changes in the CPI and ECI. There are additional items like chemicals that will be supplied at Veolia's cost plus a specified mark-up. The services to be provided by Veolia represent technical capabilities that the Township does not have in-house and in fact has contracted for in prior years. The contract will allow the Township to maintain operations of its water treatment and distribution facilities and comply with the requirements of the WQAA.

The private entity partner to the Agreement is not a regulated public utility. To the extent that resources of the affiliated Veolia regulated utilities are used to satisfy the obligations of the Agreement, these expenses can be tracked through normal regulation of Veolia Water New Jersey and reviewed in periodic base rate cases. As such, Rate Counsel believes that the

franchise customers of Veolia Water New Jersey can be protected from the risks of the proposed contract and that they are not subsidizing the contract. The Township retains all authority to set rates for its franchise customers under its governing Statutes and this extends to the manner in which it sets rates for contract customers outside of its district service area. Rate Counsel believes that adequate protections exist under these Statutes and under the Agreement to properly manage and allocate risks of the Agreement (N.J.S.A. 58:26-25c(3)).

The Agreement is limited to the contract operations and maintenance of the water treatment plant, water distribution system and metering systems. Customer charges are now and will continue to be set by the Township and these adjustment procedures are outside of the scope of the Agreement. The fees and the adjustment procedures related to those fees are described in the Agreement and these fees represent obligations of the Township, not individual customers served by the Township Water Department. The rate setting procedure is described in the Hearing Report as an out-of-scope item. It is Rate Counsel's opinion that this satisfies the requirement of N.J.S.A. 58:26-23 e(1). The Agreement contains the provisions required by N.J.S.A. 58:26-23 e (2) through (5), (7) and (8). There are no Township employees impacted by the proposed contract and therefore, N.J.S.A. 58:26-23e(6) does not need to be specifically addressed in the Agreement. According to the Hearing Report, Veolia is endeavoring to reach employment agreements with employees of the former contract operator.

Recommendation

Rate Counsel has reviewed the Petition and Exhibits and finds that the proposal satisfies the requirements of N.J.S.A. 58:26-25c(1-4). Rate Counsel has no objection to the Board approving the Agreement.

Respectfully submitted,

BRIAN O. LIPMAN, ESQ.
Director, Rate Counsel

By: Christine M. Juarez
Christine M. Juarez, Esq.
Assistant Deputy Rate Counsel

CJ/ms
Enclosures

c: Service List