



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 FAYSON LAKE) ORDER
WATER COMPANY FOR APPROVAL OF A FINANCING)
TRANSACTION) DOCKET NO. WF24030184

Parties of Record:

Martin C Rothfelder, Esq., Rothfelder Stern, L.L.C on behalf of petitioner
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On March 18, 2024, Fayson Lake Water Company (“Petitioner” or “Company”), a public utility of the State of New Jersey, subject to the jurisdiction of the New Jersey Board of Public Utilities (“Board”), filed a petition seeking *nunc pro tunc* approval of a financing transaction pursuant to N.J.S.A. 48:3-7, N.J.S.A. 48:3-9, and N.J.A.C. 14:1-5.9 (“Petition”).

BACKGROUND AND PROCEDURAL HISTORY

Petitioner provides water service to approximately 890 residential customers in the Fayson Lake community located in the Borough of Kinnelon, Morris County, New Jersey.

On October 4, 2023, Petitioner entered into a Loan Agreement with Lakeland Bank, Oak Ridge, New Jersey for a loan totaling \$1,415,000. According to the Petition, the loan was necessary for Petitioner to finance construction for upgrades and improvements to its water utility system. At the time of filing, Petitioner had completed construction of these upgrades and improvements. As part of the Loan Agreement, Petitioner granted mortgage and security interests to Lakeland Bank.

By the Petition, the Company now seeks Board approval to obtain a loan and draw up to the principal sum of \$1,415,000 to (a) finance the costs of the construction and installation of new 8” and 6” water main replacements for the Fayson Lake community; and (b) finance the transaction closing costs. The loan is initially an interest-only loan for a period of one (1) year (“Construction Period”), which may be extended by Lakeland Bank. Upon completion of the Construction Period, the loan will convert to a Term Loan for an additional fifteen (15) years for the repayment of the financed principal plus interest thereon. Such conversion requires full completion of the project, no events of default, and documented projected debt service coverage.

Interest on drawdowns of principal during the Construction Period was set at the Prime Rate, defined as the base rate on corporate loans posted by at least seventy percent (70%) of the nation's ten (10) largest banks as published in the Wall Street Journal, plus 100 basis points, provided the rate is not less than eight and one-quarter percent (8.25%) per annum.

Following conversion to the Term Loan, the interest for the first five (5) years is at a fixed rate based on the five (5)-year United States Treasury Note ("USTN") rate in effect five (5) days before the date of the conversion and rounded up to the nearest one-eighth of one percent (0.125%), plus 300 basis points, provided the rate shall not be less than six percent (6%) per annum.

On the fifth anniversary of the conversion and every five (5) years thereafter until the maturity date ("Change Date"), the interest rate for the next five (5) year period shall be equal to the USTN in effect on the applicable Change Date, rounded up to one-eighth of one percent (0.125%), plus 300 basis points, provided the rate shall not be less than six percent (6%) per annum.

The conversion to the Term Loan is contingent on Petitioner demonstrating a projected 1.20:1.00 "pre-DSCR," meaning Petitioner's Debt Service Coverage Ratio ("DSCR") calculated as Petitioner's (i) net earnings before taxes excluding any gain or loss arising from extraordinary or non-recurring items, plus (ii) interest expense, plus (iii) depreciation expense, plus (iv) amortization expense, minus (v) cash taxes, divided by (vi) documented debt service payments and any additional debt associated with the property. In order to achieve the required pre-DSCR, Petitioner must have in place a sufficient revenue stream. Toward that end, Petitioner currently has before the Board a petition for a base rate increase, in Docket No. WR24030179. Upon and after the conversion, Petitioner is obligated during the Term Loan to maintain at all times a minimum required DSCR of 1.20:1.00.

In consideration of its Petition, the Company attached copies of the following documents to the Petition: the Loan Agreement between the Petitioner and Lakeland Bank, Oak Ridge, New Jersey, together with a Promissory Note, Promissory Note Rider, and Security Agreement, executed on October 4, 2023, and a Guaranty, Indemnification Agreement, and Security Agreement, executed on October 4, 2023 by Fayson Lake Community, Inc., the sole shareholder of Petitioner (collectively, "Financing Documents"). Pursuant to the Financing Documents, the loan is secured by a priority collateral pledge of all tangible and intangible assets and personal property of Petitioner and its parent, Fayson Lake Community, Inc., now owned or hereafter acquired, to encompass all business assets including but not limited to accounts, accounts receivables, equipment, machinery, furniture, fixtures, etc.

Following the filing of the Petition, Board Staff ("Staff") and the New Jersey Division of Rate Counsel ("Rate Counsel") issued data requests, to which Petitioner provided responses on May 22, 2024.

Rate Counsel reviewed the matter and, by letter dated July 11, 2024, stated that it does not object to approval of the Petition, subject to the provisions outlined below.

DISCUSSION AND FINDINGS

Having reviewed the Petition, Financing Documents, and the comments of Rate Counsel, the Board **HEREBY FINDS** that the above detailed transaction was necessary to finance construction costs associated with the Company's upgrades and improvements. Additionally, the Board **HEREBY FINDS** that the upgrades and improvements described were necessary for the provision of safe, proper, and adequate service to the Company's customers.

The Board **HEREBY FINDS** that the financing transaction as set forth in the Financing Documents, including the Construction Period loan, forthcoming loan conversion, and Term Loan as described above, is in accordance with the law and is in the public interest and that this transaction satisfies the requirements of N.J.S.A. 48:3-7, N.J.S.A. 48:3-9, and N.J.A.C. 14:1-5.9. Accordingly, the Board **HEREBY FINDS** that the October 4, 2023 loan and associated indebtedness, as detailed in the Financing Documents and described above, including the Construction Period loan and the Term Loan, are **HEREBY APPROVED** as within time.

This Order is issued subject to the following provisions:

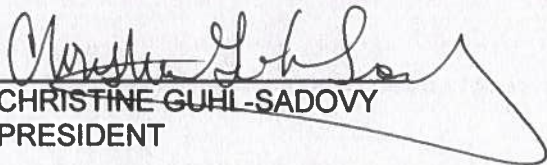
1. Petitioner shall furnish the Board with executed copies of the loan documents referenced herein within ten (10) days of closing, noting all changes in said documents from those upon which this Order is based, and there shall be no material substantive changes without prior approval of the Board.
2. 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.
3. This Order shall not affect or in any way limit the exercise of the authority of this Board or this State in any pending or future petition or in any proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting Company.
4. The Company shall, at the request of the Board, submit to the Board copies of financial statements or other documents submitted to the lender in connection with the Loan Agreement.
5. The Company shall notify the Board within fifteen (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.
6. Notwithstanding anything to the contrary in the Loan Agreement or the security instruments issued thereunder, no change in ownership of operating authority or assets of the water utility shall occur unless and until such actions have been approved by the Board pursuant to law.
7. The Board's approval is expressly limited to the Financing Documents as described herein and more fully described in the Petition and supporting documents.
8. 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.
9. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised by December 31, 2025.
10. Upon conversion of the Construction Loan to a fifteen (15)-year Term Loan, Company shall provide evidence that the Construction Loan and its associated requirements have been met and are fully satisfied.

11. Upon conversion of the Construction Loan to a fifteen (15)-year Term Loan, Company shall provide to Staff and Rate Counsel: a) the aggregate principal amount of the loan, including any unpaid interest accrued during the construction period, b) the initial interest rate established for the Term Loan to be effective or years one through five, and c) an identification and quantification of all financing-related costs incurred and to be paid by Company associated with acquiring the loan including, but not limited to, bank engineering and bank transaction and closing costs.
12. The Company shall furnish to the Board, Staff, and Rate Counsel copies of executed documents filed with other regulatory agencies, if any, relating to the new debt.
13. The new debt authorized herein shall not be redeemed at a premium prior to maturity without further Board approval, unless the estimated present value savings derived from the difference between interest on a new debt issue of comparable securities and those securities refunded is on an after-tax basis greater than the estimated present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate.
14. The Company shall furnish to the Board copies of all executed amendments and/or supplements, if any, Company's Mortgage and Deed of Trust, or any successor mortgage thereto.
15. The Board's Order in this proceeding shall not constitute pre-approval of any cost or authorization for rate recovery. All capital costs are subject to review in Company's next base rate proceeding.
16. Beginning January 15, 2025, and no later than January 15 of each year following the issuance of this Order, Petitioner shall submit a letter report to the Board Secretary and the Chief Economist of the Board detailing each debt issuance, term loan, use of revolving credit, opened or concluded in the prior year. Each report must include the name of the issuing entity, issue date, amount of debt issued, the term in years, final maturity date, coupon rate, price to public, underwriters discount, net proceeds after expenses, gross proceeds before expenses, breakdown of estimated issuance costs (including, but not limited to, information such as the underwriting fees, underwriting expenses, legal fees and expenses, recordation taxes and fees, trustee fees, etc.), and any other material provision with respect to the terms and conditions of the new issuance.

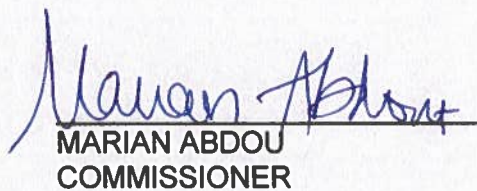
This Order shall become effective on August 21, 2024.

DATED: August 14, 2024

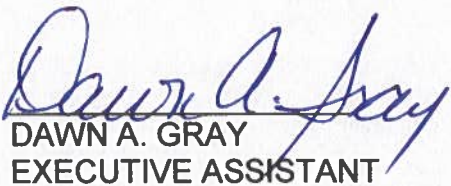
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BY:


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PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
DAWN A. GRAY
EXECUTIVE ASSISTANT

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 PETITION OF FAYSON LAKE WATER COMPANY FOR APPROVAL OF A
FINANCING TRANSACTION

DOCKET NO. WF24030184

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