

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: October 4, 2005	2. BUREAU AGENDA NO. OCT-2005-FUS-1376* <i>RP</i>
3. BUREAU: Fixed Utility Services	
4. SECTION(S): Finance/Tariffs	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: R. Rosenthal <i>RR</i> 3-61242 Mgr/Spvr: Wilson <i>BW</i> 3-6162 Legal Review: <i>[Signature]</i>	October 6, 2005
7. PERSONS IN CHARGE: <i>DK</i> Kirkwood 5-4364; Beebe 7-7237	9. EFFECTIVE DATE OF FILING: N/A
DOCKET NO.: A-210052 F5000 A-230081 F5000	DOCUMENT FOLDER

10. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

- (a) Joint application of Warwick Water Works, Inc. (Warwick Water), Warwick Drainage Co. (Warwick Drainage) (together, the Warwick Utilities) and St. Peters Town, L.P. (St. Peters Town) for approval of the transfer of all the stock of Warwick Water and of Warwick Drainage to St. Peters Town.
- (b) The acquisition of the Warwick Utilities is part of a plan by an affiliate of St. Peters Town to substantially revamp the development of St Peters Village in Chester County. Warwick Water has still not installed meters in its system, despite it having been ordered to do so five years ago. Warwick Drainage has serious inflow and infiltration (I&I) problems that have been causing untreated discharges into French Creek and the threat of disciplinary action by DEP. In response to concerns of OCA, the proposed new owners have committed to a metering plan. They are also negotiating with Warwick Township a Memorandum of Understanding (MOU) that includes the commitment to fully rehabilitate the sewage collection system so as to eliminate the I&I problem.
- (c) The Bureau of Fixed Utility Services recommends that the Commission adopt the proposed Order.

DOCKETED
OCT 19 2005

11. **MOTION BY:** Commissioner Chm. Holland
SECONDED: Commissioner Cawley

Commissioner Shane - Yes
Commissioner Pizzingrilli - Yes
Commissioner Fitzpatrick - Yes

CONTENT OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

OCTOBER 7, 2005

A-210052F5000
A-230081F5000

DANIEL P DELANEY ESQUIRE
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM
17 NORTH SECOND STREET 18TH FLOOR
HARRISBURG PA 17101-1507

DOCKETED
DEC 07 2005

**DOCUMENT
FOLDER**

Joint Application of Warwick Water Works, Inc., Warwick Drainage Co., and St. Peters Town, L.P., for approval of the transfer of all the stock of Warwick Water Works, Inc., and Warwick Drainage Co., to St. Peters Town, L.P.

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on October 6, 2005 has adopted an Order in the above entitled proceeding.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

fg
encls
cert. mail

See Attached Listing for Additional Parties of Record.

DANIEL P DELANEY ESQUIRE
KIRKPATRICK & LOCKHART
NICHOLSON GRAHAM
17 NORTH SECOND ST 18TH FLOOR
HARRISBURG PA 17101-1507

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COMMONWEALTH KEYSTONE
BUILDING
PLAZA LEVEL
HARRISBURG PA 17120

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held October 6, 2005

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Bill Shane
Kim Pizzingrilli
Terrance J. Fitzpatrick

DOCKETED
DEC 07 2005

**DOCUMENT
FOLDER**

Joint application of Warwick Water Works, Inc., Warwick Drainage Co. and St. Peters Town, L.P. for approval of the transfer of all the stock of Warwick Water Works, Inc. and Warwick Drainage Co. to St. Peters Town, L.P.

Docket Nos:
A-210052 F5000
A-230081 F5000

ORDER

BY THE COMMISSION:

On September 1, 2005, Warwick Water Works, Inc. (Warwick Water), Warwick Drainage Co. (Warwick Drainage) (together, the Warwick Utilities) and St. Peters Town, L.P. (St. Peters Town) filed a joint application pursuant to Chapter 11 of the Public Utility Code, 66 Pa. C.S. §§1101, *et seq.*, by which they seek approval of the transfer of all the stock of Warwick Water and of Warwick Drainage to St. Peters Town. Copies of the application were served upon the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate, and upon six other potentially interested parties. The protest period ended September 26, 2005, with no protests or comments having been received.

On September 27, 2005, the applicants filed a letter containing suggested language concerning Warwick Water's metering plan and tariff that, following discussions with the OCA, they have agreed should be reflected in this Order. The matter is addressed below in our Discussion and in the Ordering Paragraphs.

On September 28, 2005, the applicants filed a second letter in response to concerns of staff that a Memorandum of Understanding (MOU) between the buyers and Warwick Township concerning the rehabilitation of Warwick Drainage's collection system would not be provided to the Commission until after today's Public Meeting. This matter, too, is addressed more fully in our Discussion below and in the Ordering Paragraphs.

The Parties

The Warwick Utilities serve fewer than 50 customers in St. Peters Village, a development in Warwick Township in northwestern Chester County. Warwick Water was certificated to begin to furnish service to certain areas of St. Peters Village by Order entered April 27, 2000 at A-210052. Warwick Drainage was certificated to begin to furnish wastewater service to certain properties in the development by Order entered June 2, 2000 at A-230081. Raymond H. Carr, an adult individual, currently owns 100% of the stock of each of the utilities. Operation of both utilities is conducted by Applied Water Management, Inc. (Applied Water), a non-jurisdictional licensed contract operator that is a subsidiary of American Water Co., f/k/a American Waterworks, Inc.

St. Peters Town, L.P. is an affiliate of Earth Enterprises, Inc. (Earth Enterprises), a development company that, over the applicants, has extensive experience in land acquisition, development and finance, and also experience in constructing

supporting utility infrastructure. In a written response to informal staff questions, counsel for the applicants stated the contracts with Applied Water would remain in effect under new ownership, although Thomas Drauschak, Jr., President of Earth Enterprises, Inc., expects to negotiate new, similar contracts with the contract operator.

The Proposed Acquisition

The St. Peters Village development, comprising primarily a 20-unit condominium, a stone house, over 35 acres of land and the Warwick Utilities, would be purchased by a developer, Earth Enterprises, Inc. or its assigns pursuant to a real estate sale agreement and a separate Transfer Agreement, both dated May 31, 2005 and executed on that and the following date, June 1, 2005. One purchase price was negotiated for all the properties taken together; there was no separate purchase price for the Warwick Utilities. Both utilities will continue to provide service under their respective currently effective tariffs. The acquisition itself will not lead to any interruption or diminution of service or any change in the rates currently being charged to water and wastewater customers pursuant to currently effective tariffs.

The purchase of the utilities is being coordinated with the purchase by St Peters Town or its affiliates of approximately 15 other properties in the St Peters Village development, including both land and structures. None of those purchases involves jurisdictional property or entities.

Discussion

Of the two Warwick Utilities, Warwick Drainage has had a history of operational problems. In particular, it has experienced considerable inflow and

infiltration problems for several years, which have put the utility's plant and collection system in violation of several sections of the Pennsylvania Clean Streams Law, 35 P.S. §§691.1, *et seq.*, including untreated discharges into French Creek. These violations have led to the negotiation of a Consent Order and Agreement (Consent Order) between Warwick Drainage and the Pennsylvania Department of Environmental Protection (DEP), but that Consent Order has never been executed, despite repeated DEP requests of the owner of the utility.

As part of our Order entered April 27, 2000, approving Warwick Water's initiation of service, we approved a metering survey filed in conjunction with its entry application and ordered the utility to complete its metering plan and to file with us a report of the completion of the plan by October 5, 2000. In the course of staff's investigation into the instant acquisition proposal, it learned that Warwick Water has apparently never completed installation of meters and has never filed for approval or metered rates.

The letter filed by the joint applicants on September 27, 2005, addressing the OCA's concerns about the metering of the water customers contains a commitment that "the Joint Applicants agree, *on a best efforts basis*, to install meters for all water customers, obtain usage data and file for revenue-neutral metered rates ...within 6 to 12 months following" our approval of the instant application. [Emphasis added.] We welcome such a metering effort since it is so long overdue, but we find a "best efforts basis" to be an insufficient degree of commitment. Warwick Water was ordered to do all that five years ago, and metering still has yet to be done. Therefore, we will insist that the metering and the filing for metered rates be accomplished within one year of the entry date of this order.

As part of the negotiations to acquire the several properties in St. Peters Village, including the Warwick Utilities, Earth Enterprises, by its president, is negotiating with the Warwick Township Board of Supervisors the above-referenced MOU about several matters, including, notably, Earth Enterprise's commitment to undertake a thorough repair or rehabilitation of the sewage collection system, together with the recognition that the goal of the township is the replacement of the wastewater treatment plant with a new facility. The applicants have not yet been able to provide a final, executed copy of the MOU. The rehabilitation of the collection system is of such importance, however, that we will condition our approval of the proposed acquisitions of the Warwick Utilities upon the filing of an unredacted copy of the MOU in final, executed form.

Conclusion

The transactions before us offer the promise to cure a lack of metering at Warwick Water and a similar promise, to be more formally made by the forthcoming MOU, that the egregious sewer violations at Warwick Drainage will also be cured. Therefore, we conclude that the record provides substantial evidence of affirmative public benefit sufficient to warrant approval of the proposed transactions under *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 295 A.2d 825 (1972).

Having thus reviewed the instant application, we have determined that the acquisition by St. Peters Town of the stock of both Warwick Water and Warwick Drainage is necessary or proper for the service, accommodation, convenience, or safety of the public, and that the application should be approved; **THEREFORE**,

IT IS ORDERED:

1. That the joint application concerning the approval of the transfer of all the stock of Warwick Water Works, Inc. and all the stock of Warwick Drainage Co. to St. Peters Town, L.P. is hereby approved, subject to the applicants filing with this Commission a copy of an unredacted final, executed Memorandum of Understanding between the Warwick Township Board of Supervisors and Earth Enterprises, Inc., an affiliate of St. Peters Town, L.P.

2. That Warwick Water Works, Inc. and Warwick Drainage Co. serve a copy of the unredacted final, executed Memorandum of Understanding with Warwick Township Board of Supervisors upon the Pennsylvania Department of Environmental Protection, Southeast Regional Office, Office of Chief Counsel, and upon the Office of Consumer Advocate.

3. That following the receipt of the Memorandum of Understanding, certificates of public convenience be issued both to Warwick Water Works, Inc. and to Warwick Drainage Co. evidencing the approval granted in Ordering Paragraph No. 1, above, and that the case be marked closed.

4. That within 30 days of the consummation of the acquisition approved in Ordering Paragraph No. 1, above, Warwick Water Works, Inc. and Warwick Drainage Co. notify the Commission of the date of such consummation.

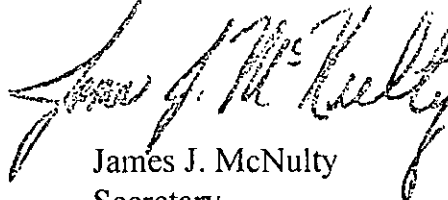
5. That if the parties determine that the acquisition approved in Ordering Paragraph No. 1, above, will not be consummated, Warwick Water Works, Inc. and Warwick Drainage Co. promptly notify this Commission of such determination.

6. That within one year from the entry of this order, Warwick Water Works, Inc. file with this Commission a report on the completion of the installation of meters for all its customers, together with a tariff providing for revenue-neutral metered rates.

7. That within 120 days of the consummation of the acquisition of Warwick Water Works, Inc. and Warwick Drainage Co., the utilities file such new or revised affiliated interest agreements as may be appropriate to govern transactions between or among them and their non-jurisdictional affiliates.

8. That a copy of this Order be served upon the Pennsylvania Department of Environmental Protection, Southeast Regional Office, Office of Chief Counsel, and upon the Office of Consumer Advocate.

BY THE COMMISSION



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: October 6, 2005

ORDER ENTERED: OCT 07 2005