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April 5, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor (filing room)
Harrisburg, PA 17120

RE: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Section 507, 508, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls; Docket No. A-2022-3033138; **PROTEST OF PATTERSON HEIGHTS BOROUGH**

Dear Secretary Chiavetta:

Enclosed for filing in the above-referenced proceeding is the Protest of Patterson Heights Borough. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions regarding this filing, please contact me.

Very truly yours,

/s/ Whitney E. Snyder

Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick Jr.

Counsel for Patterson Heights Borough

WES/das
Enclosure

Cc: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania :
Wastewater, Inc. (hereinafter referred to as :
“Aqua” or “Applicant”) pursuant to :
Sections 1102 and 1329 of the Public :
Utility Code for: :

(1) approval of the acquisition by Aqua of :
the wastewater system assets of the City of :
Beaver Falls (“Beaver Falls” or “City”) :
situated within the City of Beaver Falls :
Eastvale Borough, and West Mayfield :
Borough, Beaver County, Pennsylvania; :

Docket No. A-2022-3033138

(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in the City :
of Beaver Falls, Beaver County, :
Pennsylvania; and :

(3) an order approving the acquisition that :
includes the ratemaking rate base of the :
City of Beaver Falls wastewater system :
assets pursuant to Section 1329(c)(2) of the :
Public Utility Code. :

Request for Approval of Contracts, :
including Assignments of Contracts, :
between Aqua and the City of Beaver Falls, :
Pursuant to Section 507 of the Public :
Utility Code Request for Approval to :
Modify Agreements with Municipal :
Corporations to be Assigned to Aqua Upon :
Closing of the Acquisition by Aqua of the :
Wastewater System Assets of Beaver Falls, :
to the Extent Such Modifications are :
Necessary, Pursuant To Section 508 of the :
Public Utility Code :

PROTEST OF PATTERSON HEIGHTS BOROUGH

Pursuant to 52 Pa. Code § 5.51, Patterson Heights Borough (“Patterson Heights” or “Protestant”) files this Protest to the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua WW”) for approval of the acquisition of the wastewater system assets allegedly owned by the City of Beaver Falls (“Beaver Falls”) (“Application”). Patterson Heights requests the Public Utility Commission (“PUC” or “Commission”) refuse to accept the Application (i.e. reject the Application or hold it in abeyance) or, in the alternative, deny the Application.

I. PROTEST

1. In its Application, Aqua WW seeks Commission approval to, *inter alia*, acquire the assets, properties and rights related to the wastewater collection and treatment system (“System”) allegedly owned by Beaver Falls pursuant to 66 Pa. C.S. § 1329 (“Proposed Transaction”).

2. Beaver Falls, however, does not have full legal right or title to the System and thus does not have the legal ability to sell the System to Aqua WW. Aqua WW is attempting to weaponize Section 1329 to perform a hostile takeover of a municipal wastewater system without the consent of municipalities that: (1) claim an ownership right in the System that Aqua WW seeks to acquire; and (2) are bulk customers representing thousands of individual ratepayers of the System Aqua WW seeks to acquire.

3. Protestant, along with the three other municipalities that are also submitting Protests today, including West Mayfield Borough, White Township, and Patterson Township (collectively, Municipal Protestants”), each claim an ownership interest in the System.

4. Municipal Protestants have not consented and do not consent to sale of the System or the invalid and incomplete Asset Purchase Agreement (“APA”) attached to the Application, or the use of the Commission’s Section 1329 process.

5. On February 17, 2023, Municipal Protestants jointly filed a Complaint with the Beaver County Court of Common Pleas against Beaver Falls and Aqua WW seeking, *inter alia*, to enforce their ownership rights in the System, declare the APA void, and enjoin the sale of the System to Aqua WW. The Complaint is attached hereto as **Exhibit A**. The Complaint proceeding will be referred to as the Municipal Complaint.¹ The Complaint raises the following claims: one count of Breach of Contract Implied in Fact, Breach of Contract Implied at Law, Declaratory Judgment Pursuant to the Pennsylvania Declaratory Judgments Act, Constructive Trust, Unjust Enrichment, and Application for Injunctive Relief.²

6. Since at least the 1930's, Municipal Protestants, along with Beaver Falls, have jointly funded and engaged in the construction, operations, and maintenance of the System. Municipal Complaint at ¶¶ 7-8. In the mid-1930's, Beaver Falls and Municipal Protestants jointly constructed and connected to the System. Municipal Complaint at ¶ 9. Municipal Protestants each agreed to pay and did pay a proportionate share of the costs to construct the System. Municipal Complaint at ¶ 10.

¹ The Beaver County litigation was originally commenced by way of Praecipe for Writ of Summons *filed on September 27, 2022* by Patterson Township, Patterson Heights Borough, West Mayfield Borough, and White Township, Plaintiffs, against City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc., a Pennsylvania public Utility Company, Defendants. On or about December 19, 2022, the Court held a Case Management Conference, at which time the Court issued an order requiring the Plaintiffs to file a Complaint within sixty (60) days.

² Subsequently, on or about March 7, 2023, Defendant Aqua filed Preliminary Objections to Plaintiff's Complaint. On or about March 9, 2023, Defendant City of Beaver Falls filed an Answer and New Matter to Plaintiff's Complaint. On or about March 17, 2023, Plaintiffs filed a Reply to New Matter of Defendant City of Beaver Falls. The Court held a second Case Management Conference on March 17, 2023, at which time the Court entered an order overruling the Defendant's Preliminary Objections with respect to all matters except the issue of Plaintiffs' claim for attorneys' fees which was stricken from the Complaint. The Court ordered Defendant Aqua to file an Answer to the Complaint within twenty (20) days of the Order, which have yet to be filed. The parties are to begin engaging in discovery.

7. Over the course of nearly one hundred years, Municipal Protestants have consistently paid a respective proportionate share of the maintenance, expansions, additions, and operating costs of the System.

8. Neither Beaver Falls nor Aqua notified or sought consent or approval from any of the Municipal Protestants prior to agreeing to the sale of the System.

9. Municipal Protestants have *not* entered into contracts with Aqua regarding the sale of the System or service proposed to be provided by Aqua if the System is sold to Aqua.

10. To date, despite filing preliminary objections to the Municipal Complaint, it does not appear from the Commission's public docket that Aqua WW has made the Commission aware of the Municipal Complaint.

11. The Commission should reject the Application because Aqua WW has failed to attach documents to the Application that the Commission requires for acceptance of a Section 1329 Application as complete. Namely, Aqua WW has admitted that it has not attached service contracts between Beaver Falls and the Municipal Protestants that Aqua WW seeks to assume. Application at ¶ 25 (“the Company is submitting with this Application forms of pro-forma Wastewater Service Agreements which the Company will negotiate and enter into with the Contributing Municipalities to be executed upon Closing which will terminate and replace all prior agreements for the conveyance and treatment of wastewater. The pro forma agreements are meant to standardize wastewater conveyance and treatment service to each of the Contributing Municipalities, including the Contributing Municipalities which do not have a conveyance and treatment agreement that could be located.”). Instead, Aqua WW has attached as Exhibit F9 to the Application, a “pro forma” contract Aqua WW admits Municipal Protestants have not executed.

See Application at ¶ 25. Municipal Protestants do not consent to Aqua WW's Exhibit F9 pro forma contract.

12. The Commission's Orders implementing Section 1329 require certain information and documents listed in the Commission's Application Checklist to be submitted with an application for the application to be found complete, including: "a copy of all municipal and affiliate contracts to be assumed by buyer as part of the acquisition and a list and annual dollar value of other contracts." Implementation of Section 1329 of the Public Utility Code, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered Feb. 28, 2019), App. A at 25 ("Application Checklist"). As discussed above, Aqua WW admits it has failed to submit all such contracts. Thus, the Commission should not accept the Application as complete per the requirements the Commission has set forth in its Implementation Orders.³ Accepting the Application as complete forces parties into an extremely accelerated, time consuming, and costly litigation schedule when in fact the application is neither ripe nor complete. Obtaining necessary contracts is not likely under prevailing circumstances. Moreover, Aqua WW's hopes or speculation of somehow getting requisite and mandated contracts in place is no substitute for compliance with filing requirements. The Municipal Protestants and their citizens should not have to face litigation before this Commission and absorb the costs thereof based upon what amounts to Aqua WW's wishful thinking. The Commission's implementation of Section 1329 was meant to prevent this kind of gamesmanship which violates due process and promotes unnecessary legal expense and unnecessary expenditure of resources and time of the Commission.

³ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543139 (Tentative Implementation Order entered Jul. 21, 2016) (Final Implementation Order entered October 27, 2016); Tentative Supplemental Implementation Order entered September 20, 2018); (Final Supplemental Implementation Order entered February 28, 2019).

13. The Commission should also reject the Application as ineligible for Section 1329 procedures because Municipal Protestants, who are part of the “selling utility” do not agree to use of those procedures as the statute requires.

14. Specifically, Section 1329 requires consent of both the buyer and “selling utility” to use the Section 1329 process. 66 Pa. C.S. Section 1329(a). Selling utility is defined as: “A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller.” *Id.* at 1329(f)(2)(emphasis added). Here, Municipal Protestants are municipal corporations with an ownership interest in the “wastewater company.” Municipal Protestants, however, have not consented and do not consent to the use of the Section 1329 process. Thus, the Application should be rejected.

15. Moreover, as the Municipal Protestants do not consent to the sale of the System nor the use of the Section 1329 process, Municipal Protestants have not executed the APA that Aqua WW attached to the Application. However, the Commission’s Application Checklist expressly requires that Aqua WW “Provide a copy of the APA that is signed by all parties.” Application Checklist at 24(a). Because the APA is not signed by the Municipal Protestants, who have ownership interests in the System being sold, the Application is incomplete per the Commission’s Application Checklist and cannot be accepted.⁴

16. In the alternative, the Commission should reject the Application because it seeks the Commission to make hypothetical rulings on a sale where the purported seller does not have legal right to sell the System and Municipal Protestants have sought the Beaver County Court of Common Pleas to enforce ownership rights, including but not limited to requesting the court

⁴ *Id.*

declare the APA void. *See* Municipal Complaint at ¶ 42. As the Commission has previously recognized, “Time should not be spent litigating hypothetical scenarios that are not yet ripe for review.” *NRG et al v. Duquesne Light Co.*, Docket No. C-2013-2390562 (Order entered May 7, 2015) (citing *Application of Exelon Corporation et al. for Certificates of Public Convenience*, 2009 WL 1912486, Docket Nos. A-2009-2093057 et al. (Order entered Jun. 25, 2009).

17. In the yet further alternative, the Commission should deny the Application because the Proposed Transaction as currently presented does not provide affirmative public benefits.

18. Longstanding Pennsylvania law requires an applicant seeking to acquire utility facilities to demonstrate that the proposed transaction will "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." *City of York v. PUC*, 295 A.2d 825, 828 (Pa. 1972).

19. As currently structured and proposed, Aqua’s proposed acquisition of the System fails to provide affirmative benefits to the public. Accordingly, the Application should be denied.

20. Protestant reserves its rights upon further review of the Application and supporting documents to raise additional issues in this proceeding through pre-filed testimony.

II. STANDING

21. Patterson Heights is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania.

22. Patterson Heights is currently a customer of the System that Aqua seeks the Commission’s permission to acquire through this proceeding.

23. Patterson Heights claims an ownership interest in the System that Aqua seeks the Commission’s permission to acquire through this proceeding.

24. Protestant receives bulk service from the System for its approximately 273 retail ratepayers.

25. Pursuant to 52 Pa. Code § 5.72, Protestant has standing to participate in this proceeding because Protestant has “[a]n interest which may be directly affected and which is not adequately represented by existing participants” and Protestant “may be bound by the action of the Commission in the proceeding.” *Id.*

26. Specifically, because Protestant claims property rights in the System and is a customer of the System, the PUC’s actions regarding Aqua’s proposed acquisition of the System will directly impact Protestant’s unique rights as a customer and owner.

27. Protestant also has standing to participate in this proceeding because it has an “interest of such nature that participation” “may be in the public interest.”

28. Protestant’s participation is in the public interest because Protestant can protect the interests of over 273 ratepayers that Aqua proposes to serve via bulk service to Protestant.

29. Protestant clearly meets the Commission’s standards for participation in this proceeding.

III. CONTACT INFORMATION

30. The name and contact information for Patterson Heights are:

Patterson Heights Borough
600 7th Avenue
Beaver Falls
Beaver County, Pennsylvania 15010

31. The names and contact information for Patterson Heights’s attorneys for receiving service of all documents in this proceeding are:

Whitney E. Snyder, Esquire
Thomas J. Sniscak, Esquire
Phillip D. Demanchick Jr., Esquire

Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
Phone: 717-236-1300
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32. Protestant will be participating further in this proceeding jointly with West Mayfield Borough, White Township and Patterson Township.

WHEREFORE, Patterson Heights Borough respectfully requests the Public Utility Commission grant this Protest and reject or refuse to accept the Application or hold it in abeyance, or in the alternative, grant this Protest and deny the Application.

Respectfully submitted,

/s/ Whitney E. Snyder

Whitney E. Snyder, Esquire
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Date: April 5, 2023

Counsel for Patterson Heights Borough

Exhibit A

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
PENNSYLVANIA

PATTERSON TOWNSHIP, PATTERSON
HEIGHTS BOROUGH, WEST MAYFIELD
BOROUGH, and WHITE TOWNSHIP,

Plaintiffs,

vs.

CITY OF BEAVER FALLS and
AQUA PENNSYLVANIA WASTEWATER, INC.,
a Pennsylvania Public Utility Company,

Defendants.

CIVIL DIVISION - LAW

No. 11219 of 2022

TYPE OF PLEADING:

Complaint

FILED ON BEHALF OF:

Plaintiffs

COUNSEL OF RECORD:

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FILED OR ISSUED
2023 FEB 17 P 1:00
MICHAEL ROSSI
PROTHONOTARY
BEAVER COUNTY, PA.

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
P E N N S Y L V A N I A

PATTERSON TOWNSHIP, PATTERSON : CIVIL DIVISION - LAW
HEIGHTS BOROUGH, WEST MAYFIELD :
BOROUGH, and WHITE TOWNSHIP, : No. 11219 of 2022
Plaintiffs, :
vs. :
CITY OF BEAVER FALLS and :
AQUA PENNSYLVANIA :
WASTEWATER, INC. a Pennsylvania :
Public Utility Company, :
Defendants. :

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claim set forth in the following pages, you must take action within twenty (20) days after this pleading and notice are served by entering a written appearance personally or by attorney to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and judgment may be entered against you by the Court without further notice for any money claimed in the pleading or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service of the Beaver County Bar Association
788 Turnpike Street
Beaver, PA 15009
724-728-4888
<http://bcba-pa.org/lawyer-referral-service>

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY
P E N N S Y L V A N I A

PATTERSON TOWNSHIP, PATTERSON HEIGHTS BOROUGH, WEST MAYFIELD BOROUGH, and WHITE TOWNSHIP,	:	CIVIL DIVISION-LAW
	:	No. 11219 of 2022
Plaintiffs,	:	
	:	
vs.	:	
	:	
CITY OF BEAVER FALLS and AQUA PENNSYLVANIA WASTEWATER, INC. a Pennsylvania Public Utility Company,	:	
	:	
Defendants.	:	

COMPLAINT

AND NOW COMES, the above-named Plaintiffs, by their undersigned attorneys, and for their causes of action, aver, complain and say:

1. The Plaintiff, Patterson Township (hereinafter "Patterson"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania with offices located at 1600 19th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

2. The Plaintiff, Patterson Heights Borough (hereinafter "Patterson Heights"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania with offices located at 600 7th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

3. The Plaintiff, White Township (hereinafter "White"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of

Pennsylvania with offices located at 2511 13th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

4. The Plaintiff, West Mayfield Borough (hereinafter "West Mayfield"), is a municipal entity organized and existing under the laws of the statutes of the Commonwealth of Pennsylvania with offices located at 4609 W. 8th Avenue, Beaver Falls, Beaver County, Pennsylvania 15010.

5. The Defendant, The City of Beaver Falls (hereinafter "Beaver Falls"), is a municipal entity organized and existing under the law of the statutes of the Commonwealth of Pennsylvania with offices located at 715 15th Street, Beaver Falls, Beaver County, Pennsylvania 15010.

6. The Defendant, Aqua Pennsylvania Wastewater, Inc. (hereinafter "Aqua") is a Pennsylvania Public Utility Company with a registered address at 762 West Lancaster Avenue, Bryn Mawr, Montgomery County, Pennsylvania 19010.

7. The four (4) Plaintiffs, along with Beaver Falls, have, since at least the 1930's, jointly funded the construction and operation of a sewage treatment plant within the City of Beaver Falls.

8. That it is believed and therefore averred that beginning in at least the mid 1930's, Beaver Falls, Patterson, Patterson Heights, West Mayfield, and White (hereinafter referred to as "The Joint Sewer Users"), have engaged in the joint construction, operation and maintenance of the sewer plant located within the City of Beaver Falls.

9. It is believed and therefore averred that in the mid 1930's, Patterson, Patterson Heights, West Mayfield, White, and Beaver Falls jointly constructed and

thereafter connected to a sewer plant within the City of Beaver Falls, constructed as a Federal Work Relief Program Project.

10. That it is believed and therefor averred that each of the Plaintiffs agreed to and paid a proportionate share of the cost of the construction of the sewer plant.

11. It is believed and averred that thereafter each of the Joint Sewer Users paid for construction, maintenance, expansion, and all costs of the operation of the plant based upon their respective proportionate share of the volume of wastewater treated.

12. It is believed and therefore averred that in the 1960's, the Joint Sewer Users improved and enlarged the sewer plant, including the acquisition of additional property, with all costs of improvements, enlargements, and property acquisition allocated between the five (5) municipalities based on a proportionate share of the volume of wastewater treated.

13. That at the time of the improvement and enlargement that occurred in the 1960's, the allocation of costs are believed to have been as follows:

Beaver Falls	67%
West Mayfield	12%
White	7%
Patterson Heights	3.5%
Patterson Township	10.5%

14. That over a course of years, the Joint Sewer Users met on a regular basis, reviewed and adopted budgets, and reviewed and approved plant operations.

15. That over the course of nearly one hundred (100) years, the Joint Sewer Users have consistently paid, based upon their respective proportionate share of wastewater treated, for all maintenance, expansions, additions, and operating costs of

the wastewater treatment plant located in the City of Beaver Falls and relied upon by all users for the treatment of wastewater.

16. That the Joint Sewer Users have expended significant sums of money for the construction, maintenance, and operation of the sewer treatment plant located in the City of Beaver Falls.

17. That sometime in or about 2020, Beaver Falls, without consulting any of the Plaintiffs, entered into and obtained bids for the sale of the wastewater treatment plant located in the City of Beaver Falls, as well as Beaver Falls' own wastewater treatment lines and facilities.

18. That in or about September 2021, Beaver Falls adopted an Ordinance, Ordinance No. 4049, approving the tentative sale of the wastewater treatment plant, as well as its own wastewater treatment lines and systems to Aqua.

19. That at no time did Beaver Falls seek approval from any of the Plaintiffs for the sale of the wastewater treatment facility.

20. That at no time has Beaver Falls recognized or acknowledged the value of the investment made by the Plaintiffs in the construction, maintenance, and operation of the wastewater treatment facility.

21. That Beaver Falls is being unjustly enriched to the great expense of the Plaintiffs and their residents from the sale of the wastewater treatment plant paid for in part by the Plaintiffs.

COUNT I
Breach of Contract Implied in Fact
Plaintiffs v City of Beaver Falls

22. Plaintiffs incorporate Paragraphs One (1) through Twenty-One (21) as if set forth at full herein.

23. That Beaver Falls induced the Plaintiffs to continue their involvement as Joint Sewer Users for nearly one hundred (100) years, in the construction, maintenance, expansion, and all costs of the operation of the wastewater treatment facility located in the City of Beaver Falls based upon the implication that they were joint owners/had an ownership interest in the sewer plant.

24. That where the parties' assent to the formation of a contract, but instead of being expressed in words, the intention to incur an obligation is inferred from the conduct of the parties in light of the surrounding circumstances, a contract implied in fact exists. *Crawford's Auto Ctr., Inc. v. Com., Pennsylvania State Police*, 655 A.2d 1064, 1066 (Pa. Cmwlth. 1995)

25. That the Joint Sewer Users, including Beaver Falls, by their conduct, including their course of dealing and course of performance, assented to the formation of a contract, such that each of them were jointly responsible for their proportionate cost of the wastewater facility and also jointly entitled to any profits from it or any proceeds from any sale.

26. That Beaver Falls breached the contract implied in fact with the Plaintiffs by negotiating and approving the tentative sale of the wastewater treatment plant, as well as its own wastewater treatment lines and systems to Aqua without notice or consent of the other Joint Sewer Users, the Plaintiffs herein.

27. That Plaintiffs seek damages, in an amount equal to their proportionate share in the wastewater treatment plant, as Joint Sewer Users, from the purchase price of the plant, plus interest, penalties, costs and attorney's fees as may be applicable under the law.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as the Honorable Court may deem just and equitable.

COUNT II
Breach of Contract Implied at Law
Plaintiffs vs. City of Beaver Falls

28. Plaintiffs incorporate Paragraphs One (1) through Twenty-Seven (27) as if set forth at full herein.

29. That from as early as the mid 1930's the Plaintiffs have each paid its proportionate share of the cost of construction, expansion, maintenance and operation of the wastewater treatment plant in the City of Beaver Falls to the great benefit of Beaver Falls and its residents.

30. That Beaver Falls could not have paid for the construction, expansion, maintenance and operation of the wastewater treatment facility without the participation of Plaintiffs.

31. That Beaver Falls relied upon and the contributions of the Plaintiffs to its great benefit and use.

32. That a contract implied at law imposes a duty, despite the absence of either an express or implied agreement, when one party receives an unjust enrichment at the expense of another party. *Highland Sewer and Water Auth. v. Forest Hills Mun. Auth.*, 797 A.2d 385, 391 (Pa. Cmnlth. 2002)

33. That Beaver Falls by its acts and omissions induced the Plaintiffs to continue their involvement as Joint Sewer Users for nearly one hundred (100) years, in the construction, maintenance, expansion, and all costs of the operation of the wastewater treatment facility located in the City of Beaver Falls based upon the implication that they were joint owners/had an ownership interest in the sewer plant.

34. That Beaver Falls is estopped to deny that a contract between the Joint Sewer Users did not exist as a matter of law because to do so would confer an unjust enrichment upon the City of Beaver Falls and penalize the Plaintiffs in a manner which is inequitable.

35. That Plaintiffs seeks damages, in an amount equal to their proportionate share in the wastewater treatment plant, as Joint Sewer Users, from the purchase price of the plant, plus interest, penalties, costs and attorney's fees as may be applicable under the law.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration, together with court costs, interest and such other and further relief as the Honorable Court may deem just and equitable.

COUNT III
Declaratory Judgment Pursuant to the Pennsylvania Declaratory Judgments Act
(42 Pa.C.S.A. §§ 7531, et seq.)
Plaintiffs vs. City of Beaver Falls and AQUA Pennsylvania Wastewater, Inc.

36. Plaintiffs incorporates Paragraphs one (1) through Thirty-Five (35) as if set forth at full herein.

37. That this action is filed, in part, pursuant to the Declaratory Judgment Act, 42 Pa.C.S.A. § 7531, et seq., to determine an actual and justiciable controversy regarding the parties' rights as Joint Sewer Users.

38. That Section 7541(a) of the Pennsylvania Declaratory Judgments Act states that "[i]ts purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered." 42 Pa.C.S.A. § 7541(a).

39. That this Court has the power to "declare rights, status, and other legal relations, whether or not further relief is or could be claimed." 42 Pa.C.S.A. § 7532.

40. An actual and justiciable controversy exists between these parties regarding ownership interests in the wastewater treatment facility located in Beaver Falls based upon the parties' participation in the construction, maintenance, expansion, and all costs of the operation of the wastewater treatment facility.

41. The Court can resolve the controversy by issuing a declaration of the rights of the parties regarding the wastewater treatment facility located in Beaver Falls and the Plaintiffs' ownership interests therein.

42. Alternatively, the Court can declare the purchase agreement between Beaver Falls and Aqua null and void.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls as follows:

- a. Declaring that Plaintiffs have an ownership interest in the wastewater treatment facility in proportion to their allocation of costs as follows:

West Mayfield	12%
White	7%
Patterson Heights	3.5%
Patterson Township	10.5%

- b. Declaring that Plaintiffs are entitled to damages in the form of compensation from the purchase price of the wastewater treatment facility in the proportions listed above;
- c. Awarding to Plaintiffs attorneys' fees, all of its costs of suit and such other relief, in law and equity, as this Honorable Court deems just and appropriate or as is otherwise permitted by law.
- d. Alternatively, declaring the purchase agreement between the City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc. null and void.

COUNT IV
Constructive Trust
Plaintiffs vs. City of Beaver Falls

43. Plaintiffs incorporate Paragraphs One (1) through Forty-Two (42) of this Complaint as if set forth in full herein.

44. That by accepting payment from the Plaintiffs, both for any original construction of the sewage infrastructure and subsequent improvements, Beaver Falls created a confidential and dependent relationship with the Plaintiffs.

45. Pursuant to said relationship, Beaver Falls received the benefit of the

payment by each of the Plaintiffs in regard to the property titled solely in the City of Beaver Falls.

46. That Beaver Falls has been enriched by the contributions of the Plaintiffs to the original construction and all subsequent improvements and maintenance that they have paid for in their proportionate share.

47. That by their acceptance of the contributions of the Plaintiffs over these many years, a confidential relationship arose in fact between Beaver Falls and the Plaintiffs.

48. That with the sale of the wastewater infrastructure, including treatment lines and facilities of Beaver Falls to Aqua, Beaver Falls is reaping financial benefits based in part on the contributions of the Plaintiffs.

49. That Beaver Falls is being unjustly enriched as to at least a portion of the proceeds from the sale of the infrastructure to Aqua.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration, together with the court costs, interest, and such other and further relief as the Honorable Court may deem just and equitable.

COUNT V
Unjust Enrichment
Plaintiffs v. City of Beaver Falls

50. Plaintiffs incorporate and make a part hereof Paragraphs One (1) through Forty-Nine (49) of this Complaint as if set forth in full herein.

51. That Beaver Falls will reap benefits from the sale of the wastewater

infrastructure, that are, at least in part, the result of the contributions of the Plaintiffs.

52. That retention of these benefits without compensating Plaintiffs for their proportionate share would be inequitable.

53. That the acceptance of the contributions of the Plaintiffs over all the years and then the subsequent sale of the same to Aqua without compensation to the Plaintiffs results in an unjust enrichment on the part of Beaver Falls.

WHEREFORE, Plaintiffs request judgment for damages against Defendant City of Beaver Falls in an amount in excess of the jurisdictional limits of compulsory arbitration together with court costs, interest, and such other and further relief as the Honorable Court may deem just and equitable.

COUNT VI
Application for Injunctive Relief
Plaintiffs vs. City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc.

54. Plaintiff incorporates Paragraphs One (1) through Fifty-Three (53) as if set forth at full herein.

55. That the Defendants should be enjoined from the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities located in the City of Beaver Falls, as a result of their failure to communicate and negotiate with the Plaintiffs.

56. Alternatively, that Beaver Falls should be enjoined from the proceeds of the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities located in the City of Beaver Falls, as a result of its failure to communication with the Plaintiffs regarding the sale.

57. That the Defendants should be enjoined on the following bases:
- a. The actions of the Defendants will cause great irreparable and immediate harm to the Plaintiffs as Plaintiffs will lose valuable consideration, contractual, and property rights from the sale;
 - b. The Defendants have failed and refused to acknowledge Plaintiffs' rights in and to the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities, the subject of the herein Complaint;
 - c. The Defendants' actions are contrary to law, public welfare, and prejudicial to the interests of the Plaintiffs, their residents, and the public;
 - d. There is substantial likelihood of success on the merits of the Plaintiffs' causes of actions as set forth herein;
 - e. The Defendants' actions threaten a significant monetary loss to the Plaintiffs such that when said sale is completed, damages suffered by Plaintiffs will be incapable of compensation;
 - f. The Defendants' actions threaten possible crippling wastewater/sewer charges to hundreds of customers; and
 - g. The Defendants' actions would otherwise go unchallenged.
58. That relief is necessary to prevent immediate injury to the Plaintiffs and their property.
59. That the anticipated actions of the Defendants constitute irreparable harm as a matter of law.
60. That the Plaintiffs' rights to relief are clear and free from doubt and the activity sought to be restrained, the sale of the wastewater treatment plant, wastewater

treatment lines, and wastewater treatment facilities, is actionable.

61. That greater injury would be caused to the Plaintiffs, their residents, and the public from the Court refusing an injunction than granting an injunction.

62. That the Plaintiffs have a direct, immediate, and substantial interest in the action, the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities, to be enjoined.

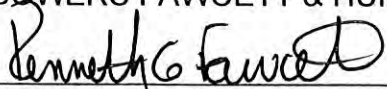
63. That the unfettered continuation of the Defendants' sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities and the resultant damage constitutes justification for equitable intervention by the Court.

64. That Plaintiffs' remedy at law is inadequate.

65. That the entry of an injunction will maintain the status quo of the parties.

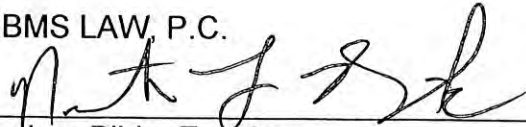
WHEREFORE, Plaintiffs respectfully request this Honorable Court issue an injunction, restraining the Defendants from allowing to proceed in the continuation of the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities, or in the alternative, enjoin the Defendants, specifically Beaver Falls, from expending or distributing any proceeds received from the sale of the wastewater treatment plant, wastewater treatment lines, and wastewater treatment facilities to Aqua Pennsylvania Wastewater, Inc.

Respectfully Submitted,
BOWERS FAWCETT & HURST, LLC



Kenneth G. Fawcett, Esquire

NBMS LAW, P.C.

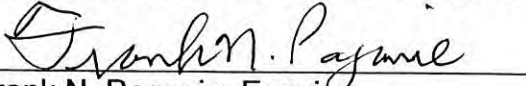


Nathan Bible, Esquire



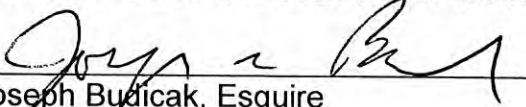
Max Schmierer, Esquire

MCMILLEN, URICK, TOCCI & JONES



Frank N. Paganie, Esquire

LAW OFFICES OF JOSEPH BUDICAK

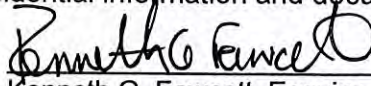


Joseph Budicak, Esquire
Attorney for Plaintiff

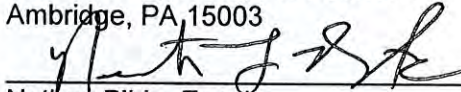
CERTIFICATE OF COMPLIANCE

I, KENNETH G. FAWCETT, ESQUIRE, NATHAN BIBLE, ESQUIRE, MAX SCHMIERER, ESQUIRE, FRANK N. PAGANIE, ESQUIRE, AND JOSEPH BUDICAK, ESQUIRE, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than nonconfidential information and documents.

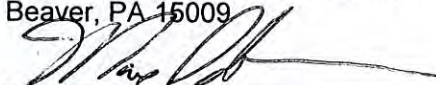
Date: 2-16-2023


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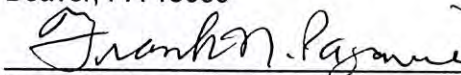
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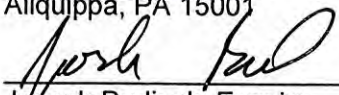
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Plaintiff's Complaint was served upon the following via USPS First Class Mail and via email on this 17 day of February, 2023:

Samuel H. Simon, Esquire
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Erik M. Bergenthal, Esquire
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Vincent A. Tucceri, Esquire
CharLee Rosini, Esquire
Gaitens, Tucceri & Nicholas, PC
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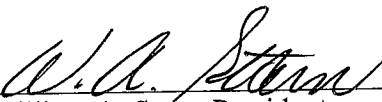
BOWERS FAWCETT & HURST, LLC



Kenneth G. Fawcett, Esquire
Attorney for Plaintiff

VERIFICATION

I, William A. Starn, on behalf of Patterson Heights Borough, hereby state that the facts set forth in the foregoing Protest dated April 5, 2023 are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing in this matter. This verification is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.



William A. Starn, President

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

BY ELECTRONIC MAIL ONLY

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/s/ Whitney E. Snyder
Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick Jr.

Dated this 5th day of April, 2023