
Michael W. Hassell

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File #: 196374

April 11, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 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**

Dear Secretary Chiavetta:

By this Letter, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) responds to the Letter Request of West Mayfield Borough, White Township, Patterson Township and Patterson Heights Borough (collectively the “Municipal Protestants”)¹ dated April 5, 2023, which asks the Pennsylvania Public Utility Commission (“Commission”) to reject the above-captioned Application to acquire the wastewater collection and treatment system (“System”) owned by the City of Beaver Falls (“Beaver Falls” or “Seller”) as incomplete.² In the alternative, the Municipal Protestants request that the Application should be held in abeyance until “the required, complete documentation is submitted.” For the reasons explained below, the Municipal Protestants requests should be denied.

The Municipal Protestants assert that the Application is incomplete for three reasons. First, they claim that the “Municipal Protestants have ownership rights in the wastewater system Aqua WW

¹ Each Municipal Protestant filed and served a Protest to the Application on April 5, 2023.

² The Letter Request included in a heading a “Notice to Plead,” which sought to require Aqua to submit a response to the Letter Request on or before April 7, 2023. The Letter Request based this deadline upon “[t]he current deadline for the Commission’s review...” Aqua filed a letter requesting that the Commission further extend the deadline for its review from April 7, 2023, to April 21, 2023, on April 5, 2023. On April 6, 2023, the Commission issued a Secretarial Letter that granted Aqua’s request, and further extended the time for review from April 7, 2023, to April 21, 2023.

seeks to acquire and have not consented to sale of the system or use of the Section 1329 process.”³ Second, they claim that “[t]he Asset Purchase Agreement (“APA”) attached to the Application is not signed by all parties as the Commission’s Application Checklist requires because Municipal Protestants have not executed the APA.”⁴ Third, they claim that the “[c]ontracts with municipalities that Aqua WW seeks to assume are not attached to the Application as the Commission’s Application Checklist requires.”⁵ None of these reasons are accurate.

The Municipal Protestants’ assertion that they have “ownership rights” in the System is betrayed by their own submission. Exhibit A to the Letter Request does not include a single document setting forth the Municipal Protestants’ ownership rights in the System. Instead, it only avers the existence of “implied contracts” and/or a “constructive trust” related to their claimed interests in the System. Under these paltry averments, the Municipal Protestants ask the Commission to accept an argument that would permit any customer that has paid for utility service to assert they have an ownership interest in assets to be transferred/acquired pursuant to Sections 1102(a)(3) and 1329 of the Public Utility Code, 66 Pa.C.S. §§ 1102(a)(3) and 1329, and object to such transfer/acquisition on this basis. This would be an absurd result.

Contrary to their assertion that the “Municipal Protestants are not seeking resolution of a factual dispute,”⁶ the Municipal Protestants are in fact asking the Commission’s staff to resolve a factual dispute. The Municipal Protestants claim, without documentary proof, that they have an ownership interest in the System;⁷ the City and Aqua have disputed this claim.⁸ The Municipal Protestants base their assertions that the Application is incomplete upon this disputed—and unfounded—claim of ownership. Critically, these assertions are also contradicted by the Agreement entered into between Patterson Township and Beaver Falls dated April 28, 1978, which explicitly states in paragraph 12 that Patterson Township (i.e., one of the Municipal Protestants) has no ownership interests in the System.⁹ By asking the Commission to find the Application is

³ Letter Request at 2.

⁴ Letter Request at 2.

⁵ Letter Request at 2.

⁶ Letter Request at 4.

⁷ Letter Request at 3 (citing the Complaint filed by the Municipal Protestants in the Court of Common Pleas of Beaver County, which was attached to the Letter Request as Exhibit A).

⁸ Patterson Township, Patterson Heights Borough, West Mayfield Borough, and White Township v. City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc., Civil Division – Law No. 11219 of 2022, City of Beaver Falls Answer and New Matter (Mar. 9, 2023) attached to this letter as Attachment 1; Patterson Township, Patterson Heights Borough, West Mayfield Borough, and White Township v. City of Beaver Falls and Aqua Pennsylvania Wastewater, Inc., Civil Division – Law No. 11219 of 2022, Aqua Answer and New Matter (Apr. 6, 2023) attached to this letter as Attachment 2; *see also* Letter Request at 2, n.4 (conceding Aqua has filed Preliminary Objections to the Complaint attached to the Letter Request as Exhibit A).

⁹ “It is agreed that [Patterson Township] does not have, nor by the terms of this agreement, does it secure, any ownership in the sanitary sewer system or sewage disposal plant of the [City of Beaver Falls], and its rights thereto are as herein defined, that is the right to tap into said system and to make use thereof in accordance with the terms hereof.” A copy of this agreement is included in Attachment 1 to this letter, and was also included as Exhibit F1 to the Application. While there are no other applicable identical agreements, Exhibit F3 to the Application (the Agreement, dated November 1998, between Big Beaver Municipal Authority and Beaver Falls) and Exhibit F4 to the

incomplete because they have not consented to the acquisition or signed the APA, the Municipal Protestants are asking the Commission to find that they have an ownership interest in the System as a matter of fact and law. The Commission should deny this request. In the alternative, and to the extent that the Commission deems this to be a factual dispute that can be resolved by the Commission, the Municipal Protestants should be required to raise it an appropriate pleading once the docket is active.

Moreover, the Municipal Protestants' assertion that Aqua "failed to disclose to the Commission" that the Municipal Protestants claim an interest in the System is false.¹⁰ Indeed, Schedule 4.05 of the APA lists each consent, waiver, authorization or approval of any Governmental Authority required in connection with the Seller's execution, delivery or performance under the APA; consent from each of the Municipal Protestants is listed "[i]f required."¹¹ The APA further discloses the pending litigation before the Court of Common Pleas of Beaver County.¹² The Application disclosed the existence of the Municipal Protestants' disputed—and unfounded—claims to the Commission.

The Municipal Protestants' claim that the Application is incomplete because Exhibit F9 is a "pro forma" contract that is "not a 'contract to be assumed by the buyer'" is similarly misrepresentative.¹³ As a part of the Application, Aqua included a contract between Beaver Falls and the Township of Patterson.¹⁴ In addition, Aqua identified that it "could not locate any conveyance and treatment agreements for Patterson Heights Borough, West Mayfield Borough, and White Township,"¹⁵ and the Municipal Protestants concede that no such agreements exist.¹⁶

Based on these facts, Aqua specifically included pro forma agreements meant to standardize wastewater conveyance and treatment service to each of the Contributing Municipalities,¹⁷ including the Municipal Protestants.¹⁸ These standardized agreements were designed to be offered to both Contributing Municipalities that have existing contracts with the City of Beaver Falls and to Contributing Municipalities that do not have existing contracts with the City of Beaver Falls. Aqua also requested that the Commission modify the existing contracts identified in paragraph 25 of the Application "which will be assigned to Aqua at closing, if not replaced by the pro-forma agreement for wastewater conveyance and treatment" pursuant to Section 508 of the Public Utility

Application (the Agreement, dated January 9, 2003, between North Sewickley Township Sewer Authority and Beaver Falls) also clearly state that the treatment plant is owned by Beaver Falls.

¹⁰ Letter Request at 2.

¹¹ Application, Exhibit B (APA, Schedule 4.05).

¹² Application, Exhibit B (APA, Schedules 4.15 (disclosing Assigned Contracts), 4.16 (disclosing Seller Litigation) and 5.11 (disclosing Buyer Litigation)).

¹³ See Letter Request at 3-4.

¹⁴ Application, Exhibit F1.

¹⁵ Application ¶ 25, n.5. Aqua further notes that it included the requests for any such contracts made to each of these municipalities as Exhibits F6, F7 and F8 to the Application.

¹⁶ See Letter Request, Exhibit A (failing to attach or aver any written contracts as between Beaver Falls and the Municipal Protestants exists).

¹⁷ "Contributing Municipalities" is defined in paragraph 3 of the Application.

¹⁸ Application ¶ 25; Application, Exhibit F9.

Code, 66 Pa.C.S. § 508.¹⁹ Aqua identified its proposed modifications and explained that its requested modifications would be limited to setting rates to be charged by Aqua during the period between Closing and the earlier of (i) termination of the assumed agreements or (ii) renegotiation of the assumed agreements in accordance with the pro forma agreements.²⁰ Furthermore, and with specific respect to the municipalities that have no existing agreements (i.e., Patterson Heights Borough, West Mayfield Borough, and White Township), Aqua explained that:

78. For those Contributing Municipalities that have no existing bulk service agreements, they will be served by Aqua either pursuant to negotiated bulk service agreements or pursuant to Aqua's tariffed bulk service rates. In the event that service is provided pursuant to default tariffed bulk service rates, future changes to those rates will be set by the Commission in the context of Aqua's base rate proceedings.

79. The foregoing provisions are just and reasonable because they maintain rates that are revenue neutral in comparison to rates that the Contributing Municipalities are charged by the City. Further, they remove uncertainty as to the rates to be charged to bulk wastewater customers who do not have an existing contract with the City or that do not negotiate a new agreement with Aqua to be effective at Closing.²¹

Aqua's requests specifically contemplated and addressed the fact that written agreements do not exist for certain municipalities, such as members of the Municipal Protestants. Those municipalities either can a) enter into a new service agreement with Aqua, or b) continue service at the existing rates being charged to them by Beaver Falls which will be adopted into Aqua's tariff and adjusted in future base rate case proceedings. On the other hand, the Municipal Protestants' request asks the Commission to hold Aqua responsible for an impossibility; it is impossible to include written agreements in the Application that the Municipal Protestants have admitted do not exist.

For these reasons, the Commission should deny the Municipal Protestants' request that the Application be rejected as incomplete. Aqua will continue to prepare and respond to the Commission's requests for additional information related to the Application during the review period established by the Commission.²² Therefore, the Municipal Protestants' alternative request that the Application be held in abeyance should be denied as unnecessary.

¹⁹ Application ¶ 72.

²⁰ Application ¶¶ 73-77.

²¹ Application ¶¶ 78-79 (emphasis added).

²² That review period has been extended by the Commission to April 21, 2023.

Rosemary Chiavetta, Secretary
April 11, 2023
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Respectfully submitted,

A handwritten signature in cursive script that reads "Michael W. Hassell".

Michael W. Hassell

MWH/cls

cc: Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL

Carrie B. Wright, Esquire
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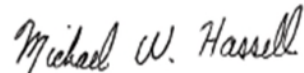
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Patterson Heights Borough, Patterson
Township, West Mayfield Borough, White
Township*

Date: April 11, 2023



Michael W. Hassell

ATTACHMENT 1

GAITENS, TUCCERI & NICHOLAS, P.C.
ATTORNEYS AT LAW

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PITTSBURGH, PENNSYLVANIA 15219

(412) 391-6920
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CHARLEE ROSINI, ESQUIRE
crosini@gtnlaw.com

March 9, 2023

VIA HAND DELIVERY

The Honorable Judge James J. Ross
Beaver County Courthouse
810 Third Street
Beaver, PA 15009

In Re: Patterson Township, et al. v. City of Beaver Falls, et al.
Docket No.: 2022-11219

Dear Judge Ross:

Kindly find enclosed the City of Beaver Falls' Answer and New Matter to Plaintiffs' Complaint filed with the Beaver County Prothonotary's Office this afternoon.

Respectfully submitted,



CharLee Rosini

CLR/ahr

Enclosures

cc: Kenneth G. Fawcett, Esquire *(via mail)*
Nathan Bible, Esquire *(via mail)*
Max Schmierer, Esquire *(via mail)*
Frank Paganie, Esquire *(via mail)*
Joseph Budicak, Esquire *(via mail)*
Samuel H. Simon, Esquire *(via mail)*
Matthew J. Lautman, Esquire *(via mail)*
Erik M. Bergenthal, Esquire *(via mail)*

**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
No. 2022-11219

**ANSWER AND NEW MATTER OF
DEFENDANT THE CITY OF
BEAVER FALLS TO PLAINTIFFS'
COMPLAINT**

Filed on Behalf of:
City of Beaver Falls, Defendant

Counsel of Record for this Party:

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**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
No. 2022-11219

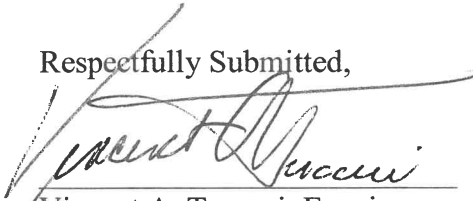
**ANSWER AND NEW MATTER OF
DEFENDANT THE CITY OF
BEAVER FALLS TO PLAINTIFFS'
COMPLAINT**

NOTICE TO DEFEND

TO THE PLAINTIFFS:

YOU ARE HEREBY NOTIFIED TO FILE A WRITTEN RESPONSE TO THE ENCLOSED **ANSWER AND NEW MATTER** WITHIN TWENTY (20) DAYS AFTER SERVICE HEREOF OR A DEFAULT JUDGMENT MAY BE ENTERED AGAINST YOU.

Respectfully Submitted,



Vincent A. Tucceri, Esquire
CharLee Rosini, Esquire
Attorneys for Defendant,
City of Beaver Falls

7. Denied as stated. The City admits that since at least the 1930's, it has owned and operated a sewerage treatment plant within the City ("the Plant"), that the Plaintiff municipalities have directed sewage collected within their boundaries to the Plant and that the Plaintiffs have compensated the City for that service in accordance with applicable agreements and/or City Ordinance(s).

8. Denied as stated. The Plant has at all times been owned and operated solely by the City. Over the course of time, municipalities in addition to Plaintiffs have directed sewage flow to the Plant, and, like Plaintiffs, have compensated the City for that service in accordance with applicable agreements and/or City Ordinance(s).

9. Denied as stated. The Plant has at all times been owned and operated solely by the City. See answer to paragraph 7 which is incorporated herein by reference.

10. Denied as stated. The Plant has at all times been owned and operated solely by the City. See answer to paragraph 7 which is incorporated herein by reference. The term "proportionate share" as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response.

11. Denied as stated. The Plant has at all times been owned and operated solely by the City. See answer to paragraph 7 which is incorporated herein by reference. The term "proportionate share" as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response.

12. Denied as stated. The Plant has at all times been owned and operated solely by the City. See answer to paragraph 7 which is incorporated herein by reference. The term "proportionate share" as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response.

13. Denied as stated. The City avers that beginning at least in 1967, the City had Agreements, which (1) incorporated applicable Ordinances governing charges to municipalities that directed wastewater to the Plant, and (2) defined the relationship between the City and the Plaintiffs in a manner fundamentally inconsistent with that now alleged by the Plaintiffs. *See, e.g.*, Agreement dated April 25, 1977 between the City (as the “First Party”) and Patterson Township (as the “Second Party”) that describes with particularity the rights and obligations of the City and Patterson Township with respect to the charges applicable to the Plaintiffs as users of the City’s sewer system, including the Plant. A copy of this Agreement, with the attached applicable Ordinances 1423 and 567 (adopted November 9, 1976) is attached hereto as Exhibit A. It is believed, and is therefore averred, that this form of Agreement was used between the City and each of the Plaintiffs in 1977 (“the 1977 Agreement”). The 1977 Agreement expressly replaced a prior agreement dating from December 1967.

14. Denied as stated. The Plant has at all times been owned and operated solely by the City, which was solely responsible for the adoption of budgets and conducting operations of the Plant.

15. Denied as stated. The Plant has at all times been owned and operated solely by the City. It is admitted that during the course of its ownership and operation by the City, the City made improvements and enlargements to the Plant, but denies the Plaintiffs’ characterization of their contribution to maintenance and improvements of the Plant. The term “proportionate share” as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response. Paragraphs 9 and 10 of the 1977 Agreement provide for the allocation of the costs of addition, enlargement, revision or renovation of the Plant or other parts of the sewage treatment system. Generally, to the extent that the work benefited less than all of the participating

municipalities, the cost of such work would be attributed to, and paid by the municipality or municipalities benefiting from same, based on a formula set forth in Ordinance No. 1423.

16. Denied as stated. It is admitted that over the course of years, the Plaintiffs, as users of the Plant, paid charges to the City as provided by Agreement(s) and/or Ordinances, and that some portion of the amounts paid would have been used for the maintenance and improvements of the Plant. See answer to paragraph 7 which is incorporated herein by reference.

17. Denied as stated. It is admitted only that in or about 2020, the City received four bids for the acquisition of the Plant and sewage transmission lines and facilities owned by the City. Additionally, the City of Beaver Falls provided notice to the Plaintiffs through letters dated April 20, 2021, in addition to follow-up calls from the Manager of the City of Beaver Falls.

18. Admitted.

19. Admitted. The City further avers that it had no obligation to secure the “approval” of the Plaintiffs for the proposed sale.

20. The allegation in this paragraph set forth conclusions of law, to which no response is required. The term “recognized or acknowledged” as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response. Further, the City denies that the Plaintiffs made any “investment” in the Plant, which at all times was solely owned by the City. See answer to paragraph 7 which is incorporated herein by reference.

21. The allegation in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegation is denied.

COUNT I

22. The City incorporates by reference its responses to paragraphs 1 through 21 above.

23. Denied. The City specifically denies that there was any “implication” that the Plaintiffs were joint owners/had an ownership interest in the Plant. To the contrary, the Plaintiffs specifically acknowledged and agreed that they had no ownership or interest in the Plant whatsoever. Specifically, the 1977 Agreement provides as follows:

The operation, management, addition, extension, enlargement, revision or renovation of said sewage disposal plant and sanitary sewer system shall be under the exclusive control of [the City.] It is agreed that Second Party does not have, nor by the terms of this agreement, does it secure, any ownership in the sanitary sewer system or sewage disposal plan of ‘the City,’ and its rights thereto as herein defined, that is the right to tap into said system and to make use thereof in accordance with the terms hereof.

Paragraph 12 of the 1977 Agreement, Exhibit A hereto.

24. The allegation in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

25. Denied. The Plant has at all times been owned and operated solely by the City. See answer to paragraph 7 which is incorporated herein by reference. The term “proportionate share” as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response. The allegations of this paragraph are expressly contrary to the clear and unambiguous language of the 1977 Agreement set forth in Exhibit A. See paragraphs 7, 15 and 23 above which are incorporated herein by reference.

26. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. Further, no “contract implied in fact” existed between the City and the Plaintiffs. By way of further response, the rights and obligations between the City and the Plaintiffs with respect to sewage handling and treatment are set forth in the 1977 Agreement.

27. The allegations in this paragraph set forth conclusions of law, to which no response

is required. To the extent that a response may be deemed necessary, the allegations are denied. Although the Plaintiffs purport to seek damages, they are not entitled to any relief in this case.

COUNT II

28. The City incorporates by reference its responses to paragraphs 1 through 27 above.

29. Denied as stated. The term “proportionate share” as used by the Plaintiffs in this paragraph is vague and undefined and therefore not susceptible to a specific response. See answers to paragraphs 7 and 15, which are incorporated herein by reference. By way of further response, the rights and obligations between the City and the Plaintiffs with respect to sewage handling and treatment are set forth in the 1977 Agreement.

30. Denied as stated. By way of further response, the rights and obligations between the City and the Plaintiffs with respect to sewage handling and treatment, including the construction, expansion, maintenance and operation of the Plant, are set forth in the 1977 Agreement. Plaintiffs have paid the same sewer rates as other municipalities sending their waste to the City’s system, including the Plant, and continue to pay the same rate per gallon as those other municipalities today.

31. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. Further, the City denies that Plaintiffs made any “contributions” to the Plant. See answer to paragraphs 7, 15 and 23 which are incorporated herein by reference.

32. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

33. Denied. See answers to paragraphs 23 and 25 above, which are incorporated herein by reference. Further, the allegations in this paragraph set forth conclusions of law, to which no

response is required. To the extent that a response may be deemed necessary, the allegations are denied.

34. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

35. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. Although the Plaintiffs purport to seek damages, they are not entitled to any relief in this case.

COUNT III

36. The City incorporates by reference its responses to paragraphs 1 through 35 above.

37. The City admits that plaintiffs purport to invoke the Declaratory Judgment Act as a basis for relief, but the City denies that the Complaint raises a justiciable controversy.

38. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

39. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

40. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further response, there is no bona fide justiciable controversy regarding ownership interests in the Plant. See answers to paragraphs 7, 15, 23 and 25 above, which are incorporated herein by reference.

41. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

42. The allegations in this paragraph set forth conclusions of law, to which no response

is required. To the extent that a response may be deemed necessary, the allegations are denied.

COUNT IV

43. The City incorporates by reference its responses to paragraphs 1 through 42 above.

44. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

45. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further response, the rights and obligations between the City and the Plaintiffs with respect to sewage handling and treatment are set forth in the 1977 Agreement. Further, Plaintiffs have paid the same sewer rates as other municipalities sending their waste to the City's system, including the Plant, and continue to pay the same rate per gallon as those other municipalities today.

46. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further response, the City denies that Plaintiffs made any "contributions" to the Plant. See answers to paragraphs 7, 15, 23 and 25 which are incorporated herein by reference. Further, Plaintiffs have paid the same sewer rates as other municipalities sending their waste to the City's system, including the Plant, and continue to pay the same rate per gallon as those other municipalities today.

47. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further answer, the City denies that Plaintiffs made any "contributions" to the Plant. See answer to paragraph 46 above, which is incorporated herein by reference.

48. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further answer, the City denies that Plaintiffs made any “contributions” to the Plant. See answer to paragraph 46 above, which is incorporated herein by reference.

49. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

COUNT V

50. The City incorporates by reference its responses to paragraphs 1 through 49 above.

51. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further answer, the City denies that Plaintiffs made any “contributions” to the Plant. See answer to paragraph 46 above, which is incorporated herein by reference.

52. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

53. The allegations in this paragraph set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied. By way of further response, the City denies that Plaintiffs made any “contributions” to the Plant. See answer to paragraph 46 above, which is incorporated herein by reference.

COUNT VI

54. The City incorporates by reference its responses to paragraphs 1 through 53 above.

55. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent

that a response may be deemed necessary, the allegations are denied.

56. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

57. The allegations in this paragraph, including subsections (a) through (g), set forth conclusions of law, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

58. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

59. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

60. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

61. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

62. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

63. The allegations in this paragraph set forth conclusions of law, apparently

identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

64. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

65. The allegations in this paragraph set forth conclusions of law, apparently identifying injunctive relief sought by Plaintiffs, to which no response is required. To the extent that a response may be deemed necessary, the allegations are denied.

WHEREFORE, the defendant denies that the Plaintiffs are entitled to any relief sought and requests entry of judgment in its favor.

NEW MATTER

Defendant the City of Beaver Falls (“the City”) asserts for its new matter, the following:

66. Each Count of Plaintiffs’ Complaint fails to state a legally sufficient claim for relief against the City.

67. The Plaintiffs’ claims, in whole or in part, are barred by the statute of limitations.

68. The Plaintiffs’ claims, in whole or in part, are barred by the statute of frauds.

69. The Plaintiffs and the City are parties to an express contract relating to the subject matter of this action; therefore the Plaintiffs cannot establish an implied in fact contract relating to the same subject matter.

70. The Plaintiffs and the City are parties to an express contract relating to the subject matter of this action; therefore the Plaintiffs cannot establish an implied in law contract relating to the same subject matter.

71. The Plaintiffs and the City are parties to an express contract relating to the subject

matter of this action; therefore the Plaintiffs cannot establish a claim for unjust enrichment.

72. Beginning at least in 1967, the City had Agreements, which incorporated applicable Ordinances governing charges to municipalities that directed wastewater to the Plant, and that defined the relationship between the City and the Plaintiffs in a manner inconsistent with that alleged by the Plaintiffs. *See, e.g.*, Agreement dated April 28, 1977 between the City (as the “First Party”) and Patterson Township (as the “Second Party”) that describes with particularity the rights and obligations of the City and Patterson Township with respect to the charges applicable to the Plaintiffs as users of the City’s sewer system, including the Plant. A copy of this Agreement, with the attached applicable Ordinances 1423 and 567 (adopted November 9, 1976 is attached hereto as Exhibit A). It is believed, and is therefore averred, that this form of Agreement was used between the City and each of the Plaintiffs in 1977 (“the 1977 Agreement”), with only the identity of the Second Party changed to indicate the respective party’s legal name. The 1977 Agreement expressly replaced a prior agreement on the same subject matter dating from December, 1967.

73. Paragraphs 9 and 10 of the 1977 Agreement provided for the allocation of the costs of addition, enlargement, revision or renovation of the Plant or other parts of the sewage treatment system. Generally, to the extent that the work benefited less than all of the participating municipalities, the cost of such work would be attributed to, and paid by the municipality or municipalities benefiting from same, based on a formula set forth in Ordinance No. 1423.

74. Payments made by Plaintiffs pursuant to an express agreement or required by an Ordinance cannot provide the predicate for a contract implied in fact or in law and cannot provide the predicate for a claim of unjust enrichment.

75. Pursuant to the 1977 Agreement, the Plaintiffs specifically acknowledged and agreed that they had no ownership or interest in the Plant whatsoever:

The operation, management, addition, extension, enlargement, revision or renovation of said sewage disposal plant and sanitary sewer system shall be under the exclusive control of [the City.] It is agreed that Second Party does not have, nor by the terms of this agreement, does it secure, any ownership in the sanitary sewer system or sewage disposal plan of 'the City' , and its rights thereto as herein defined, that is the right to tap into said system and to make use thereof in accordance with the terms hereof.

Paragraph 12 of the 1977 Agreement, Exhibit A hereto.

76. The City of Beaver Falls does not impose a separate capital improvement charge on the Plaintiffs. All capital costs are included within the rates. Every municipality being serviced by the subject wastewater treatment plant pays the same rate per gallon. This rate is subject to an annual 3% increase. See Resolution No. 1576 attached as Exhibit B.

77. The City did not keep its discussions regarding the sale of the plant a secret, contrary to the Plaintiffs' allegations in the complaint. Indeed, in April 2021, the City of Beaver Falls sent correspondence related to the potential sale.

78. Plaintiffs' claims, in whole or in part, are barred by laches and unclean hands.

79. Plaintiffs' claims, in whole or in part, are barred by estoppel.

80. Plaintiffs have an adequate remedy at law to the extent that the City has breached a contract with them, which is expressly denied, and caused them damages.

81. Plaintiffs cannot satisfy any of the elements of a claim for injunctive relief.

82. Plaintiffs do not have a clear right to relief on any count in their complaint.

83. Plaintiffs cannot show that, absent an injunction against the proposed sale, they will suffer immediate and irreparable harm that cannot be compensated in money damages.

84. The public interest would not be served by granting the requested injunction.

85. To the contrary, granting the requested injunction would harm the customers of the City's sewer system.

86. The Public Utility Commission should be permitted to determine whether the proposed sale of the City's sewer system and Plant is in the public interest.

WHEREFORE, the defendant denies that the Plaintiffs are entitled to any relief sought and requests entry of judgment in its favor.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Vincent A. Tucceri". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Vincent A. Tucceri, Esquire
CharLee Rosini, Esquire

 COPY

AGREEMENT

THIS AGREEMENT made and concluded this 28th day of April, 1977, between the CITY OF BEAVER FALLS, a municipal corporation of the Commonwealth of Pennsylvania, and a City of the Third Class, hereinafter called the "First Party" and Township of Patterson a municipal corporation of the Commonwealth of Pennsylvania, hereinafter called the "Second Party."

WHEREAS, First Party has heretofore constructed and is now operating a Sewage Plant and System; and

WHEREAS, the Borough of Patterson Heights, the Borough of West Mayfield, Patterson Township and White Township are presently utilizing the facilities and services of said Sewage Treatment Plant and System; and

WHEREAS, the First Party has adopted an Ordinance No. 1423, dated November 9, 1976, providing for a uniform user's charge; and

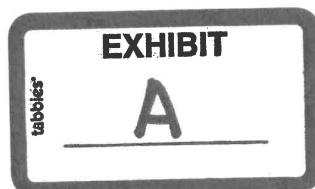
WHEREAS, the First Party has adopted a Resolution No. 567, dated November 9, 1976, providing rules and regulations for the use and operation of the Sewer System; and

WHEREAS, the parties desire to enter into an agreement incorporating the provisions of the aforesaid Ordinance and Resolution; and

WHEREAS, the parties desire to enter into a new agreement to take the place of an agreement between the parties, dated December 12, 1967; and

WHEREAS, First Party agrees to continue to make available said Sewage Treatment Plant and System facilities and services to Second Party.

NOW, THEREFORE, IN CONSIDERATION OF the Premises and the undertaking of each party to the other, the parties hereto, each intending to legally bind itself, its successors and its assigns, covenant and agree as follows:



1. The Second Party agrees to adopt an Ordinance which provides for the computation of the charges for sewer usage based on a ratio between operation and maintenance costs and meter reading volume, in accordance with said Ordinance No. 1423, a copy of which is attached hereto.

2. The Second Party agrees to pay to the First Party its proportionate share of the present and future cost and expenses of the operation, maintenance and repair of said Sewage Treatment Plant and System, used in common, based on the formula set forth in the aforesaid Ordinance No. 1423.

3. Before First Party shall permit other municipalities to connect with and utilize said Sanitary Sewer System and Plant, First Party agrees to obtain the consent of the Borough of Patterson Heights, Borough of West Mayfield, Patterson Township and White Township, but such consent shall not be unreasonably withheld.

4. None of the Boroughs or Townships presently connected with and utilizing the facilities of said Sanitary System and Plant shall allow any other municipality, except to the extent such use presently exists, to tap into its sewer system without the permission, in writing, of First Party and the said other Boroughs and Townships.

5. The Sewage Treatment Plant is designed only for the treatment of sanitary sewage and the deposit of any storm drainage, surface or sub-surface drainage into the sewerage system by any of the municipalities is strictly prohibited and shall be immediately terminated upon notice from First Party.

6. Neither party shall permit the discharging of industrial and processed waste water into the sewer system except pursuant to the rules and regulations adopted by the First Party by the aforesaid Resolution No. 567, a copy of which is attached hereto.

7. If the quality of service reflects the use of garbage disposals by any of the users of the plant and sewage system and if this becomes detrimental to the operation of the plant or

system, they shall be prohibited and be immediately terminated upon notice from First Party.

8. First Party shall render quarterly statements to Second Party at which time Second Party shall make payment within one month of the receipt of said statement.

9. Should any addition, enlargement, revision or renovation of the Sewage Treatment Plant or System be required

entirely by an increase of the service furnished to Second Party, the total cost of such addition, enlargement, revision or renovation shall be paid by Second Party.

10. In the event addition, enlargement, revision or renovation of the Sewage Treatment Plant or the Sewer System is required by more than one municipality using the same, the cost thereof shall be paid by the municipalities requiring the same, and in the event addition, enlargement, revision or renovation is required and would be beneficial to all municipalities using the same, the cost thereof shall be borne based on the formula set forth in Ordinance No. 1423, in the year that it is determined by the First Party that an addition, enlargement, revision or renovation is required. In determining whether any addition, enlargement, revision, or renovation is required by any one or more or all of the municipalities using said sanitary sewer system and sewage disposal plant, First Party, upon approval by the Environmental Protection Agency of the Commonwealth of Pennsylvania, or its successor, shall be the exclusive judge of this fact.

11. First Party and Second Party agree to maintain and keep their sanitary sewer systems in good repair. First Party through its Professional Engineer, shall have the right to make inspection, at all reasonable times, of the sanitary sewer system of Second Party and if any condition shall exist or be created as a result of which the efficiency or cost of First Party's sanitary Sewer System and Plant is adversely affected, said condition, on thirty (30) days written notice from First Party, shall be corrected.

12. The operation, management, addition, extension, enlargement, revision or renovation of said sewage disposal plant and sanitary sewer system shall be under the exclusive control of First Party. It is agreed that Second Party does not have, nor by the terms of this agreement, does it secure, any ownership in the sanitary sewer system or sewage disposal plant of the First Party, and its rights thereto are as herein defined, that is the right to tap into said system and to make use thereof in accordance with the terms hereof.

13. Second Party covenants and agrees that First Party shall be the sole and exclusive agency to provide sewage treatment and disposal service to residents of Second Party presently using the sewer system, and that Second Party will not engage in the business of providing said service to areas now served by the present sewage system.

14. This agreement shall supersede all previous agreements entered into by the parties hereto with regard to the Sewage Treatment Plant and System of First Party and all said agreements shall be terminated upon the execution of this agreement by the parties hereto.

15. This Agreement is entered into on the part of the First Party by virtue of a Resolution duly adopted on the _____ of _____, 1977, and on the part of the Second Party by virtue of a ~~Resolution~~ ^{Ordinance} duly adopted on the 5th ~~of~~ ^{day of} April, 1977, authorizing the same to be done.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, and attached hereto their official seal, by virtue of the above recited corporate action authorizing the same to be done, the day and year first above written.

ATTEST:

s/ Robert D. Yoho

s/ Edward Dixon
Secretary

CITY OF BEAVER FALLS:

BY: s/ Nick M. Camp
Mayor

TOWNSHIP OF PATTERSON
BY: s/ David E. Keenan
Chairman

-4-

BILL NO. 23
ORDINANCE NO. 1423

AN ORDINANCE amending Section 2 of Ordinance No. 1227, passed February 27, 1967, as amended by Ordinance No. 1288, passed December 22, 1970 entitled "AN ORDINANCE of the City of Beaver Falls imposing upon each property in the City of Beaver Falls, served by the Beaver Falls sanitary sewer system, a sewer rental charge, payable by the owner and/or occupier of said premises; providing for the collection thereof and the filing of liens therefor; providing for rules and regulations; and providing for surcharges on delinquent accounts." By providing for computation of the rate for sewer usage based on a ratio between operation and maintenance costs and meter reading volume:

BE IT ORDAINED AND ENACTED by the Council of the City of Beaver Falls, hereinafter sometimes referred to as "City" and it is hereby ordained and enacted by authority of the same as follows:

Section 1. Section 2 of Ordinance No. 1227, passed February 27, 1967, entitled "An Ordinance of the City of Beaver Falls imposing upon each property in the City of Beaver Falls, served by the Beaver Falls sanitary sewer system, a sewer rental charge, payable by the owner and/or occupier of said premises, providing for the collection thereof and filing of liens therefor; providing for rules and regulations; and providing for surcharges on delinquent accounts." as amended, is hereby amended to read as follows:

"Section 2 (a) The rate for said sewer usage shall be reviewed annually and computed as follows:

The total anticipated yearly flow, as reflected by the actual total sewage treated at the sewage treatment plant of all users for the preceding year, shall be divided into the total projected cost of operation and maintenance (as approved by City Council) of the City's treatment works for the coming calendar year to determine ratio "R." Ratio "R" is expressed numerically by the following:

W. YOUNG
MILLER
CITY ATTORNEY
100 AVENUE
BEAVER FALLS, PA. 15005

$$R = \frac{\text{Total Projected Operation and Maintenance Costs (\$)}}{\text{Total Sewage Treated (gallons)}}$$

The above rate ratio shall be used exclusively for determination of user charges (based upon each users water meter readings) except when the total users metered flow is less than or greater than the actual total volume of wastewater treated at the City's treatment works for the preceding year. In such case, the difference of the yearly revenues generated by the rate ratio "R" (Revenue = R x Total users metered flows) and the projected total cost of operation and maintenance for the treatment works shall be determined. This difference is labeled herein as "d" and is calculated as follows:

$$d = (\text{Projected Total Operation and Maintenance Cost, \$}) \\ - (R \times \text{Total Users Metered Flows, \$})$$

To incorporate this cost difference, "d", into each users treatment works charges, a new rate ratio "R₁" shall be determined and calculated as follows:

$$R_1 = \frac{d, \$}{\text{Total Users Metered Flows, gallons}}$$

Therefore, the actual user billing rate (\$/gallons recorded by water meter readings), R_S, shall be determined by the summation of rate ratios R and R₁. The user billing rate, R_S, can be expressed mathematically as follows:

$$R_S = R + R_1$$

Section II (b)

1. The rate ratios (R and R₁) applied to each users treatment works charges shall be reviewed annually by the City to determine the need to adjust the rate ratios based upon the actual annual operation and maintenance costs incurred by the

City, the actual quantity of wastewater flow treated by the City's treatment works, and the total revenue generated by the existing rate ratios. Upon evaluating the revenues required to meet the projected annual operation and maintenance costs, the rate ratios shall be adjusted periodically as determined necessary by the City to generate suitable funds to meet all operation and maintenance costs of the City's treatment works.

2. Records of all information pertaining to the annual review of the rate ratios and all components utilized to determine said rate ratios shall be maintained on file and open for public review during normal working hours at the City's Municipal Building.

3. The following general items (but not limited to these alone) shall be included in determining the annual operation and maintenance costs associated with the City's treatment works:

- (a) Wages and salaries
- (b) Materials and supplies
- (c) Utility requirements
- (d) Repairs - replacement
- (e) Administrative
- (f) Debt service charges
- (g) Reserve fund costs

4. The basis for actually determining the operation and maintenance costs for each of the items detailed above shall be made by the plant superintendent and approved by City Council based upon expenditures incurred for the same items over the past years of operation as well as projected expenditures for the next calendar year of operation.

RESOLUTION NO. 567

RESOLUTION adopting rules and regulations for the use and operation of the City's sewer system.

WHEREAS, the Council of the City of Beaver Falls, by Section 8 of Ordinance No. 1227 of the City of Beaver Falls, has reserved the right to adopt, revise and amend rules and regulations for the use and operation of the City's sewer system, and;

WHEREAS, the Council of the City desires to adopt certain rules and regulations for the discharge of industrial and processed wastewater into the City's sewer system;

NOW THEREFORE, be it resolved by the Council of the City of Beaver Falls that the following rules and regulations for the use and operation of the City's sewer system are hereby adopted and made a part of Ordinance 1227, as amended:

1. The discharging of industrial and processed wastewater into the City's sewerage system is strictly prohibited except as provided for herein.

2. In order for the City to consider any industrial user's connection into the City's treatment works, the following information shall be provided in duplicate to the City for evaluation of the proposed industrial wastewater discharge:

- (a) Name of Institution.
- (b) Address and Desired Location.
- (c) Desired Tap-in Location.
- (d) Estimated Quantity of Flow - include maximum gallons per minute discharge flowrate.
- (e) Description of the process which generated the wastewater.
- (f) Amount of sanitary wastes in the industrial wastewater and, if any, in what concentrations.

Section II (c)

1. In instances where an industrial or commercial user consumes large quantities of water for processing, cooling, or heating, and said water is not discharged into the City's sewerage system for treatment, and said user does not desire to pay its sewage treatment fees for that part of water said user consumes but not discharges into the City's sewerage system for treatment, then said industrial or commercial users may install separate water meters for all fixtures which will eventually contribute wastewater to the City's treatment works or said user may install a separate sewage flowmeter (as approved by the City of Beaver Falls) at any and all connection points within the City's sewerage system. Any and all costs (including City inspection costs) to be incurred by the industrial or commercial user shall totally and solely be borne by said user."

Section II. All other provisions of said Ordinance 1227 shall remain in full force and effect.

Section III. All Ordinances or parts thereof inconsistent herewith are hereby repealed.

Section IV. This Ordinance shall become effective the _____ day of _____, 1976.

PASSED FINALLY by the Council of the City of Beaver Falls, this 9th day of November, 1976.

Paul H. Camp
Mayor

ATTEST:

Robert D. Gohs
City Clerk

- (g) A complete chemical analysis of the proposed wastewater discharge providing as a minimum the following: BOD₅, COD, SS, D.S., D.O., Chlorine Demand, NH₃-N, Total N, NO₃-N, oil and grease, pH, PO₄-P, phenols, cyanide-total and amenable, mercury-total, temperature, heavy metals, and any other tests which will more appropriately describe the true characteristics of the proposed wastewater discharge.

3. The following conditions shall apply to all industrial wastewater contributors to the City's sewage treatment facilities which are approved by the City:

- (a) Any user of the treatment works whose applied loading to the treatment plant exceeds any one of the following criteria shall be classified to the conditions of this program:

BOD₅ > 230 mg/l

SS > 220 mg/l

Dissolved Solids (D.S.) > 300 mg/l

Flow \geq 10% of Average Design Flow of Treatment Works

Delivery Flowrate \geq 175 GPM

pH - > 8.0 or > 6.0

Phenols - Any Amount

Heavy Metals - Any Amount

Cyanides - Any Amount

- (b) Each industrial user of the said treatment works shall be required to pay its share of the total amount of the grant and any grant amendment awarded to the City pursuant to Federal Project No. C-420676-01 divided by the recovery period.

- (c) The industrial recovery period is defined as the useful design life of the treatment works (until 1995) or 19 years based upon the treatment plant additions being completed in 1976.

(d) Payments shall be made by the industrial users no less often than annually. The first payment by the said user shall be made not later than one (1) calendar year after such time the user begins using the treatment works.

(e) The industrial user's share of the grant amount shall be based upon the following factors: strength (BOD, Suspended Solids, Dissolved Solids, etc.), volume, and delivery flowrate. These factors shall be proportioned in relation to the existing design parameters allocated for the existing sewage treatment facility. (Since the City presently accepts no industrial wastewater discharges, the actual proportioning of the costs will be determined by the City at the time of proposed industrial tap-in). If throughout the recovery period there is a substantial change in the strength, volume, and/or delivery flowrate characteristics introduced into the treatment works by said industrial user, such user's share shall be adjusted accordingly. As a minimum, an industrial user's share shall be proportional to its flow, in relation to the treatment works flow capacity.

(f) If there is an expansion or upgrading of the treatment works, each existing industrial user's share (at the time of the expansion or upgrading) shall be adjusted accordingly.

(g) The City shall retain 50 percent of the amounts recovered from said industrial user. The remainder, together with any interest earned thereon, shall be returned to the U.S. Treasury on an annual basis.

(h) The City shall use a minimum of 80 percent of the retained amounts, together with interest earned thereon, for any expansion and/or reconstruction which may be required of the treatment works. The City shall obtain the written approval of the retained amounts for any expansion and reconstruction.

The remainder of the retained amounts shall be used as the City sees fit. Pending use, the City shall invest the retained amounts for reconstruction and expansion in: (1) obligations of the U.S. Government; or (2) obligations guaranteed as to principal and interest by the U.S. Government or any agency thereof; or (3) shall deposit such amounts in accounts fully collateralized by obligations of the U.S. Government or obligations fully guaranteed as to principal and interest by the U.S. Government or any agency thereof.

ADOPTED BY COUNCIL OF THE CITY OF BEAVER FALLS, this
9th day of November, 1976

/s/ Nick L. Camp
Mayor

/s/ Robert D. Yoho
City Clerk - Coordinator

CITY OF BEAVER FALLS
RESOLUTION NO. 1576

A RESOLUTION OF THE CITY OF BEAVER FALLS, BEAVER COUNTY, PENNSYLVANIA, AMENDING RESOLUTION 1423 DETERMINING THE JOINT SEWER USER'S CHARGE RATE COMMENCING JANUARY 1, 2021 AND TO RE-IMPLEMENT THE AUTOMATIC JOINT SEWER USER'S CHARGE BY 3% ANNUALLY.

WHEREAS, the City desires to amend provisions contained in Resolution 1423 which assessed a suspension in the automatic annual increase in the JSU's charge per 1,000 gallons of water consumption and the JSU's charge;

BE IT RESOLVED by the Council of the City of Beaver Falls, it is hereby resolved by virtue of the authority of the same as follows:

1. That Paragraph 1 of Resolution 1423 shall reflect the 3% increase (beginning January 1, 2021) and is now \$4.28 per 1,000 gallons of water consumption.
2. That the Council of the City of Beaver Falls, hereby re-implements Paragraph 4 of Resolution 1256 which reads: The City shall, effective January 1, 2021, and every year thereafter, increase the Joint Sewer User's charge by 3%.

All other provisions of Resolution No. 1256 and Resolution No. 1423 shall remain in full force and effect.

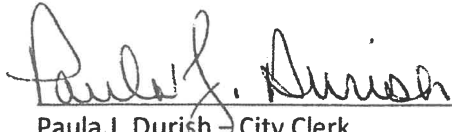
The City may, from time to time, amend this resolution as deemed necessary and appropriate by Council.

Any and all ordinances, parts of ordinances, resolution or parts of resolutions in conflict with the terms, conditions and provisions of this Resolution are hereby repealed to the extent of such conflict.

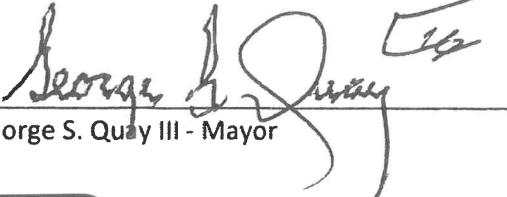
That this Resolution shall take effect immediately upon its passage.

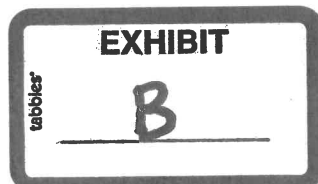
PASSED AND ADOPTED BY THE COUNCIL of the City of Beaver Falls this 8th day of December, 2020.

ATTEST:


Paula J. Durish - City Clerk

CITY OF BEAVER FALLS:


George S. Quay III - Mayor



VERIFICATION

The undersigned does hereby declare that the statements of fact set forth in the foregoing Answer and New Matter are true and correct to the best of his knowledge, information, and belief, and are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities.

3-8-23

Date



Charles R. Jones, Jr., Manager
City of Beaver Falls

CERTIFICATE OF COMPLIANCE

I 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 non-confidential information and documents.

Submitted by: Defendant, City of Beaver Falls

Signature:  _____

Name: Vincent A. Tucceri, Esquire

Attorney No. (if applicable): 27643

CERTIFICATE OF SERVICE

I, Vincent A. Tucceri, Esquire, do hereby certify that I did serve a true and correct copy of the within Answer and New Matter via United States First Class Mail, Postage pre-paid, on this 9^h day of March, 2023, upon:

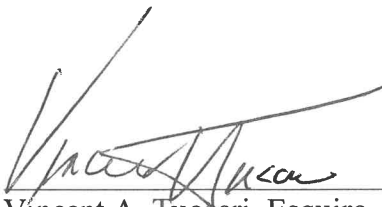
Kenneth G. Fawcett, Esquire
Bowers, Fawcett & Hurst, LLC
820 Kennedy Drive, P.O. Box 280
Ambridge, PA 15003

Nathan Bible, Esquire
Max Schmierer, Esquire
NBMS Law, P.C.
650 Corporation Street, Suite 304
Beaver, PA 15009

Frank Paganie, Esquire
McMillen, Urick, Tocci & Jones
2131 Brodhead Road
Aliquippa, PA 15001

Joseph Budicak, Esquire
401 Thirteenth Street
New Brighton, PA 15066

Samuel H. Simon, Esquire
Matthew J. Lautman, Esquire
Erik M. Bergenthal, Esquire
Houston Harbaugh, P.C.
Three Gateway Center
401 Liberty Avenue, 22nd Floor
Pittsburgh, PA 15222



Vincent A. Tucceri, Esquire
Defendant, City of Beaver Falls

ATTACHMENT 2

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

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

Plaintiffs

v.

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

Defendants

CIVIL DIVISION – LAW

NO. 11219 OF 2022

**ANSWER AND NEW MATTER OF
AQUA PENNSYLVANIA
WASTEWATER, INC.**

Filed on Behalf of:
Defendant, Aqua Pennsylvania
Wastewater, Inc.

Counsel for this party:

Samuel H. Simon

PA. I.D. 85503

ssimon@hh-law.com

Matthew J. Lautman

PA. I.D. 90390

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Erik M. Bergenthal

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HOUSTON HARBAUGH P.C.

401 Liberty Avenue, 22nd Floor

Pittsburgh, Pennsylvania 15222

412-281-5060

IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

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

Plaintiffs

v.

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

Defendants

CIVIL DIVISION – LAW

NO. 11219 OF 2022

**ANSWER AND NEW MATTER OF AQUA PENNSYLVANIA
WASTEWATER, INC.**

Defendant, Aqua Pennsylvania Wastewater, Inc. (hereafter “**Aqua**”) files the following Answer and New Matter to the complaint filed by plaintiffs Patterson Township, Patterson Heights Borough, West Mayfield Borough, and White Township (collectively the “**Plaintiffs**”).

ANSWER

1. The averments in Paragraph 1 are admitted.
2. The averments in Paragraph 2 are admitted.
3. The averments in Paragraph 3 are admitted.
4. The averments in Paragraph 4 are admitted.
5. The averments in Paragraph 5 are admitted.
6. The averments in Paragraph 6 are admitted.

7. The averments in Paragraph 7 are denied as stated. To the contrary, upon information and belief, since the 1930s, the City of Beaver Falls (“**Beaver Falls**”) has owned and operated a sewage-treatment plant within the City (the “**Plant**”). That the Plaintiffs have paid compensation to Beaver Falls for their respective use of the Plant to dispose of their municipalities’ sewage and did not, does not, and never has granted the Plaintiffs any ownership interest in the Plant, and at no time has Beaver Falls ever deeded any of the Plaintiffs any ownership interest in the Plant, which at all times has been exclusively owned by Beaver Falls.

8. The averments in Paragraph 8 are denied as stated. Upon information and belief, the Plant has at all times been owned, operated, and maintained solely by Beaver Falls. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

9. The averments in Paragraph 9 are denied as stated. Upon information and belief, the Plant has at all times been owned solely by Beaver Falls. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

10. The averments in Paragraph 10 are denied as stated. Upon information and belief, the Plant has at all times been owned solely by Beaver Falls. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

11. The averments in Paragraph 11 are admitted in part and denied in part. It is admitted that in exchange for their use of the Plant to process sewage from their municipalities, the Plaintiffs have paid fees. It is denied that the Plaintiffs thereby acquired any ownership interest in the Plant or ever had any owner ownership interest in the Plant. That the Plaintiffs have paid compensation to Beaver Falls for their respective use of the Plant to dispose of their municipalities’ sewage did not, does not, and never has granted the Plaintiffs any ownership interest in the Plant, and at no time has Beaver Falls

ever deeded any of the Plaintiffs any ownership interest in the Plant, which at all times has been exclusively owned by Beaver Falls.

12. The averments in Paragraph 12 are admitted in part and denied in part. It is admitted that in exchange for their use of the Plant to process sewage from their municipalities, the Plaintiffs have paid fees. It is denied that the Plaintiffs thereby acquired any ownership interest in the Plant or ever had any owner ownership interest in the Plant. That the Plaintiffs have paid compensation to Beaver Falls for their respective use of the Plant to dispose of their municipalities' sewage did not, does not, and never has granted the Plaintiffs any ownership interest in the Plant, and at no time has Beaver Falls ever deeded any of the Plaintiffs any ownership interest in the Plant, which at all times has been exclusively owned by Beaver Falls.

13. After a reasonable investigation, Aqua is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 13. Accordingly, those averments are denied.

14. After a reasonable investigation, Aqua is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 14. Accordingly, those averments are denied.

15. The averments in Paragraph 15 are admitted in part and denied in part. It is admitted that in exchange for their use of the Plant to process sewage from their municipalities, the Plaintiffs have paid fees. It is denied that the Plaintiffs thereby acquired any ownership interest in the Plant or ever had any owner ownership interest in the Plant. That the Plaintiffs have paid compensation to Beaver Falls for their respective use of the Plant to dispose of their municipalities' sewage did not, does not, and never has granted the Plaintiffs any ownership interest in the Plant, and at no time has Beaver Falls

ever deeded any of the Plaintiffs any ownership interest in the Plant, which at all times has been exclusively owned by Beaver Falls.

16. The averments in Paragraph 16 are admitted in part and denied in part. It is admitted that in exchange for their use of the Plant to process sewage from their municipalities, the Plaintiffs have paid fees. It is denied that the Plaintiffs thereby acquired any ownership interest in the Plant or ever had any owner ownership interest in the Plant. That the Plaintiffs have paid compensation to Beaver Falls for their respective use of the Plant to dispose of their municipalities' sewage did not, does not, and never has granted the Plaintiffs any ownership interest in the Plant, and at no time has Beaver Falls ever deeded any of the Plaintiffs any ownership interest in the Plant, which at all times has been exclusively owned by Beaver Falls.

17. The averments in Paragraph 17 are admitted in part and denied in part. It is admitted Beaver Falls entered into and obtained bids for the sale of the Plant. Any implication that Beaver Falls was required to consult with any of the Plaintiffs is denied. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

18. The averments in Paragraph 18 refer to or attempt to characterize an ordinance, which speaks for itself. To the extent a response is deemed to be necessary, Aqua denies the Plaintiffs' characterizations of the ordinance, which the Court will interpret as a matter of law.

19. The averments in Paragraph 19 are admitted in part and denied in part. It is admitted Beaver Falls entered into and obtained bids for the sale of the Plant. Any implication that Beaver Falls was required to consult with or obtain the approval of any of the Plaintiffs is denied. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

20. The averments in Paragraph 20 are denied as stated. It is denied that the Plaintiffs made any “investment” in the Plant. To the contrary, the Plaintiffs were functionally customers of the Plant and paid compensation to Beaver Falls for their use of the Plant. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

21. The averments in Paragraph 21 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

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

22. Paragraph 22 is an incorporation paragraph that contains no averments of fact and, therefore, does not require a response. To the extent a response is deemed necessary, Aqua incorporates by reference as if fully set forth herein its Answers to Paragraphs 1–21.

23. The averments in Paragraph 23 are directed to another defendant, and therefore no response is required. To the extent a response is deemed to be necessary, the averments are denied.

24. The averments in Paragraph 24 are directed to another defendant, and therefore no response is required. The averments in Paragraph 24 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

25. The averments in Paragraph 25 are directed to another defendant, and therefore no response is required. The averments in Paragraph 25 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

26. The averments in Paragraph 26 are directed to another defendant, and therefore no response is required. The averments in Paragraph 26 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

27. The averments in Paragraph 27 are directed to another defendant, and therefore no response is required. The averments in Paragraph 27 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

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

28. Paragraph 28 is an incorporation paragraph that contains no averments of fact and, therefore, does not require a response. To the extent a response is deemed necessary, Aqua incorporates by reference as if fully set forth herein its Answers to Paragraphs 1–27.

29. The averments in Paragraph 29 are directed to another defendant, and therefore no response is required. The averments in Paragraph 29 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

30. The averments in Paragraph 30 are directed to another defendant, and therefore no response is required. The averments in Paragraph 30 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

31. The averments in Paragraph 31 are directed to another defendant, and therefore no response is required. The averments in Paragraph 31 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

32. The averments in Paragraph 32 are directed to another defendant, and therefore no response is required. The averments in Paragraph 32 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

33. The averments in Paragraph 33 are directed to another defendant, and therefore no response is required. The averments in Paragraph 33 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

34. The averments in Paragraph 34 are directed to another defendant, and therefore no response is required. The averments in Paragraph 34 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

35. The averments in Paragraph 35 are directed to another defendant, and therefore no response is required. The averments in Paragraph 35 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

COUNT III

Declaratory Judgment Pursuant to the Pennsylvania Declaratory Judgments Act (42 Pa.C.S. 7531, et seq.)

Plaintiffs vs. City of Beaver Falls and AQUA Pennsylvania Wastewater, Inc.

36. Paragraph 36 is an incorporation paragraph that contains no averments of fact and, therefore, does not require a response. To the extent a response is deemed necessary, Aqua incorporates by reference as if fully set forth herein its Answers to Paragraphs 1–35.

37. The averments in Paragraph 37 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

38. The averments in Paragraph 38 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

39. The averments in Paragraph 39 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

40. The averments in Paragraph 40 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied. It is denied that the Plaintiffs have any ownership interests in the Plant. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

41. The averments in Paragraph 41 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied. It

is denied that the Plaintiffs have any ownership interests in the Plant. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

42. The averments in Paragraph 42 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied. It is denied that there is any legal or equitable basis to declare the purchase agreement between Beaver Falls and Aqua null and void. By way of further response, Aqua hereby incorporates by reference its Answer to Paragraph 7, above.

COUNT IV
Constructive Trust
Plaintiffs v City of Beaver Falls

43. Paragraph 43 is an incorporation paragraph that contains no averments of fact and, therefore, does not require a response. To the extent a response is deemed necessary, Aqua incorporates by reference as if fully set forth herein its Answers to Paragraphs 1–42.

44. The averments in Paragraph 44 are directed to another defendant, and therefore no response is required. The averments in Paragraph 44 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

45. The averments in Paragraph 45 are directed to another defendant, and therefore no response is required. The averments in Paragraph 45 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

46. The averments in Paragraph 46 are directed to another defendant, and therefore no response is required. The averments in Paragraph 46 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

47. The averments in Paragraph 47 are directed to another defendant, and therefore no response is required. The averments in Paragraph 47 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

48. The averments in Paragraph 48 are directed to another defendant, and therefore no response is required. The averments in Paragraph 48 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

49. The averments in Paragraph 49 are directed to another defendant, and therefore no response is required. The averments in Paragraph 49 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

COUNT V
Unjust Enrichment
Plaintiffs v City of Beaver Falls

50. Paragraph 50 is an incorporation paragraph that contains no averments of fact and, therefore, does not require a response. To the extent a response is deemed necessary, Aqua incorporates by reference as if fully set forth herein its Answers to Paragraphs 1–49.

51. The averments in Paragraph 51 are directed to another defendant, and therefore no response is required. The averments in Paragraph 51 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

52. The averments in Paragraph 52 are directed to another defendant, and therefore no response is required. The averments in Paragraph 52 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

53. The averments in Paragraph 53 are directed to another defendant, and therefore no response is required. The averments in Paragraph 53 are also conclusions of law to which no response is required. For both reasons, the averments are denied.

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

54. Paragraph 54 is an incorporation paragraph that contains no averments of fact and, therefore, does not require a response. To the extent a response is deemed necessary, Aqua incorporates by reference as if fully set forth herein its Answers to Paragraphs 1–53.

55. The averments in Paragraph 55 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

56. The averments in Paragraph 56 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

57. The averments in Paragraph 57 (including subparagraphs a–g) are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

58. The averments in Paragraph 58 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

59. The averments in Paragraph 59 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

60. The averments in Paragraph 60 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

61. The averments in Paragraph 61 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

62. The averments in Paragraph 62 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

63. The averments in Paragraph 63 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

64. The averments in Paragraph 64 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

65. The averments in Paragraph 65 are conclusions of law to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

WHEREFORE, Aqua respectfully requests judgment in its favor and against the Plaintiffs plus any other such relief as this Honorable Court deems appropriate and just.

NEW MATTER

70. Upon information and belief, the relationship between the Plaintiffs and Beaver Falls has been governed by multiple contracts and/or ordinances, none of which were attached to the Plaintiffs' Complaint by the Plaintiffs.

71. The Plaintiffs' causes of action for implied contract and unjust enrichment fail as a matter of law because those causes of action will not lie when there is a written contract between a plaintiff and a defendant on the same subject as the implied contracts.

72. The Plaintiffs claims are all barred by the Statute of Frauds because the Plaintiffs are claiming ownership in real property (namely, the Plant), but have not produced any executed writings showing that Beaver Falls ever transferred them any ownership in the Plant or that they otherwise hold any ownership interest in the Plant.

73. The Plaintiffs claims for implied contracts are barred because municipalities in Pennsylvania may only contract with other parties as provided by law, and contracts implied in law do not satisfy those requirements.

74. The Plaintiffs claims are barred by the applicable statute of limitations.

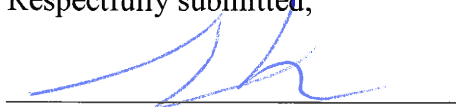
75. The Plaintiffs claims are barred by the doctrine of laches because the Plant in question has been in existence since the 1930s, and the Plaintiffs have never previously claimed any ownership in the Plant.

76. The Plaintiffs' claim for injunctive relief are barred because any damages sought by Plaintiffs can be cured by the payment of money.

WHEREFORE, Aqua respectfully requests judgment in its favor and against the Plaintiffs plus any other such relief as this Honorable Court deems appropriate and just.

The undersigned hereby certifies 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 non-confidential information and documents.

Respectfully submitted,



April 6, 2023

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IN THE COURT OF COMMON PLEAS OF BEAVER COUNTY, PENNSYLVANIA

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

Plaintiffs

v.

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

Defendants

CIVIL DIVISION – LAW

NO. 11219 OF 2022

VERIFICATION

I, Marc A. Lucca, on behalf of Aqua Pennsylvania
Wastewater, Inc., have read the foregoing Answer and New Matter, and I verify that the
statements made therein are true and correct to the best of my knowledge, information
and belief. I make this Verification subject to the penalties of 18 Pa.C.S. § 4904 relating
to unsworn falsification to authorities.



Signature

Date: 4.5.2023

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 6, 2023, a true and correct copy of the foregoing document was served on the person(s) listed below by: Facsimile; U.S. First Class Mail; Overnight Delivery Service; E-Mail; Hand Delivery; Electronic Filing System.

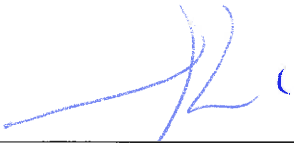
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Samuel H. Simon
PA. I.D. 85503

VERIFICATION

I, William C. Packer, Vice President, Regulatory Accounting and Regional Controller of Aqua Pennsylvania Wastewater, Inc., hereby state that the facts set forth in the Letter dated April 11, 2023 of Aqua Pennsylvania Wastewater, Inc., submitted in Docket No. A-2022-3033138 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 held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

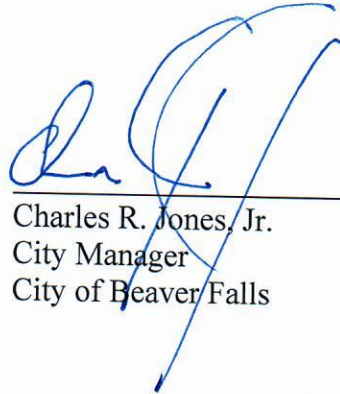


William C. Packer
Vice President, Regulatory
Accounting and Regional Controller
Aqua Pennsylvania Wastewater, Inc.

Dated: April 11, 2023

VERIFICATION

I, Charles R. Jones, Jr., City Manager of the City of Beaver Falls, hereby state that the facts set forth in the Letter dated April 11, 2023 of Aqua Pennsylvania Wastewater, Inc., submitted in Docket No. A-2022-3033138 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 held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



Charles R. Jones, Jr.
City Manager
City of Beaver Falls

Dated: April 11, 2023