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File #: 196374

May 18, 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**

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Dear Secretary Chiavetta:

We are counsel for Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) in connection with its above-referenced Application, filed with the Pennsylvania Public Utility Commission (“Commission”) on February 17, 2023, pursuant to Sections 507, 508, 1102, and 1329 of the Pennsylvania Public Utility Code (the “Code”), 66 Pa.C.S. §§ 507, 508, 1102, 1329, for approval of the acquisition of all of the assets, properties and rights related to the wastewater collection and treatment system owned by the City of Beaver Falls (“Beaver Falls” or “the City”). The Commission’s Bureau of Technical Utility Services (“TUS”) is reviewing the Application and has asked that we address certain requests for additional information. Requests for additional information not addressed in this letter will be addressed in a later submission.

**INFORMATION REQUEST 3:**

Checklist Item No. 12 –The Application’s Exhibit G consisted of a pro forma tariff supplement showing the rates, proposed rules, and conditions of service. However, the rates identified in the pro forma tariff supplement do not match the rates identified on Schedule 7.04 – Rates (Seller’s Rates) of the Asset Purchase Agreement (APA) provided in the Application’s Exhibit B. Specifically, the pro forma tariff supplement identified the following: (1) “All Divisions [...] are billed on a per EDU basis [...]”; (2) “Base” service charges apply “per EDU”; (3) “Block 1” usage charges apply from “1000 or 3000 Gallons and over” for monthly or quarterly service, respectively (i.e., as opposed to “over

[1,000/3,000] Gallons”). The Seller’s Rates indicated rates are billed on a per customer basis and the additional usage charge is for those amounts over 3,000 gallons. Also, the Application’s Exhibit U, Appendix A, Page 2, Row “Billed Dollars” determines values using data for “Customers” not “EDUs”. Please amend the Application’s Exhibit G to include a pro forma tariff supplement containing a rate equal to the existing rates of the selling utility at the time of the acquisition.

**RESPONSE:**

Included with this letter is an updated copy of Application Exhibit G.

**INFORMATION REQUEST 4:**

Checklist Item No. 15.a. – The Application’s Exhibit D included a copy of the Engineer Assessment for the Beaver Falls wastewater system. The Application’s Exhibit F5 included a copy of an agreement entitled “Capital Lease Agreement” (Lease Agreement), dated April 8, 2014, by and between the Joint Sewer Users (JSU) and Beaver Falls that leased Beaver Falls’ main sewage pipelines (Leased Property) from outlying communities to JSU, as defined in Section 1 of the Lease Agreement, until the end of December 31, 2024. The Lease Agreement’s preamble defined the JSU as organized by Beaver Falls as a body corporate and politic pursuant to the Pennsylvania Municipal Authorities Act, as amended, 53 Pa.C.S.A. § 5601. Please provide an inventory that separately identifies all the assets included in the Leased Property subject to the Lease Agreement, organized by the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

**RESPONSE:**

Included with this letter is a listing identifying the trunk sewers within the City that convey flow from outlying communities organized by NARUC Account. Please also see the response to Information Request No. 11 for further explanation.

**INFORMATION REQUEST 5:**

Checklist Item Nos. 15.a. and 16.a. – The Beaver Falls Maps indicated that a portion of a Beaver Falls wastewater main and Manhole #4 (Manhole #4 Facilities) are located in West Mayfield Borough. Please provide responses to the following:

- a. If Beaver Falls provides wastewater service to customers located in West Mayfield Borough from the Manhole #4 Facilities located in West Mayfield Borough, submit a revised Exhibit A that includes the point of service for the Manhole #4 within the requested service territory; or

**RESPONSE:**

Beaver Falls does not provide service to customers located in West Mayfield Borough from Manhole #4. Please see the response to 5.b., below.

- b. If Beaver Falls does not provide wastewater service to customers located in West Mayfield Borough from Manhole #4 Facilities, submit a revised Exhibit D that provides an inventory which separately identifies Manhole #4 Facilities as plant held for future use, organized by the National Association of Regulatory Utility Commissioners Uniform System of Accounts.

**RESPONSE:**

Included with this letter is an updated Application Exhibit D (in both CONFIDENTIAL and public versions), removing Manhole #4 and the length of pipe between Manhole #4 and Manhole #5, and the length of pipe between the municipal boundary between the City and Big Beaver Borough up to, but not including, Manhole #9. Also provided is the associated CONFIDENTIAL Excel workbook.

**INFORMATION REQUEST 6:**

Checklist Item No. 16.a. – The Beaver Falls Maps appeared to depict points of service between Beaver Falls and the Boroughs of West Mayfield (at Flow Meter #6) and Big Beaver (at the outlet of Wallace Run Pump Station) as being located outside the jurisdictional limits of Beaver Falls. However, the Application’s Exhibit A included a copy of a map that depicted the boundaries of the proposed service territory which did not appear to encompass the two points of service between Beaver Falls and the contributing municipalities. Please provide a revised Exhibit A that includes all of the points of service between Beaver Falls and the seven contributing municipalities within the boundaries of the requested service territory.

**RESPONSE:**

Included with this letter is an updated Application Exhibit A which includes the Flow Meter #6. The updated Exhibit A does not include the Wallace Run Pump Station and associated piping outside the boundaries of the City as those assets are owned by Big Beaver Borough.

**INFORMATION REQUEST NO. 8:**

Checklist Item No. 22.b. – The Application’s Exhibit P1 included a copy of the Beaver Falls Area Regional Sewage Facilities Plan (Beaver Falls Act 537 Plan Update) dated June 1993. The Beaver Falls Act 537 Plan Update included sewage facilities planning for Beaver Falls and the Boroughs of Homewood and Big Beaver, respectively. However, Checklist Item No. 22.b. requires a copy of the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities, which include the Boroughs of Eastvale, West Mayfield, and Patterson Heights and the Townships of Patterson, North Sewickley and White. Please provide copies of the DEP-approved Act 537 Official Sewage Facilities Plans for each of the aforementioned affected municipalities.

**RESPONSE:**

Included with this letter are copies of Act 537 Plans for the Boroughs of Eastvale, West Mayfield, and Patterson Heights and the Townships of Patterson, North Sewickley and White. By way of further explanation, the Regional Plan provided as Attachment 8(a) covers Beaver Falls, the Boroughs of Eastvale, West Mayfield and Patterson Heights, and the Townships of White and Patterson. Since the time the Regional Plan included as Attachment 8(a) was filed, only Beaver Falls and the Township of Patterson have updated their Act 537 plans. Beaver Falls' update was submitted with the Application as Exhibit P1, and the separate plan for the Township of Patterson is provided as Attachment 8(b). In addition, the plan for the Township of North Sewickley is provided as Attachment 8(c). Finally, the plan for the Borough of Big Beaver was included in the Company's initial filing as Exhibit P1.

**INFORMATION REQUEST NO. 11:**

Checklist Item No. 24.d. and e. – The APA's Section 2.01(b) indicated that Beaver Falls shall sell, transfer, assign and deliver to APW, free and clear of all Liens except Permitted Liens, all sanitary wastewater related treatment and conveyance facilities, which included all collection system mains (Acquired Assets). However, the Lease Agreement's Section 4(c) contained terms that appear to prohibit Beaver Falls from assigning, selling, conveying or transferring any right, title or interest in or to the Leased Property. The APA's Section 2.02 provided a list of assets excluded (Excluded Assets) from the acquisition. In consideration of this disparity, please provide responses to the following:

- a. Explain why the Leased Property is not listed in Section 2.02 of the APA as an Excluded Asset; or

**RESPONSE:**

The assets listed in the "lease" are not listed in Section 2.02 as excluded assets because the City's position is that the agreement is not valid, binding and enforceable. That is because the municipal authority was never formed and does not legally exist as an entity. There is no record at the office of the Secretary of the Commonwealth of any municipal authority having been created using the JSU name or any similar name that might be connected to the Beaver Falls system. In addition, the City's position is that the document was never signed by anyone on behalf of the so-called JSU authorized to do so. Consequently, it is the City's position that the consent provision is unenforceable and there is no party from whom to seek consent.

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- b. Provide written documentation from the JSU, as the affected municipal authority, supporting the inclusion of the Leased Property in the APA's Section 2.01 list of Acquired Assets.

**RESPONSE:**

As explained in the response to 11.a., above, it is the City's position that JSU does not exist as a legal entity, and therefore no documentation can or is needed to be obtained.

Due to the size of the attachments provided in response to these requests for additional information, Aqua has submitted the above-described attachments to the Commission via ShareFile.

Copies of Updated Exhibit D and the associated Excel workbook, provided in response to Request No. 5, have been conspicuously labeled as "CONFIDENTIAL," and have been separately compiled and submitted to the Commission via ShareFile. Aqua requests that the copies of the materials that have been labeled "CONFIDENTIAL" and that have been separately submitted to the Commission as "CONFIDENTIAL" documents be given confidential treatment by the Commission, including its various offices and bureaus. That is, Aqua requests that the confidential materials be excluded from the Commission's public document folder and that the confidential copies of these documents not be disclosed to the public.

Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,



Michael W. Hassell

MWH/kl  
Attachments

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).

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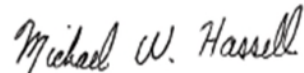
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Date: May 18, 2023



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