



Agenda Date: 12/12/16
Agenda Item: 5C

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

IN THE MATTER OF THE JOINT APPLICATION OF)
AQUA NEW JERSEY, INC. AND OAKWOOD VILLAGE)
SEWERAGE ASSOCIATES, L.L.C. FOR APPROVAL)
OF THE ACQUISITION OF THE ASSETS OF A PUBLIC)
UTILITY AND OTHER RELATED APPROVALS)
ORDER OF APPROVAL
DOCKET NO. WM16080739

Parties of Record:

Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of Aqua New Jersey, Inc.
Tricia M. Caliguire, Esq., McCarter & English, LLP, on behalf of Oakwood Village Sewerage Associates, L.L.C.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On August 3, 2016, Aqua New Jersey, Inc. ("Aqua" or "Company") and Oakwood Village Sewerage Associates, L.L.C. ("OVSA") (collectively, "Joint Petitioners") filed a joint petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14, and N.J.S.A. 48:2-24, and such other statutes and regulations as may be deemed relevant to this matter, seeking approval of: (1) the proposed acquisition of Oakwood Village Sewerage Associates, L.L.C. ("Transaction"); (2) the authority to charge the same rates for wastewater service; (3) the implementation of an initial tariff of \$20.00 per quarter to be charged for vacant apartment units in the Oakwood Village Apartments complex; (4) the abandonment of wastewater service upon closing of the asset purchase transaction; and (5) OVSA's request to be relieved of its obligations under its Board-approved tariff, upon the closing of the proposed asset acquisition.

Aqua and OVSA are regulated public utilities organized and operating under the laws of the State of New Jersey. Aqua currently provides water service to approximately 52,208 water customers and to approximately 5,332 sewer service customers in several municipalities in Warren, Hunterdon, Mercer, Burlington, Monmouth, Camden, Ocean, Sussex, Gloucester and Atlantic Counties, New Jersey.

OVSA provides wastewater service to approximately 35 customers, including 34 single-family homes (in the Millbrook Estates at Flanders Housing Development) and Oakwood Village Apartments, a garden apartment complex consisting of 1,224 rental apartments, located in the Township of Mount Olive ("Township"), Morris County, New Jersey. OVSA's tariff rates were

approved by the Board in 2002 and have remained unchanged since that time. See I/M/O the Application of Oakwood Village Sewerage Associates, L.L.C. for Approval of (A) Service Area, (B) Issuance of Equity Interests, and (C) Initial Tariff, (Docket No. WE00120986, December 19, 2002). OVSA is owned by AION Oakwood Sewer, L.L.C. ("AION"). OVSA was acquired by AION in a transaction that was approved by the Board in 2015 See I/M/O The Joint Application of Oakwood Village Sewerage Associates, L.L.C. and AION Oakwood Sewer, L.L.C. for Approval of a Transfer of Control of a Public Utility (Docket No. WM15091006, December 16, 2015) ("2015 Order"). In the 2015 Order, the Board approved certain revisions to the original tariff with no changes in wastewater rates.

THE PROPOSED TRANSFER

The Petition was filed pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C.14:1-5.14, which together require written Board approval for any person to acquire control of a public utility; and N.J.S.A. 48:2-24, which requires written Board approval for any public utility to discontinue service. The proposed Transaction is set forth in an Asset Purchase Agreement between the Joint Petitioners dated July 21, 2016, which, among other things, provides that, subject to obtaining regulatory approvals and the satisfaction of certain other conditions, Aqua shall acquire control of all the wastewater system assets now owned by OVSA. As a result of the Transaction, Aqua will continue to exist as a New Jersey public utility corporation subject to the jurisdiction and regulation of the Board. In the proposed transaction, OVSA will abandon the provision of wastewater service and will be relieved of its obligations under its current Board-approved tariff, and any and all conditions or Orders of the Board applicable to OVSA. OVSA will no longer be subject to the jurisdiction and regulation of the Board. Consideration for the purchase of the assets is one million two hundred fifty thousand dollars (\$1,250,000). Upon closing, the assets of OVSA will be combined with the assets of Aqua.

IMPACT ON AQUA NEW JERSEY, INC.

The Joint Petitioners state that the proposed Transaction will have no adverse impact on the Company as set forth below. There will be no impact on Aqua's current rates. Aqua will continue to operate under its existing Board-approved tariffs and rate structures until such time as such tariffs and rate structures are revised in accordance with New Jersey Law. Also, the proposed Transaction will cause no material changes in the balance sheet or financial position of Aqua because all of the outstanding debts of Aqua will continue to be liabilities and obligations of the Company.

In addition, there will be no impact on Aqua's employees. There will be no change in Aqua's collective bargaining agreement as a result of the proposed Transaction. Aqua will have no adverse impact to its present or future service levels and will continue to provide safe, adequate and reliable service to its customers.

Furthermore, the proposed Transaction will not adversely impact competition because Aqua will continue to service its customers in its current franchised service territories. The classic competition for customers does not exist in the regulated water utility industry. Finally, Aqua will continue to pursue opportunities to provide water and wastewater service throughout the State, including opportunities to acquire other water and wastewater systems as those opportunities arise.

Aqua has proposed to make significant capital improvements to address wastewater system deficiencies and to insure that the wastewater system is in compliance with applicable New Jersey Department of Environmental Protection ("NJDEP") requirements.

IMPACT ON OAKWOOD VILLAGE SEWERAGE ASSOCIATES, L.L.C.

The Joint Petitioners state that there will be no impact on OVSA because OVSA agreed to sell all of its assets to Aqua in exchange for cash representing the value of those assets. The transaction provides liquidity to the shareholders of OVSA. OVSA customers pay for wastewater service on a quarterly basis. Each of the 34 single-family homes pays a Board-approved tariff rate of \$206.25 per quarter. The owner of the garden apartment complex pays a Board-approved tariff rate of \$59,191.25 per quarter (equivalent to approximately \$48.36 per quarter for each of the 1,224 apartment units in the complex). These rates will remain unchanged and will be included in the Company's tariff for wastewater service applicable to customers located in the territory now served by OVSA. Rates charged for wastewater service will be unchanged after the asset purchase is completed.

The proposed Transaction will have no adverse impact on employees, as OVSA has no employees. OVSA operates the wastewater system using contracted services provided by Applied Water Management (d/b/a/ Natural Systems Utilities), which Aqua will continue to utilize. It is the intention of the Company that the wastewater system will be included in, and served by, the Company's Northern Division, located in Phillipsburg.

The provision of safe, adequate and proper utility service will be enhanced as a result of the proposed transaction in that it will make available to customers of OVSA the environmental, technical, operational and capital resources of Aqua. This will be the first time that the OVSA system is owned by a large regulated water/wastewater utility and OVSA will benefit from Aqua's expertise.

The proposed asset purchase will have no immediate, direct or measurable impact on competition as Aqua will serve the present customers of OVSA under the same market conditions that currently exist, and Aqua will continue to be subject to the jurisdiction of the Board. The OVSA service territory is fully developed and no further growth is planned.

SPECIFIC BENEFITS TO CUSTOMERS OF OAKWOOD VILLAGE SEWERAGE ASSOCIATES, L.L.C.

The Joint Petitioners state that the proposed Transaction will have no adverse impact on the criteria set forth in N.J.S.A. 48:2-51.1. The Joint Petitioners further state that proposed Transaction will promote the public interest and result in following positive benefits:

1. The need to comply with increasingly stringent water quality and environmental standards has created substantial demands for capital investment for water and wastewater utilities. The financial resources and backing of Aqua will be a benefit to OVSA customers in the replacement of infrastructure.

2. Aqua's size and scale enable it to address the wastewater needs of OVSA customers well into the future.
3. The customers of OVSA will benefit from becoming part of Aqua, a substantially larger water and wastewater company, regulated by the Board. These customers will receive the benefits of industry standard best practices in the areas of planning, research, environmental compliance, water quality, customer service, finance, risk management, operations and service delivery and management.
4. After the completion of the proposed Transaction, customers of OVSA will have access to Aqua's customer service call centers to resolve any customer service issues that may arise.
5. Aqua will continue to invest in the wastewater system and provide customers with access to additional customer service resources as well as access to additional financial and technical resources.

THE MUNICIPAL CONSENT

On November 21, 2000, the Township of Mount Olive granted Municipal Consent Ordinance No. 41-2000 ("Ordinance") to OVSA, pursuant to N.J.S.A. 48:13-11. The Municipal Consent was granted to OVSA to construct, operate, manage and maintain a sewage collection, treatment and disposal plant and system to provide sewerage service to certain tracts of land in the Township of Mount Olive. However, the Ordinance did not permit OVSA to assign any of the rights, privileges, duties and obligations granted to any other party without the prior written consent and authorization of the Township.

On September 20, 2016, the Township consented to OVSA's assignment of the wastewater franchise to Aqua.¹ While a public comment hearing was not required in this matter, the Joint Petitioners nonetheless mailed letters to each customer describing the proposed Transaction (including where additional information could be obtained), and setting out how customers might provide comments to the Board regarding this matter. To date, no comments have been received from customers.

THE STIPULATION²

On December 2, 2016, the representatives of Joint Petitioners, Board Staff, and the New Jersey Division of Rate Counsel (collectively, "the Parties") submitted a fully executed Stipulation which fully resolved all issues that arose during the course of this proceeding. Among other things, the Parties have agreed:

1. The acquisition of the wastewater system assets of OVSA by Aqua is consistent with the criteria of N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, and recommend that the proposed asset purchase be approved by the Board. Rates charged for wastewater service will be

¹ A copy of the Township's Resolution consenting to the assignment of the franchise to Aqua was provided in response to Supplemental Data Response SE-5.

² Although described in the Order at some length, should there be any conflict between this summary and the Stipulation, the terms of the Stipulation control, subject to the findings and conclusions in this Order.

unchanged because Aqua will continue to charge the same Board-approved rates for wastewater service now in effect. There are no employees dedicated to operating the OVSA wastewater system. OVSA operates the wastewater system using an outside contractor, whose contract expires on January 31, 2019. Thereafter, Aqua has agreed to utilize qualified individuals to operate the system and to inspect the wastewater system on a regular basis to ensure the system is operating properly and is in compliance with applicable regulations.

2. The provision of safe, adequate and proper utility service will be enhanced as a result of the proposed transaction in that it will make available to customers of OVSA the environmental, technical, operational and capital resources of Aqua. This will be the first time that the OVSA system is owned by a large regulated water/wastewater utility, and OVSA will benefit from Aqua's expertise.
3. The proposed asset purchase will have no immediate, direct or measurable impact on competition as Aqua will serve the present customers of OVSA under the same market conditions that currently exist, and Aqua will continue to be subject to the jurisdiction of the Board. Moreover, the OVSA service territory is fully developed and no further growth is planned.
4. The transaction will result in benefits to the customers of OVSA through system investment and improved service. The transaction will also benefit the State of New Jersey in that a small wastewater utility with environmental challenges will now be owned and operated by a regulated public utility with the resources and technical expertise to address the needs of the wastewater system and the customers now served by OVSA.
5. OVSA agreed, as noted by the Board in the 2015 Order, to make certain system improvements within two years of the closing of the change of control transaction that was the subject of that proceeding. Specifically, OVSA agreed to make improvements characterized as "Immediate Recommendations" identified in the Hatch, Mott, MacDonald report titled "Oakwood Village Wastewater Treatment Plant, Final WWTP Condition Assessment" and dated November, 2015 ("HMM Report"). OVSA also agreed to make certain repairs identified by Applied Water Management ("AWM"), the contract operator of the wastewater system, to the extent that those repairs were not duplicative of the Immediate Recommendations identified in the HMM Report. The Parties acknowledge that the 2015 Order permitted the parties to that proceeding to agree to forego or delay implementation of the AWM recommendations and the HMM Report Immediate Recommendations.
6. The Parties further acknowledge that since the Board's approval of the acquisition of OVSA by AION, the NJDEP has issued a Notice of Violation ("NOV") to OVSA indicating the system is not in compliance with applicable NJDEP requirements. As a result of the NOV, the Signatory Parties agree that bringing the wastewater system into compliance with NJDEP requirements must be a priority, and should guide the improvements made to the wastewater system over the next two years. Consequently, Aqua agrees to assume OVSA's responsibilities to undertake the following capital improvements previously identified in the 2015 Order, and OVSA shall have no further obligations in connection therewith:

- a) Ultra-violet ("UV") treatment system will be made functional (including replacing the UV electrical cabinet and UV bulbs) within six to eight months of the closing of the proposed asset purchase by Aqua.
 - b) Flow-related permit exceedances will be investigated and corrected if necessary, and the flow meters will be replaced within six to eight months of the closing of the proposed asset purchase by Aqua.
 - c) Berm construction surrounding the spray field, and replacement of the spray heads, if necessary, will be completed within one to two years of the closing of the proposed asset purchase by Aqua. The Parties acknowledge that this project will require significant design and that NJDEP permitting activities could have an impact on the timing of the completion of the project.
 - d) Membrane bioreactor replacement will be conducted on an initial three-year cycle, beginning one year after the closing of the proposed asset purchase by Aqua.
 - e) Headworks repair will be conducted within one year of the closing of the proposed asset purchase by Aqua.
 - f) Site safety measures will be completed or installed within six to eight months of the closing of the proposed asset purchase by Aqua.
7. The Parties acknowledge that Aqua will make many, but not all, of the improvements originally included in the 2015 Order. At this time, Aqua will not be addressing two major categories of improvements: 1) the Service Building and 2) Anoxic/Aerobic Treatment and certain other individual items listed under the major categories set forth in the response to RCR-E-9 and included in the 2015 Order. For the first two years following the closing of the purchase of the OVSA assets, Aqua instead will focus its attention and resources on bringing the system into compliance with NJDEP requirements. To the extent any such projects are identified, Aqua agrees to make the necessary capital investment as soon as reasonably practicable. Aqua further agrees to provide the Board and Rate Counsel with an annual report detailing the progress of its improvements for the Board and Rate Counsel to review, starting one year after the effective date of the Board Order in this proceeding.
8. Aqua agrees that should the NJDEP assess a fine or financial penalty related to the current NJDEP NOV, Aqua will not seek recovery of such fine or penalty from customers.
9. The Parties recommend that the Board approve Aqua's proposal to charge customers now served by OVSA the same rates for wastewater service as contained in the Oakwood Village Sewerage Associates, LLC tariff Rate Schedule No. 1 General Service (approved in 2015 Order); and further recommend that the Board direct the Company to file tariff pages with the Board giving effect to these rates upon the closing of the asset purchase. Nothing in this Stipulation of Settlement addresses issues of rate recovery related to the acquisition of the OVSA wastewater system. All issues of rate recovery stemming from this acquisition will be evaluated in a future base rate proceeding.

10. Aqua has withdrawn its request to implement an initial tariff rate of \$20.00 per quarter to be charged to the garden apartment complex for vacant apartments.
11. In the next base rate case which includes the OVSA wastewater system, Aqua agrees to provide Staff and Rate Counsel with an Analysis of the system flows attributable to the Millbrook Estates portion of the wastewater system as compared to the system as a whole, along with the operations and maintenance ("O&M") costs attributable to the Millbrook Estates portion of the system as compared to the total O&M costs for the wastewater system.
12. The Parties agree that OVSA should be permitted to abandon the provision of wastewater service, and should be relieved of its obligations under its Board-approved tariff, and of any and all conditions or Orders of the Board applicable to OVSA, upon the closing of the proposed asset sale to Aqua.

DISCUSSION AND FINDINGS

N.J.S.A. 48:2-24 provides in part: "No public utility shall discontinue, curtail or abandon any service without obtaining permission from the board after notice. The board may withhold permission until after hearing to determine if the discontinuance, curtailment or abandonment will adversely affect public convenience and necessity." Thus, "[p]ublic utilities must obtain permission from the Board before discontinuing, curtailing or abandoning any service. N.J.S.A. 48:2-24." In re Petition of South Jersey Gas Co., 116 N.J. 251, 259 (1989).

N.J.S.A. 48:2-51.1 provides in part:

[N]o person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

In addition to the statutory requirements, N.J.A.C. 14:1-5.14(c) provides:

The Board shall not approve a merger, consolidation, acquisition and/or change in control unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1.

Thus, in considering a request for approval pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c), the Board looks to determine whether positive benefits will flow to customers and the State and that the Transaction will not adversely impact any of the four factors set forth under N.J.S.A. 48:2-51.1. The Board, having reviewed the Petition and the entire record, **FINDS** that positive benefits will flow to customers and the State from the Transaction and that the Transaction will not adversely impact any of the four factors set forth under N.J.S.A. 48:2-51.1, and it will not adversely affect the public interest.

There will be no adverse impact on competition. The proposed Transaction will have no adverse impact on the existing OVSA rates as Aqua will adopt the existing Board-approved tariffs and rate structures, until such time as such tariffs and rate structures are revised in accordance with New Jersey law. OVSA has no employees so the proposed Transaction will not have an adverse impact on utility employees. OVSA operates the wastewater system using an outside contractor, whose contract expires on January 31, 2019. Thereafter, Aqua has agreed to utilize qualified individuals to operate the system and to inspect the wastewater system on a regular basis to ensure the system is operating properly and is in compliance with applicable regulations.

The Parties agreed that OVSA should be permitted to abandon the provision of wastewater service, and should be relieved of its obligations under its Board-approved tariff, and of any and all conditions or Orders of the Board applicable to OVSA, upon the closing of the proposed asset sale to Aqua. Thus, as to N.J.S.A. 48:2-24, the discontinuance of service by OVSA will cause no interruption of service, as customers affected by the transfer will continue to be provided with safe, adequate and proper service by Aqua upon the closing of the proposed asset sale to Aqua.

Therefore, the Board **HEREBY ORDERS** that OVSA abandon the provision of wastewater service and be relieved of its obligations under its Board-approved tariff, and of any and all conditions or Orders of the Board applicable to OVSA, upon the closing of the proposed asset sale to Aqua.

The proposed Transaction will cause no material changes in the balance sheet or financial position of Aqua. All of the outstanding debts of Aqua will continue to be liabilities and obligations of Aqua. The need to comply with increasingly stringent environmental standards, while also rehabilitating and replacing aging water infrastructure, has created substantial demands for capital investment by water utilities. The financial resources and backing of Aqua will be a benefit to OVSA customers in the replacement of infrastructure and compliance with the Safe Drinking Water Act. After the completion of the proposed Transaction, customers of OVSA will have access to Aqua's customer service call center to resolve customer service issues.

As a result of the NOV, the Board **HEREBY AGREES** that Aqua's bringing the wastewater system into compliance with NJDEP requirements must be a priority and should guide the improvements made to the wastewater system over the next two years. The Board **NOTES** that Aqua agrees to assume OVSA's responsibilities to undertake the following capital improvements previously identified in the 2015 Board Order.

Accordingly, the Board **FINDS** that the proposed acquisition will not jeopardize Aqua's ability to continue to render safe, adequate and proper utility service. The Transaction will have no adverse impact on the provision of safe, adequate and proper service by Aqua to its customers.

The Board **HEREBY ACCEPTS** the Township of Mount Olive's Ordinance No. 41-2000 granting OVSA consent to assign the existing Municipal Consent to Aqua.

The Board **HEREBY APPROVES** Aqua's request to rescind the charge of \$20.00 per apartment unit per quarter to the owner of the garden apartment complex for each rental unit that is vacant.

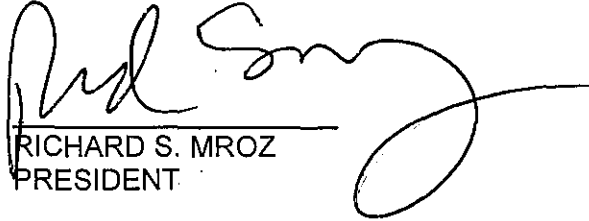
The Board **HEREBY APPROVES** the proposed acquisition of Oakwood Village Sewerage Associates, L.L.C. wastewater system by Aqua as more fully described in the Petition. Having considered the magnitude of the transaction, the Board **HEREBY FINDS** that the proposed acquisition is in the public interest subject to the following conditions:

1. This Order is based upon the specific and particular facts of this transaction and shall not have precedential value in future transactions that may come before the Board and shall not be relied on as such.
2. This Order shall not affect or in any way limit the exercise of the authority of the Board, or of the State, in any future petition, or in any proceeding with respect to rates, franchises, service, financing, accounting, capitalization, depreciation or in any matters affecting Aqua.
3. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets or liabilities now owned or hereafter to be owned by Aqua.
4. Within thirty (30) days of the date of the closing of the proposed Transaction, the Joint Petitioners shall file with the Board proof of the closing, net transaction costs, and final journal entries along with a detailed calculation of all expenses related to the proposed Transaction.
5. Within thirty (30) days of the date of the closing of the proposed Transaction, Aqua shall submit any new or revised tariff pages that may be necessary as a result of the proposed Transaction.
6. Joint Petitioners shall file with the Board its 2015 Annual Report pursuant to N.J.A.C. 14:3-6.3.
7. Joint Petitioners shall file with the Board, within thirty (30) days of closing, its Statement of Gross Intrastate Operating Revenues for the Year Ended December 31, 2015 (Form AR-3-1).
8. Pursuant to the applicable statutes, Aqua will be responsible for the Board of Public Utilities' and the Division of Rate Counsel is assessment liability based upon Aqua's 2015 Gross Operating Revenues.

The Order shall be effective on December 22, 2016.

DATED: 12/12/16

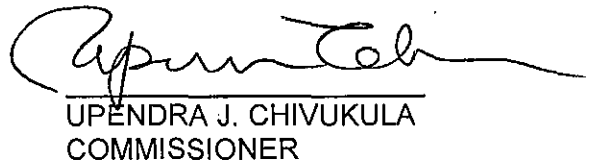
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

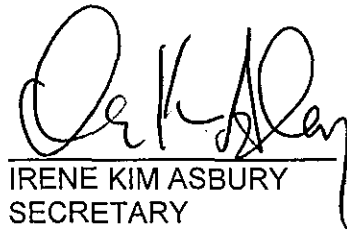

JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER

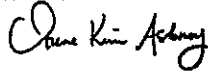

DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities



**IN THE MATTER OF THE JOINT APPLICATION OF AQUA NEW JERSEY, INC.
AND OAKWOOD VILLAGE SEWERAGE ASSOCIATES, L.L.C. FOR
APPROVAL OF THE ACQUISITION OF THE ASSETS OF A PUBLIC UTILITY
AND OTHER RELATED APPROVALS**

DOCKET NO. WM16080739

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**STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES**

I/M/O THE JOINT APPLICATION OF
AQUA NEW JERSEY, INC. AND OAKWOOD
VILLAGE SEWERAGE ASSOCIATES, L.L.C.
FOR APPROVAL OF THE ACQUISITION OF
THE ASSETS OF A PUBLIC UTILITY AND
OTHER RELATED APPROVALS

STIPULATION OF SETTLEMENT
BPU DOCKET NO. WM16080739

APPEARANCES:

Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of Aqua New Jersey, Inc., and Tricia M. Caliguire, Esq., McCarter & English, LLP, on behalf of Oakwood Village Sewerage Associates, LLC, together, the Joint Petitioners

Veronica Beke, Deputy Attorney General, and Renee Greenberg, Deputy Attorney General, (Christopher S. Porrino, Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Christine M. Juarez, Esq., Assistant Deputy Rate Counsel, and Debra Robinson, Esq., Deputy Rate Counsel, on behalf of the Division of Rate Counsel (Stefanie A. Brand, Esq., Director)

TO THE HONORABLE COMMISSIONERS OF THE BOARD OF PUBLIC UTILITIES:

This Stipulation of Settlement (“Stipulation”) fully resolves all issues raised in this proceeding in which Aqua New Jersey, Inc. (“Aqua” or the “Company”) is seeking approval by the New Jersey Board of Public Utilities (“Board”) to purchase the wastewater system assets now owned and operated by Oakwood Village Sewerage Associates, L.L.C. (“OVSA”). Aqua and OVSA (together, “Joint Petitioners”) are each public utilities regulated by the Board, and subject to the jurisdiction of the Board.

The parties that have actively participated in this proceeding are as follows: the Joint Petitioners, the Staff of the Board (“Staff”), and the Division of Rate Counsel (“Rate Counsel”). As a result of an analysis of the Joint Petitioners’ Verified Joint Petition (the “Joint Petition”)

and exhibits, conferences, negotiations, and responses to data requests, the Joint Petitioners, Rate Counsel and Staff (collectively, the "Signatory Parties") have come to an agreement on all of the issues in this matter.

The Signatory Parties agree the procedural history of this matter is as follows:

On August 3, 2016, Joint Petitioners filed the Joint Petition consistent with N.J.S.A. 48:2-51.1, N.J.A.C. 14:1-5.14, and N.J.S.A. 48:2-24, seeking the Board's approval of: 1.) Aqua's acquisition of the wastewater system assets of OVSA as described more fully in the Asset Purchase Agreement; 2.) Aqua's proposal to charge the same rates for wastewater service as contained in the Oakwood Village Sewerage Associates, LLC tariff Rate Schedule No. 1 General Service (approved by the Board¹); 3.) Aqua's proposal to implement an initial tariff of \$20.00 per quarter to be charged for vacant apartment units in the Oakwood Village Apartments complex; 4.) OVSA's request to abandon the provision of wastewater service upon the closing of the asset purchase transaction; and 5.) OVSA's request to be relieved of its obligations under its Board-approved tariff, and of any and all conditions or Orders of the Board applicable to OVSA, upon the closing of the proposed asset acquisition.

By way of background, the OVSA wastewater system is located in the Township of Mount Olive (the "Township"), Morris County, and provides wastewater collection and treatment services to 35 customers, including 34 single-family homes (in the Millbrook Estates at Flanders housing development) and the Oakwood Village Apartments (a garden apartment complex consisting of 1,224 rental apartments). OVSA's customers pay for wastewater service

¹ OVSA's tariff rates were approved by the Board in 2002 and have remained unchanged since that time. I/M/O the Application of Oakwood Village Sewerage Associates, L.L.C. for Approval of (A) Service Area, (B) Issuance of Equity Interests, and (C) Initial Tariff, BPU Docket No. WE00120986, Order, dated December 19, 2002. In I/M/O the Joint Application of Oakwood Village Sewerage Associates, L.L.C. and AION Oakwood Sewer, L.L.C. for Approval of a Transfer of Control of a Public Utility, BPU Docket No. WM15091006, Order of Approval (dated December 16, 2015)(the "2015 Order"), the Board's 2015 Order included Board-approved revisions to the original tariff with no changes in sewer rates.

on a quarterly basis, with the single-family homes being charged a fixed quarterly rate of \$206.25 and the apartment complex paying a fixed quarterly rate of \$59,191.25 (computed at \$48.36 per quarter for each apartment). OVSA's service territory is fully developed, and no growth is anticipated in the service area.

Pursuant to an Asset Purchase Agreement ("Agreement") dated July 21, 2016, and provided as Exhibit A to the Petition, Aqua seeks to acquire the OVSA wastewater system assets for a purchase price of \$1,250,000. Included in those assets is the existing municipal consent of the Township. By way of a Resolution dated September 20, 2016, the Township consented to OVSA's assignment of the wastewater franchise to Aqua.² While a public comment hearing was not required in this matter, the Joint Petitioners nonetheless mailed letters to each customer describing the proposed transaction (including where additional information could be obtained), and setting out how customers might provide comments to the Board regarding this matter. No comments were received from customers.

The Joint Petition was retained by the Board for consideration. The Signatory Parties have reviewed the Joint Petition, responses to discovery and have conducted settlement discussions in an effort to reach a proposed settlement of all the issues in this proceeding. The Signatory Parties have agreed to reasonably, fully and finally resolve all factual and legal issues in this matter by way of this Stipulation. In consideration of the recitals and mutual promises and covenants set forth herein, the Parties **DO HEREBY STIPULATE AND AGREE:**

1. The Signatory Parties agree the acquisition of the wastewater system assets of OVSA by Aqua is consistent with the criteria of N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, and recommend that the proposed asset purchase be approved by the Board. When considering a

² A copy of the Township's Resolution consenting to the assignment of the franchise to Aqua was provided in response to Supplemental Data Response SE-5. The Signatory Parties agree that this response, and all other data responses, shall be considered part of the evidentiary record of this proceeding.

transaction pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, the Board is required to evaluate the impact of the proposed transaction on competition, on the rates of ratepayers affected by the change in control, on the employees of the affected public utility, and on the provision of safe, adequate and proper utility service at just and reasonable rates, and to state the positive benefits that will be realized as a result of the change in control. These findings are set out below:

- (a.) Rates charged for wastewater service will be unchanged after the asset purchase is completed. Aqua proposes to continue to charge the same Board-approved rates for wastewater service now in effect.
- (b.) Joint Petitioners note that there are no employees dedicated to operating the OVSA wastewater system. Instead, OVSA operates the wastewater system using an outside contractor, whose contract expires on January 31, 2019. Thereafter, Aqua agrees to utilize qualified individuals to operate the system and to inspect the wastewater system on a regular basis to ensure the system is operating properly and is in compliance with applicable regulations.
- (c.) The provision of safe, adequate and proper utility service will be enhanced as a result of the proposed transaction in that it will make available to customers of OVSA the environmental, technical, operational and capital resources of Aqua. This will be the first time that the OVSA system is owned by a large regulated water/wastewater utility, and OVSA will benefit from Aqua's expertise. In addition, Aqua has proposed to make the significant capital improvements described in Paragraph Three (3)

below to address wastewater system deficiencies and to insure that the wastewater system is in compliance with applicable New Jersey Department of Environmental Protection (“NJ DEP”) requirements.

- (d.) The proposed asset purchase will have no immediate, direct or measurable impact on competition as Aqua will serve the present customers of OVSA under the same market conditions that currently exist, and Aqua will continue to be subject to the jurisdiction of the Board. Moreover, the OVSA service territory is fully developed and no further growth is planned.
- (e.) The transaction will result in benefits to the customers of OVSA through system investment and improved service. The transaction will also benefit the State of New Jersey in that a small wastewater utility with environmental challenges will now be owned and operated by a regulated public utility with the resources and technical expertise to address the needs of the wastewater system and the customers now served by OVSA.

2. By the 2015 Order, OVSA previously agreed to make certain system improvements within 2 years of the closing of the change of control transaction that was the subject of that proceeding.³ Specifically, OVSA agreed to make improvements characterized as “Immediate Recommendations” identified in the Hatch, Mott, MacDonald report titled “Oakwood Village Wastewater Treatment Plant, Final WWTP Condition Assessment” and dated November 2015 (the “HMM Report”). OVSA also agreed to make certain repairs identified by Applied Water Management (“AWM”), the contract operator of the wastewater system, to the

³ AION Oakwood Sewer, L.L.C. acquired OVSA in the transaction reviewed and approved by the Board in BPU Docket No. WM15091006, which transaction closed on January 20, 2016.

extent that those repairs were not duplicative of the Immediate Recommendations identified in the HMM Report. The Signatory Parties further acknowledge that the 2015 Order in BPU Docket No. WM15091006 permitted the parties to that proceeding to agree to forego or delay implementation of the AWM recommendations and the HMM Report Immediate Recommendations.⁴

3. The Signatory Parties further acknowledge that since the Board's approval of the acquisition of OVSA by AION, NJ DEP has issued a Notice of Violation ("NOV") to OVSA indicating the system is not in compliance with applicable NJ DEP requirements. As a result of the NOV, the Signatory Parties agree that bringing the wastewater system into compliance with NJ DEP requirements must be a priority, and should guide the improvements made to the wastewater system over the next 2 years. Consequently, Aqua agrees to assume OVSA's responsibilities to undertake the following capital improvements previously identified in the 2015 Order, and OVSA shall have no further obligations in connection therewith:

- (a.) Ultra-violet treatment system will be made functional (including replacing the UV electrical cabinet and UV bulbs) within 6 to 8 months of the closing of the proposed asset purchase by Aqua.
- (b.) Flow-related permit exceedances will be investigated and corrected if necessary, and the flow meters will be replaced within 6 to 8 months of the closing of the proposed asset purchase by Aqua.
- (c.) Berm construction surrounding the spray field, and replacement of the spray heads, if necessary, will be completed within 1 to 2 years of the closing of the proposed asset purchase by Aqua. The Signatory Parties

⁴ See 2015 Order, at 8.

acknowledge that this project will require significant design and that NJ DEP permitting activities could have an impact on the timing of the completion of the project.

- (d.) Membrane bioreactor replacement will be conducted on an initial 3 year cycle, beginning 1 year after the closing of the proposed asset purchase by Aqua.
- (e.) Headworks repair will be conducted within 1 year of the closing of the proposed asset purchase by Aqua.
- (f.) Aqua will implement site safety upgrades as soon as possible, but no later than 6 to 8 months, following the closing of the proposed asset purchase by Aqua.

4. The Signatory Parties acknowledge that Aqua will make many, but not all, of the improvements originally included in the 2015 Order. At this time, Aqua will not be addressing two major categories of improvements: 1.) the Service Building and 2.) Anoxic/Aerobic Treatment and certain other individual items listed under the major categories set forth in the response to RCR-E-9 and included in the 2015 Order. For the first 2 years following the closing of the purchase of the OVSA assets, Aqua instead will focus its attention and resources on bringing the system into compliance with NJ DEP requirements. Thereafter, Aqua will evaluate the need for those improvements identified in the 2015 Order, but excluded from Paragraph Three (3) above, and determine if the projects are needed to provide safe, adequate and proper utility service. To the extent any such projects are identified, Aqua agrees to make the necessary capital investment as soon as reasonably practicable. Aqua further agrees to provide the Board and Rate Counsel with an annual report detailing the progress of its improvements for the Board

and Rate Counsel to review, starting one year after the effective date of the Board Order in this proceeding.

5. Aqua agrees that should the NJ DEP assess a fine or financial penalty related to the current NJ DEP Notice of Violation, Aqua will not seek recovery of such fine or penalty from customers.

6. The Signatory Parties recommend that the Board approve Aqua's proposal to charge customers now served by OVSA the same rates for wastewater service as contained in the Oakwood Village Sewerage Associates, LLC tariff Rate Schedule No. 1 General Service (approved in the 2015 Order); and further recommend that the Board direct the Company to file tariff pages with the Board giving effect to these rates upon the closing of the asset purchase. Nothing in this Stipulation of Settlement addresses issues of rate recovery related to the acquisition of the OVSA wastewater system. All issues of rate recovery stemming from this acquisition will be evaluated in a future base rate proceeding.

7. Aqua has withdrawn its request to implement an initial tariff rate of \$20.00 per quarter to be charged to the garden apartment complex for vacant apartments.

8. In the next base rate case including the OVSA wastewater system, Aqua agrees to provide Staff and Rate Counsel with an Analysis of the system flows attributable to the Millbrook Estates portion of the wastewater system as compared to the system as a whole, along with the operations and maintenance ("O&M") costs attributable to the Millbrook Estates portion of the system as compared to the total O&M costs for the wastewater system.

9. The Signatory Parties agree that OVSA should be permitted to abandon the

provision of wastewater service, and should be relieved of its obligations under its Board-approved tariff, and of any and all conditions or Orders of the Board applicable to OVSA, upon the closing of the proposed asset sale to Aqua.

10. The Signatory Parties recommend that the Board consider the above stipulated terms and all agreed upon issues embodied in this Stipulation at its next regularly scheduled public agenda meeting.

11. This Stipulation is the product of negotiations by the Signatory Parties and it is an express condition of the settlement embodied by this Stipulation that it be presented to the Board in its entirety without modification or condition. It is also the intent of the Signatory Parties that this settlement, once accepted and approved by the Board, shall govern all issues specified and agreed to therein. The Signatory Parties specifically agree that if adopted in its entirety by the Board, no appeal shall be taken by them from the Order adopting the same as to those issues upon which the Signatory Parties have stipulated herein. The Signatory Parties agree that the within Stipulation reflects mutual balancing of issues and positions and is intended to be accepted and approved in its entirety. Each term is vital to this Stipulation as a whole, since the Signatory Parties hereto expressly state that they would not have signed this Stipulation had any terms been modified in any way. In the event any particular aspect of this Stipulation is not accepted or approved by the Board, then any Signatory Party materially affected thereby shall not be bound to proceed under this Stipulation.

12. The Signatory Parties further recommend to the Board that an Order issued as a result of this Stipulation shall not be construed as directly or indirectly fixing for any purposes

whatsoever any value of any tangible or intangible wastewater utility assets now owned or hereafter to be owned by Aqua.

13. The Signatory Parties recommend to the Board that an Order issued as a result of this Stipulation shall not affect nor in any way limit the exercise of the authority of this Board or of this State, in any future Petition or in any proceedings with respect to rates, franchises, service, financing, accounting, capitalization, depreciation, or in any other matter affecting or relating to Aqua.

14. Except as expressly provided herein, the Joint Petitioners, Staff or Rate Counsel shall not be deemed to have approved, agreed to, or consented to any principle underlying or supposed to underlie any agreement provided herein. This Stipulation, in total or by specific item, is in no way binding upon them in any other proceeding, except to enforce the terms of this Stipulation.

15. This Stipulation may be executed in as many counterparts as there are Parties to this Stipulation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

AQUA NEW JERSEY, INC.

Date: December 2, 2016


By: SAUL EWING LLP
Colleen A. Foley, Esq.

OAKWOOD VILLAGE SEWERAGE
ASSOCIATES, L.L.C.

Date: December 2, 2016


By: MCCARTER & ENGLISH LLP
Tricia M. Caliguire, Esq.

CHRISTOPHER S. PORRINO,
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the Board of
Public Utilities

Date: December 2, 2016


By: ~~Veronica Beke~~ Renee Greenberg
Deputy Attorney General

STEFANIE A. BRAND, DIRECTOR
NEW JERSEY DIVISION OF RATE COUNSEL

Date: December 2, 2016


By: Christine Suarez, Esq.
Asst. Deputy Rate Counsel