



Agenda Date: 10/05/10  
Agenda Item: 5B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center, Suite 801**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

WATER

IN THE MATTER OF THE ACQUISITION OF THE )  
WALKILL SEWER COMPANY BY AQUA NEW ) ORDER  
JERSEY, INC. AND OTHER RELATED APPROVALS )  
)  
) DOCKET NO. WM10020117  
)

Collen A. Foley, Esq., Saul Ewing LLP, Newark, NJ for Petitioner

(SERVICE LIST ATTACHED)

BY THE BOARD:

On February 16, 2010, Aqua New Jersey, Inc. ("Aqua" or "Company") and Walkkill Sewer Company ("Walkkill") (collectively "Petitioners") filed a joint petition with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5 for approval of a municipal consent granted on January 19, 2010, by Hardyston Township ("Township"), Sussex County, New Jersey, authorizing Walkkill to provide sewer service to portions of the Township through Township Resolution #12-10. The prior consent could not be located although records indicate that consent was granted to Walkkill in a previous Board decision dated December 19, 1979, Docket No. 797-652. Aqua also seeks approval of the acquisition of Walkkill's stock, approval to convert Walkkill customers from quarterly to monthly billing, approval of the stock purchase agreement, and approval of excess sewer capacity credits, if available, pursuant to N.J.S.A. 48:3-7, N.J.S.A. 48:2-51.1, and N.J.S.A. 48:3-10.

Essentially, in evaluating this petition, the Board must be 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 or on the employee obligations set forth in N.J.S.A. 48:3-10. See also N.J.A.C. 14:1-5.14 (c).

Edgewater Associates ("Seller"), a New Jersey partnership, owns all of the issued and outstanding shares of the capital stock of Walkkill. On November 13, 2009, Aqua signed a definitive Stock Purchase Agreement to acquire from the Seller, all of the issued and outstanding shares of the capital stock of Walkkill for \$300,000, subject to certain adjustments at closing. According to the Petition, Aqua intends to operate the acquired Company under the Aqua name.

Aqua provides water and wastewater services to approximately 50,000 customers in municipalities located in Warren, Hunterdon, Mercer, Burlington, Monmouth, Camden, Ocean, Sussex, and Gloucester Counties, New Jersey. Through its Northern Division headquartered in Phillipsburg, New Jersey, the Company provides service within Warren County to franchise areas located in Phillipsburg, Pohatcong, Lopatcong, Greenwich, Harmony, and Holland Townships.

Wallkill provides sewer service to 387 residential customers in portions of Hardyston Township, Sussex County, New Jersey.

On August 12, 2010, a duly noticed public hearing on the Petitioners' joint petition was held at the Board's Newark office. Legal Specialist Joseph Quirolo, Esq., presided over the hearing at which representatives of the Company, the Division of Rate Counsel ("Rate Counsel") and the Board Staff appeared. No members of the public appeared at the hearing.

There will be no impact on the Company's ability to provide safe, adequate and reliable service to the other areas served by the Northern Division. The new customers will have customer assistance through the Northern Division's office located in Phillipsburg, including a 24 hour emergency line. Aqua will provide daily on-site visits by a Licensed Operator to operate/supervise system operations. The Licensed Operator's responsibilities include other nearby systems. Back-up operators will be available as needed.

Aqua will undertake certain capital improvements worth \$70,000 to update portions of the sewer collection system after closing. Wallkill's system is comprised of 18,000 feet of collection main, 110 manholes, a booster pump, curb boxes and curb stops. Wallkill's sewer system is a collection system that conveys its waste to the Sussex County Municipal Utilities Authority ("SCMUA") where the waste is treated. SCMUA is a regional treatment provider for wastewater service and both entities hold an amended contract dated May 3, 1984. Wallkill is the owner of excess sewer capacity credits and Aqua needs to determine whether that amount will be needed to accommodate potential growth in the area.

Wallkill determined that it was providing sewer service to customers located in portions of the Township that were not included in Wallkill's original franchise grant dated November 1, 1977. The original franchise has expanded and the Company requested to reconfirm the municipal consent. The Township granted consent through Resolution #12-10, which authorizes Wallkill to provide sewer service to the areas that it presently serves.

Wallkill's sole employee is Nicholas Rizzo. He is President of Wallkill and is the ultimate shareholder of the utility. As part of the proposed transaction, Aqua has agreed to employ Nicholas Rizzo as a consultant for a two year period with a yearly salary of \$27,500.

Aqua did not propose to change the rates that Wallkill customers are currently charged under Wallkill's Board approved sewer tariff. Currently, Wallkill customers pay a fixed fee of \$40.56 per quarter and a volumetric charge of \$5.48 per thousand gallons pursuant to its Board approved tariff, Docket Nos. WR02030193 and WR02030194, dated August 7, 2003.

There is potential for growth in the Wallkill franchise area. The current proposal includes the addition of 175 townhouses and two commercial office buildings.

By letter dated September 22, 2010, Rate Counsel submitted its comments to the petition and is not opposed to its approval with certain provisions. These provisions include limiting the

acquisition to the stock and not indicating authorization to include any specific assets for amounts in rate base, or indicate authorization for any other ratemaking treatment. Rate Counsel asserts that it may oppose any future attempts by Aqua to include an acquisition adjustment in rate base and/or recovery of consulting agreements in the Company's revenue requirement. With these caveats, Rate Counsel is not opposed to approval of the Petition. Rate Counsel further recommends the inclusion of specific language in any Board Order approving the petition, which is incorporated in this Order.

The record indicates that Aqua provides potable water and wastewater service to customers in various communities located in nine counties throughout the State. Its employees are qualified and possess the expertise to operate and maintain these systems and facilities so as to provide safe, adequate and proper service. This same level of service will be provided to the new service area. As a wholly owned subsidiary of Aqua America, the Company has the financial stability and access to a wealth of utility related expertise and capital should the need arise.

Regarding the impact of the proposed acquisition on the requirements of N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, the record indicates as follows:

1. Impact on Competition: The proposed acquisition of Walkkill by Aqua will not adversely impact competition in the New Jersey water industry, especially since Walkkill is a small stand-alone system, with finite capacity. Thus, the acquisition will have very limited, if any, impact on competition.
2. Impact on Customer Rates: The proposed acquisition will not adversely affect the rates of ratepayers affected by the acquisition since the rates will not change after the stock purchase is completed.
3. Impact on Employees: The proposed acquisition will not adversely affect employees of Walkkill since it does not have any employees.
4. Impact on Service: The proposed acquisition will positively benefit the provision of safe, adequate, and proper utility service since service will be provided by a larger utility with established resources.

Based on the foregoing and a thorough review of the record to this proceeding, the Board **HEREBY FINDS** the proposed acquisition satisfies the requirements of N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 and therefore **HEREBY APPROVES** Aqua's purchase of the stock of Walkkill, the stock purchase agreement executed by Petitioners, Aqua's request to convert to monthly billing.

Also, the Board **HEREBY CONCLUDES** that the municipal consent requested is necessary and proper for the public convenience and properly conserves the public interests and **HEREBY APPROVES** the updated Hardyston Township Resolution #12-10, executed on January 19, 2010, for the provision of wastewater service in Hardyston Township.

The approvals granted herein shall be subject to the following provisions:

This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever the value of any tangible or intangible assets now owned or hereafter to be owned by Aqua New Jersey Inc.

2. This Order shall not affect or in any way limit the exercise of the authority of this Board in any future petition or in any proceeding with respect to rates, franchises, service,

financing, accounting, capitalization, depreciation, or in any other matter affecting Aqua New Jersey Inc.

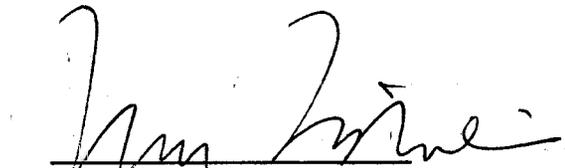
3. In an appropriate subsequent proceeding, the Company shall have the burden of demonstrating whether, and to what extent, any of the costs associated with this petition shall be allocated to ratepayers. Approval of this acquisition and/or municipal consent does not include authorization to include in rate base the specific assets that are or will be completed as a result of the acquisition.
4. Approval of this acquisition and/or municipal consent ordinance does not constitute Board approval of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, cost of construction, contributions in aid of construction, depreciation on contributed plant, the cost of connection, or any related capital improvements, and the allocation of such costs and expenses, shall be made in an appropriate subsequent proceeding.

DATED: 10/5/10

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

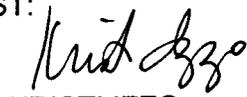
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

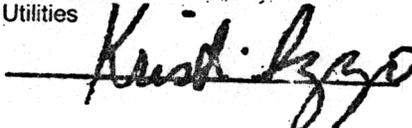
  
NICHOLAS ASSELTA  
COMMISSIONER

  
ELIZABETH RANDALL  
COMMISSIONER

ATTEST:

  
KRISTI IZZO  
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 ACQUISITION OF WALLKILL SEWER COMPANY  
BY AQUA NEW JERSEY, INC. AND OTHER RELATED APPROVALS

BPU DOCKET NO. WM10020117

SERVICE LIST

Colleen A. Foley, Esq.  
Stephen B. Genzer, Esq.  
Saul Ewing LLP  
One Riverfront Plaza, 5<sup>th</sup> Floor  
Newark, NJ 07102

Scott H. Mitchell  
Aqua New Jersey, Inc.  
10 Black Forest Road  
Hamilton, NJ 08691

Nicholas Rizzo  
Walkkill Water Company  
3331 State Route 94 South  
Hamburg, NJ 07419

Debra Lynn Nicholson, Esq.  
1 Main Street  
Sparta, NJ 07871

Stefanie Brand, Esq., Director, Rate Counsel  
Debra F. Robinson, Esq., Deputy Rate Counsel  
Division of Rate Counsel  
31 Clinton Street, 11<sup>th</sup> Floor  
P.O. Box 46005  
Newark, NJ 07101

Marco Valdivia, Bureau Chief  
Division of Water  
Board of Public Utilities  
Two Gateway Center Suite 801  
Newark, NJ 07102

Cynthia Holland, DAG  
Alex Moreau, DAG  
Dept. of Law & Public Safety  
Division of Law  
124 Halsey St., 5<sup>th</sup> Floor  
Newark, NJ 07101