

February 27, 2006

VIA HAND DELIVERY

Kristi Izzo, Secretary
State of New Jersey, Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

**Re: In The Matter of The Petition of Aqua New Jersey, Inc. for
Approval of a Municipal Consent To Provide Water Service
To Portions of the Borough Of Alpha
BPU Docket No.: WE05060543**

Dear Secretary Izzo:

Please accept for filing an original and eleven copies of the Division of the Ratepayer Advocate's ("Ratepayer Advocate") comments regarding the above referenced matter. Please date stamp the additional copy as "filed" and return it in the courier. Thank you for your consideration and attention to this matter.

Background

On June 17, 2005, Aqua New Jersey, Inc. ("Aqua-NJ" or "Company") filed a Petition with the State of New Jersey, Board of Public Utilities ("BPU" or "Board"), requesting its expedited review and approval of a municipal consent ordinance ("Municipal Consent") passed by the Borough of Alpha, Warren County ("Alpha" or the "Borough"), granting Aqua-NJ a franchise to provide water services on lands within the Borough specifically known as Grande at Park Ridge, and further allowing for

emergency water connection services to occur between the Borough’s municipal system (the “Alpha System”) and a Company-owned system located adjacent to the Borough in the Township of Phillipsburg, New Jersey (“Phillipsburg”).¹

Aqua-NJ currently provides water and/or wastewater services to nearly 44,000 customers in municipalities located in Warren, Hunterdon, Burlington, Monmouth, Camden and Gloucester Counties, New Jersey. Through its Northern Division, headquartered in Phillipsburg, New Jersey, Aqua-NJ provides service to franchise areas located in Phillipsburg, Pohatcong, Lopatcong, Greenwich, Harmony, and Holland Townships, all of which are in Warren County.²

Aqua-NJ, formerly Consumers New Jersey Water Company (“CNJ”), is a wholly owned subsidiary of Aqua America, Inc., formerly the Philadelphia Suburban Corporation (“PSC”). In March 1999, CNJ's then parent, Consumers Water Company, merged with PSC. Aqua America, Inc. is the holding company for water and wastewater utilities that, together with the Company, serve approximately 2.5 million residents in 13 states.³

Analysis – Grande at Park Ridge Estates

Grande at Park Ridge Estates (the “Development”) is a residential housing development that will eventually consist of 92 single-family homes and 16 condominium apartments, some of which will be built in accordance with the Borough’s plans to provide affordable housing.⁴ The Municipal Consent authorizes the Company to construct, maintain and operate water works to supply, distribute and sell water to

¹ Petition, paras. 1, 4 and 7.

² Id., para. 1

³ www.aquaamerica.com

⁴ Petition, para. 2.

residents of the Development.^{5 6} Construction of the Development has not yet begun and will not be scheduled to begin unless and until the Board approves the Company's Petition in this matter.⁷ As such, there are presently no residents located in the proposed franchise area, and no water service is currently being provided there.⁸

The developer of the property, D.R. Horton, Inc. (the "Developer"), will install the Development's water system (the "Park Ridge System") pursuant to the terms of a main extension agreement between itself and Aqua-NJ (the "Agreement").⁹ The Agreement was executed in September 2005. Any subcontractors of the Developer slated for this installation will be subject to the Company's approval.¹⁰

The Company proposes that the Park Ridge System be included in and served by its Northern Division ("Division"), which currently serves 10,825 water customers in that territory.¹¹ The Division will respond to emergencies arising in the proposed franchise area, where customers can call either its offices from 8:00 a.m. to 4:30 p.m., Monday through Friday, or its 24-hour emergency phone line after normal business hours.¹²

Aqua-NJ plans to interconnect the Park Ridge System with the adjacent Phillipsburg water system, which is located less than a mile from the Development, and which serves approximately 8,900 metered customers in the towns of Phillipsburg, Lopatcong, Greenwich, Pohatcong and Harmony (the "Phillipsburg System").¹³ Division

⁵ Id. para. 1.

⁶ Note: Per its response to SE-8, the Company has no involvement in the provision of wastewater services to the Development.

⁷ Responses to RAR-1.

⁸ Petition, para. 4.

⁹ Id., para. 2 and Response to RAR-28.

¹⁰ Response to SE-16.

¹¹ Petition, para. 3 and Response to RAR-2.

¹² Response to SE-9.

¹³ Petition, para. 3 and Responses to RAR-8 and RAR-10.

employees make daily visits to the Company's water facilities located throughout Warren County, where the Phillipsburg System is situated.¹⁴

The Alpha System has inadequate capacity under existing New Jersey Department of Environmental Control ("NJDEP") permits to serve the Development.¹⁵ With a firm capacity of 5.74 MG per day and a peak daily demand of 4.33 MG per day, the Company states the Phillipsburg System has sufficient capacity under its existing NJDEP permits to serve the Development, and it therefore proposes to use the 1.41 MG per day of spare capacity for the proposed franchise.¹⁶ At full build out, the Company estimates that water usage at the Development will average approximately 7.776 MG per year, while peak water usage will average approximately 0.648 MG per month.^{17 18}

The Phillipsburg System's production facilities consist of four public supply wells, three of which are located along River Road and are operated and treated by the Exley Facility at 1099 River Road, Lopatcong, New Jersey.¹⁹ The fourth well is located on Liberty Road in Harmony, New Jersey, and is used strictly as an irrigation-only well for a nearby golf course.²⁰ Treatment for the Phillipsburg System's wells consists of disinfection for all wells using Sodium Hypochlorite, and also pH adjustment for the Liberty Road Well using Caustic Soda.²¹ The Phillipsburg System has a total storage capacity of 9.0 MG -- 6.0 MG of storage at the Marble Hill Reservoir, 2.0 MG at the Marble Hill Tank, and 1.0 MG at the Lows Hollow Tank.²²

¹⁴ Petition, para. 3.

¹⁵ Id., para. 4.

¹⁶ Petition, para. 4 and Response to RAR-8.

¹⁷ Per its response to RAR-6, Aqua-NJ is not able to predict what averages for the next five years will be, stating it will depend on how many units are built and occupied in each of these years.

¹⁸ Responses to RAR-6 and RAR-7.

¹⁹ Per response to RAR-22, the Exley Facility is a Company-owned and operated water treatment center for the Company's Northern Division.

²⁰ Response to RAR-8.

²¹ Id.

²² Id.

Except for an OSHA-assessed fine in 2005 for a trench violation, the Company has not been assessed any fines or penalties by the NJDEP or other local, state or federal government agency in the past five years.²³ Permits required to serve the Development are an NJDEP-issued Safe Drinking Water Permit and a Road Opening Permit, whose submission and approval the Company asserts are the responsibility of the Developer.²⁴

25

The Company does not anticipate the need to make any significant capital improvements to the Phillipsburg System in order to serve the proposed franchise area.²⁶ Capital additions required for the Park Ridge System and its interconnection with the Phillipsburg System (the “Extended System”) will include the installation of a main line extension, hydrants, services, and meters, all of which will belong to the Company, irrespective of whether they will lie in public or private rights of way.²⁷ All capital additions will be paid for by the Developer.²⁸ Following are the types and sizes of water mains specified by the Company for the Extended System:²⁹

5,160 linear feet ± 12-inch transmission main (on Seventh Ave.)*
749 linear feet ± 12-inch transmission main (in Development)*
4,200 linear feet ± 8-inch main (in Development)

* including all pipe, fittings, valves, chambers and restoration.

²³ Response RAR-20.

²⁴ Responses to RAR-12 and SE-22.

²⁵ Note: That the Developer is responsible for the submitting and securing of all governmental agency permits is also echoed in §2.7 of the Municipal Consent Ordinance 05-10, attached as Exh. A to the Petition. However, the Main Extension Application and Agreement attached to the Response to RAR-28 states at para 1(a) the Developer is to submit such permit applications to the Company, who in turn will be responsible for the “[s]ubmission, processing and securing of approval of same.”

²⁶ Response to RAR-11.

²⁷ Response to RAR-11 and Attachment to Response to RAR-28, para. 5.

²⁸ Response to RAR-26.

²⁹ Attachment to Response to RAR-28, para. 3 and cover page.

Most of the Extended System will be constructed in the public rights of way.³⁰ The Developer has agreed to convey and confirm to Aqua-NJ an easement and right-of-way over the streets served pursuant to the Agreement, in order that it may install, maintain, repair, extend, replace and remove mains and appurtenances laid pursuant to the Agreement, until such time as these are accepted by the appropriate governing body.³¹ The Developer has also agreed to convey and confirm to Aqua-NJ, prior to the installation of any mains to be located outside the existing or proposed public rights-of-way, a perpetual and recordable deed or deeds of easement for the right to install, operate and maintain water facilities.³²

All materials to be supplied, and/or installation to be performed by the Developer for pipes, fitting, hydrants and other appurtenances must meet Company specifications, and are likewise subject to Company inspection and approval, prior to their burial.³³ Furthermore, upon completion of the installation of the mains and appurtenances by the Developer, whether in total or in phases, and before Aqua-NJ turns on water service in the mains, the Developer, in the presence of the Company, must perform a pressure test, at which time the Company will collect bacterial samples for testing.³⁴ Additionally upon such completion, the Developer must provide the Company with a complete set of as-built drawings (“As-Built Plans”).³⁵

Pursuant to the Agreement, the Company is responsible for the installation of the Development’s services up to the curb stop.³⁶ Once Aqua-NJ has received the As-Built Plans, and the Extended System has been successfully pressure tested, bacteria tested and

³⁰ Response to SE-13.

³¹ Attachment to Response to RAR-28, para. 5.

³² Id., para. 6.

³³ Id., para. 8.

³⁴ Id., para. 9.

³⁵ Id.

³⁶ Id., para. 10.

flushed, the Company will construct such services.³⁷ The cost of the service lines will be the responsibility of the Developer, who will advance amounts for such costs to the Company.³⁸ Service relocations after initial installation will be at the Developer's cost.³⁹

Aqua-NJ is responsible for reliable fire protection at the Development, and thus will supply fire hydrants for the Developer to install.⁴⁰ Ten (10) hydrants are proposed.⁴¹ Aqua-NJ will also supply and install all water meters in locations acceptable to it.⁴² If, in the judgment of the Company, a meter pit is required, such will be subject to the Company's approval and be funded by the Developer.⁴³ The Company will determine the correct size of meters to be installed in metered service accounts.⁴⁴

Any fees for professional and other services required to be funded to the Borough in conjunction with the construction of the Extended System will be the responsibility of the Developer. The Developer will pay these fees to the Company, who will establish an escrow account with the Borough for such funding.⁴⁵

The Company intends to collect deposits from the Developer for the extension of water utility service to the Development, and states it will do so in compliance with N.J.A.C. 14:3-8.1.⁴⁶ Under the terms of the Agreement, the Developer will advance to Aqua-NJ \$82,278 representing the Company's estimated administrative, engineering, inspection, fire hydrant, meter and service installation costs associated with the Extended System (the "Advance").⁴⁷ Such Advance will be subject to revision should the actual

³⁷ Id.

³⁸ Response to RAR-25.

³⁹ Attachment to Response to RAR-28, para. 10.

⁴⁰ Id., para. 4.

⁴¹ Id., cover page.

⁴² Id., para. 11.

⁴³ Id.

⁴⁴ Id., para. 12.

⁴⁵ Id., para. 2(a).

⁴⁶ Response to SE-23.

⁴⁷ Response to RAR-24 and Attachment to Response to RAR-28, para. 1.

labor, fees and meter costs differ from the estimates.⁴⁸ Aqua-NJ will record the transaction as a Customer Advance for Construction subject to the terms of the Agreement.⁴⁹ ⁵⁰ The Company states that “Only at the conclusion of the contract (i.e., after all refunds have been paid pursuant to the [A]greement) could any amounts be recorded to CIAC (Contributions in Aid of Construction).”⁵¹ ⁵²

When the occupant of any building in the Development whose front abuts to and has a service connection made directly with the Park Ridge System extension, signs a contract with Aqua-NJ for water service, then the Company has agreed to refund the following amount to the Developer, up to the amount of the total construction costs, (whose final aggregated amount is to be determined as per the Agreement), at the end of the first full calendar quarter in which that metered customer takes service, and so long as that service is taken within 10 years following the 31st of December in the year the Agreement is signed (“10-Year Period”):⁵³

5/8-inch meter	\$1,694.00
3/4-inch meter	\$2,459.00
1-inch meter	\$3,283.00
1 1/2-inch meter	\$7,508.00
2-inch meter	\$8,837.00
3-inch meter	\$18,476.00
4-inch meter	\$22,948.00
6-inch meter	\$41,802.00
8-inch meter	\$53,837.00
3-inch and less fire service	\$3,460.00
4-inch fire service	\$6,159.00
6-inch fire service	\$13,840.00
8-inch fire service	\$24,600.00

⁴⁸ Id., para. 2.

⁴⁹ Response to RAR-17.

⁵⁰ Note: This is in some contrast to the Petition, which states at para. 2 that the Developer will “contribute the System to Aqua-NJ.”

⁵¹ Response to RAR-17.

⁵² Note also that Company has indicated in its response to SE-18 that it does not presently know how much CIAC, if any, it will record at the end of the refund agreement.

⁵³ Attachment to Response to RAR-28, paras. 12, 14, 15 and 17.

10-inch fire service	\$38,440.00
12-inch fire service	\$55,359.00

The Company will retain amounts, which will belong to it, not refunded to the Developer for customers connected after the expiration of the 10-Year Period.⁵⁴ The Company will also refund, at the end of the calendar quarter in which it received the As-Built Plans, the cost for the actual number of public fire hydrants installed, as per the As-Built Plans:⁵⁵

Fire Hydrant (public) each	\$2,523.00
----------------------------	------------

Under the terms of the Agreement, the Company has the right to cause to be forfeited the above-named refunds to the Developer if all conditions of the Agreement are not met and if water main(s) are not put into service within six (6) months of the completion of construction for any applicable phase.⁵⁶ Furthermore, the Company has the right to adjust the amount of any Advance required from the Developer under the Agreement if, through no fault of the Company, the installation of the mains has not taken place by September 30, 2006.⁵⁷ Refund payment rights under the Agreement may not be assigned by the Developer, for collateral security or otherwise, without the written consent of the Company.⁵⁸

The Company proposes to charge rates for water service to its customers in the Development based on its current water tariff on file with the Board. Following are the Company's current rates for General Metered Service:⁵⁹

⁵⁴ Id. para. 17.

⁵⁵ Id., para. 13.

⁵⁶ Id., para. 26.

⁵⁷ Id., para. 25.

⁵⁸ Id., para. 16.

⁵⁹ Response to RAR-16 and www.aquaamerica.com

<u>Size of Meter</u>	<u>Fixed Service Charge</u>	
	<u>Amount Per Quarter</u>	<u>Amount Per Month</u>
5/8" or 5/8" x 3/4"	\$ 22.65	\$ 7.55
3/4"	33.98	11.33
1"	56.63	18.88
1 1/2"	113.25	37.75
2"	181.20	60.40
3"	339.75	113.25
4"	566.25	188.75
6"	1,132.50	377.50
8"	1,812.00	604.00
10"	2,265.00	755.00
12"	2,831.25	943.75

	<u>Usage Charge</u>	
	<u>Rate/1000 Gallons</u>	<u>Rate/100 Cubic Feet</u>
General Metered Consumption	\$ 3.14994	\$ 2.3562

Following are the Company's current rates for Private Fire Protection Service:⁶⁰

Sprinkler connections including hoses or hydrants connected to them

<u>Size of Service</u>	<u>Per Quarter</u>	<u>Per Month</u>
3" or less	\$ 173.00	\$ 57.67
4"	307.94	102.65
6"	691.99	230.66
8"	1,230.02	410.01
10"	1,922.01	640.67
12"	2,767.97	922.66

Following are the Company's projected annual revenues from the proposed franchise area at full build out and occupancy, calculated at current rates.⁶¹ The Company foresees no customer growth beyond build out in the next five years.⁶²

Variable:

$$(108 \text{ Customers} \times 18,000\text{g/quarter} \times 4) / 1,000\text{g} \times \$3.14 \text{ rate}/1,000\text{g} = \$24,417$$

⁶⁰ Id.

⁶¹ Response to SE-15.

⁶² Response to SE-12.

Fixed:

(108 Customers x \$22.65 Fixed Service Charge) = \$9,785

Total Projected Annual Revenues \$34,202

The Company estimates approximately \$10,000 to \$12,000 of annual incremental costs to serve the Development (at build out).⁶³ The Company also anticipates it may incur additional variable costs, whose amounts would be dependent upon usage, such as chemical costs.⁶⁴ Pursuant to the terms of the Agreement, and for a period of one (1) year from their completion and acceptance, the Developer has fiscal responsibility for all repairs and maintenance of the mains and appurtenances that it or its agents have constructed.⁶⁵

Analysis – Emergency Water Interconnection to Alpha’s Municipal Water System

The Company states that another benefit of the Municipal Consent is that the interconnection with the adjacent Phillipsburg System will provide an emergency backup water service to the Alpha System.⁶⁶ In the event that the Alpha System uses this interconnection to obtain water supply in an emergency, this water will be provided at the then-current tariff rates.

Recommendation

The Ratepayer Advocate has reviewed the Petition and is not opposed to approval of the franchise in connection with the Development at Grande at Park Ridge Estates. Aqua-NJ provides potable water services to residents of 17 municipalities in the State and

⁶³ Response to RAR-15.

⁶⁴ Id.

⁶⁵ Attachment to Response to RAR-28, para. 19.

⁶⁶ Petition, para. 4.

can efficiently and economically serve the customers in the Development by providing financial stability and water utility expertise. Additionally, as a subsidiary of Aqua America, Inc., the Company has access to additional managerial, technical, and financial resources that demonstrate the capacity of the Company to own and maintain the Park Ridge System in a safe, adequate and proper manner.

In addition, the Municipal Consent provides an emergency water source for the Alpha System. Thus, the interconnection of the Park Ridge System and the Phillipsburg System will have a beneficial side effect in providing an emergency water source to the Borough.

Approval of the Petition should not include authorization to include in rate base the specific assets that will be acquired as a result of this Petition. The determination of any assets to be included in rate base and the ratemaking impact of serving these new customers should be addressed in a future base rate proceeding.

Accordingly, the Ratepayer Advocate recommends that any Board Order approving the Petition contain the following language:

1. This Order shall not be construed as directly or indirectly fixing for any purposes whatsoever any value of any tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
2. This Order 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 the Petitioner.

These provisions will satisfy the concerns of the Ratepayer Advocate that BPU approval is limited to the municipal consent, and should not indicate authorization to include any specific assets or amounts in rate base, or indicate authorization for any other

ratemaking treatment. With these caveats, the Ratepayer Advocate is not opposed to approval of the Petition.

Respectfully submitted,

Seema M. Singh, Esq.,
Director & Ratepayer Advocate

By: _____
Susan E. McClure
Assistant Deputy Ratepayer Advocate

SM:iaa

- c: Jeanne M. Fox, President (via hand delivery)
- Frederick F. Butler, Commissioner (via hand delivery)
- Connie O. Hughes, Commissioner (via hand delivery)
- Joseph L. Fiordaliso, Commissioner (via hand delivery)
- Christine Bator, Commissioner (via hand delivery)
- *Service List *via hand delivery or regular mail and fax*