



Agenda Date: 10/05/10

Agenda Item: 5C

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

**WATER**

IN THE MATTER OF THE ACQUISITION OF THE )  
WALLKILL WATER COMPANY BY AQUA NEW ) **ORDER**  
JERSEY, INC. AND OTHER RELATED APPROVALS )  
)  
) **DOCKET NO. WM10020116**

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 Wallkill Water Company ("Wallkill") (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 Wallkill to provide water service to portions of the Township through Township Resolution #11-10. The prior consent could not be located although records indicate that consent was granted to Wallkill in a previous Board decision dated December 19, 1979, Docket No. 797-651. Aqua also seeks approval of the acquisition of Wallkill, approval to apply Aqua's current Board approved tariff, approval to convert Wallkill customers from quarterly to monthly billing, and approval of the stock purchase agreement 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 Wallkill. 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 Wallkill for \$300,000, subject to certain adjustments

at closing. According to the Application, 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 water service to 387 residential customers and 2 commercial 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.

Wallkill possesses a Water Allocation Permit, #5344, dated May 22, 2001, which allows Wallkill to divert water from four (4) wells in the Township and an Agreement for an Emergency Water System Interconnection between the Hardyston Township Municipal Utility Authority, Pottersville Properties Development, LLC and Ridgefield Commons Homeowners Association, Inc., dated April 13, 2006.

The current plant maximum output is estimated at 233 gallons per minute (gpm) or 0.336 millions gallon per day (mgd) when combining the outputs of wells #1, #2 and #3. The system is comprised of 2 water storage tanks which hold 100,000 gallons each, 28 fire hydrants and 27,400 linear feet of water main ranging in sizes from 2 - 8 inches in diameter. There is also a fourth well (well #4) that was drilled to supplement firm capacity. The well is located in Wallkill's franchise area and has an output capacity of 100 gpm. This well is currently not in service. However, once well #4 is brought on-line, the potential combined output of the system will be approximately 0.480 mgd. According to Wallkill's 2009 Annual Report, it is estimated that the average yearly residential consumption is approximately 71,500 gallons. With this being said, there is sufficient capacity to meet demand.

Wallkill was faced with minor violations according to the New Jersey Department of Environmental Protection inspection reports. In 2007, high levels of Sodium were found in wells #2 & #3. In 2008, Wallkill failed to conduct nitrate monitoring as required by federal regulation. Both violations have been resolved.

Aqua has stated that it intends to make capital investments to the water utility of approximately \$450,000 over a five-year period, which would benefit Wallkill customers. The improvements include \$50,000 for the installment of Encoder Receiver Transmitter meters, \$265,000 in

infrastructure renewal and \$135,000 to address groundwater rule compliance.

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 proposed in its petition to charge rates for water service pursuant to its existing June 7, 2010, Board approved residential water tariff. Aqua's current rates are higher than Wallkill's which would result in a rate increase outside the context of a rate proceeding. Wallkill's customers will continue to be charged Wallkill's current rates. Currently, Wallkill customers with a 5/8" meter pay a fixed fee of \$32.08 per quarter for the first 8,000 gallons of water consumed and thereafter a volumetric charge of \$1.01 per thousand gallons consumed pursuant to Wallkill's Board approved tariff dated March 20, 1983, Docket No. 8265-143.

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.

Rate Counsel notes that Aqua proposes that Wallkill's water customers be charged the current Aqua water rates upon closing of the transaction. Aqua's current water rates are \$12.00 per month for a 5/8" meter and \$4.74045 per 1,000 gallons of usage. Wallkill currently bills customers \$32.08 per quarter for a 5/8<sup>th</sup> inch meter (which includes 8,000 gallons per quarter), and a volumetric charge of \$1.01 per 1,000 gallons for any additional usage. Also, Aqua has stated that the average residential water consumption is approximately 7,620 gallons per quarter. Therefore, based on this usage level, Wallkill's ratepayers would receive an immediate rate increase of \$160.17 or approximately 125% if the Board accepted Aqua's proposal to immediately apply the Aqua rates.

Thus, Rate Counsel objects to any immediate increase for customers of Wallkill. According to Rate Counsel, the 125% increase proposed would result in rate shock for current customers, when ratepayers are suffering many other economic hardships. Nevertheless, Rate Counsel notes that, based on these concerns, Aqua has agreed to maintain the current Wallkill rates at least until the next base rate case. Rate Counsel therefore states that, as a condition of approval, the Board should require Aqua to maintain the existing Wallkill water rates.

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.

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 Walkill by Aqua will not adversely impact competition in the New Jersey water industry, especially since Walkill is a small stand-alone system, with finite capacity.
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.
3. Impact on Employees: The proposed acquisition will not adversely affect employees of Walkill 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 water 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 Walkill and 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 thus **HEREBY APPROVES** the updated Hardyston Township Resolution #11-10, executed on January 19, 2010, for the provision of water service in Hardyston Township. However, the Board **HEREBY DENIES** Aqua's request to implement its Board approved tariff regarding Walkill water customers.

The approvals granted, hereinabove, shall be subject to the following provisions:

1. 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.

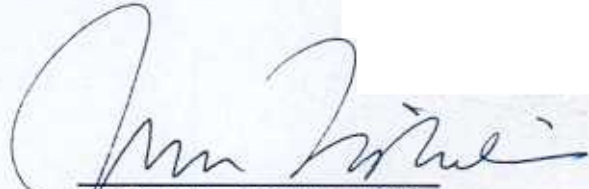
4. Approval of this acquisition and/or municipal consent ordinance does not constitute Board approval of any costs or expenses associated with this petition. Any determination as to the appropriateness or reasonableness of the costs and expenses related to the franchise, including, but not limited to, 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

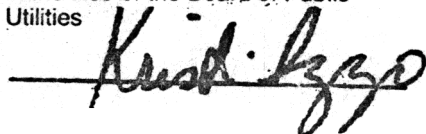
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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 WATER COMPANY  
BY AQUA NEW JERSEY, INC. AND OTHER RELATED APPROVALS •

BPU DOCKET NO. WM10020116

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