

June 30, 2005

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 Applied Wastewater Management, Inc. for Approval of (1) Municipal Consent by the Township of Hillsborough, Somerset County, New Jersey; and (2) Extension of its Existing “COWS” Tariff to the New Service Area.

BPU Docket No. WE04101349

Dear Secretary Izzo:

Please accept for filing an original and ten copies of the Division of the Ratepayer Advocate’s (“Ratepayer Advocate”) comments regarding the above referenced matter. Enclosed is one additional copy. Please date stamp the copy as “filed” and return it to the courier. Thank you for your consideration and attention to this matter.

Background

On October 27, 2004, Applied Wastewater Management, Inc. (“AWWM” or “Company”) filed a Petition with the Board of Public Utilities (“BPU” or “Board”) requesting the Board’s approval of a municipal consent adopted by the Township of Hillsborough, Somerset County. The petition further requests the Board’s approval to extend the Company’s existing Community On-Site Wastewater Systems (“COWS”) tariff to the new service area.

AWWM operates wastewater collection, treatment and disposal systems and potable water systems in portions of Morris, Burlington, Monmouth, Cape May and Hunterdon counties.

The Company currently provides service to approximately 3250 customers.¹ AWWM is a subsidiary of E'town Corporation, which in turn is a wholly-owned subsidiary of RWE AG, a German corporation engaged in providing electricity, natural gas, water, wastewater and waste removal services worldwide.²

The municipal consent authorizes the Company to provide wastewater collection and treatment services to a new residential development known as Hillsborough Chase, which will consist of approximately 105 new single family residences. The franchise area also includes 22 existing single-family homes adjacent to the new development, which are currently on septic systems.³ The new development is located in Planning Area 4 (Rural Planning Area) as defined by the State Development and Redevelopment Plan.⁴ This development is being constructed using development rights from multiple sites to concentrate development on one tract. The remaining 120 acres are to be conveyed to Hillsborough Township to be permanently preserved as open space or farmland.⁵

The wastewater treatment plant to serve the area is located within the Hillsborough Chase development.⁶ The wastewater will be collected in septic tanks located at each of the houses, and then flow by gravity through a variable grade sewer to a tank located at the treatment plant. The wastewater will be pumped into the treatment plant, where it will be treated, filtered, disinfected, and discharged into the ground.⁷

¹ Petition, par. 1.

² *I/M/O the Joint Petition of E'town Corporation and Certain Subsidiaries of E'town and Thames Water Holdings, Incorporated for Approval of a Change in Control of New Jersey Public Utilities Controlled and Owned by E'town Corporation*, BPU Docket No. WM99120923, Decision and Order (Oct. 13, 2000).

³ AWWM response to Staff discovery requests SE-1 and SE-22.

⁴ AWWM response to Staff discovery request SE-8.

⁵ Petition, par. 3; response to Staff discovery request SE-7; May 7, 2004 Upper Raritan Water Quality Management Plan Amendment (copy provided to Board in correspondence dated June 9, 2005 from Mark F. Srauss, Esq. to Damase Hebert, Esq., Legal Specialist).

⁶ AWWM response to Staff discovery request SE-4.

⁷ Public hearing transcript, p. 9, l. 10 to p. 10, l. 8.

The treatment plant has a design capacity of 38,100 gallons per day (“gpd”). Approximately 31,500 gpd will be used to serve the 105 homes within Hillsborough Chase. The remaining 6,600 gpd will be used to serve the 22 existing homes adjacent to the development, should the Township choose to provide wastewater service to the homes.⁸ The wastewater system will be a stand-alone system, and will not be connected to any other wastewater systems in the area.⁹

The Company states that the Township of Hillsborough Municipal Utilities Authority (“HMUA”) provides wastewater service to portions of Hillsborough Township, but has no mains in the vicinity of the Hillsborough Chase development. The Company further states that the HMUA was concerned that an extension of its mains to serve his development would encourage further development in the area. The Somerset County/Upper Raritan Watershed Wastewater Management Plan has been amended to provide for a stand-alone system for the Hillsborough Chase development.¹⁰

The entire wastewater system, including the treatment plan, collection system and related facilities and equipment, will be constructed at the expense of Toll Brothers, Inc., the developer of Hillsborough Chase.¹¹ AWWM will be purchasing the completed system from the developer at an agreed purchase price of \$150,000. The purchase price is payable in installments, with \$1,000 due within 30 days of the start of construction of the treatment plant, and the remainder payable based on the number of occupied residences connected to the system.¹² The Company estimates the total cost to construct the system at \$2,871,457. This amount, less the \$150,000

⁸ AWWM response to Staff discovery request SE-4.

⁹ AWWM response to Staff discovery request SE-5.

¹⁰ AWWM response to Ratepayer Advocate discovery request RAR-E-11; May 7, 2004 Upper Raritan Water Quality Management Plan Amendment (copy provided to Board in correspondence dated June 9, 2005 from Mark F. Strauss, Esq. to Damase Hebert, Esq., Legal Specialist).

¹¹ AWWM response to Ratepayer Advocate discovery request RAR-E-3.

¹² AWWM response to Staff discovery request SE-18 (par. 4.01 and 4.03 of attached Purchase Agreement).

purchase price for the system, will be reflected as Contributions in Aid of Construction (“CIAC”).¹³

The Company proposes to provide service to customers within the new service area under its existing tariff for Community On-Site Wastewater Systems (“COWS”).¹⁴ At the current tariff rate of \$995 per home, the new service area is expected to produce \$126,365 in revenues based on 127 residential connections.¹⁵ Operations and Maintenance expenses for the system are estimated at \$98,142.77.¹⁶ AWWM’s Purchase Agreement with the developer states that revenues from customers will not be sufficient to fully cover the costs of providing service until after 97 residences within the subdivision are connected to the system and receiving service. The agreement therefore requires the developer to subsidize the cost of operations until the 97th connection occurs. The subsidy payments range from \$2,000 to \$1,200 per month, depending on the number of connections.¹⁷

The Company states that it has received all of the New Jersey Department of Environmental Protection approvals required to construct and operate the wastewater system.¹⁸

Recommendation

The Division of the Ratepayer Advocate (“Ratepayer Advocate”) has reviewed the Petition and is not opposed to its approval. AWWM currently operates wastewater collection and treatment system in several other communities, and has the necessary expertise to provide service to the Hillsborough Chase development. Additionally, as a subsidiary of E’town Corporation and RWE AG, the Company has access to additional managerial, technical and

¹³ AWWM responses to Staff discovery request SE-20 and Ratepayer Advocate discovery request RAR-E-4.

¹⁴ Petition, par. 6.

¹⁵ AWWM response to Staff discovery request SE-14.

¹⁶ AWWM response to Ratepayer Advocate discovery request RAR-E-5.

¹⁷ AWWM response to Ratepayer Advocate discovery request RAR-E-3, Schedule A to Purchase Agreement.

¹⁸ Petition, par. 3; AWWM response to Staff discovery request SE-9; Public hearing transcript, p. 10, l. 9-22.

financial resources to support its operation of Hillsborough Chase system in a safe, adequate and proper manner.

The Board's recent amendments to Main Extension Rules limit the authority of utilities to contribute to the costs of extensions of service to areas not designated for growth under the State Development and Redevelopment Plan. *N.J.A.C. 14:3-8.1 et seq.* Since the Hillsborough Chase development is located in Planning Area 4, it is not within a designated growth area. However, Main Extension Rules provide for an exemption from the limits on contributions if the utility either began construction of a project or entered into a written agreement to contribute to the costs of the extension prior to March 20, 2005, when the Main Extension Rule amendments became effective. *N.J.A.C. 14:3-8.8 (g)*. AWWM agreed to the \$150,000 purchase price for the Hillsborough Chase wastewater system as part of a Purchase Agreement dated May 17, 2004.¹⁹ Thus, this payment is permitted under the Main Extension Rules. Further, this payment represents only a small portion of the estimated total cost of the system, \$2,871,457.

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. However, the Ratepayer Advocate does recommend that AWWM be directed not to depreciate the portion of the system funded by CIAC.

Accordingly, the Ratepayer Advocate recommends that any Board Order approving AWWM's 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.

¹⁹ AWWM response to Ratepayer Advocate discovery request RAR-E-3.

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.
3. The Petitioner shall not depreciate the portion of the wastewater system that is funded by CIAC.

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 the exception of requiring a negative acquisition adjustment to be booked. With these caveats, the Ratepayer Advocate is not opposed to approval of the Petition.

Respectfully submitted,
SEEMA M. SINGH, ESQ.
RATEPAYER ADVOCATE

By: _____
Sarah H. Steindel
Assistant Deputy Ratepayer Advocate

cc: Jeanne M. Fox, President (via hand delivery)
Frederick F. Butler, Commissioner (via hand delivery)
Connie O. Hughes, Commissioner (via hand delivery)
Jack Alter, Commissioner (via hand delivery)
Service List *via hand delivery or regular mail*