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NOV 6 2013  
11:00 AM  
11/6/13

November 6, 2013

Kristi Izzo, Secretary  
Board of Public Utilities  
44 South Clinton Avenue  
P.O. Box 350  
Trenton, NJ 08625-0350

WE13111058

Re: **In the Matter of the Petition of Aqua New Jersey, Inc. for Approval of a Restated Municipal Franchise to Serve the Township of Chesterfield, Burlington County BPU Docket No. TBA**

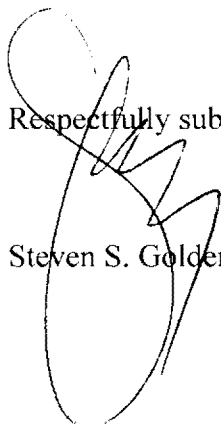
Dear Secretary Izzo:

Please find enclosed for filing an original and ten copies of the Petition of Aqua New Jersey, Inc. ("Aqua").

Kindly return a filed copy of the Petition to my attention in the enclosed self-addressed, stamped envelope.

Thank you for your anticipated courtesies.

LMS  
Beslow(z)  
DAG  
RPA  
M. MORAN  
M. KAMMER  
WATER(4)

Respectfully submitted,  
  
Steven S. Goldenberg

SSG:jfp  
Encl.  
cc: Distribution List

**IN THE MATTER OF THE PETITION OF AQUA NEW JERSEY, INC. FOR  
APPROVAL OF A RESTATED MUNICIPAL FRANCHISE TO SERVE THE  
TOWNSHIP OF CHESTERFIELD, BURLINGTON COUNTY**  
BPU Docket No. \_\_\_\_\_

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10:31

**DISTRIBUTION LIST**

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[aphenry@aquaamerica.com](mailto:aphenry@aquaamerica.com)

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

RECEIVED  
NOV 07 2013  
BOARD OF PUBLIC UTILITIES  
STATE HOUSE

**IN THE MATTER OF THE PETITION OF        )**  
**AQUA NEW JERSEY, INC. FOR APPROVAL    )**  
**OF A RESTATED MUNICIPAL FRANCHISE    )** **BPU DOCKET NO.**  
**TO SERVE THE TOWNSHIP OF                )**  
**CHESTERFIELD, BURLINGTON COUNTY    )**

**TO: THE HONORABLE COMMISSIONERS OF THE BOARD OF PUBLIC UTILITIES**

By this Petition, Aqua New Jersey, Inc. (“Aqua”) hereby requests that the Board of Public Utilities (“Board”) approve a restatement of Aqua’s franchise to provide potable water, fire protection and related services to the Township of Chesterfield, Burlington County, New Jersey (“Chesterfield”), as clarified and defined herein, pursuant to N.J.S.A. 48:2-14 and N.J.A.C. 14:1-5.5. In support of the Petition, Aqua states the following:

1. All communications with respect to this Petition and in this proceeding should be served upon the following individuals:

Andrew P. Henry, Esq.  
Assistant General Counsel  
Aqua New Jersey, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010  
[aphenry@aquaamerica.com](mailto:aphenry@aquaamerica.com)  
(610) 645-4237

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Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)  
(609) 896-4586

2. Aqua is a corporation duly organized under the laws of the State of New Jersey and is a public utility engaged in the distribution of water subject to the jurisdiction of the Board. Aqua’s principal place of business is located at 10 Black Forest Road, Hamilton, New Jersey. Aqua provides water distribution and related services at retail to approximately 57,000 residential, commercial and industrial customers located in Mercer, Burlington, Camden, Hunterdon, Gloucester, Sussex, Monmouth and Ocean counties, and in numerous municipalities, including Chesterfield.

3. Attached hereto in support of this Petition are the following exhibits:

Exhibit “A”—Ordinance 2013-10 of the Township of Chesterfield, Chesterfield Township Committee “Granting Franchise To Serve, And Municipal Consent And Permission to Construct, Operate And Maintain Water Facilities In The Township’s Rights Of Way Within The Township Of Chesterfield”

Exhibit “B”— August 30, 2013 Letter of Nicholas V. Asselta, President of Aqua, Accepting Terms and Conditions of the Franchise

Exhibit “C”—Executed Franchise Agreement

Exhibit “D”—Executed Settlement Agreement in Aqua New Jersey, Inc. v. Township of Chesterfield et al., Superior Court of New Jersey, Law Division, Burlington County, Docket No. L-2507-11, dated August 22, 2013.

Exhibit “E”—Certified Copy of Township of Chesterfield Resolution Authorizing Settlement of Litigation

Exhibit “F”—Proposed Notice of Public Hearing

Exhibit “G”—Order of the Board of Public Utilities in I/M/O Application of Crosswicks Water Company for Approval of an Ordinance Passed by the Townships of Hamilton and Chesterfield Granting a Franchise for a Portion of the Township of Chesterfield, Docket No. 9643, dated December 18, 1956

4. Aqua currently provides potable water, fire protection and related distribution services to customers located in Chesterfield pursuant to a franchise originally issued in 1910 to Aqua’s corporate predecessor, the Crosswicks Water Company (“Crosswicks”). The franchise authorized Crosswicks to construct, maintain and operate a water company located in or near the Village of Crosswicks (“Village”) to supply the Village and its inhabitants. The Village was described as situated partly in the Township of Chesterfield, located in Burlington County (“Chesterfield”), and partly in the Township of Hamilton, located in Mercer County (“Hamilton”). The Certificate of Incorporation of Crosswicks was duly filed with the Secretary of State on July 26, 1910 in accordance with then-applicable law.

5. On December 18, 1956, the Board granted an application by Crosswicks to approve Ordinances approved by Hamilton and Chesterfield to extend Aqua’s franchise service territory to provide service to additional customers located within Hamilton and Chesterfield. (Board Order attached as Exhibit “G”). As part of the franchise extension, Chesterfield also authorized Aqua to lay water pipes and mains under the public roads.

6. Since its original franchise issued, Crosswicks has undergone a series of corporate restructurings, mergers and name changes. Aqua is the corporate successor to Crosswicks that currently holds the franchise to serve Chesterfield, and has provided water and fire protection services to Chesterfield and certain of its municipal subdivisions pursuant to the franchise.

7. Over the past several years, a payment dispute arose with regard to monies due and owing to Aqua for certain of the fire protection and other services provided to Chesterfield. After trying unsuccessfully to amicably resolve the payment dispute, Aqua brought an action against Chesterfield and certain municipal co-defendants in the Superior Court of New Jersey, Law Division, Burlington County, captioned *Aqua New Jersey, Inc. v. Township of Chesterfield et al*, Docket No. L-2507-17 (the “Litigation”), to recover the monies due. In defense of the Litigation, Chesterfield interposed a Counterclaim that, among other things, alleged that Aqua’s provision of water service to Chesterfield and its co-defendants was unauthorized because the franchise awarded to Aqua’s predecessor had expired. Chesterfield predicated its arguments on the expiration of the fifty year road opening permit that had been issued to Aqua in 1956 in connection with the extension of Aqua’s franchise. Chesterfield sought a declaratory ruling that Aqua no longer had a franchise to distribute and sell water within Chesterfield, and that Chesterfield was therefore free to enter into negotiations with another water purveyor for the provision of water services without compensation or further obligation to Aqua. Aqua denied the allegations of the Counterclaim.

8. Aqua moved to stay further proceedings in the Superior Court and remand the franchise-related issues to the Board to enable the Board to exercise its primary jurisdiction with regard to the utility franchise issues, as required by N.J.S.A. 48:2-14. The Superior Court denied Aqua’s application. Aqua then moved in the Appellate Division for leave to appeal the denial of the stay. Aqua’s motion was supported by Board staff and the New Jersey Utilities Association, who intervened in the appeal application as *amici curiae* and filed supporting briefs. The Appellate Division granted leave to appeal.

9. During the pendency of the appeal, captioned Aqua New Jersey, Inc. vs. Township of Chesterfield, Superior Court of New Jersey, Appellate Division, Docket No. A-0262-12T1, the parties executed a Settlement Agreement (Exhibit “D”) that resolved all issues in the proceeding. Among other things, the Settlement Agreement authorized a restated Franchise Agreement and a related Right of Way Consent (Exhibit “C”). The franchise was approved by the Chesterfield Township Committee by Ordinance 2013-10 (Exhibit “A”). Aqua duly accepted the terms and conditions of the restated franchise by letter of Nicholas V. Asselta, President, dated August 30, 2013 (Exhibit “B”). The Settlement Agreement was approved by the Chesterfield Township Committee by Resolution 2013-06-18 (Exhibit “E”).

10. The Settlement Agreement is subject to the Board’s approval of this Petition. The Appellate Division has stayed the appeal pending action by the Board.

11. The Exhibits contain the following material terms and conditions. The Settlement Agreement resolves all issues relating to Aqua’s claims for past due invoices for water services. The Settlement Agreement also restates Aqua’s franchise to provide water services within an expanded “Franchise Area”, as described in the Franchise Agreement, and authorizes a Right of Way Consent that would permit Aqua to construct, operate and maintain water facilities in Chesterfield’s public rights of way. The Settlement Agreement is conditioned upon approval of the Franchise Agreement by the Board. Upon receipt of such approval, the parties will dismiss the Litigation with prejudice.

12. The Franchise Agreement contains the following material terms.

a) Pursuant to N.J.S.A. 48:2-14, Chesterfield grants Aqua, its successors and assigns, a non-exclusive franchise to install, construct, operate, maintain, replace and manage a water works and distribution system within the limits of Chesterfield, to serve all persons and organizations, public and private, located within the redefined "Franchise Area" with potable water, related fire and other related water services. The "Franchise Area" is described in Exhibit "A" to the Franchise Agreement and refers to the municipal boundaries of the Township of Chesterfield as of the date of the Franchise Agreement, together with any enlargements or extensions to the area described in Exhibit "A" that are approved by Chesterfield and any other agency with jurisdiction over Aqua. This definition clarifies Aqua's right to serve the entire Township of Chesterfield, thereby resolving an ambiguity that currently exists due to changes that have occurred to certain municipal boundary lines since the franchise was awarded to Crosswicks.

b) Chesterfield grants Aqua a renewed Right of Way Consent for Aqua to use the rights of way within Chesterfield for the laying of pipes above or beneath the public roads, streets and places as Aqua may deem necessary for its corporate purposes attendant to the franchise in accordance with the Franchise Agreement, N.J.S.A. 48:3-15 and N.J.S.A. 48:19-17. The prior Right of Way Consent granted to Aqua in 1956 expired on August 1, 2006.

c) The term of the franchise is clarified to be perpetual unless terminated in accordance with the provisions of the Franchise Agreement or by the Board pursuant to its authority under N.J.S.A. 48:2-14. Pursuant to N.J.S.A. 48:3-15, the initial term of the Right of Way Consent is to be 50 years, retroactive to August 1, 2006, the expiration date of the prior consent. The Right of Way Consent may be extended by Chesterfield upon expiration of the initial term and the written request or application of Aqua in accordance with applicable law.

d) The Franchise Agreement will become effective on the date it is approved by the Board, with the restated franchise to be deemed effective retroactive to August 1, 2006.

e) The Franchise Agreement supersedes and replaces all prior agreements between the parties with regard to the subject matter of the Franchise Agreement.

13. As evidenced by the foregoing, the statutory requirements regarding consent by the municipality to the restated franchise have been met. The continuing, restated franchise is necessary and proper for the public convenience and will properly conserve the public interest because, as has been the case for over a century, Aqua, with its corporate predecessors, has been the only public utility to provide water services to Chesterfield and its citizens. At all times, Aqua has had the ability to provide safe, adequate and proper service to its customers located in Chesterfield.

## REQUEST FOR EXPEDITED REVIEW

The Appellate Division has stayed the appeal of the Litigation only for a limited period of time pending action by the Board. Therefore, Aqua respectfully requests that the Board retain the matter for expedited review to enable the matter to be heard by the Board at its January agenda meeting.

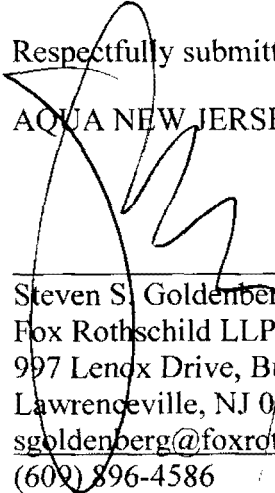
**WHEREFORE**, Aqua New Jersey, Inc. respectfully requests that the Board grant the following relief:

- (1) Approve the restated franchise granted to Aqua New Jersey, Inc. by the Township of Chesterfield; and
- (2) Provide such other or further relief as may be deemed just and equitable.

Respectfully submitted,  
AQUA NEW JERSEY, INC.

Dated: November 7, 2013

By:

  
\_\_\_\_\_  
Steven S. Goldenberg  
Fox Rothschild LLP  
997 Lenox Drive, Building 3  
Lawrenceville, NJ 08648  
[sgoldenberg@foxrothschild.com](mailto:sgoldenberg@foxrothschild.com)  
(609) 896-4586

VERIFICATION

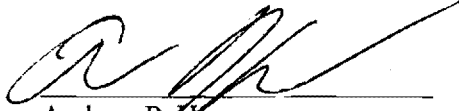
STATE OF NEW JERSEY )

COUNTY OF MERCER )

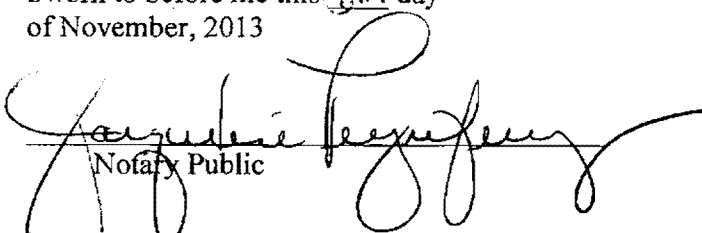
ANDREW P. HENRY, being duly sworn, upon his oath, hereby deposes and states:

1. I am Assistant General Counsel of Aqua New Jersey, Inc., which is located at 10 Black Forest Road, Hamilton, New Jersey 08691.

2. I have read the foregoing Petition and hereby verify that its contents are true and accurate to the best of my knowledge, information and belief.

  
Andrew P. Henry  
Aqua New Jersey, Inc.

Sworn to before me this 6<sup>th</sup> day  
of November, 2013

  
Notary Public

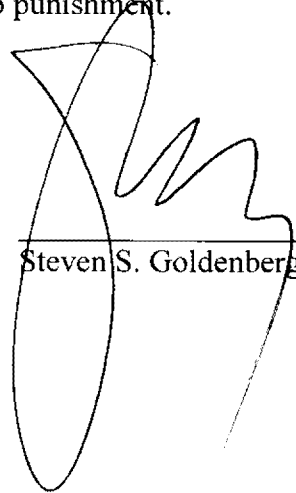
COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Jacqueline Peyreferry, Notary Public  
Lower Merion Twp., Montgomery County  
My Commission Expires Aug. 27, 2016  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES



**AFFIDAVIT OF SERVICE**

I certify that on this date, I have caused an original and 10 copies of the within Petition to be forwarded via regular mail and electronic mail to Hon. Kristi Izzo, Secretary of the Board of Public Utilities, and to all parties listed on the attached distribution list.

I hereby certify that the foregoing statements made by me are true. I am aware if any of the foregoing statements are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Steven S. Goldenberg

Dated: November 7, 2013