

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

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<b>IN THE MATTER OF THE REQUEST OF</b>	:	BPU Docket No. WE2108 _____
<b>AQUA NEW JERSEY, INC. AND AQUA</b>	:	
<b>WATER HOLDINGS, INC. FOR</b>	:	
<b>APPROVAL OF INTERCOMPANY</b>	:	<b>VERIFIED JOINT PETITION</b>
<b>RESTRUCTURING AND OF AN</b>	:	
<b>AFFILIATED INTEREST AGREEMENT</b>	:	

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

Petitioners, Aqua New Jersey, Inc. (“Aqua NJ,” or the “Company”) and Aqua Water Holdings, Inc. (“Water Holdings” and together with Aqua NJ, “Petitioners”), respectfully submit this Joint Petition to obtain the approval of the New Jersey Board of Public Utilities (the “Board” or “BPU”) pursuant to N.J.S.A. 48:2-51.1, 48:3-10 and 48:3-7.1, and related regulations and any other statutes and regulations deemed applicable, for (i) a change of control of Aqua NJ resulting from a proposed corporate restructuring (the “Proposed Restructuring”); and (ii) an updated Affiliated Interest Agreement (the “Affiliate Agreement”) between Aqua NJ and Aqua Services, Inc. (“Aqua Services”).

The Proposed Restructuring would interject a new holding company, Water Holdings between Aqua NJ and its current direct parent, Essential Utilities, Inc. (“Essential”). The Affiliate Agreement allows for Aqua NJ to continue to receive services from its nonregulated service company affiliate, Aqua Services, and details how costs for services will be allocated to Aqua NJ if obtained by Aqua Services from Essential’s to-be-created nonregulated service company, Essential Utilities Services, Inc. (“Essential Services”). In support of its above-captioned Verified Petition, the Petitioners respectfully show:

**I. THE PROPOSED RESTRUCTURING**

**A. Description of the Relevant Entities.**

**Essential**

1. Essential (f/k/a Aqua America, Inc.) was registered in Pennsylvania in 1968. Essential is a natural gas, water and wastewater utility holding company that currently provides service through its operating subsidiaries in Pennsylvania, Ohio, North Carolina, Illinois, Texas, New Jersey, Indiana, Virginia, West Virginia and Kentucky. Essential is the parent company in the corporate structure governing the relevant companies described below. Essential's current legal entity structure is attached as Exhibit A.

**Aqua NJ**

2. Aqua NJ is a public utility corporation of the State of New Jersey subject to the jurisdiction of the Board. Aqua NJ is presently a wholly-owned direct subsidiary of Essential. The Company provides wastewater service to approximately 6,500 customers and water service to approximately 55,000 customers throughout the State of New Jersey. Aqua NJ's principal business office is located at 10 Black Forest Road, Hamilton, New Jersey 08691.

**Water Holdings**

3. Water Holdings is a Pennsylvania public utility holding company formed for the purpose of holding Essential's water and wastewater public utilities. Water Holdings' principal business office is located at 762 Lancaster Avenue, Bryn Mawr, PA 19010.

**B. The Purpose of the Proposed Restructuring.**

4. Essential proposes to undertake the Proposed Restructuring to form one new Pennsylvania holding company. Upon approval of the Board and the relevant other state utility commissions, Essential plans to contribute all of the interests it holds in all of its direct, wholly owned water and wastewater utility subsidiaries, including its shares in Aqua NJ, to Water Holdings. Water Holdings will be directly and wholly owned by Essential. In turn, Water Holdings will directly and wholly own Aqua NJ. The resulting corporate structure is attached as Exhibit B.<sup>1</sup>

5. The Proposed Restructuring will allow Essential to align its legal entities in a more appropriate structure following Essential's expansion from a water and wastewater holding company to a natural gas, water and wastewater holding company. Prior to its acquisition of the Peoples Companies, Essential held the majority of its utility and non-utility companies as first-tier subsidiaries of Essential. Following the acquisition of the Peoples Companies, Essential concluded that a more appropriate corporate structure would be to hold gas and water/wastewater operating utilities in separate gas and water/wastewater holding companies that were direct subsidiaries of Essential.

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<sup>1</sup> As part of the Proposed Restructuring, Essential also intends to create a new entity, Essential Services, adjacent to Water Holdings in Essential's overall corporate structure. Essential Services will not become part of the chain of ownership of Aqua NJ after the Proposed Restructuring. Therefore, no approvals are necessary for this aspect of the Proposed Restructuring.

6. Essential's existing corporate structure was created over a period of years in the context of acquiring and operating numerous regulated and nonregulated entities. At the time of Essential's acquisition of the Peoples Companies and presently, there has been an intermediate holding company structure between Essential and the regulated natural gas utilities. Conversely, Essential does not presently have a comparable intermediate holding company structure between itself and its regulated entities providing water and wastewater service. As such, the Proposed Restructuring would make Essential's corporate structure more consistent across the two industries in which it owns regulated entities. Further, the Proposed Restructuring will more effectively position Essential as the overarching corporate parent to a portfolio of regulated utilities.

7. The Proposed Restructuring will have no impact on the ability of Aqua NJ to provide safe, adequate and proper utility service. The Proposed Restructuring is straightforward and involves no substantive change in the ultimate control of Aqua NJ. Aqua NJ will continue to be 100% owned by Essential both before and after the Proposed Restructuring, albeit such ownership will be indirect following the Proposed Restructuring. There will be no changes in the financial resources, management, or operations of Aqua NJ. Further, Aqua NJ will maintain the same employees that it has currently and will provide the same services to its customers.

**C. Legal Standard for Board Approval of the Proposed Restructuring.**

8. The Board has jurisdiction over the proposed transactions pursuant to N.J.S.A. 48:2-51.1, which requires Board approval prior to the change of control of Aqua NJ through the Proposed Reorganization. Consistent with the provisions of N.J.S.A. 48:2-51.1(a) and the standard of review set out in N.J.A.C. 14:1-5.14(c), the Board shall not approve a change in control "unless it is 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 competition, rates, the employees of the affected public utility, and on the provision of safe and adequate utility service at just and reasonable rates.

9. Jurisdiction also arises under N.J.S.A. 48:3-10, which provides that Board approval is required prior to making a sale or transfer of stock to a corporation that would vest control in such corporation of a majority interest in the capital stock of the public utility. In the context of the Proposed Restructuring, there would be a direct transfer of Aqua NJ's stock, all of which is currently owned by Essential, to Water Holdings, as a wholly owned subsidiary of Essential.

10. As explained below, the Proposed Restructuring is in the public interest and satisfies both the "no harm" standard contained in N.J.S.A. 48:2-51.1(a), and the "positive benefits" standard under N.J.A.C. 14:1-5.14(c).

**D. The Proposed Reorganization Will Not Have an Adverse Impact on Competition, Rates, Utility Employees and the Provision of Safe and Adequate Utility Service at Just and Reasonable Rates; Rather, Positive Benefits will Flow to Customers and the State as a Result of the Proposed Reorganization.**

11. As noted above, there is no substantive change in control of Aqua NJ resulting from the Proposed Restructuring as Essential will continue to own, directly or indirectly, all of the interests in all of the involved entities following the Proposed Restructuring. The only change occurring is that Essential will no longer be the direct corporate parent of Aqua NJ, due to the interjection of Water Holdings.

12. The Proposed Reorganization will not constrain or limit the Board's ability to regulate the operations of Aqua NJ. Indeed, the Company will continue to be regulated in the same manner by the Board as it is today. Further, the Proposed Reorganization will not impact any Board orders, rulings, or regulations in effect and applicable to Aqua NJ.

13. The Proposed Restructuring will not have an adverse impact on the employees of Aqua NJ, as there will be no changes in employment levels, responsibilities, or compensation as a result thereof. The Petitioners further commit to ensuring that the Company will continue to honor all existing collective bargaining agreements after consummation of the Proposed Restructuring. In addition, the Proposed Restructuring will not prevent Aqua NJ from fulfilling its obligations to employees with respect to pension benefits pursuant to N.J.S.A. 48:3-10. The Proposed Restructuring will not have an adverse impact on competition in the water industry because the Company will still have a discrete service territory, which it will continue to serve following completion of the Proposed Reorganization.

14. Accordingly, there will be no adverse impact on competition, rates, utility employees and the provision of safe and adequate service at just and reasonable rates.

15. Finally, the Proposed Reorganization is in the public interest because it will lead to greater administrative efficiency within the Essential family of companies. In fact, the Proposed Restructuring will be a non-event for customers as no operations or administration will change as a result.

**E. Additional Required Information Pursuant to N.J.A.C. 14:1-5.14(b).**

16. The following additional required information is hereby provided for the Board's consideration, pursuant to N.J.A.C. 14:1-5.14(b)(1)-(14):

- a. N.J.A.C. 14:1-5.14(b)(1), a copy of the plan of reorganization, as approved by the Essential board of directors on August 4, 2021, is attached as Exhibit C.
- b. N.J.A.C. 14:1-5.14(b)(2), a copy of the corporate resolution of Essential authorizing the Proposed Reorganization and transfer of stock is attached as Exhibit C.

- c. N.J.A.C. 14:1-5.14(b)(3) and (4), a copy of the recent balance sheets and income statements of Essential and Aqua NJ are attached as Exhibit D. No such documents exist for Water Holdings as it was recently formed and has no operations and employees.
- d. N.J.A.C. 14:1-5.14(b)(5), a copy of the certificates of incorporation for Essential and Water Holdings are attached hereto as Exhibit E. The certificate of incorporation for Aqua NJ is on file with the Board and will remain unchanged as a result of the Proposed Restructuring.
- e. N.J.A.C. 14:1-5.14(b)(6) and (7), because the Proposed Reorganization’s primary purpose is to interpose a holding company between Essential and its water operating company, Aqua NJ, there will be no new capital stock issued as a result. Rather, as a result of the Proposed Reorganization, Essential, as 100% holder of Aqua NJ’s presently outstanding and issued capital stock, will transfer all of its shares to Water Holdings. Essential will be the 100% shareholder of all outstanding and issued capital stock of Water Holdings.
- f. N.J.A.C. 14:1-5.14(b)(8), no franchise costs will be capitalized on Essential’s or Water Holdings’ books.
- g. N.J.A.C. 14:1-5.14(b)(9), the officers and directors of Essential will not change as a result of the Proposed Reorganization, and the officers of Water Holdings, the new principal stockholder of Aqua NJ, are as follows, with those individuals denoted with an (\*) also serving as directors:

<b>OFFICERS</b>	
Christopher H. Franklin*	Chief Executive Officer
Collen M. Arnold	President
Richard S. Fox*	EVP, Chief Operating Officer, Regulated Operations
Matthew Rhodes*	EVP, Strategy & Corporate Development
Daniel J. Schuller*	EVP, Chief Financial Officer
Christopher P. Luning*	EVP, General Counsel and Secretary
Stan F. Szczygiel	SVP, Finance and Treasurer

- h. N.J.A.C. 14:1-5.14(b)(10), the benefits to the public of the Proposed Reorganization are described in this Joint Petition.
- i. N.J.A.C. 14:1-5.14(b)(11), there are no anticipated changes to finances, operations, accounting, rates, depreciation, operating schedules, maintenance and management and none are proposed as a result of the Proposed Reorganization.

- j. N.J.A.C. 14:1-5.14(b)(12), proof of service of notice of the Proposed Reorganization on the public, municipalities served by Aqua NJ, and any public utilities serving in Aqua NJ's service area pursuant to N.J.A.C. 14:1-4.5, will be provided.
- k. N.J.A.C. 14:1-5.14(b)(13), the various approvals of other state agencies are discussed in Section I.F, below.
- l. N.J.A.C. 14:1-5.14(b)(14), the total amount of fees and expenses to be incurred in connection with the Proposed Reorganization is not yet known.

**F. Other Required Approvals**

17. In addition to approval by the Board, several other regulatory approvals will be required before the Proposed Reorganization can be concluded. These include approvals from the Pennsylvania Public Utilities Commission ("PAPUC"), the North Carolina Public Utilities Commission ("NCUC"), and the Illinois Commerce Commission ("ICC"). The state agencies in Ohio, Texas, Indiana, and Virginia, where Essential's other water/wastewater operating utilities are located, do not require approvals for such transactions.

18. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. have already filed a petition with the PAPUC for approval, and Aqua North Carolina, Inc. and Aqua Illinois, Inc. have also begun the process for obtaining the necessary approvals from the NCUC and the ICC, respectively. All utilities have requested that approvals be given in sufficient time so as to ensure smooth transitions and that the necessary transactions can take place with an effective date of January 1, 2022.



## **II. THE UPDATED AFFILIATE AGREEMENT**

### **A. Relationship Between Aqua NJ and Aqua Services.**

19. Aqua Services, a nonregulated service company affiliate of Essential, maintains an organization whose officers and employees are familiar with the water and wastewater utility businesses, including the business and operations of Aqua NJ and who currently provide accounting and financial services, administration, communications, corporate secretarial, customer service and billing, engineering, financial, fleet services, human resources, information systems, operation, rates and regulatory, risk management, water quality, legal, and purchasing, contracts and sales of real estate of water and wastewater utilities to Aqua NJ pursuant the Board-approved Service Company Agreement (“SCA”) dated January 1, 2014. A copy of the currently effective SCA is attached hereto as Exhibit F.

20. The proposed Affiliate Agreement for which approval is requested, which is substantially the same as the current SCA with a few updates which reflect organizational changes resulting from the acquisition of the Peoples Companies and the Proposed Reorganization, is attached hereto as Exhibit G.

### **B. Legal Standard of Review.**

21. The statutory scheme in New Jersey requires filing for approval any “management, advisory service, construction or engineering contract.” N.J.S.A. 48:3-7.1. Specifically, the statute requires:

No management, advisory service, construction or engineering contract that in itself or in connection with another contract relating to the same work, project, transaction or service involves the expenditure of a sum exceeding twenty-five thousand dollars, made by any public utility with any person or corporation owning, holding or controlling separately, or in affiliation with another person or corporation, five per cent or more of the capital stock of such public utility or with any corporation five per cent of the capital stock of which is owned, held or controlled by a person or corporation

owning, holding or controlling separately, or in affiliation with another person or corporation, five per cent of the capital stock of such public utility shall be valid or effective until approved in writing by the board.

The board shall disapprove such contract if it determines that such contract violates the laws of this state or of the United States, or that the price or compensation thereby fixed exceeds the fair price or fair compensation for the property to be furnished or the work to be done or the services to be rendered thereunder or is contrary to the public interest: otherwise the board shall approve such contract.

**C. The Affiliate Agreement is in the Public Interest.**

22. The Affiliate Agreement will facilitate various intercompany business transactions and will enable Aqua NJ to which services are provided to achieve business and regulatory goals in an efficient and more cost-effective manner.

23. The Affiliate Agreement also sets forth and classifies charges to be applied for any services provided to Aqua NJ. *See*, Affiliate Agreement, Article II. The costs of services provided under the Affiliate Agreement include reasonable charges for the services identified therein. *Id.* In addition, the Affiliate Agreement, among other matters, specifically provides: “the services to be rendered under this AIA are to be rendered by Service Company to Aqua NJ at the lower of their cost or market to Service Company.” *Id.*, at Whereas ¶ 8; *see also id.* at Article 2.1.

24. The services to be provided by Aqua Services under the Affiliate Agreement are of the same nature and character as those provided by Aqua Service to Aqua NJ today under the SCA. *See, e.g., Exhibit F*, at Ex. A and *Exhibit G*, at Ex. A (note the identity of services and that cybersecurity services are now expressly contemplated to be provided under “Information Systems” services, and the newly added “Environmental Matters” services).

25. Directly charged services will be billed to Aqua NJ in the same manner as they are today.

26. In addition, the costs for indirectly charged “Common Services” will be allocated by Aqua Services to Aqua NJ in the same way they are currently allocated, with the exception of services procured by Aqua Services from Essential Services, which will first be allocated using the Modified Massachusetts Formula, as set forth in Article 2.3.1, pursuant to the terms of the services agreement between Essential Services and Aqua Services,<sup>2</sup> then allocated to Aqua NJ pursuant to Articles 2.4 and 2.5 of the Affiliate Agreement.

27. The charges and compensation set forth in the Affiliate Agreement comply with N.J.S.A. 48:3-7.1 as the charges do not exceed the fair price or fair compensation for the property to be furnished or the work to be done.

28. The Affiliate Agreement does not violate the laws of the State of New Jersey or the United States.

29. Board approval of the attached Affiliate Agreement is in the public interest and should be granted.

### **III. PROPOSED SCHEDULE**

30. The Petitioners wish to implement the Affiliate Agreement and the Proposed Reorganization as expeditiously as possible so that the benefits described herein may begin to flow to Aqua NJ, its customers and the State of New Jersey. Consistent with that goal and keeping in mind the legitimate review rights of affected parties, the Petitioners respectfully request that the Board retain the matter and appoint a Board Commissioner to preside over the disposition of the case, rather than referring the matter to the Office of Administrative Law.

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<sup>2</sup> A copy of the agreement that will be entered into between Essential Services and Aqua Services is attached hereto as Exhibit H and is provided for informational purposes only. Aqua NJ will not be a party to this agreement, nor will it receive any services directly from Essential Services, as such this agreement is not subject to approval by the Board under N.J.S.A. 48:3-7.1.

31. The Petitioners believe the Board's retention of the case will help to expedite and streamline the review process, allow the Board to retain a greater degree of control over any substantive and procedural issues that may arise, and enhance the Board's understanding of the issues and the representations made by the Petitioners. It is further requested that the presiding Board Commissioner hold an initial Pre-Hearing Conference as soon as practicable to assist the parties with the development of a procedural schedule.

32. The Petitioners request that a final decision be rendered by the Board before December 31, 2021, which will (i) allow the Proposed Reorganization to close, pending contemporaneous approvals by the PAPUC and NCUC, on or before January 1, 2022, and (ii) ensure appropriate and approved accounting mechanisms are in place for any indirect service costs charged to Aqua NJ by Aqua Services as a result of services that may be provided by Essential Services (which is also anticipated to become a fully functioning affiliate service company effective January 1, 2022).

#### **IV. SERVICE**

33. All communications and notices with respect to this proceeding should be served on the Petitioners' attorneys, as follows:

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V. CONCLUSION

34. For all of the reasons set forth in and supported by this Joint Petition, the Proposed Reorganization will not have an adverse impact on competition, rates, employees or the provision of safe, adequate and proper utility service, and instead will provide positive benefits for Aqua NJ, its customers, and the State of New Jersey. In addition, approval of the updated Affiliate Agreement is in the public interest as it will allow for Aqua NJ to continue to capture efficiencies and cost savings through services provided by employees of its affiliated nonregulated service companies. Therefore, the Proposed Reorganization and the affiliate transaction are in the public interest and satisfy the legal requirements for approval by this Board.

WHEREFORE, the Petitioners respectfully request that the Board:

- a. grant approval of the Proposed Reorganization and any other approvals as it may determine are necessary in order for the Proposed Reorganization to be lawfully consummated;
- b. find that the requirements of N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 are met;
- c. grant approval of the affiliated interest transaction described herein;
- d. determine to retain this matter for hearing by the Board directly, with a decision to be rendered by December 31, 2021; and
- e. grant such other relief as may be reasonable and necessary.

Respectfully submitted,

SAUL EWING ARNSTEIN & LEHR LLP



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(215) 972-7717

*Attorneys for Joint Petitioners, Aqua New Jersey, Inc. and Aqua Water Holdings, Inc.*

**VERIFICATION**

STATE OF NEW JERSEY                    )  
  )  
COUNTY OF MERCER                    )

Dawn Peslak, of full age, being duly sworn, upon her oath deposes and says:

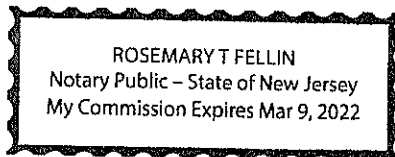
1. I am Controller for Aqua New Jersey, Inc. and in that capacity I am authorized to make this Verification on behalf of Petitioners Aqua New Jersey, Inc. in this matter.
2. I have reviewed the within Joint Petition and exhibits thereto, and the same are true and correct to the best of my knowledge, information and belief.
3. I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: August 9<sup>th</sup>, 2021

By: *Dawn Peslak*  
Dawn Peslak  
Controller  
Aqua New Jersey, Inc.

Subscribed and Sworn to Before Me, A  
Notary Public of the State of  
New Jersey, This 9<sup>th</sup> Day of August 2021.

*Rosemary T. Fellin*  
Notary Public




VERIFICATION

COMMONWEALTH OF PENNSYLVANIA )  
 )  
COUNTY OF ALLEGHENY )


Christopher P. Luning, of full age, being duly sworn, upon his oath deposes and says:

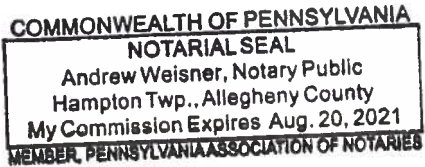
1. I am Executive Vice President, General Counsel and Secretary for Essential Utilities, Inc. and in that capacity I am authorized to make this Verification on behalf of Petitioner Aqua Water Holdings, Inc. in this matter.
2. I have reviewed the within Joint Petition and exhibits thereto, and the same are true and correct to the best of my knowledge, information and belief.
3. I certify that the foregoing statements made by me are true. I understand that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Date: August 10, 2021

By:   
Christopher P. Luning  
Executive Vice President, General Counsel,  
Secretary  
Essential Utilities, Inc.

Subscribed and Sworn to Before Me, A  
Notary Public of the Commonwealth of  
Pennsylvania, This 10 Day of August 2021.

  
\_\_\_\_\_  
Notary Public



SERVICE LIST

*I/M/O Request of Aqua New Jersey, Inc. and Aqua Water Holdings, Inc. for Approval of  
Intercompany Restructuring and of an Affiliated Interest Agreement*

BPU Docket No. WE2108\_\_\_\_\_

**Secretary**

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SERVICE LIST

*I/M/O Request of Aqua New Jersey, Inc. and Aqua Water Holdings, Inc. for Approval of  
Intercompany Restructuring and of an Affiliated Interest Agreement*

BPU Docket No. WE2108\_\_\_\_\_

**Company**

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