

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Water and Sewer LLC Seeking to Cancel its Certificate of Public Convenience and Necessity No. 39 (Sewer) and to Substitute Service.) Case No. 22-0330-WS-UNC)

**APPLICATION OF
WATER AND SEWER LLC FOR AN ORDER
APPROVING A SUBSTITUTION OF SEWER SERVICE, CANCELLING ITS
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, AND AUTHORIZING
THE WITHDRAWAL OF ITS CURRENT SEWER TARIFF**

By this Application, Water and Sewer LLC (W&S) seeks authority to terminate operations as a sewage disposal company. To effectuate this termination, W&S respectfully requests that the Public Utilities Commission of Ohio (Commission) approve a substitution of sewer service, cancel its Certificate of Public Convenience and Necessity No. 39 (Sewer), and authorize the withdrawal of its current sewer tariff, PUCO No. 3.

In support of this Application, W&S states as follows:

1. W&S is an Ohio limited liability company engaged in the business of supplying sewage disposal service to some 76 customers in the Village of Richfield, Ohio (Richfield Village or the Village) and an adjacent unincorporated territory in Richfield Township, Summit County, Ohio. W&S is a public utility as defined in R.C. 4905.02 and a sewage disposal company as defined in R.C. 4905.03(M), as such, W&S is subject to the jurisdiction of this Commission pursuant to R.C. 4905.04, 4905.05, and 4905.06.

2. In December 2020, W&S, Richfield Village, and a private developer entered into a Development and Construction Agreement (Agreement). Pursuant to the terms of the

Agreement, Richfield Village committed to constructing a new sanitary sewer system consisting of an approximate 7,000-foot force main and two pump stations at sufficient depth and capacity to serve both the existing and new Briarwood subdivisions located in the Village. The new sanitary sewer system will be connected to the Village's public sanitary sewer main on Brecksville Road. Additionally, the Northeast Ohio Regional Sewer District (NEORS) awarded Richfield Village a grant to be applied to the cost of constructing the new sanitary sewer system, which is scheduled to be completed in May of 2022.

3. On February 3, 2022, W&S and Richfield Village entered into a Donation Agreement, a copy of which is attached hereto as Exhibit A. Pursuant to the terms of the Donation Agreement, W&S donated its sewer facilities to Richfield Village with the donation to become effective after the occurrence of several events, including the Commission's approval of W&S' discontinuance of the provision of sewer services to residents of Richfield Village and Richfield Township. Thereafter, Richfield Village will provide sewer service to the affected customers.¹

4. Section 3 of the Donation Agreement provides:

Until such time as the PUCO shall have approved the discontinuance of the provision of sewer services...Water and Sewer shall have the right to continue to provide sewer services to residents of the Village and Residents of Richfield Township and to charge for such services in accordance with the tariff established by the PUCO. During this period of time, Water and Sewer shall have financial responsibility for all aspects of maintaining and operating the Sewer Facilities for purposes of providing the aforementioned sewer services.²

5. In prior cases, the Commission has consistently found that the cessation of service by a regulated utility in conjunction with uninterrupted and satisfactory service by a

¹ See Exhibit A.

² *Id.* at Section 3.

nonregulated entity does not constitute an abandonment of service and therefore is not subject to the Commission's review under R.C. 4905.20 and 4905.21.³

6. Moreover, on December 9, 2009, the Commission issued a Finding and Order (Order) in Case No. 09-1842-WS-UNC under circumstances similar to those in the above-captioned proceeding, approving a previous application of W&S to terminate its provision of water services, transfer its water service facilities to Richfield Village and Richfield Township, authorize water service thereafter to be provided by the Cleveland Division of Water, and to cancel its certificate of public convenience No. 37 (Water).⁴

7. The December 9, 2009 Order, in pertinent part, states:

Having reviewed the record in this Matter, the Commission is satisfied that the operation of W&S' water operations by the Cleveland Division of Water in the affected area will result in uninterrupted and satisfactory service to the affected customers and that this transaction constitutes a substitution of service rather than abandonment of service. Accordingly, the Commission finds that the application should be approved....⁵

8. Here, Richfield Village is not a Commission-regulated public utility and therefore, the Application should be construed as an application to substitute service, not an application for abandonment, and is subject to the Commission's general jurisdiction and supervisory authority. As stated above, Richfield Village has committed to constructing a new

³ See, e.g., *In the Matter of the joint Application of Public Utility Service Corporation and the Board of Commissioners of Fairfield County to Remove Public Service Corporation from the Roll of Public Utilities Regulated by this Commission*, Case No. 87-1320- ST-UNC (September 9, 1987); *In the Matter of the Commission Investigation into the Operations and Service of Lake Erie Utilities Company*, Case No. 86-1561-WS-COI (October 18, 1988); *In the Matter of the Application of Aqua Ohio, Inc. for Approval of the Sale of Certain Water Supply Facilities and Associated Operations to the City of Geneva Ohio, Modification of its Tariff and Certificate of Public Convenience and Necessity and other Appropriate Relief and Approvals*, Case No. 04-1685-WW-UNC (December 8, 2004).

⁴ *In the Matter of the Application of Water and Sewer LLC Seeking to Cancel its Certificate of Public Convenience No. 37 (Water) and to Substitute Service*, Case No. 09-1842-WS-UNC, Order at 4. (December 9, 2009).

⁵ *Id.* at ¶ 6.

sanitary sewer system consisting of an approximate 7,000-foot force main and two pump stations, which will be connected to Richfield Village's public sanitary sewer main on Brecksville Road. As such, Richfield Village has both the technical and infrastructure capabilities necessary to provide sewer service to W&S' existing customers upon substitution of service. Therefore, W&S' Application serves the public interest and comports with Commission precedent as the provision of sewer service by Richfield Village will ensure uninterrupted and satisfactory service to affected customers.

9. Upon approval of the Application, W&S will notify its customers by special mailing of the Commission's decision in the above-captioned proceeding and the substitution of Richfield Village as their sewer service provider. A proposed form of customer notice is attached hereto as Exhibit B.

WHEREFORE, W&S respectfully requests that the Commission find as follows:

- A. That the Application constitutes an application for the substitution of sewer service;
- B. That the Application is in the public interest, and should be granted;
- C. That W&S' Certificate of Public Convenience and Necessity No. 39 (Sewer) should be cancelled;
- D. That W&S should be authorized to cancel and withdraw its sewer tariff, PUCO No. 3; and
- E. That the form of customer notice set forth in Exhibit B to the Application should be approved.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4100

Bojko@carpenterlipps.com

(willing to accept service by email)

Counsel for Water & Sewer LLC

DONATION AGREEMENT

This DONATION AGREEMENT ("Agreement") made this 15th day of January, 2021, between and between WATER AND SEWER, LLC (hereinafter referred to as "Water and Sewer"), and the VILLAGE OF RICHFIELD, Ohio, a municipal corporation organized under the laws of the State of Ohio (hereinafter referred to as "Village").

RECITALS

1. Water and Sewer is the owner of the Sewer Facilities as defined in the Development and Construction Agreement dated November __, 2020 (the "Development Agreement"), a copy of which is attached hereto, and which Sewer Facilities are shown in Exhibit "F" thereto.

2. Pursuant to the provisions of the Development Agreement, Water and Sewer hereby donates the Sewer Facilities to the Village; provided, however, that the donation shall become effective only upon the last to occur of the following events:

- (a) the completion of the annexation to the Village of the property described in Exhibit "I" to the Development Agreement;
- (b) the Code Amendment (as defined in and attached to the Development Agreement as Exhibit "G") has been enacted by the Village's Council and has become effective;
- (c) the final development plan in accordance with the Conceptual Development Plan (as defined in and attached to the Development Agreement as Exhibit "B") and the Preliminary Plat (as defined in the Development Agreement) have been approved by the Village Planning Commission and are final and non-appealable;
- (d) the Phase 1 Plat (as defined in the Development Agreement and as shown as part of the Preliminary Plat attached to the Development Agreement as Exhibit "H") has been approved by the Village Planning Commission and the Village Council and is final and non-appealable;
- (e) the Public Utilities Commission of Ohio (the "PUCO") shall have approved the discontinuance of the provision of sewer services to residents of the Village and residents of Richfield Township by Water and Sewer; and
- (f) the Village shall have executed and delivered to Water and Sewer the Donation Receipt (as defined and attached to the Development Agreement as Exhibit "N").

3. Until such time as the PUCO shall have approved the discontinuance of the provision of sewer services as set forth in Section 2(e) above, Water and Sewer shall have the right to continue to provide sewer services to residents of the Village and residents of Richfield Township and to charge for such services in accordance with the tariff established by the PUCO.

During this period of time, Water and Sewer shall have financial responsibility for all aspects of maintaining and operating the Sewer Facilities for purposes of providing the aforementioned sewer services.

4. In the event that all of the events set forth in Section 2 above do not occur within thirty-six (36) months after the date of this Agreement, the donation of the Sewer Facilities shall be deemed null and void and without effect.

5. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be delivered by facsimile or by other electronic format (i.e., "pdf" or "tif"), each of which shall have the same force and effect as if bearing original signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have set their hands intending to be bound on the dates indicated below.

WATER AND SEWER, LLC

By: Randy S. Kertay Jr. President
Date: 1/13/2021

VILLAGE OF RICHFIELD, OHIO

By: Michael Wheeler
Its Mayor

Date: 02/03/2022

and: Sandra J. Jurek
Its Finance Director

Date: 2/3/2022

APPROVED AS TO LEGAL FORM:

Alejandro V. Cortes
Alejandro V. Cortes, Law Director

EXHIBIT B

AN IMPORTANT NOTICE ABOUT YOUR SEWER SERVICE

On _____, 2022, the Public Utilities Commission of Ohio (“PUCO”) issued an order in PUCO Case No. _____-WS-UNC, granting the application of Water and Sewer LLC ("Water and Sewer") to terminate operations as a sewage disposal company. This application resulted from an agreement by Water and Sewer, the Village of Richfield, and Richfield Township, whereby the Village of Richfield will become the provider of sewer service to sewer customers previously served by Water and Sewer.

Water and Sewer has been authorized to conduct final sewer meter readings, and the sewer portion of your next bill, which will cover service from _____, 2022 to the date of your final sewer meter reading, will be the final bill for sewer service that you will receive from Water and Sewer.

Questions regarding the substitution of the Village of Richfield as your provider of sewer service may be directed to Water and Sewer at 1-800-273-0287 or to the PUCO by writing to the Public Utilities Commission of Ohio, Service Monitoring and Enforcement Department, 180 East Broad Street, Columbus, Ohio 43266-0573, by calling the PUCO Call Center (toll free) at 1-800-686-7826 or 1-800-686-1570 (TTY Customers), or through the PUCO website at www.puco.ohio.gov.

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

4/5/2022 5:19:10 PM

in

Case No(s). 22-0330-WS-UNC

Summary: Application of Water and Sewer LLC for an Order Approving a Substitution of Sewer Service, Cancelling its Certificate of Public Convenience and Necessity, and Authorizing the Withdrawal of its Current Sewer Tariff electronically filed by Mrs. Kimberly W. Bojko on behalf of Water and Sewer, LLC