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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** | |  |
|  | | Public Meeting held September 17, 2015 | |
| Commissioners Present: | |  | |
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| Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  James H. Cawley  Pamela A. Witmer  Robert F. Powelson | | | |

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| Application of The York Water Company (York Water) for approval of (1) the transfer, by sale, of substantially all of the water distribution system assets, and rights of the Newberry Farms Mobile Home Park to York Water, and (2) the right of York Water to begin to offer or furnish water service to the public in an additional portion of Newberry Township, York County, Pennsylvania | A-2015-2474591 |
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**ORDER**

**BY THE COMMISSION:**

By the application (Application) filed on March 31, 2015, The York Water Company (York Water), utility code 213550, 130 East Market Street, York, PA 17401, seeks a certificate of public convenience pursuant to Sections 1102(a)(1)(i) and (3) of the Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1)(i) and (3), evidencing Commission approval of: 1) the acquisition by York Water of substantially all of the water distribution system assets of the Newberry Farms Mobile Home Park (Newberry Farms MHP), and 2) the right of York Water to begin to offer or furnish water service to the public in an additional portion of Newberry Township, York County, Pennsylvania.

1. **BACKGROUND AND AFFECTED ENTITIES**

Proofs of publication and service were submitted by York Water. In addition, this Application was published in *The Pennsylvania Bulletin,* 45 Pa.B. 1924, Saturday, April 11, 2015. The protest period ended April 27, 2015. No protests were filed and no hearings were held.

Under Special Act of the Assembly, York Water was incorporated under the laws of the Commonwealth of Pennsylvania on February 23, 1816, for the purpose of supplying water in the Borough, now the City of York, York County, Pennsylvania. Since that time, York Water has expanded its franchised territory from time to time to include 48 municipalities in York and Adams Counties. York Water serves an estimated population of 192,000, with water furnished to 64,465 customers as of December 31, 2014. In addition, York Water furnishes wastewater service to the public in three municipalities, all of which are located in York County. The wastewater community served has an estimated population of approximately 1,275 people with wastewater service furnished to 637 customers as of December 31, 2014.

The Newberry Farms MHP currently operates a water system that serves approximately 160 dwellings, all within the mobile home park, from wells located on the premises and does not separately charge for water service. The Newberry Farms MHP is not a certificated public utility and is owned by the limited liability company, WTS Properties, LLC (WTS) whose sole member is James Perano. The mailing address for the Newberry Farms MHP is 2846 Main Street, #12A, Morgantown, PA 19543.

1. **LOCATION OF FACILITIES TO BE ACQUIRED**

The Newberry Farms MHP is located about one mile south of York Haven Borough along the east and west sides of Cassel Road in Newberry Township, York County, Pennsylvania. Conewago Creek borders the Newberry Farms MHP’s property along its west side. Approximately three quarters of the Newberry Farms MHP’s tract, Tax Parcel No. 39000NI0190D000000, lies within York Water’s existing territory. York Water stated that the remaining western portion of the Newberry Farms MHP’s property is contiguous to, but situated outside York Water’s existing certificated service area.

The Application contained proposed water service territory maps marked as Exhibits E and F, respectively. York Water clarified the map and description contained in Exhibit F represents the actual water service territory being requested. Subsequently, York Water filed a revision to the Application’s Exhibit E so that the boundaries of requested territory depicted in both Exhibits E and F agree. According to York Water, the area of the requested territory is approximately 25 acres.

York Water stated that the Newberry Township Municipal Authority provides sanitary sewer service to the residents of the Newberry Farms MHP. There is a smaller and separate property, Tax Parcel No. 39000NI0190E000000, located within York Water’s existing water service area that is surrounded by the eastern portion of the Newberry Farms MHP’s tract and is identified as “Separate Parcel Not Served” in the Application’s map exhibits. In supplemental information, York Water stated that it has no knowledge of how the separate parcel receives wastewater service and that the subject parcel is not served by public water.

1. **DESCRIPTION OF FACILITIES TO BE ACQUIRED**

In supplemental information, York Water provided an estimated inventory of the Newberry Farms MHP’s water distribution system assets. However, York Water noted WTS does not maintain an accurate inventory of its water distribution system assets. York Water stated its estimate is based upon discussions with WTS and site visits to the Newberry Farms MHP. York Water said it converted the limited distribution maps that WTS maintains into York Water’s geospatial database. York Water then approximated the length of water main and counted like assets from its geospatial information system and geospatial asset management module. York Water stated that a more detailed listing and description of assets will be provided when the original cost study is completed and submitted.

York Water's estimated inventory of the Newberry Farms MHP’s water distribution system assets differ with the Pennsylvania Department of Environmental Protection’s (DEP’s) Community Water System Inventory. The differences include pipe diameters and quantities. DEP’s records are based on information provided when the system was permitted, are updated through periodic inspections, and are maintained by a regulatory environmental agency. York Water's estimate is based on data gleaned from WTS which is not the original owner of the Newberry Farms MHP. As such, WTS may not have the benefit of all the original owner’s records regarding the water system’s underground infrastructure. We encourage York Water to avail itself of DEP records in future transactions of this nature to ensure a more comprehensive water system inventory.

According to DEP’S records, the Newberry Farms MHP, formerly known as the Shangri-La Mobile Home Park, was previously owned by Shangri-La Associates. In a letter dated July 7, 2000, DEP transferred the subject mobile home park’s public water supply permit to WTS. As it is known today, the Newberry Farms MHP’s water system, Public Water Supply Identification (PWS ID) No. 7670111, includes two production wells, hypochlorination, pH adjustment for corrosion control, four 2,000 gallon fiberglass chlorine contact tanks, three finished water pumps, and a battery of ten hydro-pneumatic pressure tanks that connect to a pipe distribution system contained within the mobile home park. Well No. 1 was constructed in the 1970’s and Well No. 2 was constructed in the 1990’s. The raw water transmission piping generally consists of 985 feet of 2-inch diameter plastic pipe. The finished water pipe distribution system generally consists of 5,450 feet of 3/4-inch diameter plastic pipe, 230 feet of 2-inch diameter plastic pipe, and 3,426 feet of 6-inch diameter plastic pipe. All piping was installed in the 1980’s and 1990’s.

1. **PURCHASE AGREEMENT**

On September 22, 2014, York Water and WTS entered into an Agreement of Water System Sale (Agreement) by which York Water agreed to purchase substantially all of the water distribution system assets of the Newberry Farms MHP for the consideration of $42,000. In supplemental information, York Water stated there is no affiliation between York Water and the owner of the Newberry Farms MHP and that all negotiations were conducted at arm’s length. A copy of the Agreement is attached to York Water’s Application and is marked as Exhibit L. The Agreement specifies that York Water will only purchase the water distribution system assets as defined in the Agreement’s Appendix A.

The assets listed in the Agreement’s Appendix A include all water mains, fittings, valves, service lines, yard hydrants, and existing and replacement water meters within the parcels now or formerly owned by WTS. The assets also include all physical plant, property, equipment, inventory, tools, and facilities comprising the Newberry Farms MHP’s existing water distribution system owned and operated by WTS, with attendant easements, rights-of-way, fixtures, and equipment.

The purchase excludes assets described in the Agreement’s Paragraph 2. These excluded assets are any funds designated as funds of WTS including, specifically, any checking accounts, savings accounts, accounts receivables, insurance, and other investments related to the Newberry Farms MHP’s water distribution system and the provision of water services by WTS. Further, excluded assets are the wells, well houses, treatment and pumping facilities, water storage tanks, and associated equipment. In supplemental information, York Water stated that it will undertake an original cost study to determine the original cost and accumulated depreciation of the Newberry Farms MHP’s water distribution system.

1. **OPERATIONS UNDER YORK WATER**

The Application states that York Water will operate the Newberry Farms MHP’s existing distribution system as part of its water system, will interconnect the system with York water’s fully filtered system and treated water supply, and will disconnect the wells. As explained, York Water will provide water service to the Newberry Farms MHP by an extension from its existing production and transmission facilities. York Water intends to tie into its existing 12-inch diameter water main within York Haven Road (State Route 181) and extend a 12-inch diameter cement-lined ductile iron water main 2,590-feet west along Fairmont Avenue and then north along 2nd Avenue, within public and private rights-of-way, to the eastern portion of Shangri-La Way. The proposed water main extension may include fire hydrants if requested by Newberry Township.

York Water stated that Newberry Farms MHP’s water distribution system will be operated, maintained and managed by York Water’s Operations Department. The Newberry Farms MHP’s wells, well houses, pumping facilities, water treatment building, water tank, and associated equipment will remain the property of the Newberry Farms MHP and will be taken out of service. York Water stated that upon closing, WTS will contact DEP to relinquish its Community Public Water Supply Permit. As stated in supplemental information, DEP will subsequently revoke WTS’ Community Public Water Supply Permit. York Water’s operation of the Newberry Farms MHP facilities will be covered by its existing Community Water Supply Permit. According to York Water, it has met with representatives of DEP to discuss the process and anticipates no issues.

Operations under York Water will provide significant benefits to customers of the Newberry Farms MHP’s water system that include: service that does not restrict water use as presently experienced by Newberry Farms MHP customers; an opportunity to provide fire protection that is not possible with the existing Newberry Farms MHP water system; compliance with existing and proposed regulatory requirements; and the availability of managerial, financial and operating resources.

1. **ADDITIONAL CAPITAL REQUIREMENTS**

York Water will spend approximately $461,000 on water system improvements within 6 months of closing on the Newberry Farms MHP’s water distribution system. In supplemental information, York Water stated that the majority of the cost consists of the extension of 2,590-feet of 12-inch cement lined ductile iron water main from York Water’s existing 12-inch diameter water main located along York Haven Road to the Newberry Farms MHP’s water distribution system. York Water stated this water main extension will cost $277,000. The remaining water system improvement costs include the installation of approximately 160 meter pits ($160,000), and installation of approximately 160 meters ($24,000). The improvements will be funded by internally generated funds, proceeds from the issuance of common stock under York Water’s dividend reinvestment, direct cost and employee stock purchase plans and, if necessary, York Water will borrow against its line of credit.

In supplemental information, York Water stated that there have been no contributions in aid of construction toward the Newberry Farms MHP’s water system. The following are the tentative journal entries that York Water provided to record the transfer into its accounts:

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|  | Debit | Credit |
| Utility Plant in Service | $180,000 |  |
| Accumulated Depreciation | ($50,000) |  |
| Utility Plant Acquisition Adjustment |  | $55,000 |
| Construction Work in Process[[1]](#footnote-1) |  | $75,000 |

1. **PROPOSED RATES**

On October 17, 2014, York Water notified the residents of the Newberry Farms MHP of the pending acquisition and the future rates for water service. A copy of the letter is attached to the Application as Exhibit K. York Water will charge its “Repumped System Rates” for service in the territory covered by the Application. A residential repumped customer using 3,928 gallons per month will be charged $44.76 per month or $537.12 annually based on York Water’s current tariff rates. Estimated annual revenue from the 160 customers will be approximately $85,939.20 and the annual expenses will be about $52,079 providing an estimated operating income of about $33,860. York Water will begin providing service to the dwellings currently served by WTS five days after the date of closing contingent upon York Water obtaining Commission approval upon closing.

1. **FEDERAL AND STATE ENVIRONMENTAL COMPLIANCE**

In July 2012, WTS, along with other affiliated companies, entered into a Consent Decree, United States v. GSP Management Company, et al., Civil Action No. 12-5553 (Consent Decree), with the U.S. Department of Justice, U.S. Environmental Protection Agency (EPA), and the Pennsylvania Department of Environmental Protection to resolve NPDES and SDWA water and wastewater violations at 73 mobile home parks, including the Newberry Farms MHP. Under the Consent Decree, it was alleged that WTS, a related company to GSP Management Company, had failed to satisfy reporting obligations and is obligated to perform various audits and inspections, among other things. Over 4,700 NPDES and SDWA violations occurred at the 73 mobile home parks, one of which is the Newberry Farms MHP, and are documented in the appendices of the Consent Decree. The Consent Decree, excluding supporting referenced information, was made part of the Application as Exhibit M. This excluded supporting information documenting the aforementioned violations contains: Appendix A: Compliance Focused Environmental Management System Elements; Appendix B: Environmental Audit Requirements; Appendix C: List of Defendants’ Mobile Home Parks; Table 1: NPDES and SDWA Violations; Schedule CM; and Schedule PH. In supplemental information, York Water stated that the excluded information is not readily available in the public record and is voluminous. According to DEP, violations occurring at Newberry Farms MHP were the result of WTS' failure to properly sample, to follow reporting procedures to DEP, and to report sample omissions to the residents of Newberry Farms MHP.

According to DEP, York Water has no outstanding compliance or operational issues. York Water has stated that through discussions with EPA and DEP they have requested that the Newberry Farms MHP’s water system facilities be released from the terms of the Consent Decree upon York Water’s acquisition of the Newberry Farms MHP’s water distribution system facilities. EPA and DEP officials have stated their intent to recommend that the Newberry Farms MHP be released from the obligations of the Consent Decree following York Water’s acquisition of the facilities. This intent is evidenced through letters from EPA’s Regional Council and DEP’s Office of Chief Council contained in the Application’s Exhibit N.

1. **LAND-USE PLANNING COMPLIANCE**

York Water stated it discussed the proposed additional certified service area with Newberry Township and York County officials. In addition, the Application contained a survey response letter from Newberry Township dated March 17, 2015 and marked as Exhibit I stating that the Application is consistent with applicable municipal comprehensive plans and zoning ordinances. The Application also contained a letter from the York County Planning Commission dated March 17, 2015 and marked as Exhibit J indicating the proposed Application is consistent with the adopted county or multi-county comprehensive plan.

1. **OTHER CONSIDERATIONS**

In its Application, York Water states that WTS determined that it is in the best interest of its customers to sell the Newberry Farms MHP water facilities to a company that has sufficient water supply to meet the current demand of the residents at Newberry Farms MHP and is more experienced in dealing with utility service and the regulatory requirements associated with providing such service. Further, York Water is current with its annual and quarterly earnings and the Security Planning and Readiness report filing requirements and there are no outstanding fines or assessments due to the Commission.

1. **CONCLUSION**

Portions of Newberry Township are currently served by York Water. However, no corporation, partnership or individual is now furnishing or has corporate or franchise rights to furnish service similar to that to be rendered by York Water in the territory covered by this application, and no competitive condition will be created.

Based upon the facts that York Water will expand its service territory to customers in compliance with Commission regulations, that the economies of scale of an expanded customer base has a beneficial effect on existing customers, and that York Water will be meeting the needs of new customers without any detriment to its existing customers, the Commission finds that granting York Water’s amended application for the acquisition is necessary or proper for the service, accommodation, convenience, or safety of the public;

**THEREFORE,**

**IT IS ORDERED:**

1. That the amended Application of The York Water Company at Docket A‑2015-2474591 is hereby approved.
2. That upon notice of closing, a Certificate of Public Convenience be issued pursuant to 66 Pa. C.S. § 1102(a)(1)(i), evidencing Commission approval for The York Water Company to begin to offer, render, furnish and supply water service to the public in an additional portion of Newberry Township, York County.
3. That The York Water Company shall notify the Commission within 10 days of the closing with the Newberry Farms Homes Mobile Home Park.
4. That a Certificate of Public Convenience be issued pursuant to 66 Pa. C.S. § 1102(a)(3), evidencing Commission approval of the acquisition by The York Water Company of the water distribution system assets of the Newberry Farms Mobile Home Park in Newberry Township, York County, as described in the Application.
5. That the Commission takes no position on the transfer of any outstanding obligations to The York Water Company arising from the Federal Consent Decree (United States v. GSP Management Company, et al., Civil Action No. 12-5553) at this time and that The York Water Company shall notify the Secretary’s Bureau and the Bureau of the Technical Utility Services of any obligations transferred to The York Water Company resulting from the Federal Consent Decree prior to its next general rate filing.
6. That The York Water Company will file copies of its original cost study of the water distribution assets acquired from the Newberry Farms Mobile Home Park with the Secretary’s Bureau and the Bureau of Technical Utility Services, upon completion of said study.
7. That The York Water Company shall file a tariff supplement incorporating the Newberry Township service territory into The York Water Company’s Repumping System rates within 10 days following the date of closing, to become effective on one day’s notice.
8. That nothing herein shall be construed as an approval or determination of costs or expenses for the purposes of determining just or reasonable rates or to exempt The York Water Company from obtaining all necessary permits, licenses, and approvals from other federal, state, and local government agencies having jurisdiction.
9. That a copy of this Order be served upon The York Water Company, WTS Properties, LLC, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Department of Revenue, the Bureau of Corporate Taxes, the Department of Environmental Protection – South Central Regional Office and its Central Office Bureau of Regulatory Counsel.

 **BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 17, 2015

ORDER ENTERED: September 17, 2015

1. $75,000 Construction Work in Process = $42,000 Purchase Price + $33,000 Other Acquisition Costs

   Data Request Response A-2 [↑](#footnote-ref-1)