LAW OFFICES OF

MILLER KISTLER & CAMPBELL

RICHARD L. CAMPBELL
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BRIAN K. MARSHALL
LISA M. WELSH**
DAVID S. GAINES, JR.
MICHAEL S. LEVANDOSKI

OF COUNSEL
FRED B. MILLER

*ALSO ADMITTED IN WEST VIRGINIA
**ALSO ADMITTED IN MARYLAND

PLEASE REPLY TO:
STATE COLLEGE OFFICE

720 SOUTH ATHERTON STREET
STATE COLLEGE, PA. 16801-4669
(814) 234-1500
FAX (814) 234-1549
AND
124 NORTH ALLEGHENY STREET
BELLEFONTE, PA. 16823-1695
(814) 355-5474
GENERAL FAX (814) 355-5340
REAL ESTATE FAX (814) 357-0264

JOHN R. MILLER, JR.
(1919-2007)

ROBERT K. KISTLER
(1925-2012)

January 11, 2016

Scott T. Wyland
Salzmann Hughes, P.C.
105 North Front Street, Suite 205
Harrisburg, PA 17101

Re: University Area Joint Authority Tapping Fees and Quarterly Service Fees

Dear Mr. Wyland:

The purpose of this letter is to respond to your letter dated December 28, 2015. For simplicity's sake, this letter will address each of your discussion points in turn. Please note, though, that the materials that follow are general responses to your client's claims, not comprehensive responses. The University Area Joint Authority ("UAJA") has many reasons for justifying its rate structure, and there are too many such issues to thoroughly review in one letter.

I. Tapping Fees

As a preliminary matter, your letter separated tapping fees into single-family home, or "SFH," and "non-SFH" properties. Please note that the UAJA embraces the statutory system, which distinguishes between residential and nonresidential customers.

Your letter includes three reasons to support the argument that nonresidential tapping fees must be charged volumetrically. The UAJA takes issue with those arguments, and the responses to those arguments appear below. To begin with, though, please note that the UAJA is in the process of completing a new Act 57 study that will base tapping fees on factors other than gallons of water per day. That study should be complete in the coming months, and in particular, by the end of March. Nonetheless, because that study will allow the Authority to focus on solids, rather than water, as a basis for its tapping fees, the study may well render this conversation moot.

Regarding your specific arguments, we disagree that design capacity must only be billed volumetrically. You are correct that Act 57 contains language stating that "design capacity may

not be expressed in terms of equivalent dwelling units," but that section only applies to the way design capacity can be expressed in the tapping fee calculation itself. In other words, engineers must be more specific about plant capacity, while calculating tapping fees, than simply stating plant capacity in EDUs; they must, instead, use industry-accepted and more traditional units like gallons per day.

Second, the UAJA cannot simply "refund excess tapping fees when it sees that actual customer usage falls well below the water usage estimate upon which the tapping fees were based." Notably, your letter does not mention how the UAJA would monitor such use. Troublingly, this portion of your letter spoke in generalities, I assume because you know the Municipality Authorities Act does not require volumetric billing. For example, you wrote that the UAJA "should refund excess tapping fees when it sees that actual customer usage falls *well* below the water usage estimate" (emphasis added). However, surely even you would admit that a system based on such broad statements—falling "well below" an estimate, for example—would only create more trouble than the current system, which speaks in absolutes.

Third, your argument that the UAJA is overselling its plant by "overestimating EDUs and associated tapping fees" is flawed. Assuming for the sake of argument that the UAJA overestimates customer usage—which is not necessarily admitted—the UAJA is underselling, not overselling, capacity.

In brief, your letter has provided no basis for questioning the UAJA's system for billing tapping fees. We continue to believe that the Municipality Authorities Act justifies this practice, and Act 57's comprehensive language, which pertains to the calculation of tapping fees, does not alter that conclusion. Nonetheless, we believe this conversation will ultimately prove moot, because the UAJA will soon adapt its tapping fee structure to a basis other than water volume.

II. Service Fees

Regarding service fees, the UAJA has little to add to the prior discussions. Nonetheless, we trust that you agree that courts across the Commonwealth have repeatedly—including as recently as 2007—confirmed municipal authorities' use of EDU-based billing structures. For a brief review of those cases, we suggest starting with *Patton-Ferguson Joint Authority v. Hawbaker*, 322 A.2d 783 (Pa. Commw. Ct. 1974), and *Chicora Commons Limited Partnership*, 922 A.2d 986 (Pa. Commw. Ct. 2007). In both cases, plaintiffs filed suit and lost on claims that are virtually identical to your client's. Nonetheless, it is simply untrue to argue that the UAJA is violating any laws when it charges its customers based on EDUs.

You ended your letter with a request to meet and discuss this issue. In virtually all other circumstances, we—both our office and the UAJA—would accept such an invitation. In this case, though, we see value in waiting until the UAJA has completed its Act 57 study. Once again, this study will likely shift the conversation away from how many gallons of water a customer produces, thereby allaying your client's concern. Consequently, we suggest that we simply inform you when the new Act 57 study is complete and new procedures are implemented. If we

reach an agreement to do so, we would expect to be in touch in late March or early April.

Thank you for your assistance. Please let us know if you have any questions or concerns.

Very truly yours,

Richard L. Campbell
David S. Gaines, Jr.

CC: Board of Directors, University Area Joint Authority
Cory R. Miller