



TOWN COUNCIL
Town Hall Meetings
Cape Charles Civic Center
October 5, 2022 at 6:30 PM
October 8, 2022 at 2:00 PM

Two Town Hall Meetings were held by the Town Council regarding the potential sale of the Town's public utilities under the Public-Private Education Facilities and Infrastructure Act (PPEA). The purpose of the two meetings was to better accommodate the schedules of the citizens and business owners. The same information was covered in both meetings.

At approximately 6:30 p.m. on October 5, 2022, Mayor William "Smitty" Dize, having established a quorum, called to order the Town Hall Meeting. In addition to Mayor Dize, in attendance were Vice Mayor Bennett, Councilmen Buchholz, Follmer and Grossman, and Councilwomen Holloway and O'Brien. Also, in attendance were Town Manager John Hozey, Assistant to the Town Manager Julie Pruitt, Town Clerk Libby Hume, and Officer Tom Lynch. Representatives from Virginia American Water (VAW) were also in attendance. There were 17 members of the public physically in attendance, and 13 viewers on Facebook.

At approximately 2:00 p.m. on October 8, 2022, Mayor William "Smitty" Dize, having established a quorum, called to order the Town Hall Meeting. In addition to Mayor Dize, in attendance were Vice Mayor Bennett, Councilmen Buchholz, and Councilwomen Holloway and O'Brien. Also in attendance were Town Manager John Hozey, Assistant to the Town Manager Julie Pruitt, and Town Clerk Libby Hume. Representatives from VAW were also in attendance. There were 6 members of the public physically in attendance, and 10 viewers on Facebook.

Mayor Dize welcomed all in attendance adding that Town Manager John Hozey would provide a brief overview followed by questions from the public. Members of the Council would have time afterwards to provide their thoughts.

John Hozey thanked everyone for taking the time to attend this meeting in person or watch on Facebook. This was a very important discussion and the Town wanted to hear comments and questions from the public.

John Hozey provided a general overview of the process adding that a lot of information had been disseminated to the public throughout the process. Two Town Hall meetings were held earlier this year and input received was used to aide in the negotiation and development of the draft sales agreements. A comprehensive asset purchase agreement was drafted and posted on the Town's website last weekend and printed copies were available in the back of the room. This agreement would be the focus of these two Town Hall meetings. The Code of Virginia also required a formal public hearing which was tentatively scheduled for November 10, 2022 and would be followed by a special meeting for Town Council to formally consider the agreement. Should Town Council vote to move forward it would start the lengthy process of working with VAW to file for approval by the State Corporation Commission (SCC), which was the main regulatory agency that controlled private utilities. Until the SCC approved the transaction, the sale could not be finalized.

There were three main reasons for considering this sale: 1) to ensure the proper operation and maintenance of the systems; 2) to improve water quality as this was one of the main complaints received from residents; 3) to try to keep the rates lower than if the Town were to retain and operate the system. Ancillary benefits included i) the Town would be compensated and would be able to pay off existing debt; 2) additional resources would become available to apply to other priorities and capital projects.

The Town hired a consultant to assist with the evaluation process and quite a bit of time has been spent on due diligence. Other communities serviced by VAW were contacted and no significant red flags were raised.

A number of good questions were received prior to the Town Hall meetings and were reviewed as follows:

If the Town and VAW reach an agreement, what is the likely timing to complete the sale? What is the optimistic and pessimistic estimate of the duration of the negotiations to reach an agreement?

The Town and VAW had to get the engineering assessment and appraisals which would take about 30 to 60 days. Once that was obtained, a joint petition would be filed with the SCC, and based on experience with the process with the town of Waverly, the process could take about 9 to 12 months.

Is the \$15M “maximum price” equal to the appraised value from the SCC? If not, what is the source of this “maximum price?”

The purchase price will be fair market value (FMV) as determined by the average of three independent appraisals – one by the Town, one by VAW and one by SCC. The maximum sales price was \$15M. If the FMV were to come in below \$14M, the Town Council had the option to withdraw from the deal.

Will the Town hold firm on a “minimum price” of \$14M? If not, under what conditions would the town act on the option to withdraw from the sale below \$14M? Is the town prepared to retain and operate the plant under these conditions?

It was not the Town’s intent to hold firm to \$14M. \$14M was the floor and the Town Council had the right to withdraw.

What is VAW’s level of confidence that the rates will be lower at the next SCC rate meeting?

The Town’s rates were considerably higher than the statewide average. Upon approval of the sale by the SCC, the Town’s current rates would be frozen until VAW’s next rate case to the SCC. In 2017, the State required utilities to consolidate their rates into a single tariff. In the next rate case to the SCC, VAW would request that Cape Charles be brought into the consolidated rate, which was well below our current rates. A rate comparison chart was displayed showing the Town’s current frozen rate along with VAW’s consolidated rate. (Please see attached.)

With the huge fines, potential impact on “beach tourism,” and damage to the town’s reputation for recent wastewater violations, it’s clear that the capital projects and improvements will focus on wastewater. What is VAW’s commitment to make these issues the highest priorities and invest sufficient funds to eliminate wastewater violations? What is the estimate of the time to eliminate these violations? With respect to the transfer of ownership of the discharge permit, will VAW take financial responsibility for all wastewater violations beginning on the purchase date?

The wastewater violations were not a result of a lack in infrastructure but issues with the processes. VAW was confident that the issues with the wastewater violations would be resolved by the end of this year. VAW took enforcement compliance very seriously and had a good track record with no notices of violation being issued. If a violation was issued after the purchase date, it would be VAW’s responsibility.

There are several locations in the potable water distribution system in the original section of Cape Charles that have stagnant water and high suspended solids in these “dead ends.” This is a health issue; there is a risk of pathogens such as Legionella and Listeria. With the urgency of solving the wastewater violations, when will these potable water projects occur? And will VAW initiate a voluntary routine sampling program of potable water at selected point-of-use locations to ensure compliance with the regulated drinking water quality standards and protect the health and safety of stakeholders?

The Town’s water system uses groundwater which had a lower chance of bacteria than surface water. Any bacteria in the water would be destroyed by the chlorine used in the processing. The Town also performed routine water system flushes to address the “dead ends” and auto flush systems had been installed in a number of strategic areas. VAW had the employees, resources, knowledge and capacity to deal with these issues.

What is the role of the Town Council with respect to VAW's list of initial project priorities for the first 12 months; is it approval/veto or advise/consent?

VAW would conduct a comprehensive planning study to identify and prioritize specific capital improvements and the initial project priorities would be provided to the Town Council for review and approval/veto.

Should VAW desire to expand their service area, what is VAW's responsibility to work with the town during the conceptual phase to evaluate the options (e.g., expand through annexation of county property or expand by creating a regional effort using right-of way through county property)?

VAW would continue to work with the Town and agreed to regular ongoing communications with the town manager and Council. Anything related to growth and systems would be discussed and if the Town had the right to voice our concerns with the SCC if we were unhappy with VAW's direction. The process for future development or regionalization was outlined in the comprehensive asset purchase agreement.

What's the purpose of the \$50K franchise fee from VAW's perspective? What is the basis for determining the amount of the franchise fee? How will the town of Cape Charles plan to spend these funds?

The franchise fee would be another line item in the Town's budget which would be reviewed by the Town Council each year. The amount of the franchise fee was a negotiated amount that both sides felt was reasonable. The franchise agreement granted VAW certain rights to operate within the community.

How will the town decide on the use of the monies in the reserve fund?

Similar to the question regarding the franchise fee, the amount from the reserve fund would be reviewed and allocated by Town Council.

After paying significant debt obligations, how will the town decide to invest the remaining assets received from the sale of the plants – will the town consider hiring a municipal advisory firm to increase the confidence of stakeholders about the town's financial decisions?

There was no thought about hiring an outside advisory firm. Town Council had already approved their list of priorities and capital improvement plans have been established.

When will the water quality improve? The documents state that VAW will invest \$10M over 8 years and that the Town can approve the initial priority list of projects. However, it looks like this initial priority list then can be changed by VAW without Town approval. How can the Town be sure that water quality stays at the top of the list?

As a regulated utility, VAW was required to meet certain water quality standards. VAW agreed to begin projects to address water quality within the first 12 months. VAW used a computer system to control the plant which would produce stable treatment and constant water quality. The filtration media would be upgraded. A study would be performed to determine the issue with taste and whether the problem was localized or throughout the system. The quality of the water from the plant could differ from the quality within a house at the tap, based on materials used in the house.

What will be the pace of improvements to the basic infrastructure of the system, both water and wastewater? Given the recent violations cited, what actions will occur to prevent similar violations in the future? Related to this, is the Town obligated to provide land or any other type of investment should VAW find it necessary to expand facilities in the future?

The current locations provide room for growth. If there was ever a need to grow the systems beyond the current locations, VAW would be treated like any other property owner and would have a process to make a proposal. In Waverly, about 70 leaks were repaired and service line replacements were made within the first 2 months. VAW was currently working with the staff of the wastewater plant to address the violations. The issues were not a result of staff not doing their job or having the knowledge to do their job but of resource control. Two lines were broken at the wastewater plant which were difficult to access for repair. VAW proposed having a diver come in to perform the repairs. A contractor would be coming by the end of this month. The Eastern Shore was a difficult area to get resources to.

Can you provide a simple financial summary that includes the following:

- a. *Estimated sales price (looks like between \$14M and \$15M)*
The estimated sales price is between \$14M and \$15M.
- b. *Debt service associated with the current water/wastewater facilities that will be paid off using proceeds from the sale.*
\$4.8M in debt service for utilities.
- c. *Other debt service unrelated to the current water/wastewater facilities that will be paid off using proceeds from the sale.*
About \$1M total debt service to include prepaids, for a total of \$5.8M to be paid off.
- d. *Any other obligations associated with the current operation that will need to be covered using proceeds from the sale.*
None.
- e. *Any account balances/reserves that will be freed up and available to the Town for its use.*
About \$2.6M in the Facilities Fund would become available to the Town.

Relative to rates, please provide a summary that shows:

- a. *Current rates*
- b. *Estimated Town rates at closing*
- c. *Estimated VAW rates at closing (it may be that a, b, and c are all the same)*
- d. *What the VAW consolidated rates would be at the time of closing, realizing that this requires State approval.*

These questions had already been discussed and reference was made to the rate comparison sheet. VAW's historical trend for the filing of rate cases was every 2 to 3 years. The last rate case was filed in 2021. The addition of Cape Charles to the consolidated rate would be included in the next rate case.

There seems to be only one reference to the annexation agreement with Preserve Communities (Article 5.2.f.). This reference talks about the settlement of liabilities to the Town's satisfaction. It is not clear who has the liability – Preserve Communities or the town of Cape Charles? Once settled, will the Town be free and clear of any obligations to provide water or wastewater services or funding of any sort to Preserve Communities? This article makes no mention of the buyer (VAW) so does that mean they are not party to any agreement and are prepared to go forward no matter the resolution between the Town and Preserve?

The annexation agreement was a separate issue between the developer, Preserve Communities, and the Town. VAW was not a party to that. The negotiation with Preserve Communities could not be completed until the engineering and capacity studies were completed. A clause was included in the comprehensive asset purchase agreement to allow time for the negotiation. The first meeting with Preserve Communities had been scheduled.

Are there any restrictions on the spending and allocation of the yearly franchise fee? Can these funds be escrowed for the inevitable legal challenges when AW raises rates significantly, much like what is currently going on in Alexandria and every other VAW services water and wastewater utility in the state?

There was no restriction on the use of the franchise fee. The consolidated rate was explained in detail. Rates would differ greatly between large and small localities. Larger localities with more users would typically have lower rates compared to smaller localities with fewer users which would have higher rates. In looking at past rate increases, VAW's rates increased from 2% to 3.75% per year over an 11 year period. In looking at the Draper Aden Report, which was a report put out annually for municipal-owned systems, over the last 10 years, rates increased an average of 3.5% for water and 3.9% for wastewater. Based on the Draper Aden Report, Cape Charles' rates were about 39% above average.

What are the provisions in the agreement for measuring VAW's performance in meeting the 3 stated reasons for selling the utility facilities and what remedies are specified should VAW fail to meet any one of these objectives?

As with any contract, the Town could pursue legal action, and depending on the issue, there could be regulatory oversight. Utilities were a highly regulated industry, if performance fell short, the enforcement arms of the Environmental Protection Agency (EPA) and the Virginia Department of Health (VDH), for water, and the Department of Environmental Quality (DEQ), for wastewater, would issue notices of violation, fines, etc., as well as the SCC regulations. VAW would also be accountable to the Town Council.

How does the agreement define the obligation that Preserve Communities has, by virtue of the Annexation Agreement between the Town and Bay Creek, to fund the necessary expansion of the water utility facilities to accommodate the connects in Bay Creek?

As stated earlier, this agreement was a separate from the Annexation Agreement. The agreement with Preserve Communities would be negotiated and the public would have the opportunity to provide input.

One of the concerns about turning over the water utilities to a private company is the loss of control over these assets. One of the assets is the name and addresses of all the water utility customers, which is essentially a Town directory. Has any consideration been given to retaining access to this information?

This was a good point as the Town used the registry for outreach to the public such as including notices to the public with the bills. This would not be lost since the Town would continue to maintain the database for trash collection services.

The following questions were submitted for the Saturday, October 8th, meeting:

Solving the recent violations in the performance of the wastewater treatment plant requires operational changes – not costly equipment purchases. I think that it's important to clarify that VAW will be able to allocate capital funds to improve the potable water distribution system as one of the first projects – an important priority for a subset of the ratepayers.

As the largest private water and wastewater utility in the state, VAW had the resources to address issues with both the wastewater and water systems. They had the capability and knowledge to plan and had committed to perform a capital study within the first 12 months to identify the true needs for the long-term health of the plants.

Regarding VAW's statement about the low risk of pathogens in potable water due to the low concentrations of bacteria and nutrients in the source water (well). My experience as an expert witness for Legionella risks in one of the Flint potable water lawsuits confirmed that the concentration of iron in the water is a nutrient for bacteria, including Legionella. The primary source of iron in Cape Charles' potable water is the wells. Legionella has a complicated life cycle; it requires a higher life form that may exist in accumulated solids that exist in the dead ends. I have worked with potable water systems that exist in manufacturing plants, and I don't understand how flushing the potable water distribution lines will remove the suspended solids and associated bacteria in the dead legs or, equally important, in the transfer piping (after the water meter) to the residences. If you have not tested the "first sample" after an idle period (e.g., overnight or longer periods), you cannot claim that there are no pathogens in the water. This is the reason that I asked if VAW planned to initiate a voluntary routine sampling program of potable water at selected point-of-use locations to ensure compliance with the regulated drinking water quality standards and protect the health and safety of stakeholders.

Legionella and Flint issues were a completely different issue than what we had in Cape Charles. Flint made a change in their treatment which resulted in a major corrosion issue related to lead and lead poisoning as well as legionella in the distribution system. Legionella mainly affected large buildings with stagnant water. Flint also used surface water as their source, and there was a big difference between treated surface water and groundwater. There was more microbial activity in surface water. There were guidelines on the VAW website to manage large buildings. Cape Charles could not be compared to Flint. If there were any bacteria suspended in a water pipe, the chlorine residual would deactivate the bacteria. The key for dealing with dead ends was flushing. If iron was a problem, you would have discolored water, and flushing would bring in fresh water with chlorine and alleviate the iron. There would be mechanisms in place to monitor the parameters and water samples would be

taken to monitor the bacteria. There was also a comment about stagnant water in the pipes within a house. It was recommended to let the water run for a few minutes to bring in fresh water.

Currently, homeowners pay a minimum water fee of \$33.46 per month regardless of how much water is used. Will this minimum usage fee be continued/increased/decreased if the water system is sold?

The current Town rates would be frozen until the next rate case. If the next rate case was approved by the SCC, Cape Charles would be included in the consolidated rate which was currently \$15.00 for 3,500 gallons.

Councilman Grossman brought up the question of water meters for accessory dwelling units (ADU) during Wednesday's meeting. It seems only fair that if there are two independent housing units on a property, whether one is lived in by the owner and the other rented out, or if both are rented out, that each should have their own water meter, especially in light of the minimum usage fee for water. The two combined might meet or even exceed the minimum usage of water for that one meter, but if separated out, one might actually use less than the minimum, and would avoid paying the minimum usage fee. If the ADU is simply used as an extension of the main house, then one water meter should suffice. Thoughts on this?

Currently the Town allowed one meter for ADUs unless a second meter was requested. VAW's operations would be fairly consistent with the Town's operations. If a garage was converted to an ADU, one meter could be used for both. Typically, if building new construction or making substantial improvements to an existing house, VAW had engineering resources available to determine the size of the meter needed.

The floor was opened to the audience for questions.

In January, Town Council said the process would take about 18 months. About 33% was cut off this time to make a decision and it was curious why the timeline was sped up so much.

The 18-month timeframe included the entire SCC process. This work began in January, so we were already 10 months into the process. The decision would not be considered until November, then the SCC application would have to be developed which would take about 60 to 90 days. Then we would have about another 9 months for SCC consideration. The process had actually slowed down and would take longer than 18 months to complete.

Is VAW privately held or public?

VAW was not a public entity in the sense of a government entity but was publicly traded.

Will the Keck Wells be hooked up?

The Town was currently in the design process to connect the Keck wells and planned to go out for bids next summer. Should the acquisition take place prior to the connection of the wells, it would be considered as part of the evaluation and transfer to VAW.

If the Keck wells are connected, would the taste of the water improve?

The water quality from the Keck wells was judged to be better and would be blended into the current water supply so with the systematic measures, the taste could improve.

Right now, there were a lot of violations in our water, one of which is arsenic. Although still within the guidelines, would anything be done about the arsenic in the water?

The amount of arsenic in the water was below the EPA limits and VAW followed EPA regulations.

What assurances does the Town have for VAW to place their obligation to the Town above their obligation to their shareholders to increase profits? VAW would have a natural monopoly.

VAW would be a regulated monopoly. Most private companies had the ability to set their own rates. VAW did not have that ability since the rates were set by the SCC to ensure reliable, safe and reasonable costs to provide water and wastewater services. It was the SCC's job to ensure that the rates set allowed for access to capital to ensure safe, reliable service to the customers. The Town had the assurance that the SCC, a public body whose sole purpose was to look out for the rate payers and the profit margin was regulated by the SCC.

Would VAW's list of priority projects be a public document so the residents would know the issues to be improved?

The document would be presented to the Town Council for review and approval. They would be available to the public as part of the agenda packet for that meeting, with the exception of any engineering and designs which were protected under Homeland Security.

Are the connection fees anticipated to be about the same as what is currently charged by the Town?

The fees could be significantly less since the Town charged for connection and facility fees for the reserve. VAW would only charge for the connection.

There were no additional questions from the audience. Mayor Dize asked for questions and comments from the Council.

Councilwoman Holloway stated that the submitted questions were good and really helped her and the audience understand the process.

Vice Mayor Bennett commented and asked the following questions: i) *When would the FMV be established?* The first appraisals would be completed by the Town and VAW before the application was submitted to the SCC. The SCC would obtain their appraisal upon receipt of the application. Toward the middle to end of the process (about 9 months in), the SCC would set the FMV; ii) He wanted to emphasize the fact that on the rate chart, drawing the line for the Town's rate to remain level was absolutely unrealistic as there was no way for the rates to remain level if the Town were to retain the systems. As stated by VAW, if they were running the Town's systems with only our users, they would not be able to keep the rates level; iii) *The water plant backwash currently went through a pit at the old wastewater plant site. Was there any thought of continuing that process or would the process be changed?* There would be a way to change the process. There had been recent observations by the DEQ of that outfall and we were awaiting a final determination; iv) *He did not understand the comment about the Annexation Agreement and "once the sale was settled would the Town be free and clear to provide water and wastewater to Preserve Communities."* John Hozey stated that he meant to address this question, adding that no, the Town would have no obligation after the sale; v) Vice Mayor Bennett concluded by stating his appreciation for all who submitted questions.

Councilwoman O'Brien asked whether there would be a cost to the Cape Charles Volunteer Fire Company for water use. There would be no charge for use of water for any of the area volunteer fire companies as long as the use was for fire protection and/or training.

Councilman Grossman commented and asked the following: i) *Metering hydrants was discussed, could this be for filling a swimming pool?* Contractors might want bulk water for construction purposes. They would be able to get a fire hydrant meter to track usage; ii) *He asked what documentation was being considered at the November 10th public hearing and special meeting. The Comprehensive Asset Purchase Agreement appeared to need a lot of work.* John Hozey stated that the Comprehensive Asset Purchase Agreement was completed but still needed to be filled in with some of the schedules if needed; iii) *He asked whether the Keck well property had been surveyed as included as part of the purchase agreement.* John Hozey replied that it had not been surveyed yet; iv) *He asked what would be voted on.* The items being reviewed tonight would be voted on by resolution. A public hearing was required whenever assets were sold; v) *For the SCC filing, would all the schedules have to be completed?* VAW submitted the SCC filing for the Waverly system without the easement schedules which were provided just before closing. The SCC approved the sale without the schedule but it was a condition of the closing; vi) *The Town was required to post annual quality reports which were distributed and posted on our website. How would VAW get this information out?* VAW posts the information on their website and once posted, include the information to view the report in a billing statement; vii) *The Franchise Agreement stated that the rights and privileges were for 40 years. What happened at the end of the 40 years?* In the State of Virginia, franchise agreements could not be for more than 40 years. Even after expiration, the parameters continue but the Town could approach VAW and renegotiate the terms; viii) *Is the survey of the Keck property in progress?* John Hozey stated that he was trying to get something scheduled but all the surveyors contacted were extremely busy; ix) *The Town allowed ADUs and the water supply to go through the primary home and meter, but*

owners could ask for a separate meter. Will this practice continue? Yes. One meter could be used as long as it was for an ADU. If a separate home was built, a second meter would be required. Some localities allow a second water meter for watering use since it did not go into the wastewater system; x) Are short-term rental units considered residential? Yes; xi) Councilwoman Holloway asked why a bed & breakfast (B&B) was considered as commercial? VAW would check on that and provide an answer. Typically the difference was that short-term rental usage had ebbs and flows where B&Bs were continually operated as a business.

Councilman Follmer commented and asked the following: i) *He expressed his agreement with Vice Mayor Bennett regarding the rate comparison chart. People kept referring to the issues with Alexandria. In looking at the chart, and assuming their Council did their due diligence, they knew the state called for a consolidated rate, so the idea of a rate increase should not have been a surprise since their rates were so low.* VAW had owned and operated the Alexandria plant since the 1880s but the rate consolidation mandate only happened a couple of years ago. *Councilman Follmer added that Alexandria did not complain about the rates, but the state's requirement that they would be subsidizing other areas.* VAW stated that consolidation was mutually beneficial to every customer. Every locality would need a large capital project at some point. The Town of Cape Charles would benefit immediately upon consolidation. There was stability and everyone benefitted from consolidated rates.

There were no more questions or comments from the Town Council.

Mayor Dize thanked everyone for coming out for the Town Hall meetings. This was a very big decision which would affect the citizens of the Town for many years.

John Hozey stated that a public hearing was scheduled for November 10, 2022 which would give citizens another opportunity to provide their input. Town Council would hold a special meeting following the public hearing to formally consider the matter.

Mayor Dize noted that Vice Mayor Bennett left the October 8th meeting at 3:29 p.m. for an emergency.

Motion made by Councilman Grossman, seconded by Councilwoman Holloway, to adjourn the October 5, 2022 Town Council Town Hall Meeting. The motion was approved by unanimous vote.

The October 5, 2022 meeting adjourned at 8:23 p.m.

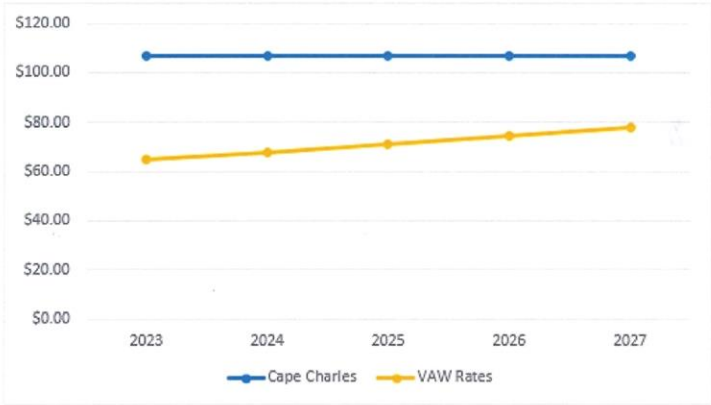
Motion made by Councilman Buchholz, seconded by Councilwoman Holloway, to adjourn the October 8, 2022 Town Council Town Hall Meeting. The motion was approved by unanimous vote.

The October 8, 2022 meeting adjourned at 3:36 p.m.

Mayor Dize

Town Clerk

Rate Comparison (W & WW Combined)



- Notes:
- Cape Charles rates reflect current rates
 - VAWC estimated consolidated rates assume:
 - 2023 rates at levels filed with the State Corporation Commission (SCC) as part of a Stipulation of Settlement in Case No. PUR-2021-00255; these rates are not final and remain subject to SCC review and approval.
 - an annual growth rate based on historical experience
 - the inclusion of VAWC's current purchased water surcharge
 - 3,500 gallons of average residential usage per month
 - All rate transitions are subject to SCC review and approval