

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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September 11, 2019

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Aqua Pennsylvania
Wastewater, Inc. Pursuant to Sections 1102,
1329 and 507 of the Public Utility Code for
Approval of the Wastewater System Assets of
East Norriton Township
Docket No. A-2019-3009052

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Harrison W. Breitman".

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Attachments:

cc: Office of Administrative Law Judge (OALJ)
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Bureau of Technical Utility Services (email only)
Certificate of Service

*277064

CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2019-3009052
Approval of the Wastewater System Assets of :
East Norriton Township :

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 11th day of September 2019.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Richard Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street
Suite 302
Harrisburg, PA 17101

Alexander R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Shelby A. Linton-Keddie, Esquire
Office of Small Business Advocate
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Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: September 11, 2019
*277389

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2019-3009052
Approval of its Acquisition of the Wastewater :
System Assets of East Norriton Township :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application proceeding pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq.* and 66 Pa. C.S. § 1329. Through this Application, filed on July 30, 2019, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) requests that the Commission: (1) approve the acquisition of the wastewater system assets (Assets) of East Norriton Township (East Norriton or Township), Montgomery County; (2) approve the right of Aqua to provide wastewater service in the requested territory; and (3) include, in its Order approving the acquisition, the ratemaking rate base of the Assets as determined under Section 1329(c)(2) of the Public Utility Code. Application at ¶ 3. Aqua also requests approval of the Asset Purchase Agreement (APA) dated October 29, 2018 as well as other municipal agreements, pursuant to Section 507 of the Public Utility Code, and requests that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. Application at ¶

5. East Norriton Township provides direct wastewater service to 4,966 customers in East Norriton Township. Application at ¶ 8; Aqua St. 2 at 8. East Norriton does not distinguish between residential, commercial, and industrial customers. Aqua St. 2 at 8. All of East Norriton's ratepayers are charged either a metered rate or a flat rate. Id.

The OCA files this Protest in order to ensure that the application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and regulations.

Specifically, the OCA avers as follows:

1. The Protestant is Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorney for the purpose of receiving service of all documents in this proceeding is Christine Maloni Hoover, Senior Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of Aqua's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3).

4. The Code further requires that a certificate shall only be granted

upon a finding that the granting of such certificate is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a). See City of York v. Pa. P.U.C., 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); see also Popowsky v. Pa. P.U.C., 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52 Pa. Code Section 53.45(b)(1-4) and the order entered in McCloskey v. Pa. P.U.C., 1624 CD 2017 (Oct. 11, 2018) (New Garden), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193 (FSIO). The OCA requests that, once the Commission issues a Secretarial Letter indicating final acceptance of the application, an in-person public input hearing be scheduled in the service territory of the acquired customers. Moreover, the OCA requests that an additional public input hearing be scheduled for Aqua’s acquiring customers in the form of a smart hearing. The OCA notes that the Commission’s final

acceptance of the instant application will likely occur in mid-October. As such, the OCA requests that public input hearings be held no later than approximately four to six weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearings will ensure that both the acquiring and acquired customers have a reasonable opportunity to be heard.

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market value or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This provision is an alternative to the use of original cost, less depreciation for ratemaking purposes, when a public utility acquires municipal water and wastewater assets. Aqua proposes to pay \$21,000,000 per the Asset Purchase Agreement of October 29, 2018. Exh. B at Article III; see also, Aqua St. 1 at 9. The original cost of the assets, as determined by the engineer's report, is \$16,212,760, and the original cost less depreciation is \$7,664,762. Application at ¶ 18.

8. Aqua's Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) was \$24,284,000. Aqua St. 4 at 11. The East Norriton Township UVE appraisal conducted by Associated Utility Services, Inc. (AUS) was \$25,064,594. Aqua St. 5 at 3. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$24,674,297. Aqua St. 1 at 20. The valuation experts were paid \$34,728 to date for AUS and \$42,143 for Gannett Fleming for the Fair

Market Value Appraisals. Exh. S1-S2. Aqua estimates that it will incur transaction and closing costs of \$220,000. Aqua St. 1 at 22.

9. Prior to closing, Aqua and East Norriton agreed that East Norriton's rates must not be lower than those in effect on the date the APA was executed. See, Exh. B at Section 7.03; see also Application at ¶ 32. Aqua and East Norriton also agreed that base rates shall not be increased until after the second anniversary of the closing date. Id. Sewer rates for metered customers are currently set at a minimum bill of \$63.25 per quarter, which includes 4,000 gallons water usage with a rate of \$6.54 per 1,000 gallons for water usage above the minimum. Application at ¶ 33. Flat rate customers are charged \$115.60 per quarter. Id. Certain customers within East Norriton Township that are connected to Whitpain Township sewers are charged \$95 per quarter by East Norriton Township. Id. Aqua will convert the quarterly rates to monthly billing after closing. Application at ¶ 32.

10. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code.

a. The valuation information provided with the Application is not sufficient to determine whether Aqua's ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation.

b. Aqua proposes to charge the following rates to all metered

customers in the acquired service territory (the charges reflect the proposed change to monthly billing):

Monthly Service Charge

Fixed (Customer Charge per connection (includes 4,000 gallons) \$21.08

Unmetered Charge (per connection) \$38.53

Monthly Consumption Charge

Per 1,000 gallons above 1,333 gallons \$6.54

Special Charges – Customers connected to Whitpain Township – Metered

Residential Customer Charge per connection:

Customers using up to 6,666 gallons per month \$31.66

Customers using over 6,666 gallons per month \$39.57

Commercial Customer Charge per connection

Customer Charge per month (up to 4,000 gallons) \$56.00

Consumption Charge \$8.00

(per 1,000 gallons above 4,000 gallons per month)

The OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code.

c. Information is provided regarding the estimated costs of planned investment in the system. The impact that the costs will have on the rates of existing and acquired customers must be determined to assess the benefits and detriments of the acquisition. In the customer notices attached to its Application, Aqua estimates the potential, incremental impact of the East Norriton acquisition on the rates established after its next base rate case, if the acquisition is approved. See Exh. I1-I2. Aqua's notice to the East Norriton customers provides an estimate of the potential impact on East Norriton customers' rates if the entire cost of the acquisition, including the ratemaking rate base, is charged to East Norriton

customers at the time of the next base rate case. See Exh. I1; see also Aqua St. 1 at App. A. Aqua’s notice to its existing water customers informs their water customers of a potential scenario in which Aqua’s water rates would reflect 25% of the total cost of ownership of the East Norriton Township at the \$21 million proposed ratemaking rate base. See Exh. I2; see also Aqua St. 1 at App A. Aqua’s notice to its existing wastewater customers informs Aqua’s wastewater customers of a potential scenario in which Aqua’s wastewater rates would reflect 50% of the revenue deficiency created by the \$21 million proposed ratemaking rate base. Id. Based on those assumptions, Aqua calculates that rates charged to residential customers would increase as follows, after its next base rate case:

Residential Customers	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
East Norriton	4,000 gal/month	\$13.42	34.84%
Aqua Wastewater	3,020 gal/month	\$1.66	2.43%
Aqua Water	4,080 gal/month	\$0.17	0.26%

11. The OCA submits that additional information is necessary to determine if the proposed rates, rate freeze, and Aqua’s request for an approved rate base of \$21,000,000 for the East Norriton acquisition, is reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

12. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua’s

existing customers and the East Norriton customers.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including public input hearings in the Township's service territory held four to six weeks after the Commission issues a Secretarial Letter indicating final acceptance and a smart hearing for the acquiring customers, regarding the Application.

Respectfully submitted,



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Dated: September 11, 2019
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PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania Wastewater, Inc. (Aqua) of the Township of East Norriton (East Norriton or Township) wastewater assets.

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and the East Norriton customers. The Acting Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Acting Consumer Advocate will ensure that the ratepayers receive proper notice in accordance with the Public Utility Code and public policy. The Acting Consumer Advocate will investigate the proposed acquisition to determine if there are substantial affirmative public benefits and request the Public Utility Commission to order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua serves approximately 28,000 wastewater customer accounts in portions of 15 counties in Pennsylvania. Aqua also serves approximately 464,000 water customers in portions of 32 counties. East Norriton Township provides direct wastewater service to 4,966 customers, in Montgomery County, Pennsylvania.