



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

December 27, 2019

Via Electronic Filing

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 its Acquisition of the Wastewater System Assets of East Norriton Township
Docket No. A-2019-3009052
I&E Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Prehearing Memorandum** in the above-captioned proceeding.

Copies are being served on all active parties of record as evidenced in the attached Certificate of Service. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 313863
(717) 787-8754
ginmiller@pa.gov

GLM/ac
Enclosures

cc: Honorable Angela T. Jones (*ALJ – PUC Philadelphia*)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

**PREHEARING MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:

In accordance with the Prehearing Conference Order dated December 4, 2019, the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Memorandum. The I&E prosecutors assigned to this proceeding are Gina L. Miller and Erika L. McLain. Ms. Miller and Ms. McLain may be contacted as follows:

By Mail: Gina L. Miller
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By E-mail: ginmiller@pa.gov
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Telephone: (717) 787-8754 (GLM)
(717) 783-6170 (ELM)

I. BACKGROUND

On July 30, 2019, Aqua Pennsylvania Wastewater, Inc. (“Aqua”) filed with the Pennsylvania Public Utility Commission (“Commission”) its Application pursuant to Sections 1102, 1329, and 507 of the Public Utility Code (“Code”), for (1) approval of the acquisition by Aqua of the wastewater system assets of East Norriton Township (“East Norriton”) situated within, Montgomery County, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in East Norriton, Montgomery County, Pennsylvania¹; (3) an order approving the acquisition that includes the ratemaking rate base of the East Norriton wastewater system assets pursuant to Section 1329(c)(2) of the Code. Request for Approval of Contracts; and (4) assignments of Contracts, between Aqua and East Norriton, pursuant to Section 507 of the Code.

After granting multiple extension requests made by Aqua, and upon Aqua’s provision of requested supplemental materials, by Secretarial Letter dated October 23, 2019, the Commission acknowledged receipt of Aqua’s Application but indicated that the Application would be accepted for filing only on a conditional basis. The conditions attached to acceptance included, inter alia, satisfying the Commission’s requirements that Aqua (1) certify service of its Application to designated entities; (2) provide individualized notice of the proposed acquisition to all potentially affected water and wastewater customers in accordance with the Commission’s Final Supplemental Implementation Order entered February 28, 2019, at Docket No. M-2016-2543193; (3) publish notice of the Application

¹ Aqua’s Application indicates that it is not seeking approval to offer, render, furnish, and supply wastewater service to the Burnside Reserve subdivision.

once a week for two consecutive weeks in a newspaper of general circulation in the impacted area; and (4) notify the Commission after such publication occurred.

On October 25, 2019, I&E filed its Notice of Appearance in this case. Additionally, The Office of the Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement on September 6, 2019. On September 11, 2019, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement in this case. On November 26, 2019, Aqua served the Commission’s Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of October 23, 2019; therefore, Aqua requested that its Application be accepted for filing. By way of a Secretarial Letter of November 26, 2019, the Commission informed Aqua that its Application was accepted for filing. On December 21, 2019, the Commission published notice of Aqua’s Application in the Pennsylvania Bulletin, and it established a protest deadline of January 6, 2020. Thereafter, Aqua’s Application was assigned to the Office of Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission’s consideration.

A telephonic Prehearing Conference is now scheduled for Monday, December 30, 2019, at 1:30 p.m., before ALJ Jones. In accordance with the Prehearing Conference Order issued by ALJ Jones on December 4, 2019, I&E now respectfully submits this prehearing memorandum.

II. ISSUES

Based upon a preliminary review of the filing, I&E has identified the following area of inquiry, representing a listing of potential issues at this time. However, I&E reserves the right to address such other issues when those issues arise:

1. Errors and omissions in the Fair Market Appraisal done by Gannett Fleming Valuation and Rate Consultants;
2. Errors and omissions in the Fair Market Appraisal done by AUS Consultants, Inc.;
3. The disclaimer of certain warranties in the Asset Purchase Agreement;
4. Aqua's lack of independent investigation into the condition and infrastructure of the East Norriton system;
5. Aqua's representations and commitments regarding closing costs and legal fees;
6. Outstanding easements and other property rights at issue for Aqua's acquisition of the East Norriton system;
7. Ratemaking issues implicated by the acquisition, including the "rate freeze" component of Aqua's Asset Purchase Agreement;
8. Benefits and detriments of the acquisition;
9. Whether the transaction is in the public interest under 66 Pa. C.S. § 1102 of the Public Utility Code; and
10. Evaluation of Aqua's claimed rate base.

I&E notes that this listing of issues is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway. Accordingly, I&E necessarily reserves the right to supplement its issue list, to remove issues from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full

record in this case. Additionally, most of the issues raised by I&E will be supported by the Direct Testimony of I&E witnesses. If there are issues of Commission policy or legal interpretation that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony, I&E reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed in Brief.

III. WITNESSES

It is currently expected that I&E may call the following witnesses without being limited thereto:

- Christopher Henkel, Fixed Utility Financial Analyst: Mr. Henkel anticipates addressing issues identified as 1 through 4 in the above listing.
- Ethan H. Cline, Fixed Utility Valuation Engineer: Mr. Cline anticipates addressing issues identified as 4 through 10 in the above listing.

The I&E witnesses may be contacted through the contact information listed above for Ms. Miller and Ms. McLain. I&E notes that this listing of witnesses is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway. Accordingly, I&E necessarily reserves the right to supplement its witness list, and to remove witnesses from this list, as necessary to facilitate the development of a full record in this case. The ALJ and all active parties will be notified of any amendments to the I&E witness list.

IV. SCHEDULE

I&E proposes the following schedule for consideration of the parties and ALJ Jones:

Other Parties' Direct Testimony	Friday, January 3, 2020
*Supplemental Direct	Tuesday, January 7, 2020
Rebuttal	Friday, January 10, 2020
**Supplemental Rebuttal	Tuesday, January 14, 2020
Surrebuttal	Friday, January 17, 2020
Rejoinder outline	Tuesday, January 21, 2020
Hearings in Harrisburg	Thursday, January 23, 2020 and Friday, January 24, 2020
Main Briefs Due	Thursday, February 6, 2020
Reply Briefs Due	Friday, February 14, 2020

*Supplemental Direct Testimony is limited in scope to provide for only the direct testimony of any timely protester who has not participated in the Prehearing Conference and has not filed a Protest prior to the Prehearing Conference held on December 30, 2019.

** Supplemental Rebuttal Testimony is limited in scope to allow for only rebuttal testimony directly responsive to any timely-filed Supplemental Direct Testimony.

I&E notes that it has discussed this proposed schedule with Aqua, OCA, and OSBA, and believes that those parties will agree to the above schedule. However, I&E recognizes the need for further feedback from those parties, all other parties, and the ALJ; therefore, I&E will stand ready to address that input during the Prehearing Conference and will work with all parties and the ALJ to develop a mutually agreeable schedule.

V. PUBLIC INPUT HEARINGS

To the extent that public input hearings are deemed necessary in this proceeding, I&E advocates for the use of Smart Hearings where possible. Considering the truncated timeline that governs this proceeding, I&E avers that use of Smart Hearings would be the most efficient way to ensure that public input opportunities are available and that any evidence produced can be timely presented and considered in this case.

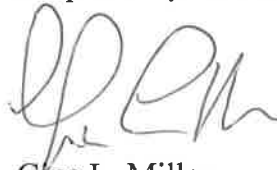
VI. DISCOVERY

In Paragraph 8 of the Prehearing Conference Order dated December 4, 2019, ALJ Jones ordered an enumerated list of modifications to the Commission’s regulations related to the discovery process. I&E understands, supports, and has adopted those modifications.

VII. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties to reach a resolution of any or all issues.

Respectfully submitted,



Gina L. Miller
Prosecutor
PA Attorney ID No. 313863
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Erika L. McLain
Prosecutor
PA Attorney ID No. 320526
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission

Dated: December 27, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102, :
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System Assets of East Norriton Township :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated December 27, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via First Class and Electronic Mail

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