



COMMONWEALTH OF PENNSYLVANIA

December 27, 2019

**E-FILED**

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 the Township of East Norriton/ Docket No. A-2019-3009052**

Dear Secretary Chiavetta:

Enclosed for filing today please find the Prehearing Memorandum, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Erin K. Fure".

Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID No. 312245

*Enclosures*

cc: Brian Kalcic  
Parties of Record

**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 Approval of its Acquisition of the Wastewater System Assets of the Township of East Norriton	:	
	:	
	:	A-2019-3009052
	:	
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**OFFICE OF SMALL BUSINESS ADVOCATE  
PREHEARING MEMORANDUM**

**I. INTRODUCTION**

The Office of Small Business Advocate (“OSBA”) is authorized to represent the interests of small business customers of utility services before the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50 (“the Act”). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this proceeding. Representing the OSBA in this matter is Assistant Small Business Advocate Erin K. Fure. Please address all correspondence in this matter as follows:

Erin K. Fure  
Assistant Small Business Advocate  
Office of Small Business Advocate  
555 Walnut Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17101  
(717) 783-2525  
(717) 783-2831 (fax)  
[efure@pa.gov](mailto:efure@pa.gov)

## II. FILING BACKGROUND

On July 30, 2019, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed an Application for approval of its acquisition of the wastewater system assets of East Norriton Township (“East Norriton”). The Commission extended the initial review period of the Application multiple times, and the Application was conditionally accepted by the Commission on October 23, 2019. On September 6, 2019, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement. On September 11, 2019, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement. The Commission’s Bureau of Investigation and Enforcement (“I&E”) filed its Notices of Appearance on October 25, 2019.

On November 26, 2019, the Commission issued a Secretarial Letter accepting Aqua’s Application for filing. A Protest was filed by Mr. Stanley Mansell on December 2, 2019. A Protest was filed by Mr. Michael Maddalo and Ms. Christine Maddaco on December 2, 2019. By Order dated December 4, 2019, a prehearing conference was scheduled for December 30, 2019. On December 9, 2019, East Norriton filed a Petition to Intervene. On December 9, 2019, a Protest was filed by Mr. Allen Dalton.

## III. IDENTIFICATION OF WITNESSES AND TENTATIVE ISSUES

Assisting in the development and presentation of the OSBA’s case in this proceeding will be:

Mr. Brian Kalcic  
Excel Consulting  
Suite 720-T  
225 S. Meramec Avenue  
St. Louis, MO 63105  
(314) 725-2511  
(314) 725-2022 – Fax  
[excel.consulting@sbcglobal.net](mailto:excel.consulting@sbcglobal.net)

After an initial review of the materials submitted by Aqua, the OSBA has identified the following issues:

1. Whether the Asset Purchase Agreement impermissibly freezes rates for East Norriton customers, to the detriment of Aqua's existing customers, and
2. Whether the Asset Purchase Agreement's rate freeze for East Norriton customers constitutes a rate stabilization plan, as defined in 66 Pa. C.S. § 1329(g) of the Public Utility Code.

The OSBA will participate in the case to assure that the interests of small business customers of both Aqua and East Norriton are adequately represented and protected.

As appropriate and necessary, the OSBA will investigate and analyze the claims and proposals of the Company and other parties through cross-examination of witnesses appearing for those parties and through briefing. The OSBA will particularly focus on any issue where the impact on the interests of the small business consumers would be unjustifiably different than or disproportionate to the impact on another class of customers, or otherwise lacking in reasonableness or basic fairness. The Application raises issues of concern, relative to rates for acquired customers, following the closing of the proposed acquisition, that may require the Commission to reject the proposed acquisition or to approve it only after imposing conditions. The OSBA submits that further information is required to determine the impact on small business customers.

The OSBA reserves the right to pursue additional issues after reviewing the testimony of the parties and as issues arise throughout the proceeding.

#### IV. SERVICE OF DOCUMENTS

In accordance with 52 Pa. Code § 1.54(b)(3)(i), the OSBA agrees to accept electronic mail delivery of documents on the due date<sup>1</sup> as satisfying the in-hand requirement, provided that such documents are followed by hard copy delivery to OSBA. Hard copy delivery may be accomplished by first class mail, by personal hand delivery, or by overnight courier.<sup>2</sup> Service by electronic mail only is not sufficient. The OSBA requests that such hard copies are also provided to its witnesses identified above.

In addition to hard copies of pleadings, briefs, and exceptions, the OSBA requests hard copies of responses to discovery propounded by the OSBA or any other party. The OSBA also requests that all parties serve an electronic copy of all interrogatory responses upon the OSBA and the OSBA witnesses identified above.

#### V. SETTLEMENT

The OSBA notes its willingness to enter into settlement discussions at the appropriate phase of this proceeding.

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<sup>1</sup> In accordance with 52 Pa. Code § 1.56(a)(5), documents must be received by 4:30 pm.

<sup>2</sup> See 52 Pa. Code §§ 1.54(b)(1), 1.54(b)(2), and 1.56(a)(2). Regarding the *perfection of service*, the OSBA respectfully submits that 52 Pa. Code § 1.56(a)(2), as currently written, does not satisfy the requirements of due process.

VI. HEARING AND BRIEFING SCHEDULE

The OSBA will continue to cooperate with other parties to develop a mutually acceptable procedural schedule.

Respectfully submitted,



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Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID # 312245

Office of Small Business Advocate  
555 Walnut Street, 1<sup>st</sup> Floor  
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(717) 783-2831 (fax)

Dated: December 27, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Angela Jones  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
[angeljones@pa.gov](mailto:angeljones@pa.gov)

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Erika McLain, Esquire  
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(Counsel for BIE)

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DATE: December 27, 2019



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