



THOMAS, NIESEN & THOMAS, LLC

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December 27, 2019

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

In re: Docket No. A-2019-3009052  
Application of Aqua Pennsylvania Wastewater, Inc. – East Norriton Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Prehearing Memorandum in accordance with the Prehearing Conference Order dated December 4, 2019. Copies of the Prehearing Memorandum are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)  
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**The Honorable Angela T. Jones, Presiding**

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**Application of Aqua Pennsylvania Wastewater, Inc., : Docket No. A-2019-3009052**  
**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 :**

**PREHEARING MEMORANDUM OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”) and submits this Prehearing Memorandum in connection with the Initial Call – In Telephonic Prehearing Conference scheduled to be held in the above captioned matter on December 30, 2019.

**I. BACKGROUND**

This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on July 30, 2019, for approval of its acquisition of the wastewater system assets of East Norriton Township pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”). The Application also includes a request for approval of contracts, including assignment of contracts, pursuant to Section 507 of the Code.

By Secretarial Letter dated October 23, 2019, the Commission conditionally accepted the Application for filing and directed Aqua to serve copies of the Application upon designated entities, to provide individualized notice to affected customers and to publish notice of the filing of the Application in a newspaper of general circulation.

Aqua complied with the requirements presented in the conditional acceptance letter. The Commission, thereafter, by Secretarial Letter dated November 26, 2019, informed Aqua that it

accepted the Application for filing and that the matter would be assigned to the Office Administrative Law Judge for disposition.

Administrative Law Judge Angela T. Jones was assigned to preside over the proceeding. An Initial Call – In Telephonic Prehearing Conference was noticed for December 30, 2019.

Judge Jones issued a Prehearing Conference Order on December 4, 2019. Paragraph 7 of the Prehearing Conference Order directs parties to file and serve a prehearing memorandum on or before Noon (12:00 PM) on December 27, 2019.

## **II. LIST OF ISSUES AND AQUA'S POSITION IN REGARD TO THEM**

There are three central issues in this Application proceeding:

### **Issue:**

Is Aqua's acquisition of the wastewater system assets of East Norriton Township necessary or proper for the service, accommodation, convenience or safety of the public?

### **Aqua's Position:**

Aqua's acquisition of the wastewater system assets of East Norriton Township is necessary or proper for the service, accommodation, convenience or safety of the public. The Commission should issue certificate(s) of public convenience approving the acquisition.

As summarized in Section X of the Application:

- a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of East Norriton Township, and to maintain the operations and make improvements to meet continuing and future customer needs.<sup>1</sup> The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;
- b. East Norriton Township has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of East Norriton Township, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The

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<sup>1</sup> As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

East Norriton Township system will benefit from the support of wastewater professionals throughout Aqua's organization;

- c. The acquisition is consistent with the Commission's long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."<sup>2</sup> The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;
- d. Aqua provides utility service to approximately 28,000 wastewater customers<sup>3</sup> and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of the Township;
- e. In *McCloskey v. Pa. P.U.C.*, 195 A. 3d 1055 (Pa. Cmwlth. 2018), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) to support a conclusion that there is a public benefit to a transaction;
- f. The acquisition of the East Norriton Sewer system will increase Aqua's customer base by approximately 21%.<sup>4</sup> With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and
- g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or Township customers. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the

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<sup>2</sup> Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

<sup>3</sup> The Aqua customer base of approximately 28,000 wastewater customers is as of July 30, 2019, the filing date of the Application.

<sup>4</sup> The percentage increase of approximately 21% is increase above the customer base of approximately 28,000 wastewater customers as of July 30, 2019, the filing date of the Application.

furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

**Issue:**

Pursuant to Section 1329 of the Public Utility Code, what is the ratemaking rate base of the wastewater system assets of East Norriton Township?

**Aqua's Position:**

The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$21,000,000, being the lesser of the purchase price of \$21,000,000 negotiated by Aqua and East Norriton Township and the average of the fair market value appraisals (\$24,674,297) of Gannett Fleming and AUS.

**Issue:**

Pursuant to Section 507 of the Public Utility Code, are the contracts, including assignments of contracts, between Aqua and East Norriton Township valid?

**Aqua's Position:**

The contracts, including assignment of contracts between Aqua and East Norriton Township are valid under Section 507 of the Public Utility Code.

**III. WITNESSES**

The following statements of written direct testimony were attached as Exhibit U, Exhibit V, Exhibit W, Exhibit X and Exhibit Y to the Application when it was submitted to the Commission on July 30, 2019.

<b><u>Application</u></b>	<b><u>Aqua Statement</u></b>	<b><u>Witness</u></b>	<b><u>Subject Matter</u></b>
Exhibit U	Statement No. 1	William C. Packer	A General Overview of the Transaction; Financial and Legal Fitness of APW; Public Benefits of the Transaction; and Section 1329

Exhibit V	Statement No. 2	Mark J. Bubel, Sr.	Description of the System; Integration into Current Operations; Technical Fitness; and Public Benefits of the Transaction
Exhibit W	Statement No. 3	Robert R. Hart	A General Overview of the Transaction; East Norriton Township's Sale Process; Information Provided to Residents; and Benefits of the Proposed Transaction
Exhibit X	Statement No. 4	Harold Walker, III	Gannett Fleming Fair Market Value Appraisal
Exhibit Y	Statement No. 5	Jerome C. Weinert	AUS Fair Market Value Appraisal

Aqua also may call as a witness either Kenneth E. Heydt, P.E., or Allen B. Mason, P.E., to address the Engineer's Asset Inventory. The addresses and telephone numbers for Mr. Heydt and Mr. Morris are as follows:

Kenneth E. Heydt, P.E.  
Carroll Engineering Corporation  
949 Easton Road  
Warrington, PA 18976  
(215) 343-5700

Allen B. Mason, P.E.  
Carroll Engineering Corporation  
949 Easton Road  
Warrington, PA 18976  
(215) 343-5700

Aqua requests that any contact with witnesses be arranged through Counsel.

Aqua also will submit its Application as an Exhibit in support of Commission approval of the proposed acquisition and the proposed ratemaking rate base. The items listed in Section 1329(d) of the Public Utility Code, including fair market value appraisals of Gannett Fleming Valuation and Rate Consultants, LLC, Utility Valuation Expert, and AUS Consultants, Inc., Utility Valuation Expert, were attached to the Section 1102 Application in accordance with Section 1329(d) when the Application was submitted to the Commission.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify Administrative Law Judge Jones and the parties promptly should Aqua determine that additional witnesses will be called.

#### **IV. LITIGATION SCHEDULE**

In compliance with Paragraph 7 of the Prehearing Conference Order, Aqua, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate conferred prior to the Initial Call – In Telephonic Prehearing Conference and propose the following litigation schedule for further discussion at the Prehearing Conference. The *Alternative* dates are proposed only for those timely Protestants, if any, that do not participate in the Prehearing Conference on December 30 *and* do not file a Protest prior to the Prehearing Conference:

December 30, 2019	– Prehearing Conference
January 3, 2020	– Non-Company Direct Testimony
January 7, 2020	– <i>Alternative</i> for Certain Non-Company Direct Testimony
January 10, 2020	– Rebuttal Testimony
January 14, 2020	– <i>Alternative</i> for Rebuttal to Certain Non-Company Direct Testimony
January 17, 2020	– Surrebuttal Testimony
January 21, 2020	– Outlines of Oral Rejoinder Testimony
January 23 and 24, 2020	– Evidentiary Hearings (with Oral Rejoinder)
February 6, 2020	– Main Briefs
February 14, 2020	– Reply Briefs

#### **V. SETTLEMENT**

Aqua is willing to address settlement of all or part of the proceeding with the other parties.

**VI. PROTECTIVE ORDER**

Aqua filed a Petition, on December 13, 2019, proposing a Protective Order for managing Confidential and Proprietary Information. Aqua is not aware of any opposition to the proposed Protective Order.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER, INC.**

By  \_\_\_\_\_

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*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: December 27, 2019



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**The Honorable Angela T. Jones, Presiding**

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**Application of Aqua Pennsylvania Wastewater, Inc., : Docket No. A-2019-3009052**  
**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 :**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 27<sup>th</sup> day of December, 2019, served a true and correct copy of the foregoing Prehearing Memorandum of Aqua Pennsylvania Wastewater, Inc., upon the persons and in the manner set forth below:

**VIA ELECTRONIC MAIL, BEFORE NOON (12:00 PM)**  
**AND 1<sup>ST</sup> CLASS MAIL, POSTAGE PREPAID**

Gina L. Miller, Prosecutor  
Erika L. McLain, Prosecutor  
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Pennsylvania Public Utility Commission  
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ginmiller@pa.gov  
ermclain@pa.gov

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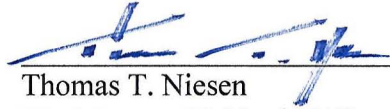
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**VIA OVERNIGHT DELIVERY**

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East Norriton, PA 19402

Christine and Michael Maddalo  
30 Point of Woods  
Hazleton, PA 18202



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