


COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 2, 2020

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 507, 1102 and 1329 of the  
Public Utility Code for Approval of its Acquisition  
of the Wastewater System Assets of the Delaware  
County Regional Water Quality Control Authority  
Docket No. A-2019-3015173

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,

/s/ Christine Maloni Hoover  
Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
E-Mail: CHoover@paoca.org

Enclosures:

cc: Office of Administrative Law Judge **(email only)**  
Office of Special Assistants **(email only)**  
Bureau of Technical Utility Services **(email only)**  
Certificate of Service

\*285678

## CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania Wastewater :  
Inc. pursuant to Sections 507, 1102 and 1329 :  
of the Public Utility Code for Approval of its : Docket No. A-2019-3015173  
Acquisition of the Wastewater System Assets :  
of the Delaware County Regional Water Quality :  
Control Authority :

I hereby certify that I have this day served a true copy of the following 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 2<sup>nd</sup> day of April 2020.

### **SERVICE BY E-MAIL ONLY**

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Dated: April 2, 2020  
\*285680

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania	:	
Wastewater Inc. pursuant to Sections 507,	:	
1102 and 1329 of the Public Utility Code for	:	Docket No. A-2019-3015173
Approval of its Acquisition of the Wastewater	:	
System Assets of the Delaware County	:	
Regional Water Quality Control Authority	:	

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PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE

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The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application 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 March 3, 2020, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) seeks Commission approval for the acquisition of the Wastewater System Assets (System) of the Delaware County Regional Water Quality Control Authority (DELCORA or Authority), and the right of Aqua to provide wastewater service to the areas served by the Authority in the requested territory. Application at ¶ 3. Aqua also seeks approval of 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 the approval of the Asset Purchase Agreement (APA) with the Authority pursuant to Section 507 of the Public Utility Code. Application at ¶ 5. DELCORA provides direct retail service to approximately 16,000 customers and provides collection, conveyance, and treatment service to approximately 200,000

Equivalent Dwelling Units in Delaware and Chester Counties, Pennsylvania, transmitting, and treating approximately 65 million gallons per day. Application at ¶ 8; Exh. I1. Application at ¶ 8. DELCORA provides wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities. Application at ¶ 8.

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, 5<sup>th</sup> 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 findings 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 14<sup>th</sup> 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 a smart public input hearing be scheduled with notice to Aqua’s existing wastewater and water customers and to DELCORA’s existing customers. Moreover, the OCA requests that a smart public input hearing be held no later than approximately four weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearing will ensure that both the existing 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 valuation or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This recently added 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 \$276,500,000. Application at ¶ 24. The original cost of the assets, as determined by the

engineer's report, is \$263,682,616, and the original cost less depreciation is \$71,908,130. Application at ¶ 22.

8. The Authority's Utility Valuation Expert (UVE) appraisal conducted by ScottMadden, Inc. (ScottMadden) indicated a fair market value of \$308,194,006. Application at ¶¶ 57, 60. Aqua's UVE appraisal conducted by Gannett Fleming indicated a fair market value of \$408,883,000. Application at ¶¶ 57, 60. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$358,538,503. Application at ¶ 60. The valuation experts were paid \$30,663 to date for ScottMadden and \$31,250 for Gannett Fleming for the appraisals. Exh. S1-S2. Aqua estimates that it will incur transaction and closing costs of \$750,000. Application at ¶ 61.

9. Aqua and DELCORA agreed that Aqua will implement DELCORA's sanitary wastewater rates in effect at closing. Application at ¶ 36. Aqua is proposing to implement DELCORA's existing rates after Closing and to maintain those rates until the next Aqua base rate proceeding. Application at ¶ 36.

10. DELCORA will take a portion of the proceeds of the Proposed Transaction and place them into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the trust through Aqua's billing process. Application at ¶ 36.

11. Copies of the notices that will be sent to customers of Aqua and to customers of DELCORA describing the filing and the anticipated effect on rates were provided in the Application. See Exh. I1-I12.

12. Aqua claims that the rate commitments discussed in the APA do not fall within the definition of "rate stabilization plan" as defined by 66 Pa. C.S. Section 1329 because Aqua has not made any commitments to control rates beyond Closing. See Application at ¶ 36; see

also Exh. H. As such, base rates for the DELCORA customers will be adjusted without any form of contractual restriction in Aqua's first base rate case which includes the Authority's system. Application at ¶ 36.

13. 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 OCA will review the data and information provided in support of each valuation. Moreover, the OCA will review the information in addition to the valuation information provided with the Application that may be required to determine whether Aqua's ratemaking proposals are reasonable.

b. Regarding the acquired service territory, the OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code. In the customer notices attached to its Application, Aqua estimates the potential, incremental impact of the DELCORA acquisition on the rates established after its next base rate case, if the acquisition is approved. See Exh. I1-I12. Aqua's notice to the DELCORA customers provides an estimate of the potential impact on DELCORA customers' rates if the entire cost of the acquisition, including the ratemaking rate base, is charged to DELOCRA customers at the time of the next base rate case. See Exh. I1-I12; see also Aqua St. 2 App. A. As presented on Aqua's notices to DELCORA customers, Aqua estimates an across the board increase of 12.55% to the acquired DELCORA customers. Aqua St. 2 App. A. Additionally, 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.

c. The OCA will also examine the impact that the ratemaking rate base will have on the rates of existing and acquired Aqua customers to assess the benefits and detriments of the acquisition. The OCA prepared the following chart, utilizing estimates provided by the Company<sup>1</sup>, to demonstrate the impact of the acquisition on existing Aqua customers:

<b>Residential Customers</b>	<b>Average Usage</b>	<b>Estimated Monthly Increase</b>	<b>Estimated Percentage Increase</b>
Aqua Wastewater	3,020 gal/month	\$9.78	14.32%
Aqua Water	4,080 gal/month	\$2.99	4.58%

d. In addition, while Aqua states that it is not proposing a rate stabilization plan, it indicates that a “portion of the proceeds of the Proposed Transaction” are to be placed into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the trust through Aqua’s billing process. Application ¶36. The OCA will examine the proposal to determine whether it is a rate stabilization plan and whether it is adequately supported and reasonable or, alternatively, whether the rate commitments are reasonable. The OCA will also examine the current rates and the proposed tariff.

14. The OCA submits that additional information is necessary to determine if the proposed rates and Aqua’s request for an approved ratemaking rate base of \$276,500,000 for DELCORA’s system are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

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<sup>1</sup> Compiled from Exhibit I1.



15. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua's existing customers and the acquired 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 a smart telephonic public input hearing for the buyer and seller's customers, held approximately four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,

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Dated: April 2, 2020  
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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 or Company) of the Delaware County Regional Water Quality Control Authority (DELCORA or Authority) 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 acquired Authority 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 order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua is a regulated public utility company, and furnishes wastewater service to approximately 35,000 customer accounts. Application ¶ 7. DELCORA owns and operates sanitary and combined wastewater collection and treatment systems that provide sanitary combined wastewater service to retail and wholesale customers in parts of Delaware and Chester Counties, including direct retail service to approximately 16,000 customers. DELCORA provides wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities.