



COMMONWEALTH OF PENNSYLVANIA

September 10, 2020

E-FILED

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

**RE: Aqua Pennsylvania Wastewater, Inc.'s Acquisition of Delaware County Regional
Water Quality Control Authority, Delaware and Chester Counties Sanitary
Wastewater Collection and Treatment System / Docket No. A-2019-3015173**

Dear Secretary Chiavetta:

Enclosed please find the Answer and Verification, on behalf of the Office of Small Business Advocate ("OSBA"), to the Petition of Aqua Pennsylvania Wastewater, Inc. For Reconsideration of Staff Action, filed September 4, 2020, 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,

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc.’s	:	
Acquisition of Delaware County Regional	:	
Water Quality Control Authority,	:	Docket No. A-2019-3015173
Delaware and Chester Counties Sanitary	:	
Wastewater Collection and Treatment	:	
System		

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO THE
PETITION OF AQUA PENNSYLVANIA WASTEWATER, INC.
FOR RECONSIDERATION OF STAFF ACTION**

I. Introduction

On March 3, 2020, Aqua Pennsylvania Wastewater (“Aqua” or “Company”) filed an application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Pennsylvania Public Utility Commission (“Commission”) approval of the acquisition of the Delaware County Regional Water Quality Control Authority’s (“DELCORA”) wastewater system assets.

On August 14, 2020, the Office of Consumer Advocate (“OCA”) filed its *Expedited Motion for an Extension of the Statutory Suspension Period for Aqua Pennsylvania Wastewater Company’s Application to Acquire Delaware County Regional Water Quality Control Authority’s Wastewater System Assets* (“OCA Motion”).

On August 18, 2020, Administrative Law Judge (“ALJ”) Angela T. Jones issued a Procedural Order setting the date for any response to the OCA Motion.

On August 24, 2020, the Office of Small Business Advocate (“OSBA”) filed its Answer in support of the OCA Motion.

On August 24, 2020, Aqua filed an Answer (“Aqua OCA Answer”) to the OCA Motion.

On August 31, 2020, Chief ALJ Charles E. Rainey, Jr. issued an Order granting the OCA Motion.

On September 4, 2020, Aqua filed its Petition for Reconsideration of Staff Action (“*Aqua Petition*”) requesting the Commission to overturn the Chief ALJ’s August 31st Order.

The OSBA files this Answer to the *Aqua Petition* pursuant to 52 Pa. Code Section 5.61(a).

II. The Legal Authority for Extending the Procedural Schedule

The *Aqua Petition* states, as follows:

[W]e acknowledge the authority of the Commission to extend statutory deadlines during the extraordinary circumstances of the COVID pandemic.

Aqua Petition, at 4, Paragraph 14.

Therefore, the Company concedes that there is no legal bar that would prevent the Chief ALJ’s August 31st Order from extending the procedural schedule in this case.

III. The Aqua “Facts”

While conceding that the Company has no legal basis to object to the Chief ALJ’s August 31st, Order, Aqua claims that extending the procedural schedule “is not justified.” *Aqua Petition*, at 4, Paragraph 14. Aqua continued, as follows:

The facts do not support claims that the COVID-19 pandemic is hampering review of Aqua's Application or raising due process concerns.

Id., at 6, Paragraph 19.

In support of its baseless “facts,” Aqua claims that the pandemic has had no effect on this proceeding, or the ability of the parties to prosecute this case:

This Application proceeding, in point of fact, was moving forward irrespective of the COVID pandemic.

Id., at 4, Paragraph 15.

Aqua’s myopic world view is absurd. The Commission is well aware that the COVID-19 pandemic has put residential customers on the unemployment and food lines; has devastated Commonwealth small businesses; and has shut down industrial production. The Commission and

the statutory advocates have been dealing with the overwhelming challenges created by this pandemic since March 2020. Yet, Aqua would have the Commission believe that the parties have had nothing better to do than investigate its application.

Complicating all investigative matters is the fact that the OSBA attorneys, staff, and expert witnesses have been required to work from home since March 2020. This has materially affected the OSBA's ability to meet statutory deadlines. Without the procedural extensions granted in this and other cases, it would have been almost impossible for the OSBA to effectively participate in cases before the Commission.

Aqua, then claims, as follows:

[T]hroughout the month of August, the parties were aware that testimony of non-applicants would be required as early as September 4, 2020.

Aqua Petition, at 5, Paragraph 17.

In fact, the OSBA was "aware" that ALJ Angela Jones had set forth a proposed litigation schedule in her August 17, 2020 Prehearing Conference Order. ALJ Jones included a "model litigation schedule" for this proceeding that was subject to change by the parties.

Furthermore, the OSBA was "aware" that the Commission had previously and consistently extended the procedural schedules in other cases. *See, e.g., Opinion and Order*, Columbia Gas of Pennsylvania, Docket R-2020-3018835 (Order entered August 6, 2020). Thus, Aqua's claim that "other parties" (such as the OSBA) "were prepared to provide their direct testimony on September 4, 2020" is simply self-serving fantasy. *Aqua Petition*, at 5, Paragraph 18. First, all "parties" can speak for themselves – no one requires Aqua to write fiction (or create "facts") on their behalf. Second, given the already over-crowded case calendar, and in light of extensions granted in other cases, the OSBA fully expected the Chief ALJ to extend the procedural schedule in this case.

Ultimately, the OSBA submits that the *OCA Motion* was submitted accurately and in good faith. The OSBA supported the *OCA Motion* based upon its over-taxed resources, and also in good faith. Aqua's distorted view of the impact of the COVID-19 pandemic should be utterly rejected by the Commission.

IV. The *Duick* Standard

The standard for granting a petition for reconsideration is set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. PUC 553 (1982) ("*Duick*"), as follows:

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that '[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them' What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick, at 559 (emphasis added). Therefore, the *Aqua Petition* will only succeed if it raises "new and novel arguments" not previously heard by the Commission, or the *Aqua Petition* raises considerations which were overlooked or not addressed by the Commission.

The *Aqua Petition* does not meet the *Duick* standard, and therefore should be rejected by the Commission.

In its *Aqua OCA Answer*, the Company argued, as follows:

The Prehearing Conference Order explains, however, that the litigation schedule presented in it 'was developed using the model litigation schedule set [forth] in the Commission's July 21, 2016, Tentative Implementation Order at Docket No. M-2016-2543193 as a guide.' There is, thus, nothing extraordinary about the proposed schedule. It is, in fact, the typical schedule for Section 1329 proceedings - the 'model' schedule. Although perhaps compressed, at least in comparison with the schedules in other Commission

application proceedings, it is in no way atypical and, in and of itself, provides no basis for extending the six month review period.

Aqua OCA Answer, at 5, Paragraph 16 (footnote omitted).

In its *Aqua Petition*, the Company raises the same argument:

In short, while the OCA's Motion expresses concern with its ability to conduct an adequate investigation of Aqua's Application and then contends that an extension to the six month review period is warranted in the interest of due process, the facts suggest otherwise. The OCA (and other parties) had conducted extensive discovery and, by the time of the prehearing conference on September 2, 2020, the OCA (and other parties) were prepared to provide their direct testimony on September 4, 2020 or other mutually agreeable date, consistent with the 'model litigation schedule.' Once the date for other parties' testimony was established the remaining dates in the schedule, including the dates for public input hearings could have been addressed as they always are in these type proceedings.

Aqua Petition, at 5-6, Paragraph 18 (footnote omitted). The Company concluded, as follows:

The circumstances of this proceeding are not hampering the Commission from meeting the six month statutory compliance date and Aqua submits that Chief Judge Rainey's Order should be reconsidered and the Expedited Motion of the Office of Consumer Advocate should be denied.

Id., at 7, Paragraph 21.

The OSBA submits that the *Aqua Petition* is nothing more than a reworded variation of the Answer that is filed in opposition to the *OCA Motion*. Therefore, the *Aqua Petition* provides nothing "new or novel" to the issue of procedural extensions, nor does it identify any issues that the Commission previously overlooked. As the *Aqua Petition* fails to satisfy the *Duick* standards, the Commission should reject the *Aqua Petition* in its entirety.

V. Conclusion

The OSBA requests that the Public Utility Commission deny the Aqua Petition for Reconsideration of Staff Action.

Respectfully submitted,

/s/ Steven C. Gray

Steven C. Gray
Attorney ID No. 75338
Senior Supervising
Assistant Small Business Advocate

For:

John R. Evans
Small Business Advocate

Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101

Dated: September 10, 2020

VERIFICATION

I, John R. Evans, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 09/10/2020

John R. Evans
(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Aqua Pennsylvania Wastewater, Inc.'s :
Acquisition of Delaware County Regional :
Water Quality Control Authority, : Docket No. A-2019-3015173
Delaware and Chester Counties Sanitary :
Wastewater Collection and Treatment :
System :**

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 other 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 T. Jones
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
801 Market Street, Suite 4063
Philadelphia, PA 19107
angeljones@pa.gov

Gina Miller, Esquire
Erika McLain, Esquire
Bureau of Investigation & Enforcement
400 North Street
Commonwealth Keystone Building
Harrisburg, PA 17120
ginmiller@pa.gov
ermclain@pa.gov

Alexander R. Stahl, Regulatory Counsel
Aqua Pennsylvania Wastewater, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
ASTahl@aquaamerica.com

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

Christine Maloni Hoover, Esq.
Erin L. Gannon, Esq.
Harrison G. Breitman, Esq.
Santo G. Spataro, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101
choover@paoca.org
egannon@paoca.org
hbreitman@paoca.org
sspataro@paoca.org

Thomas Wyatt, Esq.
Matthew Olesh, Esq.
Obermayer Rebmann Maxwell & Hoppel
Center Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102
thomas.wyatt@obermayer.com
matthew.olesh@obermayer.com

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815-2036
scott.j.rubin@gmail.com

Ross F. Schmucki
218 Rutgers Avenue
Swarthmore, PA 19081
rschmucki@gmail.com

Robert F. Young
Kenneth R. Stark
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mcneeslaw.com
ryoung@mcneeslaw.com
kstark@mcneeslaw.com

Kenneth Kynett, Esq.
Charles G. Miller, Esq.
Petrikin Wellman Damico Brown & Petrosa
The William Penn Building
109 Chesley Drive
Media, PA 19063
kdk@petrikin.com
cgm@petrikin.com

John Povilaitis
Alan Seltzer
Buchanan Ingersoll & Rooney, P C
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
john.povilaitis@bipc.com
alan.seltzer@bipc.com

Cynthia Pantages
C & L Rental Properties, LLC
PO Box 516
Lake Harmony, PA 18624
cyndipantages@gmail.com

Michelle Skjoldal
Justin Weber
Troutman Pepper Hamilton Sanders LLP
P.O. Box 1181
Harrisburg PA 17108 -1181
michelle.skjoldal@troutman.com
justin.weber@troutman.com

Jason T. Ketelsen
Troutman Pepper Hamilton Sanders LLP
3000 Two Logan Square
Philadelphia, PA 19103
jason.ketelsen@troutman.com

DATE: September 10, 2020

/s/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney ID No. 77538