



COMMONWEALTH OF PENNSYLVANIA

December 1, 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 Main Brief, 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,

/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 :**

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Date: December 1, 2020

I. STATEMENT OF THE CASE

A. Procedural History

On March 3, 2020, Aqua Pennsylvania Wastewater, Inc. (“Aqua” of the “Company”) filed an Application (“*Application*”) pursuant to Sections 507, 1103, 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 (“DELCORA”) with the Pennsylvania Public Utility Commission (“Commission”).

On March 26, 2020, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention in response to the *Application*.

On July 27, 2020, the Commission issued a Secretarial Letter accepting the *Application* as complete for review. The Commission assigned the case to Administrative Law Judge (“ALJ”) Angela T. Jones.

On September 2, 2020, a prehearing conference was held before ALJ Jones.

On September 4, 2020, ALJ Jones issued her Prehearing Conference Order #2.

On September 29, 2020, the OSBA served the Direct Testimony of Brian Kalcic.

On November 2, 2020, the OSBA served the Surrebuttal Testimony of Brian Kalcic.

On November 10, 2020, an evidentiary hearing was held before ALJ Jones.

The OSBA submits this Main Brief in according with the ALJ’s September 2nd Prehearing Conference Order #2.

B. Overview of the Proposed Transaction

The OSBA is solely focused on the rate provisions contained in Section 7.04 of the proposed Asset Purchase Agreement (“APA”) by and between the DELCORA and Aqua, and Aqua’s proposal to move DELCORA customers to their full cost of service based on the rate base addition determined in this proceeding, *i.e.*, based on the Company’s full cost of owning and

operating DELCORA's system *on a stand-alone basis*, in the Company's first base rate case following closing that includes DELCORA customers.

OSBA witness Brian Kalcic summarized Section 7.04, as follows:

The key provisions of Section 7.04 are as follows:

- 1) Aqua shall implement the currently effective rates paid by DELCORA customers upon the close of the proposed transaction ('Closing');
- 2) Aqua shall not implement a base rate increase for DELCORA's customers until the Company's first base rate case following the Closing date;
- 3) Aqua may apply PaPUC permitted or required surcharges or pass-through costs to DELCORA's customers after Closing; and
- 4) the above rate provisions 'shall be part of Buyer's requested PaPUC Governmental Approval.'

OSBA Statement No. 1, at 2 (formatting added).

II. BURDEN OF PROOF

The Commission addressed the burden of proof in this, and other, 1329 proceedings, as follows:

The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa. C.S. § 332, and therefore, the applicant has the burden of proving that it is entitled to have the acquisition approved and must do so by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990).

Implementation of Section 1329 of the Public Utility Code, Pennsylvania Bulletin, Volume 46 Issue 32 (Published August 6, 2016).

III. STATEMENT OF QUESTIONS INVOLVED

Q: Should the ALJ and the Commission reject the *Application's* proposal to set DELCORA's overall rates at full cost of service on a standalone basis in its next rate case?

Proposed Answer: Yes.

Q: Should the ALJ and the Commission require Aqua, as a condition for approval of the Proposed Transaction, to begin to consolidate DELCORA's rates with the Company's system-wide average rates for wastewater service in Aqua's next rate proceeding?

Proposed Answer: Yes.

IV. SUMMARY OF ARGUMENT

The ALJ and the Commission should reject the Aqua's proposal to set DELCORA's overall rates at full cost of service on a standalone basis in its next rate case.

The ALJ and Commission should require Aqua, as a condition for approval of the Proposed Transaction, to begin to consolidate DELCORA's rates with the Company's system-wide average rates for wastewater service in Aqua's next rate proceeding.

V. ARGUMENT

A. Section 1329

1. Introduction

As it stands today, and prior to the possible approval of the *Application*, the wastewater rates paid by DELCORA's customers are significantly lower than wastewater rates paid by similar Aqua customers. Aqua witness William C. Packer testified that the current average monthly bill of a Western Retail (non-industrial) customer in DELCORA, using 6,660 gallons per month, is \$41.26. Aqua Statement No. 2, at 10.

Specifically, Mr. Kalcic performed the following calculations in order to compare the bill paid by a similar Aqua wastewater customer to the bill paid by Mr. Packer's DELCORA wastewater customer:

As shown in Table A below, the monthly bill paid by a residential customer in the Company's Rate Zone 1 (i.e., Main Division), using the same 6,660 gallons per month, is \$82.68 inclusive of the DSIC. As such, the average monthly bill paid by a Western Retail

customer in DELCORA is presently \$41.42 or 50.1% less than the equivalent bill paid by an Aqua residential customer taking service under the Company's Rate Zone 1 rate schedule.

Table A

Computation of Monthly Wastewater Bill of Residential Customer
in Aqua's Rate Zone 1, using 6,660 gallons

Description	Monthly Tariff Charge
Customer Charge	\$31.00
Consumption @ \$7.60 Per 1,000 G.	<u>50.62</u>
Subtotal	\$81.62
DSIC @ 1.30%	<u>1.06</u>
Total Bill	\$82.68

Source: Aqua's current tariff; DSIC effective 10/1/20.

OSBA Statement No. 1, at 3.

Mr. Kalcic explained how Aqua will attempt to address this significant disparity in rates once the transaction proposed by the *Application* is completed:

Q. Does the proposed APA address the level of rates that would be applicable to DELCORA customers upon completion of Aqua's next base rate proceeding?

A. No. However, Mr. Packer testifies that the Company will 'propose to move DELCORA customers to their full cost of service based on the rate base addition determined in this proceeding in Aqua's first base rate case following closing that includes DELCORA customers.'

OSBA Statement No. 1, at 3-4 (citation omitted).

There is an important distinction to be made regarding Mr. Packer's statement. "Full cost of service" in this context means evaluating DELCORA as if was a standalone utility, not an integrated part of the greater Aqua system. Mr. Kalcic explained, as follows:

Q. By full cost of service, does Mr. Packer suggest that the Company will propose to move DELCORA customers to the Company's system-wide average wastewater rate in Aqua's next rate case?

A. No. Mr. Packer's statement indicates that Aqua will propose to set DELCORA's overall rates at the level necessary to recover the Company's total claimed revenue requirement associated with its investment in, and operation of, DELCORA's former wastewater assets. Stated differently, in its next base rate case, Aqua will propose to set DELCORA's rates so as to recover the Company's full cost of owning and operating DELCORA's system *on a stand-alone basis*.

OSBA Statement No. 1, at 4 (citation omitted).

The OSBA respectfully submits that Aqua's proposed plan to address DELCORA's wastewater rates on a standalone basis is unjust, unreasonable, and results in discriminatory rates in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. Section 1304 (Discrimination in rates).

2. Section 1329 – Legal Principles

Section 1329(c) of the Public Utility Code, 66 Pa. C.S. Section 1329(c), states, as follows:

Ratemaking rate base.--The following apply:

(1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

In Addition, Section 1329(d)(1)(v) provides the option of a rate stabilization plan ("A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition"). A rate stabilization plan is defined, as follows:

‘Rate stabilization plan.’ A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.

Finally, the Commission has expressed its strong preference for unified rate tariff rates across a utility’s service territory. *See, e.g., Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems*, Docket No. M-00950686 (Order entered February 23, 1996) (“that every system and every ratepayer in the Commonwealth will eventually be in need of specific service improvements and at that point, the true benefits of single tariff pricing will be realized by all citizens in the Commonwealth.”)

3. Aqua’s Application

As set forth above, the *Application* does not propose unified tariff rates across Aqua’s service territory. This is not consistent with the Commission’s long-standing policy of implementing single tariff pricing:

The fundamental premise of single tariff pricing is that customers receiving ‘like service’ should pay the same rates for that service, regardless of their particular location within a utility’s service territory. To achieve that end, class revenue targets are based on a system-wide class cost-of-service study, with individual utility rate zones consolidated over time so as to recover system-wide revenue targets. When rate consolidation is complete, all of a utility’s customers in a given customer class will take service on a single rate schedule that reflects the system-wide average cost of serving the class.

In short, if utility rates are determined on a stand-alone basis within individual rate zones, it will not be possible to achieve single tariff pricing.

OSBA Statement No. 1, at 5-6.

Furthermore, the *Application*’s proposal creates a number of rate issues for both Aqua’s and DELCORA’s current customers. Mr. Kalcic explained, as follows:

[S]etting DELCORA’s rates in that fashion [as proposed by the *Application*] is unlikely to provide for any degree of rate consolidation. For example, if DELCORA’s rate increase in Aqua’s next case were to be limited to 12.55%, the average

monthly bill of a Western Retail (non-industrial) customer in DELCORA, using 6,660 gallons per month, would increase from \$41.26 to \$46.44. As previously discussed, this DELCORA customer is presently paying \$41.42 less than a similar customer taking service under Aqua's Rate Zone 1 rate schedule.

To make any progress toward rate consolidation in its next case, Aqua would need to reduce the difference in the monthly bills paid by (equivalent) DELCORA and Rate Zone 1 customers. More specifically, Aqua would need to limit the new monthly bill paid by the representative Rate Zone 1 customer to something *less* than the new DELCORA bill of \$46.44 plus the old bill difference of \$41.42, or \$87.86. However, such an outcome would necessitate that the Company limit its proposed Rate Zone 1 increase in the next case to something *less* than (\$87.86 divided by \$82.68 or) 6.3%.

OSBA Statement No. 1, at 6-7. Mr. Kalcic described the result if Aqua's proposal to set DELCORA's rates on a standalone basis were adopted by the Commission:

DELCORA customers would not only continue to receive a subsidy from Aqua's remaining wastewater service customers, based on the Company's system-wide cost of service, the annual subsidy received by DELCORA customers from general ratepayers would *increase* at the conclusion of the Company's next rate case.

OSBA Statement No. 1, at 8 (emphasis in original). Such a result would cause Aqua's wastewater rates to be *prima facie* unjust and unreasonable, and would result in rate discrimination in favor of DELCORA's customers at the expense of Aqua's current wastewater customers.

Mr. Kalcic concluded, as follows:

To the extent that the average rate paid in a given rate area, such as DELCORA, is less than the Company's system average rate for wastewater service, wastewater rates in that rate area should be subject to an increase in a base rate proceeding sufficient to provide for movement toward to the system average wastewater rate in that rate case (i.e., toward system-wide cost of service), consistent with the Commission's long-standing policy of implementing single tariff pricing

OSBA Statement No. 1, at 7.

Finally, Office of Consumer Advocate witness Ralph C. Smith testified, as follows:

The seller, DELCORA, has proposed a Rate Stabilization Fund (DELCORA Customer Trust) to mitigate future rate increases. Section 1329(g) defines a ‘rate stabilization plan’ as ‘[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.’ *Aqua claims that it is not proposing a rate stabilization plan pursuant to Section 1329(g).*

OCA Statement No. 1, at 20 (emphasis added).

The *Application* does not propose a Rate Stabilization Plan in according with Section 1329(g) of the Public Utility Code. Instead, the *Application* includes a so-called “Rate Stabilization Agreement.” *Id.*, at 41. Since the Rate Stabilization Agreement does not attempt to hold rates constant or establish a rate phase-in plan per the requirements of Section 1329, the Agreement does not address DELCORA’s post-acquisition rates levels. Accordingly, as a condition for approval of the Proposed Transaction, the Commission should require Aqua to begin to consolidate DELCORA’s rates with the Company’s system-wide average rates for wastewater service in Aqua’s next rate proceeding.

4. Challenges to UVE Appraisals

The OSBA is not addressing this section.

5. Conclusion

The ALJ and the Commission should reject the *Application*’s proposal to set DELCORA’s overall rates at full cost of service on a standalone basis in its next rate case.

Instead, as a condition for approval of the Proposed Transaction, the ALJ and Commission should require Aqua to begin to consolidate DELCORA’s rates with the Company’s system-wide average rates for wastewater service in Aqua’s next rate proceeding.

B. Section 1102/1103 Standards – Public Interest

The OSBA is not addressing this section.

C. Recommended Conditions

As set forth above, as a condition for approval of the Proposed Transaction, the ALJ and Commission should require Aqua to begin to consolidate DELCORA's rates with the Company's system-wide average rates for wastewater service in Aqua's next rate proceeding.

D. Section 507 Approvals

The OSBA is not addressing this section.

E. Other Approvals, Certificates, Registrations and Relief, Under the Code

The OSBA is not addressing this section.

VI. CONCLUSION WITH REQUESTED RELIEF

Therefore, the OSBA respectfully requests that the ALJ and the Commission reject the *Application's* proposal to set DELCORA's overall rates at full cost of service on a standalone basis in its next rate case.

The OSBA respectfully requests that the ALJ and Commission order Aqua, as a condition for approval of the Proposed Transaction, to begin to consolidate DELCORA's rates with the Company's system-wide average rates for wastewater service in Aqua's next rate proceeding.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: December 1, 2020

APPENDICES

A THROUGH D

Appendix A

List of OSBA's Sponsored Testimony and Exhibits

OSBA Statement No. 1, Direct Testimony and Exhibit of Brian Kalcic, Exhibit BK-1

OSBA Statement No. 1-S, Surrebuttal Testimony of Brian Kalcic

Appendix B

Proposed Findings of Fact

1. In its *Application*, Aqua proposes to set DELCORA's overall rates at full cost of service on a standalone basis in its next rate case.
2. In its *Application*, Aqua does not propose to unify tariff rates across Aqua's service territory.
3. In its *Application*, Aqua does not propose a Rate Stabilization Plan.

Appendix C

Proposed Conclusions of Law

1. Section 1329(c) of the Public Utility Code, 66 Pa. C.S. Section 1329(c) requires that the ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring public utility during the acquiring public utility's next base rate case.
2. Section 1329(d)(1)(v) of the Public Utility Code, 66 Pa. C.S. Section 1329(d)(1)(v) allows for the use of a rate stabilization plan.
3. The Commission has expressed its preference for unified rate tariff rates across a utility's service territory as set forth in *Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems*, Docket No. M-00950686 (Order entered February 23, 1996).

Appendix D

Proposed Ordering Paragraphs

1. Aqua's proposal to set DELCORA's overall rates at full cost of service on a standalone basis in its next rate case is rejected.
2. Aqua shall begin to consolidate DELCORA's rates with the Company's system-wide average rates for wastewater service in Aqua's next rate proceeding.

**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 (*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).

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DATE: December 1, 2020

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