



COMMONWEALTH OF PENNSYLVANIA

December 14, 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 Reply 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 :**

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

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Date: December 14, 2020

I. STATEMENT OF THE CASE

A. Procedural History

On March 3, 2020, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or 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.

On December 1, 2020, the OSBA filed a Main Brief.

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

B. Overview of the Proposed Transaction

As set forth in the OSBA’s Main Brief, 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. However, by full cost of service, Aqua proposes to calculate its full cost of owning and operating DELCORA's system *on a stand-alone basis* in the Company's first base rate case following the closing of the proposed transaction.

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 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

In its Main Brief, Aqua states, as follows:

OSBA witness Kalcic recommends, as a condition for approval, that the Commission require Aqua to begin to consolidate DELCORA's rates with the Company's system-wide average rates in its next base rate case. Mr. Kalcic opposed the setting of DELCORA's overall rates at full cost of service on a standalone basis as inconsistent with long standing single tariff pricing.

Aqua Main Brief, at 60 (footnote omitted). The OSBA agrees that Aqua has correctly summarized the OSBA's position on this issue.

However, Aqua continues, as follows:

Mr. Kalcic's recommendation is inconsistent with Commission practice. The Commission has not established a cost allocation methodology in any prior Aqua Section 1329 proceeding. It should not do so here. In the first rate proceeding post-closing, Aqua will propose to move DELCORA customers to full cost of service. The OSBA will have the opportunity to present its consolidation proposal at that time. Aqua is not proposing any change in rates in this proceeding.

Aqua Main Brief, at 60. Aqua is simply wrong – Mr. Kalcic's recommendation is Commission practice. Aqua misstated the OSBA argument to reach a conclusion that should be rejected by the ALJ and the Commission.

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

In in Main Brief, Aqua argues, as follows:

Mr. Kalcic's recommendation is inconsistent with Commission practice. The Commission has not established a cost allocation methodology in any prior Aqua Section 1329 proceeding. It should not do so here.

Aqua Main Brief, at 60.

The OSBA is not requesting the establishment of any cost allocation methodology in this proceeding. Instead, the OSBA is requesting that the Commission follow its regular practice of adhering to the mandates of Section 1329(c) of the Public Utility Code, 66 Pa. C.S. Section 1329(c). Section 1329(c) requires, 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.

Section 1329(c)(1) and (c)(1)(i) are exactly what the OSBA is requesting in this proceeding, and nothing more. In contrast, Aqua proposes to address the “ratemaking rate base of the selling utility” by treating DELCORA as a separate, stand-alone entity for ratemaking purposes. No incorporation of DELCORA’s assets into the rate base of Aqua in the Company’s next base rate case is proposed by the *Application*.

Aqua continues its argument, as follows:

In the first rate proceeding post-closing, Aqua will propose to move DELCORA customers to full cost of service. The OSBA will have the opportunity to present its consolidation proposal at that time. Aqua is not proposing any change in rates in this proceeding.

Aqua Main Brief, at 60. The Company is correct that it is not proposing any rate changes in this proceeding. Mr. Kalcic explained, as follows:

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).

As set forth above, “In the first rate proceeding post-closing, Aqua will propose to move DELCORA customers to *full cost of service*.” *Aqua Main Brief*, at 60 (emphasis added). The critical distinction is what Aqua means by the term “full cost of service.” 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).

In summary, the OSBA's recommendation is that the ALJ and the Commission order Aqua to follow the plain language of Section 1329(c). The OSBA is not requesting approval of any specific cost allocation methodology, or asking the Commission to violate its normal practice. In fact, regarding the Commission's normal practice, the OSBA observed in its Main Brief that the Commission has stated 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 moving toward unified tariff rates across Aqua's service territory in the Company's next base rates case. Instead, as set forth above, Aqua plans to treat the DELCORA service territory on a standalone basis for ratemaking purposes.

In its Main Brief, the OSBA explained the numerous problems that arise out the *Application's* proposal to not begin unifying DELCORA's rates into Aqua's service territory. *OSBA Main Brief*, at 6-8.

What the Application does is create preferential rates, in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. Section 1304, which states:

No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.

The *Application* proposes that Aqua will, as set forth above, treat the DELCORA service territory on a standalone basis, and establish rates on a standalone basis, in Aqua's next rate proceeding. In the context of single-tariff pricing, this is the very definition of an unreasonable preference in rates in violation of Section 1304. Furthermore, the *Application's* proposal is in violation of the plain language of Section 1309(c)(1), as set forth above.

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, as set forth above and in the OSBA's Main Brief, 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.

Furthermore, 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,

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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 14, 2020

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