



COMMONWEALTH OF PENNSYLVANIA

February 1, 2021

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 Exceptions, 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 I.D. No. 77538

Enclosures

cc: Brian Kalcic
Commission's Office of Special Assistants
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 EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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

**For: John R. Evans
Small Business Advocate**

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

Date: February 1, 2021

I. Introduction

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.

On December 14, 2020, the OSBA filed a Reply Brief.

On January 12, 2021, ALJ Jones and ALJ F. Joseph Brady issued their Recommended Decision (“RD”).

On January 22, 2021, Aqua filed Exceptions¹

¹ 52 Pa. Code § 5.533 governs the filing of exceptions. Aqua violated Section 5.533(c) (“the exceptions must be concise” and “A separate brief in support of or in reply to exceptions may not be filed with the Secretary”) by adding to its numbered exceptions an argumentative “Introduction” and “Overview of the Proposed Transaction” that amounted to a separate brief. Aqua also violated Section 5.533(b) (“Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken...”) by embellishing its January 22nd filing with these argumentative preambles that were not specifically responsive to the RD. The OSBA will not respond to these two sections, and requests that the Commission disregard Aqua’s “Introduction” and “Overview of

to the RD.

The OSBA submits the following Reply Exception in response to the Exceptions filed by Aqua.

II. Reply Exception

Reply to Aqua Exception No. 7.A.3: The ALJs properly recommended that the *Application* be rejected even with the legally correct condition proposed by the OSBA. (Aqua Exceptions, at 44-45)

In its Exceptions, Aqua states, as follows:

OSBA recommended, 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.

Aqua Exceptions, at 44 (footnote omitted). This sentence correctly states the OSBA's position.

However, Aqua continues, as follows:

[OSBA witness] 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 Exceptions, at 44-45. In contrast to Aqua's Exception, Mr. Kalcic's recommendation *is* Commission practice. It occurs to the OSBA that Aqua does not understand the legal argument at issue here, which the OSBA advanced in its Main and Reply Briefs. OSBA Main Brief, at 3-8; OSBA Reply Brief, at 3-7. Nevertheless, Aqua's unintentional (or purposeful) distortion of the OSBA argument should be ignored by the Commission.

the Proposed Transaction." The Commission should consider how to address such deliberate disregard of its regulations.

To clarify the confusion created by the Company on this issue, the OSBA will parse the Aqua Exception. Specifically, 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 Exceptions, at 44.

This passage illustrates the OSBA's observation that it is highly likely that Aqua simply does not understand this legal issue. The OSBA *is not* requesting the establishment of a cost allocation methodology in this proceeding. What the OSBA *is* requesting is that the Commission follow its normal practice of requiring a Commonwealth public utility to adhere to the mandates of Section 1329(c) of the Public Utility Code, 66 Pa. C.S. Section 1329(c), and structure its rates accordingly. 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.

Aqua's compliance with Sections 1329(c)(1) and (c)(1)(i) is what the OSBA is requesting as a "condition" in this proceeding (although it is bizarre that requiring Aqua to follow the law should be deemed a "condition"). Instead, as the Company has repeatedly stated, Aqua proposes to address the "ratemaking rate base of the selling utility" by treating DELCORA as a separate, stand-alone entity for ratemaking purposes. Such proposed ratemaking treatment indicates that Aqua does not intend to incorporate DELCORA's assets into the Company's rate base in its next base rate proceeding.

Aqua continues its Exception, 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 Exception, at 44-45. While true, it is irrelevant that Aqua 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 its Exception, the Company states that "In the first rate proceeding post-closing, Aqua will propose to move DELCORA customers to *full cost of service*." The important distinction is what Aqua means by "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).

As Aqua witness Mr. Packer testified, the *Application* does not propose moving toward unified tariff rates across Aqua's service territory in the Company's next base rates case. Instead, Aqua plans to treat the DELCORA service territory on a standalone basis for ratemaking purposes.²

Furthermore, the Company's proposed standalone ratemaking approach would create preferential rates in violation of Section 1304 of the Public Utility Code, 66 Pa. C.S. Section 1304:

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.

Aqua proposes that it 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.

In contrast to Aqua's muddled Exception, the OSBA's recommended "condition" is that 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. Furthermore, the OSBA is not asking the Commission to violate its "normal practice" – but instead follow its stated 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

² 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.

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.”).

Finally, the Company’s proposal 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).

III. Conclusion

Therefore, for the reasons set forth herein, the OSBA respectfully requests that the Commission deny Aqua Exception No. 7.A.3.

If the Commission approves the Application with conditions, 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. 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.

Respectfully submitted,

/s/ Steven C. Gray

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

For: John R. Evans
Small Business Advocate

Office of Small Business Advocate
555 Walnut Street
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Harrisburg, PA 17101

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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).

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@tnlawfirm.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 & Hippel
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

Thomas J. Sniscak, Esq.
Kevin J. McKean, Esq.
Whitney E. Snyder, Esq.
Melissa A. Chapaska, Esq.
Hawke McKean & Sniscak LLP
tjsniscak@hmslegal.com
kjmckean@hmslegal.com
wesnyder@hmslegal.com
machapaska@hmslegal.com

Lawrence And Susan Potts
11 Chestnut Street
P O Box 522
Lake Harmony Pa 18624
Susie01213@Aol.Com

Patricia Kozel
15 Hazzard Run Road
Lake Harmony Pa 18624
pattyk6@icloud.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 118 1
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

Robert W Scott Esquire
Robert W Scott Pc
205 North Monroe Street
P O Box 468
Media Pa 19063
rscottw@scottpc.com

Marc Machlin Esquire
Troutman Pepper Hamilton Saunder LLP
2000 K Street
Suite 600
Washington Dc 20006
marc.machlin@troutman.com

Edward Clark Jr
Treasure Lake Property Owners Association
13 Treasure Lake
Dubois Pa 15801
gm@treasurelake.us

DATE: February 1, 2021

/s/ Steven C. Gray

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