

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
Consumer Advocate

January 28, 2010

Honorable Angela T. Jones
PA Public Utility Commission
801 Market Street
Philadelphia, PA 19107

Re: Pa. Public Utility Commission
v.
Aqua Pennsylvania, Inc.
Docket No. R-2009-2132019

Dear Judge Jones:

Enclosed please find an original and one copy of the Prehearing Memorandum of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Shaun A. Sparks".

Shaun A. Sparks
Assistant Consumer Advocate
PA Attorney I.D. #87372

Enclosures

cc: Secretary's Office of the PUC
Certificate of Service

122057doc

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	R-2009-2132019, <u>et al.</u>
Office of Consumer Advocate	:	C-2009-2143666
Office of Small Business Advocate	:	C-2009-2146228
	:	
v.	:	
	:	
Aqua Pennsylvania, Inc.	:	

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa.C.S. §333, and the Prehearing Conference Order of Administrative Law Judge (ALJ) Angela T. Jones issued on January 21, 2010, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION AND BACKGROUND

On November 18, 2009, Aqua Pennsylvania, Inc. ("Aqua" or "Company") filed Supplement No. 100 to Tariff-Water Pa. P.U.C. No. 1 at Docket No. R-2009-2132019 to become effective January 18, 2010. In Supplement 100 to Tariff-Water Pa. P.U.C. No. 1,

the Company requests that the Commission approve an annual 11.8% increase in base rates – an approximately \$43,200,000 million revenue increase -- charged to Aqua ratepayers. Aqua has 27 rate zones within its service territory; the rate effect of the proposed increase varies by zone under Aqua's proposed increase. In general, the Company proposes to increase rates for its typical residential customer from \$48.28 to \$53.79 or by \$5.51 per month (11.4%).

The Company serves approximately 400,000 residential, commercial, public, industrial, public and private fire protection customers located in municipalities and territories in portions of Adams, Berks, Bradford, Bucks, Carbon, Chester, Clarion, Columbia, Crawford, Cumberland, Delaware, Forest, Juniata, Lackawanna, Lawrence, Lehigh, Luzerne, Lycoming, Mercer, Montgomery, Monroe, Northampton, Northumberland, Pike, Schuylkill, Susquehanna, Snyder, Venango, Warren, Wayne and Wyoming counties.

The Office of Consumer Advocate filed a Formal Complaint against the proposed increase on November 23, 2009. On January 14, 2010, the Commission ordered the suspension of the proposed effective date of Supplement No. 61, and assigned the proceeding to the Office of Administrative Law Judge, the Honorable Angela T. Jones presiding. The Prehearing Conference Order directs a party submitting a prehearing memorandum to discuss the following:

- 1) Intended issues;
- 2) Identification of witnesses and the subject matter of their testimony;
- 3) a complete proposed litigation schedule.

The OCA will discuss each in turn below.

II. OCA ISSUES

Based upon its preliminary analysis of the Aqua filing, the OCA anticipates it will address the following topics in its testimony. The OCA also anticipates that additional issues may arise upon receipt and analysis of complete answers to OCA interrogatories. The OCA reserves the opportunity to present any new or unanticipated issues in accord with the procedural schedule set for this matter.

A. Rate of Return

1. Cost of Common Equity: The OCA will perform a detailed analysis of the cost of common equity claimed by Aqua. The OCA will carefully examine the Company's methodologies and supporting data used to develop its final cost of common equity claim. The OCA will examine the Company's claimed risk profile to determine if it supports the claimed cost of equity. The OCA will demonstrate that various discretionary upward adjustments sought by Aqua are without merit and contrary to the public interest.

2. Capital Structure: The OCA will examine whether the capital structure claimed by Aqua is representative of the period in which rates will be in effect and is otherwise appropriate for ratemaking purposes.

3. Embedded Cost of Debt and Preferred Stock: The OCA will examine the embedded cost of debt and preferred stock claimed by Aqua.

4. Interest Coverage Ratios: The OCA will perform an analysis of the reasonableness of the interest coverage ratios as a test for rate of return recommendations.

B. Rate Base/Measure of Values

1. The OCA will examine the reasonableness and accuracy of the projections of Aqua related to its water utility plant in service including, but not limited to, whether Aqua will complete its test year plant as its claims and whether it accurately reflects retirements.

2. The OCA will review the Company's claim for plant additions during the future test year to determine if the Company has demonstrated that it has incurred all such costs are prudently.

3. The OCA will investigate whether the Company's adjustment to rate base for depreciation reserve is appropriate.

4. The OCA will examine the Company's projections of non-investor

supplied funds, including but not limited to, customer deposits, customer advances for construction and contributions in aid of construction.

5. The OCA will examine the Company's claim for materials and supplies.

6. The OCA will examine the Company's calculation and amount of cash working capital, including the impacts of changing to monthly billing.

7. The OCA will review the acquisitions adjustments reflected in the filing.

8. The OCA intends to examine the reasonableness and accuracy of the Company's claimed valuation of its investment.

C. Revenues And Expenses

The OCA will examine:

1. The number of customers projected on the Company's system in the periods relevant to this proceeding is reasonable and accurate.

2. The Company's estimates of the volume of water to be sold during future period is reasonable and accurate.

3. The Company's projection of revenues in the future test year is reasonable and accurate.

4. The salary and wage annualizations and increases included by the

Company in the pro forma test year are reasonable and accurate including, but not limited to, whether the vacancies and new positions will be filled as claimed.

5. The costs associated with the accrual of retirement benefits other than pensions for the Company's employees or increased contributions to pension funds.

6. The justness and reasonableness of the Company's Employee Healthcare Expense.

7. The appropriateness of the Company's pro forma claim for rate case expense.

8. The legality and reasonableness of the Company's proposed purchased water agreement expense claims, and its request for a purchase water adjustment mechanism.

9. The reasonableness of the Company's increases for electric power purchased, and its request for a purchase power adjustment mechanism.

10. The miscellaneous other expense items which appear to be based upon company projections of future price levels.

11. The Company's request for depreciation expenses to determine whether it is just and reasonable.

12. The impact on expenses of changing to monthly billing and

associated bill processing costs.

In regard to other expenses, the OCA will examine the Company's:

13. Request for expenses related to serving additional customers.
14. Customer education costs.
15. Proposed inflation adjustment.
16. Justification and amortization of new acquisition adjustments.
17. Costs incurred in its most recent management audit.
18. Gasoline and diesel fuel contracts and purchases.
19. Insurance costs.
20. Affiliated interest charges.
21. Proposed expense amortizations.
22. Regulatory commission costs.
23. Promotional, advertising, marketing, lobbying, and political activity.
24. Operations and maintenance expenses.
25. Outside services and expenses.

D. Taxes

1. The OCA intends to raise issues related to the calculation of taxes including, but not limited to, calculation of federal and state income taxes and the amount of those taxes included as expenses for ratemaking purposes, including an adjustment for consolidated tax savings.

2. The OCA will examine the reasonableness of the Company's claim for income and property taxes.

E. Rate Structure/Cost of Service/Rate Design

1. The OCA will examine Aqua's proposed distribution of the revenue increase among customer classes and ratemaking regions.

2. The OCA will examine whether the rate design changes proposed by Aqua are reasonable and appropriate.

3. The OCA will examine Aqua's cost of service study, including whether the data use is outdated and stale, whether the methodology is valid, and whether the allocations are reasonable.

4. The OCA will examine the reasonableness and appropriateness of Aqua's proposed tariff changes.

5. The OCA will examine the use of actual water load data to test the validity of customer class demand ratios.

F. Quality of Service

1. The OCA will examine whether Aqua's main extension and other quality of service rules and regulations are enforced and applied in a fair and equitable manner.

2. The OCA will examine whether AQUA is providing its current and future residential customers with adequate, efficient, safe and reasonable service, including fire protection;

3. The OCA will investigate the water quality and service complaints of Aqua customers.

G. Other Issues

1. The OCA will examine Helping Hand, the Company's customer assistance program.

2. The OCA will examine any relevant environmental issues that arise as a result of the Company's operations.

3. The OCA will investigate to ensure that the Company is complying with all prior orders.

To assist it in performing its analysis, the OCA has served 10 sets of interrogatories on Aqua to date. The OCA believes that Aqua is making a good-faith effort to answer its interrogatories; nevertheless, while some responses have been

provided prior to their due date others are past the required due date. As a part of this Prehearing Memorandum, the OCA has proposed an expedited discovery schedule in Appendix A to help address this. In addition to formal discovery, the OCA and Aqua have conducted informal discovery, and the OCA expects continued cooperation in this regard. When the discovery process is complete, the OCA will file direct testimony setting forth the specific issues it seeks to address in this proceeding and will make specific recommendations at that time. The table below illustrates the circumstances of current discovery. While the OCA does not expect that discovery difficulties will develop, the OCA points out that the testimony due dates it presents in the proposed procedural schedule below are contingent on timely responses to OCA discovery.

OCA Set	Responses Due	Subject	Responses Outstanding
1	1/4/2010	RoR	Complete
2	1/4/2010	CoS	Nos. 6, 7, 9, 10
3	1/11/2010	Acct	Nos. 21, 39, 41, 51, 57
4	1/7/2010	Acct	Nos. 6, 7, 19, 57, 58, 59, 60, 61, 62, 70, 73
5	1/25/2010	Acct	Nos. 2, 4
6	1/28/2010	Acct	Nos. 1 to 11, 14, 15
7	1/28/2010	Acct	Nos. 1 to 3; 5 to 10
8	2/1/2010	Acct	Nos. 2 to 7; 9, 11
9	2/3/2010	Acct	Nos. 1 to 5
10	2/11/2010	QoS	All outstanding

III. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witnesses in this proceeding. Each witness will present testimony in written form and may also attach various exhibits, documents, and explanatory information which will assist in the presentation of the OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be mailed and emailed directly to the expert witnesses responsible for the area of the case, as well as to counsel for the OCA.

Accounting/Regulatory Policy:

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The OCA specifically reserves the right to call additional witnesses, as necessary. If the OCA determines that an additional witness or witnesses will be necessary for any portion of its case, it will promptly notify all parties of record and the presiding officer.

IV. PROPOSED PROCEDURAL SCHEDULE

Please refer to Appendix B. The OCA understands that the parties generally agree on this proposed schedule. The OCA will rely on the direct, rebuttal, and surrebuttal testimony of its expert witnesses as well as the testimony of the other parties to the proceeding. The OCA will present relevant exhibits to support its own testimony, including but not limited to, materials obtained from the Company through discovery and cross-examination.

V. PUBLIC INPUT HEARING LOCATIONS

Please refer to Appendix C. The number of protests and formal complaints indicates significant public interest in this proceeding. The OCA respectfully requests that the Commission conduct public input hearings. The OCA also requests that the Commission direct Aqua to advertise these public input hearings. The OCA would also

request the opportunity to review the announcements prior to publication.

As the approximate counts in the table below show, the OCA and the Commission have received a strong expression of interest from the public regarding this rate filing. The tally below does not include an additional 125 protests that the OCA continues to parse for duplicates and location. Legislators and public officials have requested public input hearings in their districts. Representative Phyllis Mundy has requested a public input hearing in Kingston Township, Luzerne County. Representative Jerry Knowles of Schuylkill County and the East Union Township Board of Supervisors have requested a public input hearing in East Union Township. Representative Neal P. Goodman of Schuylkill County also wrote to the Commission to request that the Commission deny the proposed rate increase. Through their solicitor, the boroughs of Athens, Sayre, and South Waverly in Bradford County have requested that the OCA include a request for a public input hearing in their region of Bradford County. To assist in gauging interest in public input hearings the OCA provides a tally of protests and formal complaints by County below. The OCA would draw attention to Aqua's growing presence in Pennsylvania's northwestern region - Crawford, Mercer, Lawrence, Venango, Warren, Forest, and Clarion Counties. The OCA understands that Aqua serves approximately 20,000 customers (and a much larger number of consumers) in this region and suggests that a telephonic public input hearing may be appropriate

for this region.

In addition to the quantitative approach below, the OCA notes that many of the protests from the Honesdale system in Wayne County contain serious quality of service allegations. The OCA believes that a public input hearing in the Honesdale service territory in Wayne County is required because of this.

County	Tally of identified Rate Protest/Formal Complaints
Adams	23
Berks	4
Bradford	5
Bucks	91
Chester	98
Crawford	16
Delaware	169
Forest	11
Lackawanna	4
Lawrence	1
Lehigh	3
Luzerne	21
Mercer	27
Monroe	16
Montgomery	131
Northampton	1
Northumberland	5
Pike	15
Schuylkill	4
Snyder	12
Warren	3
Wayne	23
Wyoming	5
<i>Unidentified</i>	15
TOTAL	703


VI. REPRESENTATION

The OCA will be represented in this case by Senior Assistant Consumer Advocate Dianne E. Dusman and Assistant Consumer Advocate Shaun A. Sparks.

Please provide electronic and hard copy service as follows:

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Respectfully submitted,



Dianne E. Dusman
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Shaun A. Sparks
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For:
Irwin A. Popowsky
Consumer Advocate

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DATED: January 28, 2010

APPENDIX A

Proposed Order For Expedited Discovery

Discovery must be conducted according to the Commission's rules and regulations, subject to the following modifications for an expedited discovery period. Because the period for discovery is limited, a shortened discovery response time is appropriate in this proceeding. Therefore, the following modifications will apply:

- A. Answers to written interrogatories will be served in-hand within ten (10) calendar days of service of the interrogatories.
- B. Objections to interrogatories will be communicated orally within three (3) days of service; unresolved objections be served to the ALJ in writing within five (5) days of service of interrogatories.
- C. Motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) days of service of written objections.
- D. Answers to motions to dismiss objections and/or direct the answering of interrogatories will be filed within three (3) days of service of such motions.
- E. Rulings over such motions will be issued, if possible, within seven (7) days of filing of the motion.
- F. Responses to requests for document production, entry for inspection, or other purposes will be served in-hand within ten (10) calendar days.
- G. Requests for admission will be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service
- H. Answers to on-the-record data requests will be served in-hand within seven (7) calendar days of the request.

APPENDIX B

Proposed Litigation Schedule

Prehearing	Monday, February 1, 2010
Intervenor Direct	Tuesday, February 16, 2010
Public Input Hearings	Last week Feb. - First week Mar.
Company Rebuttal	Thursday, March 11, 2010
Intervenor Surrebuttal	Wednesday, March 31, 2010
Hearings week of	Monday, April 05, 2010
Initial Brief	Friday, April 30, 2010
Reply Brief	Friday, May 14, 2010

APPENDIX C

Proposed Locations for Public Input Hearings

Based on the numbers of protests, formal complaints, and letters and calls to the OCA, the OCA suggests that the Commission conduct public input hearings in the followings locations.

1. Luzerne County

An afternoon or evening hearing in the Kingston Township Municipal Building; 180 East Center Street, Shavertown, PA 18708-1514, upon request of Representative Phyllis Mundy. The OCA would recommend that the Commission conduct this hearing on the same date as the Schuylkill County hearing.

2. Schuylkill County

An afternoon or evening hearing in East Union Township upon request of Representative Jerry Knowles and the East Union Township Board of Supervisors. The OCA would recommend that the Commission conduct this hearing on the same date as the Luzerne County hearing.

3. Wayne County

In the Aqua Pennsylvania Honesdale Division based on the number of quality of service issues raised by consumers in response to the proposed increase in rates. The OCA would recommend that the Commission conduct this hearing on the same date as the Bradford County hearing.

4. Bradford County

In the Aqua Pennsylvania Susquehanna Division upon the request of the governing bodies of the Athens, Sayre, and South Waverly boroughs. The OCA would recommend that the Commission conduct this hearing on the same date as the Wayne County hearing.

5. **Northwest Region - telephonic**

A telephonic morning/afternoon hearing for consumers in Crawford, Mercer, Lawrence, Venango, Warren, Forest, and Clarion Counties.

6. **Delaware County**

- a. One afternoon and evening hearing in the Southern portion of the county, in or around Springfield, PA; and
- b. If only one location for public input hearings is held in the county, Drexel Hill is a central location based on the Formal Complaints and correspondence received by OCA. The Radnor Township School District facilities may also be available for this purpose as this school district filed a rate protest.
- c. The OCA specifically requests that Delaware County Community College not be used as a venue for Public Input Hearings. Previous hearings there have generated complaints regarding difficulty in locating the particular building in which the hearing is held.

7. **Chester County**

One evening hearing in the Downingtown/Exton area. The East Goshen Township Board of Supervisors also requested a public input hearing in West Chester and offered the township building for this use.

8. **Montgomery County**

One evening hearing near Willow Grove, Abington and Jenkintown, PA.

9. **Bucks County**

The OCA points out that the southern region of Bucks County -- Bensalem and Bristol -- generated a significant number of protests and formal complaints. The OCA would propose one evening hearing be held in or near

Bensalem, PA.

The OCA will work with the parties and the PUC to develop specific dates, times and locations for public input hearings.

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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission
v.
Aqua Pennsylvania, Inc.
Docket No. R-2009-2132019

I hereby certify that I have this day served a true copy of the foregoing document, Prehearing Memorandum of the Office of Consumer Advocate, 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 28th day of January 2010.

SERVICE BY ELECTRONIC MAIL and IN PERSON

Allison C. Kaster, Esquire
Carrie B. Wright, Esquire
Office of Trial Staff
Pa. Public Utility Commission
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SERVICE BY ELECTRONIC and FIRST CLASS MAIL, POSTAGE PREPAID

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