



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 25, 2012

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.
Aqua Pennsylvania, Inc.

Docket No. R-2011-2267958

Dear Secretary Chiavetta:

Enclosed please find an original copy of the Bureau of Investigation and Enforcement's (I&E) **Exceptions** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

Carrie B. Wright

Prosecutor

Bureau of Investigation and Enforcement
PA Attorney I.D. #208185

Enclosure
CBW/edc

cc: Parties of Record
Hon. Angela T. Jones
Hon. Darlene D. Heep
Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Commissioner
James H. Cawley, Commissioner
Pamela A. Witmer, Commissioner
Chief Counsel Pankiw, Law Bureau
Director Cheryl Walker Davis, OSA

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
v. : Docket No. R-2011-2267958
Aqua Pennsylvania, Inc. :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated May 25, 2012, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

William C. Packer
Aqua PA, Inc.
762 W. Lancaster Ave.
Bryn Mawr, PA 19010

Thomas P. Gadsden, Esquire
Anthony C. DeCusatis, Esquire
Brooke E. Leach, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103

Kimberly A. Joyce, Esquire
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

Scott J. Rubin, Esquire
333 Oak Lane
Bloomsburg, PA 17815

Matthew Kahal
Thomas Catlin
Exeter Associates, Inc.
10480 Little Patuxent Parkway
Suite 300
Columbia, MD 21044

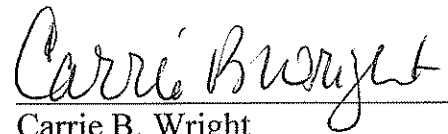
Shaun A. Sparks, Esquire
Dianne E. Dusman, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Daniel G. Asmus, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 1102
Harrisburg, PA 17101

Adeolu A. Bakare, Esquire
Charis Mincavage, Esquire
Mcneese Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Jerome Linden
201 Cornell Drive
Bryn Mawr, PA 19010

Robert W. Curtius
949 Foss Avenue
Drexel Hill, PA 19026



Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #208185

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2011-2267958
	:	
Aqua Pennsylvania, Inc.	:	

**EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION
AND ENFORCEMENT**

Carrie B. Wright
Prosecutor
PA Attorney I.D. #208185

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: May 25, 2012

TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXCEPTIONS 2

 1. I&E EXCEPTION NO. 1: The ALJ Erred In Stating That The DSIC
 ROE Agreed To By The Parties Should Not Be Implemented As Long
 As The Base Rate Return On Equity Is Greater Than 10.2%..... 2

 2. I&E EXCEPTION NO. 2: The ALJ Erred By Calculating An Overall
 Return on Equity For Aqua..... 4

III. CONCLUSION..... 7

TABLE OF CITATIONS

Commission Decisions

Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.,
Docket No. R-2008-2079310 (Order Entered July 23, 2009).....3

I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) respectfully submits these instant Exceptions to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep (“the ALJs”) in this base rate proceeding.

The I&E testimony and exhibits were admitted into the record during the evidentiary hearing held on April 10, 2012. The I&E testimony and exhibits included I&E Statement No. 1, I&E Statement No. 1-SR, I&E Exhibit No. 1 and I&E Exhibit No. 1-SR. These documents represented the Direct and Surrebuttal testimonies and accompanying exhibits of I&E expert witness Emily Sears. Also offered into the record were I&E Statement No. 2, I&E Statement No. 2-SR, I&E Exhibit No. 2 and I&E Exhibit No. 2-SR, representing the testimonies and exhibit of I&E expert witness Christine Wilson. I&E witness Joseph Kubas sponsored I&E Statement No. 3, I&E Statement No. 3-SR and I&E Exhibit No. 3. In addition, I&E Witness Jeremy Hubert sponsored I&E Statement No. 4 and I&E Exhibit No. 4. On April 20, 2012, the Joint Settlement Agreement (“Joint Settlement”) was presented to the ALJs along with accompanying Statements in Support from the signatory parties. The signatories to the Joint Settlement included Aqua, I&E, the Office of Consumer Advocate (“OCA”) and AquaLUG

(the “Signatory Parties”). The Office of Small Business Advocate (“OSBA”) chose not to oppose the Settlement.

On May 18, 2012, the ALJs issued their Recommended Decision (“RD”). While I&E agrees with the ALJs ultimate recommendation that the Joint Settlement be adopted¹, I&E disagrees with certain conclusions reached by the ALJs regarding cost of common equity in this proceeding. As these conclusions modify certain provisions of the Settlement in ways not intended by the Parties, I&E respectfully files the instant Exceptions.

For the reasons presented here, I&E requests that the Commission grant the instant Exceptions and adopt the I&E recommendations in its final Order resolving this base rate proceeding.

II. EXCEPTIONS

I&E EXCEPTION NO. 1

The ALJ Erred In Stating That The DSIC ROE Agreed To By The Parties Should Not Be Implemented As Long As The Base Rate Return On Equity Is Greater Than 10.2%.

Recommended Decision, pp. 32-33.

In Settlement, the Signatories agreed that for the period that the Settlement

¹ RD p. 51.

rate are in effect, Aqua would be allowed to use a 10.2% return on equity (“ROE”) for Distribution System Improvement Charge (“DSIC”) purposes. In their Recommended Decision, the ALJs indicate the DSIC ROE of 10.2% agreed to by the Signatory Parties is linked to the ROE set by the Settlement.² After stating that the DSIC is linked to the ROE, the ALJs go on to say that the DISC will not be implemented as long as the ROE is greater than 10.2%.³ Both statements are simply erroneous. In 2008 Aqua requested that its DSIC cap be raised from 5.0% to 7.5%. As noted on page 27 of the Aqua Recommended Decision which was adopted by the Commission in its final Order, when DSIC’s implementation was approved by the Commission, several safeguards were established, one of which was the fact that at the time of the next base rate case, the DSIC would be reset to zero.⁴ However, this provision does not establish that a company cannot utilize their DSIC until its base rate ROE falls below its DSIC ROE.

I&E requests that should the ALJs’ RD be adopted in a final Order, that the Commission clarify that as a surcharge, the DSIC ROE is completely separate and in no way linked to the base rate ROE. Further, I&E requests that the Commission clarify that by law, Aqua is not require to wait until the base rate ROE drops below

² RD p. 33.

³ RD p. 33.

⁴ *Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.*, Docket No. R-2008-2079310 (Order Entered July 23, 2009).

10.2% to implement the DSIC. To do otherwise would cause harm to the Company.

I&E EXCEPTION NO. 2

The ALJ Erred By Calculating An Overall Return on Equity For Aqua.

Recommended Decision, pp. 35-36

It was not the intention of the Signatory Parties to provide an overall ROE for Aqua in this Settlement. I&E believes it was inappropriate for the ALJs to calculate their own rate of return in this proceeding. The Settlement was also designed as a “black box” Settlement. Because of this ultimate resolution of all issues and the details of how they were resolved was not included in the Settlement.⁵ Each Signatory Party arrives at the Settlement revenue number in different ways and because of this a black box settlement is often preferable to the parties entering into a settlement agreement. Because the Settlement in this case was a black box settlement, it was designed so as not to adopt any specific cost of common equity or rate of return. In fact, as noted by the OCA in their Statement in Support attached to the Settlement regarding return on equity, “[b]y design, the Settlement does not resolve this difference of opinion; it adopts no specific

⁵ I&E Statement in Support p. 7.

common equity cost or overall rate of return.”⁶ However, the ALJs have provided their own calculation of what they believe the ROE to be. This calculation was not necessary for the ALJs to determine whether the Joint Settlement was in the public interest. Further the rate of return calculated by the ALJs is erroneous and violates the legal concept of a black box Settlement. If a cost of common equity were to be provided in this instance, it would be appropriate to calculate it based on the Commission approved Discounted Cash Flow (“DCF”) methodology. Because this method was not used, the 10.81% ROE shown in Attachment 1 to the RD is not correct.

While I&E understands that this may have been done illustrative purposes in response to Mr. Linden’s argument that Aqua’s current ROE was at 12.4%, it was simply not necessary for the ALJs to calculate their own ROE. As the ALJs noted, the public advocate witnesses all provided testimony in which they calculated an ROE for future earnings, not current.⁷ At the filing of a base rate case the current ROE becomes moot because all parties are looking at revenues and returns on a going-forward basis. Rather than calculate their own erroneous ROE, the ALJs needed only to describe this to refute Mr. Linden’s argument.

⁶ OCA Statement in Support, p. 6.

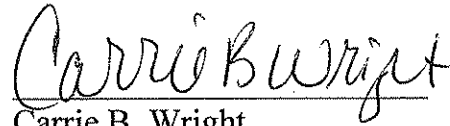
⁷ RD p. 36.

I&E request that the Commission adopt the ALJs' RD insofar as it adopts the proposed Settlement, but respectfully requests that the Commission delete Attachment 1 in which the ROE calculation is performed. There is no basis on which to rely that would allow backing into a ROE based on a specific revenue number and further does not provide a correct ROE in this case. The revenue number arrived at by the Joint Signatories was not based on any specific ROE, nor was it their intention that an ROE be included in the Joint Settlement. For those reasons, I&E believes that the ALJs erred in calculating an ROE and requests that Attachment 1 be deleted from the Commission final Order. Should the ALJs have believed a ROE was necessary for approval of the Settlement, the appropriate course of actions would have been for them to reject the Settlement, not to calculate a ROE on their own.

III. CONCLUSION

For the reasons set forth herein, the Bureau of Investigation and Enforcement respectfully requests that the Pennsylvania Public Utility Commission grant these Exceptions to the Recommended Decision and incorporate the results in its final Order.

Respectfully submitted,



Carrie B. Wright

Prosecutor

PA Attorney I.D. #208185

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: May 25, 2012