

COMMONWEALTH OF PENNSYLVANIA



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IRWINA. POPOWSKY  
Consumer Advocate

May 25, 2012

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17101

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

Dear Secretary Chiavetta:

Enclosed please find the Exceptions of Mr. Jerome Linden in the above-referenced proceeding. The Office of Consumer Advocate is filing this document on behalf of and as a courtesy to Mr. Linden.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

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

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

Enclosure

cc: Honorable Angela T. Jones  
Honorable Darlene D. Heep  
Office of Special Assistants  
Certificate of Service

156791

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

Aqua Pennsylvania, Inc.

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Docket No.R-2011-2267958

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EXCEPTIONS OF  
JEROME LINDEN

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201 Cornell Drive  
Bryn Mawr, PA 19010  
DATED: May 25, 2012

## I. INTRODUCTION

On December 19, 2011, I filed a formal complaint opposing the rate increase. This complaint was docketed by the Commission at C-2011-2280616. Following the procedures and schedule established for this proceeding, I elected active status and submitted direct and surrebuttal testimony. On May 1, 2012, I provided comments to the Joint Petition for Settlement to the Administrative Law Justices.

## II. EXCEPTIONS

**Linden Exception No. 1: The ALJs erroneously concluded that my calculation for the Return on Equity for Aqua Pennsylvania for 2011 of 12.4% was faulty.**

On Page 35 of the Recommended Decision, the ALJs claim that my calculation of a 12.4% ROE for Calendar Year 2011 is faulty, as it does not account for taxes, adjustments for the assessments paid by Aqua for the service of the Commission, uncollectibles and the rate base. This is clearly not the case. This information is taken from Linden Exhibit 4, which was Aqua Pennsylvania's response to Linden I-1. The Net Income and Equity amounts used for this calculation were provided by the Company in direct response to a request for the Return on Equity. These figures, from Page 5 of Exhibit 4, provided further breakdown to segregate Aqua Pennsylvania amounts from any other Pennsylvania activity as originally provided by the Company. As shown on Page 8, the Net Income amount is after deduction of taxes and other adjustments. Regarding the rate base, as shown on Page 18, the Shareholders Equity is the equity portion of the rate base, and is the correct value to use in computing Return on Equity. The Company had confirmed to me in an email regarding Linden I-1 that this was the correct calculation for ROE.

**Linden Exception No. 2: The ALJs relied upon a false implication regarding my testimony about the high relative contribution of net income from Aqua Pennsylvania to Aqua America.**

On Page 34 of the Recommended Decision, the ALJs state “Mr. Linden also concluded from his analysis that Aqua provides a relatively high contribution to AA’s net income based on the data regarding the 2011 calendar year. With this premise Mr. Linden implied that the money going to AA from Aqua should be allocated to operations and maintenance and thus, ameliorating the need to raise rates.” There should be no such implication. Net income is what remains after operations and maintenance and other expenses. My point is that since Aqua Pennsylvania operates as a subsidiary of Aqua America, it is necessary to examine the relative contribution of net income from Aqua Pennsylvania to Aqua America in determining if the company has a “reasonable opportunity to attract the additional capital needed to finance future plant improvements”.

**Linden Exception No. 3: The ALJs relied upon a misreading of the Company’s rebuttal to my direct testimony regarding the P/E Ratio, and erred in thinking that the P/E Ratios I provided were over a 10 year period.**

On Page 36, the ALJs state “First, Aqua’s witness testified that in more recent data AA’s P/E was actually lower than the benchmark of publicly traded water utilities. [Reference to Footnote 10] (Aqua Stmt. 2-R at 16.)”. Footnote 10 states “Mr. Linden’s P/E was calculated over a 10 year period of historic data.” The ALJs reference to Aqua Stmt. 2-R at 16 is incorrect. The reference Aqua’s witness made was to share performance, not P/E, and was never supported. In fact, Stmt 2-R continues on Page 17 to say “Aqua America’s P:E ratio is right about the average of the publically traded water companies.” Further, the P/E is not

calculated over a ten year period, but as supported in Exhibit 3 of my direct testimony was the P/E ratio on January 27, 2012.

**Linden Exception No. 4: The ALJs erred in stating that evidence was not provided to support the high relative contribution of Aqua Pennsylvania to Aqua America.**

On Page 36, the ALJs state “How is it concluded that although several companies contribute to the financials of AA, Aqua is the most influential of these companies on the financials and thus, the financials for AA correlate to financials for Aqua? Mr. Linden does not provide any guidance to his conclusion from his premise.” Here, the ALJs are mixing two related but separate points. First, is the comparison of Aqua America’s P/E compared with the market, which shows that the market values Aqua America more highly than the market overall, a strong indication that ROE of the parent company is higher than the market demands. Second, is analysis of the relative contribution of Aqua Pennsylvania to Aqua America. I have provided the answer to the question the ALJs seek. As stated in Page 2 of my direct testimony, for 2010 Aqua Pennsylvania contributed 51% of Aqua Americas revenue, but 73% of Aqua America’s net income. Information provided in Linden Exhibit 4 and cited in my comments show this continued in 2011. Further, the ALJs did not specifically address the company prepared shareholder return charts provided as Exhibit 1 in my Direct Testimony.

**Linden Exception No. 5: The ALJs erred in stating that the premise that the current rates do not generate revenues to provide the Company with a reasonable opportunity to earn a fair return and attract additional capital to finance future plant improvements had not been successfully rebutted.**

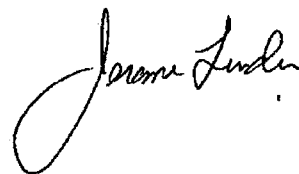
On Page 36, the ALJs state “the non-Company public advocate witnesses failed to rebut the statement made by the Company that its current ROE is inadequate and therefore justifies the need for a rate increase. The record does not support Mr. Linden’s assertion that Aqua failed to sustain its burden of proof to show that the rate increase is needed.” Here, the ALJs are missing a key point. While the non-Company witnesses did testify that a *small* increase in ROE was calculated, the overall recommendation of OCA was a revenue *decrease* of \$2,641,526 (OCA Statement No. 1S, page 9). Thus, the burden of proof was not met.

Also on Page 36, the ALJs state “While it is understood and not disputed by the Company witnesses that Mr. Linden’s financial statistics are accurate, it is not necessarily logical to conclude that Aqua is receiving an excessive rate of return for its risk. Here, the ALJs have the burden of proof reversed. I provided clear, compelling testimony using the Company’s own documents to show that the Company’s investors have realized returns well in excess of the market over various time periods. The burden of proof is on the Company to show that this is not due to excessive returns from Aqua Pennsylvania ratepayers.

The false conclusion that the need for a rate increase had not been rebutted is then carried forward on Page 37 and following, in evaluating whether the settlement is just and reasonable. The shortcoming in the disposition provided by the ALJs is that once the threshold is crossed that a rate increase is needed (which as above was not correct), there is nothing in the logic provided to determine if the increase is excessive.

### III. CONCLUSION

Since 2006, through the Commission's procedures at public input hearings, formal complaints, and as an active party, I have sought a simple answer to a simple question: How can the Commission be granting rates to Aqua Pennsylvania that are providing returns to parent company shareholders that far exceed the market and that "needed to provide a reasonable opportunity to attract the additional capital needed to finance future plant improvements"? I have demonstrated that these returns are directly attributable to Aqua Pennsylvania, not any other subsidiary. This Recommended Decision has not provided an answer. As stated in my formal complaint, my testimony, and my comments, I believe the Commission needs to examine the limitations of the methods used to determine a fair rate of return. I believe that these exceptions challenge the decision reached by the ALJs, and ask that the Commission closely examine whether the Settlement is in the public interest.



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Jerome Linden

201 Cornell Drive  
Bryn Mawr, PA 19010

DATED: May 25, 2012

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing Exceptions of Jerome Linden 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 25th day of May 2012.

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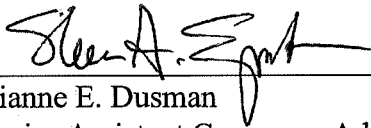
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