

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 9, 2017

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Application of Aqua Pennsylvania
Wastewater, Inc. Pursuant to Sections 1102
and 1329 of the Public Utility Code for
Approval of its Acquisition of the Wastewater
System Assets of Limerick Township
Docket No. A-2017-2605434

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Protest and Public
Statement in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants
Bureau of Technical Utility Services (email only)
Certificate of Service

234853

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
v. :
Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections : Docket No. A-2017-2605434
1102 and 1329 of the Public Utility Code :
for approval of the acquisition by Aqua of :
the wastewater system assets of :
Limerick Township :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, 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 9th day of June 2017.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Carrie Wright, Esquire
Philip Kirchner, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

John Evans
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/s/ Christine Maloni Hoover
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Dated: June 9, 2017

*234854

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections 1102 :
and 1329 of the Public Utility Code for : Docket No. A-2017-2605434
Approval of its Acquisition of the Wastewater :
System Assets of Limerick Township :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq* and 66 Pa. C.S. § 1329. Through this Application, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) seeks Commission approval for the acquisition of the wastewater assets of Limerick Township (Township), Montgomery County¹, the right of Aqua to provide wastewater service in the areas served by the Township and the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. Limerick Township provides sewage collection and treatment services to 5,434 customers in Montgomery County. Application at 3.

The OCA files this Protest in order to ensure that the application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and

¹ According to the Application all assets are located in Limerick Township except for approximately 750 feet of pipe which passes through the Northeast corner of the Borough of Royersford. Application at 3. There are no customers located in the Borough of Royersford. Id.

regulations.

Specifically, the OCA avers as follows:

1. The Protestant is Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are Christine Maloni Hoover and Erin L. Gannon, Senior Assistant Consumer Advocates.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of Aqua's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3).

4. The Code further requires that a certificate shall only be granted upon findings that the granting of such certificate is "necessary or proper for the service, accommodation, convenience or safety of the public." 66 Pa. C.S. § 1103(a). See City of York v. Pa. P.U.C., 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); see also Popowsky v. Pa. P.U.C., 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: "The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and

reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market valuation or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This recently added provision is an alternative to the use of original cost, less depreciation for ratemaking purposes, when a public utility acquires municipal water and wastewater assets. Aqua proposes to pay a \$75.1 million purchase price to the Township plus a Pending Development Payment of \$400,000. Application at 5. The original cost of the assets is \$63,480,402 with a related depreciation reserve of \$17,326,535. Id.

7. According to the Application, the average of the fair market value appraisals “is \$78,494,000 – determined by \$80,098,000 (rounded) presented in the appraisal of Gannett Fleming and \$76,890,000 presented in the appraisal of HRG.” Application at 15. The valuation experts were paid \$75,608 for the Fair Market Value Appraisal Reports. Application at 16. Aqua also indicates that it will incur transaction and closing costs of \$250,000 which will be included in rate base. Id.

8. Aqua proposes to charge customers the Limerick Township sanitary wastewater rates in effect at closing. Application at 8. The Asset Purchase Agreement between Aqua and Limerick Township provides that those rates would not change until after the third anniversary of the closing date. Id.

9. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to

Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code.

10. The valuation information provided with the Application is not sufficient to determine whether Aqua's ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation. In addition, Aqua presents a rate stabilization plan with two scenarios. Application Exh. U (Packer testimony at pages 13-17). The OCA will examine the proposals to determine whether Aqua's rate stabilization plan is reasonable.

11. Based on the Township's current rates, Aqua would charge a base charge per EDU, of \$337.20 per year, payable as \$84.30 per quarter. Application at 8. This base charge includes up to 1,000 cubic feet of usage per quarter. Id. Usage above that is charged at \$4.84 per 100 cubic feet. Id. A residential customer without a water meter is billed a flat rate of \$85 per quarter. Id.

12. Information is provided regarding the estimated costs of planned investment in the system. Aqua estimates that it will spend \$8.3 million in capital improvements over the next ten years. Application Exh. V (Bubel testimony at pages 7-8). The OCA will examine the information to determine what impact the capital improvements will have on the cost of service. The OCA will also examine the impact that the costs will have on the rates of existing and acquired customers.

13. The OCA submits that additional information is necessary to determine if the proposed rates, rate freeze, and Aqua's request for an approved rate base of \$75.1 million for the Limerick Township acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and

further information is obtained from the Applicant.

14. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua's existing customers.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, regarding the Application.

Respectfully submitted,



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Counsel for:

Tanya J. McCloskey
Acting Consumer Advocate

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Dated: June 9, 2017
234392

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania Wastewater of the Limerick Township (Township) sanitary wastewater assets.

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and the Township customers. The Acting Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Acting Consumer Advocate will investigate the proposed acquisition and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua serves approximately 20,000 wastewater customer accounts in Pennsylvania. The Township serves approximately 5,434 customers in a portion of Limerick Township, Montgomery County, Pennsylvania.