**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. :

Pursuant to Sections 1102 and 1329 of the Public :

Utility Code for Approval of its Acquisition of the : A-2017-2605434

Wastewater System Assets of Limerick :

Township :

**ORDER DENYING MOTION OF THE**

**OFFICE OF CONSUMER ADVOCATE**

**TO STRIKE REBUTTAL TESTIMONY**

On May 19, 2017, the Applicant, Aqua Pennsylvania Wastewater, Inc. (Aqua), filed an application with the Pennsylvania Public Utility Commission (Commission) by which it is seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of Limerick Township, (2) the right of Aqua to begin to offer, render, furnish or supply wastewater service to the public in a portion of Limerick Township, Pennsylvania, and (3) an order approving the acquisition that includes the ratemaking rate base of the Limerick Township wastewater system assets pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code. Receipt of the completed application was acknowledged by the Commission by Secretarial Letter dated May 31, 2017.

A prehearing conference was held on June 28, 2017, during which a litigation schedule was agreed upon. As set forth in my Order Establishing Litigation Schedule dated June 28, 2017, the following testimony deadlines were established: direct testimony of other parties – July 3, 2017; rebuttal testimony – July 11, 2017; surrebuttal testimony – July 18, 2017. On July 3, 2017, direct testimony was submitted by the Commission’s Bureau of Investigation and Enforcement (I&E) and the Office of Consumer Advocate (OCA).[[1]](#footnote-1) On July 11, 2017, rebuttal testimony was submitted by Aqua. On July 18, 2017, surrebuttal testimony was submitted by I&E and OCA. Evidentiary hearings were held on July 20-21, 2017.

On July 19, 2017, OCA filed a Motion to Strike certain rebuttal testimony submitted by Aqua. OCA seeks to strike rebuttal testimony submitted by Aqua witnesses Harold Walker, III (Aqua statement No. 3R) and Adrienne M. Vicari, P.E. (Aqua Statement No. 4R). The gravamen of the OCA’s motion is that the rebuttal testimony at issue is offered in support of the fair market value appraisals included with Aqua’s application and should have been included with Aqua’s direct case, rather than in the rebuttal phase of the proceeding. OCA argues that the offering of such evidence in rebuttal disrupts the orderly progress of the case and compromises its due process rights.

On July 24, 2017, Aqua filed an answer to OCA’s motion. In its answer, Aqua argues that the rebuttal testimony at issue was submitted to rebut specific passages from the direct testimony of OCA witnesses Everette and Watkins. It further argues that OCA’s due process rights were not compromised sine it had the opportunity to file surrebutal testimony in response to the challenged testimony and had a full opportunity to cross-examine Aqua’s witnesses on their rebuttal testimony. I agree with Aqua and will deny the OCA’s motion.

As noted by Aqua, the testimony presented by Aqua’s witnesses in the two rebuttal statements at issue respond to questions that refer to specific criticisms raised by OCA witnesses in direct testimony to the fair market value (FMV) appraisals included as part of Aqua’s application. I believe that the challenged rebuttal testimony further explains the information contained in the FMV appraisals in response to criticisms raised by OCA’s witnesses. Aqua correctly points out on page three of its answer that witnesses Walker and Vicari were identified as potential witnesses in the company’s prehearing memorandum, and that the questions and answers in the challenged rebuttal testimony cite to the specific pages of the OCA direct testimony being rebutted. I see nothing improper with this testimony.

Additionally, I do not believe that the orderly progress of this proceeding has been disrupted, or that the OCA’s due process rights have been compromised by the challenged testimony. Under the litigation schedule agreed upon in this proceeding, the challenged rebuttal testimony was submitted on July 11, 2017 and surrebuttal testimony was due by July 18, 2017. Both the OCA and I&E submitted surrebuttal testimony in response to Aqua’s rebuttal testimony. Further, all parties had the opportunity to, and in fact did, conduct cross-examination of Aqua’s witnesses, including Mr. Walker and Ms. Vicari, at the evidentiary hearings. The OCA had a full opportunity to review and respond to Aqua’s rebuttal testimony. I see no compromise of any party’s due process rights. Under the procedures observed in this proceeding, with the compressed time schedule imposed by Section 1329, a complete record on the issues involved will be presented to the Commission for its consideration.

For these reasons, I will deny the OCA’s Motion to Strike Aqua Statement Nos. 3R and 4R.

Dated: July 26, 2017

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Steven K. Haas

Administrative Law Judge

**A-2017-2605434 APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

Updated 6/9/17

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1. Aqua’s direct testimony was included with its application as Exhibits U (William Packer) and V (Mark Bubel). [↑](#footnote-ref-1)