



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

IN REPLY PLEASE  
REFER TO OUR FILE

October 3, 2017

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

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 Bureau of Investigation and Enforcement's (I&E)  
**Exceptions** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of  
service. 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

CBW/sca  
Enclosure

cc: Certificate of Service  
ALJ Steven Haas

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OCT 3 2017

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION & ENFORCEMENT**

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

**RECEIVED**

OCT 3 2017

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

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dated: October 3, 2017

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*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 New Garden Township  
and the New Garden Township Sewer System,*  
Docket No. A-2016-2580061  
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## I. INTRODUCTION

On May 19, 2017, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) filed an Application for approval of: 1) the acquisition of the wastewater systems assets of Limerick Township (“Limerick”), 2) the right of Aqua Pennsylvania Wastewater, Inc. to be to offer, render, furnish and supply wastewater service to the public in a portion of Limerick Township, and 3) for an order approving the acquisition that includes the ratemaking rate base of the Limerick wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code (“Application”). This Application requests that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve the purchase of Limerick Township’s wastewater assets and issue the necessary Certificates of Public Convenience (“CPC”) for Aqua to furnish service to the approximately 5,434 Limerick customers. Further, the Application requests that the Commission issue an Order which sets the rate base of the acquired Limerick assets at \$75.1 million under the newly enacted Section of the Public Utility Code, 66 Pa. C.S. § 1329.

On May 31, 2017, by Secretarial Letter, the Commission acknowledged receipt of the Application. Pursuant to a Prehearing Conference Order, Administrative Law Judge Steven K. Haas (“ALJ”), was assigned to develop an evidentiary record and Recommended Decision (“RD”) in this proceeding, and the ALJ conducted a Prehearing Conference on June 28, 2017. At the Prehearing Conference, a procedural schedule and the procedures applicable to this proceeding were set forth and subsequently memorialized in a Prehearing Order.

In accordance with the procedural schedule outlined in the Prehearing Order the parties exchanged direct, rebuttal, and surrebuttal testimony. The Bureau of Investigation and Enforcement ("I&E") introduced the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of Kokou Apetoh;
- I&E Exhibit No. 1, the Exhibit to accompany the Direct Testimony of Kokou Apetoh;
- I&E Statement No. 1-SR, the Surrebuttal Testimony of Kokou Apetoh;
- I&E Statement No. 2, the Direct Testimony of Rachel Maurer;
- I&E Exhibit No. 2, the Exhibit to accompany the Direct Testimony of Rachel Maurer; and
- I&E Statement No. 2-SR, the Surrebuttal Testimony of Rachel Maurer.

During the course of litigation, the parties were unable to resolve the issues presented in Aqua's Application. On July 20 and July 21, 2017, at the time and place set for the evidentiary hearing, the parties appeared before ALJ Hass and conducted cross-examination and entered testimony and exhibits into evidence. At that time, I&E moved into evidence the pieces of I&E testimony and exhibits identified above. On August 11, 2017, Main Briefs were filed by Aqua, I&E and the Office of Consumer Advocate ("OCA"). On August 18, 2017 Reply Briefs were filed by Aqua, I&E and OCA.

On September 18, 2017, the ALJ issued a Recommended Decision approving Aqua's Application. I&E maintains that the Company has failed to show that the acquisition should be approved under Section 1102 of the Public Utility Code. As such, I&E now files these timely Exceptions to the ALJ's RD.

## II. EXCEPTIONS

### 1. The ALJ erred by finding the Application contained the requisite affirmative public benefits to warrant approving the acquisition.

In this proceeding, based solely on the Commission's decision in *New Garden*,<sup>1</sup> the ALJ concluded that Aqua had demonstrated sufficient affirmative benefits to warrant approval of this Application.<sup>2</sup> As correctly noted by the ALJ in his RD, "[t]he parties generally agree that the transaction would result in benefits to Limerick Township."<sup>3</sup> For instance, Limerick Township will receive 63% more than the net book value of the system. Further, Aqua will spend approximately \$8.3 million for capital improvements to the Limerick system over the next ten years; a cost the Township will not have to incur.

On the other hand, Aqua's existing ratepayers will be expected to subsidize these Limerick customers. As noted in the I&E Main Brief, the rate base per customer of the Limerick system is approximately 3.7 time more than Aqua's existing system. Further, Limerick customers will experience a significant rate increase at the end of the three-year rate freeze. At the end of that period, Aqua intends to nearly double the Limerick residential rate from \$38 per month to \$70 per month.<sup>4</sup> As OCA pointed out, Limerick customers can expect to see significant increases for the foreseeable future.<sup>5</sup>

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<sup>1</sup> *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 New Garden Township and the New Garden Township Sewer System*, Docket No. A-2016-2580061 (Order Entered June 29, 2017).

<sup>2</sup> RD, p. 44.

<sup>3</sup> RD, p. 42.

<sup>4</sup> Aqua St. 1, p. 14.

<sup>5</sup> OCA MB, p. 58.

Aqua's application poses identifiable detriments to existing customers. The detriment imposed upon existing customers is relevant because, in its public interest analysis, the Commission must consider the benefits and **detriments** of the transaction "with respect to the impact on all affected parties"<sup>6</sup> including existing customers.

Accordingly, considering that the identified detriments of the transaction far outweigh any speculative benefits that existing ratepayers may hope to receive, I&E submits that Aqua's Application fails the public interest test and it should be rejected. The Limerick system is a large, well-functioning waste water system that is in good financial shape. The instant acquisition presents merely speculative public benefits to Limerick and Aqua's existing customers. However, the detriments imposed are real and identifiable. Therefore, I&E believes the acquisition is not in the public interest and should not be approved.

As filed, there will be a \$7.778 million revenue shortfall created by the Limerick system by 2019.<sup>7</sup> Given that the Company has committed to holding Limerick rates constant for at least three years,<sup>8</sup> this will necessitate other customers of Aqua to subsidize this shortfall. Such subsidization is entirely unwarranted and causes financial harm to current Aqua customers. This harm is contrary to the public interest and warrants the rejection of this acquisition by the Commission. As noted by I&E Witness Apetoh, per the Company's rate stabilization plan, the Company is not projecting an

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<sup>6</sup> *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984) (emphasis added).

<sup>7</sup> I&E Statement No. 1, p. 8 *referencing* I&E Exhibit No. 1, Sch. No. 1, Column C, Line 12.

<sup>8</sup> Aqua St. No. 1, p. 8.



increase for the Limerick system until 2021.<sup>9</sup> In that year, the Company projects to double the revenue from this system. It must be assumed that Aqua will do this by doubling Limerick's rates as they have indicated they will. However, even when the rates for Limerick are doubled, the existing Aqua customers will still bear the burden of a \$3 million revenue shortfall.<sup>10</sup>

Furthermore, the Commission must take into account that Section 1329 encourages the acquisition of mostly depreciated or contributed municipal systems whose value at depreciated original cost as dictated by 66 Pa. C.S. § 1311(b) of the Code, could result in financial hardship for such municipalities. The Commission's *Final Implementation Order*, states:

[t]hroughout the Commonwealth, there are a number of water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to an investor-owned public utility or entity can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. However, current law dictated by 66 Pa. C.S. § 1311(b) of the Code relating to the valuation of utility property discourages these acquisitions because the value of the property is defined as the original cost of construction less accumulated depreciation rather than the acquisition cost. **Systems that are greatly depreciated or that were constructed using grants or contributions in aid of construction could have valuations so low that sales of the systems would be less advantageous or could cause financial hardships to the municipal corporations and authorities.**

To remedy this situation, Section 1329 establishes an alternative process for valuating certain water or wastewater systems for ratemaking purposes. Section 1329 provides a

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<sup>9</sup> I&E St. No. 1, p. 9.

<sup>10</sup> I&E St. No. 1, p. 10.

process to determine the fair market value of a water or wastewater system of a municipality or authority that is to be acquired by a public utility or entity.<sup>11</sup>

This is important because Aqua has committed existing ratepayers to subsidize a financially well positioned, well-functioning municipal system that Aqua wants to purchase at approximately 63%<sup>12</sup> more than the net book value of the system. Additionally, Aqua anticipates spending \$8.3 million on capital improvements to Limerick over ten years.<sup>13</sup> As noted above, and in the I&E Main Brief, this is not a system that needs to be acquired by a larger utility. It appears the system is well run and financially stable. There are no Department of Environmental Protection violations presented as evidence that need to be addressed. As such, it is imprudent to allow Aqua to acquire this system at the expense of its existing ratepayers, especially given that Limerick appears to have the means to operate successfully without Aqua's intervention. Moreover, Aqua is projecting to approximately double Limerick customer's rates to \$70 per month in the future.<sup>14</sup> Existing Aqua customers, Limerick customers, and even Aqua itself will not realize any immediate benefit from this acquisition. The only real beneficiary in this acquisition is Limerick Township. Because the harm to Aqua and its existing ratepayers is substantial, I&E continues to recommend this Application be rejected.

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<sup>11</sup> *Final Implementation Order*, M-2016-2543193, p. 2 (Order entered October 27, 2016) (emphasis added).

<sup>12</sup> OCA St. 1, p. 3.

<sup>13</sup> OCA MB, p. 53.

<sup>14</sup> Aqua St. No. 1, p. 14.

Aqua has failed to show any cost reductions or efficiencies that will result from this acquisition and has not provided any information that shows that it is able to operate, maintain and make improvements to the Limerick system at a lower cost than Limerick itself could. Aqua's vague assertions and generalized benefits with no timeframe or assurance that they will actually occur are simply not a showing of affirmative public benefits.

In its public interest analysis, the Commission should consider the benefits and **detriments** of the transaction "with respect to the impact on all affected parties"<sup>15</sup> including existing customers. In this case, while Aqua's application fails to identify affirmative benefits for existing customers under the transaction, there are identifiable detriments which have been outlined above.

While the Commission may have accepted Aqua's vague assertions of potential benefits long into the future in the *New Garden* proceeding, it simply must not do so in this proceeding. In fact, in the *New Garden* proceeding, the Commission identified only three public benefits: 1) regionalization and economics of scale, 2) Aqua's status as a larger organization, and 3) the New Garden customers continuing to receive the same quality and quantity of service.<sup>16</sup> While I&E may disagree that these three items are sufficient to show the requisite affirmative public benefits, the fact remains that these three items will be present to some degree in the Limerick acquisition if approved by the

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<sup>15</sup> *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984) (emphasis added).

<sup>16</sup> *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 New Garden Township and the New Garden Township Sewer System*, Docket No. A-2016-2580061 (Order Entered June 29, 2017).

Commission. However, as noted above, they must be viewed in tandem with the identified detriments to the parties to this acquisition. These detriments include the fact that Aqua's existing ratepayers will be required to subsidize the Limerick customers. Further, the Limerick customers, after the three-year rate freeze, will be expected to pay substantially higher rates. Limerick is not a system that needs to be acquired in order to prevent it from facing financial hardship. Further, the Company's vague generalizations of what might occur in some unidentified point in the future do not satisfy the showing of affirmative public benefits. The Commission cannot rely on speculation about potential growth or operational efficiencies particularly when the identified detriments are great.

**2. The ALJ erred by finding that Aqua could file the requisite Section 507 approvals within 20 days of the entry of the Commission's Order in this proceeding.**

Section 507 relates to contracts between public utilities and municipalities. It requires that any such contract or agreement between a certificated utility and a municipality, except for those contracts to furnish service at regularly filed tariff rates, be filed with the Commission at least 30 days before the effective date of the contract. Upon notice to both the municipality and utility, the Commission may, prior to the effective date of the contract, institute proceedings to determine the reasonableness, legality, or any other matter affective the validity of the contract or agreement. The Commission approves these filings by issuing a certificate of filing. Section 507 notes that "...such

contract or agreement shall not be effective until the commission grants its approval thereof.”<sup>17</sup>

In this proceeding, Aqua failed to request any such approvals. In response to the identification of this flaw, Aqua simply stated its Application contained a catch-all clause requesting any other approvals, certificates, registrations and relief that the Commission deemed necessary. Aqua’s approach is problematic. First and foremost, the burden falls squarely on Aqua as the party seeking affirmative relief from the Commission to provide substantial evidence in support of its Application. By using this catch all phrase and not specifically requesting all the requisite approvals, Aqua has shifted its burden to the Commission to ferret out which contracts need Section 507 approvals. Aqua should be expected to appropriately seek the needed approvals in a transaction of this nature and not pass this requirement to the Commission.

In an effort to remedy this situation, the ALJ directed Aqua to file the Asset Purchase Agreement (“APA”) and all other relevant municipal agreements it is assuming with the Commission within 20 days of the entry of the Commission’s final Order in this proceeding.<sup>18</sup> However, this approach is ineffective as well. At this juncture, the Parties to this proceeding have not even been apprised of which municipal agreements Aqua is seeking approval of under Section 507. As noted above, the Commission may, prior to the effective date of the contract, institute proceedings to determine the reasonableness, legality, or any other matter affective the validity of the contract or agreement. However,

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<sup>17</sup> 66 Pa. C.S. §507.

<sup>18</sup> RD, p. 50.

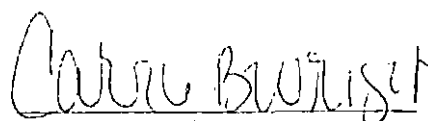
the Commission and Parties will be deprived of these opportunities if the APA and municipal contracts are not filed until 20 days after the final Commission Order in this proceeding.

I&E continues to maintain that Aqua's failure to seek the necessary approvals is a fatal flaw in its Application. As noted above, Aqua simply cannot be allowed to pass its burden on to the Commission. As a large investor owned utility, the Commission must be able to rely on Aqua to ask for the approvals required to close on this transaction. It is improper and burdensome for Aqua to rely on the Application's catch all provision and require the Commission to rummage through its Application to identify the necessary approvals on its own. Further, allowing Aqua to wait until this late in the proceeding to attempt to correct this error deprives the other Parties of their due process rights. Therefore, Aqua's Application must be rejected based on the fact that Aqua failed to request all the required approvals in order to close on the acquisition

### III. CONCLUSION

The Bureau of Investigation and Enforcement respectfully requests that Aqua's Application be denied for the reasons stated herein. I&E respectfully requests that the Commission reject the ALJ's recommendation to approve the acquisition as it failed to demonstrate affirmative public benefits and meet the standards for approval under Section 1102 of the Public Utility Code. Further, Aqua's failure to request the proper approvals under Section 507 of the Public Utility Code is a fatal flaw that cannot be remedied in the manner recommended by the ALJ.

Respectfully submitted,



Carrie B. Wright

Prosecutor

PA Attorney I.D. #208185

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Wastewater System Assets of Limerick :  
Township :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated October 3 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

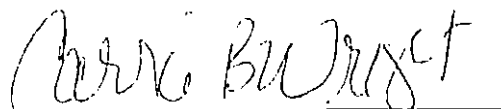
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