

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 2, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Aqua Pennsylvania Wastewater, Inc.
pursuant to Sections 507, 1102 and 1329 of the Public
Utility Code for Approval of its Acquisition of the
Wastewater System Assets of Lower Makefield Township
Docket No. A-2021-3024267

Dear Secretary Chiavetta:

Attached for electronic filing 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/ Harrison W. Breitman
Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Enclosures:

cc: Office of Administrative Law Judge (**email only**)
Bureau of Technical Utility Services (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*311874

CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania Wastewater, :
Inc. pursuant to Sections 507, 1102 and 1329 :
of the Public Utility Code for Approval of its : Docket No. A-2021-3024267
Acquisition of the Wastewater System Assets :
of Lower Makefield 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 2nd day of July 2021.

SERVICE BY E-MAIL ONLY

Erika L. McLain, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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Dated: July 2, 2021
*311881

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2021-3024267
Approval of its Acquisition of the Wastewater :
System Assets of Lower Makefield Township :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application proceeding 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, filed on May 14, 2021, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) requests that the Commission: (1) approve the acquisition of the wastewater system assets of Lower Makefield Township (LMT), Bucks County; (2) approve the right of Aqua to provide wastewater service in the requested territory; and (3) include, in its Order approving the acquisition, the ratemaking rate base of the Assets as determined under Section 1329(c)(2) of the Public Utility Code. Application at ¶ 3. Aqua also requests approval of the Asset Purchase Agreement (APA) dated September 17, 2020 as well as other municipal agreements, pursuant to Section 507 of the Public Utility Code, and requests that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. Application at ¶ 5. LMT owns a sanitary wastewater collection system operated by

the Municipal Sewer Authority of the Township of Lower Makefield, which provides direct wastewater service to 11,151 customers in Lower Makefield Township. Application at ¶ 8; Aqua St. 2 at 10. LMT does not own a wastewater treatment plant. Wastewater treatment is mainly provided by the Municipal Authority of the Borough of Morrisville and also by Yardley Borough Sewer Authority. Application at ¶ 15. All of LMT's ratepayers are charged either a metered rate or a flat rate (for customers not metered for water consumption, i.e. on private wells). Application at ¶ 34.

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 regulations.

Specifically, the OCA avers as follows:

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

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 a finding 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. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52 Pa. Code Section 53.45(b)(1-4) and the order entered in McCloskey v. Pa. P.U.C., 1624 CD 2017 (Oct. 11, 2018), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193. The OCA requests that, once the Commission issues a Secretarial Letter indicating final acceptance of the application, a telephonic public input hearing be scheduled in this matter. The OCA also requests that public input hearings be held no later than approximately four to six weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearings will ensure that both the acquiring and acquired customers have a reasonable opportunity to be heard.

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market value or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This 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 \$53,000,000 per the Asset Purchase Agreement of September 17, 2020. Application, Exh. B at Article III. The original cost of the assets, as determined by the engineer's report, is \$32,003,924, and the original cost less depreciation is \$19,808,274. Application at ¶ 19.

8. Aqua's Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) was \$55,505,000. Aqua St. 4 at 13. The LMT UVE appraisal conducted by Associated Utility Services, Inc. (AUS) was \$54,430,591. Aqua St. 5 at 3. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$54,967,796. Aqua St. 1 at 21. The valuation experts were paid \$25,742 to date for AUS and \$32,560 for Gannett Fleming for the Fair Market Value Appraisals. Application, Exh. S1-S2. Aqua estimates that it will incur transaction and closing costs of \$320,000. Aqua St. 1 at 22.

9. Aqua and LMT also agreed that base rates shall not be increased until after the second anniversary of the closing date. See, Application, Exh. B at Section 7.03; see also Application at ¶ 33. Sewer rates for metered residential customers in private dwellings are currently set at a minimum charge of \$160.48 per quarter and a rate per 1,000 gallons as follows: First 10,000 Gallons \$4.73; Second 10,000 Gallons \$4.60; Third 10,000 Gallons \$4.81; Fourth 10,000 Gallons \$5.29; Fifth 10,000 Gallons \$5.90; Excess over 50,000 Gallons \$6.77. Application at ¶ 34. For other metered residential customers

including twin-homes, apartments, townhomes, duplexes, and condominiums, with no more than two dwelling units, the same usage rates apply and the minimum charge is \$269.22 per quarter. Application at ¶ 34. Unmetered residential customers are currently charged \$269.22 per quarter. Aqua will convert the quarterly rates to monthly billing after closing.¹ Application at ¶ 33.

10. 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.

a. 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.

b. Aqua proposes to charge the following rates to residential customers in the acquired service territory (the charges reflect the proposed change to monthly billing):

¹ This applies to customers who are also Aqua water customers. For those customers who receive water service from the Municipal Authority of the Borough of Morrisville, Aqua will continue with quarterly billing after closing.

QUARTERLY SERVICE & CONSUMPTION CHARGES (\$)

A. Residential

Minimum Charge per quarter :

Per Dwelling Unit (private dwelling)	\$160.48
Exception: Residential Building with 1 meter meter and no more than 2 dwelling units	\$269.22

Consumption Charge :

First 10,000 gallons per quarter	\$4.37	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.60	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.81	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.29	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.90	per 1,000 gallons
Over 50,000 gallons per quarter	\$6.77	per 1,000 gallons

Unmetered (This charge is a flat fee for customers not metered for water consumption.)

Unmetered Charge	\$269.22
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Application, Exh. G. The OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code.

c. Information is provided regarding the estimated costs of planned investment in the system (\$9.76 million over 10 years). Aqua St. 2 at 9. The impact that the costs of the acquisition, particularly the proposed ratemaking rate base (\$53.0 million), will have on the rates of existing and acquired customers must be determined to assess the benefits and detriments of the acquisition.

Aqua's notice to the LMT customers provides an estimate of the potential impact on LMT customers' rates if the entire cost of the acquisition, including the ratemaking rate base, is charged to Lower Makefield customers at the time of the next base rate case, i.e. their existing rates increased to cover the entire revenue deficiency created by the \$53 million proposed ratemaking rate base. See Application, Exh. I1; see also Aqua St. 1 at App. A. Aqua's notice to its existing wastewater customers informs Aqua's wastewater customers of a potential scenario in which Aqua's wastewater rates would reflect 50% of the revenue deficiency. See Application, Exh. I2; see also Aqua St. 1 at App A. Aqua's notice to its existing water customers informs their water customers of a potential scenario in which

Aqua’s water rates would reflect 25% of the total cost of ownership of LMT at the \$53 million proposed ratemaking rate base. Id. Based on those assumptions, Aqua calculates that rates charged to residential customers would increase as follows, after its next base rate case:

Residential Customers	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
LMT	4,690 gal/month	\$20.94	28.17%
Aqua Wastewater	3,020 gal/month	\$2.61	3.82%
Aqua Water	4,080 gal/month	\$0.48	0.74%

d. As part of the Application, Aqua and LMT have agreed that LMT rates are not to be increased until after the second anniversary of the closing date. Application at ¶ 33. Moreover, Aqua claims that the two-year rate freeze is not a rate stabilization plan. Application at ¶ 33, note 10; Aqua St. 1 at 12. The OCA will examine whether Aqua’s agreement with LMT that rates not be increased until after the second anniversary of the closing date constitutes a rate stabilization plan under Section 1329(g) of the Public Utility Code.

11. The OCA submits that additional information is necessary to determine if the proposed rates, two-year rate freeze, and Aqua’s request for an approved ratemaking rate base of \$53,000,000 for the LMT acquisition, are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

12. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua’s existing customers and the acquired 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, including a telephonic public input hearing for the buyer and seller's customers held four to six weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,

/s/ Erin L. Gannon

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Dated: July 2, 2021
*310318

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 Interim Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania Wastewater, Inc. (Aqua) of the Township of Lower Makefield (LMT) wastewater assets.

The objective of the Interim Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and the LMT customers. The Interim 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 Interim Acting Consumer Advocate will ensure that the ratepayers receive proper notice in accordance with the Public Utility Code and public policy. The Interim Acting Consumer Advocate will investigate the proposed acquisition to determine if there are substantial affirmative public benefits and request the Public Utility Commission to order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua serves approximately 45,000 wastewater customer accounts covering various Counties throughout Pennsylvania in portions of 15 counties in Pennsylvania. Aqua also serves approximately 464,000 water customers in portions of 32 counties. Lower Makefield Township provides direct wastewater service to 11,151 customers, in Montgomery County, Pennsylvania.