



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 8, 2021

Via Electronic Filing

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

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

I&E Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's (I&E) **Prehearing Memorandum** for the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Erika L. McLain'.

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 320526
(717) 783-6170
ermclain@pa.gov

ELM/jfm
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

**PREHEARING MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

In accordance with the Prehearing Conference Order dated August 11, 2021, the Bureau of Investigation and Enforcement (“I&E”) hereby submits this Prehearing Memorandum. The I&E prosecutor assigned to this proceeding is Erika L. McLain. Ms. McLain may be contacted as follows:

By Mail: Erika L. McLain
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Fl.
Harrisburg, PA 17120

By E-mail: ermclain@pa.gov

Telephone: (717) 783-6170

I. BACKGROUND

On May 14, 2021, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) filed with the Pennsylvania Public Utility Commission (“Commission”) its Application pursuant to Sections 1102, 1329, and 507 of the Public Utility Code (“Code”), for (1) approval of the acquisition by Aqua of the wastewater system assets of Lower Makefield Township (“Lower Makefield” or “Township”) situated within Bucks County, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the areas served by the Lower Makefield wastewater system; (3) an order approving the acquisition that includes the ratemaking rate base of the Lower Makefield wastewater system assets pursuant to Section 1329(c)(2) of the Code and request for Approval of Contracts; and (4) approval of the Asset Purchase Agreement, between Aqua and Lower Makefield, pursuant to Section 507 of the Code.

By Secretarial Letter dated June 25, 2021, the Commission indicated that the Application would be accepted for filing only on a conditional basis. The Secretarial Letter, among other things, directed Aqua to ensure notice be provided to all current Aqua and Lower Makefield Township wastewater customers.

On June 16, 2021, I&E filed its Notice of Appearance in this case. On June 9, 2021, the Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement. The Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement on July 2, 2021. On June 29, 2021, Lower Makefield Township filed a Petition to Intervene. On August 4, 2021, Aqua served the Commission’s Secretary with

notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of June 25, 2021; therefore, Aqua requested that its Application be accepted for filing. By way of a Secretarial Letter of August 5, 2021, the Commission informed Aqua that its Application was accepted for filing. On August 21, 2021 the Commission published notice of Aqua's Application in the Pennsylvania Bulletin, and it established a protest deadline of September 7, 2021. Thereafter, Aqua's Application was assigned to the Office of Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission's consideration.

A telephonic Prehearing Conference is now scheduled for Thursday, September 9, 2020, at 10:00 a.m., before ALJ Jeffrey A. Watson ("ALJ Watson"). In accordance with the Prehearing Conference Order issued by the ALJ on August 11, 2021, I&E now respectfully submits this prehearing memorandum.

II. ISSUES

Based upon a preliminary review of the filing, I&E has identified the following areas of inquiry, representing a listing of potential issues at this time. However, I&E reserves the right to address such other issues when those issues arise:

1. Errors and omissions in the Fair Market Appraisal done by Gannett Fleming Valuation and Rate Consultants;
2. Errors and omissions in the Fair Market Appraisal done by AUS Consultants, Inc.;
3. Cost of Service Study;
4. Comparison of Rate Base per Customer;

5. Benefits and detriments of the acquisition;
6. Whether the transaction is in the public interest under 66 Pa. C.S. § 1102 of the Public Utility Code; and
7. Evaluation of Aqua's claimed rate base.

I&E notes that this listing of issues is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway.

Accordingly, I&E necessarily reserves the right to supplement its issue list, to remove issues from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full record in this case. Additionally, most of the issues raised by I&E will be supported by the Direct Testimony of I&E witnesses. If there are issues of Commission policy or legal interpretation that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony, I&E reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed in Brief.

III. WITNESSES

It is currently expected that I&E may call the following witnesses without being limited thereto:

- DC Patel, Fixed Utility Financial Analyst
- Ethan H. Cline, Fixed Utility Valuation Engineer

The I&E witnesses may be contacted through the contact information listed above for Ms. McLain. I&E notes that this listing of witnesses is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still

underway. Accordingly, I&E necessarily reserves the right to supplement its witness list, and to remove witnesses from this list, as necessary to facilitate the development of a full record in this case. The ALJ and all active parties will be notified of any amendments to the I&E witness list.

IV. SCHEDULE

I&E proposes the following litigation schedule:

Other Parties Direct Testimony	September 10, 2021
Rebuttal Testimony	September 17, 2021
Surrebuttal Testimony	September 24, 2021
Rejoinder Outline	September 28, 2021
Evidentiary Hearings	September 29 & 30, 2021

V. DISCOVERY

The Prehearing Order dated August 11, 2021 set forth discovery modifications, these modifications are acceptable to I&E.

VI. SERVICE OF DOCUMENTS

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony and briefs during the closure of Commission offices, and consistent with Paragraph 8 of the Commission's March 20, 2020 Emergency Order,¹ I&E will both only serve and accept electronic delivery of documents. Upon re-opening of Commission offices, and only on a forward-moving basis from that point onward, I&E requests parties

¹ Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements.*

provide a follow-up hard copy by regular first-class mail in addition to electronic delivery.

VII. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties in an attempt to reach a resolution of any or all issues.

Respectfully submitted,



Erika L. McLain

Prosecutor

PA Attorney ID No. 320526

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6170
ermclain@pa.gov

Dated: September 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated September 8, 2021, in the manner and upon the person listed below.

Served via Electronic Mail Only

Hon. Jeffrey A. Watson
Nick Miskanic, Legal Assistant
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
301 Fifth Avenue, Suite 220
Pittsburgh, PA 15222
jeffwatson@pa.gov
nmiskanic@pa.gov

Alexander R. Stahl, Regulatory Counsel
Aqua Pennsylvania Wastewater, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street
Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

Erin K. Fure
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101
efure@pa.gov

Thomas Wyatt, Esq.
Matthew Olesh, Esq.
Sydney N. Melillo, Esq.
Obermayer Rebmann Maxwell & Hoppel
Center Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102
thomas.wyatt@obermayer.com
matthew.olesh@obermayer.com
sydney.melillo@obermayer.com

Harrison W. Breitman, Esq.
Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101
hbreitman@paoca.org
egannon@paoca.org

Ralph C. Smith
Larkin & Associates, PLLC
15728 Farmington Road
Livonia, MI 48154
ocaaquamakefield@paoca.org

A handwritten signature in cursive script that reads "Erika L. McLain". The signature is written in black ink and is positioned above a horizontal line.

Erika L. McLain
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 320526