

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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September 8, 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 Prehearing Memorandum 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](mailto:HBreitman@paoca.org)

Enclosures:

cc: The Honorable Jeffrey A. Watson (**email only**)  
Certificate of Service

\*317029

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 Prehearing Memorandum, 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 8<sup>th</sup> day of September 2021.

**SERVICE BY E-MAIL ONLY**

Erika L. McLain, Esquire  
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No email listed on protest

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Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: September 8, 2021  
\*315723

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the Prehearing Order issued by Administrative Law Judge Jeffrey A. Watson on August 11, 2021, the Office of Consumer Advocate (OCA) provides the following:

**I. INTRODUCTION**

On March 14, 2021, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of Lower Makefield Township (LMT) wastewater collection system, the right of Aqua to provide wastewater service in the areas served by LMT, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated June 25, 2021, the Commission conditionally accepted the Application. The Commission required individual notice to be provided to Aqua's existing water and wastewater customers, that Aqua ensure concurrent notice is provided

to all current LMT wastewater customers, and that newspaper notice in the LMT area be provided. Upon completion, Aqua was directed to file a verification that the notice has been provided.

On June 9, 2021, the Office of Small Business Advocate filed a Notice of Intervention, and Public Statement. On June 16, 2021, the Commission's Bureau of Investigation and Enforcement filed a Notice of Appearance. On June 29, 2021, Lower Makefield Township filed a Petition to Intervene. The OCA filed a Protest and Public Statement on July 2, 2021.

On June 30, 2021, Aqua filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the June 25, 2021 Secretarial Letter. By Secretarial Letter dated August 4, 2021, the Commission informed Aqua that it had accepted the Application for filing. A Prehearing Conference Order was issued on August 11, 2021 directing the parties to submit a prehearing conference memorandum by 1:00 p.m. on September 8, 2021.

## **II. SERVICE ON THE OCA**

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Erin L. Gannon, and by Assistant Consumer Advocate Harrison W. Breitman. At this time, as a result of the COVID-19 pandemic, the OCA will be providing service via e-mail and does not request mail service from any party. All documents should be served on the OCA as follows:

Erin L. Gannon  
Senior Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street, Forum Place 5th Floor  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
Fax: (717) 783-7152  
Email: OCAAquaMakefield@paoca.org

## **III. DISCOVERY**

Discovery modifications have been addressed in the ALJ's Prehearing Order due to the expedited schedule under Section 1329, which requires a Commission Order on the Section 1329

request no later than six months after the filing and final acceptance of such application. 66 Pa. C. S. § 1329. The OCA supports these modifications. The OCA has served four sets of discovery to date.

#### **IV. WITNESSES**

The OCA intends to present the testimony of Ralph Smith (Financial, Ratemaking, Appraisal and Policy Issues). Mr. Smith's contact information is as follows:

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

To the extent necessary, the OCA's witness will present testimony regarding the impact of the proposed transaction on Aqua's existing customers and the acquired customers, and other financial, technical and ratemaking issues presented in this proceeding.

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify Your Honor and all parties of record immediately.

#### **V. ISSUES**

The OCA is participating in this proceeding to ensure the interests of Aqua's existing customers are protected. Based upon a preliminary analysis of the Application, the OCA has compiled a list of issues which it anticipates will be included in its investigation. It is anticipated that other issues may arise and may be pursued once all of the answers to the OCA's interrogatories have been received and analyzed.

The issues set forth below will be analyzed and presented as appropriate by the OCA with

the assistance of its expert witnesses:

(1) Provision of Safe, Adequate and Reasonable Service at Just and Reasonable Rates:

The Asset Purchase Agreement provides that Aqua will pay \$33,000,000 for Lower Makefield Township's wastewater collection system assets which have a depreciated original cost, as defined in Section 1329, of \$19,808,274. Aqua seeks to have the purchase price approved for inclusion in rate base under Section 1329, as part of this proceeding. The OCA will examine each appraisal and the requested rate base determination.

(2) Substantial Affirmative Benefits: The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua's existing customers.

(3) Conditions: The OCA will examine whether any conditions should be imposed upon the proposed transfer to ensure that customers are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations.

The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

## **VI. PUBLIC INPUT HEARINGS**

In *McCloskey v. Pa. P.U.C.*, the Commonwealth Court concluded that, in an Application proceeding under Section 1329, individual customer notice of the proposed sale has to be given to all ratepayers as well as an opportunity for them to participate in the proceeding. 195 A.3d 1055 (Pa. Commw. 2018) (*New Garden*). As such, the OCA respectfully requests that the Commission conduct one telephonic public input hearings for the Aqua and LMT customers impacted by the acquisition. The OCA proposes the evening of September 28<sup>th</sup> for a telephonic public input

hearing. The OCA will work with the parties, ALJ Watson, and the Commission's scheduling staff to reach a mutually agreeable hearing date.

## **VII. SCHEDULE**

The OCA proposes the following schedule:

Other Parties Direct Testimony	Friday, September 10, 2021
Rebuttal Testimony	Friday, September 17, 2021
Surrebuttal Testimony	Friday, September 24, 2021
Rejoinder Outline	Tuesday, September 28, 2021
Evidentiary Hearings	Wednesday, September 29, 2021 and Thursday, September 30, 2021
Main Briefs	Friday, October 8, 2021
<b>Reply Briefs</b>	<b>Monday, October 18, 2021</b>
<b>Recommended Decision</b>	<b>Monday, November 22, 2021</b>
<b>Public Meeting</b>	<b>Thursday, January 13, 2021</b>

## VIII. SETTLEMENT

The OCA is willing to engage in settlement discussions with all parties.

Respectfully submitted,

/s/ Harrison W. Breitman  
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DATED: September 8, 2021  
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