**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al*. :

:

v. : R-2021-3027385, *et al.*

:

Aqua Pennsylvania, Inc. :

Pennsylvania Public Utility Commission, *et al*. :

:

v. : R-2021-3027386, *et al*.

:

Aqua Pennsylvania Wastewater, Inc. :

**PREHEARING ORDER**

On August 20, 2021, Aqua Pennsylvania,- Inc. (Aqua), filed Tariff Water-Pa P.U.C. No. 3 (Tariff Water No. 3) to become effective October 19, 2021. Tariff Water No. 3 would increase Aqua’s total annual operating revenues for water service by approximately $86,118,612, or 16.9%. Also on August 20, 2021, Aqua Pennsylvania Wastewater, Inc., filed Tariff Sewer-Pa P.U.C. No. 3 (Tariff Sewer No. 3) to become effective October 19, 2021. Tariff Sewer No. 3 would increase Aqua Pennsylvania Wastewater, Inc’s[[1]](#footnote-1) total annual operating revenues for wastewater service by approximately $11,566,212, or 31.2%.

The Commission’s Bureau of Investigation and Enforcement (BIE) entered its appearance in both the water and wastewater rate filings on September 3, 2021. On September 8, 2021, the Office of Small Business Advocate (OSBA) filed a formal complaints at Docket Nos. C-2021-3028509 (water) and C-2021-3028511 (wastewater). On September 13, 2021, the Office of Consumer Advocate (OCA) filed a formal complaints at Docket Nos. C-2021-3028466 (water) and C-2021-3028467 (wastewater). Additionally, numerous ratepayer complaints have been filed. The Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a petition to intervene on September 20, 2021. Masthope Mountain Community Association filed a petition to intervene and formal complaints on October 5, 2021.

On September 16, 2021, Commissioner Ralph V. Yanora posed ten Directed Questions to be examined by the parties as part of these proceedings.

By order entered on October 7, 2021, the Commission suspended the rate filings until May 19, 2022 and directed an investigation to determine the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the rate filings.

By notice dated October 8, 2021 this matter was assigned to me and scheduled for a prehearing conference on October 15, 2021. A prehearing conference order was served on the parties on October 8, 2021.

The prehearing conference convened as scheduled. Counsel for Aqua, BIE, OCA and OSBA appeared. Additionally counsel representing intervenor CAUSE-PA and complainants Aqua Large Users Group (C-2021-3029089), East Norriton Township (C-2021-3029019), and Masthope Mountain Community Association (C-2021-3028992; C-2021-3028996), appeared and participated. This prehearing order memorializes the matters decided and agreed upon by the parties attending the conference.

Consolidation

The complaints of the statutory advocates and other complaining parties are consolidated with their respective dockets. Any additional complaints filed following the October 15, 2021 Prehearing Conference are deemed consolidated without further order.

Aqua requested that the Water and Wastewater filing dockets be consolidated for hearing and decision. No party objected. The motion to consolidate is granted.

Petition to Intervene

The petition to intervene of CAUSE-PA is granted. Masthope Mountain Community Association has elected to proceed as a complainant, at Dockets C-2021-3028992 and C-2021-3028996, and shall promptly file a withdrawal of the petition to intervene.

Service List

A combined service list of the parties for the water and wastewater proceedings is attached to this order. The fully active parties of record include the complainants who appeared and participated in the October 15, 2021 prehearing conference, as noted above.

Any party that did not appear at the October 15, 2021 Prehearing Conference will be treated as an inactive participant to this proceeding. Inactive participants will receive the presiding officer’s written orders, notices of hearings and copies of any Commission decisions and orders. Inactive participants will not participate in discovery, testify at the evidentiary hearing, or cross-examine witnesses. Inactive participants will not receive copies of the hearing exhibits or briefs filed by the active participants. Any participant entering their appearance after the October 15, 2021 prehearing conference must designate whether they want to be treated as an active participant in writing to the presiding officer and the current participants of record; otherwise, said party will be treated as an inactive participant.

Litigation Schedule

|  |  |
| --- | --- |
| Date | Event |
| Week of November 8, 2021 | Public Input Hearings |
| November 10, 2021 | Direct Testimony of Non-Company Parties (except as noted below) |
| November 12, 2021 **by noon** (the Non-Company Parties shall serve copies of direct testimony informally on November 11, 2021) | Direct Testimony of Non-Company Parties on the subjects of accounting and regulatory policy, rate base, revenues, expenses, and taxes. |
| November 19, 2021 | Supplement Direct Testimony addressing public input hearing testimony |
| December 2, 2021 | Service of written rebuttal testimony |
| December 14, 2021 | Service of written surrebuttal testimony |
| December 17, 2021 **by noon** | Written rejoinder outline and witness matrix listing the parties intending to cross-examine each witness and the extent of any cross-examination |
| December 20-22, 2021 | Telephonic technical evidentiary hearings |
| January 11, 2022 | Filing and service of main briefs |
| January 21, 2022 | Filing and service of reply briefs or submission of joint settlement petition executed by representatives of parties thereto, together with all parties’ statements in support of joint petition/settlement |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code § 5.412. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **The parties are to agree on a list of common acronyms and use them consistently in all written testimony and briefs.** The parties have further agreed, in lieu of discovery requests, to provide each party with the electronic workpapers, cited studies and other documents relied on by the witness or provide the parties with the same in workable electronic format within two business days of the testimony being served.

The above-stated dates are in-hand dates for service on the parties and the presiding Administrative Law Judge (ALJ). The parties at the prehearing conference and the presiding ALJ agree to accept electronic service of such material,[[2]](#footnote-2) so long as the subject email is received by the date due. **Until further notice, there is no requirement to follow electronic service by sending a hard copy of the same material via first-class mail postage prepaid to the parties designated on the Service List or by express mail service.** The email addresses of the presiding ALJ: [malong@pa.gov](mailto:malong@pa.gov).

Hearings will begin promptly each day. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

Public Input Hearings

The parties have agreed that there is sufficient public interest to convene public input hearings. For the health and safety of all participants in regard to Covid-19, these hearings will be conducted by telephone.

Public input hearings shall be held on **November 8, 2021 at 6:00 p.m.; November 9, and November 10, at 1:00 p.m. and 6:00 p.m. and November 12, 2021 at 1:00 p.m.** Aqua is hereby ordered to publish notice of the date, time and registration instructions for the public input hearings in newspapers of general circulation in Aqua’s service territory, weekly, for two consecutive weeks, beginning with **Sunday, October 24, 2021,** if possible, in consideration of necessary lead time for publication. Aqua is further ordered to file proof of publication with the Commission’s Secretary’s Bureau. Aqua is further ordered to publish notice of the public input hearings on its website, social media and through any other electronic means available.

Issues

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process develops.

## Discovery

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the presiding ALJs will contact the parties and direct them to pursue informal discovery.

The parties must endeavor to complete discovery upon the filing of surrebuttal testimony absent extraordinary circumstances. Motions to compel discovery filed after December 14, 2021 may not be ruled upon in advance of the evidentiary hearings.

Aqua and OCA proposed modification of the Commission’s procedures for formal discovery. No other party objected. The following modified discovery procedure applies to this case:

(a) Answers to written interrogatories shall be served in-hand within ten (10) calendar days of service.[[3]](#footnote-3)

(b) Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) calendar days.

(c) Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.

(d) Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories, and unresolved objections shall be served in writing within five (5) days of service of the interrogatories. Objections to interrogatories served on a Friday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served in writing within six (6) days of service of the interrogatories.

(e) Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.

(f) Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

(g) Discovery and discovery-related pleadings propounded after 12:00 noon on a Friday or after 12:00 noon on any business day immediately preceding a state holiday will be deemed served on the next business day for purposes of determining the due date of the responses and responsive pleadings.

All discovery due dates shall be “in-hand” and electronic or fax service on the due date will satisfy the “in-hand” requirement.

Pre-Served Testimony and Exhibits

No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness.

Confidential Security Information (CSI) as defined by 35 P.S. § 2141 *et seq.* should not be transmitted by email or other electronic means. The parties are to avoid introducing CSI into the record and should develop alternative means, such as joint stipulations or redaction when proposing testimony or exhibits. If there is no other alternative to establish a material fact other than by CSI, the parties are to contact the presiding ALJ immediately and in advance of the evidentiary hearing.

Settlement and Stipulations

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. Submission of a fully executed joint settlement petition, together with all parties’ statements in support of the joint petition/settlement, must be filed with the Secretary for the Commission and received in-hand by the presiding ALJ no later than the close of business on **January 21, 2022**.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

Cross-Examination

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76; 5.243.

Briefs and Reply Briefs

The appropriate parties shall include an appendix which answers each of the directed questions posed by Commissioner Ralph V. Yanora by letter dated September 16, 2021. Each question shall be set forth in question and answer format. Answers may be a citation to the testimony or exhibit where the answer is clearly set forth.

The parties must comply with 52 Pa.Code §§ 5.501, et seq., regarding the preparation and filing of briefs. Briefs must include proposed conclusions of law and proposed ordering paragraphs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit to the presiding ALJ one copy by email. The electronic version of a brief must be prepared in Microsoft Office Word format. If in doubt, please email the presiding ALJ for clarification.

IMPORTANT NOTICE: All briefs must conform to the “Instructions for Briefs” attached hereto as Appendix A and made a part of this order. Also, Rate Case Tables will be electronically provided to the parties. These Tables must be used by Aqua and all parties in this proceeding. If any party fails to follow these instructions in the smallest detail that party’s position will not be considered, regardless of where the record may support it or the position of any other party to this proceeding. Your anticipated cooperation will be appreciated.

Modification

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: October 19, 2021 /s/

Mary D. Long

Administrative Law Judge

Special Instructions for Briefs and Exceptions

in Major General Rate Increase Proceedings

1. Each brief shall follow the general organization shown in the attached standardized format.

2. Each brief shall contain a table of contents with page references to a summary of argument and to each topic addressed in the argument.

3. Adjustments contained in each brief shall:

a. be based on a specific test year, to be selected before the close of the record;

b. be complete and self contained, include accurate reference to the appropriate record sources, be on a before-income-tax basis (never on a net income or revenue requirement basis) and be on a consistent jurisdictional basis (if record support cannot be located, the adjustment may/will be rejected);

c. be detailed to demonstrate the step-by-step calculation of that adjustment together with appropriate accurate record references (once again, if the record support cannot be located for the necessary steps, the adjustment may/will be rejected);

d. include concomitant rate base, revenue, expense, depreciation expense, and tax (i.e., taxes other, State Income, and federal Income) adjustments set forth, together with the details of their calculation;

e. include within the brief calculations which are the basis for proposed adjustments, but which are incomplete in the record.

4. Tables showing all proposed rate base and income adjustments, organized as shown in the attached Table I and Table II, shall be submitted with each brief which includes such adjustments.

a. The starting point of Table I “Income Summary” shall be the utility’s final pro forma showing at present rates. The ALJ shall specify the starting point to be the most recent update admitted into evidence. The update, admission, and ALJ ruling shall be cited on the table.

b. The effect of deferred or accrued taxes on the various tax adjustments presented in Table II “Summary of Adjustments” shall be indicated by a footnote.

5. The following schedules shall be submitted with each brief.

a. A schedule showing the precise derivation of any adjustment to proposed cash working capital allowance.

i. The schedule describing an adjustment to a Utility’s claim for Cash Working Capital shall separately list (1) adjustments originating from Table II “Summary of Adjustments” and (2) adjustments resulting from the proposed revenue increase. Any effect on deferred and/or accrued taxes shall be shown in a separate column or footnote.

ii. Net Revenue and Expense Lag Days for all Cash Working Capital Adjustments shall be calculated to at least one decimal place.

b. A schedule showing all tax and jurisdictional allocation factors utilized (any deviations from standard or obvious factors should be explained on the schedule on in the brief).

c. A schedule listing, for the party or parties filing the brief, each exhibit or other document admitted into the record, along with the date the document was identified and the date the document was admitted.

6. Rate structure proposals shall be reasonably specific and explicit, shall, as appropriate, refer accurately to record support and shall be summarized at the end of the “Rate Structure” topic heading of each brief.

7. Parties shall, as feasible and appropriate, discuss alternative rate design proposals for overall rate increases at and below the requested increase

8. Regarding the filing of exceptions, the following instructions are provided:

a. Each exception shall be separately identified and, as necessary, discussed.

b. Each exception shall include, before any discussion is provided, the following elements (see examples attached):

i. a reference to the relevant part of the Recommended Decision, at least to the relevant pages;

ii. a reference to related discussions in the excepting party’s brief and, as appropriate, to other briefs; and

iii. a concise statement of the exception.

c. The exceptions shall follow the order of presentation provided in the table of contents to the Recommended Decision.

d. If a party takes exception concerning a topic not included within the Recommended Decision or the table of contents thereto, the appropriate exception shall be included at the end of the appropriate major topic heading (such as “Rate Base” or “Expenses”).

e. If a party seeks to correct computations associated with the Recommended Decision, replacement computations, with source references to briefs or the record, shall be provided.

Standardized Brief Format for

General Rate Increase Proceedings

I. Introduction

II. Summary of Argument

III. Rate Base

A. Fair Value

B. Plant in Service

C. Depreciation Reserve

D. Additions to Rate Base

E. Deductions from Rate Base

F. Conclusion

IV. Revenues

V. Expenses

VI. Taxes

VII. Rate of Return

VIII. Miscellaneous Issue

IX. Rate Structure

A. Cost of Service

B. Revenue Allocation

C. Tariff Structure

D. Summary and Alternatives

X. Conclusion

Note: Appropriate modifications may be made. For instance, a party might add “Affiliated Interest Expenses” as a major topic heading or might brief only rate structure and not use other topic headings. A summary and alternatives should be provided under “Rate Structure” but the “Rate Base” and “Rate Structure” formats shown may be modified, as appropriate. Additional subheadings should be used, as appropriate.

TABLE I

Income Summary

($000)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Pro Forma  Present  Rates | Recommended  Adjustments | Adjusted  Present  Rates | Revenue  Adjustment | Total  Allowable  Revenues |
|  | $ | $ | $ | $ | $ |

Operating Revenues

Deductions:

O&M Expenses

Depreciation

Taxes:

State

Federal

Other

Total Deductions

Net Income Available for Return

Rate Base

Recommended Rate of Return

TABLE II

Summary of Adjustments

($000)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Recommended  Adjustments | Exhibit  Reference | Rate  Base  Effect | Revenue  Effect | Expense  Effect | Depreciation  Effect | Effect  Upon  Taxes -  Other | State  Tax  Effect | Federal  Tax  Effect |
|  |  | $ | $ | $ | $ | $ | $ | $ |

Total Adjustments

Company Rate Base

Recommended Rate Base

Examples of Specific Exceptions

1. Staff excepts to the ALJ’s rejection of the Staff (and OCA) rate case expense adjustment. See R.D., pp. 31-2; Staff brief, pp. 54-5; OCA brief, pp. 98-9. The $128,000 adjustment, based on a filing once every four years and on disallowance of certain expenses, should be accepted.

2. The Company excepts to the adoption of the OCA revenue adjustment. See R.D., pp. 28-30; Company brief, pp. 56-9; Company reply brief, p. 12. This adjustment was based on unreasonable projections of industrial consumption (see OCA brief, p. 84). The Company projection, as modified at Company St. 14, pp. 11-12, should be used.

3. OCA excepts to the ALJ’s failure to address, and accept, its weather adjustment to revenues. See OCA brief, pp. 21-4; OCA reply brief, p. 12.

4. Corrections to calculations underlying salary increases (R.D., p. 41), force reductions (R.D., pp. 48-9) and tax normalization (R.D., pp. 81-2) are offered and explained at Appendix B.

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1. Hereafter, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. are collectively referenced as “Aqua.” [↑](#footnote-ref-1)
2. For parties accepting electronic service, the documents are to be served electronically on the date indicated, by 4:00 p.m. unless otherwise indicated. [↑](#footnote-ref-2)
3. This provision applies to interrogatories filed on or after October 15, 2021. [↑](#footnote-ref-3)