

COMMONWEALTH OF PENNSYLVANIA



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November 29, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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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 Exception in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Jeffrey A. Watson (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*320318

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 Exception, 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 29th day of November 2021.

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Dated: November 29, 2021
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 :

**EXCEPTION
OF THE
OFFICE OF CONSUMER ADVOCATE**

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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 requesting that the Public Utility Commission (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. Aqua also requested 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 requested that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application.

The OCA filed a Protest and Public Statement on July 2, 2021. In testimony, the OCA argued that the average appraisal amount under Section 1329 was overstated and Aqua had failed to meet the legal requirements of Section 1102. The OCA argued that, if affirmative public benefits were found, certain conditions should be imposed on the grant of the certificate of public convenience. The OCA also argued that the Commission should adopt the OCA's proposed adjustments to the appraisals and a recommended rate base of \$51.236 million rather than \$53 million as requested by Aqua. In addition, the OCA's position is that Aqua should record the impact of the tax savings resulting from claimed repairs deductions in a regulatory liability account. A comprehensive procedural history of the case is found in the OCA's Main Brief. OCA M.B. at 1-3.

On November 17, 2021, the Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson. The ALJ agreed with the

majority of the OCA's adjustment to the appraisals. The ALJ recommended approval of Aqua's application and made adjustments to the ratemaking rate base, decreasing it to \$51,236,259.

The OCA files this Exception on the basis that the ALJ erred in rejecting the OCA's recommendation that Aqua be required to account for the impact of the tax savings resulting from claimed repairs deductions in a regulatory liability account that would be addressed in Aqua's next base rate case that includes the acquired LMT system. Adoption of the OCA's position does not impact the ratemaking rate base recommended by ALJ Watson. The OCA's recommendation permits the tax savings to be preserved for review and resolution in a future case.

I. EXCEPTION

OCA Exception No. 1: The ALJ Erred in Denying the OCA's Recommendation that Aqua Be Required to Account for the Impact of the Tax Savings Resulting From Claimed Repairs Deductions in a Regulatory Liability Account that Would be Addressed in Aqua's next base rate case that includes the acquired LMT system. R.D. at 92-97 OCA M.B. at 11-13; OCA R.B. at 15-17.

The ALJ recommended that the Commission deny the OCA's recommendation that if the Commission approves the transaction, the impact on income tax expense from repairs deductions claimed by Aqua for LMT wastewater utility system assets should be recorded in a regulatory liability account and addressed in Aqua's first base rate case in which rates for the acquired LMT wastewater utility customers are addressed. R.D. at 97. The Recommended Decision states as follows:

In the case of a utility seeking Commission authorization to defer and record certain expenses as a regulatory asset, the Commission found that the standard that must be met to obtain Commission authorization is whether, based on Commission precedent, the expense item appears to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery of expenses (Eligible Deferral Item). *See Petition of Pa. Am. Water Co.*, P-2012-2308982 (Opinion and Order entered August 30, 2012). There, the Commission stated that authorizations for deferral accounting are not intended to develop a factual record and are not an assurance of future ratemaking treatment.

R.D. at 96. The Recommended Decision further states that the OCA, as a proponent for deferral accounting must demonstrate that, based on Commission precedent, tax repairs deductions appear to be within the scope of items that the Commission has allowed as an exception to the rule against retroactive ratemaking. R.D. at 96. The ALJ concluded that the OCA has failed to demonstrate that the tax repairs deductions are, or appear to be, substantial. R.D. at 96.

The OCA notes, however, that Aqua asserted in testimony that the size the repairs deductions is not currently known. Aqua St. 1-R at 9-10; OCA St. 1SR at 6. OCA witness Smith testified that repairs deductions can be substantial and result in reducing income tax expense. OCA

St. 1 at 40. Moreover, Aqua did not provide evidence which illustrated that the costs are insubstantial. As discussed extensively in the OCA's Main Brief, as a result of the proposed transaction, Aqua is expected to have federal income tax deductions for repairs for the acquired LMT wastewater system. OCA St. 1 at 40-42; OCA M.B. at 20-22. As such, Aqua can avail itself of tax deductions for repairs even where the accounting treatment results in the repairs costs being capitalized for book purposes.

The OCA does not bear the burden of proof in this proceeding.¹ The fact that Aqua expects the repairs deductions to be relatively small, but is not able to provide evidence to support that expectation, is not a valid reason against the deferred accounting recommendation. See Aqua St. 1-R at 10. Simply put, not requiring such deferred accounting would essentially allow Aqua to keep for its investors all of the income tax savings from repairs deductions for the LMT wastewater utility system from the date of acquisition through the timing of Aqua's next base rate case in which the LMT utility would be included. OCA R.B. at 16; OCA St. 1SR at 6. This would mean that Aqua's ratepayers, including the acquired LMT customers, would not see any reflection of the savings in setting rates in the next rate case that includes the acquired LMT system. Accordingly, OCA witness Smith recommended that Aqua should be required to account for the impact of the tax savings resulting from claimed repairs deductions in a regulatory liability account that would be addressed in Aqua's next base rate case that includes the acquired LMT system. OCA St. 1SR at 7.

The deferred accounting in a regulatory liability account of Aqua's repairs deductions for the acquired LMT system from the date of the acquisition through the test year being used in Aqua's next base rate case will preserve the issue so that it can be addressed in Aqua's next rate

¹ The OCA further notes that it is not possible to determine the exact size of tax repairs deductions that will occur in the future. A deferral account would preserve the issue so that the tax repairs deductions can be addressed in the first base rate case that includes LMT.

case. At this point, the OCA, the other parties, and the Commission can review the actual tax repairs deductions that Aqua receives in the context of a base rate case. The OCA is not requesting that any retroactive ratemaking treatment be given to tax repairs deductions that are currently unknown. Indeed, requiring an accounting of the impact of the tax savings resulting from claimed repairs deductions in a regulatory liability account addresses any concern regarding retroactive ratemaking by preserving the issue so that it could be addressed in Aqua's next base rate case that includes the acquired LMT system. If Aqua believes that the amounts accumulated in the regulatory liability account for the LMT wastewater utility repairs deductions should not be used to offset rate increases in that case, Aqua would have the opportunity to present its reasoning in that future rate case.

Given the size of the proposed transaction and the potential benefits of utilizing tax repairs, requiring Aqua to defer the tax savings for later review is reasonable and appropriate. As such, the OCA respectfully requests that the Commission include OCA witness Smith's recommended condition regarding the treatment of tax repairs deductions as part of its Order in this proceeding.

II. CONCLUSION

For the reasons set forth above and in the OCA's Main and Reply Briefs, the OCA respectfully files these Exceptions to the Recommended Decision of ALJ Watson. The impact on income tax expense from repairs deductions claimed by Aqua for LMT wastewater utility system assets should be recorded in a regulatory liability account and addressed in Aqua's first base rate case in which rates for the acquired LMT wastewater utility customers are addressed.

Respectfully submitted,

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