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December 6, 2021

Via Electronic Filing

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

In re: Docket No. A-2021-3024267

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

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Reply to the Exception of the Office of Consumer Advocate concerning the Recommended Decision of Administrative Law Judge Jeffrey A. Watson. Copies of the Reply to Exception are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
ra-OSA@pa.gov
The Honorable Jeffrey A. Watson, Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esq. (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Jeffrey A. Watson, Presiding

Application of Aqua Pennsylvania : Docket No. A-2021-3024267
Wastewater, Inc., (“Aqua”), under :
Sections 1102 and 1329 of the Pennsylvania :
Public Utility Code, 66 Pa C.S. §§ 1102(a) :
and 1329 (relating to enumeration of acts :
requiring certificate and valuation of :
acquired water and wastewater systems), :
for approval of: (1) the transfer, by sale, of :
substantially all of the wastewater system :
assets, properties and rights of Lower :
Makefield Township related to its :
wastewater collection and conveyance :
system; (2) the right of APW to begin to :
offer or furnish wastewater service to the :
public in Lower Makefield Township, :
Bucks County, Pennsylvania; and (3) the :
use for ratemaking purposes of the lesser :
fair market value or the negotiated :
purchase price of the Lower Makefield :
Township assets related to its wastewater :
collection and conveyance system. :

REPLY OF
AQUA PENNSYLVANIA WASTEWATER, INC.
TO THE EXCEPTION OF THE OFFICE OF CONSUMER ADVOCATE

Thomas T. Niesen, Esquire
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Harrisburg, PA 17101

*Attorneys for
Aqua Pennsylvania Wastewater, Inc.*

DATED: December 6, 2021

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I. INTRODUCTION

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), filed with the Public Utility Commission (“Commission”) on May 14, 2021, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”).

The Application asks the Commission to approve Aqua’s acquisition of the wastewater system assets of Lower Makefield Township (“Lower Makefield” or “Township”) and allow Aqua to begin to provide wastewater service in portions of the Township.

The Application also asks that the Commission include in its order approving the acquisition, a determination that the ratemaking rate base of the assets being acquired by Aqua is \$53,000,000 pursuant to Section 1329(c)(2) of the Code.

The Application, additionally, seeks, to the extent necessary, approval of contracts, including assignment of contracts between Aqua and the Township pursuant to Section 507 of the Code and such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

On October 8, 2021, Aqua, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Lower Makefield filed a Joint Petition for Approval of a Partial Settlement proposing a resolution of all issues with the exception of (1) the determination of ratemaking rate base; and (2) the treatment of income tax savings on repairs deductions.

By Recommended Decision dated November 16, 2021 (“Recommended Decision”), Judge Watson recommended that the Commission approve the Joint Petition without modification.

Concerning the two issues reserved for litigation:

- (1) Judge Watson recommends that the Commission adopt adjustments proposed by the OCA to the fair market value appraisals of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett”) and AUS Consultants, Inc. (“AUS”). The effect of the

adjustments is to reduce the ratemaking rate base for the acquired assets from \$53,000,000 to \$51,236,259.

- (2) As to the treatment of income tax savings on repairs deductions, Judge Watson recommends that the Commission deny the OCA's proposal to record the income tax effect of repairs deductions in a regulatory liability account to be addressed in Aqua's next rate case.

On November 29, 2021, Aqua filed Exceptions to the recommended reduction of ratemaking rate base from \$53,000,000 to \$51,236,259. The OCA filed an Exception to the denial of its proposed recording of the income tax effect of repairs deductions in a regulatory liability account.

Aqua submits the following Reply to the Exception of the OCA.¹

II. REPLY TO OCA EXCEPTION

Reply to OCA Exception No. 1 – Treatment of Income Tax Savings on Repairs Deductions

Recommended Decision, Section VII.I, pages 92-97; Aqua Main Brief, Section V.B., pages 23-24, and Aqua Reply Brief, Section V.B, pages 9-10

Judge Watson denied the OCA's request that the Commission require Aqua to record the income tax effect of repairs deductions in a regulatory liability account, which would then be addressed in the first Aqua rate case that includes the Lower Makefield system. Citing the Commission's Opinion and Order entered August 30, 2012, at Docket No. P-2012-2308982, concerning a petition of Pennsylvania American Water Company, the Recommended Decision concludes that:

It appears reasonable to apply a similar standard in this instance. In other words, OCA, as the proponent for deferral accounting, must demonstrate that, based on Commission precedent, Repairs Tax Reductions appear to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive ratemaking. Based on the record, I find OCA has not presented sufficient evidence to determine that Repairs Tax Reductions are an Eligible Deferral

¹ Pursuant to 52 Pa. Code Section 5.535, Aqua incorporates into its Reply to OCA Exception, by reference and citation, relevant sections and pages of its previously filed Main and Reply Briefs.

Item. Accordingly, I do not recommend that the Commission approve the creation of a regulatory liability at this time.

Additionally, citing the Commission's Order entered May 17, 2018, at Docket No. M-2018-2641242, addressing The Tax Cuts and Jobs Act, the Recommended Decision also states that:

It appears that directing the use of a regulatory liability for Repairs Tax Reductions requires the Commission to determine that such amounts are, or appear to be, extraordinary, substantial, and non-recurring. I find that OCA has failed to demonstrate that Repairs Tax Reductions are, or appear to be, substantial.

The Recommended Decision properly concludes that the OCA failed to present sufficient evidence to determine that Repairs Tax Reductions are an Eligible Deferral Item. The OCA's claim in its Exception No. 1 that repairs deductions could be substantial is not a basis for concluding that the deductions are an Eligible Deferral Item. Indeed, the same claim could be made by the OCA (or the utility) for any utility cost component.

Deferral accounting is an exception to the established rule against retroactive recovery of expenses. The OCA offers no support in its Exception No. 1 for the Commission to conclude that repairs tax deductions should be allowed here. Notably, the OCA has not cited a single instance where the Commission has required the creation of a regulatory liability account as a condition for approval of a fair market value transaction.

Additionally, and contrary to the OCA's suggestion otherwise, there is no evidence that the repairs tax deductions will, in fact, be substantial. Aqua witness Packer testified that the likelihood of repairs deductions being realized or availed to the Company is remote in the first five years of Aqua ownership prior to the inclusion of the Lower Makefield system in an Aqua rate case.²

² Aqua St. No. 1-R at 9.

Mr. Packer also testified that Internal Revenue Service regulations dictate that the wear and tear on the utility assets acquired must have occurred during the taxpayer's use of the assets. Since wear and tear on the Lower Makefield system to date has been during Township ownership, it is unlikely that any meaningful repair benefit would be realized.³

While Aqua has the burden of proof to support its request for an order granting the Application and issuance of certificates of public convenience as claimed by the OCA,⁴ we submit that Aqua does not have the burden to dis-prove a deferred accounting proposal submitted by an OCA witness. OCA, rather, is obligated to present sufficient evidence to determine that Repairs Tax Reductions are an Eligible Deferral Item and that the amounts involved are substantial, consistent with the reasoning presented in the Recommended Decision.

We point out, again, as we did in the Aqua Main and Reply Briefs, that the OCA's proposal is one-sided. The Lower Makefield system has a deficiency in revenue requirement at its existing rates. Given that it will be a few years before the system is presented in a base rate case, the deficiency in revenue requirement will be borne by the Company as regulatory lag – *Aqua, significantly, is not requesting deferral of this revenue deficiency*. If Aqua is able to yield any tax repair benefit, while unlikely and small in benefit, it would serve as an offset to the revenue deficiency.⁵

When Aqua presents itself before the Commission in a base rate case, any repair benefits will accrue to customers at that time and going forward. The OCA's proposed treatment of income tax savings on repairs deductions disregards other costs of providing service that are likely to increase and be borne by the Aqua as regulatory lag until the rate case that includes the Lower Makefield system.

³ Aqua St. No. 1-R at 9-10.

⁴ See Section 332 (a) of the Public Utility Code, 66 Pa. C.S. § 332(a).

⁵ Aqua St. No. 1-R at 10.

In sum, rather than addressing the reasoning presented in the Recommended Decision, the OCA in its Exception No. 1 attempts to support its proposal by claiming that repairs deductions could be substantial and that its proposal will “preserve the issue.” These efforts are insufficient bases to reverse the Recommended Decision. Although the OCA states that it is not requesting any retroactive ratemaking treatment, the proposal sets the stage for that possibility.

OCA Exception No. 1 should be denied.

III. CONCLUSION

The Commission should deny the Exception of the OCA, grant Aqua’s Exceptions, modify the Recommended Decision as set forth in Aqua’s Exceptions, approve Aqua’s Application filed pursuant to Sections 1102, 1329 and 507 of the Public Utility Code, and:

- a. Issue Certificates of Public Convenience under Section 1102:
 - (1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of Lower Makefield Township; and
 - (2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory.
- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
 - (1) Include within its territory all the Requested Territory;
 - (2) Adopt and apply within the Requested Territory, Lower Makefield’s rates as Aqua’s Base Rates; and
 - (3) Apply Aqua’s *Rules and Regulations* within the Requested Territory.
- c. As part of its Order approving the Application include a determination that the ratemaking rate base of the Lower Makefield system is \$53,000,000 pursuant to Section 1329(c)(2);
- d. As part of its Order approving the Application approve Contracts, including Assignment of Contracts, between Aqua and Lower Makefield, pursuant to Section 507 of the Public Utility Code; and

- e. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code as may be appropriate.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Date: December 6, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Jeffrey A. Watson, Presiding

Application of Aqua Pennsylvania : Docket No. A-2021-3024267
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1329 (relating to enumeration of acts :
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substantially all of the wastewater system :
assets, properties and rights of Lower :
Makefield Township (LMT) related to its :
wastewater collection and conveyance :
system; (2) the right of APW to begin to :
offer or furnish wastewater service to the :
public in Lower Makefield Township, :
Bucks County, Pennsylvania; and (3) the :
use for ratemaking purposes of the lesser :
fair market value or the negotiated :
purchase price of the LMT assets related :
to its wastewater collection and :
conveyance system. :

CERTIFICATE OF SERVICE

I hereby certify that I have this 6th day of December, 2021, served a true and correct copy of the foregoing Reply of Aqua Pennsylvania Wastewater, Inc. to the Exception of the Office of Consumer Advocate, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

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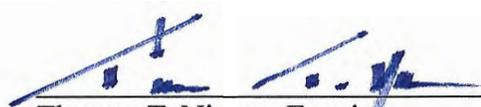
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