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File #: 18

January 20, 2022

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: PA Public Utility Commission v. Aqua Pennsylvania, et al.
Docket Nos. R-2021-3027385, et al.

Dear Secretary Chiavetta:

Attached for filing is the Motion to Submit Further Exhibit on behalf of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Garrett P. Lent

GPL/kls
Attachment

cc: Honorable Mary D. Long (*w/att.*)
Certificate of Service

CERTIFICATE OF SERVICE
(R-2021-3027385 and R-2021-3027386)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), and the Prehearing Order dated October 19, 2021 (establishing the list of fully active parties in this proceeding).

VIA E-MAIL ONLY

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Date: January 20, 2022

Garrett P. Lent

22917101v1

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, *et al.*	:	
	:	
v.	:	Docket Nos. R-2021-3027385, *et al*.
	:	
Aqua Pennsylvania, Inc.	:	

Pennsylvania Public Utility Commission, *et al.*	:	
	:	
v.	:	Docket Nos. R-2021-3027386, *et al*.
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

MOTION TO SUBMIT FURTHER EXHIBIT OF
AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.

TO ADMINISTRATIVE LAW JUDGE MARY D. LONG:

Pursuant to Sections 5.103 and 5.431 of the Pennsylvania Public Utility Commission's ("Commission") regulations, 52 Pa. Code §§ 5.103 and 5.431, Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc. (collectively "Aqua PA" or the "Company") move for the admission of the document attached hereto as Appendix A, "AP Post-Hearing Exhibit 1." Aqua PA respectfully requests that Administrative Law Judge Mary D. Long (the "ALJ") admit AP Post-Hearing Exhibit 1 into the record at this time, as it is a very recent determination by the Pennsylvania Department of Environmental Protection ("PADEP") that is directly relevant and material to issues raised in this proceeding concerning the provision of wastewater service to the Masthope Mountain Community Association ("Masthope").

In support thereof, Aqua PA states as follows:

1. This proceeding was initiated on August 20, 2021, when Aqua PA filed on a consolidated basis Tariff Water – Pa. P.U.C. No. 3 ("Tariff Water No. 3") and Tariff Sewer – Pa. P.U.C. No. 3 ("Tariff Sewer No. 3") with the Pennsylvania Public Utility Commission ("Commission") to be effective for service rendered on or after October 19, 2021. Therein, the Company proposed changes to Aqua PA's base water rates designed to produce an increase in water revenues of approximately $86.118 million and changes to Aqua PA's base wastewater rates designed to produce an increase in wastewater revenues of approximately $11.566 million, both based upon data for a fully projected future test year ("FPFTY") ending March 31, 2023 ("2021 Base Rate Case"). The filing was made in compliance with the Commission's regulations and contains all supporting data and testimony required to be submitted in conjunction with a tariff change seeking a general rate increase.

2. Among the various parties that have intervened and participated in this case, Masthope submitted testimony regarding the wastewater service provided by Aqua PA to Masthope.

3. Specifically, Masthope's witness testified regarding the restrictions for new connections to the Masthope wastewater system that was issued by the PADEP in December 2020. Masthope St. 1 at 2. Masthope's witness further testified regarding Aqua PA's submission of a Corrective Action Plan related to the Masthope wastewater system ("Masthope CAP") to PADEP. Masthope St. 1 at 3. Aqua PA witness Mr. Todd M. Duerr submitted rebuttal testimony responding to these claims (AP St. 9-R at 33-39), and Masthope's witness submitted further surrebuttal in response (Masthope St. 3-SR).

4. On December 20, 2021, evidentiary hearings were held and the above-referenced testimony was admitted into the record. The ALJ also issued an Interim Order on Briefs and the

Closing of the Record, wherein the ALJ established deadlines and requirements for briefs and ordered that "the record will close without further order on January 24, 2022."

5. At the time the parties submitted their respective briefs, this issue remained in dispute. *See* AP MB, Section VIII.D.; *see also* Masthope MB at 9-19.

6. Since submitting its Main Brief, Aqua PA received a letter action dated January 11, 2022, from the PADEP, related to the Masthope CAP, *i.e.*, the "PADEP Action on the Masthope Community Association Corrective Action Plan." A true and correct copy of this document is attached hereto as Appendix A and has been marked and identified as "AP Post-Hearing Exhibit 1."

7. Therein, the PADEP indicates that it has reviewed the Masthope CAP, as revised, and found that "the CAP is acceptable and hereby grants sewage facilities planning approval." Appendix A at 1. Moreover "[w]ith the approval of the [Masthope] CAP, the Department hereby grants a sewer connection allocation of 60 Equivalent Dwelling Unites (EDU's) to APW…In accordance with Section 94.21.b of the Department's Regulations, this allocation modifies the sewer connection prohibition currently in place within the Township but does not lift it." Appendix A at 2. PADEP also imposes various reporting requirements upon Aqua PA as a part of its action. *See* Appendix A at 2-3.

8. Pursuant to 52 Pa. Code § 5.401(a), "[r]elevant and material evidence is admissible subject to objections on other grounds." Furthermore, 52 Pa. Code § 5.406(a) contemplates that public documents, specifically including the reports or decisions of a governmental department or agency, are admissible evidence.

9. As explained above, the PADEP Action on the Masthope Community Association Corrective Action Plan is relevant and material to the issues raised by Masthope regarding Aqua

PA's ability to provide additional sewer connections in this community. This exhibit is also a public record issued by the PADEP, which is reasonably available to members of the public from the PADEP's official records.

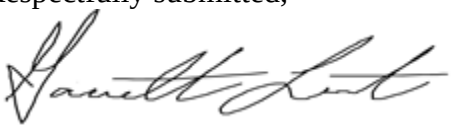
10. In addition, 52 Pa. Code § 5.431(a) (emphasis added) states that "[t]he record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." Relatedly, however, "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. Code § 5.431(b).

11. Aqua PA submits that the record in this proceeding is not yet closed, as the Interim Order on Briefs and the Closing of the Record specifically states "the record will close without further order on January 24, 2022." Nevertheless, good cause exists for the admission of AP Post-Hearing Exhibit 1 because it is directly relevant to issues raised in this proceeding, and the document was issued by the PADEP after the parties submitted testimony in this case.

12. Alternatively, to the extent that AP Post-Hearing Exhibit 1 is not admitted into the record, Aqua PA submits that the ALJ and the Commission should take judicial notice of the facts contained therein. 52 Pa. Code § 5.408.

WHEREFORE, and for the reasons more fully explained herein, Aqua PA respectfully moves for the admission of the PADEP Action on the Masthope Community Association Corrective Action Plan, which has been marked and identified as AP Post-Hearing Exhibit 1. Alternatively, and to the extent that AP Post-Hearing Exhibit 1 is not admitted into the record, Aqua PA respectfully requests that the ALJ and the Commission take notice of the facts contained therein under 52 Pa. Code § 5.408.

Respectfully submitted,



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Dated: January 20, 2022

Counsel for Aqua Pennsylvania, Inc., and Aqua Pennsylvania Wastewater, Inc.

APPENDIX A

AP Post-Hearing Exhibit 1

pennsylvania
DEPARTMENT OF ENVIRONMENTAL PROTECTION

January 11, 2022

CERTIFIED MAIL NO. 7017 2400 0000 0920 1025

Mr. Todd Duerr, Vice-President of Production
Aqua Pennsylvania Wastewater Inc.
762 Lancaster Pike
Bryn Mawr, PA 19010

CERTIFIED MAIL NO. 7017 2400 0000 0920 1032

Ms. Denise Steuhl, Secretary
Lackawaxen Township
169 Urban Road
Hawley, PA 18428

Re: Corrective Action Plan and Official Sewage Facilities Plan Update Revision Act 537 Planning
Masthope Mountain Community WWTP
Lackawaxen Township, Pike County

Dear Mr. Duerr and Ms. Steuhl:

The Department has reviewed the Masthope Mountain Community WWTP Corrective Action Plan (CAP) dated August 16, 2021 (received by the Department on August 24, 2021), with additional revisions dated November 30, 2021 (received by the Department on December 16. 2021), as submitted by Entech Engineering Inc. on behalf of Lackawaxen Township (Township) and Aqua Pennsylvania Wastewater Inc. (APW).

The CAP proposes a systematic plan to identify and propose corrective measures for APW's wastewater treatment facility that is hydraulically overloaded as shown in the 2019 Chapter 94 Municipal Wasteload Management Report. The CAP also contains time schedules for the implementation of the activities proposed in the CAP. The Department's review has found that the CAP is acceptable and hereby grants sewage facilities planning approval. The CAP is now to be considered an integral part of your municipality's Official Sewage Facilities Plan.

In accordance with the provisions of the Pennsylvania Sewage Facilities Act, 35 P.S. § 750.1-750.20(a) (Act 537), and Chapter 71 of the Department's Regulations, 25 Pa. Code Ch. 71, the Department will hold the Township and APW responsible for the complete and timely implementation of the CAP. The Department realizes that CAP activities and their implementation schedules are dynamic in nature. Should conditions be encountered during implementation of the CAP which require the alteration of the approved CAP, please inform the Department, in writing, of the need to modify the plan at the earliest possible instance.

With the previous statements in mind, the Department wishes to advise APW that should any of the CAP activities not yield their expected results, additional tasks may need to be proposed/completed to eliminate the hydraulic/organic overload of APW's wastewater collection, conveyance and treatment systems. This pertains mainly to those CAP activities where results may be significantly affected by precipitation amounts, groundwater conditions, stream flow levels, etc.

With the approval of the CAP, the Department hereby grants a sewer connection allocation of 60 Equivalent Dwelling Units (EDU's) to APW. This allocation shall be administered and disbursed by APW for use within APW's wastewater collection system service area. In accordance with Section 94.21.b of the Department's Regulations, this allocation modifies the sewer connection prohibition currently in place within the Township but does not lift it. All sewer connection requests from individuals or other entities must be made, in writing, to APW. Subsequently, all allocation awards to individuals or other entities, from APW, must be made in writing by an authorized APW Official(s).

To properly track the 60 EDU sewer connection allocation, the Department is enclosing a Quarterly Status Report of Sewage Allocation Form (Report). This Report must be completed by APW and submitted to the Department's Northeast Regional Office within 14 calendar days after the end of each calendar year quarter. All connections granted from this and any future sewer connection allocation(s) must be reported to the Department on this Report form. Specifically, APW should list the name of the individual(s) or other entity(ies) receiving any portion of the allocation, the number of EDU's awarded and the date the allocation was awarded to the property owner. A Report must be submitted, to the Department, even if no allocation is granted by APW during a particular calendar year quarter.

Failure to provide the Department with accurate and timely Quarterly Reports, proper wastewater planning documents for Official Sewage Facilities Plan Revisions (as required by the Pennsylvania Sewage Facilities Act-Act 537 and the Department's Regulations), when appropriate, for land development or failure to comply with the approved CAP may result in revocation of part or all of the sewer connection allocation. A copy of APW's letter granting any entity a sewer connection from APW's sewer connection allocation must accompany any wastewater planning documents submitted to the Township or the Department for review.

In addition to the above, the Department requests that APW submit its written progress reports to the Department on a semi-annual basis. The reports shall be submitted to the Department's Northeast Regional Office within 14 calendar days after the end of each semi-annual calendar year period. The first progress report is due on July 14, 2022. APW may submit more frequent progress reports to the Department at its discretion.

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. Section 7514, and the Administrative Agency Law, 2 Pa. C.S., Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals

must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

Please contact Ms. Staci Shoemaker, of my staff, at (570) 826-2333, or at stashoemak@pa.gov, if you have any questions regarding this letter.

Sincerely,

Bharat R. Patel P.E.
Environmental Program Manager
Clean Water Program

Enclosures: - Quarterly Status Report of Sewage Allocation Form

cc: Mr. Doug Berg/Entech Engineering Inc.
Mr. Steve Clark, Greater PA Director of Operations/Aqua Pennsylvania Wastewater Inc.
Mr. Paul Brindle, Honesdale Field Supervisor/Aqua Pennsylvania Wastewater Inc.
Mr. Richard Tussel, Building Inspector/Lackawaxen Township
Mr. Ralf Graf, Secretary/Lackawaxen Township Planning Commission
Mr. Dennis Brink, Chairman/Pike County Planning Commission
Mr. Michael Mrozinski, Planning Director/Pike County Office of Community Planning
Thomas Farley, Esquire

AP Post-Hearing Exhibit 1

DATE: _____

Quarterly Status Report of Sewage Allocation
(To be Completed and Submitted to the Department
Within Fourteen [14] Days at the End of Each Calendar Year Quarter)

Authority/Municipality: Aqua Pennsylvania Wastewater Inc. – Masthope Community Development

County: Pike

Municipalities Served: Lackawaxen Township

Reporting Period _____ To _____

Balance of Allocation Available at the End of the Last Reporting Period _____

Additional Allocations Awarded _____

Connections/EDU's/Gallonage Granted During This Reporting Period

Name of Applicant or Developer or Property Owner	Development or Property Name (As Applicable)	Physical Street Address or Lot Number of Property for Connection	Municipality That Development or Property is Located Within	No. of EDU's, Connections or Gallonage Granted	Date Connection or Gallonage Granted to Applicant

(Attach Additional Sheets or Use Reverse of Form If Needed)

Total Connections/Gallonage Granted During This Reporting Period _____

Balance of Allocation Remaining in EDU's or Gallonage _____

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc. and Aqua	:	
Pennsylvania Wastewater, Inc.	:	

VERIFICATION

I, Todd M. Duerr, being the Vice President, Production for Aqua Pennsylvania, Inc. ("AP"), hereby state that the information set forth in the forgoing motion is true and correct to the best of my knowledge, information, and belief and that if asked orally at a hearing in this matter my answers would be as set forth therein. I further state that I am sponsoring AP Post-Hearing Exhibit 1. I hereby state that the aforementioned exhibit is true and correct to the best of my knowledge, information, and belief.

I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: 20 January 2022

Todd M. Duerr