

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

March 4, 2022

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 East Whiteland
Township
Docket No. A-2021-3026132

Dear Secretary Chiavetta:

On March 4, 2022, the Office of Consumer Advocate filed a Prehearing Memorandum for the above-referenced proceeding. Please reject that filing at confirmation number 2371997 and replace it with this corrected Prehearing Memorandum. 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.

Very truly yours,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: The Honorable Marta Guhl (**email only**)
Athena DelVillar (**email only**: sdelvillar@pa.gov)
Certificate of Service

*325032

CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania Wastewater, :
Inc. pursuant to Sections 1102, 1329, 507, and :
2102 of the Public Utility Code for Approval of its : Docket No. A-2021-3026132
Acquisition of the Wastewater System Assets :
of East Whiteland 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 4th day of March 2022.

SERVICE BY E-MAIL ONLY

Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
carwright@pa.gov

Erin K. Fure, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
efure@pa.gov

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com
Counsel for Aqua PA Wastewater, Inc.

Alexander R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com
Counsel for Aqua PA Wastewater, Inc.

Thomas Wyatt, Esquire
Matthew S. Olesh, Esquire
Sydney N. Melillo, Esquire
Obermayer Rebmann Maxwell & Hippel, LLP
Centre Square West
1500 Market Street, Suite 3400
Philadelphia, PA 19102-2101
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com
Sydney.Melillo@obermayer.com
Counsel for East Whiteland Township

Richard J. Gage
120 Treaty Drive
Wayne, PA 19087
brittagage@aol.com

/s/ Christine Maloni Hoover

Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: March 4, 2022
*325033

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2021-3026132
Approval of its Acquisition of the Wastewater :
System Assets of East Whiteland Township :

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333 and the Prehearing Order issued by Administrative Law Judge Marta Guhl on February 23, 2022, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION

On August 3, 2021, Aqua Pennsylvania Wastewater, Inc. (Aqua, Applicant, or Company) filed an Application under Sections 507, 1102, 1329 and 2102 of the Public Utility Code requesting that the Public Utility Commission (Commission) (1) approve the acquisition of the wastewater system assets of East Whiteland Township (East Whiteland or Township), Chester 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. Application at ¶ 3; 66 Pa. C.S. §§ 507, 1102, 1329 and 2102. Aqua also requests approval of the Asset Purchase Agreement (APA) dated January 8, 2021 as well as other municipal agreements, pursuant to Section 507 of the Public Utility Code,

and requests that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. Application at ¶ 5. Aqua provides wastewater service to approximately 45,000 customers throughout Pennsylvania. East Whiteland owns a sanitary wastewater collection system which provides direct wastewater service to 3,895 customers in East Whiteland Township, who will become Aqua customers if the Application is approved. Application at ¶ 8.

On August 26, 2021, the Office of Small Business Advocate filed a Notice of Intervention, and Public Statement. The OCA filed a Protest and Public Statement on September 17, 2021. On October 4, 2021, I&E entered its appearance in the matter. On February 3, 2022, East Whiteland Township filed a Notice of Intervention.

By Secretarial Letter dated December 20, 2021, the Commission conditionally accepted the Application. The Commission required that individual notice be provided to Aqua's potentially affected existing water and wastewater customers that Aqua ensure concurrent notice is provided to all current East Whiteland wastewater customers, and that newspaper notice be provided in the East Whiteland area. Upon completion, Aqua was directed to file proof of publication of the newspaper notice with the Commission.

On December 21, 2021, Aqua filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the December 20, 2021 Secretarial Letter. By Secretarial Letter dated February 4, 2022, the Commission informed Aqua that it had accepted the Application for filing. Administrative Law Judge (ALJ) Marta Guhl issued a Prehearing

Conference Order on February 23, 2022 directing the parties to submit a prehearing conference memorandum on or before March 4, 2022.

II. SERVICE ON THE OCA

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocates Erin L. Gannon and Christine Maloni Hoover, and Assistant Consumer Advocates Harrison W. Breitman and Laura J. Antinucci. The OCA does not request mail service from any party. The OCA designates the following individual for the service list in this proceeding and asks that the parties use the email listed below:

Harrison W. Breitman
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: OCAAquaEastWhiteland@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. However, the OCA offers the following modifications to the Commission's procedural rules regarding discovery and proposes that the modifications will apply to all discovery requests issued in the proceeding, including those served prior to the entry of the procedural Order governing this proceeding.

- A. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes shall be served in-hand within five (5) calendar days of service of the interrogatories or requests for production.

- B. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within two (2) calendar days of service; unresolved objections shall be served in writing to the propounding party within three (3) calendar days of service of the interrogatories and/or requests for production.
- C. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of written objections.
- D. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of such motions.
- E. Requests for admission shall be deemed admitted unless answered or objected to within three (3) calendar days of service.
- F. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

The OCA has served five sets of discovery to date.

IV. WITNESSES

The OCA intends to present testimony from David J. Garrett and Noah D. Eastman. Their respective contact information is as follows:

Noah D. Eastman Office of Consumer Advocate 555 Walnut Street 5 th Floor, Forum Place Harrisburg, PA 17101-1923 OCAAquaEastWhiteland@paoca.org	David J. Garrett Resolve Utility Consulting PLLC 101 Park Avenue Suite 1125 Oklahoma City, OK 73102 OCAAquaEastWhiteland@paoca.org
--	---

To the extent necessary, the OCA’s witnesses will present testimony regarding the impact of the proposed transaction on Aqua’s existing customers and the acquired customers, and regarding 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 consumers 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 \$54,930,000 for East Whiteland's wastewater collection system assets which have a depreciated original cost, as defined in Section 1329, of \$32,955,596. Aqua Exh. Q at 24. 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 acquired and 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, evening telephonic public input hearing for the Aqua and East Whiteland customers impacted by the acquisition. The OCA and the parties provided a suggested date of March 22, 2022, with March 21, 2022 as an alternate date, by email on March 2, 2022 as directed by the Prehearing Conference Order. The OCA requests that the phone number and pin be placed on the hearing notice and all advertisements regarding the public input hearings.

VII. SCHEDULE

The OCA, on behalf of all of the parties, sent an email to Your Honor, requesting a revision to the reply brief date. The proposed schedule below is based on the requested revised reply brief date of April 19, rather than April 13 as shown in the Prehearing Conference Order.

	ALJ Proposed	Proposed Schedule if Reply Brief Date Is Revised
Prehearing conference	March 8, 2022	March 8, 2022
Direct testimony of other parties	March 10, 2022	March 11, 2022
Rebuttal testimony	March 15, 2022	March 18, 2022
Public Input Hearing		March 22, 2022 (alternate date March 21, 2022)
Surrebuttal testimony	March 18, 2022	March 25, 2022
Evidentiary hearings	March 22-23, 2022	March 31-April 1, 2022
Receipt of transcript	March 24, 2022	
Main Briefs	April 6, 2022	April 12, 2022
Reply Briefs	April 13, 2022	April 19, 2022
Recommended Decision	May 13, 2022	May 20, 2022
Public meeting	July 14, 2022	July 14, 2022

If the request for the revised reply brief date is not granted, the OCA will work with the parties to develop a schedule.

VIII. SETTLEMENT

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

Respectfully submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Laura J. Antinucci
Assistant Consumer Advocate
PA Attorney I.D. # 327217
E-Mail: LAntinucci@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
Patrick M. Cicero
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
DATED: March 4, 2022
324906