



COMMONWEALTH OF PENNSYLVANIA

April 15, 2022

E-FILED

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

**Re: Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the
Acquisition of East Whiteland Township's Wastewater System Assets / Docket
No. A-2021-3026132**

Dear Secretary Chiavetta:

Enclosed please find the Reply Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Erin K. Fure

Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc. :
Section 1329 Application for the :
Acquisition of East Whiteland Township's : **Docket No. A-2021-3026132**
Wastewater System Assets :
:

**REPLY BRIEF ON BEHALF
OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Date: April 15, 2022

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I. STATEMENT OF THE CASE

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”).

The OSBA files this Reply Brief in accordance with Prehearing Order #1, issued in the above-captioned matter on March 16, 2022.

A. Procedural History

On July 23, 2021, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed an Application for approval of the acquisition of the wastewater system assets owned by East Whiteland Township (“EWT” or “Township”) to Aqua (“*Application*”).

On August 18, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On August 20, 2021, a Secretarial Letter was issued granting Aqua’s request to extend the initial review period.

On August 25, 2021, Aqua submitted answers to the Bureau of Technical Utility Services’ (“TUS”) requests for additional information.

On August 26, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On August 26, 2021, a Secretarial Letter was issued granting Aqua’s request to extend the initial review period.

On August 26, 2021, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement.

On September 2, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On September 2, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On September 16, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On September 16, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On September 17, 2021, the Office of Consumer Advocate ("OCA") filed a Notice of Appearance, Protest and Public Statement.

On September 23, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On September 24, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On September 30, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 1, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

The Commission's Bureau of Investigation and Enforcement ("I&E") filed its Notice of Appearance on October 4, 2021.

On October 7, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 7, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On October 14, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 15, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On October 21, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 22, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On October 29, 2021, Aqua submitted answers to TUS's requests for additional information.

On December 17, 2021, Aqua submitted answers to TUS's requests for additional information.

By Secretarial Letter dated December 20, 2021, the *Application* was conditionally accepted by the Commission.

On December 21, 2021, Aqua filed a letter detailing its compliance with the December 20, 2021 Secretarial Letter conditionally accepting the *Application*.

On January 25, 2022, Aqua filed a letter submitting a certificate verifying service of the *Application* on designated entities as well as the proof of publication.

On February 3, 2022, EWT filed a Petition to Intervene.

On February 4, 2022, a Secretarial Letter was issued which finalized acceptance of the *Application* and set March 7, 2022 as the deadline for protests or petitions to intervene.

On February 4, 2022, a Notice was issued that a telephonic Prehearing Conference was scheduled for March 8, 2022 before Administrative Law Judge (“ALJ”) Marta Guhl.

On February 4, 2022, a Protest was filed by Mr. Richard J. Gage.

On February 14, 2022, a letter and memorandum were submitted by the Valley Forge Sewer Authority.

On February 23, 2022, ALJ Guhl issued a Prehearing Conference Order.

On March 4, 2022, Aqua filed a Petition for Protective Order.

On March 7, 2022, a Telephonic Public Input Hearing Notice was issued scheduling a public input hearing for March 22, 2022 at 6 p.m.

The telephonic Prehearing Conference was held as scheduled on March 8, 2022.

On March 11, 2022, the OSBA, I&E, and OCA served direct testimony.

On March 15, 2022, a Telephonic Hearing Notice was issued scheduling evidentiary hearings for March 31, 2022 and April 2, 2022.

On March 16, 2022, a Protective Order was issued.

On March 16, 2022, Prehearing Order #1 was issued.

On March 18, 2022, Aqua and EWT served rebuttal testimony.

On March 22, 2022, the public input hearing was held as scheduled.

On March 25, 2022, the OSBA, I&E, OCA, and Aqua served surrebuttal testimony.

Evidentiary hearings were held on March 31, 2022. During the evidentiary hearings, the OSBA’s direct¹ and surrebuttal testimony² were admitted into the evidentiary record.

¹ OSBA St. No. 1, the Direct Testimony of Brian Kalcic, including Exhibit BK-1, an Appendix, and Mr. Kalcic’s signed verification.

² OSBA St. No. 1-S, the Surrebuttal Testimony of Brian Kalcic, including Mr. Kalcic’s signed verification.

On March 31, 2022, a Cancellation Notice was issued, which notified the parties that the evidentiary hearing scheduled for April 1, 2022 was cancelled.

On April 4, 2022, a Briefing Order was issued.

On April 8, 2022, Main Briefs were filed by the OSBA, OCA, I&E, Aqua, and EWT.

B. Overview of the Proposed Transaction

The OSBA's overview of the proposed transaction ("Transaction") is contained in the OSBA's Main Brief. (*OSBA M.B.*, pp. 7-8).

II. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

III. STATEMENT OF QUESTIONS INVOLVED

Should the Commission, as a condition for approval of the *Application*, reject any rate freeze for EWT customers that extends beyond the effective date of new rates in Aqua's first base rate case following the Close of the proposed Transaction?

Suggested Answer: Yes. In the alternative, if the Commission does not reject the rate freeze, the Commission should direct Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case following the Close of Aqua's acquisition of EWT's wastewater assets.

IV. SUMMARY OF REPLY ARGUMENT

As a condition of approving the proposed Transaction, the ALJ and the Commission should either (1) reject any rate freeze for EWT customers that extends beyond the effective date of new rates in the Company's next base rate case, or, alternatively (2) impute revenues to EWT customers to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case following the Close of the proposed Transaction.

In its Main Brief, Aqua argued that the OSBA's recommended conditions are unnecessary as Aqua "would make a similar proposal" to impute revenues to EWT customers, if needed, as it did to address the rate freeze in the Tobyhanna Sewer System acquisition.

In response, the OSBA notes that the *Stipulation of the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Protestant Gage, East Whiteland Township, and Aqua Pennsylvania Wastewater, Inc.* ("*Stipulation*") adequately resolves the OSBA's concerns as it commits Aqua to impute revenues to EWT customers, as necessary, in its next base rate case. Without such a commitment, the statements made by Mr. Packer in Aqua St. No. 1-R, at 3-4, are unenforceable. If the *Stipulation* is not approved, the OSBA requests that the ALJ and the Commission either reject the rate freeze entirely, or direct Aqua to address EWT's rate freeze in the same manner used for the acquired Tobyhanna Sewer System in Aqua's first base rate proceeding following the Close of the proposed Transaction.

V. REPLY ARGUMENT

A. Sections 1102/1103

1. Introduction

The OSBA's Introduction to Sections 1102 and 1103 are contained in the OSBA's Main Brief. (*OSBA M.B.*, p. 12).

2. Fitness

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

3. Substantial Affirmative Public Benefits

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

4. Conclusion

The OSBA took no position on the issues in this section. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

B. Section 1329

1. Introduction

The OSBA's Introduction to Section 1329 is contained in the OSBA's Main Brief. (*OSBA M.B.*, p. 13).

2. Legal Principles

The OSBA's discussion of Legal Principles is contained in the OSBA's Main Brief. (*OSBA M.B.*, pp. 13-14).

3. Aqua's Application

The OSBA's discussion of Aqua's Application is contained in the OSBA's Main Brief. (*OSBA M.B.*, p. 14).

4. Challenges to UVE Appraisals

a. Cost Approach

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

b. Market Approach

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

c. Income Approach

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

5. Conclusion

The OSBA took no position on the issues in this section. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

C. Stipulation

Throughout the course of this proceeding, the OSBA expressed concerns regarding the rate freeze commitment contained in Section 7.03 of the *Asset Purchase Agreement*; namely, that the three-year rate freeze commitment would delay movement of EWT-acquired customers toward cost of service and exacerbate the difference in rates paid by EWT-acquired customers

and existing customers. (*OSBA M.B.*, pp. 11, 15-17). In the *Stipulation*, the parties propose to resolve the OSBA's concerns in the following manner:

Stipulated Resolution

- a. The current average EWT residential rate is \$33.33 per month based on one equivalent dwelling unit ("EDU"). As set forth in the notice sent to EWT customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on EWT wastewater customers of 132.93%.
- b. The Stipulating Parties acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the EWT customers that are in excess of the restrictions contained in Section 7.03 of the Asset Purchase Agreement.
- c. Aqua and EWT agree that, at the time of Aqua's first base rate case that includes the EWT system, Aqua may propose an effective date for new rates for EWT wastewater customers that is different from the effective date of new rates for other customers, consistent with the terms of Section 7.03 of the Asset Purchase Agreement. All parties reserve their rights to address Aqua's proposal.
- d. If Aqua proposes to freeze EWT rates beyond the effective date of new rates in Aqua's first base rate case that includes the EWT system assets, (1) Aqua shall propose a separate rate for EWT customers in its tariff that reflects the continuation of EWT's existing rates through the end of the rate freeze period, and (2) Aqua's compliance proof of revenue will be calculated using the new rate otherwise applicable to EWT customers at the conclusion of Aqua's base rate case, not EWT's frozen rate, such that existing ratepayers are not required to fund the revenue deficiency related to the rate freeze. Once the contractual rate freeze term expires, the customers acquired through the acquisition of the EWT system shall immediately become subject to the new rate applicable to EWT customers, as determined in Aqua's first base rate case that includes the EWT system assets.
- e. In the first base rate proceeding filed by Aqua that includes EWT's wastewater system assets, Aqua shall propose to move the EWT system to its full cost of service, based on a separate cost of service study for EWT's system; provided, however, that Aqua will not be obligated to propose EWT wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Stipulating Parties acknowledge, however, that Aqua may agree to rates other than those proposed for EWT customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and EWT reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua

agrees to provide written notice to EWT customers of the rate filing and the level of increase, if any, resulting from this provision.

- f. Aqua will send a welcome letter to EWT Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

(*Stipulation*, pp. 4-5). The OSBA is satisfied that the proposed resolution contained within the *Stipulation* resolves its rate freeze concerns, if adopted, as it implements Mr. Kalcic's suggestion that Aqua be directed to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case after the Close of the proposed Transaction. (*OSBA M.B.*, pp. 17-18).

D. Recommended Conditions

The OSBA recommended as a condition for the approval of the proposed Transaction, that the ALJ and the Commission should, in accordance with 66 Pa. C.S. § 1103 (a), reject the rate freeze commitment found in Section 7.03 of the *Asset Purchase Agreement*. (*OSBA St. 1*, p. 8). The OSBA alternatively proposed that the ALJ and the Commission direct Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case after the Close of the proposed Transaction. (*OSBA St. 1*, p. 8).

The Company and EWT argued³ that:

Mr. Kalcic's recommendation is unnecessary as demonstrated in the Company's most recently concluded base rate filing, whereby the Tobyhanna Sewer System acquired by the Company was reflected in proposed rates, despite the fact that a contractual rate freeze for the system rates extended beyond the effective date of the proposed rates. Aqua's proposed tariff treated the existing Tobyhanna rates in effect through the duration of the rate freeze period as a special charge. Once the expiration of the contractual rate freeze elapsed, Tobyhanna customers immediately became subject to full tariff rates. Nonetheless, the Company's

³ EWT endorses, adopts, and incorporates by reference the arguments pertaining to recommended conditions made by Aqua in its Main Brief (*EWT M.B.*, p. 14).

proof of revenue was calculated at the full cost of service rate, not the frozen existing rate, thus no existing customer was harmed or paid for the rate freeze. If the same situation would occur for the East Whiteland system, the Company would make a similar proposal for East Whiteland customers.

(*Aqua M.B.*, p. 46). Aqua continued on to note that if rates were increased before the rate freeze period expires, such situation “can be handled with a proposed effective date of new rates for East Whiteland customers being synchronized to the exact day and month of the expiration, with zero chance of any system funding by existing customers.” (*Aqua M.B.*, p. 48).

As noted in its Main Brief, the OSBA’s rate freeze concerns would be satisfied if Aqua committed to addressing EWT’s rate freeze in the same manner used for the acquired Tobyhanna Sewer System in Aqua’s first base rate proceeding following the Close of the proposed Transaction. (*OSBA M.B.*, p. 18). However, Aqua is not required to treat EWT’s rate freeze in the same manner as it treated the Tobyhanna rate freeze. Since there is no enforceable commitment by Aqua to treat EWT’s rate freeze as it did the Tobyhanna rate freeze, the OSBA requests that the ALJ and Commission order Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua’s first base rate case after the Close of the proposed Transaction, if a rate freeze is not rejected outright. (*OSBA M.B.*, p. 18).

E. Section 507 Approvals

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

F. Section 2102 Approval

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exceptions or reply exceptions.

G. Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in exception, or reply exceptions.

VI. CONCLUSION WITH REQUESTED RELIEF

In view of the foregoing, and if the *Stipulation* is not approved, the OSBA respectfully requests that, as a condition for approval of the *Application*, the ALJ and the Commission reject any rate freeze, including the rate commitment contained in Section 7.03 of the *Asset Purchase Agreement*, that extends beyond the effective date of new rates in Aqua's first base rate case following the Close of the Transaction. Alternatively, the OSBA respectfully requests that, as a condition for approval of the *Application*, the ALJ and the Commission direct Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case following the close of the Transaction.

Respectfully submitted,

Erin K. Fure

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Dated: April 15, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc. Section :
1329 Application for the Acquisition of East :
Whiteland Township’s Wastewater System : **Docket No. A-2021-3026132**
Assets :
:

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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