

April 14, 2022

Via Electronic Filing

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

In re: Docket No. A-2021-3026132
Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329, 507
and 2102 of the Public Utility Code for Approval of its Acquisition of the Wastewater
System Assets of East Whiteland 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 Stipulation of the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Protestant Richard Gage, East Whiteland Township and Aqua Pennsylvania Wastewater, Inc. Copies of the Stipulation 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.)
The Honorable Marta Guhl, Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esq. (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

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

**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.**

AND NOW, come the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Protestant Richard Gage (“Gage”), East Whiteland Township (“EWT”) and Aqua Pennsylvania Wastewater, Inc. (“Aqua”) (together, the “Stipulating Parties”) and submit this Stipulation as follows:

I. BACKGROUND

This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on July 23, 2021, for approval of its acquisition of the wastewater system assets of East Whiteland Township pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code (“Code”).

By Secretarial Letter dated February 4, 2022, the Commission accepted the Application for filing and assigned the matter to the Office Administrative Law Judge for disposition. Administrative Law Judge Marta Guhl was assigned to preside over the proceeding.

Following the Prehearing Conference on March 8, 2022, Judge Guhl issued Prehearing Order #1 on March 16, 2022. Paragraph 13 of Prehearing Order #1 directs the parties to confer

amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding.

Consistent with the Paragraph 13 of Prehearing Order #1, I&E, OCA, OSBA, Gage, EWT and Aqua stipulate as follows in resolution of some of the issues in this proceeding:

II. STIPULATION

The Stipulating Parties stipulate to the following terms if the Commission approves Aqua's acquisition of the EWT wastewater collection system and grants Aqua the right to begin to offer, render, furnish or supply wastewater service in the areas served by EWT.

Tariff:

Aqua included proposed schedule of rates tariff pages with its Application. No party presented testimony in opposition to the proposed tariff pages.

Stipulated Resolution:

The pro forma tariff submitted with the Application, including all rates, rules and regulations regarding conditions of Aqua's wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

Easements and Other Property Rights

I&E recommended that the Commission require Aqua and EWT to (1) Identify all missing easements, including rights of way; (2) Take any and all actions to obtain the missing easements and rights of way so that they may be conveyed to Aqua at closing; and (3) EWT should bear all costs and expenses for obtaining the missing easements and rights of way. I&E also recommended that for situations beyond EWT's control where it is unable to transfer certain missing easements or other property rights at closing, Aqua and EWT may proceed to closing provided that an escrow account is established of an appropriate portion of the purchase price to ensure the Township

obtains any remaining missing easements or other property rights post-closing and delivers them to Aqua.

Stipulated Resolution

Aqua and the Township will work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement (“APA”) by Closing. However, Aqua shall be permitted in its discretion to close without the transfer of all of the Real Property Rights, provided that an escrow is established from the Purchase Price to be used to obtain any post-Closing transfers of the Real Property Rights. Aqua will provide an update to I&E, OCA, and OSBA approximately 30 days in advance of the anticipated Closing Date and a final update before Closing regarding the status of the transfer of real property rights including easements related to the system.

Legal Fees

Aqua anticipates that transaction and closing costs will be approximately \$308,300 including the Company’s UVE fees and proposed that the exact closing costs will be determined at closing.

Stipulated Resolution

In its next base rate case, Aqua shall separately identify any legal fees included in its transaction and closing costs pursuant to the APA between Aqua and EWT and specify amounts expended by Aqua on behalf of the Township. I&E, OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

Cost of Service Study (“COSS”)

I&E and OCA recommended that, in its next base rate case, Aqua provide a separate cost of service study for the EWT system.

Stipulated Resolution

In its first base rate case filing that includes the EWT system assets, Aqua will:

- a. Include a COSS that removes all costs and revenues associated with the operation of the EWT system; and
- b. Include a separate COSS for the EWT system.

These studies are in addition to any form of COSS directed by the Commission's final order in the Company's base rate case filing at Docket Nos. R-2021-3027385 and R-2021-3027386.

EWT Rates, Rate Freeze and Rate Stabilization

I&E, OCA and OSBA challenged the three-year rate freeze in Section 7.03 of the APA.

I&E and OCA also contended that the rate freeze is a Section 1329 rate stabilization plan.

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.

Long Term Infrastructure Improvement Plan ("LTIIIP")

Aqua and OCA agreed that Aqua must file and receive approval of an amended LTIIIP that includes the EWT system prior to charging the Distribution System Improvement Charge ("DSIC") to EWT customers. OCA further recommended that any EWT improvement projects reflected in the amended LTIIIP should be in addition to, and not reprioritize existing capital projects.

Stipulated Resolution:

- a. If Aqua proposes to modify its LTIIIP to include the EWT wastewater system, the projects added for EWT will be in addition to those that Aqua plans for its existing systems.
- b. In LTIIIPs or Annual Asset Optimization Plans that include the EWT wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua's current practice and ability to allocate projects as needed for its capital program.
- c. Upon approval of the Commission of a modification to Aqua's LTIIIP that includes the EWT wastewater system, Aqua shall be permitted to apply the DSIC to the EWT wastewater system prior to the first base rate case in which the EWT assets are incorporated into rate base.

- d. If Aqua is not already applying the DSIC to the EWT wastewater system, it will do so when rates for those customers are implemented in the first base rate proceeding that includes the EWT system assets.

Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

OCA recommended that, if approved, the acquisition should be conditioned on a requirement that claims for AFUDC and deferred depreciation be made no later than Aqua’s next base rate case.

Stipulated Resolution:

- a. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, will be addressed in Aqua’s first base rate case which includes EWT wastewater system assets.
- b. Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, the Stipulating Parties reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties' assent to this agreement should not be construed to operate as its preapproval of Aqua's requests. The pro forma tariff submitted with the Application, including all rates, rules and regulations regarding conditions of Aqua’s wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

Section 507 and 2102 Approvals

Aqua asked the Commission to approve, if necessary, its acquisition agreement with EWT and the assignment of 22 contracts with municipalities under Section 507 of the Code and also to approve, under Section 2101 of the Code, the assignment of EWT’s rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities for conveyance of wastewater through the Valley Creek Trunk Line.

Stipulated Resolution


The Stipulating Parties agree that the Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507 and Section 2102.¹

¹ The OCA does not join in this paragraph but does not oppose it.


The Stipulating Parties agree that the Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507 and Section 2102.¹

WHEREFORE the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, Protestant Richard Gage, East Whiteland Township and Aqua Pennsylvania Wastewater, Inc. request that Administrative Law Judge Marta Guhl and the Pennsylvania Public Utility Commission accept and approve this Stipulation.


AQUA PENNSYLVANIA WASTEWATER, INC.

By: 
Thomas T. Niesen, Esquire
Alexander R. Stahl, Esquire

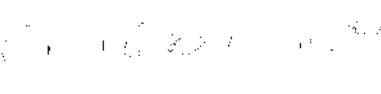
EAST WHITELAND TOWNSHIP

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Matthew S. Olesh, Esquire
Sydney N. Melillo, Esquire


OFFICE OF CONSUMER ADVOCATE

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Deputy Consumer Advocate
Erin L. Gannon
Senior Assistant Consumer Advocate
Harrison W. Breitman,
Laura J. Antinucci,
Assistant Consumer Advocates

THE BUREAU OF INVESTIGATION AND ENFORCEMENT

By: 
Carrie B. Wright, Prosecutor

OFFICE OF SMALL BUSINESS ADVOCATE

By: 
Erin K. Fure,
Assistant Small Business Advocate

PROTESTANT RICHARD GAGE

By: 
Richard J. Gage

¹ The OCA does not join in this paragraph but does not oppose it.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Whiteland Township : **Docket No. A-2021-3026132**
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CERTIFICATE OF SERVICE

I hereby certify that I have this 14th day of April 2022, served a true and correct copy of the foregoing 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., upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

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