

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120

**Pennsylvania Public Utility
Commission et al.**
v.
Aqua Pennsylvania Inc.

Public Meeting May 12, 2022
3027385-OSA
Docket Nos. R-2021-3027385, et al.

MOTION OF COMMISSIONER RALPH V. YANORA

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, Aqua or Company), the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), *et al.*, to the Recommended Decision issued on February 18, 2022, at the above-captioned docket. This matter concerns Aqua's proposed combined water and wastewater rate increase filing.

In its proposed rate case filing, Aqua requests a management performance adjustment to its return on equity (ROE) claim. Aqua offered that the Company demonstrated strong performance in management effectiveness based on its commitment to providing safe and reasonable service for the benefit of Commonwealth communities and the environment. Specifically, Aqua stated that it provides high quality service and continues to assist the Commonwealth in dealing with problems created by small, troubled, or non-viable water and wastewater systems.

I recognize Aqua's efforts and willingness to quickly provide emergency aid to various water and wastewater systems that needed substantial improvement. Aqua often provided this emergency aid on short notice and at the request of the Commission or other parties to protect the public from egregious health and safety threats and to protect the Commonwealth's drinking water resources from catastrophic damage. The competence and reliability of Aqua's management effectiveness in this regard is unparalleled. Aqua management has earned this reputation by consistently and successfully working to protect the public and the environment under emergency situations presenting highly difficult operational, financial, and legal issues over many years.¹

Aqua's management performance in recent emergency situations reinforces that Aqua has been and continues to be a trusted and reliable corporate citizen on which the public can rely. Specifically, Aqua is currently operating three troubled utility systems under emergency receiverships throughout the Commonwealth, including one wastewater and two

¹ For past example, one only need look to aid rendered by Aqua in Emlenton, Pennsylvania where the Commission fielded approximately ninety-three simultaneously filed formal complaints against the Emlenton Water Company alleging unsafe and inadequate water service and water-borne illness. *Bradley Louise et al. v. Emlenton Water Company*, Docket No. C-2008-2058411, (Complaint filed July 24, 2008); *Joint Application of Aqua Pennsylvania, Inc. and Emlenton Water Company*, Docket No. A-2008-2074746 (Final Order entered December 29, 2008).

water systems. These respectively include North Heidelberg Sewer Company (NHSC), Twin Lakes Utilities, Inc., (Twin Lakes) and James Black Water Service Company (James Black).²

Regarding NHSC, on March 21, 2017, I&E requested that the Commission issue an Ex Parte Emergency Order to avoid “a tidal wave of adverse consequences, including the potential discharge of untreated wastewater into the Commonwealth's waterways, which could result in irreparable harm to the environment, the health of its NHSC's customers and the safety of the public at large.”³ At that time, NHSC served approximately 273 residential and one commercial wastewater customer.⁴ I&E added that should NHSC fail to immediately take corrective action, the Commission should appoint a receiver pursuant to 66 Pa. C.S. §529 because it appeared that NHSC was “consciously and intentionally placing in jeopardy its ability to provide safe, reliable and reasonable wastewater service to its customers.”⁵ In response, on March 22, 2017, Chairman Gladys Brown Dutrieuille directed Aqua to assume this receiver role, which Aqua immediately and willingly did.⁶ This past fall, Hurricane Ida substantially destroyed NHSC’s wastewater treatment plant and Aqua immediately responded to avert what could have been yet another disaster to the environment and to downstream drinking water supplies. Aqua’s reconstruction efforts have gone beyond the normal expectations of a receiver.⁷ On May 2, 2022, Aqua filed its 17th quarterly status report regarding its successful and ongoing five-year effort to rehabilitate the NHSC system, both operationally and financially, for the safety and benefit of the families served by that system and all Commonwealth residents downstream of its wastewater discharge.

Regarding Twin Lakes, on October 23, 2018, Twin Lakes petitioned the Commission to approve an abandonment of water service to its approximately 114 residential customers no later than March 31, 2019.⁸ Twin Lakes claimed it could no longer provide service to its customers because of significant quality of service and financial issues.⁹ On June 10, 2020, Twin Lakes provided notice to the Commission that on September 1st of that year it would cease providing water service to its customers.¹⁰ The practical effect of such abandonment would be the loss of potable water service and, for many customers, the loss of water for in-home sanitation as well. On July 13, 2020, the Commission directed that Twin Lakes “shall not abandon or surrender water service to its customers, in whole or in part, without Commission authorization.”¹¹ Nevertheless, on August 3, 2020, Twin Lakes provided public notice to its customers that “to

² Aqua Pennsylvania Statement No. 1 at 40; Aqua Pennsylvania Main Brief at 133-134.

³ *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. Metropolitan Edison Company and North Heidelberg Sewer Company*, Docket No. P-2017-2594688, *Petition for Ex Parte Emergency Order* (filed March 21, 2017).

⁴ *Id.*, *Opinion and Order* at 5 (Order entered May 4, 2017).

⁵ *Id.*, *Petition for Ex Parte Emergency Order*.

⁶ *Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement v. North Heidelberg Sewer Company*, Docket No. P-2017-2594688, *Ex Parte Emergency Order* (Issued March 22, 2017; ratified April 6, 2017.)

⁷ Aqua Pennsylvania Main Brief at 131.

⁸ *Twin Lakes Utilities, Inc. Application to Abandon Service to its customers in Sagamore Estates in Shohola Township, Pike County Pennsylvania*, Docket No. A-2018-3005590 (filed October 23, 2018.)

⁹ *Id.* See also, *Office of Consumer Advocate’s Answer in Support of the Petition of Twin Lakes Utilities*, Docket No. P-202-3020914 (filed August 5, 2020) (also containing a reiteration of the history and issues behind the Twin Lakes Section 529 forced acquisition petition supported by the OCA.)

¹⁰ *Twin Lakes Utilities, Inc. – Notice of Termination of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc.*, Docket No. M-2020-3020390 (Served June 10, 2020.)

¹¹ *Secretarial Letter* addressed to Jay Cooper, Middlesex Water Company DBA Twin Lakes Utilities, Inc. (Issued July 13, 2020.)

protect the public health, Twin Lakes will cease water service at 12:01 am on September 1, 2020.”¹² Shortly thereafter, the OCA petitioned the Commission stating that the “OCA respectfully requests the Commission direct Aqua Pennsylvania to act as a receiver to operate Twin Lakes until the resolution of the Section 529 proceeding.”¹³ The OCA opined that “Aqua Pennsylvania appears to be financially, managerially, and technically capable to serve Twin Lakes’ customers. It is a capable PUC jurisdictional water utility and a proximate public utility as required under Section 529.”¹⁴ Aqua willingly took on this request; the Company continues to make significant investments into the Twin Lakes system to ensure its customers receive safe water service.

Simultaneous with its work with NHSC and Twin Lakes, Aqua is also serving as a receiver to James Black, a typical small, troubled water system with approximately nineteen customers.¹⁵ I include a description of this typical small troubled water system only to provide perspective on the difference in scale required to rehabilitate NHSC and Twin Lakes, and to comment on the depth of resources, expertise, and employee commitment required to manage all these emergency efforts at the same time.

Aqua has answered the call to provide emergency assistance at the request of the public, public advocates, and government agencies. Given the nature and frequency of these emergencies, the Company should be recognized for its efforts to serve as a ready and willing ally in water and wastewater emergencies. Affording Aqua a modest management efficiency adjustment to its cost of capital because of its exemplary emergency service is a just, reasonable, and affordable approach to addressing its ongoing emergency aid efforts. It would be inequitable to proceed otherwise as there is no provision of the Public Utility Code that demands utilities exhaust employees or financial resources because of emergencies occasioned by others.

Section 523 of the Public Utility Code permits the Commission to award a management performance adjustment based on “[a]ny other relevant and material evidence of efficiency, effectiveness and adequacy of service.”¹⁶ Aqua’s consistent willingness to answer calls for aid to other water and wastewater providers show it is doing more than required by 66 Pa. C.S. Section 1501. The examples discussed here show Aqua carries a roster of large and complex emergency aid matters unlike any other Pennsylvania utility. As stated in its direct testimony, operating troubled systems requires significant time, commitment, and involvement from many departments within Aqua.¹⁷ As such, Aqua management is exceeding the expectations placed upon it not only by its existing customers, but also the Commonwealth. Aqua should receive a management efficiency award commensurate with the emergency service described herein. Therefore, to reflect the extraordinary effort exhibited by Aqua to aid and protect Pennsylvania

¹² *Twin Lakes Utilities, Inc. Section 529 Petition*, Docket No. P-2020-3020914 (filed August 3, 2020.)

¹³ *Office of Consumer Advocate Petition for Issuance of an Interim Emergency Order on an Expedited Basis*, Docket No. P-2020-3020914 at ¶ 18 (filed August 18, 2020.)

¹⁴ *Id.* at ¶ 17 (citations omitted.)

¹⁵ *In re James Black Water Service Company*, Docket No. M-2019-3012563 Ex Parte Emergency Order (Order Issued September 3, 2019, Ratified September 19, 2019).

¹⁶ 66 Pa. C.S. § 523(b)(7).

¹⁷ Aqua Pennsylvania Statement No. 1 at 20.

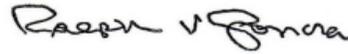
water and wastewater customers and the environment, Aqua should be awarded an additional 25 basis points to its ROE, for a total ROE of 10.00%.¹⁸

THEREFORE, I MOVE THAT:

1. That Aqua's Exception No. 1.6 is granted, and the Company shall be awarded a management performance adjustment of 25 basis points to its ROE, for a total ROE of 10%.
2. That the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

MAY 12, 2022

DATE



RALPH V. YANORA
COMMISSIONER

¹⁸ The Commission awarded Aqua a management performance adjustment of 22 basis points in its 2008 rate case, for a total ROE of 11.00%. *Pennsylvania Public Utility Commission, Joseph J. Silvia, et al. v. Aqua Pennsylvania, Inc.*, Docket No. R-00072711 (Order entered July 31, 2008).