



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 20, 2022

Via Electronic Filing

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

Re: Application of Aqua PA Wastewater, Inc. Pursuant to Section 1329 of the
Public Utility Code for Approval of its Acquisition of East Whiteland
Township, Chester County Sanitary Wastewater Collection System
Docket No. A-2021-3026132
I&E Exceptions

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Exceptions of the Bureau of Investigation and Enforcement (I&E)** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

Carrie B. Wright
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Enclosures

cc: Administrative Law Judge Marta Guhl (*via email* – mguhl@pa.gov)
Athena DelVillar, Legal Assistant (*via email* – sdelvillar@pa.gov)
Office of Special Assistants (*via email* – ra@OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua PA Wastewater, :
Inc. Pursuant to Section 1329 of the :
Public Utility Code for Approval of : Docket No.: A-2021-3026132
its Acquisition of East Whiteland :
Township, Chester County Sanitary :
Wastewater Collection System :

**EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Dated: May 20, 2022

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I. INTRODUCTION

The Bureau of Investigation and Enforcement (I&E) respectfully submits these instant Exceptions to the Recommended Decision of Administrative Law Judge Marta Guhl (the ALJ) in this proceeding.

A. Procedural Background

On July 31, 2021, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed with the Pennsylvania Public Utility Commission (Commission) its Application pursuant to Sections 1102, 1329, and 507 of the Public Utility Code (Code), for approval of the following requests: (1) approval of the acquisition by Aqua of the wastewater system assets of the East Whiteland Township (EWT); (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the requested service territory; and (3) an order approving the acquisition that includes the ratemaking rate base of the EWT wastewater system assets pursuant to Section 1329 of the Code.¹

I&E filed a Notice of Appearance in this proceeding on October 4, 2021. On August 26, 2021, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance and Intervention. In addition, the Office of Consumer Advocate (OCA) filed a Protest and Notice of Appearance on September 17, 2021.

On December 20, 2021, the Commission issued a Secretarial Letter indicating that Aqua's Application had been conditionally accepted. The Commission issued a Secretarial Letter accepting Aqua's Application as complete on February 4, 2022 and the matter was assigned to the Office of Administrative Law Judge (OALJ). ALJ Guhl was subsequently

¹ Aqua Application, p. 2.

assigned to this proceeding and ALJ Guhl issued an Order on February 23, 2022, establishing March 8, 2022 as the date for a Prehearing Conference.

A telephonic Prehearing Conference took place on March 8, 2022. On March 31, 2022, ALJ Guhl conducted evidentiary hearings telephonically.

Pursuant to the procedural schedule and in accordance with Commission regulations at Section 5.501, I&E submitted a Main Brief and Reply Brief. On April 15, 2022, Aqua, I&E, OCA, OSBA and East Whiteland Township filed a Joint Stipulation that contained certain conditions that the parties agreed to if the Commission approved the Application. On May 10, 2022, ALJ Guhl issued a Recommended Decision denying the transaction finding that Aqua failed to establish that the proposed transaction is necessary or proper for the service, accommodation, convenience, or safety of the public as required by Section 1103(a) of the Public Utility Code. I&E now timely files the instant Exception to reaffirm its position that, if the ALJ's recommendation is reversed by the Commission and the acquisition is approved, the conditions contained in the Joint Stipulation must be approved.

II. EXCEPTION

If the Transaction is Approved, the Joint Stipulation Must be Adopted as a Condition of the Acquisition.

The ALJ's RD recommends denial of the acquisition based on Aqua's failure to demonstrate that the transaction results in substantial affirmative benefits. I&E did not present testimony challenging the affirmative public benefits; however, it recommended that certain conditions must be implemented if the transaction is approved. I&E's recommended conditions are contained in the Joint Stipulation; therefore, should the acquisition ultimately be approved by the Commission, the Joint Stipulation must also be approved. The

signatories to the Joint Stipulation carefully crafted the conditions to eliminate certain issues with the acquisition and achieve a desired result if the Commission approves the transaction.

As explained in the I&E testimony and Briefs, I&E recommended that approval of Aqua's Application be subject to three conditions. First, that Aqua provide a cost of service study in its next base rate case that includes the EWT assets specifically for the EWT system.

As further explained by I&E, this condition has been accepted by the Company.²

Accordingly, should the Commission approve this acquisition, I&E requests that the Commission condition Aqua's Application upon requiring this cost of service study be provided as part of the Company's next base rate case filing.

Second, I&E recommended that the Commission condition approval of Aqua's Application upon the rejection of Aqua's rate freeze provision. As I&E explained, without Aqua's guarantee not to file a base rate case until the expiration of the rate freeze provision, this provision constitutes as nothing more than an empty promise to EWT customers in an attempt to win their favor for the proposed acquisition. Furthermore, it would infringe upon the Commission's ultimate rate setting authority. However, as this issue has been sufficiently addressed by the Joint Stipulation, I&E continues to recommend this condition be implemented if the Commission approves this acquisition.

Finally, I&E recommended that the approval of Aqua's Application be conditioned upon Aqua's and EWT's guarantee that all easements and real property rights have been transferred to Aqua by closing or for circumstances beyond EWT's control where it is unable to transfer all missing easements including public rights-of-way and other property rights

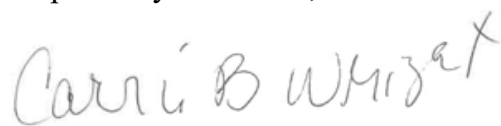
² Aqua St. No. 1- R, p. 11.

prior to or at closing, that an escrow account be established from the purchase price to be used to obtain any post-closing transfers. This will ensure that the UVEs' appraisals rely on an accurate assumption and to ensure that ratepayers are safeguarded from post-transaction uncertainty. Again, I&E submits that this issue has been sufficiently addressed by the Joint Stipulation and that these conditions should be implemented if the Commission ultimately approves the acquisition.

III. CONCLUSION

For the reasons set forth herein, the Bureau of Investigation and Enforcement respectfully requests that if the Pennsylvania Public Utility Commission approves the acquisition, that it additionally approve the Joint Stipulation entered into by the Parties to this proceeding.

Respectfully submitted,

A handwritten signature in black ink that reads "Carrie B. Wright". The signature is written in a cursive style and is contained within a thin black rectangular border.

Carrie B. Wright
Prosecutor
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Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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Dated: May 20, 2022

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Wastewater Collection System :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Exceptions** dated May 20, 2022, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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