

COMMONWEALTH OF PENNSYLVANIA



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December 9, 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 Water
System Assets of Shenandoah Borough and
MABS
Docket No. A-2022-3034143

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ David T. Evrard
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Assistant Consumer Advocate
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Bureau of Technical Utility Services (**email only:** dsearfoorce@pa.gov; sdonnelly@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

*338204

CERTIFICATE OF SERVICE

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections :
507, 1102 and 1329 of the Public : Docket No. A-2022-3034143
Utility Code for Approval of its :
Acquisition of the Water System Assets :
of Shenandoah Borough and MABS :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, 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 9th day of December 2022.

SERVICE BY E-MAIL ONLY

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Dated: December 9, 2022
*338208

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania , Inc. :
pursuant to Sections 1102, 1329 of the Public :
Utility Code for Approval of its Acquisition of : Docket No. A-2022-3034143
the Water System Assets of the Borough of :
Shenandoah :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application proceeding pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq.* and 66 Pa. C.S. § 1329. Through this Application, filed on October 6, 2022, Aqua Pennsylvania, Inc. (Aqua or Company) requests that the Commission: (1) approve the acquisition of the water system assets of the Borough of Shenandoah (Shenandoah or Borough) and the Municipal Authority of the Borough of Shenandoah (MABS or Authority); (2) approve the right of Aqua to provide water 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 ¶ 5. Aqua also requests approval of the Asset Purchase Agreement (APA) dated July 20, 2021, pursuant to Section 507 of the Public Utility Code. Application ¶¶ 7, 75.

Shenandoah/MABS provides water service to 2,899 customers, of which 2,652 are residential, 200 are commercial, 5 are industrial, and 39 are public. Application ¶ 11, 30. The seller does not project any significant customer growth over the next five years. *Id.* ¶ 33. The system

assets include a water treatment plant, storage tanks, pumping stations, dams, water mains and all other treatment, storage and distribution assets necessary to run the system. Application ¶ 24. Other than four fire companies, all of Shenandoah/MABS's customers are metered for their water service. *Id.* ¶ 34. MABS bills customers a minimum charge for a stated allowance, plus additional rates for usage beyond that allowance. *Id.* ¶ 36. Wastewater service is provided by the Shenandoah Municipal Sewer Authority, Girardville Area Municipal Authority, Girardville Area Municipal Authority and Schuylkill County Municipal Authority, and by private septic. *Id.* ¶ 17.

The OCA files this Protest in order to ensure that the Application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and regulations.

Specifically, the OCA avers as follows:

1. The Protestant is Patrick M. Cicero, Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are David T. Evrard and Harrison W. Breitman, Assistant Consumer Advocates, and Erin L. Gannon, Senior Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of Aqua's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §

1102(a)(1)-(3).

4. The Code further requires that a certificate shall only be granted upon a finding that the granting of such certificate is “necessary or proper for the service, accommodation, convenience or safety of the public.” 66 Pa. C.S. § 1103(a). *See City of York v. Pa. P.U.C.*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); *see also Popowsky v. Pa. P.U.C.*, 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52 Pa. Code Section 53.45(b)(1-4) and the order entered in *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055, (Pa. Cmwlth. Ct. 2018), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193. The OCA requests that, once the Commission issues a Secretarial Letter indicating final acceptance of the application, a telephonic public input hearing be scheduled in this matter. The OCA also requests that public input hearings be held no later than approximately four to six weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearings will ensure that both the existing and acquired customers have a reasonable opportunity to be heard.

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market value or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This provision is an alternative to the use of original cost, less depreciation for ratemaking purposes, when a public utility acquires municipal water and wastewater assets. Aqua proposes to pay \$12,000,000 per the Asset Purchase Agreement of July 20, 2021. Aqua Exh. B, Article III. The original cost of the assets, as determined by the engineer's report, is \$19,385,971 and the calculated depreciation reserve is \$8,595,893 for a net depreciated original cost under 66 Pa. C.S. § 1329(d)(5) of \$10,790,078. Application ¶ 19; Aqua Exh. Q at 26.

8. Aqua's Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) was \$25,221,000. Application ¶ 59. The Shenandoah UVE appraisal conducted by ScottMadden, Inc. (ScottMadden) was \$18,100,307. *Id.* The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$21,660,654. *Id.*; Aqua Exh. S1 at 4; Aqua St. 7 at 6. The purchase price of \$12,000,000 is less than the average of the UVE appraisals, and Aqua's proposed ratemaking rate base is \$12,000,000. Application ¶ 59. Aqua estimates that it will incur transaction and closing costs of \$457,000, inclusive of Aqua's UVE fees. Aqua St. 1 at 18.

9. According to the Applicants, MABS rates were last increased on October 1, 2020. Application ¶ 36. Aqua and Shenandoah agreed that base rates will not increase until Aqua's next base rate case following Closing, and that Aqua's Distribution System Improvement Charge will not be applied to MABS customers until calendar year 2023. *Id.* ¶ 35. MABS presently bills on a monthly and quarterly basis. Aqua will convert the quarterly rates to monthly billing after closing. *Id.* ¶¶ 34-35.

11. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code.

a. The valuation information provided with the Application is not sufficient to determine whether Aqua’s ratemaking proposals are reasonable. The OCA will review any additional data and information provided in support of each valuation.

b. Aqua proposes to charge the following rates to residential customers in the acquired service territory (as noted above, the Company states that it will convert the acquired Shenandoah/MABS customers to monthly billing. *See Application ¶ 35*):

MONTHLY SERVICE CHARGE

Customer Charge (\$)	Shenandoah Division
Fixed (per Customer)	
<u>Meter Size:</u>	
5/8 inch	\$ 20.49
5/8 x 3/4 inch	20.49
3/4 inch	29.88
1 inch	40.91

MONTHLY CONSUMPTION CHARGE : Rate per 1,000 gallons

All Classes (5/8, 5/8 x 3/4, 3/4 and 1 inch meters)	
First 1000 Gallons	Included in Minimum Monthly Fixed Charge
Next 1000 Gallons	\$ 20.49
Next 1333 Gallons	\$ 10.96
Next 3667 Gallons	\$ 4.83
Greater than 6667 Gallons	\$ 10.96

MONTHLY SERVICE CHARGE

Customer Charge (\$)	Shenandoah Division
Fixed (per Customer)	
<u>Meter Size:</u>	
2 inch	\$ 110.29 up to 2,000 gallons
3 inch	\$ 679.73 up to 84,000 gallons
4 inch	\$ 1,223.46 up to 150,000 gallons
6 inch	\$ 2,582.84 up to 324,000 gallons
8 inch	\$ 3,616.05 up to 453,000 gallons

MONTHLY CONSUMPTION CHARGE : Rate per 1,000 gallons

All Classes (2,3,4,6 and 8 inch meters)	
500,000 gallons beyond base allowance	\$ 3.92
Usage beyond base allowance plus 500,000 gallons	\$ 1.89

Aqua Exh. G. The OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code.

c. Information is provided regarding the estimated costs of planned investment in the system (approximately \$23 million over 10 years). Aqua St. 2 at 6. The impact that the costs of the acquisition, particularly the proposed ratemaking rate base (\$12 million), will have on the rates of existing and acquired customers must be determined to assess the benefits and detriments of the acquisition. The revenue that will be collected from MABS customers will be approximately \$1,927,789. Aqua St. 1, App. A. The revenue requirement associated with the ratemaking rate base will result in an additional \$865,000 of revenue that needs to be collected from ratepayers. *Id.*

Aqua's notice to the Shenandoah customers provides an estimate of the potential impact on Shenandoah's rates if the entire cost of the acquisition, including the ratemaking rate base, is charged to Shenandoah customers at the time of the next base rate case, i.e. their existing rates increased to cover the entire revenue deficiency created by the \$12 million proposed ratemaking rate base. *See* Aqua Exh. I2; *see also* Aqua St. 1, App. A. Aqua's notice to its existing water customers informs them of a potential scenario in which Aqua's water rates would increase by 0.10%. *See* Aqua Exh. I1; *see also* Aqua St. 1, App. A. The proposed notice to MABS customers has two scenarios for rate increases, a 15.90% increase if 20% of the revenue deficiency is subsidized by existing Aqua water customers, and a 44.87% increase if 100% of the revenue deficiency is borne by the acquired MABS customers. *See* Aqua Exh I2. Based on those assumptions, Aqua calculates that rates charged to residential customers would increase as follows, after its next base rate case:

% of Revenue Deficiency Applied to Existing Aqua Customers	Average Shenandoah Customer Monthly Increase (\$) at 2.79 Kgal	Average Shenandoah Customer Monthly Increase (%) at 2.79 Kgal
0%	\$19.50	44.87%
50%	\$9.75	22.44%
80%	\$6.91	15.90%
100%	\$0.08	0.10%

d. Aqua and Borough/MABS request that the Commission approve the rate provisions contained in the APA, which provides that rates charged to the former MABS customers will not increase until Aqua’s next base rate case following closing. Application ¶ 35.

12. The OCA submits that additional information is necessary to determine if the proposed rates and Aqua’s request for an approved ratemaking rate base of \$12 million for the Shenandoah acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

13. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua’s existing customers and the acquired customers.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including a telephonic public input hearing for the buyer and seller's customers held four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,

/s/ David T. Evrard

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Dated: December 9, 2022
338297

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania, Inc. (Aqua) of the water assets of the Borough of Shenandoah and the Municipal Authority of the Borough of Shenandoah (MABS).

The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and the MABS customers. The Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Consumer Advocate will investigate the proposed acquisition to determine if there are substantial affirmative public benefits and request the Public Utility Commission to order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua serves approximately 448,000 water customers in portions of 32 counties in Pennsylvania. MABS provides water service to 2,899 customers, in Schuylkill County, Pennsylvania.