

COMMONWEALTH OF PENNSYLVANIA



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February 17, 2023

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

Re: Pennsylvania Public Utility Commission  
v.  
Aqua Pennsylvania Wastewater, Inc.  
(Supp. No. 3 to Tariff Sewer-Pa. P.U.C. No. 3)  
Docket No. R-2022-3037141

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Erin L. Gannon  
Erin L. Gannon  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 83487  
EGannon@paoca.org

Enclosures:

cc: The Honorable Gail M. Chiodo (**email only**)  
Certificate of Service

\*341188

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission :  
v. : Docket No. R-2022-3037141  
Aqua Pennsylvania Wastewater, Inc. :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Prehearing Memorandum, 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 17<sup>th</sup> day of February 2023.

**SERVICE BY E-MAIL ONLY**

Richard A. Kanaskie, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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Harrisburg, PA 17120  
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*Counsel for Aqua PA, Inc.*

/s/ Erin L. Gannon  
Erin L. Gannon  
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Harrisburg, PA 17101-1923  
Phone: 717-783-5048  
Fax: 717-783-7152  
Dated: February 17, 2023  
\*341187

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

|  |   |                            |
|--|---|----------------------------|
| Pennsylvania Public Utility Commission | : |                            |
|  | : | Docket Nos. R-2022-3037141 |
| v.                                     | : | C-2023-3037579             |
|  | : |                            |
| Aqua Pennsylvania Wastewater, Inc.     | : |                            |
| (Supplement No. 3 to Tariff Sewer-     | : |                            |
| Pa. P.U.C. No. 3)                      | : |                            |

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PREHEARING MEMORANDUM OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to the Prehearing Conference Order of Administrative Law Judge Gail M. Chiodo issued on February 9, 2023, Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and in anticipation of the telephonic Prehearing Conference scheduled for February 21, 2023, the Office of Consumer Advocate (OCA) provides the following information:

**I. INTRODUCTION AND PROCEDURAL HISTORY**

Aqua Pennsylvania Wastewater, Inc. provides wastewater service to approximately 61,000 customers. Aqua Pennsylvania, Inc. provides water service to approximately 450,000 customers. Those customers are located in 32 counties across Pennsylvania.

On December 7, 2022, Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company) filed Supplement No. 3 to Tariff Sewer-PA P.U.C. No. 3 (Supplement No. 3), which proposes to establish a contract rate for large industrial wastewater customers via a rider. Its effective date was February 5, 2023. On December 13, 2022, the Commission's Bureau of Technical Utility Services issued data requests. On December 22, 2022, Aqua filed Supplement No. 5 to Tariff

Sewer-PA P.U.C. No. 3, which voluntarily postponed Supplement No. 3 to become effective February 10, 2023. On January 5, 2023, Aqua filed responses to the TUS data requests. On January 11, 2023, the OCA filed a Formal Complaint against Aqua. On February 9, 2023, the Public Utility Commission (Commission) entered an Order suspending Supplement No. 3 by operation of law until August 10, 2023. Pursuant to that Order, on February 15, 2023, Aqua filed Supplement No. 8 to Tariff Sewer-PA P.U.C. No. 3 with an effective date of August 10, 2023.

## **II. ISSUES**

The OCA is participating in this proceeding to ensure that the interests of Aqua's existing customers are protected. Based upon its investigation and review of the filing, the OCA has compiled a list of issues to be addressed. These issues will be presented as appropriate by the OCA with the assistance of its expert witnesses. They are as follows:

1. In the supporting information submitted with its December 7, 2023 filing, Aqua states that it has a "small number" of large industrial wastewater customers but cannot quantify how many bills or how Aqua's revenues would be impacted if its tariff change is approved. The proposed new rider would allow large industrial wastewater customers to negotiate rates that are lower than Aqua's tariffed rates for service. If the revenues generated by these contract rates are less than the cost to serve those customers, Aqua's other wastewater or water customers will be at risk to pay the revenue deficiency in future rates.

2. The Consumer Advocate is concerned that the Company's proposed rider may result in rates and charges that are not just and reasonable or otherwise non-compliant with applicable statutes, Commission regulations or policy.

3. The proposal to allow large industrial customers “with a viable competitive alternative to service from the Company” to pay contract rates for wastewater service has, to the OCA’s knowledge, not previously been reviewed or approved by the Commission.

4. A preliminary examination of Aqua’s request to establish a contract rate for large industrial wastewater customers indicates that the proposed rider may be contrary to sound ratemaking principles and public policy.

The OCA reserves the right to address any additional issues that arise during the course of the proceeding.

### **III. WITNESSES**

The OCA is in the process of securing consultants for this matter. The OCA will promptly advise the Presiding Officer and parties when its witnesses and their area of testimony is determined.

The OCA specifically reserves the right to call additional witnesses, as necessary. If the OCA determines that additional witnesses will be necessary for any portion of its case, it will notify all parties of record immediately.

**IV. PROPOSED SCHEDULE AND AMOUNT OF TIME NEEDED FOR HEARINGS**

The OCA requests that the dates included in any litigation schedule in this matter be considered “in-hand” dates and that electronic service on the due date will satisfy the “in-hand” requirement, without provision of hard copies.

ALJ Chiodo requested that the parties consider a schedule targeting the July 13, 2023 Public Meeting date. Given that the scope of issues in this proceeding is limited to one proposed rate, the end of suspension date is August 10, 2023, and the press of other cases during the same period, the OCA proposes the following schedule targeting the August 3, 2023 Public Meeting:

|                                |                |
|--------------------------------|----------------|
| Direct Testimony Aqua          | March 1, 2023  |
| Direct Testimony Other Parties | March 20, 2023 |
| Rebuttal Testimony             | March 29, 2023 |
| Surrebuttal Testimony          | April 7, 2023  |
| Rejoinder Outline              | April 12, 2023 |
| Hearings                       | April 14, 2023 |
| Main Brief                     | April 25, 2023 |
| Reply Brief                    | May 4, 2023    |

The OCA will continue to work with the parties and Presiding Officer to reach a schedule that is mutually acceptable.

**V. DISCOVERY**

The OCA proposes that all discovery due dates should be “in-hand” and electronic service on the due date will satisfy that requirement. The OCA further proposes that hard copy service of discovery responses should not be required. To date, the OCA has served and received responses to one set of interrogatories to Aqua.

If the OCA's proposed schedule or a schedule with similar spacing between rounds of testimony is adopted, the OCA requests the following discovery modifications:

1. Answers to interrogatories and responses to requests for document production, entry for inspection, or other purposes shall be served within five (5) calendar days of service of the interrogatories or requests for production.

2. Objections to interrogatories and/or requests for production shall be communicated orally to the propounding party within two (2) calendar days of service; unresolved objections shall be served on the propounding party in writing within three (3) calendar days of service of the interrogatories and/or requests for production.

3. Motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of written objections.

4. Answers to motions to dismiss objections and/or direct the answering of interrogatories and/or requests for production shall be filed within two (2) calendar days of service of such motions.

5. Requests for admission shall be deemed admitted unless answered or objected to within three (3) calendar days of service.

6. Discovery requests and discovery related pleadings (such as objections, motions, and answers to same) served after 4:30 p.m. Monday through Thursday or after 12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.

## **VI. PUBLIC INPUT HEARING**

At this time, the OCA is not requesting a Public Input Hearing. However, the OCA reserves the right to make such request if the OCA determines that one is necessary.

## **VII. CUSTOMER NOTICE**

It is not specified in the filing if direct notice has been provided to the Aqua customers. If not, the OCA requests that Aqua be directed to provide direct notice within a reasonable period, given the number of possible customers impacted.

## **VIII. SERVICE ON THE OCA**

The OCA will be represented in this case by Senior Assistant Consumer Advocate Erin L. Gannon and Assistant Consumer Advocate Christopher M. Andreoli. Erin L. Gannon will act as the lead attorney for purposes of participating in the Prehearing Conference. All documents should be served on the OCA as follows:

Erin L. Gannon  
Christopher M. Andreoli  
555 Walnut Street, 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
Phone: 717-783-5048

The OCA will accept email service without provision of a hard copy. To the extent that materials are available electronically, it is requested that copies be served upon all of the following:

Erin L. Gannon – [EGannon@paoca.org](mailto:EGannon@paoca.org)  
Christopher M. Andreoli – [CAAndreoli@paoca.org](mailto:CAAndreoli@paoca.org)  
Lauren R. Myers – [LMyers@paoca.org](mailto:LMyers@paoca.org)

**IX. SETTLEMENT**

The OCA is willing to participate in settlement discussions in this matter.

Respectfully submitted,

/s/ Christopher M. Andreoli  
Christopher M. Andreoli  
Assistant Consumer Advocate  
PA Attorney I.D. # 85676  
[CAndreoli@paoca.org](mailto:CAndreoli@paoca.org)

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Dated: February 17, 2023