



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

March 6, 2023

Via Electronic Filing

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

Re: Application of Aqua Pennsylvania, Inc. (“Aqua”) under Sections 1102 1329 of the Pennsylvania Public Utility Code for (1) approval of the acquisition by Aqua of the water system assets of the Borough of Shenandoah (“Shenandoah” or “Borough”) and the Municipal Authority of the Borough of Shenandoah (“MABS” or the “Authority”) situated within the Borough, West Mahanoy Township, Mahanoy Township, Butler Township, Girardville Borough, and Union Township, Schuylkill County, Pennsylvania, (2) approval of the right of Aqua to begin to offer, render, furnish and supply water service to the public in the Borough of Shenandoah, West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, Schuylkill County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Borough and MABS water system assets pursuant to Section 1329(c)(2) of the Public Utility Code; and (4) approval of a contract between Aqua, the Borough, and MABS, pursuant to Section 507 of the Public Utility Code.

Docket No. A-2022-3034143

I&E Prehearing Memorandum

Dear Secretary Chiavetta,

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement’s (I&E) **Prehearing Memorandum** 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 contact the undersigned.

Sincerely,

Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov

Enclosures

cc: Administrative Law Judge Jeffrey A. Watson (*via email*)
Nicholas Miskanic, Legal Assistant (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc.	:	
("Aqua") under Sections 1102 1329 of the	:	
Pennsylvania Public Utility Code for (1)	:	
approval of the acquisition by Aqua of the	:	
water system assets of the Borough of	:	
Shenandoah ("Shenandoah" or "Borough")	:	
and the Municipal Authority of the Borough	:	
of Shenandoah ("MABS" or the "Authority")	:	
situated within the Borough, West Mahanoy	:	
Township, Mahanoy Township, Butler	:	
Township, Girardville Borough, and Union	:	
Township, Schuylkill County, Pennsylvania,	:	
(2) approval of the right of Aqua to begin to	:	Docket No.: A-2022-3034143
offer, render, furnish and supply water service	:	
to the public in the Borough of Shenandoah,	:	
West Mahanoy Township, Mahanoy	:	
Township, Butler Township, and Girardville	:	
Borough, Schuylkill County, Pennsylvania;	:	
(3) an order approving the acquisition that	:	
includes the ratemaking rate base of the	:	
Borough and MABS water system assets	:	
pursuant to Section 1329(c)(2) of the Public	:	
Utility Code; and (4) approval of a contract	:	
between Aqua, the Borough, and MABS,	:	
pursuant to Section 507 of the Public Utility	:	
Code.	:	

**PREHEARING MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE JEFFREY WATSON:

In accordance with the Administrative Law Judge Jeffrey Watson's Prehearing Conference Order, the Bureau of Investigation and Enforcement ("I&E") hereby submits this Prehearing Memorandum. The I&E prosecutor assigned to this proceeding is Carrie B.

Wright. Ms. Wright may be contacted as follows:

By Mail: Carrie B. Wright
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Fl.
Harrisburg, PA 17120

By E-mail: carwright@pa.gov

Telephone: (717) 783-6156

I. BACKGROUND

On October 6, 2022, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed with the Pennsylvania Public Utility Commission (Commission) its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (Code), related to its acquisition of the Borough of Shenandoah (Borough)/Municipal Authority of the Borough of Shenandoah (MABS or collectively with the Borough, referred to as Shenandoah) water system assets.

By way of a Secretarial Letter of February 3, 2023, the Commission informed Aqua that its Application was accepted for filing. On February 18, 2023, the Commission published notice of Aqua's Application in the Pennsylvania Bulletin. Thereafter, Aqua's Application was assigned to the Office of Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission's consideration.

A telephonic Prehearing Conference is now scheduled for March 7, 2023, at 10:00 a.m., before ALJ Jeffrey Watson (the ALJ). In accordance with the Prehearing Conference Order issued by the ALJ, I&E now respectfully submits this prehearing memorandum.

II. ISSUES

Based upon a preliminary review of the filing, I&E has identified the following areas of inquiry, representing a listing of potential issues at this time. However, I&E reserves the right to address such other issues when those issues arise:

1. Errors and omissions in the Fair Market Appraisals;
2. Cost of Service Study;
3. Easements and Other Property Rights;
4. Comparison of Rate Base per Customer;
5. Benefits and detriments of the acquisition;
6. Whether the transaction is in the public interest under 66 Pa. C.S. § 1102 of the Public Utility Code;
7. Evaluation of Aqua's claimed rate base; and
8. Future Base Rate Implications.

I&E notes that this listing of issues is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway. Accordingly, I&E necessarily reserves the right to supplement its issue list, to remove issues from this list, and to reassign issues between witnesses as necessary to facilitate the development of a full record in this case. Additionally, most of the issues raised by I&E will be supported by the Direct Testimony of I&E witnesses. If there are issues of Commission policy or legal interpretation that are not properly the subject of testimony or factual issues that are clear on the record and need not be supported by testimony, I&E reserves the right to dispense with testimony when, in its opinion, an issue can be adequately addressed in Brief.

III. WITNESSES

It is currently expected that I&E may call the following witnesses without being limited thereto:

- DC Patel, Fixed Utility Financial Analyst
- Esyan Sakaya, Fixed Utility Valuation Engineer

The I&E witnesses may be contacted through the contact information listed above for Ms. Wright. I&E notes that this listing of witnesses is provided without analysis of the positions of all parties to this proceeding and while the discovery process is still underway. Accordingly, I&E necessarily reserves the right to supplement its witness list, and to remove witnesses from this list, as necessary to facilitate the development of a full record in this case. The ALJs and all active parties will be notified of any amendments to the I&E witness list.

IV. SCHEDULE

I&E will work with the Parties and the ALJ to develop a procedural schedule in this proceeding.

I&E requests that hearings be held telephonically in this matter. To the extent that in person hearings are required, I&E respectfully requests that those hearings be held in Harrisburg.

V. DISCOVERY

I&E will work with the Parties to develop mutually agreeable discovery modifications.

VI. SERVICE OF DOCUMENTS

The Commission's March 20, 2020 Emergency Order,¹ which was controlling regarding electronic service of documents, expired on September 30, 2021. In anticipation of the expiration of the March 20 Order, the Commission issued a new Order on September 15, 2021 regarding the regulations controlling service requirements.² Pursuant to the September 15 Order, the Commission recognized, for purposes of satisfying service of documents requirements:

... that some of the measures we implemented significantly benefitted the operational needs of the Commission, the public and the regulated community. Specifically, the electronic service requirements we adopted were essential to ensuring continued, uninterrupted operations, providing needed flexibility. Therefore, in order to maintain that flexibility to respond to operational demands, we will waive certain regulatory service provisions, consistent with our previous actions.³

Further, the Commission stated:

... some of the operational restraints occasioned by the pandemic remain. ... Toward this end, we will continue to permit electronic service *by* the Commission on all parties, regardless of whether a particular party has agreed to electronic service. ... Additionally, service *on* Commission staff in proceedings pending before it, whether staff is a party or otherwise, shall be exclusively electronic unless the parties agree otherwise.⁴

Therefore, for purposes of satisfying in-hand service requirements for discovery responses, prepared testimony, briefs and other documents, I&E requests that electronic delivery of documents continue to satisfy the service requirements without the need to follow up with service of a hard copy of such documents.

¹ Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements* ("March 20 Order").

² Docket No. M-2021-3028321, *Re: Waiver of Regulations Regarding Service Requirements* ("September 15 Order").

³ September 15 Order, p. 3.

⁴ *Id.*, p. 6.

VII. SETTLEMENT

I&E intends to participate in any settlement discussions and is willing to work with the parties in an attempt to reach a resolution of any or all issues.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Prosecutor
PA Attorney ID No. 308185

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
carwright@pa.gov

Dated: March 6, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc. :
 (“Aqua”) under Sections 1102 1329 of the :
 Pennsylvania Public Utility Code for (1) :
 approval of the acquisition by Aqua of the :
 water system assets of the Borough of :
 Shenandoah (“Shenandoah” or “Borough”) :
 and the Municipal Authority of the Borough :
 of Shenandoah (“MABS” or the “Authority”) :
 situated within the Borough, West Mahanoy :
 Township, Mahanoy Township, Butler :
 Township, Girardville Borough, and Union :
 Township, Schuylkill County, Pennsylvania, :
 (2) approval of the right of Aqua to begin to : Docket No.: A-2022-3034143
 offer, render, furnish and supply water :
 service to the public in the Borough of :
 Shenandoah, West Mahanoy Township, :
 Mahanoy Township, Butler Township, and :
 Girardville Borough, Schuylkill County, :
 Pennsylvania; (3) an order approving the :
 acquisition that includes the ratemaking rate :
 base of the Borough and MABS water :
 system assets pursuant to Section 1329(c)(2) :
 of the Public Utility Code; and (4) approval :
 of a contract between Aqua, the Borough, :
 and MABS, pursuant to Section 507 of the :
 Public Utility Code. :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated March 6, 2023 in the manner and upon the persons listed below:

Service via Electronic Mail Only

Alexander R. Stahl, Esq.
Aqua Pennsylvania, Inc.
762 Lancaster Ave.
Bryn Mawr, PA 19010
astahl@aquaamerica.com
Counsel for Aqua Pennsylvania, Inc.

Courtney L. Schultz, Esq.
Saul Ewing Arnstein & Lehr LLP
1500 Market Street
Center Square West, 38th Floor
Philadelphia, PA 19102
courtney.schultz@saul.com
Counsel for Aqua Pennsylvania, Inc.

Sharon E. Webb, Esq.
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
swebb@pa.gov

David T. Evrard, Esq.
Harrison W. Breitman, Esq.
Erin L. Gannon, Esq.
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101
OCAShenandoah@paoca.org

Service via First Class Mail Only

Donna Gawrylik
MABS
114 South West Street
Shenandoah, PA 17976



Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov