

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Jeffrey A. Watson, Presiding**

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

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**PREHEARING MEMORANDUM OF  
AQUA PENNSYLVANIA, INC.**

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AND NOW, comes Aqua Pennsylvania, Inc. (“Aqua”) and submits this Prehearing Memorandum in connection with the Telephonic Prehearing Conference scheduled to be held in the above-captioned matter on March 7, 2023, at 10:00 a.m.

**I. BACKGROUND**

This proceeding concerns the Application of Aqua, filed with the Pennsylvania Public Utility Commission (the “Commission”) on October 6, 2022, for approval of its acquisition of the water system assets of the Borough of Shenandoah (“Borough”) and the Municipal Authority of the Borough of Shenandoah (“MABS” and together with the Borough, referred to as “Shenandoah”) pursuant to Sections 1102 and 1329 of the Public Utility Code (the “Code”). The Application also includes a request for approval of a contract pursuant to Section 507 of the Code.

By Secretarial Letter dated December 9, 2022, the Commission, *inter alia*, conditionally accepted the Application for filing and directed Aqua to serve copies of the Application upon

designated entities, to provide individualized notice to affected customers, to publish notice of the filing of the Application in a newspaper of general circulation, and to provide additional information concerning MABS' Ringtown No. 5 Dam.

Aqua complied with the requirements of the conditional acceptance letter. The Commission, thereafter, by Secretarial Letter dated February 3, 2023, informed Aqua that it accepted the Application for filing and that the matter would be assigned to the Office Administrative Law Judge for disposition.

Administrative Law Judge Jeffrey A. Watson was assigned to preside over the proceeding. A Telephonic Prehearing Conference was noticed for March 7, 2023.

Judge Watson issued a Prehearing Conference Order on February 7, 2023. Pursuant to Paragraph 6 of the Prehearing Conference Order parties are directed to file and serve a prehearing memorandum on or before 10:00 a.m. on March 6, 2023.

## **II. LIST OF ISSUES AND AQUA'S POSITION IN REGARD TO SAME**

There are three central issues in this proceeding, each of which is set forth below, along with Aqua's position regarding same.

**Issue No. 1:** Is Aqua's acquisition of the water system assets of Shenandoah necessary or proper for the service, accommodation, convenience or safety of the public?

**Aqua's Position:** Aqua's acquisition of the water system assets of Shenandoah is necessary or proper for the service, accommodation, convenience or safety of the public. The Commission should issue certificate(s) of public convenience approving the acquisition.

As summarized Section X of the Application:<sup>1</sup>

- a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of Shenandoah, and to maintain the operations and make

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<sup>1</sup> Application, at ¶ 55.

improvements to meet continuing and future customer needs.<sup>2</sup> The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;

- b. Shenandoah has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of MABS, to provide water service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The MABS system will benefit from the support of water professionals throughout Aqua's organization;
- c. The acquisition is consistent with the Commission's long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."<sup>3</sup> The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;
- d. Aqua provides utility service to approximately 448,000 water customers and has years of experience operating water systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of MABS;
- e. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007), to support a conclusion that there is a public benefit to a transaction such as the one that is the subject of this proceeding;
- f. The acquisition of Shenandoah system will increase Aqua's customer base by approximately 0.6%. With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and

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<sup>2</sup> As a certificated provider of utility service, Aqua's fitness is presumed. See *Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

<sup>3</sup> *Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

- g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or MABS customers. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua’s ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission’s determination of substantial affirmative benefits.

**Issue No. 2:** Pursuant to Section 1329 of the Public Utility Code, what is the ratemaking rate base of the water system assets of Shenandoah?

**Aqua’s Position:** The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$12,000,000, being the lesser of the purchase price of \$12,000,000 negotiated by Aqua and Shenandoah and the average of the fair market value appraisals which is \$21,660,654 – determined by \$25,221,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants and \$18,100,307 presented in the appraisal of ScottMadden.<sup>4</sup>

**Issue No. 3:** Pursuant to Section 507 of the Public Utility Code, is the Asset Purchase Agreement (“APA”) between Aqua and Shenandoah valid?

**Aqua’s Position:** The APA between Aqua and Shenandoah is valid under Section 507 of the Public Utility Code.

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<sup>4</sup> See Application, at ¶ 59.

### III. WITNESSES

The following statements of written direct testimony were attached as Exhibit U, Exhibit V, Exhibit W, Exhibit X, Exhibit Y, Exhibit Z, and Exhibit AA to the Application when it was submitted to the Commission on October 6, 2022.<sup>5</sup>

<u>Application</u>	<u>Aqua Statement</u>	<u>Witness</u>	<u>Subject Matter</u>
Exhibit U	Statement No. 1	William C. Packer	A General Overview of the Transaction; Financial and Legal Fitness of Aqua; APA Provisions; Public Benefits of the Transaction; and Section 1329
Exhibit V	Statement No. 2	Brennan J. Kelly, P.E.	Description of the System; Environmental Compliance; and Technical Fitness
Exhibit W	Statement No. 3	Stephen Clark	Integration into Current Operations; Lead Service Lines; Customer Service; Metering Plan; and Public Benefits of the Transaction
Exhibit X	Statement No. 4	Matthew J. Marchisello, P.E.	MABS Dams
Exhibit Y	Statement No. 5	Leo Pietkiewicz	A General Overview of the Transaction; Shenandoah's Water System; MABS rates; and Public Benefits of the Transaction
Exhibit Z	Statement No. 6	Harold Walker, III	Gannett Fleming Fair Market Value Appraisal
Exhibit AA	Statement No. 7	Dylan W. D'Ascendis	ScottMadden Fair Market Value Appraisal

Aqua requests that any contact with witnesses be arranged through the undersigned counsel.

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<sup>5</sup> The testimony of Mr. Pietkiewicz and Mr. D'Ascendis will be presented by Shenandoah.

Aqua also will submit its Application, filed with the Commission on October 6, 2022, as an Exhibit in support of Commission approval of the proposed acquisition and the proposed ratemaking rate base.

The Application, as filed, has 47 separately numbered documents publicly available on the Commission's web docket and includes the items required by Section 1329(d) of the Public Utility Code. The fair market value appraisals of Gannett Fleming, Utility Valuation Expert, and ScottMadden, Utility Valuation Expert are Application Exhibits Q and R, respectively. Confidential Exhibits will be submitted on a Confidential basis.

Aqua will also submit its supplemental information letters filed with the Commission, dated November 9, 2022, November 18, 2022, and December 16, 2022, which are publicly available on the Commission's web docket. The Confidential workpapers filed with the supplemental information letter of November 9, 2022, and the Confidential Dam Inspection Reports filed with the supplemental information letter of November 18, 2022 will be submitted on a Confidential basis.

The List of Exhibits A through CC2, provided with the Application, is attached hereto as Attachment 1.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify ALJ Watson and the parties promptly should Aqua determine that additional witnesses will be called.

#### **IV. LITIGATION SCHEDULE**

Aqua has conferred with the Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("OSBA") on the proposed litigation schedule presented in the Prehearing Conference Order. Aqua supports the

alternative proposed schedule presented by the OCA, which would modify the dates in the Prehearing Conference Order as follows:

<b>Event</b>	<b>Proposed Dates</b>
Acceptance of Application	Friday, February 3, 2023
Protests/Petitions to Intervene Due	Monday, March 6, 2022 <sup>6</sup>
Prehearing Conference	Tuesday, March 7, 2023
Direct Testimony of Other Parties	Monday, March 20, 2023
Telephonic Public Input Hearing	Wednesday, March 15, 2023, 6 pm or Tuesday, March 21, 2023, 6 pm
Rebuttal Testimony	Monday, March 27, 2023
Surrebuttal Testimony	N/A
Evidentiary Hearings with oral rejoinder	Tuesday and Wednesday, March 28 and 29, 2023
Receipt of Transcript	Monday, April 3, 2023
Main Briefs	Tuesday, April 11, 2023
Reply Briefs/	<b>Thursday, April 20, 2023<sup>7</sup></b>
Recommended Decision	<b>Tuesday, May 30, 2023</b>
Public Meeting	<b>Friday, July 14, 2023</b>

**V. SETTLEMENT**

Aqua is willing to address settlement of all or part of the proceeding with the other parties in the proceeding.

**VI. PROTECTIVE ORDER**

Information marked CONFIDENTIAL was provided with the Application. Aqua filed a Petition for Protective Order addressing CONFIDENTIAL information on March 2, 2023. There was no objection to the Petition from I&E, OCA and OSBA. Intervenor Donna Gawrylik was also

<sup>6</sup> Per PUC Pa Bulletin Notice, not included in ALJ’s 2/7/23 Prehearing Conference Order.

<sup>7</sup> Bolded dates are listed per ALJ as non-negotiable.

contacted, but did not respond in advance of filing the petition or this memorandum.

Respectfully submitted,

**AQUA PENNSYLVANIA, INC.**

By: /s/ Courtney L. Schultz

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*Counsel for Aqua Pennsylvania, Inc*

Date: March 6, 2023

**ATTACHMENT 1**  
**LIST OF APPLICATION EXHIBITS**

**INDEX OF AQUA PENNSYLVANIA, INC.'s 1329 FILING**

<u>TAB</u>	<u>DESCRIPTION</u>	<u>EXHIBIT</u>
1.	Cover Letter	
2.	Certificate of Service	
3.	Application	
4.	Application Checklist	
5.	Index of Exhibits to Application	
6.	Map of Requested Territory.....	A
7.	Asset Purchase Agreement, dated July 20, 2021 .....	B
8.	Aqua's 2021 Balance Sheets and Income Statement reports.....	C
9.	Asset Inventory prepared by Pennoni Associates, Inc.....	D
10.	DEP Water allocation permit issued, November 21, 2017 .....	E
11.	Assigned Contracts .....	F
12.	Schedule of rates tariff page .....	G
13.	MABS' Resolution.....	H
14.	Aqua Customer Notices .....	I1
15.	MABS Customer Notices .....	I2
16.	MABS Annual Financial Report 2019.....	J1
17.	MABS Annual Financial Report 2020.....	J2
18.	MABS Adopted Annual Budgets 2021.....	J3
19.	MABS Adopted Annual Budgets 2022.....	J4
20.	MABS Summary of Outstanding Loans.....	J5

<u>TAB</u>	<u>DESCRIPTION</u>	<u>EXHIBIT</u>
21.	MABS Annual Department of Community and Economic Development Report .....	K
22.	William M. Grutza’s Water Operator’s License .....	L
23.	Public Water Supply permits for the WTP .....	M1
24.	The National Pollution Discharge Elimination System permit for the WTP .....	M2
25.	Consumer Confidence Report 2017 .....	N1
26.	Consumer Confidence Report 2018 .....	N2
27.	Consumer Confidence Report 2019 .....	N3
28.	Consumer Confidence Report 2020 .....	N4
29.	Consumer Confidence Report 2021 .....	N5
30.	List of Violations for the MABS System .....	O
31.	DEP Correspondence related to deficiencies in the MABS dams .....	P
32.	Fair Market Value Appraisal Report of Gannett Fleming .....	Q
33.	Fair Market Value Appraisal Report of Scott Madden .....	R
34.	Gannett Fleming valuation service agreements and invoices .....	S1
35.	ScottMadden valuation service agreements and invoices .....	S2
36.	Verification Statement of Gannett Fleming .....	T1
37.	Verification Statement of ScottMadden .....	T2
38.	Testimony of William C. Packer .....	U
39.	Testimony of Brennan T. Kelly .....	V
40.	Testimony of Stephen Clark .....	W
41.	Testimony of Matthew Marchisello .....	X

<u>TAB</u>	<u>DESCRIPTION</u>	<u>EXHIBIT</u>
42.	Testimony of Leo Pietkiewicz .....	Y
43.	Testimony of Harold Walker, III .....	Z
44.	Testimony of Dylan W. D’Ascendis.....	AA
45.	Responses to Section 1329 Application Standard Data Requests .....	BB
46.	Aqua’s Verified Statement selecting Gannett Fleming as its Utility Valuation Expert.....	CC1
47.	MABS’ Verified Statement selecting ScottMadden as its Utility Valuation Expert.....	CC2

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**and the Municipal Authority of the Borough :**  
**of Shenandoah Pursuant to Sections 1102, :**  
**1329 and 507 of the Public Utility Code**

**CERTIFICATE OF SERVICE**

I, Courtney L. Schultz, hereby certify that a true and correct copy of Aqua Pennsylvania, Inc.'s Prehearing Memorandum in connection with the above-referenced docket was served on the following individuals on this day of March 6, 2023, as indicated below.

**PA PUC**

Rosemary Chiavetta, Secretary  
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