

COMMONWEALTH OF PENNSYLVANIA



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March 6, 2023

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 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/ Harrison W. Breitman
Harrison W. Breitman
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Enclosures:

cc: The Honorable Jeffrey A. Watson (**email only**)
Nick Miskanic, ALJ's Legal Assistant (**email only**: nmiskanic@pa.gov)
Certificate of Service

*342340

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 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 6th day of March 2023.

SERVICE BY E-MAIL ONLY

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Dated: March 6, 2023
*342079

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the Prehearing Order issued by Administrative Law Judge (ALJ) Jeffrey A. Watson on February 7, 2023, the Office of Consumer Advocate (OCA) provides the following:

I. INTRODUCTION

On October 11, 2022, Aqua Pennsylvania, Inc. (Aqua or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission (Commission) approval of the acquisition of the water system assets of the Borough of Shenandoah (Borough) and the Municipal Authority of the Borough of Shenandoah (MABS), the right of Aqua to provide water service in the areas served by the Borough and MABS, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated December 9, 2022, the Commission conditionally accepted the Application. The Commission required that individual notice be provided to Aqua’s potentially affected existing water and wastewater customers, that Aqua ensure concurrent notice is given to all current Borough/MABS water customers, and that newspaper notice in the Borough/MABS

area be provided. Upon completion, Aqua was directed to file proof of publication with the Commission.

On October 25, 2022, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, and Public Statement. Also on October 25th, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Protest and Public Statement on December 9, 2022. In January 2023, several individuals filed informal protests against the Application. On January 17, 2023, Donna M. Gawrylik filed a Protest and Petition to Intervene.

On January 24, 2023, Aqua filed a letter with the Commission verifying that it had complied with the notice requirements contained in the December 9, 2022 Secretarial Letter. By Secretarial Letter dated February 3, 2023, the Commission informed Aqua that it had accepted the Application for filing. A Prehearing Conference Order was issued on February 7, 2023, in which ALJ Watson directed the parties to submit prehearing conference memoranda by 10:00 a.m. on March 6, 2023.

II. SERVICE ON THE OCA

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Erin L. Gannon, and by Assistant Consumer Advocates Harrison W. Breitman and David T. Evrard. All documents should be served on the OCA as follows:

Erin L. Gannon
Senior Assistant Consumer Advocate
Harrison W. Breitman
David T. Evrard
Assistant Consumer Advocates
Office of Consumer Advocate
555 Walnut Street, 5th Floor
717-783-5048
OCAShenandoah@paoca.org

III. WITNESSES

The OCA intends to present the testimony of David J. Garrett (Financial, Ratemaking, Appraisal and Policy Issues) and Morgan N. DeAngelo (Ratemaking and Public Benefits Issues).

Mr. Garrett's contact information is as follows:

David J. Garrett
Resolve Utility Consulting
101 Park Avenue, Suite 1125
Oklahoma City, Oklahoma 73120
OCAShenandoah@paoca.org

Ms. DeAngelo's contact information is as follows:

Morgan N. DeAngelo
Regulatory Analyst
Office of Consumer Advocate
555 Walnut Street, 5th Floor
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To the extent necessary, the OCA's witness will present testimony regarding the impact of the proposed transaction on Aqua's existing customers and the acquired customers, and other financial, technical and ratemaking issues presented in this proceeding.

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify Your Honor and all parties of record immediately.

IV. ISSUES

The OCA is participating in this proceeding to ensure the interests of Aqua's existing customers are protected. Based upon a preliminary analysis of the Application, the OCA has identified a number of issues which it anticipates will be included in its investigation. It is possible that other issues may arise and may be pursued once all of the answers to the OCA's interrogatories

have been analyzed.

The issues the OCA has identified thus far and that will be presented as appropriate by the OCA with the assistance of its expert witnesses are:

(1) **Provision of Safe, Adequate and Reasonable Service at Just and Reasonable Rates:** The Asset Purchase Agreement provides that Aqua will pay \$12,000,000 for the Borough/MABS' water system assets which have a net depreciated original cost, as defined in Section 1329, of \$10,790,078. Aqua seeks to have the purchase price approved for inclusion in rate base under Section 1329, as part of this proceeding. The OCA will examine each appraisal and the requested rate base determination. The OCA will also examine the rate impact on Borough/MABS customers and Aqua's existing customers resulting from Aqua's projected capital investment of \$23 million over 10 years in the Borough/MABS system.

(2) **Substantial Affirmative Benefits:** The OCA submits that additional information is necessary to determine whether the affirmative benefits claimed by Aqua are sufficient to support a finding that this transaction is in the public interest.

(3) **Conditions:** The OCA will examine whether any conditions should be imposed upon the proposed transfer to ensure that customers are treated in a fair and just manner in accord with Pennsylvania law and Commission rules and regulations. Specifically, the OCA will examine whether conditions should be required related to the imposition of the Distribution System Improvement Charge on Borough/MABS customers, whether there should be conditions with respect to the filing of Aqua's first base rate case following the transaction's closing or whether there should be any specific consumer protection measures required of Aqua for the benefit of Borough/MABS customers.

The OCA reserves the right to raise additional issues as the case proceeds and further

information is obtained from the Applicant.

V. PUBLIC INPUT HEARINGS

The OCA is aware of some opposition to the proposed acquisition in the Borough/MABS service area. The OCA is aware of three informal protests filed with the Commission as well as a formal Protest and Petition to Intervene filed by a former chairperson of the MABS Board. Accordingly, the OCA respectfully requests that the Commission conduct a virtual or telephonic public input hearing to hear from the Borough/MABS customers and existing Aqua customers impacted by the acquisition. The OCA proposes 6 p.m. on March 15, 2023 for a virtual or telephonic public input hearing or, alternatively 6 p.m. on March 21, 2023. Aqua, the Borough/MABS, I&E and OSBA support the OCA's request. The OCA will work with the parties, ALJ Watson, and the Commission's scheduling staff to reach a mutually agreeable hearing date.

VI. DISCOVERY

Discovery modifications were addressed in the ALJ's Prehearing Order due to the expedited schedule under Section 1329, which requires a Commission Order on the Section 1329 filing no later than six months after the filing and final acceptance of such application. 66 Pa. C. S. § 1329. The OCA does not recommend any further modifications if the schedule proposed by the OCA (see next page) is adopted.

The OCA has served four sets of discovery to date.

VII. SCHEDULE

The OCA proposes the following schedule:

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|---|--|
| Public Input Hearing (virtual or telephonic) | March 15, 2023 at 6pm (alternatively March 21 at 6pm) |
| Direct Testimony by non-applicants | March 20, 2023 |
| Rebuttal Testimony (and Supplemental Direct Testimony by non-Applicants if the Public Input Hearing is after the due date for Direct Testimony) | March 27, 2023 |
| Evidentiary Hearings | March 28-29, 2023 |
| Receipt of transcript | April 3, 2023 |
| Main Briefs | April 11, 2023 |
| Reply Briefs and/or Settlement and Statements in Support | April 20, 2023 |
| Recommended Decision | May 30, 2023 |

It is the OCA’s understanding that this proposed schedule is acceptable to Aqua, the Borough/MABS, I&E and OSBA. As reflected in the schedule above, if the Public Input Hearing is held after the due date for non-applicants’ Direct Testimony, then the parties agree that Supplemental Direct Testimony can be submitted by the deadline for Rebuttal Testimony. Further, the parties agree that Applicant testimony responsive to Supplemental Direct Testimony can be provided orally, during the Evidentiary Hearings.

The OCA requests that all dates included in the schedule be considered “in-hand” dates and that electronic service on the due date will satisfy the “in-hand” requirement, without follow-up hard copy.

VIII. SETTLEMENT

The OCA is willing to engage in settlement discussions with all parties.

Respectfully submitted,

/s/ David T. Evrard

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Dated: March 6, 2023
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