



COMMONWEALTH OF PENNSYLVANIA

March 17, 2023

E-FILED

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, 508, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls / Docket No. A-2022-3033138

Dear Secretary Chiavetta:

Enclosed please find the Notice of Intervention & Protest, Public Statement, and Verification, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me

Sincerely,

/s/ Nakea S. Hurdle

Nakea S. Hurdle
Assistant Small Business Advocate
Attorney ID No. 203633

Enclosures

cc: Kevin Higgins
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections :
1102 and 1329 of the Public Utility Code : **Docket No. A-2022-3033138**
for: :

(1) approval of the acquisition of Aqua of :
the wastewater system assets of the City of :
Beaver Falls situated within City of :
Beaver Falls Eastvale Borough, and West :
Mayfield Borough, Beaver County, :
Pennsylvania; :

(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in the :
City of Beaver Falls, Beaver County, :
Pennsylvania; and :

(3) an order approving the acquisition :
that includes the ratemaking rate base of :
the City of Beaver Falls wastewater :
system assets pursuant to Section :
1329(c)(2) of the Public Utility Code. :

Request for Approval of Contracts, :
including Assignments of Contracts, :
between Aqua and the City of Beaver :
Falls, Pursuant to Section 507 of the :
Public Utility Code :

Request for Approval to Modify :
Agreements with Municipal Corporations :
to be assigned by Aqua Upon Closing of :
the Acquisition by Aqua of the :
Wastewater System Assets of Beaver :
Falls, to the extent such modifications are :
necessary, Pursuant to Section 508 of the :
Public Utility Code :

**NOTICE OF INTERVENTION AND PROTEST
OF THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Office of Small Business Advocate (“OSBA”) files this Notice of Intervention and Protest with respect to the above-captioned Application of Aqua Pennsylvania Wastewater, Inc.

(“Application”) pursuant to Sections 5.51(a) and 5.71(a)(1) of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“Commission”), 52 Pa. Code §§ 5.51(a) and 5.71(a)(1). In support of this Notice of Intervention and Protest, the OSBA avers as follows:

1. The OSBA is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50) to represent the interests of small business consumers as a party in proceedings before the Commission.
2. Representing the OSBA in this proceeding is:

Nakea Hurdle
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street, 1st Floor
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Harrisburg, Pennsylvania 17101
(717) 783-2525
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nhurdle@pa.gov

3. The Application was filed by Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) on February 21, 2023, regarding the acquisition subject to the purchase asset agreement signed between Aqua and the City of Beaver Falls (the “City”) executed on October 20, 2021. The Application requests (1) approval of the acquisition by Aqua of the wastewater system assets of the City; (2) the approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the City; (3) that the Commission include in its order approving the acquisition, the ratemaking rate base of the City wastewater system assets as determined under §1329(c)(2) of the Public Utility Code, 66 Pa.C.S. §1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to §507 of the Public Utility Code, 66 Pa.C.S.

§ 507, for certain municipal contracts that Aqua has included in the Application (to the extent necessary), including new service agreements that Aqua will negotiate and enter into with Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough (the “Contributing Municipalities”) prior to Closing and which will replace any prior agreements; and (5) that the Commission allows certain existing agreements between Aqua and the Contributing Municipalities to be modified because the agreements contain a rate formula that is inconsistent with the rates charged by the City to the Contributing Municipalities. Application, at Paragraph 3.

4. Aqua is a public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania and is engaged in the wastewater service business and furnishes wastewater to approximately 60,000 customers accounts, as reflected in documents already on file with the Commission. Application, at Paragraph 7.

5. The City is a duly organized and validly existing city under a Home Rule Charter and owns the sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 3,190 customers in the City. Application, at Paragraph 8. The City also provides transmission and treatment service for the seven (7) Contributing Municipalities. *Id.*

6. Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience when a wastewater system is being acquired (upon agreement of the acquiring and selling utilities), to establish a fair market value of the selling utility by utilizing the list of utility valuation experts maintained by the Commission, and to require the acquiring utility to submit to the Commission the following information when acquiring a wastewater

system prior to the Commission’s decision to approve or deny the proposed acquisition of a public utility and issue a certificate of public convenience:

- (i) Copies of the two appraisals performed by the utility valuation experts under §1329(a) of the Public Utility Code, 66 Pa.C.S. §1329(a).
- (ii) The purchase price of the selling utility as agreed to by the acquiring public that will be included in its rate base.
- (iii) The ratemaking rate base determined pursuant to §1329(c) of the Public Utility Code, 66 Pa.C.S. §1329(c).
- (iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.
- (v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

§1329(d) of the Public Utility Code, 66 Pa.C.S. §1329(d).

7. When a certificate of public convenience is required under Section 1102, Section 1103(a) of the Public Utility Code, 66 Pa. C.S. § 1103(a), allows the Commission to issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed acquisition would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pennsylvania Public Utility Commission*, 449 Pa. 136, 141, 295 A.2d 825, 828 (Pa. 1972). In addition, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”

8. The Application raises issues of concern that may require the Commission to reject the proposed transaction or to approve it only after imposing conditions. Of particular concern is whether the transaction would increase water rates of small business customers.

9. The OSBA reserves the right to raise additional issues as they arise throughout this proceeding.

WHEREFORE, the OSBA respectfully requests that the Commission reject the Application as filed.

In the alternative, the OSBA respectfully requests that the Commission conduct a full investigation, including evidentiary hearings, into the Application.

Respectfully submitted,

/s/ Nakea Hurdle

Nakea Hurdle
Assistant Small Business Advocate
Attorney I.D. No. 203633

For: NazAarah Sabree
Small Business Advocate

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(717) 783-2525
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Date: March 17, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania
Wastewater, Inc. pursuant to Sections
1102 and 1329 of the Public Utility Code
for:** : **Docket No. A-2022-3033138**

**(1) approval of the acquisition of Aqua of
the wastewater system assets of the City
of Beaver Falls situated within City of
Beaver Falls Eastvale Borough, and West
Mayfield Borough, Beaver County,
Pennsylvania;** :

**(2) approval of the right of Aqua to begin
to offer, render, furnish and supply
wastewater service to the public in the
City of Beaver Falls, Beaver County,
Pennsylvania; and** :

**(3) an order approving the acquisition
that includes the ratemaking rate base of
the City of Beaver Falls wastewater
system assets pursuant to Section
1329(c)(2) of the Public Utility Code.** :

**Request for Approval of Contracts,
including Assignments of Contracts,
between Aqua and the City of Beaver
Falls, Pursuant to Section 507 of the
Public Utility Code** :

**Request for Approval to Modify
Agreements with Municipal
Corporations to be assigned by Aqua
Upon Closing of the
Acquisition by Aqua of the Wastewater
System Assets of Beaver Falls, to the
extent such modifications are necessary,
Pursuant to Section 508 of the Public
Utility Code** :

**PUBLIC STATEMENT OF
THE OFFICE OF SMALL BUSINESS ADVOCATE**

The Small Business Advocate is authorized and directed to represent the interest of small business consumers of utility services in Pennsylvania under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (the “Act”). The Act further provides that the Small Business Advocate is to issue publicly a written statement stating concisely the specific interest of small business consumers to be protected by her initiation of or intervention in any proceeding involving those interests before the Public Utility Commission or any other agency or court. This public statement relates to the February 21, 2023, Application filed by Aqua Wastewater Inc. (“Aqua” or the “Company”) requesting approval for the Company’s proposed acquisition of the wastewater system of the City of Beaver Falls (“Beaver Falls” or the “City) and related requests.

The Small Business Advocate files this Protest and Intervention against the Company’s acquisition of the wastewater system of the City and related requests (the “Acquisition”) to protect the interests of the City’s small business customers. A thorough inquiry by the Public Utility Commission into all of the elements of the Acquisition is necessary to ensure that the City’s small business customers will continue being provided safe, adequate and reliable service at a reasonable cost.


In view of the foregoing, the Small Business Advocate will participate in proceedings before the Public Utility Commission to investigate the reasonableness of the proposed Acquisition. The Small Business Advocate will ask the Commission to conduct a full investigation, including evidentiary hearings, into the Application to ensure that the transaction is just, reasonable, and non-discriminatory.

Dated: March 17, 2023

VERIFICATION

I, NazAarah Sabree, hereby state that the facts set forth herein above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: March 17, 2023



(Signature)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania
Wastewater, Inc. pursuant to Sections 1102
and 1329 of the Public Utility Code for:** : **Docket No. A-2022-3033138**

**(1) approval of the acquisition of Aqua of the
wastewater system assets of the City of
Beaver Falls situated within City of Beaver
Falls Eastvale Borough, and West Mayfield
Borough, Beaver County, Pennsylvania;** :

**(2) approval of the right of Aqua to begin to
offer, render, furnish and supply wastewater
service to the public in the City of Beaver
Falls, Beaver County, Pennsylvania; and** :

**(3) an order approving the acquisition that
includes the ratemaking rate base of the City
of Beaver Falls wastewater system assets
pursuant to Section 1329(c)(2) of the Public
Utility Code.** :

**Request for Approval of Contracts, including
Assignments of Contracts, between Aqua and
the City of Beaver Falls, Pursuant to Section
507 of the Public Utility Code** :

**Request for Approval to Modify Agreements
with Municipal Corporations to be
assigned by Aqua Upon Closing of
the Acquisition by Aqua of the Wastewater
System Assets of Beaver Falls, to the extent
such modifications are necessary, Pursuant
to Section 508 of the Public Utility Code** :

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable Charles E. Rainey Jr.
Chief Administrative Law Judge
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Patrick Cicero, Esquire
Consumer Advocate
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DATE: March 17, 2023

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/s/ Nakea S. Hurdle

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