

COMMONWEALTH OF PENNSYLVANIA



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April 27, 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 1102,
1329 and 507 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:

Attached for electronic filing please find the Office of Consumer Advocate's Protest and Public Statement in this matter.

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

Respectfully submitted,

/s/ Andrew J. Zerby
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Bureau of Technical Utility Services (**email only:** dsearfoorce@pa.gov; sdonnelly@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2022-3033138
Approval of its Acquisition of the Wastewater :
System Assets of the City of Beaver Falls :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Protest and Public Statement, 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. This document was filed electronically on the Commission's electronic filing system.

Dated this 27th day of April 2023.

SERVICE BY E-MAIL ONLY

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Dated: April 27, 2023
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2022-3033138
Approval of its Acquisition of the Wastewater :
System Assets of the City of Beaver Falls :

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application proceeding pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§ 5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq.* and 66 Pa. C.S. § 1329. Through this Application, filed on February 17, 2023, Aqua Pennsylvania Wastewater Inc. (Aqua) requests that the Pennsylvania Public Utility Commission (Commission) (1) approve Aqua’s acquisition of the wastewater assets of the City of Beaver Falls (Beaver Falls) (2) approve the right of Aqua to begin furnishing wastewater service to the requested area (as outlined in the application), and (3) include, in the order approving the acquisition, the ratemaking rate base as determined pursuant to Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329(c)(2). Application ¶ 3. Aqua also requests approvals pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, of certain municipal contracts that Aqua will enter into, including service agreements with: Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough. *Id.*

Beaver Falls owns a sanitary wastewater collection and treatment system that furnishes wastewater service to approximately 3,190 active residential, commercial, industrial, and public customers within the City, and provides transmission and treatment service for the seven contributing municipalities: Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough. Application ¶¶ 3,8. Beaver Falls projects growth of 183 Equivalent Dwelling Units (EDUs) over the next five years. *Id.* at ¶ 32.

The OCA files this Protest in order to ensure that the application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and regulations. Specifically, the OCA avers as follows:

1. The Protestant is Patrick M. Cicero, Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorneys for the purpose of receiving service of all documents in this proceeding are Erin Gannon, Senior Assistant Consumer Advocate, and Christopher Andreoli and Andrew Zerby, Assistant Consumer Advocates.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309.1 *et seq.* This Protest is filed to ensure that Aqua's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3).

4. The Code further requires that a certificate of Public Convenience only be granted upon a finding that granting such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. §1103(a). *See City of York v. Pa.*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); *see also Popowsky v. Pa. PUC*, 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. §1103(a). The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52 Pa. Code Section 53.45(b)(1-4) and the order entered in *McCloskey v. Pa. PUC*, 1624 CD 2017 (Oct. 11, 2018), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193. The OCA requests that, once the Commission issues a Secretarial Letter indicating final acceptance of the application, at least one telephonic or virtual public input hearing should be scheduled in this matter. The OCA also requests that public input hearings be held no later than approximately three to four weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearings will ensure that both acquired and existing customers have a reasonable opportunity to be heard.

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market value or the purchase price, whichever

is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This provision is an alternative to the use of original cost, less depreciation for ratemaking purposes when a public utility acquires municipal water and wastewater assets. Aqua proposes to pay \$41,250,000 for the Beaver Falls wastewater system per the Asset Purchase Agreement of October 20, 2021. Application ¶¶ 5,55. The original cost of the assets as determined by the engineer's report is \$12,898,487, and the original cost less depreciation is \$5,032,210. *Id.* at ¶ 19.

8. Aqua's Utility Valuation Expert (UVE) appraisal conducted by ScottMadden indicated a fair market value of \$40,199,348. Application ¶ 56. The Beaver Falls UVE appraisal conducted by Gannett Fleming indicated a fair market value of \$44,292,000. Application ¶ 56. The average value of the two appraisals is \$42,245,674. *Id.* The valuation experts were paid \$71,297.50 for their fair market value appraisals. *Id.* at ¶ 60. Aqua estimates that it will incur transaction and closing costs of approximately \$714,980, which it plans to include in its rate base. *Id.* at ¶ 57.

9. Aqua states that it is not presenting a rate stabilization plan. Application ¶ 62. Aqua proposes to implement Beaver Falls' existing rate after the closing of the transaction and to maintain those rates until the next Aqua rate proceeding after closing. Application ¶ 62.

10. Aqua proposes to implement Beaver Falls' existing flat quarterly rate of \$42.37 (including a 3,000 gallons usage allowance) and an \$8.46 per thousand gallons for usage over 3,000 gallons for City Customers. Exhibit B, Schedule 7.04. Aqua proposes to continue to charge Beaver Falls' wholesale customers \$4.45 per thousand gallons. *Id.* Aqua also proposes to amend its Long Term Infrastructure Improvement Plan to include Beaver Falls, and once approved by the Commission request permission to apply a Distribution System Improvement Charge to Beaver Falls customers. Aqua St. 1 at 11.

11. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to the approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code.

a. The OCA will investigate the data and information provided in support of each valuation. Moreover, the OCA will investigate the information in addition to the valuation information provided with the Application that may be required to determine whether PAWC’s ratemaking proposals are reasonable.

b. The OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code. Aqua estimates that bills for current Beaver Falls customers would increase as follows as a result of this transaction:

Rate Class	Average Usage	Estimated Quarterly Increase	Estimated Percentage Increase
Residential	9,490	\$169.28	174.09%
Commercial	39,870	\$616.78	174.09%
Industrial	96,710	\$484.66	174.09%
Public	69,260	\$1,049.70	174.09%
Bulk Other (Dalton)	440,530	\$11,605.89	174.09%

The potential increase is calculated by allocating 100% of the revenue deficiency created by the transaction to the acquired customers. Application Exhibit I2. Aqua estimates that, if costs are shared with other Aqua customers, the percentage increase would be 119.27%. *Id.* Aqua estimates that for contributing municipalities, based on average quarterly usage of 6,354,460 gallons, quarterly rates could increase \$50,223.20 (174.09%) assuming no sharing. Application Exhibit I3.

Aqua projects that bills for its existing water and wastewater customers, if sharing 50% of the revenue deficiency with Beaver Falls’ Customers, would increase as follows as the result of this transaction:

Aqua Wastewater Customers

Rate Class	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
Residential	4,000 gal/month	\$2.60	3.08%
Commercial/Public	8,330 gal/month	\$4.13	3.08%
Industrial	1,500 gal/month	\$1.41	3.08%

Aqua Water Customers

Rate Class	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
Residential	4,000 gal/month	\$0.19	0.24%
Commercial/Public	33,380 gal/month	\$1.07	0.24%
Industrial	200,150 gal/month	\$5.17	0.24%

Application Exhibit I1; Aqua St. 1 Appendix A.

c. Aqua estimates that over the next ten years it will invest approximately \$10.2 million in the Beaver Falls system. Aqua St. 2 at 8. The impact that the costs of this acquisition, including the capital investment and proposed ratemaking rate base, will have on the rates of existing and acquired customers must be considered in assessing the benefits and detriments of the acquisition. Aqua projects that the annual revenue that will be collected from Beaver Falls customers for Year One will be less than the annual revenue requirement for Aqua to own, make planned capital investment in, and operate the Beaver Falls system. Aqua St. 1 Appendix A. The annual revenue deficiency of \$4,288,000 will be recovered by increasing rates for existing and acquired Aqua customers. *Id.*

12. The OCA submits that additional information is necessary to determine if the proposed rates and Aqua's request for an approved ratemaking base of \$41,250,000 are reasonable and lawful under the Public Utility Code. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

13. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua’s existing ratepayers and the acquired customers.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including a virtual or telephonic public input hearing for the buyer and seller’s customers held approximately three to four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

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Dated: April 27, 2023

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Patrick M. Cicero
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PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. §309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interest of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania Wastewater, Inc. (Aqua) of the City of Beaver Falls' (Beaver Falls) wastewater collection and treatment assets.

The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interest of both existing Aqua customers and the acquired Beaver Falls customers. The Consumer Advocate seeks to prevent ratepayers from paying unreasonable and unduly discriminatory costs, or costs that otherwise violate the Public Utility Code. Finally, the Consumer Advocate will investigate the proposed transaction to determine if there are substantial affirmative public benefits and request the Public Utility Commission order all necessary and proper consumer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua is a regulated public utility that serves approximately 60,000 wastewater customer accounts throughout Pennsylvania. Beaver Falls provides wastewater service to approximately 3,190 customers in the City and provides transmission and treatment service for seven contributing municipalities in Beaver County, Pennsylvania.