



COMMONWEALTH OF PENNSYLVANIA

April 28, 2023

E-FILED

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

**Re: Pennsylvania Public Utility Commission v. Aqua Pennsylvania Wastewater, Inc.
(Supplement No. 3 to Tariff Sewer-PA PUC No. 3) / Docket No. R-2022-3037141**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, 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/ Steven C. Gray

Steven C. Gray
Senior Supervising
Assistant Small Business Advocate
Attorney I.D. No. 77538

Enclosures

cc: Nakea S. Hurdle
Brian Kalcic
Parties of Record

I. Introduction

A. History of the Proceeding

On December 7, 2022, Aqua Pennsylvania Wastewater, Inc. (“Aqua PA” or the “Company”) filed Supplement No. 3 to Tariff Sewer-PA P.U.C. No. 3 with the Pennsylvania Public Utility Commission (“Commission”).

On December 22, 2022, Aqua PA filed Supplement No. 5 to Tariff Sewer-PA P.U.C. No. 3 to voluntarily extend the effective date of Supplement No. 3 to February 10, 2023.

On January 5, 2023, Aqua PA filed a revised Supplement No. 3 to clarify the eligibility for proposed rates. Revised Supplement No. 3 was filed to allow Aqua PA to establish contract rates for qualifying industrial wastewater customers via a rider.

On January 20, 2023, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention.

On February 21, 2023, a telephonic prehearing conference was held before Administrative Law Judge (“ALJ”) Gail M. Chiodo.

On March 2, 2023, ALJ Chiodo issued her Scheduling Order.

On March 20, 2023, the OSBA served the Direct Testimony of Brian Kalcic.

On April 7, 2023, the OSBA served the Surrebuttal Testimony of Mr. Kalcic.

On April 14, 2023, an evidentiary hearing was held before ALJ Chiodo.

The OSBA submits this Main Brief in accordance with ALJ Chiodo’s Scheduling Order.

B. Legal Standards

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

The burden of proof to establish the justness and reasonableness of every element of the utility's rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). "It is well-established that the evidence adduced by a utility to meet this burden must be substantial." *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).

Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to "consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates." In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate, and reasonable service. "[I]n exchange for the utility's provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility's investors . . . In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs." *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S. § 1501.

II. Summary of Argument

The OSBA submits that Aqua PA's proposed Rider LWCUR – Large Wastewater Customer User ("Rider LWCUR"), which would provide for a discounted rate to a large industrial customer that has a viable alternative to taking wastewater service from Aqua PA, should be rejected without prejudice.

No current, otherwise qualifying large industrial wastewater customer of Aqua PA is interested in the proposed rider.

In the future, if Aqua PA should serve a large industrial wastewater customer that has a viable alternative to taking service from the Company, Aqua PA can re-file for a similar rider at that time.

III. Argument

Aqua PA, in its Supplement No. 3 and Revised Supplement No. 3, proposed to establish a rider for contract rates for large industrial wastewater users. The purpose of the Company's proposed Rider LWCUR is to address the possibility that a large industrial customer might choose to leave or bypass the Company's system if a competitive alternative wastewater service was available. To deter an industrial customer from bypassing the Company's system, Rider LWCUR would permit Aqua PA to offer that industrial customer a discounted rate compared to the Company's otherwise applicable tariff rate.¹

In order to qualify for Rider LWCUR, the large industrial customer:

- must discharge at least 85,000 gallons of wastewater resulting from industrial processes into Aqua PA's wastewater collection system;
- must enter into a Service Agreement with a term of not less than 3 years; and
- must have a viable, competitive alternative to taking wastewater service from Aqua PA that the customer intends to utilize unless the Company provides a discounted rate for the continuation of wastewater service from Aqua PA.²

As of this writing, Aqua PA currently serves one (1) large industrial wastewater customer that would meet the first criterion set forth above. However, Aqua PA has stated that this one large industrial customer will not be participating in Rider LWCUR, if approved.³

¹ OSBA Statement No. 1, at 2.

² OSBA Statement No. 1, at 2.

³ OSBA Statement No. 1, at 2.

Although Aqua PA currently does not serve any large industrial customers that will be participating in Rider LWCUR, the Company does have a reason for proposing Rider LWCUR at this time.

Specifically, Aqua PA filed the proposed Rider LWCUR as required by a Joint Stipulation with Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC (collectively, “Kimberly-Clark”). That Joint Stipulation was filed at Docket No. A-2019-3015173, which is the proceeding where Aqua PA is seeking to acquire the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”).⁴

If Aqua PA’s acquisition of DELCORA is approved, the Company would initially assume the existing wastewater service agreement between DELCORA and Kimberly-Clark when the transaction closes. Then, if Rider LWCUR is approved, and once Kimberly-Clark’s current wastewater service agreement expires, Kimber-Clark would be eligible to apply for service from Aqua PA under Rider LWCUR.⁵

However, the OSBA observes that Aqua PA has not yet entered into negotiations with Kimberly-Clark for discounted wastewater service.⁶ Also, Aqua PA has not proffered any evidence that Kimberly-Clark has a viable alternative to the Company’s wastewater service.⁷

Finally, at the time of this writing, the Aqua PA proceeding to acquire DELCORA at Docket No. A-2019-3015173 is stayed. Two separate cases, one before the Court of Common Pleas of Delaware County and one before the Bankruptcy Court for the Eastern District of Pennsylvania, must be resolved before the Commission Docket can resume.

⁴ OSBA Statement No. 1, at 3.

⁵ OSBA Statement No. 1, at 3.

⁶ OSBA Statement No. 1, at 4.

⁷ OSBA Statement No. 1, at 4.

To summarize, Aqua PA's one qualifying large industrial customer has no interest in Rider LWCUR. Aqua PA may serve a possible eligible customer in Kimberly-Clark sometime in the future, yet the Company's acquisition of DELCORA is far from certain. Finally, even if Aqua PA ultimately does acquire DELCORA, there is no record evidence that Kimberly-Clark would qualify for Rider LWCUR.

Consequently, at this time Aqua PA's proposed Rider LWCUR is a solution in search of a problem. The OSBA respectfully requests the Commission to reject Aqua PA's Rider LWCUR without prejudice.

IV. Conclusion

Wherefore, the OSBA respectfully requests that the ALJ and the Commission reject Aqua PA's proposed Rider LWCUR without prejudice.

Respectfully submitted,

/s/ Steven C. Gray

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Dated: April 28, 2023

Proposed Findings of Fact

1. On December 7, 2022, Aqua Pennsylvania Wastewater, Inc. (“Aqua PA” or the “Company”) filed Supplement No. 3 to Tariff Sewer-PA P.U.C. No. 3 with the Pennsylvania Public Utility Commission.
2. On December 22, 2022, Aqua PA filed Supplement No. 5 to Tariff Sewer-PA P.U.C. No. 3 to voluntarily extend the effective date of Supplement No. 3 to February 10, 2023.
3. On January 5, 2023, Aqua PA filed a revised Supplement No. 3 to clarify the eligibility for proposed rates.
4. Aqua PA, in its Supplement No. 3 and Revised Supplement No. 3, proposed to establish a rider for contract rates for large industrial wastewater users. The purpose of the Company’s proposed Rider LWCUR is to address the possibility that a large industrial customer might choose to leave or bypass the Company’s system if a competitive alternative wastewater service was available. OSBA Statement No. 1, at 2.
5. To deter an industrial customer from bypassing the Company’s system, Rider LWCUR would permit Aqua PA to offer that industrial customer a discounted rate compared to the Company’s otherwise applicable tariff rate. OSBA Statement No. 1, at 2.
6. Aqua PA currently serves one (1) large industrial wastewater customer that would meet the annual wastewater volume criterion required to participate in Rider LWCUR. OSBA Statement No. 1, at 2.
7. Aqua PA has stated that this one (1) large industrial customer will not be participating in Rider LWCUR, if approved. OSBA Statement No. 1, at 2.

8. Aqua PA filed the proposed Rider LWCUR as required by a Joint Stipulation with Kimberly-Clark Corporation and Kimberly-Clark Pennsylvania, LLC that was filed at Docket No. A-2019-3015173. OSBA Statement No. 1, at 3.
9. Docket No. A-2019-3015173 is the proceeding where Aqua PA is seeking to acquire the wastewater system assets of the Delaware County Regional Water Quality Control Authority (“DELCORA”).
10. If Aqua PA’s acquisition of DELCORA is approved, the Company would initially assume the existing wastewater service agreement between DELCORA and Kimberly-Clark when the transaction closes. OSBA Statement No. 1, at 3.
11. If Rider LWCUR is approved, and once Kimberly-Clark’s current wastewater service agreement expires, Kimber-Clark would be eligible to apply for service from Aqua PA under Rider LWCUR. OSBA Statement No. 1, at 3.
12. Aqua PA has not yet entered into negotiations with Kimberly-Clark for discounted wastewater service. OSBA Statement No. 1, at 4.
13. Aqua PA has not proffered any evidence that Kimberly-Clark has a viable alternative to the Company’s wastewater service. OSBA Statement No. 1, at 4.
14. The Aqua PA proceeding to acquire DELCORA at Docket No. A-2019-3015173 is currently stayed.

Proposed Conclusions of Law

1. Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”
2. The burden of proof to establish the justness and reasonableness of every element of the utility’s rate increase rests solely upon the public utility. 66 Pa. C.S. § 315(a). “It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” *Lower Frederick Township. v. Pa. PUC*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980).
3. Furthermore, Section 523 of the Public Utility Code, 66 Pa. C.S. § 523, requires the Commission to “consider . . . the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates.” In exchange for customers paying rates for service, which include the cost of utility plant in service and a rate of return, a public utility is obligated to provide safe, adequate, and reasonable service. “[I]n exchange for the utility’s provision of safe, adequate and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return for the utility’s investors In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs.” *Pa. PUC v. Pennsylvania Gas & Water Co.*, 61 Pa. PUC 409 (1986), at 415-16. *See also* 66 Pa. C.S. § 1501.

Proposed Ordering Paragraph

1. Wherefore, Aqua PA's proposed Rider LWCUR is rejected without prejudice.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 : **Docket No. R-2022-3037141**
 v. :
 :
 :
 Aqua Pennsylvania Wastewater, Inc :

CERTIFICATE OF SERVICE

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

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