

COMMONWEALTH OF PENNSYLVANIA



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

*347149

CERTIFICATE OF SERVICE

Application of Aqua Pennsylvania, Inc. :
pursuant to Sections 507, 1102 and 1329 :
of the Public Utility Code for Approval : Docket No. A-2022-3034143
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 Reply Exception, 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 June 2023.

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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 : Docket No. A-2022-3034143
of its Acquisition of the Water System :
Assets of Shenandoah Borough and MABS :

REPLY EXCEPTION
OF THE
OFFICE OF CONSUMER ADVOCATE

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Office of Consumer Advocate

Dated: June 6, 2023

I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply to the Exceptions of the Aqua Pennsylvania Inc. (Aqua) and the Borough of Shenandoah (Borough) and the Municipal Authority of the Borough of Shenandoah (MABS) (together “Shenandoah”) because it disagrees with certain statements of facts and assertions of law in Aqua’s and Shenandoah’s Exceptions.

II. REPLY EXCEPTIONS

Reply to Aqua & Borough/MABS Exceptions 1: Aqua’s and Shenandoah’s Characterization of Certain Facts and Law Related to Free Service Are Disputed and Should Not Be Adopted.

The OCA supports the overall settlement as being in the public interest. The OCA did not join in the settlement provision regarding approval of a tariff that requires Aqua to provide free water service to eight fire companies. Settlement ¶¶ 17.B.1, B.3. This is consistent with the OCA’s position in its testimony and its Statement in Support, which is that free service is not permitted and harms PAWC’s other customers. *See* OCA St. 1 at 15; Settlement App. C (OCA Statement in Support) at 4; *Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1050-51 (Pa. Commw. Ct. 2002) (*Coatesville*). In recognition of the OCA’s position, the Settlement included additional terms which provided a reasonable compromise resolution of this issue as the additional terms ensure that free service is only for a limited period, during which it will not be directly subsidized by other Aqua customers. Also, the additional terms provide Aqua and OCA’s agreement to cooperate in getting a broader resolution of the legal question so that buyers and sellers, as well as parties reviewing proposed transactions under Section 1329, have certainty going forward. Settlement ¶¶ 17.B.3.i-3.iii.

The OCA files this Exception because it disagrees with certain statements of facts and assertions of law in Aqua’s and Shenandoah’s Exceptions. First, MABS did not have a \$0.00 rate

in place for service to the fire companies. *See* Aqua Exc. at 2; Shenandoah Exc. at 2. In fact, there was no rate. *See* Aqua Exh. H. The fire companies received no bills from MABS. As such, the fire companies are effectively “new” customers now that Aqua has acquired the system and service territory. Similar to any other entity that becomes a customer post-closing, Aqua’s rates for service should apply.

Second, the OCA disagrees with Aqua’s assertion that its practice of providing free service is supported by a fair reading of Section 1329. Aqua Exc. at 7. In the OCA’s view, Sections 1329 and 1304 of the Public Utility Code can be read in harmony by recognizing that the seller was not charging a “rate” for service for purposes of Section 1329. 66 Pa. C.S. §§ 1329, 1304. Again, the seller was not issuing bills for \$0.00. Aqua recognizes this in its exceptions, where it calls it a “non-rate,” in describing the proposed settlement tariff as follows:

Notably, this \$0.00 rate was to be charged until the Company’s next base rate case, and reflected the adoption of MABS’ (the seller) existing rate (or in this case non-rate) charged to these customers.

Aqua Exc. at 3 (emphasis added).

Further, Aqua did not continue Shenandoah’s practice of not charging properties including the Police Department, the library, and public hydrants in the Borough of Shenandoah for service. Aqua Exh. BB at 6; Aqua Exh. H; Settlement App. A. Thus it appears that Aqua and Shenandoah understood that free service by Shenandoah would not be continued under ownership by a PUC-regulated utility and did not believe those practices to be required by Section 1329(d)(1)(v) of the Public Utility Code. 66 Pa. C.S. § 1329(d)(1)(v).

If the Commission grants Aqua’s Exception, for the foregoing reasons and as stated in the OCA’s Statement in Support, it should also adopt the other related provisions of the Settlement that the ALJ rejected related to free service. R.D. at 75. These provisions ensure that free service

will not continue beyond the next base rate case, to mitigate harm to Aqua’s other ratepayers and provide a path for broader resolution of this issue going forward.¹

III. CONCLUSION

For the reasons set forth above, in the Office of Consumer Advocate’s Testimony, the OCA’s Statement in Support of Settlement and the Presiding Officer’s Recommended Decision, the OCA respectfully requests that, if the Public Utility Commission grants the Exceptions of Aqua and Shenandoah, it should not adopt the statements of fact and assertions of law contained in those Exceptions that are contested by the OCA. Further, if the Exceptions are granted, the Commission should adopt all provisions of Settlement Paragraph 17.B.3.

Respectfully submitted,

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¹ Specifically, under the additional provisions, Aqua commits that, in the first base rate proceeding that includes the Shenandoah water system assets, it will propose to charge rates for water service to all entities it serves in the acquired territory. Settlement ¶ 17.B.3.ii. In that proceeding, Aqua will also begin tracking monthly consumption for those fire companies receiving free water service and report that usage. *Id.* at 17.B.3.i. This will assist the parties and the Commission to evaluate whether the rates Aqua proposes for the fire companies in that rate proceeding are reasonable and recover the cost of service, to minimize subsidies paid by other Aqua customers. Additionally, Aqua commits to join the OCA in any efforts, including but not limited to filing a petition for declaratory order with the Commission, to reconcile the regulatory, legal and policy precedent against provision of free service by Commission-regulated utilities and Section 1329(d) of the Code, which addresses the buyer’s adoption of seller’s rates at closing. *Id.* at ¶ 17.B.3.iii. This provision recognizes that the issue of free service is likely to reoccur in future 1329 acquisitions and its resolution will provide certainty for Aqua, other potential buyers, potential sellers, and other stakeholders.