

COMMONWEALTH OF PENNSYLVANIA



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December 8, 2023

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

Re: Application of Aqua Pennsylvania Wastewater, Inc. (hereinafter referred to as “Aqua” or “Applicant”) pursuant to Sections 1102 and 1329 of the Public Utility Code for: (1) approval of the acquisition by Aqua of the wastewater system assets of the Greenville Sanitary Authority (“GSA”) situated within the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Borough of Greenville, Hempfield Township and West Salem Township, Mercer County, Pennsylvania; and (3) an order approving the acquisition that includes the ratemaking rate base of the GSA 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 GSA, Pursuant to Section 507 of the Public Utility Code
Docket No. A-2023-3041695

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate’s Protest and Public Statement in the above-referenced proceeding.

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

Respectfully submitted,

/s/ Gina L. Miller
Gina L. Miller
Assistant Consumer Advocate
PA Attorney I.D. # 313863
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Enclosures:

cc: Office of Administrative Law Judge (**email only:** crainey@pa.gov)
Paul Diskin, BTUS (**email only:** pdiskin@pa.gov)
Office of Special Assistants (**email only:** ra-OSA@pa.gov)
Certificate of Service

*4882-7618-1398

CERTIFICATE OF SERVICE

Application of Aqua Pennsylvania Wastewater, Inc. :
 (hereinafter referred to as “Aqua” or “Applicant”) :
 pursuant to Sections 1102 and 1329 of the Public :
 Utility Code for: (1) approval of the acquisition :
 by Aqua of the wastewater system assets of the :
 Greenville Sanitary Authority (“GSA”) situated :
 within the Borough of Greenville, Hempfield :
 Township, and West Salem Township, Mercer :
 County, Pennsylvania; (2) approval of the right : Docket No. A-2023-3041695
 of Aqua to begin to offer, render, furnish and :
 supply wastewater service to the public in the :
 Borough of Greenville, Hempfield Township :
 and West Salem Township, Mercer County, :
 Pennsylvania; and (3) an order approving the :
 acquisition that includes the ratemaking rate :
 base of the GSA 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 GSA, Pursuant to Section 507 of :
 the Public Utility Code :

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:

Dated this 8th day of December 2023.

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555 Walnut Street
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Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Dated: December 8, 2023
*4877-7273-4102

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania :
Wastewater, Inc. (hereinafter referred : Docket No. A-2023-3041695
to as “Aqua” or “Applicant”) pursuant :
to Sections 1102 and 1329 of the :
Public Utility Code for (1) approval of :
the acquisition by Aqua of the :
wastewater system assets of the :
Greenville Sanitary Authority :
 (“GSA”) situated within the Borough :
of Greenville, Hempfield Township, :
and West Salem Township, Mercer :
County, Pennsylvania (2) approval of :
the right of Aqua to begin to offer, :
render, furnish and supply wastewater :
service to the public in the Borough of :
Greenville, Hempfield Township and :
West Salem Township, Mercer :
County, Pennsylvania; (3) an order :
approving the acquisition that :
includes the ratemaking rate base of :
the GSA wastewater system assets :
pursuant to Section 1329(c)(2) of the :
Public Utility Code; (4) Request for :
Approval of Contracts pursuant to :
Section 507 of the Public Utility Code

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

The Office of Consumer Advocate (OCA) files a Protest in this matter 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 November 17, 2023, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) requests that the Commission: (1) approve consistent with the

provisions of 66 Pa. C.S §§ 1102 and 1103, the acquisition of the wastewater system assets owned by Greenville Sanitary Authority (GSA or Greenville); (2) approve the right of Aqua to provide wastewater service in the Borough of Greenville, Hempfield Township, and West Salem Township in Mercer County, Pennsylvania; and (3) include, in its Order approving the acquisition, the ratemaking rate base of the acquired Assets as determined under Section 1329(c)(2) of the Public Utility Code. Application ¶5. Aqua also requests approval of the Asset Purchase Agreement (APA) dated April 27, 2023 as well as other municipal agreements pursuant to Section 507 of the Public Utility Code, and requests that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. *Id.* at ¶¶ 73-74.

II. SUMMARY OF OCA’S REQUESTED RELIEF

As a threshold matter, the OCA submits that Aqua’s Application should be rejected for two reasons. First, Aqua has designated the entire Exhibit Z of its Application materials as Confidential Security Information (CSI). Aqua indicates that Exhibit Z includes the Direct Testimony of John Childers who provides testimony regarding transaction benefits. Application, Exhibit W at 4. Designating Exhibit Z as CSI means that access to it is not available, and it is uncertain whether and how it will become fully and completely available to the OCA, impacted consumers, and other interested stakeholders. Absent full and complete access to Exhibit Z, the OCA, impacted consumers, and other interested stakeholders, will be deprived of the opportunity to evaluate the purported benefits of Aqua’s Application, as required by applicable law, and deprived of due process. The OCA submits that it is antithetical to the public interest to permit Aqua the opportunity to build its Application upon the premise that restricted testimony is necessary to support its purchase of a municipally-owned public asset in a manner that will have rate consequences upon the customers it seeks to acquire and the water and wastewater

customers it currently serves. Therefore, Aqua's Application should be rejected and it should be required to support its transaction in a manner that does not deprive parties of due process and impermissibly shift Aqua's burden of proof to the OCA and others seeking to review, investigate, and challenge whatever claims may be contained in Exhibit Z.

Beyond the denial of due process imposed by lack of access to Exhibit Z, Aqua's Application should also be rejected because the customer notices Aqua has included as Exhibit I1 and Exhibit I2 for existing and acquired customers, respectively, are deficient in that they omit material information about rate consequences anticipated for existing and acquired customers. The omissions that are presently identifiable without the benefit of discovery, are described more fully below, but they include: (1) Aqua's failure to include the known rate impact of its planned Section 1329 acquisitions, including Aqua's \$18 million agreement to acquire the water provider in Greenville's service territory, Greenville Water Authority, in customer notices identified as Exhibits I1 and I2; (2) Aqua's intention to charge Greenville customers a distribution system improvement charge, which is at odds with the rate representations in Exhibit I2; and (3) incomplete and inaccurate information about Greenville rates to properly notify customers as set forth in Exhibit I2.

Although the OCA does not waive its position that Aqua's Application should be rejected for each of the independent bases identified above, if the Commission does not determine to reject Aqua's Application, it should not be conditionally accepted unless and until the Commission identifies and implements a timeline, process, and protocol that will enable the OCA to fully and completely review, evaluate, and investigate Application Exhibit Z. The protocol must provide a framework for treatment of discovery, responsive testimony, hearing time and briefing related to Exhibit Z. Additionally, Aqua should be required to cure the identifiable defects in the proposed customer notices included as Exhibit I1 and I2 before any

conditional acceptance is granted.

Accordingly, the Office of Consumer Advocate respectfully requests that the Commission not accept Aqua's Application at this time due to the issues raised in this Protest and the need for additional information. Finally, if Aqua's Application is accepted, the OCA requests that the Commission investigate and hold full hearings, including a telephonic or virtual public input hearing for Aqua and Greenville's customers held approximately three to four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

III. PROTEST

Greenville owns a sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 2,281 customers and which also provides transmission and treatment service for Hempfield Township and West Salem Township (collectively, the Contributing Municipalities). Additionally, Greenville accepts flows from approximately 1,168 Hempfield Township customers and 571 West Salem Township customers. Finally, Greenville provides bulk treatment service for the Contributing Municipalities as these municipalities own their respective collection systems and bill their own residents. Application ¶ 9.

The OCA files this Protest in order to aver that Aqua's Application should be rejected, but if it is not, 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 Gina L. Miller, Assistant Consumer Advocate and Jacob D. Guthrie, Assistant Consumer Advocate.

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 by the OCA to ensure that the interests of Aqua’s existing and acquired customers are protected.

3. In reaching a determination on the merits of this application, the Commission is required to give “due consideration to the interest of consumers.” 71 P.S. §§ 309-5(2).

4. 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).

5. The Code further requires that a certificate shall only be granted upon a finding that the granting of 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. PUC*, 295 A.2d 825, 828 (Pa. 1973); *see also Popowsky v. Pa. PUC*, 937 A.2d 1040 (Pa. 2007). Moreover, the proposed transaction must “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York* at 828. To satisfy this standard, any proposed benefits must differ substantially “from the benefits already being provided by the existing system operator,” and must be specific to the transaction itself, and not merely “arise as a result of the acquiring utility’s fitness.” *Cicero v. Pa. P.U.C.*, 300 A.3d 1106, 1119 (Pa. Cmwlth. Ct. 2023) *petitions for allowance of appeal filed at* Nos. 568 MAL 2023 (Commission), 569 MAL 2023 (East Whiteland Township), 570 MAL 2023 (Aqua Pennsylvania) (all filed Oct. 26, 2023).

6. 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 Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable”). The OCA submits that if the Commission grants this application, it must do so only with imposition of conditions in order to ensure that the public interest standard is met.

7. 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. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), as well as the Commission’s Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193.

8. Section 1329 of the Public Utility Code, *inter alia*, enables an acquiring public utility and a selling public utility to elect 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. Greenville proposes to pay \$18 million for the Greenville wastewater system per the Asset Purchase Agreement of April 27, 2023. Application ¶22. The original cost of the assets, as determined by the Engineers Report by KLH Engineers, Inc., is approximately \$13.6 million, and the original cost less depreciation is approximately \$6.9 million. Application ¶20; Application, Exh. D, p. 5; Exhibit Q, p. 27.

9. Aqua’s Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) indicated a fair market value of

\$24,060,000. Application ¶57; Application, Exh. BB at 27; Application Exh. Q at 1. The Greenville UVE appraisal conducted by ScottMadden, Inc. indicated a fair market value of \$18,757,633. Application ¶57; Application, Exh. R. at 11; Application, Exhibit V at 23. The average of the fair market value appraisals of the buyer’s UVE and the seller’s UVE is \$21,408,817. Application, Exh. Y at 21. The valuation experts were paid a total of \$56,285, with \$35,842.46 to date for ScottMadden and \$20,441.84 for Gannett Fleming for the appraisals. Application, Exh. S1 and S2. Aqua estimates that it will incur transaction and closing costs of \$487,250. Application ¶58.

10. Aqua proposes to implement Greenville’s sanitary wastewater rates by billing direct retails customers a monthly base fee of \$10.50 per unit, which includes an allowance of 500 gallons, and an inclining consumption charge per 1,000 gallons as indicated below:

Usage	Charge per 1,000 gallons
For next 2,000 gallons	\$3.84
For next 2,000 gallons	\$4.05
For next 3,500 gallons	\$4.13
For next 24,500 gallons	\$4.18
For next 117,500 gallons	\$4.26
For next 100,000 gallons	\$4.40
For next 75,000 gallons	\$4.47
Over 325,001 gallons	\$4.69

Additionally, Aqua proposes to continue to charge well users a flat rate of \$30.41 per month per unit. Application ¶¶34-35. The OCA notes that Greenville’s rate ordinance, Exhibit H to Aqua’s Application, indicates that all structures with multiple units will be billed per each individual unit; however, it is unclear to the OCA at this time whether Aqua intends to adopt Greenville’s per unit billing practice. Application, Exhibit H at 5.¹

¹ For purposes of clarification, the pages are not numbered; therefore, the OCA counted from the first page of the Ordinance identified as Exhibit H.

11. Paragraph 35 of Aqua’s Application summarizes the existing billing terms of the Contributing Municipalities as follows:

Contributing Municipalities bill their own residents at their established rates; however, per **Exhibit F1** West Salem retains 15% of the revenue collected and remits the remainder to the GSA, and similarly, per **Exhibit F4**, Hempfield retains 25% of the revenue collected and remits the remainder to the GSA. West Salem remits payment to GSA for its revenue collected on a monthly basis, and Hempfield remits payment to GSA for its revenue collected on a quarterly basis.

Application ¶35. At the time of this Protest, it appears, but remains unclear, to the OCA that Aqua intends to continue the billing arrangement currently in place between the Contributing Municipalities and Greenville as outlined above.

12. Aqua’s proposed tariff for the Greenville division includes a “Special Charge” provision for customers who had a deduct meter in place as of April 27, 2023 to pursue a credit in a manner and within a time period determined by Aqua. Application, Exhibit G at Original Page 10 15 2 (Rate Zone 15). To date, no information appears to be available about the credit eligibility, calculation, process, number of eligible customers, or rate impact.

13. Aqua is not proposing to begin collecting a distribution service improvement charge (DSIC) from customers in the acquired system immediately following closing; however, Aqua indicates that it plans to amend its Long-Term Infrastructure Improvement Plan (LTIIIP) to include to Greenville customers. After filing its amended LTIIIP with the Commission, Aqua intends to request initiation of a DSIC for Greenville customers. Application, Exh. Y at 9.

14. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission 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 Aqua’s 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 Greenville customers would increase as follows as a result of this transaction:

Rate Class	Average Usage/Kgal	Estimated Monthly Increase	Estimated Percentage Increase
Residential	2.91	\$41.75	180.85%
Commercial	11.07	\$100.85	180.85%
Industrial	12.58	\$11.38	180.85%
Public	11.23	\$95.06	180.85%
Bulk	3,123.90	\$39,153.27	180.85%

Application, Exh. Y, Appendix A, p. 1 of 11. The potential increase is calculated by allocating 100% of the revenue deficiency created by the transaction to the acquired customers. *Id.* Aqua projects that bills for its existing water and wastewater 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	\$1.35	1.6%
Commercial/Public	8,330 gal/month	\$2.14	1.6%
Industrial	1,500 gal/month	\$0.73	1.6%

Aqua Water Customers

Rate Class	Average Usage	Estimated Monthly Increase	Estimated Percentage Increase
Residential	4,000 gal/month	\$0.09	0.12%
Commercial/Public	33,380 gal/month	\$0.55	0.12%
Industrial	200,150 gal/month	\$2.64	0.12%

Aqua Application, Exhibit I1 at 1. In calculating the potential impact of the acquisition on its current wastewater and water customers, Aqua appears to assume that 31% of the wastewater revenue requirement will be shifted to its water customers. At the time of this Protest, and without the benefit of the discovery process, the OCA is unable to verify the basis for Aqua’s calculations or the assumptions that underlie them; therefore, the OCA’s requires additional information to determine the reasonableness of the proposed rate increase and revenue shift.

15. Aqua estimated that within ten years of closing, it will invest approximately \$20.4 million in capital projects in the Greenville system. Application, Exh. X at 10. At present, without the benefit of discovery, it is unclear what assumptions underlie Aqua’s notice and disclosure of any rate impact that these additional capital projects will have on GSA rates. 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.

16. Aqua projects that annual revenue that will be collected from Greenville customers will be approximately \$1.23 million. Application ¶ 41. The annual revenue requirement associated with the \$18 million ratemaking rate base for the Greenville system is \$996,206, based upon the operating expenses that Greenville presented in its 2022 financial statements “as adjusted by Aqua.” Application ¶ 42. If accurate, this produces an estimated annual revenue deficiency of \$233,800 to be recovered by increasing rates for existing and acquired Aqua customers.²

A. Aqua’s Application Should Be Rejected Because Denying Access to Exhibit Z as CSI Deprives Parties and Impacted Customers the Access to Material Evidence

17. As discussed above, Exhibit Z of Aqua’s Application is designated as CSI.

18. CSI is a statutorily-defined term used to identify enumerated types of information contained within a record maintained by an agency in any form, the disclosure of which would compromise security against, sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, public property or public utility facilities. 35 P.S. § 2141.2.

19. When a public utility identifies a record as containing CSI, it is required to state in its transmittal letter, upon submission to an agency, that the record contains CSI and an explanation of why the information should be treated as CSI. 35 P.S. § 2141.3(a)

20. Once information has been designated as CSI, challenges to the CSI designation or requests to examine records containing CSI by a member of the public must be made to the agency in which the CSI was submitted. The agency is charged with developing protocols and

² Aqua’s calculated revenue requirement and rate impacts purport to reflect the impact of planned capital investment in Year One in the amount of \$1.588 million. *See* Aqua Exh. Y, Appendix A at 1. The OCA will further investigate these claims and their underlying basis as part of this case.

procedures to address challenges to the designation. 35 P.S. § 2141.3(c).

21. In this case, the Commission is the agency charged with developing protocols and procedures to address challenges to Aqua's designation of CSI. Presently, the Commission does not appear to have developed any such protocols or procedures. The absence of protocols and procedures for challenges to the designation of CSI in the context of this Section 1329 proceeding, with an expedited litigation schedule, operates as a barrier to the OCA's ability to fully litigate this case. As set forth in a letter to the Commission's Secretary, which is submitted concurrently with this Protest, the OCA requests that Aqua's Application not be conditionally accepted until the Commission provides a timeline, process, and protocol for review including the subsequent treatment of discovery, responsive testimony, hearing time, and briefing related to Exhibit Z and that process is made public once it is determined. The OCA incorporates its request here.

22. The transmittal letter Aqua submitted with its Application on November 17, 2023 indicates that the filing includes, *inter alia*, "Confidential Security Information Aqua Statement No. 4"; however, letter provides no explanation of why Aqua Statement No. 4 should be treated as CSI.

23. Aqua's Application materials indicate that Exhibit Z includes the Direct Testimony of John Childers who provides testimony regarding transaction benefits. Application, Exhibit W at 4. Aqua also generally indicates that Mr. Childers provides testimony regarding Aqua's response to preventing and responding to security concerns, including actively monitoring for cyber threats. *Id.* at 12-13.

24. Aqua's designation of Exhibit Z as CSI means that access to it is not available, and it is uncertain whether and how it will become fully and completely available to the OCA,³ impacted consumers, and other interested stakeholders.

25. By designating Exhibit Z as CSI, Aqua materially deprives the OCA, impacted consumers, and other interested stakeholders the opportunity to timely access, review, investigate, and challenge the purported affirmative public benefit claims made in its Application.

26. Because Aqua has not provided an explanation of why Exhibit Z should be treated as CSI, as required by 35 P.S. § 2141.3(a), its designation is unsupported and it deprives the OCA, impacted consumers, and other interested stakeholders of the explanation required by law, in addition to a meaningful basis from which to challenge the CSI designation of the contents of the Exhibit.

27. Aqua appears to have overly-restricted materials by identifying the entire Exhibit Z, the Direct Testimony of John Childers, as CSI. Aqua's blanket designation apparently extends to the identification of Mr. Childers' employer, business address, credentials, and other basic information that should provide a foundation for expert testimony. The OCA submits that Aqua's designation of such perfunctory information is at odds with the definition of CSI. The OCA is concerned that Aqua has not limited the CSI designation to only that which is statutorily warranted.

28. The OCA has significant concerns about how its inability to fully and completely access Exhibit Z might impact its ability to timely retain appropriate expert witnesses for the case and to conduct discovery necessary to evaluate Aqua's claims. These concerns are

³ Upon the OCA's request, Aqua's counsel agreed to personally deliver Exhibit Z to OCA's counsel for a limited viewing opportunity and for a very limited duration. While the OCA appreciated Aqua's agreement to provide the limited review, it did not provide the OCA with full and complete access to the document in a way that is necessary to enable the OCA and its expert witnesses the opportunity to review, evaluate and investigate Exhibit Z.

compounded by Aqua's lack of support for designating Exhibit Z as CSI.

29. The truncated statutory timeframe available for this complex case with rate consequences for impacted consumers, which the Commission has previously construed as being limited to a six-month consideration period under 66 Pa. C.S. § 1329(d)(2), imposes a significant burden upon the OCA's development of a record absent the additional, unsupported hurdle Aqua has injected with its CSI designation. *Implementation of Section 1329 of the Public Utility Code, Final Supplemental Implementation Order, M-2016-2543193 at 2 (February 28, 2019) (FSIO for Section 1329)*.

30. The Commission's *FSIO for Section 1329* expressly recognized the need to aid "fair and efficient Section 1329 review" by requiring applicants to include necessary information to enable parties to "meaningfully participate in the application without causing exhaustive discovery and within the statutory timeline of Section 1329." *Id.* The OCA submits that at present, it is not only unable to meaningfully participate in the application, but it is rendered unable to adequately begin to plan for such participation.

31. The OCA's inability to fully and completely access Exhibit Z is currently impacting its ability to timely identify and retain appropriate expert witnesses for the case and to conduct discovery on the testimony. Although the OCA has a statutory duty to represent the interests of consumers before the Commission, its ability to fulfill its obligations in this case is now compromised in ways that are presently undeterminable. *See* 71 P.S. § 309-2.

32. At present, Aqua's restriction of Exhibit Z under the unsubstantiated claim that is entirely comprised of CSI operates as an improper, de facto shift of its burden of proof to support its Application. Currently, those seeking to review, investigate, and challenge whatever claims may be contained in Exhibit Z, including the OCA, now have the burden of demonstrating that they should be entitled to have full and complete access to Exhibit Z.

33. Aqua's Application should be rejected and it should be required to support its transaction in a manner that does not deprive parties of due process and improperly shift its burden of proof in this case.

B. Aqua's Application Should be Rejected Because it Materially Omits Known Rate Consequences for Acquired and Existing Customers.

34. The OCA submits that Aqua's Application should be rejected because the customer notices to existing and acquired customers, as set forth in Application Exhibits I1 and I2, omit material information about the known rate consequences of the Application.

35. In Paragraphs 19 and 52 of Aqua's Application, Aqua indicates that, other than those being served by private wells, water service in the GSA territory is provided by the Municipal Authority of the Borough of Greenville-Greenville Water Authority ("GWA).

36. Aqua's Application omits the fact that it intends to purchase the GWA assets for \$18 million, although it has been publicly announced that Aqua's parent company, Essential Utilities, signed an agreement to purchase GWA for \$18 million, and it expects the transaction to close in the third quarter of 2024.⁴

37. Despite Essential Utilities' public announcement of its October 4, 2023 agreement to purchase the GWA system, when Aqua filed its November 17, 2023 Application in this case, it acknowledged that Greenville customers receive water service from GWA but it was silent about its contractual agreement to purchase the GWA system.

38. In Slide 33 of its November 2023 Investor Presentation, Essential also notified its investors about pending Pennsylvania municipal acquisitions, including but not limited to the

⁴ <https://finance.yahoo.com/news/essential-utilities-aqua-pennsylvania-agrees-113000654.html>

pending \$18 million GWA acquisition.⁵

39. The OCA submits that by omitting the existence of anticipated rate consequences of the pending GWA purchase, Aqua has materially omitted critical information necessary to accurately inform Greenville customers of known and anticipated rate consequences they stand to face if acquired by Aqua. Exhibit I2 is a notice that purports to inform acquired customers about the estimated rate impact of the Application, but it fails to account for the estimated rate consequences of the GWA purchase and other pending purchases. Aqua's material omissions extend to the known and anticipated rate consequences of its existing customers as well. Specifically, Exhibit I1 is a notice that purports to inform existing customers about the estimated rate impact of the Application, but it also fails to account for the estimated rate consequences of the GWA purchase and other pending purchases.

40. As a regulated Pennsylvania public utility, Aqua should not be permitted to provide ratepayers less candor about the rate consequences they may face than it owes investors about the dividends they may expect to reap at the expense of those ratepayers.

41. Further, Aqua provides in its Application that it intends to include Greenville in its next LTIP, so that Greenville customers can begin paying the DSIC. Exhibit Y at 9.

42. However, the notices contained in Exhibit I2 do not make mention of the impact that the DSIC will have on wastewater bills under Aqua ownership. As a result, the customers who received the notice contained in Exhibit I2 have not been given full and accurate information about the rates that they will pay shortly after being acquired by Aqua, when the LTIP becomes effective, which will be higher than those provided in the notice.

⁵ chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.essential.co/static-files/39f07290-b86b-4a5f-8351-2476c649105d

43. Finally, the notice contained in Exhibit I2 is materially deficient in that it omits critical information necessary to determine the likely rate impact that the proposed Transaction will have on individual customers.

44. Specifically, the notice fails to indicate the units of measure for “average usage.” Neither the notice itself, nor anywhere else in the Application, does Aqua elucidate why 2,910 of some unit was determined to be the average, which – if the 2,910 is in gallons – is substantially less than the average usage provided in the notice to Aqua customers of 4,000 gallons, in Exhibit I1. Aqua also does not provide the monthly or quarterly estimated customer charge.

45. Importantly, Aqua also fails to provide the monthly or quarterly estimated volumetric charge. Without providing the monthly or quarterly estimated volumetric charge, current GSA customers cannot estimate the rate impact the proposed Transaction would have on them if they do not consume the exact “average” volume, as very few customers are likely to use exactly the average volume contained within the notice.

46. The OCA submits that Aqua’s Application should be rejected because Exhibits I1 and I2, which purport to inform customers about estimated rate consequences, withhold critical information about the true impact of the rate consequences that customers actually may face.

C. Without Waiver of OCA’s Position that Rejection is Warranted on Multiple Bases, if Aqua’s Application is Not Rejected, Additional Investigation and Conditions Are Necessary to Protect Consumers.

47. The OCA submits that additional information is necessary to determine if the Application proposals, and Aqua’s request for an approved ratemaking rate base of \$18 million for the Greenville acquisition, are reasonable and lawful under the Public Utility Code and other applicable standards. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

48. The OCA submits that additional information is necessary to determine whether or how the transaction will substantially and affirmatively benefit Aqua's existing customers and the acquired customers.

49. The OCA submits that Aqua's Application appears to indicate that it is aware of 276 missing easements for the Greenville system. Application, Exhibit B, Schedule 6.05(e). The identified easements are made without the benefits of an Abstractor's Report, which is allegedly pending, and which may reveal additional missing easements and/or property rights. *See* Application, Exhibit CC, Standard Data Request Response No. 6. The OCA submits that additional information regarding missing easements/property rights must be identified, quantified, and investigated before Aqua's Application can be approved; therefore, additional information is necessary to ensure that consumers are not paying for property that Aqua will not acquire.

50. The OCA submits that additional information is necessary to determine whether Aqua's requests for Section 507 approval of assigned contracts as enumerated in Paragraph 73 of Aqua's Application would unduly burden Aqua's existing customers.

51. The OCA submit that Aqua has designated Exhibit Z to its Application as containing CSI, meaning that, beyond the limited viewing opportunity that Aqua's counsel provided to the OCA on December 6, 2023, it has been and presently remains inaccessible to the OCA for full and complete investigation. The OCA submits that it is rendered unable to fulfill its duty to represent consumers in this case absent full and complete access to all of Aqua's Application materials. Additionally, because there is currently no protocol that provides a framework for treatment of discovery, responsive testimony, hearing time and briefing related to Exhibit Z, there is no identified path forward to enable the OCA to respond to the underlying testimony it contains. All of these obstacles will jeopardize the OCA and other parties' ability to

build a complete record in this case and due process concerns are implicated. Accordingly, without waiver of its position that Aqua's Application should be rejected, the OCA avers that Aqua's Application should not be conditionally accepted unless and until the Commission identifies and implements a protocol that will enable the OCA to fully and completely review, evaluate, and investigate Application Exhibit Z.

52. The OCA submits that additional information is necessary to determine whether Aqua's existing customers and the acquired customers were accurately notified about the rate impact of the transaction based on the totality of information known and available to Aqua and/or Greenville.

53. The OCA submits that, without waiver of its position that Aqua's Application should be rejected, Aqua's Application should not be conditionally accepted unless and until the Commission requires Aqua to revise the customer notices to existing and acquired customers, as set forth in Application Exhibits I1 and I2, respectively, to cure the following omissions:

a. Aqua's failure to include the known rate impact of its planned Section 1329 acquisitions, including Aqua's \$18 million agreement to acquire the water provider in Greenville's service territory, Greenville Water Authority in customer notices identified as Exhibits I1 and I2;

b. Aqua's intention to charge Greenville customers a distribution system improvement charge is at odds with the rate representations in Exhibit I2; and

c. Incomplete and inaccurate information about Greenville rates exists to properly notify customers as set forth in Exhibit I2.

54. The OCA requests that, if the Commission issues a Secretarial Letter indicating final acceptance of the application, a telephonic or virtual public input hearing be scheduled in this matter. The OCA also requests that a public input hearing 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 with adequate notice will ensure that both the acquiring and acquired customers have a reasonable opportunity to be heard.

WHEREFORE, the Office of Consumer Advocate avers that Aqua's Application should be rejected. Without waiver of its position, if the Pennsylvania Public Utility Commission does not reject Aqua's Application, the OCA submits that it should not be conditionally accepted unless and until the Pennsylvania Public Utility Commission identifies and implements a protocol that will enable the Office of Consumer Advocate to fully and completely review, evaluate, and investigate Application Exhibit Z.

Additionally, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not conditionally accept Aqua's Application unless and until Aqua revises Exhibits I1 and I2 to address the presently identifiable omissions regarding the known rate consequences of the Application. Finally, the OCA respectfully requests that the Pennsylvania Public Utility Commission not approve Aqua's Application at this time due to the issues raised above and the need for additional information. Finally, if Aqua's Application is accepted, the Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including a telephonic or virtual public input hearings for Aqua and Greenville's customers held approximately three to four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,

/s/ Gina L. Miller

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Dated: December 8, 2023

Counsel for:

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Consumer Advocate

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 interests 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 or Company) of Greenville Sanitary Authority (GSA or Greenville); wastewater collection and treatment assets.

The objective of the Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and the acquired Greenville customers. The Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise in violation of the Public Utility Code. Finally, the Consumer Advocate will investigate the proposed acquisition to determine if there are substantial affirmative public benefits and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua is a regulated public utility company that furnishes wastewater service to approximately 60,000 customer accounts across Pennsylvania. Greenville furnishes wastewater service to approximately 2,281 active residential, commercial, industrial, and bulk customers in the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania.