

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Mark A. Hoyer, Presiding

Venango Water Company – Ex Parte	:	
Emergency Order Naming Aqua	:	Docket No. M-2023-3042180
Pennsylvania, Inc. as Receiver	:	
	:	
Section 529 Investigation of	:	Docket No. I-2023-3042312
Venango Water Company	:	

**PREHEARING MEMORANDUM OF
AQUA PENNSYLVANIA, INC.**

AND NOW, comes Aqua Pennsylvania, Inc. (“Aqua”) and submits this Prehearing Memorandum in connection with the Telephonic Prehearing Conference scheduled to be held in the above captioned matter on February 20, 2024.

I. BACKGROUND

This proceeding concerns the Investigation of the Public Utility Commission (“Commission”) into whether it should order a capable public utility to acquire Venango Water Company (“VWC”) pursuant to Section 529 of the Public Utility Code (“Code”), 66 Pa. C.S. § 529 (“Section 529”). The Commission instituted the Investigation as part of its Ex Parte Emergency Order entered August 11, 2023 (“Ex Parte Order”) in Docket No. M-2023-3042180, as ratified by the Commission’s Ratification Order entered August 24, 2023. (“Ratification Order”).

The Commission, in Ordering Paragraph 4 of the Ex Parte Order, directed Aqua to act as Receiver for VWC, pursuant to 66 Pa. C.S. § 529(g), beginning August 12, 2023 and to continue during the pendency of the Section 529 proceeding. Aqua’s appointment as Receiver, pursuant to

Section 529(g), is to “protect the interests of the customers” of VWC. Aqua, in its own right, is also a “capable public utility” as defined in Section 529(m) of the Code, 66 Pa. C.S. § 529(m).

Deputy Chief Administrative Law Judge Mark A. Hoyer was assigned to preside over the Section 529 Investigation. A Telephonic Prehearing Conference was noticed for February 20, 2024, at 10:00 AM. Judge Hoyer issued a Prehearing Conference Order on February 2, 2024. Paragraph 7 of the Prehearing Conference Order directs each litigating party to file and serve a prehearing memorandum on or before 4:30 PM on Friday, February 16, 2024.

II. LITIGATION SCHEDULE

Aqua will cooperate with Judge Hoyer and the litigating parties to arrive at a mutually acceptable litigation schedule.

III. LIST OF ISSUES AND AQUA’S POSITION IN REGARD TO THEM

Section 529(a) presents a “general rule” list of several determinations for the Commission to address in a Section 529 investigation. In conjunction with Section 529(a), Section 529(c) identifies several “factors” for the Commission to consider in making a determination pursuant to Section 529(a). Those factors are:

- (1) The financial, managerial and technical ability of the small water or sewer utility.
- (2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.
- (3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.
- (4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.

- (5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.
- (6) Any other matters which may be relevant.

66 Pa. C.S. § 529(c).

The Commission, in Subparagraph 1.q. of Appendix A to the Ex Parte Order, directed Aqua, as Receiver, to submit testimony regarding each “factor” delineated in Section 529(c). Aqua intends to only submit direct testimony addressing each of the Section 529(c) “factors” as set forth above, which the Commission may then consider in its Section 529(a) determinations. Section 529(i) places the burden of proof on the Bureau of Investigation and Enforcement (“I&E”) to establish a prima facie case, including the presentation of direct testimony, that the acquisition of VWC would be in the public interest and in compliance with Section 529.

Aqua reserves the right to present testimony in rebuttal to direct testimony of I&E or of other litigating parties, as is its right as a “capable public utility”, pursuant to Section 529(m), or as the appointed Receiver of VWC, pursuant to Section 529(g).

IV. WITNESSES

At this time, Aqua anticipates calling the following witnesses:

William C. Packer
Vice President, Regulatory Accounting
and Regional Controller
Essential Utilities, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Stephen Clark
Operations Director of Greater
Pennsylvania
Aqua Pennsylvania, Inc.
1775 North Main Street
Honesdale, PA 18431

Mr. Packer will address financial matters. Mr. Clark will address operational matters.

Aqua asks that any and all contact with Mr. Packer and/or Mr. Clark be through counsel.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify Administrative Law Judge Hoyer and the parties promptly should Aqua determine that additional witnesses will be called.

Respectfully submitted,

AQUA PENNSYLVANIA, INC.

By: /s/ Courtney L. Schultz

Courtney L. Schultz, Esq.

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Counsel for Aqua Pennsylvania, Inc.

Date: February 16, 2024

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CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of February, 2024, served a true and correct copy of the foregoing Prehearing Memorandum of Aqua Pennsylvania, Inc., upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL, BEFORE 4:30 PM

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
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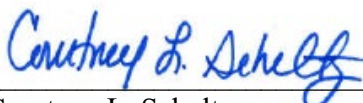
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