

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

**The Honorable Mark A. Hoyer, Presiding**

---

<b>Venango Water Company – Ex Parte</b>	<b>:</b>	
<b>Emergency Order Naming Aqua</b>	<b>:</b>	<b>Docket No. M-2023-3042180</b>
<b>Pennsylvania, Inc. as Receiver</b>	<b>:</b>	
	<b>:</b>	
<b>Section 529 Investigation of</b>	<b>:</b>	<b>Docket No. I-2023-3042312</b>
<b>Venango Water Company</b>	<b>:</b>	
	<b>:</b>	
<b>Section 529 Investigation of Sugarcreek</b>	<b>:</b>	<b>Docket No. P-2024-3045205</b>
<b>Water Company, West Hickory Water</b>	<b>:</b>	
<b>Company, Plumer Water Company,</b>	<b>:</b>	
<b>Fryburg Water Company, Cooperstown</b>	<b>:</b>	
<b>Water Company and Blaine E. Rhodes</b>	<b>:</b>	
<b>Sewer Company</b>	<b>:</b>	

**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 (the “Venango 529 Investigation”). The Commission instituted the Venango 529 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 Venango 529 Investigation. 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 Venango 529 Investigation.

On January 3, 2024, the Commission's Bureau of Investigation and Enforcement (“I&E”) filed a Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Several Small Water and Sewer Utilities Owned by the Blaine Edwin Rhodes Estate at Docket No. P-2024-3045205 (the “Rhodes 529 Petition”).<sup>1</sup> On January 23, 2024, a Call-In Telephone Prehearing Conference Notice was served in the Venango 529 Investigation scheduling a conference for February 20, 2024. A Prehearing Conference Order was issued on February 2, 2024.

On February 15, 2024, I&E filed a Petition for Consolidation of the Venango Section 529 Investigation with the 529 Petition involving the Rhodes Utilities (the “Petition to Consolidate”).

On February 16, 2024, Aqua, I&E and the Office of Consumer Advocate (“OCA”) filed their prehearing memoranda in the Venango 529 Investigation as ordered. A Telephonic Prehearing Conference, over which Judge Hoyer presided, took place on February 20, 2024, at 10:00 AM. In light of the Petition to Consolidate and the Rhodes 529 Petition having been filed by I&E no substantive matters were addressed at the Prehearing Conference, however, the parties were directed to submit a joint status report on March 22, 2024, which they did.

---

<sup>1</sup> The six utilities included in this petition are identified in the above-caption and are referred to herein as the “Rhodes Utilities”.

On March 20, 2024, ALJ Hoyer issued the First Interim Order Amending Caption and Consolidating the Venango 529 Investigation and the Rhodes 529 Petition proceedings (hereinafter referred to collectively as the “Consolidated 529 Proceeding”); Ordering Notice be provided to All Customers of VWC and the Rhodes Utilities; and Ordering all Utilities To Preserve Records. The March 20, 2024 Order specifically required VWC to provide notice to its customers of the Consolidated 529 Proceeding within 30 days of the date of the Order. Aqua as Receiver for VWC provided notice to the VWC customers through a bill insert on March 29, 2024.

On May 2, 2024, a Call-In Telephone Prehearing Conference Notice was served in the Consolidated 529 Proceeding scheduling a conference for May 21, 2024. A Prehearing Conference Order was issued on May 7, 2024, directing prehearing memoranda be submitted no later than noon on May 20, 2024.

## **II. LITIGATION SCHEDULE**

Aqua will cooperate with Judge Hoyer and the litigating parties to arrive at a mutually acceptable litigation schedule once all parties have been identified. However, preliminarily, the parties have conferred and present the below schedule for your consideration at this time:

I&E Direct Testimony:	August 1, 2024
Other Parties’ Direct Testimony:	August 30, 2024
Rebuttal Testimony:	September 27, 2024
Surrebuttal Testimony:	October 16, 2024
Evidentiary Hearings (Telephonic, if necessary):	October 23-24, 2024
Main Briefs Due:	November 15, 2024
Reply Briefs Due:	December 6, 2024

### **III. SECTION 529 STATUS REPORTS**

Aqua will continue to provide quarterly status reports to the Commission regarding VWC. Three such reports have been provided to date – an Initial Status Report on October 11, 2023, a Second Status Report on January 9, 2024, and a Third Status Report on April 8, 2024.

### **IV. 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 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). Aqua will also address other matters relevant to the proceeding.

#### V. 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.  
Saul Ewing LLP  
1500 Market Street  
Centre Square West, 38th Floor  
Philadelphia, PA 19102  
(215) 972-7717  
[Courtney.schultz@saul.com](mailto:Courtney.schultz@saul.com)  
*Counsel for Aqua Pennsylvania, Inc.*

Date: May 20, 2024

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The Honorable Mark A. Hoyer, Presiding**

---

<b>Venango Water Company – Ex Parte</b>	<b>:</b>	
<b>Emergency Order Naming Aqua</b>	<b>:</b>	<b>Docket No. M-2023-3042180</b>
<b>Pennsylvania, Inc. as Receiver</b>	<b>:</b>	
	<b>:</b>	
<b>Section 529 Investigation of</b>	<b>:</b>	<b>Docket No. I-2023-3042312</b>
<b>Venango Water Company</b>	<b>:</b>	
	<b>:</b>	
<b>Section 529 Investigation of Sugarcreek</b>	<b>:</b>	<b>Docket No. P-2024-3045205</b>
<b>Water Company, West Hickory Water</b>	<b>:</b>	
<b>Company, Plumer Water Company,</b>	<b>:</b>	
<b>Fryburg Water Company, Cooperstown</b>	<b>:</b>	
<b>Water Company and Blaine E. Rhodes</b>	<b>:</b>	
<b>Sewer Company</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 20th day of May, 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 12:00 PM**

The Honorable Mark A. Hoyer  
Deputy Chief Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
mhoyer@pa.gov  
mswarner@pa.gov

Christy Appleby  
Aaron Beatty  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923  
cappleby@paoca.org  
abeatty@paoca.org

Joseph J. Ferguson, Esq.  
ERDE, FERGUSON, FOULK &  
CRESSMAN  
300 Arch Street  
Meadville, PA 16335  
jferguson@cressmanerdelaw.com

Steven C. Gray  
Rebecca Lyttle  
Office of Small Business Advocate  
555 Walnut Street  
Forum Place, 1st Floor  
Harrisburg, PA 17101  
sgray@pa.gov  
relyttle@pa.gov


Alexander Stahl, Esq.  
Aqua Pennsylvania, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010  
astahl@aquaaamerica.com

Carrie B. Wright  
Scott B. Granger  
Michael A. Podskoch  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
carwright@pa.gov  
sgranger@pa.gov  
mpodskoch@pa.gov

Randall L. Rhodes  
Venango Water Company  
P.O. Box 397  
Reno, PA 16343  
vwc-rlr@pa.rr.com

Gregory J. Merkel  
DALE WOODARD GENT MCFATE LAW  
FIRM  
1030 Liberty Street  
Franklin, PA 16323  
merkel@dwgmlaw.com

Elizabeth Rose Triscari  
Pennsylvania American Water Company  
852 Wesley Drive  
Mechanicsburg, PA 17055  
[Elizabeth.triscari@amwater.com](mailto:Elizabeth.triscari@amwater.com)



---

Courtney L. Schultz