

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judges Mark A. Hoyer and Alphonso Arnold III, Presiding

Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code, for Approval of the Acquisition by Aqua of the Wastewater System Assets of the Greenville Sanitary Authority Situated within the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania	: : : : : : : : :	Docket No. A-2023-3041695
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**PREHEARING MEMORANDUM OF
AQUA PENNSYLVANIA WASTEWATER, INC.**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”) and submits this Prehearing Memorandum in connection with the Telephonic Prehearing Conference scheduled to be held in the above-captioned matter on July 17, 2024, at 10:00 a.m.

I. BACKGROUND

This proceeding concerns the Application of Aqua, filed with the Pennsylvania Public Utility Commission (the “Commission”) on November 17, 2023, for approval of its acquisition of the wastewater system assets of the Greenville Sanitary Authority (“GSA”) pursuant to Sections 1102 and 1329 of the Public Utility Code (the “Code”). The Application also includes a request for approval of certain municipal contracts pursuant to Section 507 of the Code.

By Secretarial Letter dated May 2, 2024, the Commission, *inter alia*, conditionally accepted the Application for filing and directed Aqua to serve copies of the Application upon designated entities, to provide individualized notice to affected customers, to publish notice of the

filing of the Application in a newspaper of general circulation, and to provide additional information concerning the proposed acquisition of the GSA System.

Aqua complied with the requirements of the conditional acceptance letter. The Commission, thereafter, by Secretarial Letter dated June 21, 2024, informed Aqua that it accepted the Application for filing and that the matter would be assigned to the Office Administrative Law Judge for disposition.

Administrative Law Judges Marky A. Hoyer and Alphonso Arnold III were assigned to preside over the proceeding. A Telephonic Prehearing Conference was noticed for July 17, 2024.

Judges Hoyer and Arnold issued a Prehearing Conference Order on June 26, 2024. Pursuant to Paragraph 2 of the Prehearing Conference Order parties are directed to file and serve a prehearing memorandum on or before 12:00 p.m. on July 16, 2024.

II. LIST OF ISSUES AND AQUA'S POSITION IN REGARD TO SAME

There are three central issues in this proceeding, each of which is set forth below, along with Aqua's position regarding same.

Issue No. 1: Is Aqua's acquisition of the wastewater system assets of GSA necessary or proper for the service, accommodation, convenience or safety of the public?

Aqua's Position: Aqua's acquisition of the wastewater system assets of GSA is necessary or proper for the service, accommodation, convenience or safety of the public. The Commission should issue certificate(s) of public convenience approving the acquisition.

As summarized Section IX of the Application:¹

- a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of GSA, and to maintain the operations and make improvements to meet continuing and future customer needs.² The proposed transaction will

¹ Application, at ¶ 53.

² As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

not have an adverse effect on the service provided to existing customers of Aqua;

- b. The GSA has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of the GSA, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The GSA system will benefit from the support of wastewater professionals throughout Aqua’s organization;
- c. The acquisition is consistent with the Commission’s long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry.”³ The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;
- d. Aqua provides utility service to approximately 60,000 wastewater customers and has years of experience operating water systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of GSA;
- e. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007), to support a conclusion that there is a public benefit to a transaction such as the one that is the subject of this proceeding;
- f. The acquisition of the GSA system will increase Aqua’s customer base by approximately 4%. With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and
- g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or the GSA. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate

³ *Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

Issue No. 2: Pursuant to Section 1329 of the Code, what is the ratemaking rate base of the water system assets of the GSA?

Aqua's Position: The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$18,000,000, being the lesser of the purchase price of \$18,000,000 negotiated by Aqua and the GSA and the average of the fair market value appraisals which is \$20,977,920 – determined by \$23,260,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants and \$18,695,839 presented in the appraisal of Scott Madden.⁴

Issue No. 3: Pursuant to Section 507 of Code, is the Asset Purchase Agreement (“APA”) between Aqua and GSA valid and should the municipal agreements of GSA be assigned to Aqua?

Aqua's Position: The APA between Aqua and the GSA is valid and the GSA's municipal agreements should be assigned to Aqua under Section 507 of the Code.

⁴ See Application (as updated on April 12, 2024), at ¶ 57.

III. WITNESSES

The following statements of written direct testimony were attached as Exhibit U, Exhibit V, Exhibit W, Exhibit X, Exhibit Y, Exhibit Z, and Exhibit AA to the Application when it was submitted to the Commission on November 17, 2023.⁵

<u>Application</u>	<u>Statement</u>	<u>Witness</u>	<u>Subject Matter</u>
Exhibit U	Greenville Statement No. 1	Jasson W. Urey	GSA System and Operations
Exhibit V	Greenville Statement No. 2	Dylan W. D'Ascendis	ScottMadden Fair Market Value Appraisal
Exhibit W	Aqua Statement No. 1	Zach Martin	Current Operations of GSA; Future Operations and Service level improvements by Aqua; Aqua's Technical Fitness; Customer Service; and Public Benefits
Exhibit X	Aqua Statement No. 2	Mark J. Bubel, Sr.	Description of the GSA System; Capital Improvements; and Environmental Compliance
Exhibit Y	Aqua Statement No. 3	William C. Packer	Overview of the Transaction; Financial and Legal Fitness of Aqua; APA Rate Provisions; and Public Benefits of the Transaction
Exhibit Z	Aqua Statement No. 4	John Childers (adopted by Sumit Nair as described below)	Cybersecurity and Public Benefits of the Transaction
Exhibit AA	Aqua Statement No. 5	Rita Black	Customer Assistance Programs
Exhibit BB	Aqua Statement No. 6	Harold Walker, III	Gannett Fleming Fair Market Value Appraisal

⁵ The Direct Testimony of Witnesses Packer, Walker, and D'Ascendis were updated and filed with the Commission on April 12, 2024. The Direct Testimony of Witness Childers (adopted by Witness Nair) was downgraded from Confidential Security Information to Highly Confidential and refiled with that designation on December 20, 2023.

Aqua requests that any contact with witnesses be arranged through the undersigned counsel. Aqua is providing notice to the parties that Aqua Statement No. 4, the Direct Testimony of John Childers, will be adopted by Sumit Nair, Chief Information Officer of Essential Utilities, Inc.

Aqua also will submit its Application, filed with the Commission on November 17, 2023 (as updated on April 12, 2024) as an Exhibit in support of Commission approval of the proposed acquisition and the proposed ratemaking rate base.

The Application, as filed, has 46 separately numbered documents publicly available on the Commission's web docket and includes the items required by Section 1329(d) of the Code. The fair market value appraisals of Gannett Fleming, Utility Valuation Expert, and ScottMadden, Utility Valuation Expert, are Application Exhibits Q and R, respectively, and were updated on April 12, 2024. Confidential Exhibits will be submitted on a Confidential basis.

Aqua will also submit its supplemental information letters filed with the Commission, dated January 30, 2024, February 16, 2024, February 23, 2024, April 12, 2024, and April 19, 2024, which are publicly available on the Commission's web docket. The Confidential information filed with the supplemental information letters of February 16, 2024 and April 12, 2024 will be submitted on a Confidential basis.

The List of Exhibits A through DD2, provided with the Application, is attached hereto as Attachment 1.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify ALJ's Hoyer and Arnold and the parties promptly should Aqua determine that additional witnesses will be called.

IV. LITIGATION SCHEDULE

Aqua has conferred with the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and Intervenors GSA and the Borough of Greenville (“Greenville”) on a proposed litigation schedule using the Reply Brief date of September 5, 2024 as set forth in the Prehearing Conference Order. Aqua, I&E, OCA, OSBA, GSA, and Greenville had tentatively agreed to a proposed schedule, set forth below, but understand that the hearing dates will need to be moved due to conflicts. Aqua will be prepared to discuss the procedural schedule at the Prehearing Conference.

Event	Proposed Dates
Acceptance of Application	Friday, June 21, 2024
Prehearing Conference	Tuesday, July 16, 2024
Other Parties’ Direct Testimony	Friday, July 26, 2024
Public Input Hearing (“PIH”) (Telephonic)	Tuesday, July 30, 2024, at 6 p.m.
Rebuttal Testimony	Friday, August 2, 2024
Surrebuttal Testimony	Friday, August 9, 2024
All-Party Testimony in Response to PIH	Friday, August 9, 2024
Oral Rejoinder Outline	Tuesday, August 13, 2024
Evidentiary Hearings	Thursday, August 15, 2024 (2 nd date TBD)
Main Briefs	Tuesday, August 27, 2024
Reply Briefs	Thursday, September 5, 2024

V. SETTLEMENT

Aqua is willing to address settlement of all or part of the proceeding with the other parties in the proceeding.

VI. DISCOVERY MODIFICATIONS

Aqua is not proposing any modifications to the discovery deadlines set forth in the Prehearing Conference Order.

VII. PROTECTIVE ORDER

Information marked CONFIDENTIAL was provided with the Application. Aqua filed a Petition for Protective Order addressing CONFIDENTIAL information on July 12, 2024. There was no objection to the Proposed Protective Order from I&E, OCA, OSBA, Intervenors GSA and Greenville Borough, or Protestant Keith Gabage.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By: /s/ Courtney L. Schultz

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Date: July 15, 2024

Counsel for Aqua Pennsylvania Wastewater, Inc.

ATTACHMENT 1
LIST OF APPLICATION EXHIBITS

INDEX OF EXHIBITS TO APPLICATION

<u>DESCRIPTION</u>	<u>EXHIBIT</u>
Map of Requested Territory.....	A
Asset Purchase Agreement, dated April 27, 2023	B
Aqua’s 2022 Balance Sheets and Income Statement reports.....	C
Engineering Assessment prepared by KLH Engineers.....	D
GSA’s Chapter 94 Report to DEP	E
Intermunicipal Sewage Agreement, dated October 28, 1998, between Greenville, GSA, West Salem, and the West Salem Township Municipal Sewage Authority (“WSMSA”)	F1
Addendum to Intermunicipal Sewage Agreement, dated December 23, 1998, between Greenville, GSA, West Salem, and WSMSA.....	F2
Addendum to Intermunicipal Sewage Agreement, dated March 19, 2008, between Greenville, GSA, West Salem, and WSMSA.....	F3
Consent Agreement, dated June 16, 2011, between Greenville, GSA, West Salem, and WSMSA.....	F4
Intermunicipal Sewage Agreement, dated December 21, 2006, between GSA, Greenville, Hempfield Township Municipal Authority (“HTMA”), and Hempfield.....	F5
Pro Forma Water Meter Read Agreement, between Aqua and GWA.....	F6
Aqua Pro Forma Tariff Supplement for GSA Rates.....	G
GSA Rate Ordinance, Rules & Regulations	H
Aqua Customer Notices	I1
GSA Customer Notices.....	I2
Greenville’s Annual Financial Statements 2021.....	J1
Greenville’s Annual Financial Statements 2022.....	J2
Greenville’s Adopted Annual Budgets 2022	J3

<u>DESCRIPTION</u>	<u>EXHIBIT</u>
Greenville’s Adopted Annual Budgets 2023	J4
Greenville’s Annual Department of Community and Economic Development Report	K
Isaiah Vernon’s Wastewater Operator’s License.....	L
WQM Permit for WTP issued in 2023	M1
WQM Permit Applications for Barrette St., Penn Ave., North Front St.	M2
NPDES Application and Current Permit for the WWTP.....	N1
DMRs for WWTP from August 2018 – August 2023	N2
Notices of Violation issued to GSA.....	O1
GSA Consent Order with the DEP on 12/21/21	O2
GSA’s Act 537 Plan.....	P1
Hempfield’s Act 537 Plan.....	P2
West Salem’s Act 537 Plan.....	P3
Fair Market Value Appraisal Report of Gannett Fleming	Q
Fair Market Value Appraisal Report of Scott Madden.....	R
Gannett Fleming valuation service agreements and invoices.....	S1
ScottMadden valuation service agreements and invoices.....	S2
Verification Statement of Gannett Fleming.....	T1
Verification Statement of ScottMadden.....	T2
Greenville Statement No. 1, Direct Testimony of Jasson W. Urey	U
Greenville Statement No. 2, Direct Testimony of Dylan W. D’Ascendis	V
Aqua Statement No. 1, Direct Testimony of Zach Martin (Confidential).....	W
Aqua Statement No. 2, Direct Testimony of Mark J. Bubel, Sr.	X

DESCRIPTION

EXHIBIT

Aqua Statement No. 3, Direct Testimony of William C. Packer Y

Aqua Statement No. 4, Direct Testimony of John Childers
(Highly Confidential Information)..... Z

Aqua Statement No. 5, Direct Testimony of Rita Black..... AA

Direct Testimony of Harold A. Walker, III BB

Responses to Section 1329 Application Standard Data Requests CC

Aqua’s Verified Statement selecting Gannett Fleming as its Utility Valuation Expert DD1

GSA’s Verified Statement selecting ScottMadden as its Utility Valuation Expert..... DD2

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2023-3041695
Wastewater, Inc. Pursuant to Sections 1102 :
and 1329 of the Public Utility Code, for :
Approval of the Acquisition by Aqua of the :
Wastewater System Assets of the Greenville :
Sanitary Authority Situated within the :
Borough of Greenville, Hempfield Township, :
and West Salem Township, Mercer County, :
Pennsylvania :

CERTIFICATE OF SERVICE

I, Courtney L. Schultz, hereby certify that a true and correct copy of Aqua Pennsylvania Wastewater, Inc.’s Prehearing Memorandum in connection with the above-referenced docket was served on the following individuals on this 15th day of July, 2024, as indicated below.

VIA E-FILE AND ELECTRONIC MAIL

PA PUC

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