



COMMONWEALTH OF PENNSYLVANIA

August 27, 2024

E-FILED

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

Re: Application of Aqua Pennsylvania Wastewater, Inc. for Approval of its Acquisition of the Wastewater System Assets of the City of The Greenville Sanitary Authority / Docket No. A-2023-3041695

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Rebecca Lyttle

Rebecca Lyttle
Assistant Small Business Advocate
Attorney ID No. 201399

Enclosures

cc: Jason Hails
Roger Cathcart
Parties of Record

**BEFORE THE
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 :

**MAIN BRIEF ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Rebecca Lyttle
Assistant Small Business Advocate
Attorney ID No. 201399

For: NazAarah Sabree
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Date: August 27, 2024

TABLE OF CONTENTS

I.	STATEMENT OF THE CASE.....	1
	A. Procedural History	1-2
	B. Overview of the Proposed Transaction.....	2-3
II.	BURDEN OF PROOF	3-4
III.	STATEMENT OF THE QUESTIONS INVOLVED.....	5
IV.	SUMMARY OF ARGUMENT	5
V.	ARGUMENT.....	6
	A. Section 1102/1103	6-8
	B. Section 1329.....	8-9
	C. Recommended Conditions.....	9-13
	D. Section 507 Approvals.....	13
	E. Other Approvals, Certificates, Registrations and Relief.....	13
VI.	CONCLUSION WITH REQUESTED RELIEF	14

APPENDICES

APPENDIX A FINDINGS OF FACT

APPENDIX B CONCLUSIONS OF LAW

APPENDIX C PROPOSED ORDERING PARAGRAPHS

TABLE OF AUTHORITIES

STATUTES

66 Pa. C.S. § 1329(c)(2).....	2
66 Pa.C.S. § 507.....	2
66 Pa. C.S. § 332(a)	3
<i>Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission</i> , 578 A.2d 600, 602 (Pa. Cmwlt. 1990)	3
66 Pa. C.S. § 1103(a)	4
<i>Id.</i>	4
<i>Seaboard Tank Lines v. Pa. Pub. Util. Comm’n</i> , 502 A.2d 762, 764 (Pa. Cmwlt. 1985) ...	4
<i>Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n</i> , 138 A.2d 240, 243 (Pa. Super. 1958)	4
<i>City of York v. Pa. Pub. Util. Comm’n</i> , 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).....	4

I. STATEMENT OF THE CASE

A. Procedural History

On November 20, 2023, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed its Application 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 (“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 (“*Application*”).

On December 4, 2023, the Office of Small Business Advocate (“OSBA”) filed its Protest and Notice of Intervention.

On June 25, 2024, the PreHearing Conference Order of Deputy Chief Administrative Law Judges (“ALJ”) Mark A. Hoyer and ALJ Alphonso Arnold III was served on the parties.

On July 16, 2024, the OSBA filed its PreHearing Memorandum.

On July 17, 2024, a PreHearing Conference was held before Deputy Chief ALJ Hoyer and ALJ Arnold.

On July 22, 2024, the ALJs’ PreHearing Order was served on the parties.

On July 26, 2024, the OSBA served the Direct Testimony of Jason Hails and Roger Cathcart.

On August 2, 2024, OSBA served the Rebuttal Testimony of Mr. Hails and Mr. Cathcart.

On August 9, 2024, the OSBA served the Surrebuttal Testimony of Mr. Hails and Mr. Cathcart.

The OSBA files this Main Brief in accordance with the ALJs' July 22nd PreHearing Order.

B. Overview of the Proposed Transaction

In the *Application*, the Company requested the Commission (1) approve Aqua's acquisition of the wastewater system assets ("Acquired Assets") of the GSA; (2) approve the right of Aqua to begin providing wastewater service in the requested territory; and (3) in its Order approving the acquisition, incorporate the ratemaking rate base of the Acquired Assets as determined under Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329(c)(2). Aqua also requested that the Commission, to the extent necessary, issue certificates for filing, pursuant to Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, for certain municipal contracts that Aqua has included in their *Application*.

Aqua is seeking approval of the purchase of Acquired Assets of GSA pursuant to their Agreement dated April 27, 2023, with a purchase price of Eighteen Million Dollars (\$18,000,000).¹

Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 60,000 customer accounts, as reflected in documents already on file with the Commission. Aqua's existing service territories cover various counties throughout Pennsylvania with wastewater operations in nearby Venango

¹ *Application*, Page 6, Statement No. 22.

County, and its affiliate Aqua Pennsylvania, Inc. also provides water operations in close proximity to Mercer County, including Aqua’s Western Division office in Sharon, Pennsylvania².

The GSA is a duly organized and validly existing municipal authority organized and existing under the Municipal Authorities Act of 1945. GSA owns the 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 and West Salem. GSA accepts flows from approximately 1,168 Hempfield customers and 571 West Salem customers. GSA provides bulk treatment service for Hempfield and West Salem as these municipalities own their respective collection systems and bill their own residents³.

The GSA provides wastewater service to approximately 2,281 customers, which includes 2,082 residential, 183 commercial, 2 industrial, and 14 public within the Requested Territory, and bulk service to 2 Contributing Municipalities. The GSA provides bulk treatment to 1,646 customers in the Contributing Municipalities (1,168 in Hempfield and 571 in West Salem)⁴.

II. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlt. 1990).

² *Application*, Page 3, Paragraph 8.

³ *Id.*, Page 3, Paragraph 9.

⁴ *Id.*, Page 7, Paragraph 31.

Section 1102 of the Code states:

Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory....

(3) For any public utility or an affiliated interest of a public utility ... to acquire from, or transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. §§ 1102(a)(1), (3).

Furthermore, the Commission shall grant a certificate of public convenience “only if the commission shall find or determine 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). In granting a certificate of public convenience, the Commission may impose such conditions as it deems to be just and reasonable. 66 Pa. C.S. § 1103(a).

An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets.

Seaboard Tank Lines v. Pa. Pub. Util. Comm’n, 502 A.2d 762, 764 (Pa. Cmwlth. 1985);

Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n, 138 A.2d 240, 243 (Pa. Super. 1958).

An applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

III. STATEMENT OF THE QUESTIONS INVOLVED

1. Are the terms of the proposed *Application* not in the Public Interest?

Suggested Answer: *Yes*

2. Is the purchase price too high, resulting in an unnecessary escalation of Aqua's rate increase?

Suggested Answer: *Yes*

3. Does Aqua fail to justify its proposed capital plan?

Suggested Answer: *Yes*

4. Should Aqua rates be increased gradually to mitigate rate shock to the GSA customers?

Suggested Answer: *Yes*

5. Should Aqua re-determine the revenue requirement deficiency based on updated terms and on revised information and estimates?

Suggested Answer: *Yes*

IV. SUMMARY OF ARGUMENT

The terms of the proposed *Application* are not in the public interest, as the transaction will lead to unfair and unreasonable rate increases for GSA wastewater customers.

The impact on GSA wastewater rates is not outweighed by the claimed benefits of Aqua's ownership.

If the Commission approves the transaction, it should be conditional on Aqua providing a multi-year rate plan to move GSA rates to the Company's system-wide average rate over a ten-year period.

V. ARGUMENT

A. Sections 1102/1103

The terms of the proposed *Application* are not in the public interest, as the transaction will lead to unfair and unreasonable rate increases for Greenville Wastewater customers⁵.

The public benefit analysis that Aqua uses includes unsubstantiated assumptions in its calculations, and even with these calculations, the hypothetical public benefit would be considered very small at \$168,131.⁶ Alternative and more realistic assumptions would reduce this calculated benefit resulting in a *negative* public impact.

Aqua proposes that part of the public benefit is interest income from an assumed \$16,174,944 investment of net proceeds. However, the likelihood of investing the proceeds is very small, as Aqua witness William Packer testified that he had received no assurances regarding the use of the funds from GSA⁷. The \$849,185 in interest income is purely theoretical, and there are no assurances that Greenville or the GSA will invest these funds. Reducing the net public benefit by \$849,185 of interest income will result in a significant negative public impact⁸. If this single adjustment were applied by itself, the result would be a Net Public *Impact* (not benefit) of -\$701,054⁹.

Another significant purported public benefit is the 10-year Net Present Value (“NPV”) of the avoided rate increases of \$1,155,655, based on proposed avoided capital spending. The claimed NPV benefit is derived by calculating the avoided rate increases related to lower capital

⁵ OSBA Statement No. 1, Page 3, Lines 13-15.

⁶ OSBA Statement No. 3, Page 4, Lines 19-20.

⁷ Transcript from Telephonic Evidentiary Hearing, Page 160, Lines 4-6.

⁸ OSBA Statement No. 3, Page 5, Lines 8-10.

⁹ The OSBA Calculation: \$168,131 – \$869,185 = -\$701,054.

spending by comparing Aqua's proposed capital plan of \$20.4 million to GSA's capital plan of \$45.6 million, and then claiming the avoided capital over 10 years as a rate-related benefit¹⁰.

This is also a theoretical calculation and will not be realized by customers. There is no reason why GSA could not pursue a similar capital plan to Aqua's, thus avoiding the costs themselves should the acquisition not materialize.

In addition, GSA's capital plan should not be considered in assessing the benefits of the acquisition when used to compare Aqua's capital plan. Mr. Packer stated, as follows:

GSA did not have a capital plan. We asked, you know, for that, I believe, during the process they did generate one I think sometime in 2023, if I'm not mistaken. But we did not have one at our disposal, I guess, when we put our hours [SIC] together"¹¹.

Based on the questionable validity of GSA's capital plan, and the fact that GSA would responsibly pursue lower capital spending if left to implement the improvements itself, a significant part of the NPV of avoided rate increases will not transpire, resulting in a further net benefit reduction of \$517,004. If this single adjustment were applied by itself, the result would be a Net Public *Impact* (not benefit) of \$348,873¹².

The two questionable benefits noted above, when both are removed from the calculation, result in the reported net public benefit of \$168,131 being revised to a Net Public *Impact* (not benefit) of approximately \$1.2 million¹³. Anything more than even a 12.13% reduction in these two benefits would result in a *negative* net benefit¹⁴. Given these more realistic calculations of

¹⁰ OSBA Statement No. 1-S, at Page 4, Lines 13-22 and at Page 5, Lines 1-11.

¹¹ Transcript from Telephonic Evidentiary Hearing, Page 137, Lines 9-14.

¹² OSBA Statement No. 1-S, at 5. The OSBA Calculation: $\$168,131 - \$517,004 = -\$348,873$.

¹³ OSBA Calculation: $\$168,131 - \$869,185 - \$517,004 = \$1,218,058$.

¹⁴ OSBA Calculation: $\$168,131 / (\$869,185 + \$517,004) = \$168,145$. $\$168,131 < \$168,145$.

benefits, the net public benefit is not demonstrable and should result in the Commission denying the *Application*.

B. Section 1329

The proposed purchase price is too high, resulting in an unnecessary escalation of rate base¹⁵. The negotiated purchase price of \$18,000,000 is slightly below the lower of the two fair market value appraisals by the Utility Valuation Experts (“UVEs”) which is \$18,757,633, and both valuations rely upon significant revenue arriving in later years resulting in an average of the two valuations of \$21,408,817¹⁶.

The negotiated purchase price of \$18,000,000 is \$13,465,362 or 397% higher than the net book value of the GSA system assets as used by ScottMadden Inc. (“ScottMadden”)¹⁷, or \$11,145,561 or 263% higher than the original cost new less depreciation of the wastewater system’s utility plant in service as of May 31, 2023, of \$6,854,439 used by Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”)¹⁸. This proposed price and resultant adjustment to rate base would heavily burden existing GSA customers if rates were increased to meet the cashflow requirements to generate a return for the new system owner.

Both parties to the transaction, Aqua and GSA, are incentivized to maximize the price paid for the system assets. GSA as the seller would like to command as high a price as possible, while Aqua as the buyer is incented to maximize its rate base, and therefore the return on its rate base.

Aqua submitted evidence of significant forecast increases in revenue for GSA wastewater post-transaction, as set forth below. These revenue increases will be funded by commensurately

¹⁵ OSBA Statement No. 1, Page 3.

¹⁶ *Application*, Statement 57, Page 16.

¹⁷ *Id.*, Page 8, Lines 5-6.

¹⁸ Rebuttal Testimony of Harold Walker, Page 5, Lines 9-11.

significant increases in customer rates, to be determined at the next rate case that addresses GSA wastewater customer rates¹⁹.

C. Recommended Conditions

As set forth in the OSBA testimony in this proceeding, the UVE's use unrealistic assumptions in their valuations, particularly the capital spending requirements of GSA and the revenues (rates) used to earn a return on an inflated adjustment to rate base (which is based on the result of the valuations). These variables are better known now, well after the valuations' original published dates, and should be accounted for with an updated analysis. The OSBA recommends that the UVEs update their analysis to provide more current inputs to consider in the establishment of the purchase price. An updated analysis would likely lead to a lower purchase price.

A lower purchase price could satisfy both parties while moderating potential rate impacts to GSA customers²⁰.

Furthermore, justification for the capital plan proposed by Aqua is not evident. The OSBA recommends that a revised and detailed capital asset condition assessment should be provided along with a business case for the transaction. In addition, a prioritization and rationalization of the capital spending should be done to ensure that pacing of capital spending is supported and mitigates the magnitude of rate increases²¹.

Aqua identified upgrades to the GSA Waste Water Treatment Plant ("WWTP") and gravity collection systems based on compliance, facility conditions observed, facility age, and safety. Aqua estimates that it will invest approximately \$20.4 million over the next 10 years in

¹⁹ OSBA Statement No. 1, Page 6.

²⁰ OSBA Statement No. 1, Page 10, Lines 20-21.

²¹ OSBA Statement No. 1, Page 3.

the entire System.²² This contrasts with GSA estimated upgrades of \$45.6 million, for which GSA indicates that it has incurred \$2.8 million in engineering design costs²³. Based on Aqua's review of the GSA System and the plans that the GSA had developed, Aqua has identified a more cost-effective solution to that proposed by GSA. Aqua's acquisition of the GSA system is purported to directly save customers over \$20 million in avoided capital improvement costs.²⁴

Aqua identified \$16.7 million in upgrades that are required to meet the Consent Order and Agreement ("COA"), with the bulk of this spending proposed to meet COA requirements that GSA had determined would cost \$45.6 million²⁵. In addition to the condition assessment and business cases to support capital spending plans, the OSBA recommends that the Commission also direct Aqua to conduct a detailed comparison of Aqua's proposed plan and GSA's plan to support the rationalization and prioritization of capital spending to meet future wastewater system needs.

The OSBA submits that the Aqua proposal to seek a 100% recovery of the revenue requirement deficiency from the customers of GSA at a future rate proceeding will result in bill increases that would constitute rate shock. Instead, rates should be increased gradually to mitigate rate shock to GSA customers that a multi-year phase in plan be proposed to move GSA customers to a system-wide average for wastewater over the ten-year planning horizon²⁶.

Significant rate increases resulting from this transaction are apparent in the valuations of Gannett

Fleming and ScottMadden, which rely on materially higher revenue projections in 2024 and beyond than GSA current (2023) revenue. While GSA budgeted total fees for services in the

²² Exhibit X Aqua Pennsylvania Wastewater Inc Direct Testimony of Mark J. Bubel, Sr., Page10, Lines 3-12.

²³ OSBA Statement No. 1, Page 11.

²⁴ *Id.*, at Page 11.

²⁵ Exhibit X Aqua Pennsylvania Wastewater Inc Direct Testimony of Mark J. Bubel, SR. Page 10 lines 5-7.

²⁶ OSBA Statement No. 1, at Page 25.

sewer fund budget of \$ 1,266,763 for 2022 and \$ 1,265,499 for 2023²⁷, the ScottMadden valuation income approach relied on revenue increases of 20% per year from 2024 to 2029, increasing to \$3,793,559 in total revenues in 2029²⁸. This 2029 revenue, relied upon by ScottMadden to ascertain an income approach value of \$19,372,669, represents a 300% increase from GSA's 2023 budget. The Gannett valuation income approach (Pro Forma and Estimated Operations with IOU Ownership DCF with Capitalization of Terminal Value Model) relies on even higher total revenues, with 2029 revenues escalating to \$4,448,905²⁹, representing a 352% increase from GSA's 2023 budget. Gannett's final valuation is \$24,060,000 (rounded)³⁰.

Significant increases are also projected in Aqua's financial projections for GSA wastewater post-acquisition. The projections are limited to forecasts out to 2027 (not 2029). However, the 2027 revenue projection is \$3,896,219, which is 308% higher than GSA's 2023 budgeted fees for service. Notably, this revenue increase is due in large part to the opening rate base of \$18,000,000 (the purchase price) and forecast capital additions. O&M only increases 13% from 2023 to 2027.³¹ A lower rate base, pegged at the purchase price, would result in a commensurately smaller need for rate increases to generate the revenue required post-transaction³².

Aqua acknowledges that there is more flexibility and opportunity to deal with rate impacts over a much larger customer base, and acknowledges this approach benefits both existing and acquired customers to the extent that costs can be shared between the systems over

²⁷ Exhibit J4 – Town of Greenville 2023 Sewer Fund Budget, Page 2 of 4.

²⁸ Supporting MS Excel worksheets to Exhibit R - ScottMadden Valuation, Excel worksheet Tab 3.1 Income Approach.

²⁹ Exhibit Q - Gannett Valuation, Exhibit 16, Page 2 of 6, PDF Page 147 of 492.

³⁰ *Id.*, Report Page 1, PDF Page 3 of 492.

³¹ OCA IR Response - OCA-I-15 Attachment 1 CONFIDENTIAL, Appendix A.

³² OSBA Statement No. 1, at Page 7.

longer periods of time such that rate shock and affordability are mitigated³³. However, Aqua does not propose any rate mitigation measures either by a rate stabilization plan or the sharing of costs over a larger customer base³⁴.

The OSBA submits that GSA rates should be set to fully recover costs over time. The current proposed rate increases lead to rate shock. Gradualism should be considered in the transition of the GSA system in the Aqua system³⁵. Gradualism in setting wastewater rates involves the practice of making small, incremental adjustments over a period to establish pricing that is both equitable and environmentally sound. This approach acknowledges the importance of striking a balance between the financial sustainability of Aqua and the affordability for GSA consumers. By implementing a gradual adjustment to wastewater rates, Aqua can effectively manage unexpected impacts on customers and establish a future pricing structure that is more consistent and predictable³⁶.

The OSBA submits that Aqua's proposal to seek the 100% recovery of the revenue requirement deficiency from the customers of GSA will result in bill increases that would constitute rate shock. Rates should be increased gradually to mitigate rate shock to GSA customers. Furthermore, the increases sought will result in affordability issues for its customers. Consideration should be given to sharing the recovery of the deficiency of the GSA revenue requirement system-wide as well as making a multi-year plan to move GSA customer rates to a system average rate³⁷.

³³ *Id.*, at Page 23.

³⁴ OSBA Statement No. 1, Page 23.

³⁵ *Id.*, at Page 24.

³⁶ *Id.*

³⁷ *Id.*

In addition, the OSBA recommends that Aqua file a revised revenue requirement deficiency determination reflecting the updated purchase price, capital plan, and any other refinements to the terms of the agreement to reflect a multi-year phase-in of GSA customer rates³⁸.

Consequently, should the transaction be approved by the Commission, the OSBA recommends the following conditions of approval:

- Aqua must conduct an asset condition assessment based on an audit post-close.
- Aqua must conduct a detailed comparison or reconciliation between the Aqua proposed plan and the GSA proposed plan, including justification for capital spending decisions.
- Aqua must conduct an exercise to rationalize and prioritize planned capital spending to moderate rate increases.
- Aqua must develop and submit a multi-year rate plan to phase in rate increases to mitigate rate shock.

D. Section 507 Approvals

The OSBA is not briefing this section.

E. Other Approvals, Certificates, Registrations and Relief

The OSBA is not briefing this section.

³⁸ OSBA Statement No. 1, Page 4.

VI. CONCLUSION WITH REQUESTED RELIEF

The OSBA respectfully requests that the ALJ and Commission deny the proposed transaction as set for in the *Application*.

In the alternative, if the ALJ and Commission conclude that the proposed transaction is just and reasonable, the OSBA recommends the following conditions for final approval of the transaction:

The Commission will require Aqua to consolidate GSA's rates with the Company's system-wide average rates for wastewater service in its next rate proceeding over a ten-year period;

Aqua must conduct an asset condition assessment based on an audit post-close;

Aqua must conduct a detailed comparison or reconciliation between the Aqua proposed plan and the GSA proposed plan, including justification for capital spending decisions;

Aqua must conduct an exercise to rationalize and prioritize planned capital spending to moderate rate increases; and

Aqua must develop and submit a multi-year rate plan to phase in rate increases to mitigate rate shock.

Respectfully submitted,

/s/ Rebecca Lyttle

Rebecca Lyttle

Assistant Small Business Advocate

Attorney I.D. No. 201399

Commonwealth of Pennsylvania
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Dated: August 27, 2024

APPENDIX A

FINDINGS OF FACT

Findings of Fact

1) On November 20, 2023, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed its Application 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.

2) The GSA provides wastewater service to approximately 2,281 customers, which includes 2,082 residential, 183 commercial, 2 industrial, and 14 public within the Requested Territory. *Application*, at 7, paragraph 31.

3) Aqua stated that the public benefit would be \$168,131.¹

4) On December 4, 2023, the Office of Small Business Advocate (“OSBA”) filed its Protest and Notice of Intervention.

5) Aqua is seeking approval of the purchase of Acquired Assets of GSA pursuant to their Agreement dated April 27, 2023, with a purchase price is Eighteen Million Dollars (\$18,000,000).²

6) The negotiated purchase price of \$18,000,000 is \$13,465,362 or 397% higher than

¹ *Id.*

² *Application*, Page 6, Statement No. 22.

the net book value of the GSA system assets as used by ScottMadden Inc. (“ScottMadden”)³, or \$11,145,561 or 263% higher than the original cost new less depreciation (“OCNLD”) of the wastewater system’s utility plant in service as of May 31, 2023, of \$6,854,439 used by Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett Fleming”)⁴. Aqua identified upgrades to the GSA Waste Water Treatment Plant (“WWTP”) and gravity collection systems based on compliance, facility conditions observed, facility age, and safety. Aqua estimates that it will invest approximately \$20.4 million over the next 10 years in the entire System.⁵ This contrasts with GSA estimated upgrades of \$45.6 million, for which GSA indicates that it has incurred \$2.8 million in engineering design costs⁶.

7) Aqua identified \$16.7 million in upgrades that are required to meet the Consent Order and Agreement (“COA”), with the bulk of this spending proposed to meet COA requirements that GSA had determined would cost \$45.6 million⁷.

8) Fleming and Scott Madden, which rely on significantly higher revenue projections in 2024 and beyond than GSA current (2023) revenue.

9) GSA budgeted total fees for services in the sewer fund budget of \$ 1,266,763 for 2022 and \$ 1,265,499 for 2023⁸,

10) Scott Madden valuation income approach relied on revenue increases of 20% per year from 2024 to 2029, increasing to \$3,793,559 in total revenues in 2029⁹. This 2029 revenue, relied upon by Scott Madden to ascertain an income approach value of \$19,372,669, represents a

³ *Id.*, at 8, lines 5-6.

⁴ Rebuttal Testimony of Harold Walker, Page 5, Lines 9-11.

⁵ Exhibit X Aqua Pennsylvania Wastewater Inc Direct Testimony of Mark J. Bubel, SR. Pg.10 lines 3-12

⁶ OSBA Statement No. 1, at 11.

⁷ Exhibit X Aqua Pennsylvania Wastewater Inc Direct Testimony of Mark J. Bubel, SR. Page 10 lines 5-7.

⁸ Exhibit J4 – Town of Greenville 2023 Sewer Fund Budget, Page 2 of 4.

⁹ Supporting MS Excel worksheets to Exhibit R - ScottMadden Valuation, Excel worksheet Tab 3.1 Income Approach.

300% increase from GSA's 2023 budget.

11) The Gannett valuation income approach (Pro Forma and Estimated Operations with IOU Ownership DCF with Capitalization of Terminal Value Model) relies on even higher total revenues, with 2029 revenues escalating to \$4,448,905¹⁰, representing a 352% increase from GSA's 2023 budget. Gannett's final valuation is \$24,060,000 (rounded)¹¹.

12) Aqua's 2027 revenue projection is \$3,896,219, which is 308% higher than GSA's 2023 budgeted fees for service.

13) Aqua does not propose any rate mitigation measures either by a rate stabilization plan or the sharing of costs over a larger customer base¹².

¹⁰ Exhibit Q - Gannett Valuation, Exhibit 16, Page 2 of 6, PDF page 147 of 492.

¹¹ *Id.*, Report Page 1, PDF page 3 of 492.

¹² *Id.*

APPENDIX B

CONCLUSIONS OF LAW

Conclusions of Law

1) Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

2) Section 1102 of the Code states: Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory....

(3) For any public utility or an affiliated interest of a public utility ... to acquire from, or transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 a. C.S. §§ 1102(a)(1), (3).

Furthermore, the Commission shall grant a certificate of public convenience “only if the commission shall find or determine 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). In granting a certificate of public convenience, the Commission may impose such conditions as it deems to be just and reasonable. 66 Pa. C.S. § 1103(a). An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and

operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958). An applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

Proposed Ordering Paragraphs

1. The *Application* as filed by Aqua and GSA is hereby denied.
2. In the alternative, if the Commission concludes that the proposed transaction is just and reasonable, the following conditions shall be imposed upon Aqua:
 - a. Aqua shall consolidate GSA's rates with Aqua's system-wide average rates for wastewater service in its next rate proceeding over a ten-year period.
 - b. Aqua must conduct an asset condition assessment based on an audit post-close.
 - c. Aqua must conduct a detailed comparison or reconciliation between the Aqua proposed plan and the GSA proposed plan, including justification for capital spending decisions.
 - d. Aqua must conduct an exercise to rationalize and prioritize planned capital spending to moderate rate increases.
 - e. Aqua must develop and submit a multi-year rate plan to phase in rate increases to mitigate rate shock.

**BEFORE THE
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 hereby certify that true and correct copies of the foregoing have been served via email (*unless otherwise noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: August 27, 2024