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August 27, 2024

***Via electronic filing only***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105

**RE: Docket No. A-2-23-3041695 – Application of Aqua Pennsylvania Wastewater, Inc. for Acquisition of the Wastewater Collection and Treatment System Assets of the Greenville Sanitary Authority**

Dear Secretary Chiavetta:

Attached for electronic filing please find the Greenville Sanitary Authority and the Borough of Greenville's Main Brief in the above referenced matter. A copy of this document has been served upon all parties of record via electronic mail.

Respectfully Submitted,

DOUGLAS, JOSEPH & OLSON



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and the Borough of Greenville  
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Enclosures:

cc: The Honorable Mark A. Hoyer (email only)  
The Honorable Alphonso Arnold, III (email only)  
Certificate of Service

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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The Honorable Mark A. Hoyer  
And  
The Honorable Alphonso Arnold, III,  
Presiding

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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**

**MAIN BRIEF OF THE  
BOROUGH OF GREENVILLE AND  
THE GREENVILLE SANITARY AUTHORITY**

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Dated: August 27, 2024

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### **Cases:**

**Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. Super 1950)**

**In Re Byerly, 270 A.2d 186 (Pa 1970)**

**City of York v. Pa. PUC, 295 A.2d 825 (Pa 1972)**

**Popowsky v. Pa. PUC, 937 A.2d 1040 (Pa 2007)**

**Cicero v. Pa. PUC, 300 A.3d 1106 (Pa Cmwltth 2023)**

### **Statutes:**

**52 Pa. C.S.A. section 5.501**

**66 Pa. C.S.A. section 332**

**66 Pa. C.S.A. section 507**

**66 Pa. C.S.A. section 1102/1103**

**66 Pa. C.S.A. section 1329**

**66 Pa. C.S.A. section 2102**

## I. STATEMENT OF THE CASE

Pursuant to the briefing schedule circulated by The Honorable Mark A. Hoyer and the Honorable Alphonso Arnold, III, dated July 22, 2024, and in accordance with Commission Regulations at 52 Pa Code § 5.501, The Borough of Greenville and the Greenville Sanitary Authority (jointly hereinafter referred to as the “GSA”) hereby submit their Main Brief in support of the Application of Aqua Pennsylvania Wastewater, Inc. (hereinafter referred to as “Aqua”) filed with the Public Utility Commission (hereinafter referred to as “the PUC” or “Commission”) pursuant to sections 507, 1102, and 1329 of the Public Utility Code (hereinafter referred to as the “Application”) that is the subject of this proceeding. GSA respectfully requests that the Commission approve the Application of Aqua.

### A. Procedural History

The Application of Aqua was filed with the Commission on November 17, 2023, for approval to acquire the wastewater system assets owned by the Greenville Sanitary Authority and operated pursuant to a lease by the Borough of Greenville. Aqua is seeking the right to provide wastewater service to the customers of the Borough of Greenville as well as customers in West Salem Township and Hempfield Township. The Commission assigned the Application to Docket Number A-2023-3041695.

On December 1, 2023, the Office of Small Business Advocate (“OSBA”) filed a Protest against the Application.

On December 8, 2023, the Office of Consumer Advocate (“OCA”) filed a Protest against the Application.

On June 3, 2024, Keith Gabage (“Gabage”) filed a Protest against the Application.

On June 17, 2024, The Greenville Sanitary Authority and the Borough of Greenville filed Petitions to Intervene.

On June 21, 2024, the Commission accepted the Application for filing.

On June 24, 2024, the Bureau of Investigation and Enforcement (“I&E”) entered its appearance in this proceeding.

On June 25, 2024, the Commission issued a Prehearing Conference Notice, scheduling a

prehearing conference for July 17, 2024, and the Application to the office of the Administrative Law Judges.

On June 26, 2024, the Commission issued a Prehearing Conference Order. The Order directed the parties to file Prehearing Memoranda by July 16, 2024.

On July 6, 2024, notice of the Application was published in the Pennsylvania Bulletin. The Notice provided a deadline of July 16, 2024, for Protests and Petitions to Intervene.

On July 12, 2024, the Commission issued a Telephonic Public Input Hearing Notice, scheduling the input hearing for July 30, 2024, to begin at 6:00 pm.

By secretarial letter dated July 21, 2024, the Commission accepted Aqua's Application for Filing and assigned Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Alphonso Arnold, III, to preside over the proceeding.

The telephonic Prehearing Conference on the Application was held on July 17, 2024. A Pre-hearing Conference Order was issued by Judges Hoyer and Arnold on July 22, 2024, in which, inter alia, a litigation schedule and discovery deadlines were set.

On behalf of GSA, the rebuttal testimony of Jasson Urey (Borough/Authority Manager) and Dylan D'Ascendis (Utility Evaluation Expert of Scott Madden, Inc.) was submitted.

At the Evidentiary Hearing held on August 1, 2024, all pre-served written testimony and exhibits were entered into the record as Exhibits #1 through #37. The evidentiary record was closed on August 15, 2024.

## **B. Overview of the proposed Transaction**

The Borough of Greenville operates the Greenville Sanitary Authority's wastewater collection, conveyance and treatment system (hereinafter referred to as the "System"). The System provides service to residential, institutional and commercial customers in the Borough of Greenville. The Borough accepts flow and collects sewer rental fees from the adjoining Townships of Hempfield and West Salem.

GSA's system is an aging system without any substantial capital improvements since its inception. Because of ongoing compliance issues the GSA entered into a consent decree with the Pennsylvania Department of Environmental Protection. After carefully considering its options, GSA decided to make capital improvements to its system with an estimated 2023 cost of \$45,600,000.00. Shortly after deciding to move forward with the capital improvement project, the

opportunity to sell its system to Aqua arose. After prolonged, careful and thorough deliberation and community input, the Authority voted to sell its wastewater system for the following primary reasons:

1. The GSA and its desire to exit the business of providing sanitary sewer services allowing the Borough to focus its efforts and resources on other governmental functions which desperately need attention.
2. The GSA System has not been appropriately maintained such that it has been subject to regulatory Orders and needs at least \$45,000,000 in capital expenditures to correct the deficiencies.
3. Aqua is more than capable of providing safe, reliable and quality wastewater services to its customers whereas GSA has been struggling to do so.
4. The benefits of private ownership subject to PUC regulatory oversight, provide meaningful and consistent oversight.
5. The process of upgrading the system's infrastructure would be the responsibility of Aqua with significant expertise and experience in upgrading out-of-compliance wastewater systems as opposed to a board of volunteers with no-experience.
6. Transfer of the System will place the System on the public tax rolls, providing additional municipal, county and school tax revenue.
7. Aqua has a low-income assistance program which, given the local demographics of low-income elderly customers, will be very helpful.
8. Infusion of capital into the Borough would be an opportunity to jumpstart economic development in a community that has recently created a Redevelopment Authority.

It is important to note that the use of the proceeds from the sale was not a primary concern of the members of the Authority's Board. The appealing part of the proposed sale was the improvement of services for the customers. However, the receipt of the proceeds is without any dispute, viewed as a significant public benefit over which the public has had many opportunities for input.

On April 27, 2023, GSA and Aqua negotiated and entered into an Asset Purchase Agreement for the purchase of the wastewater assets of the GSA for the purchase price of \$18,000,000.00. Pursuant to the Asset Purchase Agreement. GSA and Aqua agreed to utilize the process set forth

in Section 1329 of the Public Utility Code to determine the fair market value of the System. GSA retained Scott Madden, Inc to perform their evaluation. Scott Madden, Inc. concluded the fair market value of GSA's wastewater assets to be \$18,695,839. Aqua retained Gannett Fleming to perform its utility evaluation. It was the opinion of Gannett Fleming that GSA's wastewater assets had a fair market value of \$23,260,000.

## **9. BURDEN OF PROOF**

The Public Utility Code requires Commission approval via issuance of a Certificate of Public Convenience to permit a public utility to acquire property that is used or useful in the public service. See 66 Pa.C.S.A. section 1102(a)(3). Pursuant to the Public Utility Code, the burden of proof rests with the applicant. See 66 Pa. C.S.A. section 332(a). The Pennsylvania Supreme Court has opined that "burden of proof" means a duty to establish a fact by a preponderance of the evidence, meaning that the party has presented evidence more convincing than the evidence by the opposing party. Se-Ling Hosiery v. Margulies, 70 A.2d. 854 (Pa. 1950). Once a presumption as to a particular fact is established, the burden of proof shifts to the opposing party to rebut the prima facie case. In Re Byerly, 270 A.2d 186 (Pa. 1970)

## **10. STATEMENT OF QUESTIONS INVOLVED**

### **Question No. 1**

Is the proposed transaction necessary or proper for the service, accommodation, convenience or safety of the public?

### **Suggested Answer to Question No. 1**

Yes. The Proposed Transaction is necessary and proper for the service, accommodation, convenience and safety of the public. As such, GSA respectfully requests that the Commission issue a Certificate of Public Convenience approving Aqua's acquisition of the System.

### **Question No. 2**

Pursuant to Section 1329 of the Public Utility Code, is the \$18,000,000.00 negotiated purchase price the appropriate ratemaking rate base of the wastewater system assets of the GSA?

**Suggested Answer to Question No. 2**

Yes. The \$18,000,000.00 negotiated purchase price is the appropriate ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code, being the lesser of the negotiated purchase price and the average UVE fair market value appraisals.

**Question No. 3**

Pursuant to Section 507 of the Public Utility Code, are the contracts, including the assignment of contracts between GSA and Aqua reasonable, legal and valid?

**Suggested Answer to Question No. 3**

Yes. The contract, including assignment of contracts between Hempfield Township and West Salem Township and Aqua, is reasonable, legal and valid pursuant to Section 507 of the Public Utility Code.

**11. SUMMARY ARGUMENT**

There is much debate over what constitutes harm and what constitutes benefits to the public from the proposed sale. The Protestors generically assert that GSA customers will see increased rates and that the service being provided by GSA is safe and reliable and therefore the proposed sale of the System is not in the public's interest. It is acknowledged that in the abstract the assertions of the Protestors appear to have merit, upon closer examination the arguments are flawed.

GSA asserts that the Certificate of Convenience should be issued to Aqua as the sale is proper for the service and accommodation of the public. While the GSA is currently providing safe and reliable service to its customers, it is not without significant concerns. Municipalities should not be required to wait until those concerns become catastrophic before being permitted to transfer ownership and control of their wastewater systems. Retaining control of the GSA System may well cause harm to the public, including increased rates that may be higher than those incurred by the sale, continuing environmental violations, incurrence of substantial debt by the GSA and never-ending staffing difficulties. The sale of the system to an investor-owned operator with PUC oversight eliminates all of the potential harm to the public. Elimination of harm is a public benefit. Additionally, Aqua brings superior fitness in the operation of a wastewater system, which may not be quantifiable but is clearly an affirmative benefit. From a purely quantitative standpoint, there

will be an increase in real estate tax revenue for the municipalities, the county and the school district. There will be a substantial infusion of capital into the community from the net sale proceeds. There will be a low-income assistance program for the customers.

GSA suggests that when the Commission considers the totality of the circumstances, there is merit to the granting of the requested Certificate of convenience as there is a net benefit for the GSA customers and the public at large.

## 12. ARGUMENT

### A. Section 1102/1103

#### 1. Introduction

Pursuant to 66 Pa. C. S. §1102(a)(1)(i) before the sale of GSA's wastewater system can take place, Aqua must secure from the Commission a "Certificate of Public Convenience." To secure the Certificate, Aqua (and GSA) must establish that the granting of the Certificate "is necessary or proper, for the service, accommodation, convenience, or safety of the public." 66 Pa. C.S. §1103(a).

In City of York v. Pa. PUC, 295 A2d 825,828 (Pa. 1972) the Supreme Court held that to satisfy their burden, the parties to the transaction must establish that the proposed transaction will "affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way." The Court has also held that the Commission is not required to quantify benefits in making a factually based determination concerning certification matters. Popowsky v. Pa. PUC, 937 A2d 1040, 1055-1056 (Pa. 2007).

In making its decision the Commission is to perform a balancing test of all facts relevant to a potential transaction, including but not limited to potential rate increases. See generally Cicero v. Pa. PUC, 300 A.3d 1106 (Pa. Cmwlth 2023)

In support of its position that the evidentiary record supports a finding by the Commission granting a Certificate to Aqua, GSA points to the following testimony of Jasson Urey (Exhibit #25, pages 2-3):

- \* The GSA has not been able to maintain the System and the sale avoids the GSA having to navigate possible non-compliance with stringent United States

Environmental Protection Agency (“EPA”) and Pennsylvania Department of Environmental Protection (“DEP”) regulations and rules, which have grown increasingly more challenging to follow and implement.

- \* Secures future financial stability for the Borough and its residents and provides flexibility to make necessary future capital investments within the Borough.
- \* Provides enhanced operational expertise through review of System processes, the identification of deficiencies not previously known or properly able to address.
- \* Preserves all jobs for the GSA employees.
- \* Provides service benefits through ownership by Aqua, a Commission regulated utility that provides high-quality professional wastewater services to the public.
- \* With the anticipated sale proceeds, the Borough looks to invest in the redevelopment efforts of the community to help bolster its tax base.
- \* Provides benefits from Aqua’s expertise, long-standing capital improvement programs, and experience in improving and investing in aging systems in need of capital investments.
- \* Provides access to Aqua’s customer assistance programs to provide payment assistance for qualifying customers.
- \* Improves security of information systems against cyber-attacks targeted at municipal-owned utilities with less sophisticated technology infrastructure and defenses, as well as of physical assets due to Aqua’s security programs and procedures.
- \* Provides enhanced customer service and operational functions through expanded customer service center hours, more streamlined payment options (including by phone), enhanced customer information and education programs, and support provided by Aqua’s team;
- \* Recognizes benefits related to Aqua’s proven record of environmental stewardship for the operation of wastewater systems; and
- \* Added protections for customers due to Aqua’s regulation by the Commission, which will ensure regulatory oversight, require approval for all rate increases, and provide significant consumer protections.

The criteria set forth in 66 PA. C.S. §1102, et seq. employs subjective language for a reason. The circumstances of each transaction and their respective parties are unique.

Is this transaction “necessary or proper”? GSA suggests that it is both.

GSA owns an aging system that is in need of significant upgrades. At the same time, the qualifications and regulations in running a wastewater system are increasing in complexity. The Borough of Greenville is a town of approximately 5,000 people and is run by a single Borough Manager. In addition to his duties of running the wastewater system, he is charged with supervising a full-time police department, a full-time fire department, a full-time street department, a full-time code enforcement department as well as 4 other administrative staff members. The Borough of Greenville would very much like to divest itself of the responsibility of operating its aging wastewater system so that the Borough Manager’s time and resources can be allocated to other areas of need. As for customers, their wastewater system will be managed by a private entity with significant expertise and resources to deal with the aging system. GSA submits that the proposed sale is “proper” for the service of the public.

Mr. Urey further addressed other intangible benefits of the proposed sale which are not capable of being quantified but are all evidence of “affirmatively promote the service, accommodation, and safety of the public in a substantial way” (Exhibit #27, page 3, Lines 1-37) when he testified as follows:

- \*Eliminating the difficulty in finding Board members,
- \*No longer have a Board which lacks foresight in developing and following a capital improvement plan,
- \*Expertise in running/operating wastewater systems,
- \*Access to experienced operators and laborers,
- \*Access to seldom used but expensive equipment,
- \*Access to supporting professionals, such as Human Resources, legal and accounting,
- \*Purchasing leverage for equipment and supplies.

The conclusion of the witnesses for the Protestors that there is insufficient public benefit from this transaction overlooks the totality of the testimony of Mr. Urey.

It cannot be overstated that the GSA Board members engaged in a very extensive and thorough investigation of the benefits of keeping its System and the benefits of selling their System. It was their conclusion that there were no benefits to keeping their System. The GSA was committed to a substantial upgrade of its System at a 2023 estimated cost of \$45,600,000.00. The flipside of an “affirmative public benefit” is the reality of an “affirmative public detriment” to keeping the System. If GSA is unable to sell its System, and makes the needed capital improvements, rates will increase without benefit of PUC oversight by approximately 200% and the benefits of transferring to Aqua as outlined herein will not be received by the public.

GSA suggests that protesting the granting a Certificate of Convenience to Aqua is not in the public’s best interest, public being the customers of GSA, it would actually cause harm to the public by denying it the economic and non-economic benefits outlined in Mr. Urey’s testimony.

GSA submits that the Application submitted by Aqua easily satisfies the criteria of Public Utility code sections 1102 and 1103 and the interpreting case law.

## **2. Fitness**

GSA submits that the technical, financial and legal fitness of Aqua to own and operate GSA’s wastewater system is without dispute.

## **3. Substantial Affirmative Public Benefits**

It is obvious that the proposed sale of the wastewater system will provide the GSA a substantial financial windfall. After payment of one debt with a balance of \$2,000,000 (engineering costs for the System renovation project) the balance of the funds will be deposited into the Authority for use with public needs resulting in an affirmative public benefit in a quantified amount. The net proceeds can then be leveraged for matching grants or invested, whatever the public decides is best for their needs. Without the sale, no such benefit would be received by the customers. This benefit, while not the primary motivating reason for a sale, is by itself, substantial.

The Protestors focus on the possibility of an increase in rates as determinative evidence that the proposed sale is without substantial affirmative public benefit. Their view suggests that:

- A) Rate increases are not inevitable for the GSA customers without the sale,
- B) Denying the Certificate will prevent an increase in rates,
- C) A sale should be denied if rates are expected to increase, and
- D) All other benefits are outweighed by a rate increase.

The GSA customers have been notified of the intended sale and potential rate increase, yet there have not been any objections presented by the public. The only Objections to the sale were filed by agencies whose mandate is to challenge all such sales and from an Aqua customer who is not in the proposed service area or even an Aqua wastewater customer.

The only potential harm from this sale is an increase in rates, which are inevitable regardless of the sale. This is not a lateral trade for similar service by Aqua. GSA has not maintained its System over the years. GSA has demonstrated that it is not capable of effectively operating its wastewater system. To suggest that GSA will be able to provide equal service as Aqua in the future is ignoring the realities of the circumstances. Aqua is more experienced, has more expertise, has more capital resources, has the ability to regionalize its assets without the burdens of municipal restrictions and the benefits of PUC regulation. The GSA customers are far better off with Aqua owning and operating their wastewater system than they are now. The Greenville Borough will be relieved of this task and have the benefit of focusing their assets and resources to other pending responsibilities, plus will have an infusion of capital that will benefit the Borough residents.

#### **4. Conclusion**

GSA submits that Aqua and GSA have produced sufficient evidence that the proposed transaction is “necessary or proper, for the service, accommodation, convenience safety of the public” as required by 66 Pa. C.S.A. section 1103 for the Commission to grant Aqua a Certificate of Public Convenience.

It has been opined that the Commission is to apply the “preponderance of the evidence” standard. See Popowski, supra. GSA suggests that all the credible evidence relevant to this transaction supports this transaction being proper. The position that rates will increase with the proposed sale

of the System is likely correct, but the rates may be lower than if the sale is not permitted to proceed. Thus, there is no credible evidence of record to suggest that this transfer will cause harm to the public or tht it is not a substantial benefit to the GSA customers.

## **B Section 1329**

### **1. Introduction**

GSA and Aqua lawfully agreed to follow 66 Pa. C.S.A. section 1329 to establish the fair market value of the GSA wastewater system. Pursuant to 66 Pa. C.S.A. section 1329(a)(1) GSA selected and retained from the Commission's list ScottMadden, Inc as its Utility Valuation Expert. The opinion of ScottMadden, Inc. was that the wastewater system of GSA was valued at \$18,695,839. It was the opinion of Gannett Fleming that GSA's wastewater system had a fair market value of \$23,260,000. The average of the two appraisals was \$20,977,920.

### **2. Legal Principles**

66 Pa. C.S.A. section 1329 was lawfully passed by the Legislature and speaks for itself and therefore will not be further addressed.

### **3. Aqua's Application**

Aqua's Application was properly submitted for the Commission's consideration. The details of that Application need not be recited herein.

### **4. Conclusion**

GSA submits that 66 Pa. C.S.A. section 1329 is a lawfully created method by which fair market values and the ratemaking base of a wastewater system can be determined. GSA further submits that GSA and Aqua have lawfully complied with all aspects of 66 Pa. C.S.A. section 1329. The position of the Protestors that the lawfully negotiated purchase price is inappropriate is not relevant. The protest against the use of 66 Pa. C.S.A. section 1329 is one for the legislature, not this Commission.

## **C. Recommended Conditions**

GSA does not believe that any conditions are needed on the Grant of Certificate of Convenience are needed to protect the public's interest.

**D. Sectional 507 Approvals**

GSA endorses the position of Aqua on the issue of approvals as required by 66 Pa. C.S.A. section 507.

**E. Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code.**

GSA's endorses Aqua's position on the issue of other approvals, certificates, registration and relief, if any.

**VI. CONCLUSION OF REQUESTED RELIEF**

For all of the reasons set forth herein, as well as reasons set forth in Aqua's Main Brief, The Borough of Greenville and The Greenville Sanitary Authority respectfully requests that the Commission approve the pending Application and to grant Aqua a Certificate of Convenience.

Respectfully submitted,

DOUGLAS, JOSEPH & OLSON



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Greenville and the Greenville  
Sanitary Authority  
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Dated: August 27, 2024

**Appendix A – Proposed Findings of Fact**

The Borough of Greenville and The Greenville Sanitary Authority endorse and incorporate by reference the Proposed Findings of Fact submitted by Aqua.

**Appendix B – Proposed Conclusions of Law**

The Borough of Greenville and The Greenville Sanitary Authority endorse and incorporate by reference the Proposed Conclusions of Law submitted by Aqua.

**Appendix C – Proposed Ordering Paragraphs**

The Borough of Greenville and The Greenville Sanitary Authority endorse and incorporate by reference the Proposed Ordering Paragraphs submitted by Aqua.