

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

**EXCEPTIONS OF THE
BOROUGH OF GREENVILLE AND
THE GREENVILLE SANITARY AUTHORITY TO THE RECOMMENDED DECISION
OF JUDGES ALPHONSO ARNOLD III AND MARK A. HOYER**

James E. Douglas, Esquire
(PA I.D. 49643)
409 N. Hermitage Rd.
Hermitage, PA 16148
jedouglas@douglasjoseph.com
counsel for The Borough of Greenville
and The Greenville Sanitary Authority

I. INTRODUCTION

Pursuant to the procedural schedule established and in accordance with the regulations of the Public Utility Commission (hereinafter referred to as “Commission”) the Greenville Sanitary Authority and the Borough of Greenville (hereinafter collectively referred to as “GSA”) hereby submits these Exceptions to the Recommended Decision of Administrative Law Judges Alphonso Arnold III and Mark A. Hoyer (hereinafter referred to as “Judges” in connection with Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua”), filed with the Commission pursuant to the Public Utility Code (hereinafter referred to as the “Application”) that is the subject of this proceeding.

By Recommended Decision dated October 3, 2024, Judges Arnold and Hoyer recommended that Aqua’s Application be Denied due to their Finding that Aqua failed to meet its burden of proof that it is entitled to the relief it is seeking under 66 PA. C.S. § 332 (a).

II. SUMMARY OF ARGUMENT

GSA respectfully submits its Exceptions to the Recommended Decision because, from GSA’s perspective, the Record demonstrates this proposed transaction will deliver numerous and substantial affirmative benefits to the Borough of Greenville, the Greenville Sanitary Authority and the customers of the Greenville Sanitary Authority. The Judges undervalued and or dismissed these benefits because of potential rate increases resulting in their unfortunate Recommendation.

GSA submits that the Recommended Decision is against the weight of the evidence of Record, contrary to the applicable statutes, and that the Judges misconstrued the appellate caselaw referenced in their Recommendation.

The legislature has enacted Section 1103(a) which dictates that a Certificate of Public Convenience shall be granted, “only if the Commission shall find or determine that the granting of such a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”

As per the strict reading of the Code, the Commission is required to address as follows:

Has Aqua establish evidence of Record supporting the Finding that the proposed transaction is necessary or proper for the service of the public, or

Has Aqua established evidence of Record supporting the Finding that the proposed transaction is necessary or proper for the accommodation of the public, or

Has Aqua establish evidence of record supporting the Finding that the proposed transaction is necessary or proper for the convenience of the public, or

Has Aqua established evidence of record supporting the Finding that the proposed transaction is necessary or proper for the safety of the public.

GSA suggests that the Judge's failed to make the required Findings, instead they erroneously focused entirely on appellate caselaw dicta which is neither binding nor determinative, it is meant only as guidance.

The reasoning behind the Recommended Decision suggests that a municipality wishing to sell its wastewater assets must establish conclusively that the imminent service, operational or financial distress, inadequacy of service, or some element of operational distress prior to exploring a sale and that future rates are not to be increased by the sale regardless of the benefits received in exchange. That is not the legislative intent set forth in the existing relevant statutes, Section 1103 and Section 1329. Admittedly, some of the language in the applicable statutes is subjective in nature, but that was by design, not by accident. The subsequent caselaw attempts to provide some guidance when interpreting the relevant statutes, but in the end, the Judge's must make a Finding that is consistent with the language in the statutes, not the caselaw dicta.

Before GSA further addresses the applicable law, it will address the Findings of Fact to which it files Exceptions.

GSA respectfully submits the following Exceptions to the Findings set forth in the Recommended Decision and urges the Commission to reject the Recommended Decision and approve the relief requested in the Application.

III. EXCEPTIONS

Exception No. 1 – Aqua failed to establish that a substantial affirmative public benefit will result from this transaction. (Decision p. 94)

It is to be noted that the language of this Finding is not required by section 1103

GSA disputes that Aqua failed to establish a substantial affirmative benefit from the sale. To the contrary, GSA believes that the Record establishes many invaluable public benefits from the transaction. GSA submits that the Judges failed to give the appropriate weight to the evidence submitted by GSA identifying public benefits derived from the proposed transaction. These benefits are as follows:

GSA' System is an aging System in need of substantial capital improvements. Prior to entering into the proposed transaction, the Board of GSA had embarked on a capital improvement project with an expected cost of \$45,600,000. The ability to transfer the responsibility and effort to improve its system to Aqua, who is much better equipped to address such improvements, is "proper" for the service, accommodation and convenience of the public. The Judges failed to give the appropriate weight to the fact that GSA does not have the administrative staff to continue running the System much less take on this additional responsibility as the administration is already overburdened with other Borough related responsibilities. To Find otherwise requires the Judges to accept as credible the allegations (not evidence) of the Protestants over the testimony of Jasson Urey the Borough/Authority Manager. Mr. Urey unequivocally testified that relieving himself of this responsibility would benefit the public by

allowing him and his staff to focus on other important public needs which are in need of additional attention. To suggest that this is not a valuable and substantial benefit to the public is to ignore the testimony of the Borough Manger on this issue in favor of no evidence to the contrary.

The public deserves professional oversight of its wastewater system. The PUC provides such oversight. The GSA System is run by a Board of volunteers (when they can be found) who are not experienced in management of a utility system. Despite allegations to the contrary, this is a substantial affirmative benefit for the customers. To suggest otherwise is irresponsible when the Board itself is looking for a better path forward and are being told by Protestants that PUC oversight is not necessary. The Board members of GSA are asking that the Certificate of Convenience be granted as they do not feel capable of navigating the regulatory waters. GSA believes that the PUC oversight is an invaluable protection to its customers and therefore an affirmative benefit

Transferring the System assets to the public tax rolls is a substantial affirmative benefit for the Borough, the County and the Greenville Area School District.as revenue will be raised from GSA consumers who may or may not pay real estate taxes, such as the local hospital, all of the local churches and colleges. This additional revenue source is clearly a substantial affirmative benefit for the taxpayers of the Borough of Greenville.

The low-income assistance program offered by Aqua is an affirmative benefit. To the customers that receive the benefits, they are substantial.

Proposed upgrades to the security system of the GSA System is an affirmative benefit, not only to the continuity of service to the customers but also to the safety of the employees. The Judges have placed little or no weight on these benefits, alleging that the current system has not yet had any damaging breaches. It is that kind of myopic logic that has put the GSA in the position they are in presently. If the proposed security system mitigates even one interruption in service, data breach or prevents one employee from being injured, it is substantial.

The Board did not make the decision to sell its system out of need for money, but to discount the public benefits to be gained from the net sales proceeds, is disrespectful to the Board members who made the Decision. The net proceeds will be deposited with the Authority. Once deposited they are public funds and will be used for the public's benefit. The Judge's Finding that because there is not a definite plan for use of the funds currently equates to a Finding that there is no public benefit is woefully short on logic and demonstrates a lack of understanding of how municipal finances are handled. The sitting Board is not permitted to make commitments on how funds are to be spent before the funds are received as that removes from future Board members the ability to address the public's needs as they deem appropriate. The net proceeds will be spent as seen fit by the appropriate Board in accordance with reasonable and prudent municipal spending practices. It cannot be overstated that the net sales proceeds from this transaction are a very substantial benefit to the community. The options for public benefit are numerous. None of which would have been available without the net sales proceeds. GSA finds it alarming that the Judge's, and the Protestants have reached their conclusion on this Finding without the benefit of coming to the community, speaking to the community, and speaking with

the community leaders. The GSA community has spoken on this issue. The Community looks forward to the benefits these proceeds will bring for everyone's benefit.

GSA points out that section 1103 does not require the Judges to Find substantial public benefits, but should this Commission disagree, GSA files its Exception to the Judges Finding that Aqua has failed to satisfy that burden as not supported by the evidence of Record.

EXCEPTION #2 GSA customers are likely to experience higher rates as a result of this transaction (Decision p. 96)

This Finding is a blatant disregard of the realities of the circumstances GSA is facing. Should this transaction be denied the unequivocal evidence supports the Finding that the capital improvement project of GSA will proceed and that the rates for its customers will increase to an amount in excess of the projected should this transaction be approved.

EXCEPTION #3 The record does not support a Finding that the GSA cannot meet its obligations under the COA absent Aqua's intervention. (Decision p. 98)

This finding is irrelevant to the criteria set forth in section 1103. A standard that requires Sellers to be incapable of running their systems before being allowed to sell is not what the legislature intended. Such a standard encourages Sellers to neglect their systems. The standard to be applied here is whether or not the proposed sale is "proper".

EXCEPTION #4 The evidence did not establish that the benefits to be realized from the proposed transaction would outweigh the harms to the current customers. (Decision p. 110)

The weighing of the benefits against a perceived harm is not addressed in section 1103. Should the Commission choose to follow the standard suggested by the appellate courts, GSA suggest that the Judge's misapplied the test by giving more weight to the potential rate increase than the courts intended. The legislature and the appellate courts could have required that any rate increase of a certain amount of dollars or a percentage increase would disqualify the Application, but they did not. It would seem that the reason is that such an arbitrary standard may not take in the totality of the circumstances. Every proposed sale has different circumstances and as such every application is to be evaluated on its own merits.

By the Judges suggesting that a rate increase of an estimated \$40 per month is a harm to the public that justifies a Finding that an application does not meet the section 1103 criteria. The judges acknowledge that rate increases by themselves are not determinative in the granting of a certificate, but yet they seem to rely solely on that logic on this application.

It cannot be emphasized enough that the Board members of GSA and the GSA customers and the public at large, do not agree with the finding that the potential rate increase is a substantial harm. This Finding is an effort to apply an analysis perpetuated by the Commonwealth agencies, OCA, OSB and I&I, whose plan is to object to proposed sales, regardless of the particular facts. The Protestants who take this position cite no testimony by customers that the proposed rate increase is harmful to them. These Protestant did not appear at any of the public hearings when the sale

was being considered, did not speak to any of the GSA customers, did not speak to any of the GSA administrative staff, did not speak to any of the GSA employees, nor did they view the GSA facility or the conditions and circumstances of the community that GSA serves. And yet, the Judges gave the Protestants position more credibility than the position of the GSA and its customers. It is also to be noted that during the public hearings on the Application, not a single person from the GSA community voiced an objection to the proposed sale or to the proposed rate hikes. So, we ask, how can the Judges find that potential rate increase be so harmful with nobody but the OCA, the OSB and the I&I, making that allegation. This Finding is a shameful overreach by the Judges and therefore GSA files its Exception.

Exception #5 Aqua has likely understated the potential rate impact of this transaction

(Decision p. 95)

GSA suggests that this Finding is inappropriate in its entirety. The language of section 1103 does not require that rate changes be addressed in the approval or denial of an Application for a Certificate. Should the Commission decides to consider this Finding GSA submits that past rate estimates on other transactions are not determinative of the accuracy of the current estimate. The GSA and its customers were made aware that ultimately the PUC has jurisdiction over the rates to be assessed and tht the estimate was just that, a good faith estimate. This Finding has no foundation in the Record, is irrelevant and does nothing to address the section 1103 criteria and therefore GSA files its Exception.

Exception #6 The rate impact that this transaction would have on GSA customers is significant (Decision p. 96).

Depending on the definition applied, it may be true that the estimated rate increase is significant but is such a Finding must be considered in conjunction with the totality of the evidence and circumstances. This language is not addressed in section 1103 of the Code. One could interpret that omission as an indication tht the legislature that consideration of rate increases at this point in the process as not relevant. The concept of “significant” is a subjective descriptive term that can vary from individual to individual. A blanket statement such as that made by the Judges is without proper foundation. It is expected that if the proposed transaction occurs, the rates will increase for the GSA customers. However, it is guaranteed that if the Application is not granted, the rates will increase even more than the proposed rates. The rates for 2025 as projected to increase by \$4.85 per month. That increase may be significant for some, insignificant for others, but there is no regulatory body or agency that can do anything about the increase. With the proposed transaction, the PUC will have the ability to control future increases.

Without a foundation for defining the term “Significant” and language in section 1103 incorporating rates in the Application criteria, GSA takes Exception to this Finding.

Exception #7 Aqua has not demonstrated that its planned improvements to the GSA system outweigh the increase in rates (Decision p. 104).

Section 1103 does not require such a Finding. Improvements to the system are just part of the

overall benefits that the customers and the public will receive as a result of the proposed transaction and should not be considered independently. If the Commission chooses to consider such a weighing test, GSA suggest that the GSA and its customers and the public at large have already spoken on this issue, and they believe that the potential increase in rates are outweighed by the potential benefits of the proposed transaction. GSA believes that the Judges have overreached by giving more creditability to the Protestants arguments than the evidence and opinions of the operators and customers of the system.

Although repetitive, one cannot ignore the rate increases to be incurred by the customers is less with the proposed sale than they are projected to be by the Denial.

GSA suggests that the improvements to the GSA system combined with the other identified benefits outweighs the potential rate increase caused by this transaction.

Exception #8 No affirmative benefit will result from the GSA's desire to exit the utility business (Decision pp. 105, 111)

This Finding has been addressed previously. GSA finds this conclusion to be offensive to its Board, its staff and those who operate this System who are collectively expressing a need to transfer this operation elsewhere and ideally to a more capable owner. To require the GSA to continue to operate the System will cause harm to the Borough and its staff and as a result to the public at large. GSA has said that operating this System is no longer a task that they believe they can do properly. The Judges have ignored the substantial evidence supporting that position in

favor of opinions of the Protestants, GSA takes exception to this Finding.

Exception #9 GSA customers will experience higher bills as a result of this transaction (Decision 104).

The rates for the GSA customers will be increasing regardless of whether or not transaction proceeds, therefore this Finding should not be determinative of the Application being granted.

As stated previously, rates are not addressed in section 1103 and should not be considered in isolation of other criteria. If Aqua's Application is denied an increase of much more than that which is projected by Aqua will be levied on the customers to pay of the capital improvement project of GSA. How can that result be justified by the Judges as in the best interest of its customers? Ultimately, decisions on rates are made in a different proceeding before the PUC if this Application is approved. If the Application is denied the GSA Board will raise the rates without oversight. Again, how can that result be in the best interest of the customers? That is the result the Protestants are advocating.

The rates are increasing no matter the outcome of this application, therefore the speculative increase in rate should not be the most important factor in considering the Aqua application.

GSA takes Exception to this Finding as being irrelevant.

Exception #10 Security upgrades do not establish an affirmative public benefit (Decision p. 100)

GSA contends to the contrary.

Exception # 11 GSA has the tools to comply with the COA. (Decision p. 104)

GSA and its engineers have determined tht a substantial upgrade of its System is necessary. To proceed with its plan, GSA will need to borrow in excess of \$45.6 million. Securing a loan in that amount will be a challenge.

Exception #12 Aqua has not demonstrated a need for its planned improvements to the System. (Decision p. 104)

GSA strongly disputes this Finding as being contrary to the Record. The need for improvements to its System cannot be disputed. The only question is when the improvements are to be made. The Board members of GSA along with input from its employees and engineers made a reasoned decision to proceed with the needed improvements and they are the only credible witnesses on this point. To make a Finding inconsistent with the evidence submitted is to give credibility to the position of the Protestants who have never seen the System, nor have they spoken with any of the experts who had input in that decision to make the improvements.


CONCLUSION

The GSA and its customers have a right to be serviced by a state-of-the-art System. Their proposed sale to Aqua and its terms are not overreaching. The GSA has carefully and diligently followed all applicable statutes in arriving at the decision to enter the APA.

The standards proposed by the Protestants and by the Judges Recommended Decision creates a burden so high that it is unlikely any municipality can sell its wastewater system, a standard not consistent with the legislatures intentions.

For all of the reasons set forth herein, as well as reasons set forth in the Borough of Greenville and the Greenville Sanitary Authority's Main Brief, the Borough of Greenville and the Greenville Sanitary Authority respectfully request that the PUC approve the pending Application and to grant Aqua Pennsylvania Wastewater, Inc. Certificates of Public Convenience.

Respectfully submitted,
DOUGLAS, JOSEPH & OLSON



James E. Douglas, Esquire
On behalf of The Borough of
Greenville and the Greenville

Dated: October 15, 2024