

Buchanan

John F. Povilaitis
717 237 4825
john.povilaitis@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852

November 12, 2024

VIA ELECTRONIC FILING

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

Re: Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement
Petition to Request the Commission Open a Section 529 Investigation Into the
Acquisition of Conneaut Lake Park Corporation, Inc.
Docket Nos: P-2024-3051855 and I-2024-3051857

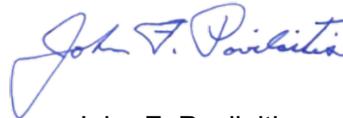
Dear Secretary Chiavetta:

Enclosed for filing please find the PreHearing Conference Memorandum of Aqua
Pennsylvania, Inc. in the above-captioned proceeding.

Copies are being served in accordance with the attached Certificate of Service.

Please contact the undersigned if you have any questions. Thank you for your attention
to this matter.

Very truly yours,



John F. Povilaitis

JFP/ja
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	P-2024-3051855
Bureau of Investigation and Enforcement	:	I-2024-3051857
	:	
v.	:	
	:	
Conneaut Lake Park Water Corporation, Inc.	:	

PREHEARING CONFERENCE MEMORANDUM OF AQUA PENNSYLVANIA, INC.

TO THE HONORABLE ADMINISTRATIVE LAW JUDGES ERANDA VERO AND ARLENE ASHTON:

Aqua Pennsylvania, Inc. (“Aqua”) hereby submits this Prehearing Conference Memorandum in accordance with 52 Pa. Code § 5.222 of the regulations of the Pennsylvania Public Utility Commission (“PaPUC” or “Commission”) and the November 6, 2024 Prehearing Order (Corrected) of Administrative Law Judges Eranda Vero and Arlene Ashton (collectively, “ALJs”) in connection with the telephonic Prehearing Conference to be held on November 13, 2024 at 2:00 p.m.

I. PROCEDURAL HISTORY

On October 28, 2024, the Commission’s Bureau of Investigation & Enforcement (“I&E”) filed with the PaPUC a *Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of Conneaut Lake Park Water Corporation, Inc.* (“Petition”). The Petition requests the Commission to open an investigation under Section 529 of the Public Utility Code, 66 Pa. C.S. §529, to determine whether the Commission should order a “Capable Public Utility”, as defined in Section 529(m) of the Public Utility Code (“Code”)¹ to acquire Conneaut Lake Park Water

¹ 66 Pa.C.S. § 529(m).

Corporation, Inc. (“CLPWC”). According to the Petition, CLPWC is a certificated Pennsylvania small water public utility that is allegedly in violation of various provisions of the Code and the Commission’s regulations and therefore needs to be investigated under the requirements of Code Section 529. Petition ¶28.

Aqua was identified in the Petition as being a potentially capable proximate water service provider to CLPWC. Petition ¶38.

On November 5, 2024, Aqua filed a Petition to Intervene in this proceeding.

The Commission has not issued any order or taken any other action addressing whether the Petition states a *prima facie* case under Code Section 529.

In a corrected order dated November 6, 2024, the appointed ALJs issued a Prehearing Conference Order which, among other things, established a prehearing conference in this proceeding for Wednesday November 13, 2024 at 2:00 p.m. and directed the filing of a prehearing conference memorandum by no later than 4:00 p.m. on November 12, 2024.

II. NOTICE TO PARTIES

In the Prehearing Conference Order, the parties were directed, among other things, to address the adequacy of notice in accordance with Code Section 529(h). Prehearing Conference Order ¶2. Aqua acknowledges that it was provided notice and a copy of the Petition and is identified as a potentially capable utility under Code Section 529. However, Aqua does not have sufficient information to discern if the notice requirements of Code Section 529(h) have been fully satisfied since those requirements largely apply to I&E as the moving party on the Petition and CLPWC as the subject public utility.

III. PROPOSED DISCOVERY AND LITIGATION SCHEDULE

Aqua does not propose any modification to the discovery regulations set forth in 52 Pa. Code § 5.321 et seq. I&E shared a potential schedule prior to the Prehearing Conference, and Aqua does not object to the litigation schedule proposed by I&E. In the event evidentiary hearings are held and a procedural schedule is set, Aqua supports a process by which all parties have an opportunity to submit an initial round of Direct Testimony followed by Rebuttal Testimony that allows sufficient time for all parties to respond to all previously filed testimony, and dates for hearings, Main Briefs and Reply Briefs. Aqua, as having been identified as a potentially Capable Public Utility under Code Section 529, is prepared to fully participate in the proceeding as necessary and appropriate and as may be further directed by the ALJs.

IV. BURDEN OF PROOF

Given the current posture of this proceeding and assuming no settlement can be achieved, it is necessary to determine and confirm who has the burden of proof with respect to the issues in the proceeding prior to establishing any litigation schedule. Importantly, certain burden of proof issues are addressed in Code Section 529(i). 66 Pa.C.S. § 529(i). Among other things, I&E has the burden of proving that CLPWC should be acquired by a Capable Public Utility and that such acquisition is in the public interest. CLPWC has the burden of “proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates” if it believes such to be the case. 66 Pa. C.S. §529(i)(1). And Aqua would have the burden of proving its financial, managerial or technical *inability* to acquire and operate CLPWC. 66 Pa. C.S. §529(i)(2). These varying burdens may dictate different filing dates for direct and rebuttal testimony.

V. ISSUES AND WITNESSES

The following is a preliminary list of potential issues in this proceeding. Aqua reserves the right to identify and address other issues as the proceeding progresses.

- Is CLPWC capable of providing just, reasonable and adequate service at reasonable rates and otherwise satisfy all other legal requirements necessary for its continued provision of utility service to the public?
- Whether the Commission should order a capable public utility to acquire CLPWC?
- Consideration of the six elements in Code Section 529(a).
- Consideration of the five alternatives in Code Section 529(b).
- Consideration of the five factors in Code Section 529(c).
- Whether appointment of a Receiver under Code Section 529(g) is appropriate.
- The tariff rates applicable to CLPWC customers prospectively in consideration of Code Section 529(f).

At this time, Aqua anticipates calling the following witnesses:

William C. Packer
Vice President, Regulatory Accounting
and Regional Controller
Essential Utilities, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

Stephen Clark
Operations Director of Greater
Pennsylvania
Aqua Pennsylvania, Inc.
1775 North Main Street
Honesdale, PA 18431

Mr. Packer will address financial matters and Mr. Clark will address operational matters. Aqua requests that any and all contact with Mr. Packer and/or Mr. Clark be through counsel.

Aqua reserves the right to call additional witnesses, as necessary, and agrees to notify the ALJs and the parties promptly should Aqua determine that additional or different witnesses will be called.

VI. OTHER MATTERS

To the extent there is no opposition to Aqua's pending Petition to Intervene at the time of the Prehearing Conference, Aqua requests that the ALJs enter a timely order granting Aqua full rights to intervene and participate in all aspects of this proceeding.

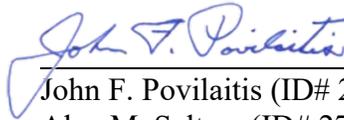
Aqua believes that it may be appropriate to defer setting a litigation and procedural schedule for this proceeding to allow I&E, CLPWC, Aqua and any other parties that enter an appearance in this proceeding an opportunity to discuss the issues pertinent to CLPWC's service and any potential measures that can or should be taken to address all or some of the alleged violations specified in the Petition.

VII. SETTLEMENT

Aqua is willing to make a good faith effort to resolve this matter through settlement.

Date: November 12, 2024

Respectfully submitted,



John F. Povilaitis (ID# 28944)
Alan M. Seltzer (ID# 27890)
Buchanan Ingersoll & Rooney PC
409 N. Second Street, Suite 500
Harrisburg, PA 17101
Phone: 717-237-4862
Fax: 717-233-0852
E-mail: john.povilaitis@bipc.com
E-mail: alan.seltzer@bipc.com

Counsel for Aqua Pennsylvania, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	P-2024-3051855
Bureau of Investigation and Enforcement	:	I-2024-3051857
	:	
v.	:	
	:	
Conneaut Lake Park Water Corporation, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Honorable Arlene Ashton
Honorable Eranda Vero
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street – Suite 4063
Philadelphia, PA 19107
aashton@pa.gov
evero@pa.gov

Patrick Cicero, Consumer Advocate
Harrison W. Breitman, Esquire
Jacob D. Guthrie, Esquire
Office of Consumer Advocate
555 Walnut Street
Fifth Floor – Forum Place
Harrisburg, PA 17101
Ra-oca@paoca.org
Hbreitman@paoca.org
jguthrie@paoca.org

Michael A. Podskoch, Jr., Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street – 2nd Floor
Harrisburg, PA 17120
mpodskoch@pa.gov

Todd Josphe
PO Box 242
Harmonsburg, PA 16422
tjosephproperties@hotmail.com

NazAarah Sabree, Small Business Advocate
Sharon W. Webb, Esquire
Office of Small Business Advocate
555 Walnut Street
First Floor – Forum Place
Harrisburg, PA 17101
ra-sba@pa.gov
swebb@pa.gov

Mark J. Shaw, Esquire
MacDonald Illeg Jones & Britton LLP
100 State Street – Suite 700
Erie, PA 16507-1459
mshaw@mijb.com
*(Counsel for Conneaut Lake Park
Corporation, Inc.)*

Joshua B. Brown, Esquire

Lund Metcalfe, LLC
1900 Main Street – Suite 257
Canonsburg, PA 15317
jbrown@lundmetcalfe.com

Jamestown Municipal Water and Sewer
Authority
406 Jackson Street
PO box 188
Jamestown, PA 16134
Jamestown@zoominternet.net

James Tolbert
21986 Russet Drive
Meadville, PA 16355
jtolbert@zoominternet.net

Douglas Smith
12554 Reed Avenue
Conneaut Lake, PA 16316
ds42@windstream.net

George Malloy
213 Cobblestone Drive
Pittsburgh, PA 15237
shellyhuf@hotmail.com

Sharon Arneson
1218 Forest Avenue
New Kensington, PA 15068
arnesonsharon@ymail.com

Tera Powell
719 10th Street
New Brighton, PA 15066
Tera.malekovic@gmail.com

Conneaut Lake Joint Municipal Authority
9888 State Highway 285
PO Box 277
Conneaut Lake, PA 16316
office @cljma.com

Reynolds Water Company
301 Arlington Drive
Greenville, PA 16125
grdc@greenvillereynolds.com

Alexander R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

SERVICE BY U.S. MAIL

Municipal Authority of Conneaut Lake
395 High Street
PO Box 345
Conneaut Lake, PA 16316

Linesville Municipal Water Authority
103 West Erie Street
Linesville, PA 16424

Vernon Township Water Authority
16678 McMath Avenue
Meadville, PA 16335

Saegertown Water Department
603 Erie Street
PO Box 558
Saegertown, PA 16433

Greenville Water Authority
44 Clinton Street
Greenville, PA 16125

Date: November 12, 2024



John F. Povilaitis