

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO  
Consumer Advocate

OFFICE OF CONSUMER ADVOCATE  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, Pennsylvania 17101-1923  
(717) 783-5048  
(800) 684-6560

 @pa\_oca  
 /pennoca  
FAX (717) 783-7152  
consumer@paoca.org  
www.oca.pa.gov

December 9, 2024

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of Aqua Pennsylvania  
Wastewater, Inc. For Approval of its  
Third Long-Term Infrastructure  
Improvement Plan  
Docket No. P-2024-3052037

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Office of Consumer Advocate's Comments in the captioned proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby  
Christy M. Appleby, Esq.  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
CAappleby@paoca.org

Enclosures

cc: Office of Administrative Law Judge (email only: crainey@pa.gov)  
Office of Special Assistants (email only: ra-OSA@pa.gov)  
Paul Diskin, TUS (email only: pdiskin@pa.gov)  
Daniel Searfoorce, TUS (email only: dsearfoorc@pa.gov)  
Sean Donnelly, TUS (email only: sdonnelly@pa.gov)  
Paul Zander, TUS (email only: pzander@pa.gov)  
Certificate of Service

## CERTIFICATE OF SERVICE

Petition of Aqua Pennsylvania Wastewater, :  
Inc. For Approval of its Third Long-Term : Docket No. P-2024-3052037  
Infrastructure Improvement Plan :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below. This document was filed electronically on the Commission's electronic filing system.

Dated this 9th day of December, 2024.

### SERVICE BY E-MAIL ONLY

Michael W. Hassell, Esq.  
Megan Rulli, Esq.  
Post & Schell, P.C.  
17 North Second Street  
12<sup>th</sup> Floor  
Harrisburg, PA 17101-1601  
mhassell@postschell.com  
mrulli@postschell.com  
*Counsel for Aqua Wastewater, Inc.*

Alexander R. Stahl  
Regulatory Counsel  
Aqua Services, Inc.  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010  
Phone: 610-645-1130  
astahl@aquaamerica.com  
*Counsel for Aqua Wastewater, Inc.*

Steven C. Gray, Esq.  
Rebecca Lyttle, Esq.  
Office of Small Business Advocate  
555 Walnut Street, 1<sup>st</sup> Floor  
Forum Place  
Harrisburg, PA 17101  
sgray@pa.gov  
relyttle@pa.gov  
*Counsel for OSBA*

John W. Sweet, Esq.  
Ria M. Pereira, Esq.  
Elizabeth R. Marx, Esq.  
Lauren Berman, Esq.  
118 Locust Street  
Harrisburg, PA 17101  
pulp@pautilitylawproject.org  
*Counsel for CAUSE-PA*

Allison Kaster, Director  
Carrie B. Wright, Esq.  
Michael A. Podskoch, Jr., Esq.  
Bureau of Investigation & Enforcement  
Commonwealth Keystone Building  
400 North Street, 2nd Floor West  
Harrisburg, PA 17105-3265  
carwright@pa.gov  
mpodskoch@pa.gov  
*Counsel for I&E*

*Counsel for:*

Patrick M. Cicero  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
717-783-5048

Dated: December 9, 2024

/s/ Christy M. Appleby

Christy M. Appleby, Esq.  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 85824  
CAppleby@paoca.org

Katie M. Kennedy, Esq.  
Assistant Consumer Advocate  
PA Attorney I.D. # 317237  
KKennedy@paoca.org

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Aqua Pennsylvania Wastewater, Inc. :  
For Approval of its Third Long-Term : Docket No. P-2024-3052037  
Infrastructure Improvement Plan :

---

COMMENTS OF THE  
OFFICE OF CONSUMER ADVOCATE

---

I. INTRODUCTION

On November 8, 2024, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed for approval of its Third Long-Term Infrastructure Improvement Plan (LTIIIP). Aqua’s currently effective Revised LTIIIP for the five-year period from 2020 through 2024 was approved on February 27, 2020. The instant Petition for this Third LTIIIP would be for the five-year period from 2025 through 2029 and Aqua states “is being submitted pursuant to a condition set forth in the Commission’s April 25, 2024 Secretarial Letter approving the Company’s Annual Asset Optimization Plan at Docket No. M-2024-3047063.” Petition at 1.<sup>1</sup>

Pursuant to its Petition, Aqua seeks the implementation of a Third LTIIIP. The LTIIIP is then assigned to the Commission’s Bureau of Technical Utility Services (TUS) for analysis. TUS is to make a recommendation to the Commission, and other parties may file comments to a proposed modifications within 30 days of the date it was filed. 52 Pa. Code § 121.5(a). If any party’s comments raise issues of material fact, the proposed LTIIIP will be referred to the Office of Administrative Law Judge (OALJ) for hearings and a decision, which litigation must be completed within 120 days. *Id.*

---

<sup>1</sup> Aqua’s Petition sets forth the legal standards and the procedural history for its LTIIIP. Petition, ¶¶ 4-25.

Under the proposed Third LTIP, Aqua states that the Company plans to:

increase its collection system infrastructure spending and includes systems that were not previously included in its Distribution System Improvement Charge (“DSIC”) program that were acquired under Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329 or that were non-Section 1329 acquisitions that have been included in Aqua’s most recent base rate case proceeding.

Petition at 1. Aqua identifies in its Petition that the Third LTIP includes only collection system plant that is eligible as defined in 66 Pa. C.S. § 1351. Petition, ¶ 26, citing 66 Pa. C.S. §1352(a). Aqua also proposes to include its Workforce Management and Training program and outreach and coordination program with other utilities, PennDOT and local governments. Aqua also requests that a waiver be authorized of Section 121.5(c) to allow for implementation of the LTIP prior to 120 days.

Finally, Aqua proposes tariff changes to remove the tariff language for Lower Makefield Township and East Whiteland Township. For the reasons set forth below, the OCA strongly opposes the Company’s proposal to remove current tariff language prohibiting application of the DSIC surcharge to wastewater customers in East Whiteland Township.

Pursuant to the Commission’s regulations, the Office of Consumer Advocate submits the Comments as set forth below.

## II. COMMENTS

### A. Inclusion of Acquired Systems

Under the Third LTIP, Aqua proposes to increase its collection system spending to about \$14.5 million on average over the course of the Plan. Petition, ¶ 27. Aqua states that it also proposes to include systems that were not previously included in its Distribution System Improvement Charge (DSIC) program that were otherwise acquired under Section 1329 of the Public Utility Code (66 Pa. C.S. § 1329) or were non-Section 1329 acquisitions that have been included in Aqua’s

most recent base rate proceeding.<sup>2</sup> Petition, ¶ 27. In its Petition, Aqua provides that “[a] large portion of the capital to be spent in this LTIP will continue to be focused on systems that experience significant I&I [Inflow and Infiltration] and to “rehabilitate its systems and concentrate on replacing pumping station control panel.” Petition, ¶ 29, Exh. A (Third LTIP) at 4.

The OCA has previously recommended inclusion of acquired systems into the Company’s LTIP as soon as they are integrated into the Company’s base rates. The OCA supports the Company’s proposed inclusion of 1329 acquisitions and non-Section 1329 acquisitions that have been included in Aqua’s most recent base rate proceeding in its LTIP as soon as those entities are eligible to be included. The pending base rate proceeding identifies the eligible list of acquisitions. However, to avoid an inconsistency in the application of DSIC to acquired systems, the OCA recommends that the Commission should not approve the inclusion of the East Whiteland Township system in the Third LTIP and should defer a decision on that system until such time as there is an unappealed final Order regarding inclusion of this system in base rates. The question of whether East Whiteland Township should be included in ratemaking rate base of Aqua is a matter that is currently being litigated in the rate case. As discussed in Section E below, the OCA outlines its opposition to the inclusion of East Whiteland Township in DSIC for the reasons outlined in the rate case for its opposition of East Whiteland’s inclusion in ratemaking rate base.

B. Workforce Management and Training Program

In its Petition, Aqua proposes to include its workforce management and training program which includes construction inspectors and mandatory safety training. Petition, ¶¶ 42-44; Third LTIP at 25-27. Inclusion of the workforce management workforce management plans has previously been included in Aqua’s LTIP and is authorized by the Commission pursuant to the

---

<sup>2</sup> Aqua’s most recent base rate proceeding is currently pending before the Commission. *Pa. PUC v. Aqua Pennsylvania Water, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047824.

Act 11 Final Implementation Order. Aqua should make clear that the inclusion of workforce management and training in its LTIP does not double count costs recovered in the LTIP and the base rate proceeding. Specifically, “the utility will have to demonstrate that there is no overlap of costs already reflected in base rates with costs expended pursuant to an LTIP.” 66 Pa. C.S. § 1357(a)(1)(i). The Company has not provided any details regarding whether these costs are also included in its base rate proceeding as a part of either the Petition or the Third LTIP. Prior to Commission approval, Aqua should be required to provide this detail in its final Third LTIP.

C. Outreach and Coordination Activities with Other Utilities, PennDOT and Local Governments

In its Petition, Aqua provides that it has been updating its GIS to incorporate its wastewater assets and as part of its analysis process, the Company will collect information “from PennDOT, counties, homeowners associations and municipalities as to their intentions to undertake paving and other public works projects during the budget year.” Petition, ¶ 47. Aqua states:

Where Aqua chooses to undertake a pipe or manhole refurbishment project on a road pre-scheduled for paving, the project will be coordinated with the state, county, or municipality. Aqua and the government agency will work together to insure the design, permitting and construction of the pipe project will be completed in time to allow for the road to be paved. In some cases, where sewer main projects are large, the government agency will agree to postpone paving of its roads to the following year. Typically, when Aqua undertakes a project where paving has been pre-planned by the government agency. Aqua and its ratepayers will benefit financially through the avoidance of some level of road surface restoration, usually a half-road milling and macadam overlay.

Petition, ¶ 47. Aqua notes that many municipalities do not identify potential paving plans in advance of Aqua’s proposed project selection process and that Aqua must be proactive in identifying opportunities to coordinate pipe replacement and road paving. Petition, ¶ 48; Third LTIP at 27-28.

The OCA supports the Company's efforts to perform outreach to and to coordinate with other utilities, PennDOT, and local governments. However, Aqua's Third LTIP does not provide any greater level of detail than the Petition regarding how the Company accomplishes its goals of outreach and coordination or the frequency of its outreach activities, such as how frequently the Company meets with interested entities and what type of follow-up efforts in the interim are initiated. A greater level of detail would allow the Commission to be able to evaluate whether it has any recommendations or is aware of any best practices from other utilities in order to improve coordination efforts.

For example, Columbia Water's LTIP provides for the frequency of meetings and how efforts are coordinated. Columbia's most recent LTIP Order provides:

Columbia advises that it meets annually, and often more frequently, with the municipalities where it provides public water service in order to coordinate the replacement of water main with the reconstruction and/or repaving of streets and roadways. Columbia notes that these meetings often include other utilities serving the same areas. Columbia states that it coordinates its replacement projects to coincide with other planned roadway and utility work. Columbia states that PennDOT is very effective at notifying utilities well ahead of planned state highway projects making coordination of the work an easy process. Columbia notes that in each of the municipalities where it provides public water service, public officials have a strong record of planning street projects far enough in advance to allow each of the major utilities to upgrade facilities as necessary.

Columbia states that for each project, it coordinates all work with the state or local municipality through planning meetings and the permitting process. Columbia also notes that it utilizes the PA One Call System to minimize utility conflicts and that it notifies its customers of proposed work with door hangers throughout the construction process.

*Petition of Columbia Water for Approval of its Second LTIP, 2022 Pa. PUC LEXIS 412, Order at \* 15-16 (Dec. 8, 2022).* While Columbia Water's service territory is certainly smaller than Aqua's so the processes may be different, however, a greater level of detail such as provided by Columbia's

Second LTIP would help the Commission to be able to better evaluate any recommendations for improvements.

D. Waiver

Aqua also seeks a waiver of the requirement to file a new LTIP at least 120 days prior to the expiration of its currently effective LTIP. 52 Pa. Code § 121.5(c). The currently effective LTIP is set to expire December 31, 2024. The OCA does not object to the waiver given that Aqua did not meet the 120-day requirement. The OCA submits that the current Second LTIP to be extended until such time as a new LTIP is approved by the Commission. The Third LTIP should not be approved for newly acquired systems until such time as the Commission has issued a final Order in its currently pending base rate proceeding regarding the acquired systems.

E. Tariff Changes

Aqua proposes to remove the language on Original Pages 10.12.3 of Tariff Sewer- Pa. P.U.C. No. 3 which states that the DSIC surcharge shall not be applied to bills of customers in Lower Makefield Township and on Original Page 10.13.3 of Tariff Sewer-Pa. P.U.C. No. 3 which states that the DSIC surcharge shall not be applied to bills of wastewater customers in East Whiteland Township. Petition, ¶ 51. Specifically regarding East Whiteland Township, Aqua proposes to delete the following tariff provision:

[t]he DSIC surcharge shall not be applied to bills of wastewater customers in East Whiteland Township, this will remain effective until an amended Long-Term Infrastructure Improvement Plan (LTIP) is filed and approved which includes East Whiteland. Following the approval of an amended LTIP, the DSIC surcharge shall be applicable to wastewater customers in East Whiteland Township.

Petition, ¶ 51.

The OCA does not agree that the tariff changes should be implemented for East Whiteland Township. The acquisition of East Whiteland is currently on appeal before the Pennsylvania

Supreme Court, and the matter of whether the proposed base rates should be increased for East Whiteland Township customers is currently pending before the Public Utility Commission. *Cicero v. Pa. Pub. Util. Comm'n.*, 300 A.3d 1106 (Pa. Cmwlth. 2023) *alloc. granted Cicero v. Pa. PUC*, Nos. 47-49 MAP 2024 (Pa. June 14, 2024). Until the matters have been resolved with a final base rate proceeding Commission Order and a final Pennsylvania Supreme Court Order, the tariff should not be amended to allow for inclusion of East Whiteland in its tariff. *Id.*

The matter of whether the Company has the authority to charge rates to East Whiteland Township is currently pending before the Commission as a litigated issue. The OCA has filed a Main Brief in the matter at Docket No. R-2024-3047824 and incorporates by reference the arguments set forth in its Main Brief in the matter. *Pa. PUC v. Aqua Pennsylvania Water, Inc. and Aqua Pennsylvania Wastewater, Inc.*, Docket Nos. R-2024-3047824, OCA Main Brief at 12-34 (Oct. 28, 2024). The OCA opposes inclusion of the East Whiteland system in DSIC recovery for the same reasons as set out in its Main and Reply briefs in the pending rate case. In short, Aqua does not have a Certificate of Public Convenience or the authority to own the East Whiteland wastewater system assets or to serve the customers in East Whiteland. Therefore, the Company does not have the authority to charge a DSIC to East Whiteland Township residents. The Commission should deny the Company's request to amend its tariff to allow the Company to charge a DSIC to East Whiteland. While the Commission entered the *East Whiteland Order* granting certificate of public convenience authority to Aqua to acquire the East Whiteland wastewater system assets and to begin offering service to East Whiteland customers, the Commonwealth Court reversed the *East Whiteland Order* in *Cicero*. A reversal of an order renders the initial order a nullity, as if it were not granted. *Cf. Phila. Elec. Co. v. Pa. PUC*, 433 A.2d 620, 626 (Pa. Cmwlth. 1981) ("an order is deemed final ... unless or until it is reversed").

Given *Cicero's* reversal of the Commission's *East Whiteland Order*, there is no valid and enforceable Commission order granting certificate of public convenience authority to Aqua to acquire the East Whiteland system assets or to serve East Whiteland customers. Without a valid order granting certificate authority in the first place, the Commission lacks jurisdiction to further authorize Aqua to: (1) increase rates to East Whiteland customers or (2) include the East Whiteland system property in its rate base or (3) to assess a DSIC to East Whiteland Township.

The OCA submits that Aqua's tariff should not be modified regarding charging the DSIC to East Whiteland Township customers until such time as there is a final Order in both the Pennsylvania Supreme Court proceeding and the Company's current pending base rate proceeding.

### III. CONCLUSION

The Office of Consumer Advocate submits that while it is not requesting a hearing in this matter, the Company's Plan should be modified to address the questions raised above. The OCA also recommends that the Company's current tariff prohibiting application of the DSIC surcharge to East Whiteland wastewater customers not be approved pending resolution of the Company's current base rate proceeding and the Pennsylvania Supreme Court appeal for the acquisition of East Whiteland Township.

Respectfully submitted,

/s/ Christy M. Appleby

Christy Appleby  
Senior Assistant Consumer Advocate  
PA Bar ID #85824  
cappleby@paoca.org

Katie Kennedy  
Assistant Consumer Advocate  
PA Bar ID #317237  
kkennedy@paoca.org

Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Counsel for:  
Patrick M. Cicero  
Consumer Advocate

DATED: December 9, 2024