

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17120**

**Application of Aqua Pennsylvania Wastewater, Inc. (Aqua), pursuant to 66 Pa.C.S. §§ 1102 and 1329 for: (1) approval of the acquisition by Aqua of the Greenville Sanitary Authority (GSA); (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's wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code**

**Public Meeting held December 12, 2024**  
**3041695-OSA**  
**Docket No. A-2023-3041695**

**Request for Approval of Contracts, including Assignments of Contracts, between Aqua and the GSA, Pursuant to Section 507 of the Public Utility Code**

**MOTION OF COMMISSIONER RALPH V. YANORA**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Aqua Pennsylvania Wastewater, Inc. (Aqua, the Company, or the Applicant) filed on October 15, 2024, as well as the Exceptions of the Greenville Sanitary Authority (the GSA) and the Borough of Greenville (the Borough) (collectively, Greenville) received on October 16, 2024, in the above-captioned proceeding. The Exceptions were filed in response to the Recommended Decision of Administrative Law Judge (ALJ) Alphonso Arnold III and Deputy Chief ALJ Mark A. Hoyer (collectively, the ALJs) issued on October 3, 2024.

This matter concerns the Application filed with the Commission by Aqua on November 17, 2023, pursuant to Sections 507, 1102, and 1329 of the Public Utility Code (Code), 66 Pa. C.S. §§ 507, 1102, and 1329 (Application). In its Application, Aqua requested Commission approval of the Asset Purchase Agreement (APA) dated April 27, 2023 for acquisition of substantially all of the assets, properties, and rights related to the wastewater collection and treatment system (the System) owned by the GSA, and the right of the Company to provide wastewater service in the areas served by the GSA, through the issuance of a Certificate of Public Convenience (CPC) under Section 1102. The Application also requested, pursuant to Section 1329(c)(2), the Commission's approval to utilize fair market value for the ratemaking rate base of the System. In addition to the request for approval of the acquisition and APA, Aqua requested approval of other municipal

agreements to be assumed by Aqua as a result of the transaction, pursuant to Section 507 of the Code, 66 Pa.C.S. § 507.

In the Recommended Decision issued on October 3, 2024, the ALJs recommended that the Commission deny the Application based on their conclusion that Aqua did not meet its burden to establish affirmative public benefits from the acquisition of the GSA System. As a result, the Recommended Decision found that it was not necessary to consider Aqua's additional approval requests under 66 Pa.C.S. §§ 507 and 1329.

### **Affirmative Public Benefits**

In its Exception No. 1, Aqua objects to the conclusion in the Recommended Decision that the Company has not met its burden of showing that there are significant public benefits of the proposed transaction that outweigh the purported harm of the rate impact. Specifically, Aqua contends that the ALJs did not weigh all the factors for and against the transaction, but improperly gave undue weight to a potential rate impact to GSA and Aqua customers. Aqua submits that the ALJs failed to address how the single articulated harm of the revenue requirement deficiency, and subsequent rate impact, outweigh the public benefits of the transaction.

I agree with Aqua that there are substantial affirmative public benefits that will accrue as the result of this transaction. As Aqua asserts, the acquisition of the GSA system will not only result in regionalization and economies of scale for both Aqua and GSA customers, but will also result in better management practices, protective customer service programs, and technological advancements for GSA customers. Additionally, and most compellingly, the transaction will resolve significant safety and operational deficiencies on the GSA wastewater system, including:

- Hazardous chemical storage, labeling, safety and dichlorination issues;
- Wastewater treatment plant ventilation, physical safety, physical security, and cyber security concerns;
- Insufficient emergency/standby power generation;
- Limited quantity and availability of licensed operators, and limited access to training and redundancy of operators;
- Limited or lacking process control testing;
- Permit compliance issues;
- Lack of emergency preparedness training;
- Lack of safety and security equipment training;
- Inadequate supervisory control and data acquisition and operator alarm systems; and
- Lack of asset management or compliance management software systems.

In addition to these safety concerns, the transaction also addresses environmental deficiencies with the GSA system. GSA entered into a Consent Order Agreement (COA) with the Pennsylvania Department of Environmental Protection (DEP) on December 21, 2021, in relation to violations of effluent limitations between June 2019 and June 2021. GSA has

exceeded total residual chlorine allowable limits in its NPDES permit multiple times, and the exceedance of the fecal coliform permit parameter led to the entry into the COA with the DEP. At present, GSA is in breach of the COA.

As part of this transaction, Aqua will invest approximately \$20.4 million in planned upgrades to the GSA system to address these COA violations. Aqua has existing wastewater operations in nearby Venango and Mercer Counties and has already met with DEP regarding 17 proposed planned improvements to the GSA system. Aqua's planned improvements expenditures are also less than half the cost GSA planned to spend to address the COA, saving customers over \$20 million in otherwise required incremental expenditures.

I recognize that this acquisition will result in rate increases for the GSA customers, and potentially Aqua customers as well. However, it is informative to review GSA's current rates, approximately \$23 a month for residential customers, when judging this case as a whole. Such a monthly bill is significantly lower than the tariffed wastewater rates for other major regulated water utilities in the Commonwealth.<sup>1</sup> I believe this low monthly rate is indicative of a wastewater system which has been neglected. As the proceeding exhibits, the system is in need of rehabilitation, whether from GSA or Aqua. Look no further than GSA's Exceptions where it states "[t]he rates for GSA customers will go up regardless of whether or not the transaction proceeds."<sup>2</sup> The instant application represents a prudent option for the system to achieve its much needed improvements while moving rates toward more reasonable cost-of-service.

Aqua has the expertise, licensed professionals, and capital to resolve these significant safety, operational, and environmental deficiencies in the GSA system. In contrast, the Borough has recently worked its way out of Act 47 distressed status after 21 years. As a result of the Act 47 designation, the Borough has struggled with GSA Board participation, GSA infrastructure investment, and GSA customer billing issues. Due to these difficulties, GSA has indicated a strong desire to exit the wastewater utility business.

When weighing all these factors, I believe that the acquisition has substantial affirmative public benefits which outweigh the rate impact. Therefore, the Application should be granted.

### **Conditions for Approval**

While the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), and the Office of Small Business Advocate (OSBA) noted their opposition to the relief requested in the Application, discussed *supra*, should the Commission grant approval, I&E, the OCA, and the OSBA each recommended certain conditions be applied.

#### **1. Cost of Service Studies**

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<sup>1</sup> For example, Pennsylvania American Water Company's Zone 1 Wastewater Rate is approximately \$133, and, Pittsburgh Water's Wastewater Rate is approximately \$86.

<sup>2</sup> See GSA Exception Number Nine.

Aqua agreed that it will provide a separate Cost of Service Study (COSS) for the GSA System in its next base rate case, as recommended by I&E and the OCA, with the stipulation that it would want to reserve any opinion as to what the rate design would be for grouping together bulk customers into a single separate class in the separate GSA COSS submitted in Aqua's next base rate case. I agree that this is reasonable and in the public interest.

## **2. Employee Segregation from Borough of Greenville Stormwater Services**

Aqua stated that GSA employees hired by Aqua will not work on the Borough's stormwater system. I agree that this is reasonable and in the public interest.

## **3. Low-Income Program Information and Tracking**

Aqua noted the OCA made several recommendations regarding low-income programs and access to those programs for the GSA's customers. Accordingly, Aqua has agreed to include color flyers describing the Customer Assistance Program (CAP) in a letter to the GSA customers, post-closing, as well as including a bill insert more specific to acquired customers, post-closing, with their first bills. Further, Aqua agreed to track enrollment of the GSA customers into Aqua's CAP and report the enrollments every six months to the Commission and parties until the conclusion of Aqua's next base rate case. I agree that this is reasonable and in the public interest.

## **4. Customer Notices**

I agree with Aqua that none of the requested changes to the customer notice are appropriate, necessary, or mandated by existing Commission Regulations.

## **5. Missing Easements and Other Property Rights**

I agree with Aqua that not having easements does not prevent it from being able to complete work if required. When maintenance or repair is required, Aqua stated that it can secure temporary construction easements from property owners if no permanent easement exists, and Aqua may perform emergency work after notice to the property owner. Further, Aqua insisted that the issue of missing easements and property rights is already contemplated in the APA. Aqua stated that Section 6.05 of the APA provides that all costs and expenses incurred with obtaining each missing easement shall be paid by the GSA and no additional consideration is payable by buyer for any missing easement. Lastly, Aqua asserted that the APA contains a process by which a portion of the purchase price is held in escrow to ensure that the GSA obtains any missing easements after closing occurs. As such, no additional information is required at this time.

## **6. Transaction and Closing Costs**

As Aqua is not seeking recovery of the GSA's transaction and closing costs, no additional information regarding the tracking of closing costs is required at this time. I believe this to be appropriate.

## **7. Increased Hardship Funding from Aqua**

Aqua argued that it would be appropriate to increase funding for its hardship fund, Aqua Aid, by \$25,000 per year for the next three years. Aqua also noted that monitoring funding levels is important to ensuring funds are appropriately allocated to where they are most beneficial and, therefore, recommended an annual review of Aqua Aid through the Aqua Assistance Collaborative (AAC). I agree that this is reasonable and in the public interest.

## **8. The OSBA's Recommendations**

I agree with Aqua that any recommendation to moderate or further assess Year 1 or Year 2 spending is not necessary. Aqua avers that it provided ample support for the reasonableness and need for the improvements provided in the proposed 10-year capital plan for the System. Further, Aqua noted it conducts post-acquisition audits to evaluate the plant condition, which will also allow the Company to refine its current assessment of future capital expenditures. Aqua agreed to file these audits with the Commission in its next base rate case. Since Aqua is not proposing to make the same improvements as the GSA would make, were the transaction not approved, Aqua does not recommend preparing a reconciliation of its planned capital investments to those in the GSA's capital plan. However, Aqua agreed to provide a reconciliation in its next base rate case, if the application is approved, for Aqua's capital projects and expenditures, with those in the current GSA capital plan. I find that this is reasonable and in the public interest.

## **9. Long Term Infrastructure and Improvement Plan (LTIIIP)**

I agree with Aqua that there is no requirement to file an updated LTIIIP after the closing of a Section 1329 transaction or any transaction under Section 1102. Therefore, if Aqua modifies its LTIIIP to include the GSA, that the timing of filing a modified LTIIIP be at the Company's discretion.

### **Section 507 Approvals**

Aqua requested in its Application that the Commission approve, pursuant to 66 Pa.C.S. § 507, which requires that contracts between a public utility and a municipal corporation for other than the furnishing of service at tariff rates be filed with the Commission, the following six agreements:

- 1) Intermunicipal Sewage Agreement, dated October 28, 1998, between the Borough, the GSA, West Salem, and the West Salem Township Municipal Sewage Authority (WSMSA);
- 2) Addendum to Intermunicipal Sewage Agreement, dated December 23, 1998, between the Borough, the GSA West Salem, and the WSMSA;

- 3) Addendum to Intermunicipal Sewage Agreement, dated March 19, 2008, between the Borough, the GSA, West Salem, and the WSMSA;
- 4) Consent Agreement, dated June 16, 2011, between the Borough, the GSA, West Salem, and the WSMSA;
- 5) Intermunicipal Sewage Agreement, dated December 21, 2006, between the GSA, the Borough, the Hempfield Township Municipal Authority (HTMA), and Hempfield; and
- 6) Pro Forma Water Meter Read Agreement, between Aqua and the Greenville Water Authority (GWA).

I agree with Aqua that these agreements are necessary to allow Aqua to provide service to the service territory currently served by the GSA System and are reasonable and in the public interest. Aqua and Greenville also sought approval of the APA that Aqua and the GSA entered into on April 27, 2023, which I also find to be reasonable and in the public interest.

### **Conclusion**

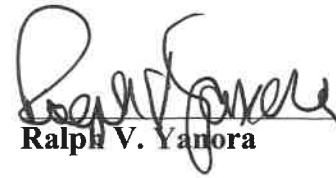
Based on the foregoing, I find that: (1) the Exceptions of Aqua and Greenville should be granted; (2) the Recommended Decision should be rejected; and (3) the Application should be granted, consistent with this Motion.

### **THEREFORE, I MOVE:**

1. That the Exceptions of Aqua Pennsylvania Wastewater, Inc., filed on October 15, 2024, at Docket No. A-2023-3041695, are granted, consistent with this Motion.
2. That the Exceptions of the Greenville Sanitary Authority and the Borough of Greenville, filed on October 16, 2024, at Docket No. A-2023-3041695, are granted, consistent with this Motion.
3. That the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Alphonso Arnold III, issued on October 3, 2024, at Docket No. A-2023-3041695, is modified, consistent with this Motion.
4. That the Application filed by Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 507, 1102, and 1329 of the Pennsylvania Public Utility Code for approval of its acquisition of the wastewater collection system assets of the Greenville Sanitary Authority on November 17, 2023, and as amended, at Docket No. A-2023-3041695, is approved, subject to the terms of conditions set forth in this Motion.

5. That the Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**Date: December 12, 2024**

  
Ralph V. Yanora