

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

**Application of Aqua Pennsylvania
Wastewater, Inc. Pursuant to Sections 1102
and 1329 of the Public Utility Code, for
Approval of the Acquisition by Aqua of the
Wastewater System Assets of the Greenville
Sanitary Authority Situated within the
Borough of Greenville, Hempfield
Township, and West Salem Township,
Mercer County, Pennsylvania**

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

STATEMENT OF COMMISSIONER KATHRYN L. ZERFUSS

The Commission is making a determination today on Aqua Pennsylvania Wastewater, Inc.'s (Aqua) application requesting Commission approval to acquire Greenville Sanitary Authority's (GSA) wastewater system. I would like to thank the Office of Administrative Law Judge and the Office of Special Assistants for their thorough review of the evidence in this case, careful consideration of the parties' positions, and diligent application of the relevant case law.

Initially, I want to highlight that the Commission's obligation in this Section 1329 proceeding is to review the evidence before us and make a decision on whether Aqua has satisfied its burden of proving that there are substantial affirmative public benefits of this proposed acquisition that outweigh the acknowledged harms resulting from this acquisition. *See Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023). The Court explained that where known harms result from the transaction, the acquisition must provide benefits that *differ substantially* from the benefits already being provided by the existing system operator. Providing the same services that are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits, especially if the existing system is already operating safely and reliably. *Id.* at 1118. Based on my evaluation of the record in this case, I find that Aqua has not satisfied its burden of demonstrating that its acquisition of the GSA would affirmatively promote the service, accommodation, convenience, or safety of the public.

The \$18 million price Aqua would pay to acquire the GSA system is very high compared to the net book value of \$6,854,439, and the resulting rate increases to current GSA customers¹

¹ The OCA presented evidence that the median income in the Greenville Borough is 54,237, and there are 1,766 individuals in Greenville that are below 200% of the federal poverty limit (FPL) and 335 families in Greenville that are below 200% of the FPL. OCA St. 1 at 29; OCA Exh. CMH-22.

and existing Aqua customers is a known harm that will have a detrimental impact. According to Aqua, the GSA customers would shoulder the burden of the acquisition cost. Aqua plans to seek recovery of the entire projected \$2.223 million revenue requirement deficiency from the GSA customers, estimating that the average GSA customer's bill would increase by 180.85% after Aqua's next base rate case following this acquisition. Aqua St. 3 (Revised) at 17. While this increase alone is very high, the Office of Consumer Advocate (OCA) presented compelling evidence that Aqua may have under projected the annual revenue deficiency for the GSA system and the rate increases that Aqua estimated to recover the deficiency. Specifically, the OCA presented testimony that Aqua has historically under projected revenue deficiencies for three of its recent acquisitions. *See* OCA St. 1-SR at 6 (noting Aqua's acquisitions in Lower Makefield, Shenandoah Water, and East Whiteland Township were under projected by \$706,082, \$1,402,877, and \$1,981,719, respectively). Further, as the ALJs in this proceeding acknowledged, the rate impacts Aqua has projected do not include the rate increases that may result from other pending and future acquisitions, the \$20.4 million Aqua plans to invest into the GSA system, or the rate increases that may happen in future base rate proceedings after the first base rate proceeding after Aqua acquires the GSA system.

Aqua has not shown that there are substantial affirmative benefits that would outweigh the rate impact to customers. For instance, Aqua has argued that the Greenville Borough community, which includes the GSA customers, will receive a beneficial cash infusion stemming from the proceeds from the sale, which will allow the GSA to pay off its debts, use its cash surplus (otherwise encumbered by sewer utility operations), have proceeds to place into interest earning securities, and have a new property tax paying business in the community. However, there is no assurance in the record that the GSA customers and the Borough of Greenville will directly benefit from the sale because the GSA and the Borough did not indicate how the proceeds will be used. The GSA's counsel explained that "the characterization that the borough would be in a better financial position is not accurate as stated. These monies will remain in the Sanitary Authority, which also still runs the stormwater. So the borough is not actually receiving these funds at this time." Tr. at 156.

Aqua has also argued that because it has more expertise and capital than the GSA, it is better-positioned to correct any operational and environmental deficiencies in the system, and it can offer better management practices, customer service enhancements, and technological improvements, including cyber and physical security improvements. Despite these arguments, the record demonstrates that the GSA has been providing improvements to its wastewater plant when needed, is already providing safe, adequate, and reliable service to its customers, and is capable of continuing to provide such service without Aqua's intervention. While Aqua notes that the GSA is in violation of its Consent Order Agreement (COA) with the Pennsylvania Department of Environmental Protection (DEP), it is clear from the record that this is the only DEP compliance issue GSA has currently, and it resulted from the instant transaction. Before it entered into this transaction with Aqua, GSA had invested \$2.8 million on an engineering design for upgrading its wastewater treatment plant before stopping its work based on its decision to sell to Aqua. Aqua St. 2 at 10. When Aqua filed this Application, GSA did not have any current environmental compliance issues that necessitated the capital spending Aqua now projects to address the COA violations. During the pendency of this proceeding, GSA received notice of a

breach from DEP resulting from GSA's failure to move forward under its COA with DEP. OCA St. 1SR at 9; OCA Exh. CMH-2SR. Accordingly, I find reasonable the ALJs' conclusion that aside from this sole breach, GSA is capable of, and has taken, action to comply with the COA.

Moreover, the parties to this case did not propose any significant consumer or small business protection conditions as part of this acquisition to assist vulnerable customers facing a large rate increase. For example, Aqua did not propose a rate stabilization plan that would phase rates in over a period of time after its next base rate case. Aqua St. 3 (Revised) at 9. While Aqua has offered to increase the funding for its hardship fund by \$25,000 per year for the next three years (Aqua St. 5-R at 7-8), this is a relatively small increase in funding, particularly given that it will be spread out over Aqua's large customer base, and will not be enough to mitigate a sudden rate increase for income-challenged families. Nor did the parties propose a plan to provide small businesses with payment arrangement options to assist these businesses in affording rising costs and maintaining water and wastewater services to continue to run their operations efficiently.

I support the goals of regionalization and believe that the acquisition of smaller systems by larger systems under Section 1329 may improve the long-term viability of the water and wastewater industry. Nevertheless, we must carefully evaluate each Section 1329 case because there is a direct connection between acquisition costs and the ability of families and small businesses to afford life-sustaining water and wastewater services. Part of this careful evaluation includes following the legal requirement that an acquiring public utility must prove that substantial affirmative public benefits outweigh the harms of the transaction. Based on the facts of this case, Aqua has not satisfied this standard. For these reasons, I will be dissenting on this matter.

DATE: December 12, 2024



Kathryn L. Zarfuss, Commissioner

