

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

Public Meeting held February 6, 2025

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Kathryn L. Zerfuss  
John F. Coleman, Jr.  
Ralph V. Yanora

Joint Application of Aqua Pennsylvania, Inc. and its subsidiary, Honesdale Consolidated Water Company, for the approval of (1) the transfer to Aqua, through merger, of all property of Honesdale used or useful in the public service (2) the right of Aqua to begin to offer, render, furnish, and supply water service in portions of the Borough of Honesdale, Townships of Texas and Dyberry, Wayne County Pennsylvania *nunc pro tunc* and (3) the abandonment by Honesdale of public utility service in portions of the Borough Honesdale, Townships of Texas and Dyberry, Wayne County Pennsylvania, and Request for Approval of Merger Between Affiliates

Docket Numbers:

A-2024-3049920  
A-2024-3049921  
G-2024-3049962  
G-2024-3049963

**OPINION AND ORDER**

**BY THE COMMISSION:**

On July 3, 2024, Honesdale Consolidated Water Company (Honesdale) and Aqua Pennsylvania, Inc. (“Aqua” or “Company”) (hereinafter Honesdale and Aqua are collectively referred to as “Joint Applicants”) filed a Joint Application (Application)

requesting approval by the Pennsylvania Public Utility Commission (Commission), of the merger of Honesdale, a wholly-owned subsidiary of Aqua into Aqua<sup>1</sup>, the issuance of certificates of public convenience pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa.C.S. § 1102(a)(3) and any other approvals necessary to consummate the merger. The Joint Applicants indicated that upon completion of the merger transaction, Honesdale would be merged into Aqua, with Aqua as the surviving entity and cessation of Honesdale's existence as a separate entity.

Section 2102(a) of the Public Utility Code, 66 Pa.C.S. § 2102(a) provides for Commission approval of the exchange of property between affiliates. Since Honesdale is a subsidiary of Aqua as defined by Section 2101 of the Public Utility Code, 66 Pa.C.S. § 2101, the Joint Applicants seek Commission approval of the merger between affiliates.

### **PROCEDURAL HISTORY**

By Secretarial Letter dated July 5, 2024, the Joint Applicants were directed to serve copies of the Application upon the certain parties<sup>2</sup>, and to file proof of such service with this Commission, pursuant to 52 Pa. Code, §1.57 and §1.58.

The Secretarial Letter notified the Joint Applicants that the Commission would publish notice of the filing of the Application in the Saturday, July 20, 2024 issue of the Pennsylvania Bulletin and directed the Joint Applicants to publish the same notice once a week for two consecutive weeks in a newspaper having a general circulation in the area involved and file proof of publication with the Commission on or before Monday, August 5, 2024.

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<sup>1</sup> Aqua acquired Honesdale via a stock merger approved by Commission Order entered August 8, 2008 in Docket Nos. A-2008- 2046001 and A-2008-2046002.

<sup>2</sup> Each city, borough, town, township, county and related planning office which is included, in whole or in part, in the proposed service area; A water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment and disposal service to the public and whose service area abuts the service area proposed in the application; The Department of Environmental Protection's appropriate regional office.

On July 15, 2024, a Notice of Appearance of Rebecca Lyttle was filed on behalf of the Office of Small Business Advocate (OSBA). The OSBA subsequently filed a Notice of Intervention, Public Statement and Verification on July 22, 2024.

On July 22, 2024, the proceeding was transferred to the Office of Administrative Law Judge (OALJ). By Telephonic Prehearing Conference Notice dated July 25, 2024, a Prehearing Conference was scheduled for August 9, 2024 at 9:00 a.m. A Prehearing Conference Order was also issued on July 25, 2024 setting forth the rules and expectations for the conference.

On August 2, 2024, Aqua filed an Affidavit of Publication evidencing publication of Notice of the Application in the Philadelphia Inquirer on July 15, 2024 and July 22, 2024 and the Tri-County Independent on July 13, 2024 and July 20, 2024.

On August 6, 2024, the Joint Applicants and OSBA each filed a Prehearing Memorandum. On August 9, 2024, the Prehearing Conference was held, and a Prehearing Order was issued memorializing the matters decided and agreed upon by the parties at the prehearing conference, including a litigation schedule.

On September 12, 2024, John F. Povilaitis, Esquire and Alan M. Seltzer, Esquire, entered their appearance in this matter on behalf of Joint Applicants.

By e-mail dated September 12, 2024, counsel to the Joint Applicants informed the OALJ that the Joint Applicants and the OSBA were engaged in settlement discussions and had made significant progress toward a full settlement. The parties requested that the litigation schedule established in the Prehearing Order issued August 9, 2024 be modified to facilitate the conduct of their settlement efforts. The parties' request was granted by Order dated August 13, 2024. Subsequently, by e-mail dated September 24, 2024,

counsel to the Joint Applicants informed the OALJ that the Joint Applicants and the OSBA had reached a full settlement in principle and requested that the litigation schedule established for this proceeding be suspended.

On October 4, 2024, the Joint Applicants and the OSBA filed a Joint Stipulation requesting that the Joint Stipulation be accepted into the evidentiary record of this proceeding, and that it be accepted as the OSBA's withdrawal of its request for evidentiary hearings in connection with the Application. Additionally, in the Joint Stipulation, Aqua expressly agreed that in a six-month period following the Commission's issuance of a final and unappealable Order approving the Joint Application, it will include three bill notices in the former Honesdale commercial customers' monthly bills informing the former Honesdale commercial customers that: (i) the OSBA is an independent state agency that represents the interests of small business consumers in regulated utility matters before the Commission, (ii) the OSBA works directly with small businesses to assist with any questions or concerns they may be experiencing with their utility services, and (iii) the OSBA may be contacted by viewing the website at [www.osba.pa.gov](http://www.osba.pa.gov). Further, the parties asked that the Application be reassigned to the Commission's Bureau of Technical Utility Services (TUS) for review and disposition on the merits.

Since the Joint Stipulation was unopposed; the OALJ issued an order on November 24, 2024, reassigning these proceedings to the Commission's Bureau of Technical Utility Services for further action.

### **JOINT APPLICANTS**

Aqua is a Class A water utility, duly organized and existing under the laws of the Commonwealth of Pennsylvania, operating under Commission issued certificates of public convenience. Aqua is a wholly-owned direct subsidiary of Essential Utilities, Inc.

(Essential).<sup>3</sup> Aqua is a “public utility” as defined in Section 102 of the Public Utility Code, 66 Pa.C.S. § 102. Aqua serves approximately 450,000 water customers in various Counties throughout Pennsylvania, including Wayne County.

Honesdale is a wholly owned subsidiary of Aqua, which Aqua acquired by stock merger approved by Order of the Commission entered August 8, 2008, at Docket Nos. A-2008-2046001 and A-2008-2046002. Honesdale has existed as a separate subsidiary of Aqua since it was acquired by Aqua on October 1, 2008. Aqua owns 100% of the shares of common stock of Honesdale. Prior to its purchase by Aqua, Honesdale was a Class B water utility, duly organized and existing under the laws of the Commonwealth of Pennsylvania, operating under Commission issued certificates of public convenience. Honesdale served approximately 2,370 customers within portions of Honesdale Borough and Texas Township, Wayne County Pennsylvania at the time of Aqua’s acquisition of Honesdale.

The Joint Applicants state that Aqua has been providing service to the acquired Honesdale customers since Aqua closed on the transaction on October 1, 2008, under approved rates on file with the Commission.<sup>4</sup> With this Joint Application, Aqua is seeking to clean up and streamline its corporate subsidiaries and to the extent necessary seeks approval *nunc pro tunc* to acquire by merger the assets of Honesdale and to continue to provide service to its customers.

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<sup>3</sup> The Joint Applicants note that there is a current pending Application before the Commission at Docket Nos. A-2021-3026774 and A-2021-3026775 to establish a new company, Aqua Water Holdings, Inc., between Essential and Aqua, and that transaction will not affect, and will not be affected by, the merger of Honesdale into Aqua under this Application.

<sup>4</sup> Pursuant to the October 1, 2008 closing, Aqua submitted Honesdale Water Company Tariff – Water Pa. P.U.C. No. 8 to record the merger of Honesdale with Aqua. Honesdale became a rate division under Aqua’s compliance tariff Supplement No. 104 to Water-PAP.U.C No. 1, which was filed in accordance with the Aqua’s rate case at Docket No. R-2009-2132019. Honesdale is currently under Aqua’s Rate Zone 1 tariffed rates.

## **MERGER PLAN**

The Joint Applicants state that in accordance with the Plan of Merger, Honesdale shall be merged into Aqua, with Aqua as the surviving entity and Honesdale's separate existence ceasing. All stock of Honesdale shall be cancelled and the certificates representing such shares shall be surrendered to Aqua and cancelled.

Further, the Joint Applicants note that Aqua shall succeed to all the properties, rights and other assets of Honesdale and shall be subject to all the liabilities of Honesdale. Honesdale does not have any outstanding debt secured by its assets, and Aqua shall not be assuming any debt associated with the Honesdale assets, and no other changes to Aqua's management, directors or outstanding stock will occur through this proposed merger. The Joint Applicants state that the proposed merger will not alter the ownership structure of Aqua by Essential.

## **PUBLIC INTEREST CONSIDERATIONS**

The Joint Applicants claim that the proposed transfer of control is in the public interest for the following reasons:

- In the Commission's Merger Order at Docket Nos. A-2008-2046001 and A-2008-2046002, the Commission concluded that the transfer of control of Honesdale to Aqua is necessary or proper for the service, accommodation, convenience or safety of the public;
- Aqua will be able to streamline the number of subsidiaries in its corporate structure, thereby reducing the overall subsidiaries of Essential as well;
- The approval of the Joint Application will improve efficiency of Aqua and Essential through reduced reporting requirements;

- Aqua as a certificated public utility possesses the technical expertise and the financial resources to operate the Honesdale system and to maintain the operations and make improvements to meet continuing and future customer needs; and,
- Approval of the Joint Application and the issuance of the requested certificate of public convenience and such other approvals as may be required are “necessary or proper for the service, accommodation, convenience, or safety of the public” and will provide affirmative public benefit as the merger of Honesdale into Aqua will promote efficiency and will reduce the number of subsidiaries of Aqua.

For the reasons advanced by the Joint Applicants, we conclude that the record provides substantial evidence of affirmative public benefits sufficient to warrant approval of the proposed transaction under *City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972); *Irwin A. Popowsky v. Pennsylvania Public Utility Commission*, 937 A.2d 1040 (Pa. 2007).

Additionally, the Commission is not bound to apply the substantial affirmative public benefit test and may formulate the specific criteria or factors to be used in assessing whether a utility’s proposed internal restructuring is “proper” for servicing the public and deserving of a certificate of public convenience. *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n*, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16, 24. The merger of Honesdale, a wholly-owned subsidiary of Aqua, into Aqua is proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. Section 1102(a)(3); 52 Pa. Code § 69.901, *PPL Elec. Utils. Corp. v. Pa. Pub. Util. Comm’n*, Docket No. 624 C.D. 2019 (unreported opinion filed October 27, 2020) at slip op. 16, 24. The proposed merger of Honesdale into Aqua will not have any effect on the management and operations of Honesdale or Aqua and is proper for the service,

accommodation, convenience, or safety of the public. 66 Pa.C.S. Section 1102(a)(3); 52 Pa. Code § 69.901.

## **CONCLUSION**

In conclusion, the Joint Application will be approved and certificate(s) of public convenience be issued for the transfer to Aqua, through merger, of all property of Honesdale used or useful in the public service, the right of Aqua to begin to offer, render furnish, and supply water service in portions of the Borough of Honesdale and the Townships of Texas and Dyberry, Wayne County, Pennsylvania *nunc pro tunc*, and the abandonment by Honesdale of public utility service in portions of the Borough Honesdale, and Townships of Texas and Dyberry, Wayne County Pennsylvania, pursuant to Section 1102(a)(3) of the Code. 66 Pa.C.S. § 1102(a)(3). The granting of the Joint Application is proper for the service of the public and certificate(s) of public convenience should be issued, evidencing the Commission's approval. Additionally, the Request for Approval of Merger Between Affiliates shall be approved pursuant to Section 2102(a) of the Public Utility Code, 66 Pa. C.S. § 2102(a). In approving the Joint Application, the Commission will also approve the aforementioned Joint Stipulation between Aqua and the OSBA.

The Commission has determined that the Joint Applicants are current with their annual financial and Security Planning and Readiness Self Certification Form report filing requirements, and there are no outstanding Commission fines or assessments against the Applicants.

Having reviewed the Joint Application, we conclude that the proposed merger, of all property of Honesdale used or useful in the public service, the right of Aqua to begin to offer, render, furnish, and supply water service in portions of the Borough of Honesdale Townships of Texas and Dyberry, Wayne County Pennsylvania *nunc pro tunc*

and the abandonment by Honesdale of public utility service in portions of the Borough Honesdale, Townships of Texas and Dyberry, Wayne County Pennsylvania, pursuant to Section 1102(a)(3) of the Code. 66 Pa.C.S. § 1102(a)(3); and, that the Request for Approval of Merger Between Affiliates pursuant to Section 2102(a) of the Public Utility Code, 66 Pa. C.S. § 2102(a) should be approved; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Merger Application of Aqua Pennsylvania, Inc. and Honesdale Consolidated Water Company at Docket Nos. A-2024-3049920, A-2024-3049921, G-2024-3049962, and G-2024-3049963 be approved per the Order.
2. That a Certificate of Public Convenience be issued pursuant to Section 1102(a)(3) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(3), authorizing the transfer to Aqua Pennsylvania, Inc., through merger, of all property of Honesdale Consolidated Water Company used or useful in the public service.
3. That a Certificate of Public Convenience be issued pursuant to Section 1102(a)(1)(i) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(1)(i), authorizing Aqua Pennsylvania, Inc. to begin to offer, render, furnish, or supply water service to the public in the territory currently served by Honesdale Consolidated Water Company.
4. That within thirty (30) days following consummation of the transaction approved by Ordering Paragraphs Nos. 2 and 3, above, Aqua Pennsylvania, Inc. shall notify this Commission of the effective date of the merger.
5. That upon receiving the notice required by Ordering Paragraph No. 4, above, a Certificate of Public Convenience shall be issued pursuant to Section 1102(a)(2) of the Public Utility Code, 66 Pa. C.S. § 1102(a)(2), authorizing Honesdale

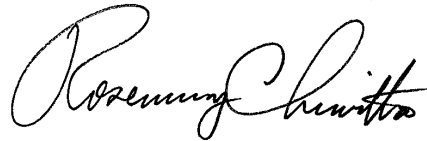
Consolidated Water Company to abandon its authority to provide water service in its current service territory.

6. That if the Joint Applicants determine that the instant transaction will not occur, they shall promptly file notice of such determination with the Commission.

7. That the Commission approves the Joint Stipulation between Aqua Pennsylvania, Inc. and the OSBA at the above-referenced docket.

8. That upon filing of either notice directed by Ordering Paragraph Nos. 4 or 6, above, the proceedings at Docket Nos. A-2024-3049920, A-2024-3049921, G-2024-3049962, and G-2024-3049963 shall be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: February 6, 2025

ORDER ENTERED: February 7, 2025