



COMMONWEALTH OF PENNSYLVANIA

March 18, 2025

E-FILED

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

Re: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 507, 508, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls / Docket No. A-2022-3033138

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Attorney
Assistant Small Business Advocate
Attorney I.D. No. 77538

Enclosures

cc: Rebecca Forbes
Kevin Higgins
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. pursuant to Sections 1102	:	Docket No. A-2022-3033138
and 1329 of the Public Utility Code for:	:	
(1) approval of the acquisition by Aqua of the	:	
wastewater system assets of the City of Beaver	:	
Falls situated within the City of Beaver Falls	:	
Eastvale Borough, and West Mayfield Borough,	:	
Beaver County, Pennsylvania; (2) approval of	:	
the right of Aqua to begin to offer, render,	:	
furnish and supply wastewater service to the	:	
public in the City of Beaver Falls, Beaver	:	
County, Pennsylvania; (3) an order	:	
approving the acquisition that includes the	:	
ratemaking rate base of the City of Beaver Falls	:	
wastewater system assets pursuant to Section	:	
1329(c)(2) of the Public Utility Code; and (4)	:	
request for Approval of Contracts, between	:	
Aqua and the City of Beaver Falls,	:	
Pursuant to Section 507 of the	:	
Public Utility Code	:	

**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

Steven C. Gray
Senior Attorney
Assistant Small Business Advocate
Attorney I.D. No. 77538

For: NazAarah Sabree
Small Business Advocate

Commonwealth of Pennsylvania
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Date: March 18, 2025

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I. INTRODUCTION

On February 17, 2023, Aqua Pennsylvania Wastewater, Inc. (“Aqua PA”) filed an Application (“*Application*”) Pursuant to Sections 507, 508, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls (the “City”).

The *Application* addresses the purchase asset agreement signed between Aqua PA and the City on October 20, 2021. The *Application* requests (1) approval of the acquisition by Aqua PA of the wastewater system assets of the City; (2) the approval of the right of Aqua PA to begin to offer, render, furnish, and supply wastewater service to the public in the City; (3) that the Commission, in its Order approving the acquisition, include the ratemaking rate base of the City wastewater system assets as determined under §1329(c)(2) of the Public Utility Code, 66 Pa. C.S. §1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to §507 of the Public Utility Code, 66 Pa. C.S. § 507, for certain municipal contracts that Aqua PA has included in the Application (to the extent necessary), including new service agreements that Aqua PA will negotiate and enter into with Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough (the “Contributing Municipalities”) prior to Closing and which will replace any prior agreements; and (5) that the Commission allows certain existing agreements between Aqua PA and the Contributing Municipalities to be modified because those agreements contain a rate formula that is inconsistent with the rates charged by the City to the Contributing Municipalities.

On March 17, 2023, the Office of Small Business Advocate (“OSBA”) filed a Protest and Notice of Intervention in response to the *Application*.

On June 28, 2023, after a series of deficiency delays filed by Aqua PA, the Commission issued a Secretarial Letter conditionally accepting the *Application*.

On March 28, 2024, Aqua PA filed an Amended Application (“*Amended Application*”).

On April 4, 2024, the Commission issued a Secretarial Letter withdrawing the Commission’s conditional acceptance of the *Application*.

On June 27, 2024, the Commission issued a Secretarial Letter conditionally accepting the *Amended Application*.

On December 30, 2024, the Commission issued a Secretarial Letter formally accepting the *Amended Application*.

On January 29, 2025, a Prehearing Conference was held before Administrative Law Judge (“ALJ”) F. Joseph Brady.

On February 4, 2025, ALJ Brady issued his Prehearing Order.

On February 14, 2025, the OSBA served the Direct Testimony and Exhibits of Rebecca Forbes.

On March 4, 2025, the OSBA served the Surrebuttal Testimony of Ms. Forbes.

The March 10, 2025, evidentiary hearing was cancelled by ALJ Brady.

The OSBA submits this Main Brief in accordance with the procedural schedule set forth in the February 4th Prehearing Order.

II. LEGAL STANDARDS

Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

Aqua PA has the burden of proof in this proceeding to establish that it is entitled to approval of the proposed acquisition. 66 Pa. C.S. § 332(a). Aqua PA must demonstrate its case by a preponderance of evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990). In addition, Aqua PA's evidence supporting its proposed acquisition must be more convincing than the evidence presented by any opposing party against it. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

The Commission decision must be supported by substantial evidence in the record. Specifically, “the elements of [a] cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (Pa. 1983). Finally, the evidence must be substantial, legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *Lansberry* at 602); *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

To be granted a certificate of public convenience under 66 Pa. C.S. Section 1102, Aqua PA must meet the requirements of 66 Pa. C.S. Section 1103(a) (Procedure to obtain certificates of public convenience), which states that a “certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” Thus, Aqua PA has the burden of proving that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlth. Ct. 1972). *City of York* requires that the Commission conduct a “net benefits assessment” whereby the proposed substantial benefits of a transaction must outweigh the harms caused by the transaction for the proposed acquisition to be approved. *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1056 (Pa. 2007).

Section 1103(a) also states that the “commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.” 66 Pa.C.S. § 1103(a)

Section 1329 of the Public Utility Code, 66 Pa. C.S. Section 1329(d)(3) provides the Commission with the option to disapprove this, or any other proposed acquisition, that proceeds under Section 1329. Section 1329(d)(3) specifically states that “If the commission issues an order approving the application for acquisition...” 66 Pa.C.S. § 1329(d)(3) thereby providing the Commission the legal basis upon which it can deny Aqua PA’s proposed acquisition.

III. SUMMARY OF ARGUMENT

There is no record evidence demonstrating that the City of Beaver Falls wastewater system is in any way a troubled system. The City’s wastewater system is fully functional and operational.

The small business wastewater service rate could increase by up to 165.61%, because of the proposed acquisition, which is much too high of a rate impact, and is the definition of an unjust and unreasonable rate increase.

The latest Commission Reasonableness Review Ratio (“RRR”) would act as a cap on the amount of the purchase price that would be added to the rate base of the acquiring utility. The RRR, applied to the proposed transaction price of \$41.25 million, calculates that only \$8,454,113 should be included in Aqua PA’s rate base.

Based upon the large rate increase for the City’s customers, as well as the excessive price that Aqua PA is proposed to pay the City for its wastewater system, the OSBA respectfully requests that the Commission deny the proposed acquisition.

In the alternative, if the Commission approves the proposed acquisition, only \$8,454,113 should be included in Aqua PA’s rate base.

IV. ARGUMENT

A. The City's Wastewater System is not in Dire Condition

The OSBA submits that a fundamental issue in determining the Commission's decision when a major utility applies to acquire a wastewater system under Section 1329 is the current condition of to-be-acquired system.

The condition of the City's wastewater system is satisfactory. Aqua PA witness Zachary Martin testified that the City's wastewater system complies with all Pennsylvania Department of Environmental Protection ("DEP") requirements.¹ Aqua PA witness Mark J. Bubel, Sr. testified that the City's wastewater system is currently under a Corrective Action Plan ("CAP") with the DEP, but that no physical upgrades are required by the CAP.²

Aqua PA witness Mr. Bubel also testified that the City's wastewater treatment plant has no issues of non-compliance with the United States Environmental Protection Agency.³

OCA witness Nicholas A. DeMarco concluded that the City's wastewater system is not a troubled system. Mr. DeMarco observed that any repairs or upgrades necessary for the City's wastewater system are in the normal course of its operation, and do not constitute declaring the system "troubled."⁴ Mr. DeMarco summarized his analysis, as follows:

While the Beaver Falls system may have previous compliance issues, it seems to be complying with the CAP, and it appears Beaver Falls is providing adequate, efficient, safe and reasonable service to its customers.

OCA Statement No. 1, at 11.

B. The Customer Rate Impact of the Proposed Transaction

¹ OCA Statement No. 1, at 5.

² OCA Statement No. 1, at 5.

³ OCA Statement No. 1, at 10.

⁴ OCA Statement No. 1, at 10.

Aqua PA witness William Packer testified that the typical residential customer would experience a 165.61% increase in their wastewater rates if the proposed acquisition is completed. Mr. Packer calculated the same percentage increase for the City's small business customers.⁵ These percentage increases, set forth in his Appendix A, are based upon 100% of the revenue requirement deficiency being borne by the acquired customers of the City.

However, this percentage increase does not include the additional rate increases that were the result of the recent Aqua PA rate case.⁶ Furthermore, this percentage increase also does not include the \$10.2 million that Aqua PA plans to spend, over 10 years, to improve the City's wastewater system.⁷

The OSBA submits that a rate increase of over 165%, which will further increase over time, is the definition of an unjust and unreasonable rate increase as prohibited by Section 1301. City of Beaver Falls Mayor Kenya Jones believes that the transaction should be approved by the Commission, and that the Commission shouldn't focus on the massive rate increases proposed.⁸ The OSBA respectfully disagrees.

C. The RRR Metric

The Commission has recently promulgated the so-called Reasonableness Review Ratio ("RRR") that would act as a cap on the amount of the purchase price that would be added to the rate base of the acquiring utility.

⁵ Aqua PA Statement No. 1 Supp, Appendix A, at 1.

⁶ Order, Docket No. R-2024-3047822, R-2024-3047824 (Order entered February 7, 2025).

⁷ OCA Statement No. 1-SR, at 4.

⁸ Aqua PA Statement No. 7, at 5-6.

OSBA witness Rebecca Forbes applied the latest Commission RRR to the proposed transaction price of \$41.25 million and calculated that only \$8,454,113 should be included in Aqua PA's rate base.⁹

The OSBA is cognizant of the Commission's statement in its 2024 *Final Supplemental Implementation Order* ("FSIO")¹⁰ that the establishment of the RRR is not retroactive. However, the Commission stated that it "will consider the unique facts and circumstances of each acquisition and take into account the dates on which the APAs were executed and applications were filed."¹¹

Aqua PA filed its original *Application* on February 17, 2023, its *Amended Application* on March 28, 2024, and the Commission formally accepted the *Amended Application* on December 30, 2024. This time delay, with multiple requests for delays by Aqua PA, may convince the Commission that retroactive application of the RRR to the *Amended Application* is appropriate in this case.

Regardless of the issue of retroactivity, the RRR does illustrate a critical issue in this proceeding – that Aqua PA is significantly overpaying for the City of Beaver Falls wastewater system. Furthermore, the rate impact on both the City's residential and small business customers will be extreme and possibly devastating to the smaller businesses in the City's service territory.

If the City's wastewater system was an unmitigated disaster, requiring Aqua PA to rapidly step in to remedy the hazards, that situation might make a large rate increase impact understandable and even necessary. However, there is no record evidence that the City's wastewater system is anything but fully functional and operational. As OCA witness DeMarco

⁹ OSBA Statement No. 1, at 4.

¹⁰ Docket No. M-2016-2543193 (Order entered July 2, 2024).

¹¹ *FSIO*, at 114.

concluded “it appears Beaver Falls is providing adequate, efficient, safe and reasonable service to its customers.”¹²

¹² OCA Statement No. 1, at 11.

V. CONCLUSION

The Office of Small Business Advocate respectfully requests that the ALJ and the Commission reject the *Amended Application*.

In the alternative, if the Commission approves the *Amended Application*, the RRR metric should be applied to allow only \$8,454,113 to be included in Aqua PA's rate base.

/s/ Steven C. Gray
Steven C. Gray
Senior Attorney
Assistant Small Business Advocate
Attorney ID No. 77538

For: NazAarah Sabree
Small Business Advocate

Commonwealth of Pennsylvania
Office of Small Business Advocate
Forum Place
555 Walnut Street, 1st Floor
Harrisburg, PA 17101

Dated: March 18, 2025

APPENDIX A

Proposed Findings of Fact

Proposed Findings of Fact

1. On February 17, 2023, Aqua Pennsylvania Wastewater, Inc. filed an Application Pursuant to Sections 507, 508, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the City of Beaver Falls.
2. On March 17, 2023, the Office of Small Business Advocate filed a Protest and Notice of Intervention in response to the Application.
3. On June 28, 2023, after a series of deficiency delays filed by Aqua PA, the Commission issued a Secretarial Letter conditionally accepting the Application.
4. On March 28, 2024, Aqua PA filed an Amended Application.
5. On April 4, 2024, the Commission issued a Secretarial Letter withdrawing the Commission's conditional acceptance of the Application.
6. On June 27, 2024, the Commission issued a Secretarial Letter conditionally accepting the Amended Application.
7. On December 30, 2024, the Commission issued a Secretarial Letter formally accepting the Amended Application.
8. Aqua PA witness Zachary Martin testified that the City's wastewater system complies with all Pennsylvania Department of Environmental Protection requirements. OCA Statement No. 1, at 5.
9. Aqua PA witness Mark J. Bubel, Sr. testified that the City's wastewater system is currently under a Corrective Action Plan with the DEP, but that no physical upgrades are required by the CAP. OCA Statement No. 1, at 5.
10. Aqua PA witness Mr. Bubel testified that the City's wastewater treatment plant has no issues of non-compliance with the United States Environmental Protection Agency. OCA Statement No. 1, at 10.
11. Aqua PA witness William Packer testified that the typical small business customer would experience a 165.61% increase in their wastewater rates if the proposed acquisition is completed. This percentage increase is based upon 100% of the revenue requirement deficiency being borne by the acquired customers of the City. Aqua PA Statement No. 1 Supp, Appendix A, at 1.
12. Applying the latest Commission Reasonableness Review Ratio to the proposed transaction price of \$41.25 million results in only \$8,454,113 that should be included in Aqua PA's rate base. OSBA Statement No. 1, at 4.

13. The Commission stated that it “will consider the unique facts and circumstances of each acquisition and take into account the dates on which the APAs were executed and applications were filed” when considering whether to apply the Reasonableness Review Ratio. *2024 Final Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered July 2, 2024).

APPENDIX B

Proposed Conclusions of Law

Proposed Conclusions of Law

1. Section 1301 of the Public Utility Code, 66 Pa. C.S. § 1301, provides that “every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission.”

2. Aqua PA has the burden of proof in this proceeding to establish that it is entitled to approval of the proposed acquisition. 66 Pa. C.S. § 332(a).

3. Aqua PA must demonstrate its case by a preponderance of evidence. *Lansberry v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. Ct. 1990).

4. Aqua PA’s evidence supporting its proposed acquisition must be more convincing than the evidence presented by any opposing party against it. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1950).

5. The Commission decision must be supported by substantial evidence in the record. Specifically, “the elements of [a] cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.” *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (Pa. 1983).

6. The evidence proffered must be substantial, legally credible, and cannot be mere “suspicion” or a “scintilla” of evidence. *Lansberry at 602; Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

7. To be granted a certificate of public convenience under 66 Pa. C.S. Section 1102, Aqua PA must meet the requirements of 66 Pa. C.S. Section 1103(a) (Procedure to obtain certificates of public convenience), which states that a “certificate of public convenience shall be granted by order of the commission, only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”

8. Aqua PA has the burden of proving that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. Cmwlth. Ct. 1972).

9. *City of York* requires that the Commission conduct a “net benefits assessment” whereby the proposed substantial benefits of a transaction must outweigh the harms caused by the transaction for the proposed acquisition to be approved. *Popowsky v. Pa. PUC*, 937 A.2d 1040, 1056 (Pa. 2007).

10. Section 1103(a) of the Public Utility Code, 66 Pa. C.S. Section 1103(a), also states that the “commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.”

11. Section 1329(d)(3) of the Public Utility Code, 66 Pa. C.S. Section 1329(d)(3) specifically states that “If the commission issues an order approving the application for acquisition...” thereby providing the Commission the legal basis upon which it can deny Aqua PA’s proposed acquisition.

APPENDIX C

Proposed Ordering Paragraphs

Proposed Ordering Paragraphs

1. The proposed acquisition set forth in Aqua PA's Amended Application is denied.

Or, in the alternative:

2. The proposed acquisition set forth in Aqua PA's Amended Application is approved.
3. Aqua PA will be allowed to include \$8,454,113 in Aqua PA's rate base.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. pursuant to Sections 1102	:	Docket No. A-2022-3033138
and 1329 of the Public Utility Code for:	:	
(1) approval of the acquisition by Aqua of the	:	
wastewater system assets of the City of Beaver	:	
Falls situated within the City of Beaver Falls	:	
Eastvale Borough, and West Mayfield Borough,	:	
Beaver County, Pennsylvania; (2) approval of	:	
the right of Aqua to begin to offer, render,	:	
furnish and supply wastewater service to the	:	
public in the City of Beaver Falls, Beaver	:	
County, Pennsylvania; (3) an order	:	
approving the acquisition that includes the	:	
ratemaking rate base of the City of Beaver Falls	:	
wastewater system assets pursuant to Section	:	
1329(c)(2) of the Public Utility Code; and (4)	:	
request for Approval of Contracts, between Aqua	:	
and the City of Beaver Falls, Pursuant to Section	:	
507 of the Public Utility Code	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via e-mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

The Honorable F. Joseph Brady
Administrative Law Judge
Pennsylvania Public Utility Commission
Philadelphia District Office
801 Market Street
Philadelphia, PA 19107
fbrady@pa.gov

Melanie El Atieh, Esquire
Harrison W. Breitman, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101
OCAAquaBFalls@paoca.org

Legal Assistant Pam McNeal
pmcneal@pa.gov

Elizabeth Preate Havey, Esquire
James J. Rodgers, Esquire
Dilworth Paxon LLP
1650 Market Street, Suite 1200
Philadelphia, PA 19103
epreatehavey@dilworthlaw.com
jroddgers@dilworthlaw.com

Michael W. Hassell, Esquire
Garrett P. Lent, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101
mhassell@postschell.com
glent@postschell.com

Kimberly A. Joyce, Esquire
Alexander R. Stahl, Esquire
Aqua Pennsylvania
762 W. Lancaster Ave
Bryn Mawr, PA 19010
kajoyce@essential.co
astahl@aquaamerica.com

Keith E. Gabage
607 Plum Run Drive
West Chester, PA 19382
gabagek@gmail.com

DATE: March 18, 2025

Carrie B. Wright, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street, 2nd Floor West
Harrisburg, PA 17105-3265
carwright@pa.gov

/s/ Steven C. Gray _____
Steven C. Gray
Senior Attorney
Assistant Small Business Advocate
Attorney I.D. No. 77538