



COMMONWEALTH OF PENNSYLVANIA

March 28, 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 Brief in Opposition of the Joint Petition for Non-Unanimous Settlement of All Issues, filed on March 25, 2025, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-referenced 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*

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Assistant Small Business Advocate  
Attorney I.D. No. 77538

*Enclosures*

cc: Rebecca Forbes  
Kevin Higgins  
Parties of Record

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**BRIEF IN OPPOSITION OF THE JOINT PETITION  
FOR NON-UNANIMOUS SETTLEMENT  
OF ALL ISSUES  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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**Date: March 28, 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.

On March 18, 2025, the OSBA filed a Main Brief in accordance with the procedural schedule set forth in ALJ Brady’s February 4<sup>th</sup> Prehearing Order.

On March 25, 2025, parties other than the OSBA filed a Joint Petition for Non-Unanimous Settlement of All Issues.

In accordance with ALJ Brady’s November 24, 2025, email message, the OSBA submits this Brief in Opposition to the Joint Petition for Non-Unanimous Settlement of All Issues (“*Joint Petition for NUS*”).

## 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.”

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.” 66 Pa.C.S. § 1103(a). Thus, the *Joint Petition for NUS* must prove 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 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

The *Joint Petition for NUS* proposes that the small business wastewater customer rate would increase by up to approximately 120%. Such an increase is much too high of a rate impact and is the definition of an unjust and unreasonable rate increase. Nor does the *Joint Petition for NUS* proposed rate increase include all the additional increases that the City's small business customers would be subject to.

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 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 ratemaking rate base.

The Legislature allows the Commission the option to approve a Section 1329 acquisition. Such approval is not mandatory.

Based upon the large rate increase for the City's customers, regardless of whether it is a 68% increase in Aqua PA's next rate case and the balance of the 120% later, the OSBA respectfully requests that the ALJ and the Commission deny the *Joint Petition for NUS*.

### IV. ARGUMENT

#### A. The Potential Rate Impact on the City's Small Business Customers is too Severe

The *Joint Petition for NUS* acknowledges that, at the filed acquisition price of \$41.25 million, "the average bill of a City residential customer could increase by approximately 166%." *Joint Petition for NUS, at Paragraph 44(a)*. Aqua PA witness William Packer calculated the

same 166% increase for the City’s small business customers.<sup>1</sup> These percentage increases, set forth in his Appendix A, are based upon 100% of the revenue requirement deficiency being borne by the City’s customers.

The *Joint Petition for NUS* proposes to reduce the \$41.25 million to \$29.9 million that will be included in Aqua PA’s ratemaking rate base.<sup>2</sup> This will result in an average bill increase of approximately 120% instead of the originally proposed 166%<sup>3</sup> if 100% of the revenue requirement deficiency is borne by the City’s customers. However, the 120% percentage increase still does not include the additional rate increases that will result from the recent Aqua PA rate case.<sup>4</sup> Nor does this percentage increase include the \$10.2 million that Aqua PA plans to spend, over 10 years, to improve the City’s wastewater system.<sup>5</sup>

Paragraph 43 of the *Joint Petition for NUS* includes settlement terms that attempt to mitigate the rate impact upon the City’s current customers if the acquisition is approved. First, Paragraph 43 states that “Aqua will propose a rate gradualism plan for all of the City’s customers to pay their full cost of service over time.” This term will, apparently, include the City’s small business customers. Second, Paragraph 43 states that Aqua PA “will propose to limit the base rate increase for the residential customers located within the City’s limits to a 68% rate increase over their existing rates.”

B. The City’s Wastewater System is not in Critical Condition

If the City’s wastewater system was failing, or in any manner seriously “troubled,” the OSBA may view the *Joint Petition for NUS* differently.

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<sup>1</sup> Aqua PA Statement No. 1 Supp, Appendix A, at 1.

<sup>2</sup> *Joint Petition for NUS*, at 2.

<sup>3</sup> Derived by using Aqua PA Statement No. 1 Supp, Appendix A, at a \$29.9 million rate base.

<sup>4</sup> Order, Docket No. R-2024-3047822, R-2024-3047824 (Order entered February 7, 2025).

<sup>5</sup> OCA Statement No. 1-SR, at 4.

However, the record evidence demonstrates that 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

Office of Consumer Advocate ("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."<sup>9</sup> 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. OCA witness DeMarco concluded "it appears Beaver Falls is providing adequate, efficient, safe and reasonable service to its customers."<sup>10</sup>

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<sup>6</sup> OCA Statement No. 1, at 5.

<sup>7</sup> OCA Statement No. 1, at 5.

<sup>8</sup> OCA Statement No. 1, at 10.

<sup>9</sup> OCA Statement No. 1, at 10.

<sup>10</sup> OCA Statement No. 1, at 11.

C. The RRR Metric

The Commission has recently promulgated the 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.

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.<sup>11</sup>

The OSBA is cognizant of the Commission’s statement in its 2024 *Final Supplemental Implementation Order* (“*FSIO*”)<sup>12</sup> 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.”<sup>13</sup>

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 proceeding.

Regardless of the issue of retroactivity, the RRR does illustrate that the *Joint Petition for NUS* proposal which would allow Aqua PA to include \$29,900,000 in ratemaking rate base is far from the RRR target of \$8,454,113.

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<sup>11</sup> OSBA Statement No. 1, at 4.

<sup>12</sup> Docket No. M-2016-2543193 (Order entered July 2, 2024).

<sup>13</sup> *FSIO*, at 114.

D. The Big “If”

The Commission is not legally required to approve this acquisition as set forth in the *Joint Petition for NUS*. 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) (emphasis added). By choosing the word “if” rather than, for example, the word “when,” the Legislature left it to the Commission to decide **if** the proposed Section 1329 acquisition meets the requirements set forth in *City of York* and is in the public interest.

The OSBA respectfully submits that it does not.

## V. CONCLUSION

The record evidence in this proceeding has produced four different dollar amounts that would be included in Aqua PA's ratemaking rate base if the acquisition was approved. As originally filed, the amount was \$41.25 million. The OSBA calculated the RRR amount as \$8,454,113. The OCA witness testified to \$19.6 million.<sup>14</sup> The *Joint Petition for NUS* proposes \$29,900,000.

While the \$29.9 million is a reduction from the originally filed \$41.25 million, the rate impact upon the City's small business customers remains severe. Whether the 120% increase in the City's small business customer bills happens all at once, or even with an initial increase of 68% (with more to come in future rate cases), the increase is simply too much.

Furthermore, the 120% increase in bills is excessive when the City's wastewater system is fully operational and is providing safe and adequate service.

Therefore, the Office of Small Business Advocate respectfully requests that the ALJ and the Commission reject the *Joint Petition for Non-Unanimous Settlement*.

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Dated: March 28, 2025

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<sup>14</sup> OCA Statement No. 2, at 4.

**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	:	
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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).

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