

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	A-2022-3033138
Wastewater, Inc. pursuant to Sections	:	
1102 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	:	

RECOMMENDED DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

In this Application, Aqua Pennsylvania Wastewater, Inc. seeks, *inter alia*, to acquire the wastewater system assets of the City of Beaver Falls. This Decision recommends that the Pennsylvania Public Utility Commission deny the Joint Petition for Non-Unanimous Settlement of All Issues filed March 25, 2025, because it is unenforceable pursuant to Section 1329 of the Public Utility Code. 66 Pa.C.S. § 1329. The statutory deadline is June 28, 2025. Thus, the last reasonable public meeting for the Commission to act is June 18, 2025.

HISTORY OF THE PROCEEDING

On February 17, 2023, the Applicant, Aqua Pennsylvania Wastewater, Inc. (Aqua), filed an Application with the Pennsylvania Public Utility Commission (Commission) requesting: (1) approval of the acquisition by Aqua of the wastewater system assets of the City of Beaver Falls (Beaver Falls); (2) the approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in Beaver Falls; (3) that the Commission include in its order approving the acquisition, the ratemaking rate base of Beaver Falls wastewater system assets as determined under Section 1329(c)(2) of the Public Utility Code (the Code), 66 Pa.C.S. §1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to Section 507 of the Code, 66 Pa.C.S. § 507, for certain municipal contracts that Aqua included in the Application (to the extent necessary), including new service agreements that Aqua 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 and the Contributing Municipalities to be modified because the

agreements contain a rate formula that is inconsistent with the rates charged by Beaver Falls to the Contributing Municipalities.

On March 17, 2023, the Office of Small Business Advocate (OSBA) filed a Notice of Appearance, as well as a Notice of Intervention & Protest, Public Statement, and Verification.

On March 20, 2023, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

On April 5, 2023, West Mayfield Borough, Patterson Heights Borough, Patterson Township, and White Township (collectively, Municipal Protestants) filed Protests. The Municipal Protestants also filed a Joint Verified Letter Request to Reject Aqua's Application as Incomplete or Hold in Abeyance and Request for Expedited Response on April 5, 2023.

On June 28, 2023, the Commission conditionally accepted the above-captioned application.

On February 13, 2024, Patterson Heights Borough, Patterson Township, West Mayfield Borough, and White Township filed Notices of Withdrawal of Protest and Letters of Consent to the Sale of the City of Beaver Falls Wastewater Collection and Treatment Systems to Aqua.

On March 28, 2024, Aqua filed an Amended Application.

On April 4, 2024, the Commission issued a Secretarial Letter withdrawing the Commission's conditional acceptance of the application.

On April 17, 2024, the Office of Consumer Advocate (OCA) filed a Notice of Appearance.

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

On August 21, 2024, Aqua filed a letter advising the Commission of its provision of individualized notice of the proposed acquisition to its water and wastewater customers.

On September 23, 2024, Chris Perkins filed a Protest to the Amended Application.

On October 10, 2024, Keith Gabage filed a Protest to the Amended Application.

On December 23, 2024, Aqua filed a Letter and Certificate of Service verifying service of the Amended Application upon the designated entities, and proof of publication.

On December 30, 2024, the Commission issued a Secretarial Letter accepting Aqua's filing of the Amended Application.

By Notice dated December 30, 2024, a Telephonic Prehearing Conference was scheduled for January 29, 2025, and the matter was assigned to me.

On January 6, 2025, the City of Beaver Falls, Pennsylvania, filed Notice of Appearance.

On January 14, 2025, a Prehearing Order was issued advising the parties of the date and time of the scheduled Prehearing Conference and informing them of the procedures applicable to this proceeding.

On January 28, 2025, Aqua, Beaver Falls, OCA, I&E, and OSBA filed Prehearing Memoranda.

On January 29, 2025, the Prehearing Conference was held as scheduled. Aqua, Beaver Falls, OCA, I&E, and OSBA appeared and were represented by counsel. In addition, Protestant Keith Gabage appeared *pro se*.

On January 30, 2025, a Motion for Protective Order was filed.

On February 3, 2025, a Prehearing Order was issued memorializing certain procedural matters addressed at the Prehearing Conference and establishing a litigation schedule.

On February 4, 2025, a Protective Order was issued.

On February 13, 2025, Keith Gabage notified all parties, via email, that he no longer wished to be an active party.

On February 20, 2025, Telephonic Public Input Hearings were held at 1:00 p.m. and 6:00 p.m. No members of the public participated or provided testimony.

On February 26, 2025, In-Person Public Input Hearings were held in Beaver Falls at 1:00 p.m. and 6:00 p.m. No members of the public participated or provided testimony.

On March 7, 2025, Counsel for Aqua advised me, via e-mail, that the parties had agreed to mutual waivers of cross examination of all witnesses, requested that all witnesses be excused from the evidentiary hearing, and requested that all evidence be permitted to be entered into the record by stipulation and verification. By further e-mail, I granted these requests.

On March 10, 2025, the scheduled Telephonic Evidentiary Hearing was cancelled.

On March 14, 2025, Aqua, Beaver Falls, OCA, I&E, and OSBA filed a Joint Stipulation for Admission of Evidence.

On March 18, 2025, Aqua, Beaver Falls, OCA, I&E, and OSBA filed Main Briefs in accordance with the litigation schedule.

On March 21, 2025, counsel for Aqua notified me, via e-mail, that Aqua, Beaver Falls, OCA, and I&E had reached a settlement in principle with respect to this matter. Counsel for Aqua further informed me that Aqua had been advised OSBA would be opposing the settlement.

On March 25, 2025, Aqua, Beaver Falls, OCA, and I&E (collectively, Joint Petitioners) filed a Joint Petition for Approval of Non-Unanimous Settlement of All Issues (Joint Petition or Settlement). The Settlement included Statements in Support from Aqua, Beaver Falls, OCA, and I&E.

On March 28, 2025, OSBA filed a Brief in Opposition to the Settlement.

Also on March 28, 2025, an Order was issued granting the Joint Stipulation for Admission of Evidence.

TERMS OF THE SETTLEMENT

The Joint Petition for Approval of Non-Unanimous Settlement of All Issues is signed by Aqua, Beaver Falls, OCA, and I&E. Appendix A is the Asset Purchase Agreement (APA) Amendments. Appendix B is Aqua’s Statement in Support. Appendix C is Beaver Falls’ Statement in Support. Appendix D is I&E’s Statement in Support. Appendix E is the OCA’s Statement in Support. Appendix F is the *Pro Forma* Tariff.

The principal terms and conditions of the proposed settlement are contained in Section III, Paragraphs 36 – 71 of the Joint Petition. For purposes of this Recommended Decision, the relevant paragraphs of the Joint Petition can be found at Paragraphs 39 – 42. For ease of reference, the relevant settlement terms are cited below *in verbatim*, with subheadings and paragraph numbering retained as they appear in the Joint Petition, as follows:

C. PURCHASE PRICE AND RATE BASE OF THE ACQUIRED ASSETS

39. The Settlement Parties agree that the rate base of the “Acquired Assets” (as that term is defined in the APA) that are the subject of the Amended Application will be \$29,900,000.

40. Aqua and Beaver Falls agree that the APA, dated as of October 20, 2021, and attached to the Amended Application as **Exhibit B** will be amended to reflect a purchase price of \$37,750,000 and to remove the contract termination date in the APA. A copy of the amendments to the APA are attached hereto as Appendix A.

41. Any goodwill resulting from this transaction that is included on the balance sheet of Aqua shall be excluded from its rate base and any debt or equity issued to finance the goodwill shall be excluded from the ratemaking capital structure for ratemaking purposes.
42. The difference between the purchase price and the allowed rate base will not be recovered in rate base nor via amortization from Aqua's existing customers or from Beaver Falls' current customers.

DISCUSSION

It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Opinion and Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C S Water & Sewer Assocs.*, 74 Pa.P.U.C. 767 (1991). As discussed in more detail below, the proposed settlement in this case contains terms that are illegal and unenforceable and therefore against the public interest.

Essential to the acquisition of a wastewater utility is the establishment of the ratemaking rate base pursuant to Section 1329(c) of the Code, which states:

§ 1329. Valuation of acquired water and wastewater systems.

(c) Ratemaking rate base.--The following apply:

- (1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

- (i) the acquiring public utility during the acquiring public utility's next base rate case; or
 - (ii) the entity in its initial tariff filing.
- (2) The ratemaking rate base of the selling utility *shall be* the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

66 Pa.C.S. § 1329(c) (*emphasis added*).

Thus, in a proposed acquisition such as this one, the ratemaking rate base *shall be* either the lesser of the purchase price or the fair market value (FMV) of Beaver Falls' wastewater system. *Id.* This requirement is not negotiable.

Here, the parties agreed upon a rate base of \$29,900,000. *See* Joint Petition ¶ 39. However, according to the Joint Petition, the parties also agreed to a purchase price of \$37,750,000. *See* Joint Petition ¶ 40. In addition, the Joint Petition is silent regarding the FMV of the Beaver Falls wastewater system. Likewise, the Statements in Support of Beaver Falls, OCA, and I&E do not discuss FMV. Aqua's Statement in Support states the FMV of the system is \$42,245,674. Aqua Stmt. pp. 14-15. Therefore, Paragraph 39 of the Joint Petition is in violation of Section 1329(c)(2) of the Code, since the agreed upon rate base of \$29,900,000 is neither the purchase price, nor the FMV of the wastewater system.

“The enforceability of a settlement agreement is determined according to principles of contract law.” *Baribault v. Zoning Hearing Bd. of Haverford Twp.*, 236 A.3d 112, 118 (Pa. Cmwlth. 2020) (citing *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999)). “It is well-settled law that a contract with an illegal term is void and unenforceable.” *Commonwealth v. Tanner*, 205 A.3d 388, 399 (Pa. Super. 2019) (citing

Fowler v. Scully, 72 Pa. 456, 467 (1872)). Moreover, “an agreement that cannot be performed without violating a statute is illegal and will not be enforced.” *Rittenhouse v. Barclay White Inc.*, 625 A.2d 1208, 1211 (Pa. Super. 1993) (citing *Dippel v. Brunozzi*, 74 A.2d 112 (Pa. 1950) (holding “an agreement which violates a provision of a statute, or which cannot be performed without violation of such a provision, is illegal and void.”)).

Accordingly, I recommend the Joint Petition be denied because an essential term of the Joint Petition (i.e. ¶ 39) is a violation of the Code and unenforceable. Furthermore, since this essential term is illegal, the Settlement as a whole is void and unenforceable. Thus, the remainder of the Joint Petition and its terms are now rendered moot and will not be addressed.

CONCLUSIONS OF LAW

1. The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility. 66 Pa.C.S. § 1329(c)(2).

2. “The enforceability of a settlement agreement is determined according to principles of contract law.” *Baribault v. Zoning Hearing Bd. of Haverford Twp.*, 236 A.3d 112, 118 (Pa. Cmwlth. 2020) (citing *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999)).

3. “[A] contract with an illegal term is void and unenforceable.” *Commonwealth v. Tanner*, 205 A.3d 388, 399 (Pa. Super. 2019) (citing *Fowler v. Scully*, 72 Pa. 456, 467 (1872)).

4. “[A]n agreement that cannot be performed without violating a statute is illegal and will not be enforced.” *Rittenhouse v. Barclay White Inc.*, 625 A.2d 1208, 1211 (Pa. Super. 1993) (citing *Dippel v. Brunozzi*, 74 A.2d 112 (Pa. 1950)).

5. Paragraph 39 of the Joint Petition is a violation of the Public Utility Code and unenforceable. 66 Pa.C.S. § 1329(c)(2).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Non-Unanimous Settlement of All Issues filed March 25, 2025, be denied.

2. That the Application of Aqua Pennsylvania Wastewater, Inc. requesting: (1) approval of the acquisition by Aqua of the wastewater system assets of the City of Beaver Falls (Beaver Falls); (2) the approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in Beaver Falls; (3) that the Commission include in its order approving the acquisition, the ratemaking rate base of Beaver Falls wastewater system assets as determined under §Section 1329(c)(2) of the Public Utility Code (the Code), 66 Pa.C.S. §1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to §Section 507 of the Code, 66 Pa.C.S. § 507, for certain municipal contracts that Aqua included in the Application (to the extent necessary), including new service agreements that Aqua 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

