

COMMONWEALTH OF PENNSYLVANIA



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June 9, 2025

Via Electronic Filing

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Section 1329 Application of Aqua Pennsylvania, Inc. for the Acquisition of the Water System Assets of the Municipal Authority of the Borough of Greenville situated within the Borough of Greenville, Hempfield Township, Sugar Grove Township, and West Salem Township, Mercer County, Pennsylvania
Docket No. A- A-2024-3049015

Dear Secretary Homsher:

Attached for electronic filing, please find the Office of Consumer Advocate's Protest and Public Statement in this proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
Harrison W. Breitman, Esq.
Assistant Consumer Advocate
PA Attorney I.D. # 320580
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Enclosures

cc: The Honorable Charles E. Rainey, Jr. (email only: crainey@pa.gov)
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Certificate of Service

CERTIFICATE OF SERVICE

Section 1329 Application of Aqua :
Pennsylvania, Inc. for the Acquisition of the : Docket No. A-2024-3049015
Water System Assets of the Municipal :
Authority of the Borough of Greenville :
situated within the Borough of Greenville, :
Hempfield Township, Sugar Grove :
Township, and West Salem Township, :
Mercer County, Pennsylvania :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Protest and Public Statement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 9th day of June 2025.

SERVICE BY E-MAIL ONLY

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Dated: June 9, 2025

/s/ Harrison W. Breitman
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Section 1329 Application of Aqua	:	
Pennsylvania, Inc. for the Acquisition of the	:	Docket No. A-2024-3049015
Water System Assets of the Municipal	:	
Authority of the Borough of Greenville	:	
situated within the Borough of Greenville,	:	
Hempfield Township, Sugar Grove	:	
Township, and West Salem Township,	:	
Mercer County, Pennsylvania	:	

PROTEST OF THE
OFFICE OF CONSUMER ADVOCATE

The Office of Consumer Advocate (OCA) files this Protest in the above-captioned Application pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (PUC or Commission), 52 Pa. Code §§5.51-5.53, and Chapter 11 and Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1101, *et seq.* and 66 Pa. C.S. § 1329.

Through this Application, filed on April 25, 2025, Aqua Pennsylvania Inc. (Aqua or Company) seeks Commission approval for the acquisition of the water treatment and distribution system assets (System) of Municipal Authority of the Borough of Greenville (GWA), and the right of Aqua to begin to offer, render, furnish and supply water service in the areas served by the Township in the requested territory. Application at ¶ 5. Aqua also seeks approval of the ratemaking rate base of the assets as determined under Section 1329 of the Public Utility Code. *Id.* In addition, Aqua requests the approval of the Asset Purchase Agreement (APA) with GWA pursuant to Section 507 of the Public Utility Code. Application at ¶ 7. Aqua is a regulated public utility company that furnishes water service to approximately 458,000 customer accounts and wastewater service to approximately 64,000 customer accounts across Pennsylvania, totaling service to

approximately 522,000 customers. Aqua St. 1 at 7. Aqua provides these services across thirty-two counties in the Commonwealth. *Id.*

GWA furnishes water service to approximately 2,731 customers including, 2,401 residential, 251 commercial, 3 industrial, 21 public, and 55 private fire customers in Greenville 2 Borough and portions of Hempfield Township (Hempfield), West Salem Township 3 (West Salem), and Sugar Grove Township (Sugar Grove) in Mercer County. Application at ¶ 30; GWA St. 1 (Strahler) at 4. The OCA files this Protest in order to ensure that the application is approved only if (1) it is found to be in the public interest; (2) it provides substantial, affirmative benefits to the public, and (3) it is in accordance with the Public Utility Code and applicable Commission rules and regulations.

Specifically, the OCA avers as follows:

1. The Protestant is Darryl A. Lawrence, Acting Consumer Advocate, 555 Walnut Street, 5th Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorney for the purpose of receiving service of all documents in this proceeding is Harrison W. Breitman, Assistant Consumer Advocate.

2. The OCA is authorized by law to represent the interests of utility ratepayers in all proceedings before the Commission. 71 P.S. §§ 309-1, *et seq.* This Protest is filed by the OCA to ensure that the interests of Aqua's existing and acquired customers are protected.

3. Section 1102 of the Public Utility Code requires that the Commission issue a Certificate of Public Convenience as a legal prerequisite to an entity offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. §1102(a)(1)-(3).

4. The Code further requires that a certificate shall only be granted upon findings 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). *See City of York v. Pa. P.U.C.*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1973); *see also Popowsky v. Pa. P.U.C.*, 594 Pa. 583; 937 A.2d 1040 (2007).

5. Section 1103(a), as interpreted by *City of York*, requires that the proposed transaction “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” 295 A.2d at 828.

6. Section 1103(a) of the Code provides: “The Commission, in granting such a certificate, may impose such conditions as it may deem to be just and reasonable.” 66 Pa. C.S. § 1103(a). The OCA submits that the Commission can consider the imposition of just and reasonable conditions to ensure that the affirmative substantial public benefit standard is met in this case.

7. Section 1329 of the Public Utility Code, *inter alia*, enables a public utility to use fair market valuation to determine whether the fair market valuation or the purchase price, whichever is less, will be reflected in rate base. 66 Pa. C.S. § 1329(c)(2). This provision is an alternative to the use of original cost, less depreciation, for ratemaking purposes, when a public utility acquires municipal water and wastewater assets. Aqua proposes to pay a purchase price of \$18,000,000 for the water system, which is higher than the depreciated original cost of the system. Application, Exhibit B, APA, Article III. The original cost of the assets, as determined by the engineer’s report, is \$24,179,112, and the original cost less depreciation is \$13,289,277. GWA St. 3 at 18.

8. On or about June 13, 2024, the Commission entered a Final Supplemental Implementation Order (2024 FSIO) to support the use of a Reasonableness Review Ratio (RRR) in Section 1329 cases/applications, stating that:

To evaluate the FMV, we will utilize the [Enterprise Value (EV)] of the investor-owned utilities (IOUs) as a relevant proxy. As noted in the 2024 TSIO, the EV is a comprehensive valuation of the IOUs and is readily available to the public for each of these IOUs given their publicly traded status. To determine the [depreciated

original cost (DOC)] of these IOUs, we will utilize the [Net Property, Plant, & Equipment (Net PP&E)] included on each of the company's balance sheets. We reiterate that Net PP&E is an appropriate proxy for DOC since it represents the total value of the physical assets of the company less depreciation. The RRR is the ratio of these two numbers, with EV being the numerator and Net PP&E being the denominator, such that Reasonableness Review Ratio = Enterprise Value / Net Property, Plant & Equipment.”

Valuation of Acquired Municipal Water & Wastewater Systems – Act 12 of 2016 Implementation, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered June 13, 2024) (2024 FSIO), 2024 FSIO at 103. The OCA acknowledges that the APA for this acquisition was signed prior to the issuance of the 2024 FSIO. To that end, though, the OCA also acknowledges that the proposed purchase price in this instant transaction is less than the value of what the purchase price would be applying the RRR in this case.

9. An increase in rates involves a substantial property right and ratepayers are entitled to notice and opportunity to be heard regarding a Commission administrative proceeding in which a decision is made regarding rates under the 14th Amendment of the United States Constitution (U.S. Const. amend. XIV, § 1), 52 Pa. Code Section 53.45(b)(1-4) and the order entered in *McCloskey v. Pa. P.U.C.*, 1624 CD 2017 (Oct. 11, 2018), as well as the Commission's Final Supplemental Implementation Order entered on February 8, 2019 at Docket No. M-2016-2543193. The OCA requests that a public input hearing be scheduled with notice to Aqua's existing customers and to GWA's existing customers. Moreover, the OCA requests that a public input hearing be held no later than approximately four weeks after the issuance of the Secretarial Letter indicating final acceptance. Expediting the scheduling of the public input hearing will ensure that both the existing and acquired customers have a reasonable opportunity to be heard.

10. The Aqua's Utility Valuation Expert (UVE) appraisal conducted by Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) indicated a fair market value of \$33,246,833. Aqua St. 6 at 27. GWA's UVE appraisal conducted ScottMadden, Inc.

(ScottMadden) indicated a fair market value of \$20,512,657. Application at ¶ 57. The average of the fair market value appraisals of the buyer's UVE and the seller's UVE is \$26,879,745. *Id.* Given that the purchase price of \$18,000,000 is lower than the average of the appraisals, Aqua requests approval to include \$18,000,000 in its ratemaking rate base. Application at ¶ 54. The costs of the valuation experts' appraisals were a total of \$65,000 to date, with \$35,000 for ScottMadden and \$30,000 to date for Gannett Fleming. GWA St. 3; Aqua St. 6. Aqua estimates that it will incur transaction and closing costs of \$359,019, which it intends to include in its next rate base. Application ¶ 59.

11. Aqua and GWA agreed that Aqua will initially adopt GWA's rates in effect at the time of closing of the Transaction. Section 7.04 of the APA; Aqua St. 1 at 9.

12. Copies of the notices that will be sent to customers of Aqua and to customers of GWA describing the filing and the anticipated effect on rates were provided in the Application. *Id.*

13. Aqua avers that the rate commitments discussed in the APA do not fall within the definition of "rate stabilization plan" as defined by 66 Pa. C.S. Section 1329 because GWA is not included in Aqua's currently pending base rate case, there is no contractual restriction and the Company does not anticipate that rates for existing GWA customers will be held constant after the next base rate case. Aqua St. 1 at 10. As such, base rates for the GWA customers may be adjusted in Aqua's first base rate case which includes the GWA's system, including but not limited to the initiation of a DSIC charge. *Id.*

14. Preliminarily, the OCA has identified the following areas that require further consideration by the Commission and must be resolved prior to Commission approval of this application pursuant to Chapter 11 and Section 1329 of the Public Utility Code.

a. The OCA will investigate the data and information provided in support of each valuation. Moreover, the OCA will investigate the information in addition to the

valuation information provided with the Application that may be required to determine whether Aqua's ratemaking proposals are reasonable.

b. GWA also anticipates that the system will need an entirely new water treatment plant at or near 2033, with an estimated cost of \$10 million to \$12 million dollars. GWA St. 3 at 23. The OCA will review this claim.

c. Regarding the acquired service territory, the OCA will examine the proposed rates and tariffs to determine if they are just, reasonable and in accord with the Public Utility Code. In the customer notices attached to its Application, Aqua estimates the potential, incremental impact of the GWA acquisition on the rates established after its next base rate case, if the acquisition is approved. Aqua St. 1 at 9-10. As presented in Aqua's notices to GWA customers, Aqua estimates an across-the-board increase of 64.66% to the acquired GWA water customers. Aqua St. 1 at Appendix A. As presented in Aqua's notice to its current water customers, Aqua estimates that residential water customer rates will increase by 0.21%, or \$0.19 per month, for average usage of 3,870 gallons per month. Application at Exh. 11. The impact that the costs will have on the rates of existing and acquired customers must be determined to assess the benefits and detriments of the acquisition.

15. The OCA submits that additional information is necessary to determine if the proposed rates and Aqua's request for an approved ratemaking rate base of \$18,000,000 for GWA's system are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicants.

16. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua's existing customers and the acquired customers.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission not approve this Application at this time due to the issues raised above and the need for additional information. The Office of Consumer Advocate further requests that the Pennsylvania Public Utility Commission investigate and hold full hearings, including a public input hearing for the buyer and seller's customers, held approximately four weeks after the Commission issues a Secretarial Letter indicating final acceptance of the Application.

Respectfully submitted,

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Dated: June 9, 2025

PUBLIC STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
PURSUANT TO 71 P.S. SECTION 309-4(e)

Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 9, 1976, authorizes the Consumer Advocate to represent the interests of consumers before the Pennsylvania Public Utility Commission (Commission). In accordance with Act 161, and for the following reasons, the Interim Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania Inc. (Aqua or Company) of the Municipal Authority of the Borough of Greenville (GWA); water system and treatment assets.

Aqua is a regulated public utility company that furnishes service to approximately 522,000 customer accounts across Pennsylvania, with 458,000 of those accounts being water service accounts. GWA furnishes water service to approximately 2,731 customers, which are comprised of 2,401 residential, 251 commercial, 3 industrial, 21 public, and 55 private fire customers within the Borough of Greenville, Hempfield Township, Sugar Grove Township, and West Salem Township, Mercer County, Pennsylvania.

The objective of the Office of Consumer Advocate (OCA) in filing a Protest in this matter is to protect the interests of Aqua's current customers and the acquired GWA customers. The OCA will endeavor to ensure that this application is not approved unless it can be demonstrated that the acquisition affirmatively benefits the public in some substantial way. Additionally, the OCA will request the Public Utility Commission order all necessary and proper customer protections, which are justified, reasonable, and in accordance with sound ratemaking principles.