

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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May 25, 2018

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

Re: Application of Aqua Pennsylvania  
Wastewater, Inc. Pursuant to Sections 1102  
and 1329 of the Public Utility Code for  
Approval of its Acquisition of the Wastewater  
System Assets of East Bradford Township  
Docket No. A-2018-3001582

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Protest and Public Statement in the  
above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
E-Mail: [CHoover@paoca.org](mailto:CHoover@paoca.org)

Enclosures:

cc: Office of Administrative Law Judge  
Office of Special Assistants  
Bureau of Technical Utility Services (e-mail only)  
Certificate of Service  
\*250190

CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania :  
Wastewater, Inc. Pursuant to Section 1102 :  
and 1329 of the Public Utility Code for : Docket No. A-2018-3001582  
Approval of its Acquisition of the :  
Wastewater System Assets of East Bradford :  
Township :

I hereby certify that I have this day 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 25<sup>th</sup> day of May 2018.

SERVICE BY E-MAIL and INTER-OFFICE MAIL

Carrie B. Wright, Esquire  
Erika McLain, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pa 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL, POSTAGE PREPAID

Thomas T. Niesen, Esquire  
Thomas, Niesen, & Thomas, LLC  
212 Locust Street  
Suite 302  
Harrisburg, PA 17101

Office of Small Business Advocate  
300 North Street  
Suite 202  
Harrisburg, PA 17101

/s/ Christine Maloni Hoover  
Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
PA Attorney I.D. # 50026  
E-Mail: [CHoover@paoca.org](mailto:CHoover@paoca.org)

Counsel for Office of Consumer Advocate  
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Harrisburg, PA 17101-1923  
Phone: (717) 783-5048  
Fax: (717) 783-7152  
Dated: May 25, 2018  
\*250193

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :  
Wastewater, Inc. Pursuant to Sections 1102 :  
and 1329 of the Public Utility Code for : Docket No. A-2018-3001582  
Approval of its Acquisition of the Wastewater :  
System Assets of East Bradford Township :

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PROTEST OF THE  
OFFICE OF CONSUMER ADVOCATE

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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, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) seeks Commission approval for the acquisition of the wastewater assets of East Bradford Township (Township), Chester County, the right of Aqua to provide wastewater service in the areas served by the Township and the approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. East Bradford Township provides sewage collection service to 1,248 customers in Chester County. Application at 3.

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 Tanya J. McCloskey, Acting Consumer Advocate, 555 Walnut Street, 5<sup>th</sup> Floor, Forum Place, Harrisburg, PA 17101-1923. Protestant's attorney for the purpose of receiving service of all documents in this proceeding is Christine Maloni Hoover, Senior 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 to-be-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 explicitly allows the Commission to impose conditions upon the issuance of a Certificate of Public Convenience. 66 Pa. C.S. § 1103(a). 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.” The OCA submits that the Commission may wish to consider the imposition of conditions in order to ensure that the public interest standard is met.

6. 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 recently added 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 \$5 million purchase price to the Township plus Aqua will assume certain liabilities and will pay certain out of pocket costs incurred by East Bradford Township. Application at 5-6. The original cost of the assets is \$8,294,931 with a related depreciation reserve of \$2,820,983.<sup>1</sup> Application at 5.

7. According to the Application, the average of the fair market value appraisals “is \$8,643,676 – determined by \$8,050,000 presented in the appraisal of Gannett Fleming and \$9,237,351 presented in the appraisal of AUS.” Application at 15. The valuation experts were paid \$46,573 for the Fair Market Value Appraisal Reports. Id. Aqua also indicates that it will incur transaction and closing costs of \$60,000 which will be included in rate base. Id.

8. Aqua proposes to charge customers the East Bradford Township sanitary wastewater rates in effect at closing. Application at 8. Those rates will remain in effect until Aqua’s next base rate case. Id.

9. Preliminarily, the OCA has identified the following areas that

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<sup>1</sup> Aqua indicates that a series of capped sewers (pipe and manholes) are included in the original cost, with an estimated original cost value of \$100,000. Application at 5. Aqua indicates that Aqua will categorize the capped sewer pipe and manholes as plant held for future use upon closing. Id. In addition, Aqua indicates that the area of capped sewers is not included in the Requested Territory. Id.

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.

10. The valuation information provided with the Application is not sufficient to determine whether Aqua's ratemaking proposals are reasonable. The OCA will review the data and information provided in support of each valuation.

11. Based on the Township's current rates, Aqua would charge a flat rate to residential customers based on whether the dwelling is a townhouse or a single family dwelling. Application at 9; Exh. G. A residential customer in a townhouse is charged a quarterly rate of \$158.16 and a residential customer in a single family home is charged a quarterly rate of \$204.27. Id. Commercial and industrial customers have a minimum quarterly rate that includes 6,000 gallons per quarter and a volumetric rate. Id. Commercial and industrial customers are also charged a per EDU fee. Id. Aqua estimates annual revenue of \$1,082,403 from East Bradford Township customers. Id.

12. Information is provided regarding the estimated costs of planned investment in the system. Aqua estimates that it will spend \$1.8 million on capital improvements over the next ten years. Application Exh. V (Bubel testimony at page 7). The OCA will examine the information to determine what impact the capital improvements will have on the cost of service. The OCA will also examine the impact that the costs will have on the rates of existing and acquired customers.

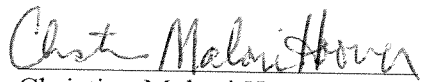
13. The OCA submits that additional information is necessary to determine how the transaction will substantially and affirmatively benefit Aqua's

existing customers.

14. The OCA submits that additional information is necessary to determine if the proposed rates, and Aqua's request for an approved rate base of \$5 million for the East Bradford Township acquisition are reasonable. The OCA reserves the right to raise additional issues as the case proceeds and further information is obtained from the Applicant.

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 regarding the Application.

Respectfully submitted,



Christine Maloni Hoover  
Senior Assistant Consumer Advocate  
Pa. Attorney No. 50026  
[CHoover@paoca.org](mailto:CHoover@paoca.org)

Counsel for:

Tanya J. McCloskey  
Acting Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: May 25, 2018  
250104



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 Acting Consumer Advocate determined to file a Protest and participate in proceedings before the Commission involving the proposed acquisition by Aqua Pennsylvania Wastewater of the East Bradford Township (Township) sanitary wastewater assets.

The objective of the Acting Consumer Advocate in filing a Protest in this matter is to protect the interests of Aqua's current customers and the Township customers. The Acting Consumer Advocate will endeavor to prevent ratepayers from paying costs that are unreasonable or unduly discriminatory, or otherwise violative of the Public Utility Code. The Acting Consumer Advocate will investigate the proposed acquisition and request the Public Utility Commission order all necessary and proper customer protections which are justified, reasonable, and in accordance with sound ratemaking principles.

Aqua serves approximately 20,000 wastewater customer accounts in Pennsylvania. The Township serves approximately 1,248 customers in a portion of East Bradford Township, Chester County, Pennsylvania.