



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

May 25, 2012

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

**Re: Pennsylvania Public Utility Commission v. Aqua Pennsylvania, Inc.
Docket No. R-2011-2267958**

Dear Secretary Chiavetta:

I am delivering for filing today the original plus nine (9) copies of the Exceptions, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties.

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

Sincerely,

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

Enclosures

cc: Cheryl Walker Davis
Office of Special Assistants

Brian Kalcic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

v.

AQUA PENNSYLVANIA, INC.

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DOCKET NO. R-2011-2267958

**EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

For: Steven C. Gray
Acting Small Business Advocate
Attorney ID No. 77538

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101

Dated: May 25, 2012

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I. INTRODUCTION

On November 18, 2011, Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) filed Supplement No. 115 to Tariff Water-Pa. P.U.C. No. 1 (“Supplement No. 115”), to become effective January 18, 2013.

Supplement No. 115 seeks approval of rates and rate changes which would increase total annual operating revenues by \$38.6 million. The Office of Small Business Advocate (“OSBA”) filed a Complaint alleging that the materials filed by Aqua may be insufficient to justify the rate increase requested and that the Company’s present and proposed rates, rules, and conditions of service may be unjust, unreasonable, unduly discriminatory, and otherwise contrary to law, particularly as they pertain to small business customers.

By Order entered January 12, 2012, the proposed Supplement No. 115 was suspended by operation of law until August 18, 2012. The Commission ordered an investigation into the lawfulness, justness, and reasonableness of the rates, rules, and regulations contained in the proposed Supplement No. 115.

The Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the OSBA, and The Aqua Large User’s Group (“AquaLUG”) entered appearances as active parties in this case. Other active parties include Mr. Robert Curtius and Mr. Jerome Linden. Several pro se parties chose to participate as inactive parties to this proceeding.

Administrative Law Judges (“ALJs”) Angela T. Jones and Darlene D. Heep were assigned to this proceeding and issued a Prehearing Conference Order on January 20, 2012.

Five public input hearings were held during the month of March, 2012.

Aqua served its direct testimony with its filing on November 18, 2012. Other parties' served direct testimony on February 17, 2012. Rebuttal testimony was served on March 19, 2012, and surrebuttal testimony on April 5, 2012.

Evidentiary hearings took place on one day, April 10, 2012, at which Mr. Curtius cross-examined several witnesses, and the parties stipulated to the testimony and agreed to admit all testimony and exhibits into the record without objection.

Aqua, I&E, OCA, and AquaLUG, reached an agreement in principle to settle the rate case. On April 20, 2012, a Joint Petition for Settlement ("Settlement") and Statements in Support of the Settlement were submitted to the ALJs.

The OSBA did not join in the Settlement, but filed a letter dated April 19, 2012, stating that it did not oppose the Settlement. On May 2, 2012, Mr. Linden and Mr. Curtius filed objections to the Settlement. Several other inactive parties chose to support or to oppose the Settlement. On May 3, 2012, Aqua filed its response to Mr. Curtius' objections to the Settlement.

The Commission issued the Recommended Decision ("RD") of ALJs Jones and Heep on May 18, 2012. Exceptions are due one week later, on May 25, 2012.

The OSBA submits the following Exceptions to the Recommended Decision.

II. EXCEPTIONS

A. **EXCEPTION NO. 1: The ALJs erred in Their Characterization of the OSBA's Position with Respect to the Company's Current Return on Equity ("ROE") (RD at 33, 44).**

In the RD, the ALJs mischaracterize the position of the OSBA with respect to the Company's current ROE. In two separate places, the ALJs characterize the OSBA's position on this issue as supporting the notion that the Company's current ROE is "inadequate," as evidenced by the ALJs' following statements:

The non-Company public advocates all provided testimony to calculate an ROE for future earnings. (I&E Stmt. 1, OCA Stmt 2S and OSBA Stmt 1.) *Implicit in the presentation of a ROE for future earnings is the premise that the current ROE is inadequate.*¹

*It is agreed that the record evidence demonstrated a rate of return on common at 9.49% as inadequate when evaluating future, projected and forecasted earnings of similar companies used as a barometer group. See OCA Stmt. 1 and 1-S, I&E Stmt. 1 and OSBA Stmt. 1. Furthermore, the non-Company public advocate witnesses failed to rebut the statement made by the Company that its current ROE is inadequate and therefore justifies the need for a rate increase.*²

These statements mischaracterize the OSBA's position. In both instances, the ALJs reference OSBA Statement No. 1, and thereby imply that OSBA witness Brian Kalcic agreed that the Company's current ROE is inadequate.

OSBA witness Mr. Kalcic never testified or implied that the Company's current ROE of 9.49% was inadequate, contrary to these two statements by the ALJs. Unlike other

¹ RD at 36 (emphasis added).

² RD at 44 (emphasis added).

witnesses in this proceeding, Mr. Kalcic did not recommend a specific ROE level for Aqua. Instead, Mr. Kalcic testified that the Commission should award Aqua an ROE no greater than 10.00% in this proceeding.³ Logically, the fact that Aqua's current ROE of 9.49% is below the OSBA's recommended ROE *cap* of 10.00% says nothing about whether or not an ROE of 9.49% is inadequate. Therefore, the ALJs erred in concluding that the OSBA agreed that the Company's current ROE of 9.49% is inadequate.

B. EXCEPTION NO. 2: The ALJs Erred in Stating that the OSBA Failed to Rebut The Statement Made by the Company that the ROE was Inadequate and Therefore Justifies the Need for a Rate Increase. (RD at 36).

As quoted in Exception 1, above, on page 36 of the RD the ALJs conclude that "the non-Company public advocate witnesses failed to rebut the statement made by the Company that its current ROE is inadequate and therefore justifies the need for a rate increase." Since Mr. Kalcic offered surrebuttal testimony to the Company in support of the OSBA's recommended ROE cap of 10.0%, the record does not support the ALJ's conclusion with regard to the OSBA.⁴ Once again, the ALJs erred in concluding that the OSBA agreed that the Company's current ROE is inadequate.

³ See OSBA Statement No. 1 at pgs. 5-7.

⁴ See OSBA Statement No. 3 at pgs. 3-4.

C. EXCEPTION NO. 3: The ALJs Erred in Using Mr. Kalcic’s “Method” to Assign an ROE in the Context of a Black Box Settlement, and Moreover, the ALJs Altered the Terms of this Settlement by Assigning the ROE. (RD at 38-39).

In the RD, the ALJs overstepped their bounds in assigning an ROE to the Company using Mr. Kalcic’s methodology. The ALJs stated:

The issue before the undersigned is whether it is reasonable, just and in the public interest to permit the ROE to be set at 10.2% for purposes of the DSIC as agreed to by the signatory parties to the Joint Settlement. I&E argued that setting the ROE at 10.2% for purposes of the DSIC provides a period of stability for both Aqua and its customers (Joint Settlement Appendix D at 6-7, ¶ 10.c.) Furthermore, although the Joint Settlement did not assign an ROE, the undersigned ALJs used the method of the OSBA witness, Mr. Kalcic, to approximate a ROE with the \$16.7 million increase. See attachment 1.⁵

Presumably, the ALJs used Mr. Kalcic’s “method” as set forth in his direct testimony, at Exhibit BK-1. What the ALJs fail to realize is that Mr. Kalcic’s Exhibit BK-1 was based on the revenue requirement components included in the Company’s filed case, not on the various revenue requirement assumptions that the settling parties may have employed to arrive at a \$16.7 million increase. Not only did the ALJs use Mr. Kalcic’s methodology in a way that it was not intended to be used, the use of Mr. Kalcic’s spreadsheet implies that the OSBA approves of the ALJs’ approach for calculating an ROE for the Company under the settlement. Neither of these scenarios is endorsed by the OSBA, and both should be ignored by the Commission.

The OSBA notes that it did not join in the Settlement, but did not oppose the Settlement for reasons of its own. The agreement reached among the settling parties has been altered by the ALJs’ attempt to approximate an ROE based upon the final agreed-to

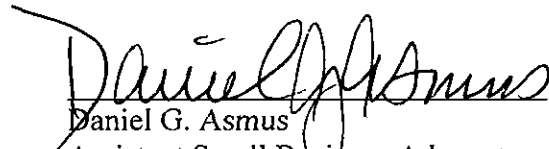
⁵ RD at 38-39.

revenue number using a methodology propounded by a party that did not join in the Joint Settlement. In a black box settlement, the underlying ROE is confidential, and publishing an estimate of that ROE in a RD, as has happened here, may constitute grounds for the withdrawal of Aqua and/or any of the other parties from the Settlement.

III. CONCLUSION

For the reasons set forth in its letter of April 19, 2012, as well as the additional factors enumerated in these Exceptions, the OSBA respectfully requests that the Commission ignore the portions of the Recommended Decision referenced herein when determining whether to approve the Settlement in its entirety without any modifications.

Respectfully submitted,


Daniel G. Asmus
Assistant Small Business Advocate
Attorney I.D. No. 83789

For:

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

Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: May 25, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
v. : **Docket No. R-2011-2267958**
Aqua Pennsylvania, Inc. :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Exceptions, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

Hon. Angela T. Jones
Administrative Law Judge
Pa. Public Utility Commission
801 Market Street - #4063
Philadelphia, PA 19107
(215) 560-2105
(215) 560-3133 (fax)
angeljones@pa.gov

Kimberly A. Joyce, Esquire
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
(610) 525-1400
(610) 519-0989 (fax)
KAJoyce@aquaamerica.com

Thomas P. Gadsden, Esquire
Anthony C. DeCusatis, Esquire
Brooke E. Leach, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103
(215) 963-5234
(215) 963-5001 (fax)
tgadsden@morganlewis.com
adecusatis@morganlewis.com
bleach@morganlewis.com

Max E. Stoner
Glance Associates, Inc.
3705 Trindle Road
Camp Hill, PA 17011
(717) 731-1579
Max@glanceeng.com
(E-mail Only)

Hon. Darlene D. Heep
Administrative Law Judge
Pa. Public Utility Commission
801 Market Street - #4063
Philadelphia, PA 19107
(215) 560-2105
(215) 560-3133 (fax)
dheep@pa.gov

Dianne E. Dusman, Esquire
Shaun A. Sparks, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
OCA-SERVICE-AQUA-R20112267958@paoca.org
(E-mail and Hand Delivery)

Carrie B. Wright, Esquire
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
carwright@pa.gov
(E-mail and Hand Delivery)

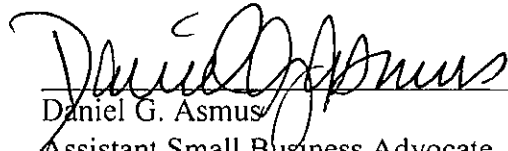
Jerome Linden
201 Cornell Drive
Bryn Mawr, PA 19010
(First-class Mail Only)

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PA PUC
SECRETARY'S BUREAU

Robert W. Curtius
949 Foss Avenue
Drexel Hill, PA 19026
(First-class Mail Only)

Scott J. Rubin
333 Oak Lane
Bloomsburg, PA 17815
scott.j.rubin@gmail.com
(E-mail Only)

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
cmincavage@mwn.com
abakare@mwn.com



Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

Date: May 25, 2012

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