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July 24, 2017

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

In re: Docket No. A-2017-2605434

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 Limerick Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Answer to the Motion to Strike of the Office of Consumer Advocate. Copies of the Answer are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Steven K. Haas, Presiding

Application of Aqua Pennsylvania Wastewater, Inc., : Docket No. A-2017-2605434
**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 Limerick :
Township situated within a portion of Limerick :
Township and within a portion of the Borough of :
Royersford, Montgomery County, Pennsylvania; (2) :
approval of the right of Aqua to begin to offer, render, :
furnish and supply wastewater service to the public in :
a portion of Limerick Township, Montgomery County, :
Pennsylvania; and (3) an order approving the :
acquisition that includes the ratemaking rate base of :
the Limerick Township wastewater system assets :
pursuant to Section 1329(c)(2) of the Public Utility :
Code. :**

ANSWER OF AQUA PENNSYLVANIA WASTEWATER, INC.
TO THE MOTION TO STRIKE OF THE OFFICE
OF CONSUMER ADVOCATE

AND NOW comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”), by its attorneys, and, pursuant to 52 Pa. Code Section 5.103, answers the Motion to Strike (the “OCA Motion”) of the Office of Consumer Advocate (“OCA”). In opposition to the Motion, Aqua submits as follows:

INTRODUCTION

1. This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on May 19, 2017, for approval of its acquisition of the wastewater system assets of Limerick Township pursuant to Sections 1102 and 1329 of the Public Utility Code.

2. Citing 52 Pa. Code § 5.243(e), the OCA Motion asks Judge Haas to strike the rebuttal testimony of Harold Walker, III, of Gannett Fleming Valuation and Rate Consultants, LLC (“GF”)¹ and Adrienne M. Vicari, P.E. of Herbert Rowland & Grubic, Inc. (“HRG”)² that rebuts the direct testimony of OCA witnesses Ashley E. Everette and Glenn A. Watkins.

3. GF and HRG are the Utility Valuation Experts engaged by Aqua and Limerick Township, respectively, pursuant to Section 1329, to conduct fair market value appraisals of the Limerick wastewater system.

4. The Fair Market Valuation Appraisals of GF and HRG were included with Aqua’s Application as Exhibit Q and Exhibit R, respectively, when the Application was filed with the Commission and served on the OCA on May 19, 2017. Section 1329(d)(1) requires that copies of the two appraisals be included as attachments to the Application of the acquiring public utility. Verifications of Mr. Walker of GF and Ms. Vicari of HRG were included with the Appraisals as part of the Application.

5. Using the data and information presented in the Appraisals, Ms. Everette and Mr. Watkins prepared direct testimony and, the OCA, on July 3, 2017, served OCA Statements Nos. 1 and 2, the direct testimony of Ms. Everette and Mr. Watkins. The testimony of Ms. Everette and Mr. Watkins analyzed and proposed adjustments to the Fair Market Value Appraisals of GF and HRG.

6. Mr. Walker and Ms. Vicari reviewed the testimony of Ms. Everette and Mr. Watkins and prepared rebuttal testimony. On July 11, 2017, Aqua served Aqua Statements Nos. 3R and 4R, the rebuttal testimony of Mr. Walker and Ms. Vicari rebutting the testimony of

¹ Aqua Statement No. 3R.

² Aqua Statement No. 4R.

OCA witnesses Everette and Watkins. Aqua had identified Mr. Walker and Ms. Vicari as potential witnesses in its Prehearing Memorandum.

7. Exhibit Q and Exhibit R were admitted into the record as Exhibit Q and Exhibit R to Aqua Exhibit No. 1. Objections of Aqua to the admission of parts of OCA Statement No. 1 and OCA Statement No. 2, in its entirety, addressing fair market value appraisal methodologies and results were denied and those statements of testimony were admitted into the record.

8. The Motion of the OCA to Strike the testimony of Mr. Walker and Ms. Vicari rebutting the now record testimony of Ms. Everette and Mr. Watkins remains for resolution.

THE OCA MOTION

9. The OCA Motion claims that the challenged testimony of Mr. Walker and Ms. Vicari is not rebuttal testimony but rather Aqua's "case-in-chief" which Aqua should have presented as "direct testimony." OCA's characterization of the rebuttal testimony is wholly inaccurate.

10. Each and every question and answer of the rebuttal testimony that OCA seeks to strike is in rebuttal to, and, indeed, in direct response to, the direct testimony of OCA witness Everette and OCA witness Watkins, which has been admitted into the record. Each and every question and/or answer and/or topic discussed in the rebuttal testimony cites a specific page of the OCA direct testimony being rebutted. The challenged testimony is clearly rebuttal in nature; not at all Aqua's "case-in-chief;" and not prohibited by 52 Pa. Code § 5.243(e).

11. The OCA Motion also claims "surprise" and "ambush." This characterization is, likewise, wholly inaccurate. The litigation schedule adopted at the Prehearing Conference and reflected in the Order Establishing Litigation Schedule contemplated the submission of rebuttal testimony and Aqua identified Mr. Walker and Ms. Vicari as possible witnesses in its

Prehearing Memorandum. The OCA, in any event, can be neither surprised nor ambushed by testimony rebutting the direct testimony of its witnesses.

12. Although not entirely clear from the OCA Motion, the OCA may be suggesting that the “surprise” and “ambush” is because Mr. Walker and Ms. Vicari did not sponsor direct testimony. If that is the basis for the contention then Aqua submits that the OCA Motion is an attempt to complicate what the General Assembly envisioned as a six month streamlined process under recently enacted Section 1329. There is no requirement within Section 1329 that the Utility Valuation Experts present direct testimony. The Section only requires that copies of their Appraisals be included as attachments to the Application.

13. The OCA Motion further claims that the challenged rebuttal testimony compromises its due process rights. The OCA’s due process rights, however, are not compromised, in any way, by a rebuttal response to the direct testimony of its witnesses. Striking the rebuttal testimony of Mr. Walker and Ms. Vicari would, however, compromise the due process rights of Aqua. OCA’s due process rights were fully protected, in any event. Ms. Everette and Mr. Watkins presented surrebuttal testimony in response to the challenged rebuttal testimony and the OCA had the opportunity to cross examine Mr. Walker and Ms. Vicari at the evidentiary hearing.

14. The cases cited by the OCA in Paragraph 8 of the OCA Motion are not at all analogous to this situation. No new claim is presented in the rebuttal testimony of Mr. Walker and Ms. Vicari. The challenged rebuttal testimony, rather, rebuts the direct testimony of OCA witnesses Everette and Watkins.

15. In an attempt to support the striking of the rebuttal testimony of two witnesses, the OCA cites evidence of its witness Watkins that Ms. Vicari’s rebuttal testimony in a single

area – the going value adjustment – “appears” to be different than the original rationale in the HRG appraisal. This isolated claim of the OCA witness is a matter for briefing and not a reason for striking testimony.

16. At the evidentiary hearings on July 20 and 21, 2017, Aqua moved to strike the direct and surrebuttal testimony of Mr. Watkins and portions of the direct and surrebuttal testimony of Ms. Everette addressing fair market value methodologies and conclusions. Judge Haas denied the motions. Having denied the motions, it is reasonable and appropriate that Aqua be permitted to submit testimony from the Utility Valuation Experts rebutting the testimony of the OCA witnesses.

17. A similar motion to strike portions of the Utility Valuation Experts’ rebuttal testimony in the New Garden Application proceeding at Docket No. A-2016-2580061 was denied by Judge Haas in his Order Denying Office of Consumer Advocate’s Motion to Strike Rebuttal Testimony dated February 24, 2017.


CONCLUSION

18. For all the reasons set forth above, the OCA Motion should be denied. OCA has failed to present any reason or justification for striking the testimony of Mr. Walker and Ms. Vicari that rebuts the direct testimony of OCA witnesses Everette and Watkins.

WHEREFORE Aqua Pennsylvania Wastewater, Inc. asks that Administrative Law Judge Haas deny the Motion to Strike of the Office Consumer Advocate.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By  _____

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Date: July 24, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Steven K. Haas, Presiding

**Application of Aqua Pennsylvania Wastewater, Inc., : Docket No. A-2017-2605434
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 Limerick Township :
situated within a portion of Limerick Township and :
within a portion of the Borough of Royersford, :
Montgomery County, Pennsylvania; (2) approval of the :
right of Aqua to begin to offer, render, furnish and :
supply wastewater service to the public in a portion of :
Limerick Township, Montgomery County, :
Pennsylvania; and (3) an order approving the :
acquisition that includes the ratemaking rate base of the :
Limerick Township wastewater system assets pursuant :
to Section 1329(c)(2) of the Public Utility Code :**

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of July, 2017, served a true and correct copy of the foregoing Answer of Aqua Pennsylvania Wastewater, Inc. to the Motion to Strike of the Office of Consumer Advocate, upon the persons and in the manner set forth below:

VIA ELECTRONIC AND 1ST CLASS MAIL

The Honorable Steven K. Haas
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