



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

October 10, 2017

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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 Limerick Township  
Docket No. A-2017-2605434

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply  
Exceptions** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of  
service. If you have any questions, please contact me at (717) 783-6156.

Sincerely,

Carrie B. Wright  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #208185

CBW/sea  
Enclosure

cc: Certificate of Service  
ALJ Steven Haas

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania :  
Wastewater, Inc. Pursuant to Sections :  
1102 and 1329 of the Public Utility Code : Docket No. A-2017-2605434  
for Approval of its Acquisition of the :  
Wastewater System Assets of Limerick :  
Township :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Exceptions** dated October 10, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

**Served via Electronic and First Class Mail**

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Carrie B. Wright  
Prosecutor  
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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Application of Aqua Pennsylvania** :  
**Wastewater, Inc. Pursuant to Sections** :  
**1102 and 1329 of the Public Utility** : **Docket No. A-2017-2605434**  
**Code for Approval of its Acquisition of** :  
**the Wastewater System Assets of** :  
**Limerick Township** :

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**REPLY EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION & ENFORCEMENT**

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Carrie B. Wright  
Prosecutor  
PA Attorney I.D. #208185

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Dated: October 10, 2017

## TABLE OF CONTENTS

I.	Introduction .....	1
II.	Reply Exceptions .....	2
1.	<u>Reply to Aqua’s Exception No. 2: The ALJ Correctly Denied Aqua’s Proposal to Split the \$75.1 Million Ratemaking Rate Base into an Initial Rate Base of \$60 Million and a Regulatory Asset of \$15.1 Million .....</u>	2
2.	<u>Reply to Aqua’s Exception No. 3: The ALJ Correctly Determined that the Parties and the Commission Can Review Fair Market Value Appraisals ....</u>	4
3.	<u>Reply to Aqua’s Exception No. 5: Filing Municipal Agreements within 20 Days of a Final Order Does Not Cure the Section 507 Defect .....</u>	6
III.	Conclusion.....	8

**TABLE OF CITATIONS**

**Statutes**

66 Pa. C.S. § 1329 ..... 2

**Commission Decisions**

*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 New Garden Township  
and the New Garden Township Sewer System,  
Docket No. A-2016-2580061  
(Order Entered June 29, 2017) ..... 6*

## I. INTRODUCTION

On May 19, 2017, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) filed an Application for approval of: 1) the acquisition of the wastewater systems assets of Limerick Township (“Limerick”), 2) the right of Aqua Pennsylvania Wastewater, Inc. to be to offer, render, furnish and supply wastewater service to the public in a portion of Limerick Township, and 3) for an order approving the acquisition that includes the ratemaking rate base of the Limerick wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code (“Application”). This Application requests that the Pennsylvania Public Utility Commission (“Commission” or “PUC”) approve the purchase of Limerick Township’s wastewater assets and issue the necessary Certificates of Public Convenience for Aqua to furnish service to the approximately 5,434 Limerick customers. Further, the Application requests that the Commission issue an Order which sets the rate base of the acquired Limerick assets at \$75.1 million under the newly enacted Section 1329 of the Public Utility Code (“Code”).

On September 18, 2017, Administrative Law Judge Steven K. Haas (“ALJ”) issued a Recommended Decision (“RD”) approving Aqua’s Application. I&E filed Exceptions to the RD because the Company failed to demonstrate that its Application meets the criteria that it serves the public interest within the meaning of Sections 1102 and 1103 of the Code. For the reasons addressed in Main Brief, Reply Brief and Exceptions, I&E continues to maintain that approval of the Application is not in the public interest. However, in response to the Exceptions filed by Aqua, I&E now files these timely Reply Exceptions.

## II. REPLY EXCEPTIONS

1. **Reply to Aqua's Exception No. 2: The ALJ Correctly Denied Aqua's Proposal to Split the \$75.1 Million Ratemaking Rate Base into an Initial Rate Base of \$60 Million and a Regulatory Asset of \$15.1 Million.**

The ALJ correctly determined that Aqua's proposal to split the Section 1329 ratemaking rate base of \$75,100,000 in to an initial ratemaking rate base of \$60,000,000 and a \$15,100,00 regulatory asset was inconsistent with the procedural requirements articulated in Section 1329 and with traditional ratemaking principles. In Exceptions, Aqua argues that that the ALJ's denial was inappropriate as the regulatory asset is "simply a proposal" that can be fully vetted in its next base rate proceeding.<sup>1</sup>

The problem with Aqua's attempt to address this issue at a later time is that the proposal violates the clear language of Section 1329, which is currently before the ALJ and the Commission. Section 1329(c)(1) mandates that:

(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.<sup>2</sup>

Despite the clear mandate that the ratemaking rate base "shall be" incorporated into the rate base of the acquiring entity during the next base rate case or in its initial tariff filing, Aqua is proposing to defer putting \$15.1 million in rate base through its regulatory asset

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<sup>1</sup> Aqua Exceptions, pp. 6-7.

<sup>2</sup> 66 Pa. C.S. § 1329(c)(1).

proposal. It argues that the regulatory asset is simply a proposal and that “[a]ny further questions about it can be fully vetted in Aqua’s next base rate case.”<sup>3</sup> Vetting questions about this proposal is unnecessary given that the ALJ properly determined that the proposed regulatory asset violates the plain language of the statute:

Section 1329(c)(1) is clear in its intent to incorporate the full ratemaking rate base of the selling utility into the rate base of the acquiring utility during the acquiring utility’s next base rate case. There is no provision for the splitting of the full rate base amount.<sup>4</sup>

Moreover, the ALJ correctly found that Aqua’s regulatory asset proposal is inconsistent with longstanding ratemaking principles:

I agree that a regulatory asset typically represents specific incurred costs that a regulatory agency permits a public utility to defer to its balance sheet because recovery will come through future rates, amounts that would otherwise be required to appear on the company's income statement and be charged against current expenses; a circumstance that is not the case in this instance.<sup>5</sup>

In short, regulatory assets are typically used for expense items to prevent a sudden steep increase in costs for certain expenses, they are not for deferring rate base recognition of utility plant.<sup>6</sup> Utility plant is generally depreciated over 30 to 40 years so the large, one-time impact on the income statement is not a concern. Moreover, delaying the \$15.1 million through the regulatory asset will cause a mismatch between the expected life of the asset and the period over which the asset is recovered. As noted by I&E Witness

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<sup>3</sup> Aqua Exceptions, p. 7.

<sup>4</sup> RD at 22.

<sup>5</sup> RD at 22.

<sup>6</sup> I&E Statement No. 2, p. 4.



Maurer, while Section 1329 is a newly enacted statute, recovery of assets such as these is not new at all.<sup>7</sup> These types of assets have traditionally been recovered through rate base and not through the type of regulatory asset procedure the Company is proposing in this proceeding.

While Aqua characterizes its regulatory asset as simply a proposal that should be addressed in a later proceeding, it is one that violates the Section 1329 and traditional ratemaking principles. Therefore, the ALJ properly denied Aqua's proposal to split the \$75.1 million ratemaking rate base into an initial rate base of \$60 million and a regulatory asset of \$15.1 million.

**2. Reply to Aqua's Exception No. 3: The ALJ Correctly Determined that the Parties and the Commission Can Review Fair Market Value Appraisals.**

In Exceptions, Aqua argues that the ALJ's determination that it is appropriate for parties to question the fair market value appraisals of the Utility Valuation Experts ("UVE") is "contrary to clear and unambiguous statutory language and must be reversed."<sup>8</sup> In short, Aqua maintains that the General Assembly established a "procedure" in Section 1329 to determine the fair market value of the selling utility that requires two UVEs to perform separate appraisals. Given this "procedure," Aqua argues that only the UVEs can establish fair market value through their appraisals and the

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<sup>7</sup> I&E St. No. 2, pp. 6-7.

<sup>8</sup> Aqua Exceptions, p. 8.

Commission has no jurisdiction to consider adjustments to the appraisals proposed by other parties.<sup>9</sup>

Aqua's broad reading of Section 1329 to infer that the process outlined in the statute somehow strips the Commission of its authority to make a public interest determination is in error. Aqua maintains that the UVE appraisals ensure that the public interest is protected; therefore, parties and ultimately the Commission have no jurisdiction to challenge the appraisals or make alternate recommendations.<sup>10</sup> I&E fundamentally rejects Aqua's argument that Section 1329 requires the Commission to abdicate its obligations and authority under the Code, or that Section 1329 somehow transfers those obligations and authority to the UVEs. The perfunctory review advocated by Aqua would require the Commission to accept any submitted appraisal on its face without any ability to verify its basis. Parties must be able to investigate the underlying basis of the UVEs' fair market value appraisals in order for the Commission to determine whether the UVEs complied with Section 1329. Nothing in Section 1329 imposes any duty upon UVEs to protect the public interest and there is simply no basis to conclude that Section 1329 somehow confers a statutory duty upon UVEs, individuals hired to perform an appraisal for compensation, to protect the public interest.

After a thorough and well-reasoned analysis, the ALJ correctly held that:

I disagree with Aqua that Section 1329 precludes review and analysis by the Commission or other parties of the UVE fair market value appraisals in an effort to ensure that the public interest is protected. I do not believe that the legislature, in

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<sup>9</sup> Aqua Exceptions, pp. 9-10

<sup>10</sup> Aqua Exceptions, pp. 9-10.

enacting Section 1329, intended this result, and I do not recommend such a result here.<sup>11</sup>

Moreover, the ALJ noted that the Commission has already rejected Aqua's attempt to limit Commission authority in the recent *New Garden* proceeding.<sup>12</sup> In *New Garden*, Aqua similarly attempted to limit the ability of the parties to challenge the fair market appraisals and narrow the Commission's jurisdiction. The Commission rejected Aqua's arguments and determined that Section 1329 did not repeal its authority to conduct an inquiry into the assets Aqua sought to acquire.

Aqua has presented no new argument or justification as to why the Commission's determination in *New Garden* should be reversed and its jurisdiction should be limited here. Therefore, the ALJ correctly determined that it is "appropriate in this proceeding to allow other parties to question or challenge the fair market value appraisals and the proposed rate base value of the acquired assets, and to submit evidence and develop a record in support of their respective positions"<sup>13</sup> and Aqua's exception to this determination must be denied.

**3. Reply to Aqua's Exception No. 5: Filing Municipal Agreements within 20 Days of a Final Order Does Not Cure the Section 507 Defect.**

Aqua does not except to the ALJ's recommendation that it file all municipal agreements it is assuming within 20 days of the entry of a final Opinion and Order.<sup>14</sup> For

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<sup>11</sup> RD at 25-26.

<sup>12</sup> RD at 26; *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 New Garden Township and the New Garden Township Sewer System*, Docket No. A-2016-2580061 (Order Entered June 29, 2017).

<sup>13</sup> RD at 26.

<sup>14</sup> Aqua Exceptions, p. 24.

the reasons discussed in I&E's Exceptions, I&E disagrees that this recommendation cures the defect of Aqua's failure to request such approvals in its Application.<sup>15</sup> Despite the fact that this proceeding is almost concluded, the parties to this proceeding have not been apprised of which municipal agreements Aqua is seeking approval to assume under Section 507. Pursuant to Section 507, the Commission may, prior to the effective date of the contract, institute proceedings to determine the reasonableness, legality, or any other matter affective the validity of the contract or agreement. However, the Commission and parties will be deprived of these opportunities if the municipal contracts are not filed until 20 days after the final Commission Order in this proceeding. Therefore, approving the acquisition without knowing what agreements Aqua is assuming is in error.

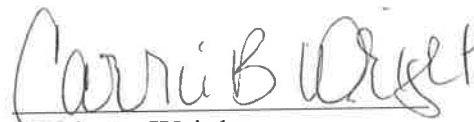
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<sup>15</sup> I&E Exceptions, pp. 8-10.

### III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation and Enforcement respectfully requests that the Commission deny the exceptions of Aqua Wastewater, Inc. As indicated in I&E's Exceptions filed on October 3, 2017, I&E respectfully requests that the Commission reject the ALJ's determination that the Application be approved because the proposed transaction is not in the public interest within the meaning of Sections 1102 and 1103 of the Code and because Aqua has not sought the necessary approvals of its municipal contracts under Section 507 of the Code. However, if the Application is approved, I&E requests that Aqua's Exceptions be denied and that the Commission make clear that: (1) Aqua's regulatory asset treatment of the ratemaking rate base violates Section 1329; and (2) the Commission and other parties to a Section 1329 proceeding have the right to review, challenge and adjust the fair market appraisals presented by the utility valuation experts.

Respectfully submitted,



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Dated: October 10, 2017