

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

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

**PUBLIC MEETING: November 8, 2017
2605434-OSA**

Docket No. A-2017-2605434

STATEMENT OF VICE CHAIRMAN ANDREW G. PLACE

Binding Poll – Issue No. 8

I first want to commend Administrative Law Judge (ALJ) Steven K. Haas for effectively presiding and exhaustively analyzing an adversarial and complex matter while permitting this Commission to reach a comprehensive ruling within the specified six-month time frame. I also want to express my appreciation for the work of our advisory staff for delineating the numerous issues and the parties' positions in this proceeding.

In my opinion, the synergistic operation of applicable statutory sections of the Public Utility Code and the available evidentiary record do not support any form of approval for the present application and underlying transaction. The relevant legal analysis that is applicable here rests both on Sections 1102 and 1103 of the Public Utility Code, as well as on Section 1329 that focuses on the rate base valuation of municipal or municipal authority water and wastewater systems that are acquired by investor owned utilities or other entities.¹ Aqua Pennsylvania Wastewater, Inc. (Aqua) must demonstrate that the proposed acquisition produces net affirmative benefits in accordance with the requirements of Section 1102 and applicable court precedent.² The existence of these net affirmative benefits involves not only the end-user consumers of the acquired entity but also Aqua's existing ratepayers.

The available and credible evidence of record does not demonstrate the presence of net affirmative benefits on a post-acquisition basis for either the Limerick system consumers or the existing Aqua ratepayers. The alleged affirmative benefits put forward by Aqua are speculative and not quantified. The Office of Consumer Advocate (OCA) observed in its Exceptions the following:

For instance, acquiring 5,343 customers for \$75.1 million, a purchase price 63% over net book value, will increase costs substantially. The average rate base cost of each Limerick customer will be \$13,820 or nearly four times that of an existing Aqua customer at \$3,595. OCA St. 1 at 16-17; OCA M.B. at 56-57. In other words, the number of customers would increase by only 27%, while Aqua's average rate base cost would increase by 60% per customer. *Id.* Moreover, Aqua's rate stabilization plan includes a \$70 per month rate for Limerick customers at the conclusion of the rate freeze,

¹ 66 Pa. C.S. §§ 1102, 1103, and 1329. *See also 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 Authority*, Docket No. A-2016-2580061, Order entered June 29, 2017, at 60 (“[t]he rate base value determined under the Section 1329 process is only one component of the factors comprising the evaluation of the public benefit analysis required under Section 1102”) (*Aqua PA – New Garden Order*), appeal pending *McCloskey v. Pa. Pub. Util. Comm’n*, (Pa. Cmwlth, filed November 3, 2017).

² *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 295 A.2d 825 (Pa. 1972); *Popowsky v. Pa. Pub. Util. Comm’n*, 594 Pa. 583, 937 A.2d 1040 (Pa. 2007).

which is an increase from the current rate of \$38. Aqua M.B. at 50; OCA St. 1 at 11-12; OCA M.B. at 58. Aqua stated that this number is an “extremely conservative” estimate, meaning that rates will likely be higher than \$70 per month and even greater harm will result to Limerick customers from the acquisition. Aqua M.B. at 50.

OCA Exc. at 20.

The Recommended Decision (R.D.) of ALJ Haas also references OCA’s argument, based on Aqua information and materials, that the increase of the monthly rate for the Limerick system customers is targeted on “... years four through ten of Aqua ownership (Exhibit U, Page 14)”, and that “... Aqua’s projection... [shows] ...that it intends to increase rates to Limerick customers by \$4,650,000 in the first ten years”, or by 105% over existing Limerick system revenues.³ The R.D. further notes the OCA observation “... that Aqua witness Packer indicated that in order to shift less costs to Aqua’s existing customers, Limerick customer rates could be increased at an even greater amount.”⁴ The R.D. also observes the following:

The OCA makes the further argument that Aqua has not demonstrated that it can operate and maintain the Limerick system, and make anticipated improvements, at a lesser cost than Limerick Township. The OCA states, “...based on Aqua’s projections, it appears that Aqua’s operating and maintenance expenses would be similar to or greater than those experienced by Limerick. Thus, it is not clear whether there will be any efficiencies in costs to run the system through Aqua’s acquisition.” (OCA Main Brief, pp. 60-61). Similarly, OCA argues that, despite Aqua’s assertions of a declining cost profile because the system does not require ongoing capital improvements, that profile will exist whether the system is owned by the Township or Aqua. (OCA main Brief, p. 61). OCA argues that these purported benefits will be realized by customers regardless of who owns the system. Therefore, they are not benefits that would result solely from approval of Aqua’s application.

R.D. at 44.

I observe that substantial revenue requirements will still be created for the Limerick ratepayers and the existing Aqua consumers even if the Commission were to adopt a lesser rate base amount associated with the fair value of the Limerick system acquisition. This includes the ALJ’s recommended figure of \$64,373,378 that produces an \$18,219,511 or 39.48% acquisition premium over the Limerick system’s net book value of \$46,153,867.⁵ Furthermore, although the evidence of record indicates that the Limerick system is financially viable and capable of sustaining its own incremental improvements at the lower cost of capital of a municipal utility, such future investments will take place at the higher cost of capital — including a return on common equity capital and associated tax effects — of an investor-owned utility, Aqua.

I understand that Limerick wishes to sell its wastewater system and that Aqua is a willing buyer. However, this Commission has a statutory charge to carry out a proper analysis of the proposed transaction and ascertain with confidence whether it produces net affirmative benefits and serves the broader public interest.


³ R.D. at 43, citing OCA St. No. 1, pp. 11-12. A 105% total revenue increase over a period of ten years translates to an annually compounded rate of growth of 7.44%.

⁴ R.D. at 43, citing Tr. p. 22 and OCA M.B., p. 58.

⁵ R.D. at 10, 40.

The evidentiary record clearly demonstrates that Aqua has failed to sustain its burden of proof in this proceeding. Therefore, I believe that Aqua's application should be denied.

Dated: November 8, 2017



Andrew G. Place
Vice Chairman