

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 22, 2017

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
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  
Limerick Township  
Docket No. A-2017-2605434

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer to Aqua's Petition for Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Hayley E. Dunn".

Hayley E. Dunn  
Assistant Consumer Advocate  
PA Attorney I.D. 324763  
E-Mail: [HDunn@paoca.org](mailto:HDunn@paoca.org)

Attachment

cc: Honorable K. Steven Haas, ALJ  
Office of Special Assistants (email only: [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Certificate of Service

\*242614

CERTIFICATE OF SERVICE

Re: 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 the acquisition by Aqua of :  
the wastewater system assets of :  
Limerick Township :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer to Aqua's Petition for Reconsideration, 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 22th day of December, 2017.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

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Dated: December 22, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**ANSWER OF THE OFFICE OF CONSUMER ADVOCATE  
IN OPPOSITION TO THE PETITION FOR RECONSIDERATION  
OF AQUA PENNSYLVANIA WASTEWATER, INC.**

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**I. INTRODUCTION**

On May 19, 2017, Aqua Pennsylvania Wastewater, Inc. (Aqua) filed with the Pennsylvania Public Utility Commission (Commission) an Application seeking: (1) approval of its acquisition of the wastewater system assets of Limerick Township, (2) the right to offer wastewater service to the public in portions of Limerick Township, Montgomery County, Pennsylvania, and (3) an order including the ratemaking rate base of the Limerick System pursuant to Section 1329(c)(2). On November 29, 2017, the Commission entered an Opinion and Order (Order) in which it granted Aqua's Application.

In its Order, the Commission provided that Section 1329 does not preclude the parties, including the Office of Consumer Advocate (OCA), from challenging the fair market value appraisals of the Utility Valuation Experts (UVE) or reviewing the assumptions of the UVEs for reasonableness. Order at 35-36. The Commission determined that the proposed acquisition provides affirmative public benefits and approved a \$64,373,378 ratemaking rate base for the Limerick system. Order at 82. The Commission attached certain conditions to its approval,

including that: (1) at the time of its next base rate case, Aqua must submit a cost-of-service study separating the costs, capital, and operating expenses for service to Limerick customers as a separate rate class and an analysis detailing the effects of designing rates for Limerick customers as a separate, stand-alone rate zone, (2) the Commission retains the authority to allocate revenues in excess of the restriction in the Asset Purchase Agreement (APA), and (3) Aqua and its shareholders should bear the risk of a shortfall between the revenues it is permitted to recover under the APA and the costs incurred for the Limerick System. Order at 84. Further, the Commission declined to permit regulatory asset treatment requested by Aqua. Order at 34.

On December 14, 2017, Aqua filed a Petition for Reconsideration (Aqua Petition) of the Commission's November 29, 2017 Order. Aqua seeks reconsideration as to the Commission's: (1) determination that Section 1329 permits the parties to review the UVE assumptions for reasonableness, (2) adjustments to the HRG fair market value (FMV) appraisal, and (3) adoption of the finding that the HRG FMV appraisal was performed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) despite the Commission's adjustments.

The OCA submits that the Commission should deny Aqua's Petition for Reconsideration. Aqua failed to present any new or novel argument or evidence. Rather, the Company restated arguments previously considered by the Commission. The basis for Aqua's arguments is primarily its own interpretation of Section 1329, which the Commission evaluated and rejected. Order at 35-36. Therefore, Aqua has not met the well-established standard for reconsideration.

## **II. LEGAL STANDARD**

Pursuant to Section 703 of the Public Utility Code, "[a]fter an order has been made by the [C]ommission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in

the application for rehearing.” 66 Pa. C.S. § 703(f); 52 Pa. Code § 5.572(c) (“Petitions for reconsideration . . . shall be filed within 15 days after the Commission order involved is entered or otherwise it becomes final”). Section 703 also provides that the Commission may “rescind or amend any order made by it.” 66 Pa. C.S. § 703(g).

The Commission set forth the standard applied to petitions for reconsideration in Duick v. Pennsylvania Gas and Water Co., 1982 Pa. PUC LEXIS 4, \*12-13, where it stated:

A petition for reconsideration, under the provisions of 66 Pa. C.S. 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or part. In this regard we agree . . . that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

In further delineating the standard for petitions for reconsideration, in Pa. PUC v. PECO Energy Co., 1999 Pa. PUC LEXIS 24, \*10-11, the Commission provided:

[B]ecause a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under the appropriate circumstances.

...

We have held that such petitions must make new or novel arguments not previously considered or raise matters which are designed to convince us to exercise our discretion to rescind or amend the Order under consideration.

As such, a justifiable petition for reconsideration must present new or novel arguments.

### **III. ARGUMENT**

The OCA submits that Aqua’s Petition for Reconsideration should be denied. In its Petition for Reconsideration, Aqua first argued that the Commission’s “conclusion that Section 1329 permits a review of UVE assumptions for reasonableness is a clear error of law.” Aqua

Petition at 5 (emphasis omitted). Second, Aqua asserted that “[t]he Commission, in adjusting the HRG FMV Appraisal . . . overlooked and failed to properly consider the unbiased independence of the UVEs.” Aqua Petition at 10. Third, Aqua averred that the Commission’s Order is inconsistent in that “[t]he Commission, in adjusting the HRG FMV Appraisal overlooked the unchallenged Finding that the HRG FMV Appraisal is in compliance with USPAP.” Aqua Petition at 10-11. Aqua’s second and third arguments are essentially the same – that the Commission should not adjust the HRG FMV appraisal. Aqua did not make any new or novel arguments and the arguments Aqua claims the Commission overlooked were thoroughly addressed. For the reasons below, Aqua failed to meet the Duick standard.

A. Aqua’s Argument that Section 1329 Prohibits a Review of UVE Assumptions for Reasonableness is Not New or Novel and has Not Been Overlooked.

In its Petition for Reconsideration, Aqua argued that the Commission should reconsider its determination that Section 1329 permits the parties to review the UVE appraisals for reasonableness. Aqua Petition at 6. Aqua asserted that the language of Section 1329 does not subject the ratemaking rate base to adjustments “regardless of their purported reasonableness.” Aqua Petition at 6. Aqua also claimed that the Commission may not “override” the USPAP standard and that the Commission “lacks the power to adopt discretionary adjustments to the FMV Appraisal Reports.” Aqua Petition at 5.

Aqua previously argued this point. Specifically, in its Exceptions, *inter alia*, Aqua noted that “[t]he appraisal criticisms . . . which are the bases for the adjustments recommended by Judge Haas, are not based on USPAP but rather are based on the ‘just and reasonable’ ratemaking standard found in Section 1301 of the Public Utility Code.” Aqua Exceptions at 13. Aqua “contend[ed] that the Commission’s jurisdiction is limited” to ensuring that the appraisals comply with the USPAP. Aqua Exceptions at 10-11. Aqua also argued that the “adjustments are

contrary to statutory law and the procedures enacted by the General Assembly” under the language of Section 1329. Aqua Exceptions at 14. Therefore, this argument is not new or novel.

Moreover, in its Order, the Commission noted that Aqua “repeat[ed] its arguments that the adopted adjustments are contrary to the clear intent of the Section 1329 and that the Parties’ should not be able to challenge the fair market value appraisals” and argued that “because the OCA’s adjustments are based on the ‘just and reasonable’ ratemaking standard . . . they should be rejected.” Order at 36. In addressing Aqua’s argument, the Commission stated, “In the *Aqua – New Garden Order*, we concluded that Section 1329 permits the Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the UVEs.” Order at 35-36. The Commission further provided:

[T]he OCA states that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals as to their *reasonableness*.” OCA R. Exc. at 9 (citing *Aqua – New Garden Application Order* at 53). The OCA also notes that while Section 1329 requires that UVEs adhere to the USPAP standards in their valuations, the legislation does not prohibit a review of the assumptions utilized by the UVEs for reasonableness and conformance to the standards of the industry being valued.” OCA R. Exc. at 9-10 (citing 66 Pa. C.S. § 1329(a)(13)). We agree that Section 1329 does not prevent a review of the UVE assumptions for reasonableness.

Order at 36. As such, the Commission addressed and did not overlook this argument.

B. Aqua’s Argument that the Commission Should Not Adjust the HRG FMV Appraisal is Not New or Novel and has Not Been Overlooked.

In its Petition for Reconsideration, Aqua argued that the Commission should not adjust the HRG FMV appraisal because each UVE is “independent and qualified by the Commission” through a process that “assures that the UVE is unbiased.” Aqua Petition at 7, 8. Similarly, Aqua argued that the Commission should not adjust the HRG FMV appraisal because the adjustments are not consistent with the adopted finding that the appraisal was performed in compliance with the USPAP. Aqua Petition at 10.

Aqua already presented arguments regarding the “unbiased” nature of the UVEs. Specifically, in its Main Brief, *inter alia*, Aqua averred that “[i]n order to protect the public interest and at the same time avoid increasing costs for the statutory advocates, the General Assembly required the use of the Commission approved UVEs to fully represent the public interest.” Aqua M.B. at 38. Aqua further averred that the UVEs are “two impartial, independent and qualified experts” who create “two independent fair market value determinations.” Aqua M.B. at 39, 40. Therefore, Aqua’s argument on this point is not new or novel.

In addition, Aqua previously presented arguments regarding the USPAP being the only standard by which the Commission should adhere. As mentioned above, in its Exceptions, Aqua asserted that the Commission’s jurisdiction in Section 1329 proceedings is limited to ensuring that the appraisals comply with the USPAP. Aqua Exceptions at 10-11. Aqua also argued that adjustments not based on the USPAP are “neither relevant nor material to the determination of fair market value in compliance with USPAP.” Aqua Exceptions at 13-14 (emphasis omitted). Accordingly, Aqua’s argument on this point is not new or novel.

Moreover, in its Order, the Commission acknowledged Aqua’s argument that “the procedures under Section 1329, including the independent appraisals by the UVEs, provide the mechanism for determining the rate base value of the acquired assets” and that adjustments not based on the USPAP standard should be rejected. Order at 18, 36. In response, the Commission concluded that “Section 1329 does not prevent a review . . . for reasonableness and . . . the ALJ appropriately considered several of the recommendations to the fair market appraisals of the Limerick system.” Order at 36. Therefore, the Commission did not overlook Aqua’s argument.

Further, although the adopted finding stated that the HRG FMV appraisal was performed in compliance with the USPAP, the Commission’s adjustments for reasonableness are not

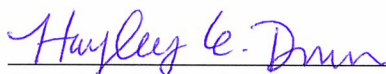


inconsistent as Aqua claimed. Aqua Petition at 10-11. Section 1329 requires that UVEs comply with the USPAP, while Section 1301 requires that rates be just and reasonable. 66 Pa. C.S. § 1301, 1329(a)(3). These Sections present two separate requirements, both of which must be followed. Order at 36.

#### IV. CONCLUSION

Aqua Pennsylvania Wastewater, Inc.'s Petition for Reconsideration of the Pennsylvania Public Utility Commission's November 29, 2017 Order should be denied consistent with the Office of Consumer Advocate's Answer. For the reasons set forth above, the Company has not met the standard for reconsideration and, further, the Company's arguments have already been considered and properly denied by the Commission.

Respectfully Submitted,



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Dated: December 22, 2017

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