

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judge Angela T. Jones, Presiding**

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**Application of Aqua Pennsylvania :  
Wastewater, Inc. Pursuant to Sections :  
1102, 1329, and 507 of the Public Utility :                   Docket No. A-2019-3009052  
Code for Approval of its Acquisition of the :  
Wastewater System Assets of East :  
Norriton Township :**

**STATEMENT OF EAST NORRITON TOWNSHIP IN SUPPORT OF SETTLEMENT**

**TO ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:**

East Norriton Township (“East Norriton” or the “Township”), by its attorneys, submits this statement in support of the Joint Petition for Approval of Settlement (“Joint Petition”) submitted to the Public Utility Commission (“Commission”) by Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and East Norriton Township.<sup>1</sup>

**I. Introduction**

This proceeding concerns Aqua’s Application, filed with the Public Utility Commission (“Commission”) on July 30, 2019, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”), for approval of its acquisition of the wastewater system assets of East Norriton. On February 6, 2020, the Joint Petitioners filed a Joint Petition for Approval of Settlement (“Joint Petition”) proposing a resolution of all issues in the proceeding. East Norriton supports the Joint Petition and submits that it should be approved without modification because the settlement will

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<sup>1</sup> Aqua, I&E, OCA, OSBA and the Township are, hereinafter, referred to, collectively, as “Joint Petitioners.”

further the public interest.

## **II. The Proposed Settlement is in the Public Interest.**

The Joint Petition should also be approved because it resolves all issues in this proceeding and is in the public interest. Whether the terms and conditions of the settlement are in the public interest is the main issue for the Commission's consideration. *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Pa. P.U.C. v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985); *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 East Bradford Township*, Docket No. A-2018-3001582, Recommended Decision of Administrative Law Judges Eranda Vero and Marta Guhl dated August 22, 2010, mimeo at 19-20; *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa.P.U.C. v. CS Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991).

In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) ("*City of York*"), the Pennsylvania Supreme Court explained that in the context of a utility merger, the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. Here, this is indeed the case, as the terms of the settlement are in the public interest. The Joint Petition should thus be approved.

### **A. The Proposed Settlement Minimizes Litigation and Administrative Burden.**

As a threshold matter, the proposed settlement should be approved because it is consistent with the Commission's policy to promote settlements over costly litigation. 52 Pa. Code § 5.231(a). Indeed, the Commission has explicitly stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding."

52 Pa. Code § 69.401.

This would unequivocally be the case here. The proposed settlement allows the transaction at issue to proceed without further litigation or administrative review. It is thus consistent with well-established Commission policy.

**B. Aqua is Undoubtedly Fit to Own and Operate East Norriton's System.**

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). Here, there is no dispute that Aqua has the requisite technical, financial and legal fitness to own and operate the East Norriton system. Indeed, Aqua's fitness is presumed because it is a certificated provider of utility service. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

To show legal fitness, Aqua must demonstrate that it has obeyed the Public Utility Code and Commission Regulations. *Re Perry Hassman*, 55 PA PUC 661 (1982). Here, Aqua is a public utility operating under certificates of public convenience granted by the Commission, and there are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service. Aqua thus satisfies the criteria for legal fitness.

To show financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Here, Aqua is a Class A wastewater utility with total assets of \$252 million and annual revenues of \$15 million. As a subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities. Aqua thus satisfies this criterion as well.

Finally, to show technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Again, Aqua easily satisfies this standard here. Aqua will seamlessly integrate the operation of the East Norriton system into its

current operations, and the acquisition will easily fold into Aqua's existing wastewater operations.

**C. The Public Will Benefit as a Result of the Settlement.**

There is substantial evidence in support of settlement and the public benefits resulting from the acquisition.

**1. The Transaction Provides Benefits for East Norriton and its Customers.**

For purposes of this statement, East Norriton will focus primarily on the considerable benefits that will directly impact its residents and customers.

First, Aqua will not just be able to take over operations of the Township's system, but has the managerial, technical and financial resources to continue to operate, maintain and improve the East Norriton system in a safe, reliable and efficient manner now and in the future. This is particularly important given the increasing environmental compliance requirements and issues facing East Norriton's system, and Aqua's demonstrated ability to address these issues. East Norriton Township customers will become part of a larger-scale, efficiently operated, wastewater utility that over time will likely yield further operating efficiencies and improve long-term viability.

Second, Aqua is projecting less operating and maintenance costs for the East Norriton system under its ownership as a result of reductions in costs for wastewater treatment, as well as efficiencies in administrative and general costs, such as insurance, auditing, and legal, among others.

Third, the Township's customers will benefit greatly from Aqua's technical experience and fitness in deploying resources towards capital improvements. It is estimated that capital projects to bring the system into compliance are estimated at \$16 million over the 10 years post-closing. Customers will certainly benefit from Aqua's administration of these improvements.

Fourth, the Township's customers will benefit from enhanced customer service and billing/payment protections. Aqua provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business, as well as 24/7/365 emergency response. East Norriton's customers will be able to go to Aqua's website and establish an account to pay their bills online. East Norriton customers can also sign up for notifications and alerts to be sent to their email address or phone concerning their service, which allows customers to stay informed of events impacting their service. In addition, Aqua has procedures in place under Chapter 14 of the Code that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Aqua employs customer care teams to help resolve service and billing issues, and has an established process and procedure for addressing formal and informal complaints.

Fifth, Aqua will implement East Norriton's existing rates upon Commission approval of the acquisition. The acquisition will thus not have any immediate impact on the rates of East Norriton customers.

Finally, the sale of the system will directly benefit East Norriton's residents and taxpayers. The transaction will provide the Township with the financial flexibility to undertake other capital projects without having to raise taxes, and will allow it to avoid the financial difficulty that it could face in making the considerable improvements needed to the system. Moreover, Aqua will offer employment to all employees of the Township who currently work on the system, allowing for the preservation of jobs and operational continuity.

## **2. The Transaction Provides Other Benefits As Well.**

Other considerable benefits of the proposed transaction exist as well, particularly for Aqua's existing customers. Aqua will increase its customer base by approximately 20% as a result of the acquisition. With a larger customer base, future infrastructure investment across the state

will be shared at a lower incremental cost per customer for all of Aqua's customers. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua, nor will it have any immediate impact on their rates.

In addition, the proposed transaction presents economies of scale that will be realized upon its consummation. Aqua is acquiring the East Norriton system at a rate base per customer of \$4,229, which is lower than what was most recently included in Aqua's 2018 Rate Case (approximately \$7,750 per customer). In addition, even after applying the entire revenue deficiency to the current average monthly bill of a residential customer in East Norriton of approximately \$39 per month using four thousand gallons, the adjusted average bill would increase to approximately \$52 per month (a 35% increase). This is less than the Company's existing average wastewater rates included in its most recent rate case of approximately \$68.27, again showing the immediate economies of scale that will result from this transaction's approval.

**D. The Conditions Agreed to by Aqua Further Ensure that the Transaction Provides Considerable Public Benefit.**

Aqua has agreed, in settlement, to several conditions to be imposed by the Commission on approval of the transaction. The imposition of conditions is consistent Section 1103(a) of the Code. The conditions include:

- As part of Aqua's first base rate case including East Norriton's system assets, the submission of a wastewater cost of service study that removes all costs and revenues associated with the operation of the East Norriton system, as well as a separate cost of service study for the East Norriton system;
- Aqua's first base rate case that includes East Norriton wastewater system assets will address any claims for Allowance for Funds Used During Construction and deferred

depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge (“DSIC”);

- Upon approval of Aqua’s modified Long Term Infrastructure Improvement Plan that includes the East Norriton system, Aqua shall be permitted to collect a DSIC related to the East Norriton wastewater system prior to the first base rate case in which the East Norriton assets are incorporated into rate base, although Aqua will not reprioritize other existing capital improvements that it already committed to undertake in other service areas;
- Aqua will send a welcome letter to East Norriton wastewater customers within 20 days following the transaction closing, which will include information regarding (a) the conversion to monthly billing for sewer service and (b) Aqua’s low income programs;
- Regarding a dispute as to the transfer of easements, Aqua will work with East Norriton Township to ensure the transfer of all real property rights, including easements and missing easements, by closing, and will provide an update as to these matters to I&E, OCA, and OSBA on March 31, 2020, as well as a final update before closing, regarding the status of the transfer of real property rights;
- Aqua and East Norriton have agreed to amend the Asset Purchase Agreement to warrant that the East Norriton assets are fit for a particular purpose at the time of closing and sale, resolving a contested issue between Aqua and I&E; and
- In its next base rate case, Aqua will separately identify any legal fees included in its transaction and closing costs and specify amounts expended by Aqua on behalf of East Norriton, with the statutory advocates reserving the right to challenge the reasonableness, prudence, and basis for these fees.

Via these conditions, Joint Petitioners have reached resolution on all outstanding issues in order to ensure that the transaction provides public benefit.

### **III. Fair Market Valuation**

#### **A. Background on the Valuation of East Norriton's System.**

Section 1329 addresses the valuation of assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. It is a voluntary process to determine the fair market value of an acquired water or wastewater system at the time of acquisition, and provides that the ratemaking rate base will be the lesser of the fair market value (*i.e.*, the average of the buyer's and seller's independently conducted appraisals) or the negotiated purchase price.

For the transaction at issue, Aqua and East Norriton negotiated a purchase price of \$21,000,000 for the wastewater system, which was the result of voluntary arm's length negotiations.

East Norriton engaged the services of AUS to provide a fair market value appraisal in accordance with Uniform Standards of Professional Appraisal Practice ("USPAP"), utilizing the cost, market and income approaches. Aqua engaged Gannett for the same purpose.

AUS's fair market value appraisal is \$25,064,594. Gannett's fair market value appraisal is \$24,284,000. The average of the two is \$24,674,297. As a result, the ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$21,000,000, the lesser of the negotiated purchase price of \$21,000,000 and the average of \$24,674,297.

#### **B. The Settlement Resolves All Disputes As To Valuation.**

The determination of ratemaking rate base was a matter of controversy between Aqua, OCA and I&E with OCA and I&E proposing adjustments to Aqua's proposed ratemaking rate base. Joint Petitioners have resolved their conflicting positions in settlement with Aqua agreeing to accept in settlement a reduced ratemaking rate base of \$20,750,000.



In addition, Aqua has agreed that, in future Section 1329 filings, it will support the following positions:

Cost Approach: Consistent with the Commission's Order in the Cheltenham Acquisition case (Docket No. A-2019-3008491), the service lives applicable to East Norriton wastewater's gravity mains and manholes is established at a maximum of 75 years.

- (1) Aqua and the statutory parties reserve the right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings, including methodologies, inputs and assumptions that were present in this case but not challenged by the statutory parties or that were accepted by the Commission.

This furthers the public interest here by reducing unnecessary litigation expenses and helping to preserve administrative resources. In settlement of this proceeding, Aqua agrees to support this appraisal adjustment in its future Section 1329 proceedings.

**IV. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code.**

**A. Section 507 Approval Should Be Given.**

Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

The Joint Petition asks that the Commission issue Certificates of Filing, pursuant to Section 507, for the documents listed therein. There is no opposition to the issuance of the Certificates of Filing. As a result, East Norriton asks that the Commission issue the requested Certificates.

Along with the above, East Norriton and Aqua will enter into a First Amendment to the APA to implement the agreed upon settlement term and amended language discussed above regarding the warranty issue. East Norriton asks that the Commission issue a Certificate of Filing, to the extent necessary, approving the First Amendment under Section 507 of the Code.

**B. Other Approvals, Certificates, Registrations and Relief**

As a final matter, East Norriton respectfully requests that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the East Norriton wastewater system assets.

**V. CONCLUSION**

East Norriton respectfully requests that Administrative Law Judge Angela T. Jones recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

/s/ Thomas Wyatt

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Date: February 18, 2020

**CERTIFICATE OF SERVICE**

I, Matthew Olesh, Esq., hereby certify that I have served a true and correct copy of the foregoing Statement in Support of Settlement upon the parties list below in accordance with the requirements of 52 Pa. Code §§ 1.54 (relating to service by a party) via electronic mail and/or e-service.

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Dated: February 18, 2020

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