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February 18, 2020

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120


In re: Docket No. A-2019-3009052
Application of Aqua Pennsylvania Wastewater, Inc. – East Norriton Township

Dear Secretary Chiavetta:

We are counsel for Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”) in the above matter and are submitting, with this letter via electronic filing, the Company’s Statement in Support of the Joint Petition of Aqua, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and East Norriton Township for Approval of Settlement, filed with you on February 6, 2020. Copies of the Statement in Support are being served as presented in 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, Esq. (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Angela T. Jones, Presiding

**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 AQUA PENNSYLVANIA WASTEWATER, INC.
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE ANGELA T. JONES:

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), by its attorneys, and submits this statement in support of the Joint Petition for Approval of Settlement (“Joint Petition”) submitted to the Public Utility Commission (“Commission”) by Aqua, 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 (“East Norriton” or “Township”).¹

I. INTRODUCTION

This proceeding concerns the Application of Aqua, filed with the Public Utility Commission (“Commission”) on July 30, 2019, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”). On February 6, 2020, Aqua, I&E, OCA, OSBA and the Township filed a Joint Petition for Approval of Settlement (“Joint Petition”) proposing a resolution of all issues in the proceeding.

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

Aqua supports the Joint Petition and submits that it should be approved, without modification. The settlement will further the public interest. Aqua, moreover, presented substantial evidence of affirmative public benefits in support of the settlement and its acquisition of the East Norriton wastewater system, the expansion of its service territory into the Township and a ratemaking rate base of \$20,750,000 for the East Norriton system assets.

II. THE PROPOSED SETTLEMENT IS CONSISTENT WITH COMMISSION REGULATIONS AND IN THE PUBLIC INTEREST. IT MINIMIZES COSTLY LITIGATION AND ADMINISTRATIVE BURDEN.

It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.² Settlements lessen the time and expense of litigating a case³ and, at the same time, conserve administrative hearing resources. This directly benefits all parties concerned.⁴

The Joint Petition proposes the resolution of all issues in this proceeding. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is

² 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation 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.

³ The substantial cost of litigation avoided through settlement can include the cost of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the cost of preparing and serving briefs, reply briefs, exceptions and replies to exceptions, together with the cost of briefs and reply briefs necessitated by any appeal of the Commission's decision.

⁴ *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2019-3006904, Recommended Decision of Administrative Law Judge Darlene Davis Heep dated September 4, 2019, mimeo at 8; *Pa. P.U.C. v. Buck Hill Water Company*, Docket No. R-2019-3007103, Recommended Decision of Administrative Law Judge F. Joseph Brady dated May 29, 2019, mimeo at 9-10; *Pa. P.U.C. v. Timberlee Valley Sanitation Company*, Docket No. R-2018-3003104, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated October 16, 2018, mimeo at 10; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2017-2631441, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated May 16, 2018, mimeo at 23; *Pa. P.U.C. v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013, mimeo at 11; *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011 (“*Recommended Decision of ALJ Barnes*”), mimeo at 9; *Pa. P.U.C. v. Reynolds Disposal Company*, Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011, mimeo at 12; *Pa. P.U.C. v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebour dated March 2, 2010, mimeo at 11; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010, mimeo at 5.

whether the agreement reached is in the public interest.⁵ The benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest.⁶

Joint Petitioners submit that the Joint Petition is in the public interest. Approval of the Joint Petition will minimize litigation and administrative burden by avoiding lengthy and contentious evidentiary hearings, the preparation, filing and consideration of main and reply briefs, exceptions and replies to exceptions, and by avoiding the possibility of further appellate court review of a Commission Opinion and Order.

Approval of the Joint Petition will also further the public interest by allowing the transaction to move forward thereby promoting the General Assembly's support and encouragement of municipal wastewater acquisitions.

III. SECTION 1102 STANDARDS – FITNESS AND AFFIRMATIVE PUBLIC BENEFITS

A. Introduction

The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. A certificate of public convenience will issue “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

⁵ *Recommended Decision of ALJ Barnes*, mimeo at 9, citing *Pa. P.U.C. v. CS 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).

⁶ *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).

As addressed below, Aqua, in support of settlement, presented substantial evidence demonstrating that its proposed acquisition of the East Norriton wastewater system and proposed expansion of service territory into the Township are necessary or proper for the service, accommodation, convenience, or safety of the public.

As also addressed below, the Commission, in granting certificates of public convenience, “may impose such conditions as it may deem just and reasonable.” 66 Pa.C.S. § 1103(a). I&E, OCA and OSBA proposed, and, in settlement, Aqua accepted several conditions for Commission approval of the transaction.

B. Legal Principles

In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Pennsylvania Supreme Court explained in the context of a utility merger that the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger.

The Pennsylvania Supreme Court addressed *City of York* in *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) (“*Popowsky*”), explaining that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018) (“*McCloskey*”), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court concluded that the Commission must address rate impact “in a general fashion” when deciding whether there is substantial public benefit to a transaction and determine whether the impact on rates is outweighed by the other positive factors that the acquisition serves a substantial public

benefit.

Additionally, 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).

C. Fitness

Joint Petitioners agree that Aqua has the requisite technical, financial and legal fitness to own and operate the East Norriton system.⁷

As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).⁸ The Commission addressed the fitness criteria in *Re Perry Hassman*, 55 PA PUC 661 (1982).

As to legal fitness, Aqua must demonstrate that it has obeyed the Public Utility Code and Commission Regulations. *Hassman, supra*. Aqua is a public utility operating under certificates of public convenience granted by the Commission. There are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service.⁹

As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Aqua is a Class A wastewater utility with total assets of \$252 million and annual revenues of \$15 million.¹⁰ As a subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities.¹¹

⁷ Joint Petition, ¶24.

⁸ A continuing public need is also presumed where public utility service is already being provided in the service territory subject to the application. *See Re Glenn Yeager et al.*, 49 PA PUC 138 (1975); *Hostetter v. Pa. P.U.C.*, 49 A.2d 862 (Pa. Super. 1946); *Allegheny Airlines v. Pa. P.U.C.*, 465 F.2d 237 (3d Cir. 1972).

⁹ Aqua St. No. 1 at 10.

¹⁰ Aqua St. No. 1 at 10.

¹¹ Aqua St. No. 1 at 11. Aqua PA is a Class A water utility and the largest subsidiary of Aqua America. In 2018, Aqua PA had operating income of approximately \$232 million, net income of \$181 million and cash flow from operations of \$270 million. Aqua PA has a Standard and Poor's Rating of A+. Aqua St. No. 1 at 10.

As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Aqua will seamlessly integrate the operation of the East Norriton system into its current operations. The acquisition will easily fold into Aqua's existing wastewater operations.¹²

D. Public Benefits Resulting from the Settlement

Aqua presented substantial evidence in support of settlement and the public benefits resulting from the acquisition. In summary form, the public benefits include:

Consolidation/Regionalization

- The Commission has long supported the consolidation/regionalization of water/wastewater systems throughout Pennsylvania. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale and resulting greater environmental/economic benefits. Consolidation/regionalization also enhances the quality of ratepayers' daily lives, promotes community economic development and provides environmental enhancements. Ultimately, these benefits inure to customers both existing and acquired. Aqua's acquisition of the East Norriton wastewater system will further the Commission's consolidation/regionalization objectives. Aqua St. No. 1 at 13 and *Policy Statement*, slip op. at 18.
- Aqua, and its parent company, Aqua PA, have a proven track record of working within the Commission's consolidation/regionalization policy and assimilating wastewater and water systems. Aqua has acquired 16 wastewater systems over the past 10 years. The proposed acquisition is no exception to the principles noted in the *Policy Statement*. Aqua and Aqua PA have successfully acquired numerous water/wastewater utilities over the past 130 years. Aqua St. No. 1 at 13-14. Over the long term, this process has benefitted both current customers, future customers that were acquired and the Commonwealth. Aqua St. No. 1 at 17.
- Aqua 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. Aqua St. No. 1 at 14 and Aqua Exhibit No. 1, Application ¶ 51.a.

Benefits to East Norriton Township Customers

- East Norriton Township customers will become part of a larger-scale, efficiently operated, wastewater utility that over time will likely yield further operating

¹² Aqua Exhibit No. 1, Application ¶24; Aqua St. No. 2 at 10 – 11.

efficiencies and improve long-term viability as envisioned in the *Policy Statement*. Aqua St. No. 1 at 15.

- Aqua is projecting less operating and maintenance costs under its ownership that will likely be realized through reductions in costs for wastewater treatment, as well as efficiencies in administrative and general costs, such as insurance, auditing, legal among others. Aqua St. No. 1 at 16.
- Inasmuch as there are meaningful investments needed, the customers of the East Norriton system will benefit greatly from the Company's technical experience and fitness in deploying resources towards capital improvements. Capital projects to bring the system into compliance for the benefit of East Norriton residents are estimated at \$16 million over the 10 years post-closing. Aqua St. No. 1 at 16 and Aqua St. No. 2 at 8.

Enhanced Customer Service for East Norriton Township Customers

- Aqua America provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business. The same customer service number houses Aqua America's 24/7/365 emergency response. As an Aqua customer, an East Norriton resident will be able to go to Aqua America'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. This service allows customers to stay informed of events impacting their service. Aqua St. No. 1 at 17.

Enhanced Customer Billing and Payment Protections

- 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 Services employs customer care teams to help resolve service and billing issues, and has an established process and procedure for addressing formal and informal complaints. Aqua St. No. 1 at 17 – 18.

Benefits to Existing Customers of Aqua – Increased Customer Base

- 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. Aqua St. No. 1 at 16

Benefits to Existing Customers of Aqua – Economies of Scale

- Aqua is acquiring the East Norriton system at a lower rate base per customer of \$4,229, than compared to the Company's existing systems most recently included in its 2018 Rate Case at approximately \$7,750. Aqua St. No. 1 at 16 and I&E Exh. No. 2, Sch. 6.

- 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 or a 35% increase. This is less than the Company's existing average wastewater rates included in its most recent rate case at approximately \$68.27. Aqua St. No. 1 at 16.
- The fact that both the rate base and rates are less than the Company's current rates demonstrate that there are economies of scale immediately as a result of this acquisition. Aqua St. No. 1 at 17.

No Adverse Effect

- The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Aqua Exhibit No. 1, Application ¶ 51.a.
- The acquisition will not have any immediate impact on the rates of either the East Norriton customers or the existing customers of Aqua. Aqua Exhibit No. 1, Application ¶ 51.g.
- Aqua will implement East Norriton's existing rates upon Commission approval of the acquisition. Aqua Exhibit No. 1, Application ¶ 32.

East Norriton Wants to Sell Its Wastewater System

- East Norriton has agreed to sell its wastewater system. The public interest and need will be served by allowing Aqua, in lieu of East Norriton, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The East Norriton system will benefit from the support of wastewater professionals throughout Aqua's organization. Aqua Exhibit No. 1, Application ¶ 51.b.

Significantly, together with the foregoing, Aqua's acquisition of the East Norriton wastewater system is consistent with Section 1329 of the Code and the General Assembly's clear support and encouragement of municipal wastewater acquisitions.

E. Potential Rate Impact Is Outweighed by Other Positive Factors

The settlement and acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of East Norriton Township. Aqua presented substantial evidence in support of settlement and demonstrated that the potential impact of future

rate increases is outweighed by other positive factors summarized as follows:

No Change in Rates as A Result of Settlement

- Joint Petitioners agree that the pro forma tariff submitted by Aqua with its Application will be permitted to become effective upon Closing. The pro forma tariff will implement the East Norriton current rates inclusive of any Commission permitted or required surcharges or pass through costs. Aqua St. No. 1 at 11 – 12.

Hypothetical Future Rate Impact

- The current average monthly bill of a residential customer in East Norriton, is approximately \$39 per month using four thousand gallons. Applying 100% of the revenue deficiency to the existing rates would increase the average bill to approximately \$52 per month or a 35% increase, which is less than the Company's existing systems included in its most recent rate case at approximately \$68.27. Aqua St. No. 1 at 16 and 18.
- Again, this system is being acquired at a rate base per customer that is less than the Company's existing systems, which demonstrates that there are immediate economies of scale brought by this system. Given this fact and the fact that there are again meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time. Aqua St. No. 1 at 18.
- While the rates of the East Norriton system are reasonably expected to increase, either on their own or whether acquired by the Company, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base. This benefits both existing and acquired customers alike. Aqua St. No. 1 at 18.

Hypothetical Future Rate Impact Is Outweighed by Other Positive Factors

- While there is an expectation of increased rates as a result of the transaction, this is not unexpected. The possibility of increased rates is noted in *McCloskey*. The positive factors from the transaction outweigh the possibility of increased rates. This transaction and others like it further a recognized legislative objective and are consistent with the Commission's consolidation/regionalization policy. The Company's Application demonstrates that there will be both tangible and intangible positive factors that are likely realized as a result of this transaction, including capital improvements, expense efficiencies, and economies of scale. Aqua St. No. 1 at 19-20.

In sum, the hypothetical future impact on rates is outweighed by the recognized benefit of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger

customer base. Equally significant, the acquisition furthers the General Assembly’s legislative objectives established through the enactment of Section 1329.

F. The Settlement Imposes Several Conditions for Commission Approval of the Transaction

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 with Section 1103(a) of the Code. The conditions include:

Cost of Service Study

Aqua has agreed, in settlement, to submit, in its first base rate case that includes the East Norriton wastewater system assets, a wastewater cost of service study that removes all costs and revenues associated with the operation of the East Norriton system and to also submit a separate cost of service study for the East Norriton system. In doing so, the cost to serve the East Norriton system will be separately identified and the Commission will be informed as to costs when new rates are being considered for implementation. The submission of a separate cost of service study has been a condition for Commission approval in other Section 1329 application proceedings, most recently in *Cheltenham*¹³ where a similar condition to meet the affirmative public benefit standard was directed by the Commission.¹⁴ Aqua accepts this condition in resolution of this proceeding.

Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

Aqua has agreed, in settlement, that any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System

¹³ *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Township and Contracts between Aqua Pennsylvania Wastewater, Inc. and Cheltenham Township*, Docket No. A-2019-3008491, Opinion and Order entered November 5, 2019 (“*Cheltenham*”).

¹⁴ *Cheltenham*, mimeo at 86.

Improvement Charge (“DSIC”) will be addressed in Aqua’s first base rate case which includes East Norriton wastewater system assets and that Joint Petitioners reserve the right to litigate claims for AFUDC, deferral of depreciation and transaction costs in future rate cases. It is appropriate that these matters not be addressed here but rather await a future rate case where they can be fully vetted. A similar condition to meet the affirmative public benefit standard was directed by the Commission in *Cheltenham*.¹⁵ Aqua accepts this condition in resolution of this proceeding.

DSIC and Long Term Infrastructure Improvement Plan (“LTIIIP”)

Aqua has agreed, in settlement, that, upon approval of a modification to its LTIIIP to include the East Norriton system, it 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. Aqua also has agreed, in settlement, that, in LTIIIPs or Annual Asset Optimization Plans that include the East Norriton wastewater system, it will not reprioritize other existing capital improvements that it already committed to undertake in other service areas. Significantly, the section does not limit Aqua’s current practice and ability to allocate projects as needed by Aqua necessary for its capital program, but recognizes that any East Norriton system infrastructure will be in addition to capital improvements already planned. The condition allows for improvements to be made to the East Norriton system through Aqua’s DSIC program in addition to the already existing projects under the Company’s LTIIIP. Again though, projects under the LTIIIP may be allocated as necessary for Aqua’s capital program. Aqua accepts this condition in resolution of this proceeding.

¹⁵ *Cheltenham*, mimeo at 86 – 87.

Welcome Letter and Low Income Program Outreach

Aqua has agreed, in settlement, to send a Welcome Letter to East Norriton wastewater customers within 20 days following Closing which will include information regarding the conversion to monthly billing for their sewer service. The Welcome Letter also will include information regarding Aqua's low income programs. This settlement provision will ensure that Aqua's newly acquired East Norriton customers are made aware of the conversion to monthly billing in a timely manner and are informed of, and will be able to take advantage of, Aqua's low income programs. Aqua accepts this condition in resolution of this proceeding.

Easements

Aqua and East Norriton have a contractual provision in the Asset Purchase Agreement ("APA") that Aqua believes reasonably and adequately addresses the transfer of system easements and rights of way for East Norriton pipe that has been in the ground for decades.¹⁶ Supplementing the contractual provision, Aqua has agreed, in settlement and in response to concerns expressed by I&E,¹⁷ to work with East Norriton Township to ensure the transfer of all real property rights including easements and missing easements as defined in the APA by Closing and to provide an update to I&E, OCA, and OSBA on March 31, 2020 and a final update before Closing regarding the status of the transfer of real property rights including easements. It is understood and agreed that this term does not preclude Aqua and East Norriton Township from closing the transaction if any easements remain missing at Closing. The condition reflects a reasonable compromise of opposing positions of Aqua and I&E. Aqua accepts this condition in resolution of this proceeding.

¹⁶ Aqua St. No. 1-R Public Version at 18.

¹⁷ See I&E St. No. 2 at 19 – 22.

Warranty

In *Cheltenham*, Aqua and I&E addressed an issue of warranty disclaimer within the APA, resolving the issue through stipulation approved by the Commission. The stipulation acknowledged, *inter alia*, that going forward, Aqua will try to address the issue in a manner that is agreeable to Aqua and I&E. The issue was addressed, again, in testimony of Aqua and I&E in this proceeding. In resolution of the warranty issue here, Aqua and East Norriton Township have agreed, in settlement, to amend page 13 of the APA to warrant that the East Norriton assets are fit for a particular purpose at the time of closing and sale as follows:

Except as expressly set forth in this agreement, seller makes no express or implied representations or warranties of any kind whatsoever, including any representation as to the physical condition or value of any of the acquired assets or the system, or the future profitability or future earnings performance of the acquired assets or the system or any future ratemaking that may be allowed by the PAPUC for any of the acquired assets. All implied warranties of merchantability and fitness for a particular purpose ~~are expressly excluded~~ **are valid only until the time of closing.** Notwithstanding the foregoing, seller is not aware of any material defect in the performance or operation of the physical assets constituting the system.

The condition will settle a contested issue in the proceeding and represents a reasonable compromise of opposing positions of Aqua and I&E. Aqua accepts this condition in resolution of this proceeding.

Legal Fees

Aqua has agreed, in settlement, to separately identify, in its next base rate case, 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 such fees. It is appropriate that these matters not be addressed here but rather await a future rate case where they can be fully vetted. Aqua accepts this condition in resolution of this proceeding.

G. Conclusion – Public Interest and Benefit

Aqua’s acquisition of the wastewater system assets of East Norriton Township and related expansion of certificated service territory are necessary or proper for the service, accommodation, convenience or safety of the public.

Aqua submitted substantial evidence in support of the settlement and the many positive factors resulting from the acquisition consistent with *City of York, Popowsky* and *McCloskey*. In further support of the settlement, the evidence of record also demonstrates that hypothetical future rate impact is outweighed by other positive factors.

In settlement, Aqua also accepted several conditions for approval as proposed by I&E, OCA and OSBA consistent with Section 1103(a) of the Code. Joint Petitioners submit that the conditions are just and reasonable and Aqua accepts them in resolution of this proceeding.

In sum, consistent with *City of York, Popowsky* and *McCloskey*, the settlement and acquisition will further public interest and are supported by affirmative public benefit.

IV. Section 1329 Fair Market Valuation

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.

Section 1329 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.

Aqua and East Norriton negotiated a purchase price of \$21,000,000 for the wastewater system. The price was the result of voluntary arm’s length negotiations. Aqua and East Norriton

are not affiliated with each other.¹⁸

Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with Uniform Standards of Professional Appraisal Practice (“USPAP”), utilizing the cost, market and income approaches. East Norriton engaged the services of AUS for the same purpose.¹⁹

Gannett’s fair market value appraisal is \$24,284,000. AUS’s fair market value appraisal is \$25,064,594. The average of the two is \$24,674,297. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$21,000,000, being the lesser of the negotiated purchase price of \$21,000,000 and the average of \$24,674,297.²⁰

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.

A ratemaking rate base of \$20,750,000 is less than the \$21,000,000 produced by application of the statute to the Fair Market Value appraisal results submitted by the Utility Valuation Experts. Aqua, however, accepts a ratemaking rate base of \$20,750,000 in settlement of the proceeding.

A. Appraisal Adjustment

Aqua acknowledges, in the Joint Petition, that the statutory advocates made adjustments to the appraisals of Gannett and AUS and agrees that, in future Section 1329 filings, it will support the following positions:

¹⁸ Aqua Exhibit 1, Section XI, at 14 – 16.

¹⁹ Aqua Exhibit 1, Section XI, at 14 – 16.

²⁰ Aqua Exhibit 1, Section XI, at 14 – 16.

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 settlement term will further the public interest here by tending to reduce 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.

B. Conclusion – Section 1329 Fair Market Valuation

Aqua has agreed, in settlement, to accept, as a condition for approval, a ratemaking rate base of \$20,750,000, which is less than the negotiated purchase price of \$21,000,000 and less than the average of the Fair Market Value appraisal results submitted by the Utility Valuation Experts. The settlement term reflects a compromise of conflicting positions of Aqua, I&E and OCA. Aqua accepts a ratemaking rate base of \$20,750,000 in settlement of the proceeding.

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

A. Section 507 Approval

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 following.

- i. Asset Purchase Agreement, dated October 29, 2018, by and between East Norriton Township and Aqua Pennsylvania Wastewater, Inc.
- ii. Assignment of the Agreement with Joint Sewer Authority, dated November 12, 2003, by and among the East Norriton-Plymouth-Whitpain Joint Sewer Authority, East Norriton Township, Whitpain Township and Plymouth Township addressing service to the Burnside Reserve development
- iii. Assignment of the Agreement, dated July 18, 1994, by and among East Norriton Township, Whitpain Township and John DiSanto
- iv. Assignment of the Agreement, dated August 13, 1991 by and between the Plymouth Township Municipal Authority and Plymouth Township and the East Norriton Sewer Authority and East Norriton Township Board of Supervisors
- v. Assignment of the Agreement, dated September 9, 2007, by and among East Norriton Township, Whitpain Township and the Automobile Dealers Association of Greater Philadelphia
- vi. Assignment of the Joint Treatment Agreement, dated October 5, 1959, among the East Norriton-Plymouth Joint Sewer Authority, the Township of East Norriton, the Township of Plymouth, the East Norriton Township Municipal Authority and the Plymouth Township Municipal Authority
- vii. Assignment of the Intermunicipal Sewage Treatment Service Agreement, dated August 14, 1991 by and among the East Norriton-Plymouth Joint Sewer Authority and East Norriton Township, Plymouth Township and Whitpain Township, East Norriton Township Municipal Authority and Plymouth Township Municipal Authority
- viii. Assignment of the Supplement No. 1 to Intermunicipal Sewage Treatment Service Agreement, dated on or about October 25, 2005, among the East Norriton-Plymouth-Whitpain Joint Sewer Authority and East Norriton Township, Plymouth Township and Whitpain Township.

There is no opposition to the issuance of the Certificates of Filing. Aqua, accordingly, asks that the Commission issue the requested Certificates.

Along with the above, Aqua and East Norriton will enter into a First Amendment to the APA to implement the agreed upon settlement term and amended language discussed above in

Section III.F under the “Warranty” heading. Aqua 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, Aqua’s Application asked the Commission to 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. Aqua asks that the Commission incorporate the above in its Opinion and Order approving the Application.

VI. CONCLUSION

Aqua Pennsylvania Wastewater, Inc. respectfully requests that Administrative Law Judge Angela T. Jones accept the foregoing in support of the Joint Petition for Approval of Settlement and further that Administrative Law Judge Jones recommend approval of and the Public Utility Commission approve the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By  _____

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Date: February 18, 2020

**SBEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Angela T. Jones, Presiding

**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 :**

CERTIFICATE OF SERVICE

I hereby certify that I have this 13th day of February 2020, served a true and correct copy of the foregoing Statement of Aqua Pennsylvania Wastewater, Inc. in Support of Joint Petition for Approval of Settlement, upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL AND 1ST CLASS MAIL, POSTAGE PREPAID

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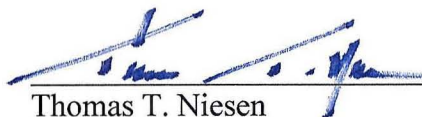
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