**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17120**

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|  | Public Meeting held May 21, 2020 |
| Commissioners Present:  Gladys Brown Dutrieuille, Chairman  David W. Sweet, Vice Chairman  John F. Coleman, Jr.  Ralph V. Yanora | |
| Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of Wastewater System Assets of East Norriton Township | A-2019-3009052 |
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**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Angela T. Jones, issued on March 13, 2020, approving the Joint Petition for Settlement of All Issues (Joint Petition or Settlement) of the above-captioned Application of Aqua Pennsylvania Wastewater, Inc. (Aqua, Applicant or Company) for Approval of Acquisition of Wastewater System Assets of East Norriton Township (East Norriton or Township), Montgomery County, Pennsylvania.[[1]](#footnote-2)

On March 20, 2020, the OCA filed Exceptions to the Recommended Decision. In its Exceptions, the OCA supports approval of the Joint Petition without modification of its terms. However, the OCA requests that the Commission clarify certain factual findings by the ALJ. No Replies to the Exceptions were filed by the Parties.

As discussed below, pursuant to the Joint Petition, the Asset Purchase Agreement (APA) between Aqua and East Norriton shall, subject to the terms and conditions contained in the Settlement, be approved as being in the public interest. The Commission shall issue such Certificates of Public Convenience (CPC or Certificates) as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a) of: (1) the transfer, by sale, of substantially all of East Norriton’s assets, properties and rights related to its wastewater collection system assets to Aqua as provided in the Application; and (2) Aqua’s right to begin to offer, render, furnish or supply wastewater service to the public in the areas served by East Norriton as indicated in the Application.

After consideration of the record and the evidence presented in this matter and consistent with this Opinion and Order, we shall: (1) adopt the Joint Petition and approve the Settlement, without modification; (2) approve the APA; (3) grant the Exceptions filed by the OCA; and (4) adopt the ALJ’s Recommended Decision, as modified by the clarifications requested.

1. **History of the Proceeding**

On July 30, 2019, Aqua filed an application with the Commission (Application), pursuant to the Pennsylvania Public Utility Code (Code), 66 Pa. C.S.

§§ 1102(a) and 1329, requesting that the Commission issue CPCs to Aqua for the transfer, by sale, of substantially all of the assets, properties and rights of the East Norriton wastewater collection system assets (East Norriton System) to Aqua and to set the fair market value of the acquisition for rate base ratemaking purposes.

The Application also requested the issuance of certificates of filing pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, regarding the APA and seven contracts identified in the APA to which the Township is a party.

On September 6, 2019, the OSBA filed a Notice of Intervention and Public Statement. On September 11, 2019, the OCA filed a Protest to the Application and Public Statement. On October 25, 2019, I&E filed a Notice of Appearance.

Aqua made several requests for extension of time to file the requisite data for the Application, which were granted.

By Secretarial Letter dated November 26, 2019, the Commission accepted the Application for filing and assigned the matter to the Office of Administrative Law Judge for adjudication and disposition.

On December 2, 2019, two individual Aqua customers, Christine and Michael Maddalo and Stanley Mansell, filed Protests to the Application, with each arguing, generally, against potential rate increase from the asset purchase of East Norriton.[[2]](#footnote-3) On March 3, 2020, the Commission granted Mr. Mansell’s Withdrawal Petition filed on December 2, 2019.

On December 2, 2019, ALJ Jones issued a Prehearing Conference notice that scheduled a Prehearing Conference on December 30, 2019.

On December 4, 2019, ALJ Jones issued a Prehearing Conference Order that established procedural rules for this proceeding, amendments to discovery and a tentative litigation schedule and directed that the Parties file prehearing memoranda on or before December 27, 2019.

On December 9, 2019, East Norriton filed a Petition to Intervene. Also, on December 9, 2019, Mr. Allen Dalton filed a Protest to the Application.

On December 13, 2019, the Parties filed a proposed procedural schedule that was agreed upon. Aqua filed a Petition for Protective Order. No Parties objected to the issuance of a Protective Order.

Protestants Christine and Michael Maddalo chose to be inactive participants. Mr. Allen Dalton did not attend the scheduled Prehearing Conference nor provided a written statement and, therefore, became an inactive participant. *See* R.D. at 4.

Notice of the Application was published in the *Pennsylvania Bulletin* on December 21, 2019, 49 *Pa. B.* 7555. The deadline for filing protests and petitions to intervene was on January 6, 2020.

A Prehearing Conference was held as scheduled on December 30, 2019. At the Prehearing Conference, the Parties agreed to an expedited procedural schedule, among other things, to comply with the May 21, 2020 statutory deadline for Commission action. 66 Pa. C.S. § 1329(d)(2). None of the Parties objected to the Intervention of East Norriton or the OSBA in this matter.

On January 3, 2020, ALJ Jones issued a Hearing Notice and scheduled a public input hearing on January 13, 2020, to be conducted by means of telephone, in-person and live video broadcast through the Internet (Smart Hearing). Summaries of the testimony presented at the Smart Hearing is set forth on pages 9-11 of the R.D.

The Petition for Protective Order was granted on January 6, 2020.

On January 10, 2020, the Laborers District Council of the Philadelphia Metropolitan Area and Vicinity (Union) petitioned to intervene in the proceeding. No Parties objected to the Union’s intervention.[[3]](#footnote-4)

The public input hearing was held on January 13, 2020. At the hearing various parties identified testimony, documents and exhibits which were admitted into the record without objection.

On January 16, 2020, the ALJ issued an Order which granted the Union’s Intervention and rejected Aqua’s proposed conditions on the Union’s participation in this proceeding.

On January 23, 2020, the active Parties - Aqua, East Norriton, I&E, the OCA and the OSBA (collectively, Joint Petitioners), notified ALJ Jones that they had reached a settlement in principle and requested that the scheduled evidentiary hearing be conducted telephonically on January 24, 2020.

The telephonic evidentiary hearing convened on January 24, 2020. Various parties identified testimony, documents and exhibits which were admitted into the record without objection. In light of the proposed Settlement, the Joint Petitioners agreed to a modified procedural schedule and the ALJ memorialized the agreed-upon schedule in an Interim Order. R.D. at 5.

The ALJ’s Interim Order directed that the settlement documents should be submitted by no later than February 18, 2020. Counsel for the OCA agreed to mail the proposed Settlement to the Joint Petitioners, with a cover letter, by no later than February 6, 2020.

On February 6, 2020, the Joint Petitioners filed a Joint Petition for Approval of the Settlement. The Settlement was mailed out to the Joint Petitioners for their comments. The Union did not join in the Settlement but did not oppose it.

The OCA filed its Statement in Support of the Settlement on February 6, 2020. On February 14, 2020, I&E filed its Statement in Support of the Joint Petition. Also, on February 14, 2020, Mr. Dalton filed a letter indicating that he read the Settlement and joins the Settlement.

On February 18, 2020, the OSBA, Aqua and East Norriton, each filed separate Statements in Support of the Petition. The only individual participant to file comments was Mr. Dalton.

The record in this matter was closed on February 18, 2020, the deadline for filing objections to the Joint Petition. The statutory six-month deadline for Commission action on this matter is May 29, 2020. The Joint Petitioners were able to reach a settlement of all the issues and are in full agreement that the Settlement is in the best interests of East Norriton and its customers.

In the Recommended Decision issued on March 13, 2020, ALJ Jones recommended that the Commission approve and adopt the Settlement without modification and that the Commission issue CPCs to Aqua for the transfer, by sale, of substantially all of the wastewater collection system assets, properties and rights of East Norriton to Aqua. R.D. at 39, 41-42.

On March 20, 2020, the OCA filed Exceptions seeking clarification of the ALJ’s findings, while supporting adoption of the Settlement without modification. No other party filed Exceptions.

On March 23, 2020, Aqua filed its First Amendment to the APA, that became effective on March 3, 2020, to effectuate a term in the Settlement that amends the APA to warrant that East Norriton wastewater system assets are fit at the time of closing of the acquisition.[[4]](#footnote-5)

No Replies to the OCA’s Exceptions were filed.

1. **Background**

**A. Section 1329 and Valuation of Assets**

On April 14, 2016, Governor Wolf signed Act 12 of 2016 into law, which amended Chapter 13 of the Code by adding a new Section 1329, 66 Pa. C.S. § 1329. The new provision became effective on June 13, 2016.

Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The law provides for a voluntary process between an “acquiring public utility”[[5]](#footnote-6) and the seller of the municipal/authority system, to determine the fair market value of an acquired water or wastewater system at the time of acquisition. For ratemaking purposes, the valuation 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.

Specifically, Section 1329 of the Code enables a public utility or other acquiring entity to use fair market valuation which is not tied to the original cost of construction of the facilities which are acquired, minus the accumulated depreciation. Section 1329 also allows the acquiring entity’s post-acquisition improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes. 66 Pa. C.S. § 1329(f). In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an acquiring public utility and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. 66 Pa. C.S. § 1329(b). The selected UVEs conduct economic valuations of the selling utility’s system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which assessment is incorporated into the valuations of the UVEs.

As set forth in Section 1329(a) and (b), fair market value is determined by the results of two, separate independent appraisals conducted by the UVEs. Each UVE determines fair market value in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), employing the cost, market and income approaches.

66 Pa. C.S. § 1329(a)(3). The appraisals are then averaged to determine the fair market value. 66 Pa. C.S. § 1329(g). As noted, the lesser of the negotiated purchase price or the fair market value is the value the acquiring utility will use as the rate base for the acquired assets in its next base rate case. 66 Pa. C.S. § 1329(c)(2).[[6]](#footnote-7)

After receiving the valuations, the acquiring public utility must apply for a Certificate under Section 1102 of the Code, 66 Pa. C.S. § 1102, and include the following as attachments to the Section 1102 application: (1) copies of the UVE appraisals; (2) the agreed purchase price; (3) the ratemaking rate base; (4) the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and (5) a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable. 66 Pa. C.S. § 1329(d)(1).

For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a deadline for issuing a determination as follows: “The [C]ommission shall issue a final order on an application submitted under [Section 1329(d)(1)] within six months of the filing date of an application meeting the requirements of subsection (d)(1).” 66 Pa. C.S. § 1329(d)(2).

On July 21, 2016, the Commission issued proposed procedures and guidelines to begin the implementation of Section 1329. *Implementation of Section 1329 of the Public Utility Code, Tentative Implementation Order*, Docket No. M‑2016‑2543193 (Order entered July 21, 2016) (*Tentative Implementation Order*). Due to the six-month timeline required in Section 1329, the *Tentative Implementation Order* contained a proposed guideline and assumed that the last public meeting before the six-month deadline would be fifteen days prior to that deadline. *Tentative Implementation Order* at 14-15. As noted above, the Commission issued a final order implementing Section 1329 on October 27, 2016. *Implementation of Section 1329 of the Public Utility Code, Final Implementation Order*, Docket No. M‑2016-2543193 (Order entered October 27, 2016) (*Final Implementation Order*). In the *Final Implementation Order*, the Commission indicated that the proposed model timeline was only a guideline for achieving a Commission final order within the six-month deadline, but the parties are free to propose modifications to the presiding ALJ within the context of the specific Section 1329 proceeding. *Final Implementation Order* at 35.

Thereafter, the Commission issued proposed revisions pertaining to the standard materials required for Section 1329 applications, guidelines for selling utility valuations, testimony, and procedural guidelines. *Implementation of Section 1329 of the Public Utility Code, Tentative Implementation Order*, Docket No. M‑2016-2543193 (Order entered September 20, 2018) (*Tentative Supplemental Implementation Order*). After receiving comments about the *Tentative Supplemental Implementation Order*,the Commission entered a final Order designed to improve the quality of valuations, ensure that the adjudication process is both fair and efficient, and, ultimately reduce litigation surrounding Section 1329 determinations. *Implementation of Section 1329 of the Public Utility Code, Tentative Implementation Order*, Docket No. M‑2016-2543193 (Order entered September 20, 2018) (*Final Supplemental Implementation Order*).

**B. Transaction Overview**

Aqua (the acquiring entity) is a regulated public utility company existing under the laws of the Commonwealth of Pennsylvania. Aqua provides wastewater utility service to approximate 28,000 customers. Aqua’s service territory covers Adams, Bucks, Carbon, Chester, Clarion, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, Venango, and Wyoming Counties. Aqua St. No.2 at 3. Aqua operates 37 wastewater treatment plants throughout the Commonwealth. Twenty systems of the Company’s Southeast Division are in proximity to East Norriton. Aqua and its parent company, Aqua Pennsylvania, Inc. (Aqua PA) have about 600 employees with expertise in providing water and wastewater service to Pennsylvania citizens. R.D. at 7.

East Norriton (the selling entity) is a township of the Second Class that owns and operates a sanitary wastewater collection system providing service to 4,966 customers. East Norriton’s collection system has approximately 59 miles of gravity sewer collection mains and intercepts in sizes ranging from eight inches to 24 inches in diameter with 9 dedicated pump stations and approximately four miles of force mains sized four to 16 inches. *See* Application at 3. A surge tank is located at the Einstein Road Pump Station to assist with maintaining flows during wet weather. R.D. at 8, citing Applicationat 4. Certain Township customers are connected to Whitpain Township and Plymouth Township mains due to proximity and availability of sewer mains located near the properties. Arrangements for the service of customers are set forth in the contracts to be assigned to Aqua. *Id*. The Township does not distinguish between residential, commercial, and industrial customer classes. The wastewater flow for East Norriton customers was approximately 988,750,00 gallons for 2018. The Township bills its customers on a quarterly basis. R.D. at 7.

East Norriton has metered sewer customers, flat rate sewer customers and metered well customers. Metered customers are charged a minimum bill of $63.25 per quarter which includes 4,000 gallons of usage with a rate of $6.54 per 1,000 gallons for usage above the minimum. Flat rate customers are charged $115.64 per quarter. Certain customers within the Township that are connected to Whitpain Township, but billed by East Norriton, are charged $95.00 per quarter. R.D. at 8, citing Applicationat 7-8.

Wastewater treatment is provided by the East Norriton-Plymouth-Whitpain-Joint Sewer Authority (JSA WWTP)[[7]](#footnote-8) at its wastewater treatment plant in Plymouth Township. Water service is provided by Pennsylvania-American Water Company and private wells. R*.*D. at 8.

East Norriton experienced 25 sanitary sewer overflows (SSO) in 2018, with three of the occurrences due to blockages from roots and grease. The remainder of the occurrences were due to wet weather events. The Township received a letter from the Pennsylvania Department of Environment Protection (DEP) dated July 15, 2019, which noted DEP’s belief that the Township is subject to an excessive amount of wet weather inflow and infiltration (I&I). DEP also noted that the sewers tributary to the Norris City Pump Station are hydraulically overloaded. R.D. at 8.

The original cost, by year and major plant category, of East Norriton’s used and useful plant in service is $16,212,760 with a related calculation depreciation reserve of $7,664,762. R.D. at 8, citing Application at 5.

On October 29, 2018, Aqua and East Norriton entered into the APA whereby East Norriton would sell all its wastewater system assets, properties and rights relating to the East Norriton System to Aqua for the purchase price of $21 million. Subsequently, the Parties entered into a settlement agreement where they agreed to a rate making rate base value for those assets at $20.75 million. R.D. at 6-7.

Aqua filed its Application under Sections 507, 1102 and 1329 of the Code, 66 Pa. C.S. §§ 507, 1102 and 1329.

**III.** **Discussion**

1. **Legal Standards**

Aqua is the Applicant in this proceeding. As the proponent of a rule or order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Applicant’s evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se‑Ling Hosiery, Inc. v. Margulies*,364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

The Applicant requests approval of: (1) the transfer, by sale, of substantially all of East Norriton’s assets, properties and rights related to its wastewater system and all pipes, pumping stations, hoists, generators, manholes and pipelines and billing and collections related assets necessary to run the system to Aqua as provided in the Application; and (2) Aqua’s right to begin to offer, render, furnish or supply water service to the public in the areas served by East Norriton as indicated in the Application. Accordingly, Aqua has the burden of proving it satisfies the requirements of the Code, particularly Sections 1102 and 1103 of the Code, 66 Pa. C.S. §§ 1102 and 1103. Section 1102(a) provides that the Commission must issue a Certificate as a legal prerequisite to a public utility offering service or abandoning service and certain property transfers by public utilities. The Code provides the following, in pertinent part:

Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

\* \* \*

(3) For any public utility . . . to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. § 1102(a)(3).

The Commission will only grant a Certificate“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.” To ensure that a transaction is in the public interest, the Commission may impose conditions in granting a Certificate that it deems to be just and reasonable. 66 Pa. C.S. § 1103(a).

In order for the Commission to approve the proposed transaction under Sections 1102 and 1103 of the Code, the Applicant must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*).[[8]](#footnote-9)

Additionally, pursuant to Section 1103 of the Code, the Applicant must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from the Township. *Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958). As a certificated public utility, there is a rebuttable presumption that Aqua possesses the requisite fitness. *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

Finally, in accordance with Section 507 of the Code, any contract or agreement between any public utility and any municipal corporation shall only be valid unless filed with the commission at least 30 days prior to its effective date. The Commission may, prior to the effective date of such contract or agreement, institute proceedings to determine the reasonableness, legality or any other matter affecting the validity. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval.

**B. Settlement**

As stated above, the Parties reached a full settlement of all the issues in this proceeding and the Joint Petition was filed by Aqua, I&E, the OCA, the OSBA, and East Norriton. The Joint Petition includes the terms and conditions of the Settlement relating to: (1) the agreed-upon fair market value for ratemaking purposes at $20,750,000; (2) the rate treatment of the acquired system assets; (3) cost of service study considerations; (4) distribution system improvement charge (DSIC) considerations; (5) long term infrastructure improvement plan (LTIIP) considerations; (6) allowance for funds used during constructions (AFUDC) considerations; (7) warranty and legal fees concerning this transaction; and (8) other rate-related issues and agreements necessary to effectuate the transaction. The Joint Petition is supported by statements from all the signatory parties.

**TERMS OF SETTLEMENT**

The relevant terms of the settlement are as follows – subsections and paragraph numbers are listed as they appear in the original settlement filed with the Commission:

23. Joint Petitioners agree that this Application proceeding can be settled without the need for further litigation. The terms and conditions comprising this Joint Petition, to which Joint Petitioners agree, are as follows:

**A. Approval of Application and Acquisition**

(1) The Commission should approve Aqua’s acquisition of the East Norriton Township wastewater collection system assets and Aqua’s right to begin to offer, render, furnish, or supply wastewater service in the areas served by East Norriton.

(2) The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.[[9]](#footnote-10)

**B. Tariff**

The pro forma tariff submitted by Aqua with the Application, including all rates, rules and regulations regarding conditions of Aqua’s wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

**C. Cost of Service Study**

(1) In the first base rate case that includes East Norriton wastewater system assets, Aqua will submit a wastewater cost of service study that removes all costs and revenues associated with the operation of the East Norriton system.

(2) In the first base rate case that includes East Norriton wastewater system assets, Aqua will also provide a separate cost of service study for the East Norriton system. Aqua will file a Cost of Service Study separately for the East Norriton system consistent with typically filed rate making exhibits including, but not limited to the following: Rate Base (Measures of Value), Statement of Operating Income, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

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

(1) Any claims for AFUDC and deferred depreciation related to post acquisition improvements not recovered through the Distribution System Improvement Charge (“DSIC”) for book and ratemaking purposes, will be addressed in Aqua’s first base rate case which includes East Norriton wastewater system assets.

(2) Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties assent to this agreement should not be construed to operate as its preapproval of Aqua’s requests.

**E. DSIC and Long Term Infrastructure Improvement Plan (“LTIIP”)**

(1) Upon approval by the Commission of a modification to its LTIIP to include the East Norriton wastewater 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.

(2) In LTIIPs or Annual Asset Optimization Plans that include the East Norriton wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. This 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.

**F. Fair Value Ratemaking Rate Base**

Pursuant to Section 1329(c), Aqua shall be permitted to use $20,750,000 for ratemaking rate base for the acquired assets.

**G. Appraisal Adjustments**

(1) Aqua acknowledges that the statutory advocates made adjustments to the appraisals of Gannett Fleming Valuation and Rate Consultants, LLC and AUS Consultants, Inc. Aqua agrees that in future Section 1329 filings, Aqua 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.

(2) 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.

**H. East Norriton Rates**

(1) The current average East Norriton residential rate is $38.52 per month based on 4,000 gallons of monthly usage. As set forth in the notice sent to East Norriton customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on East Norriton’s wastewater customers of 34.84%.[[10]](#footnote-11)

(2) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the East Norriton customers that are in excess of the restrictions contained in Section 7.03(a) of the Asset Purchase Agreement.

**I. Welcome Letter**

Aqua will 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.

**J. Low Income Program Outreach**

Within the same Welcome Letter identified in the previous term, Aqua shall include information regarding its low income programs. The welcome letter shall include, at a minimum, a description of the available low income programs eligibility requirements for participation in the programs, and Aqua’s contact information.

**K. Easements**

Aqua and East Norriton Township will work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement (“APA”) by Closing. Aqua will 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 related to the system. This provision does not limit Aqua and East Norriton Township’s ability to go to Closing if any missing easements are not transferred at the time of Closing.

**L. Warranty**

Aqua and East Norriton Township agree to amend page 13 of Exhibit B of Aqua’s Application, 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.

**M. Legal Fees**

In its next base rate case, Aqua shall separately identify any legal fees included in its transaction and closing costs pursuant to the APA between Aqua and East Norriton Township and specify amounts expended by Aqua on behalf of East Norriton. The statutory advocates reserve the right to challenge the reasonableness, prudency, and basis for such fees.

**III. JUSTIFICATION AND SUPPORT FOR SETTLEMENT**

24. It is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement.[[11]](#footnote-12) Settlements lessen the time and expense of litigating a case and, thus, directly benefit all parties concerned. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.[[12]](#footnote-13) Joint Petitioners submit that the resolution of this proceeding through settlement will further the public interest. Aqua, I&E, OCA, OSBA and Township agree that Aqua has the requisite technical, financial and legal fitness to own and operate the East Norriton system and have agreed to file statements in support of the settlement by February 18, 2020, which will be labeled as Attachments 1 through 5, respectively.

**IV. CONDITIONS OF SETTLEMENT**

25. This Joint Petition is proposed to settle the instant matter and, except as set forth above, is made without any admission against or prejudice to any positions which any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by anyone of the Joint Petitioners as provided below. Except as set forth above, Joint Petitioners agree that this Joint

Petition shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

26. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein without modification. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn upon written notice to the Commission and all parties within three (3) business days by any one of the Joint Petitioners and, in such event, shall be of no force and effect. Regardless of whether this Settlement is approved or not, no adverse inference shall be drawn to any party in this or any other proceeding as a consequence of this Settlement. Joint Petitioners waive the right to file Exceptions if Judge Jones recommends approval of this Joint Petition without modification.

Settlement at 6-11; 11-17.

**C. ALJ’s Recommendations**

In the Recommended Decision, ALJ Jones set forth the terms and conditions of the Settlement and recommended the approval of the Joint Petition upon review under the applicable legal standards. R.D. at 11-20; 20-37, and 37‑39. Additionally, the ALJ reached twelve Conclusions of Law. R.D. at 40-41. The ALJ’s analysis and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified for purposes of clarification by this Opinion and Order.

The ALJ recommended the approval of the Joint Petition without modification to the terms and conditions for approval of Aqua’s and East Norriton’s APA as being in the public interest. R.D. at 18-38, 38-39.

The ALJ’s analysis and recommendation for the approval of the Joint Petition and adoption of the relevant terms and condition of the Application, without modification, as being in the public interest, are summarized as follows:

1. **Approval of Application**

The ALJ reviewed the record in this Application and concluded that Aqua is technically, legally and financially fit to own and operate the assets it would acquire through the proposed transaction and to provide the proposed service to the public. R.D. at 22.

The ALJ cited to the Commission’s Orders, *South Hills Movers, Inc. v. Pa. PUC*,21 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992); *Re: Byerly*, 270 A.2d 186 (Pa. 1970); *Morgan Drive-Away, Inc. v. Pa. PUC*,293 A.2d 895 (Pa. Cmwlth. 1972), and explained that, Aqua as an existing certified Pennsylvania public utility, has a presumption of legal and technical fitness. R.D. at 20-21.

With regard to financial fitness, the ALJ explained that Aqua is the second largest investor owned regulated water and wastewater utility operating in Pennsylvania. The ALJ also explained that Aqua, as a subsidiary of Aqua PA, has access to Aqua PA’s financing capabilities. The ALJ noted that Aqua PA has total utility plant assets of $4.3 billion and annual revenues of $438 million in 2018.

The ALJ also noted that Aqua’s witness testified that it would finance the transaction by using existing short-term credit lines, and that the Company expects to convert the short-term credit to a mix of long-term debt and equity capital shortly after closing the proposed transaction. R.D. at 21.

The ALJ stated that Aqua PA has a track record of working within the Commission’s consolidation and regionalization policy to assimilate wastewater and water systems and has a better chance to realize the benefits of better management practices, economics of scale and greater environmental and economic benefits. The ALJ cited Aqua’s Statement in support of the Settlement that, consolidation and regionalization also enhance the quality of ratepayers’ daily lives, promotes community economic development and provides environmental enhancements. These benefits inure to both existing and acquired customers. Aqua Stmt. in Support at 6. R D at 2‑23.

The ALJ also discussed the affirmative public benefits of the proposed transaction including consolidation/regionalization, benefits to East Norriton customers and benefits to Aqua’s existing customers. R.D. at 22-25.

**2. Cost of Service Study**

The ALJ made special reference to one of the conditions in the Settlement in which Aqua, in its first base rate case, will remove all costs and revenues associated with the operation of East Norriton and have a cost of service study exclusively for the wastewater system of East Norriton. R.D. at 26-27. The ALJ agreed that this precedent is modelled after the Commission’s directive in its approval of the recent *Application of Aqua Pa. Wastewater, Inc. Pursuant to Section 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Twp., and Contracts between Aqua Pa. Wastewater, Inc. and Cheltenham Twp.*,Docket No. A-2019-3008491, (Order entered November 5, 2019) (*Cheltenham*). In *Cheltenham,* the Commission conditioned its approval of an acquisition by directing the submission of a separate cost of service study. The ALJ concluded that approval of the Application was in the public interest and recommended that the Commission issue Certificates as may be necessary to evidence its approval pursuant to 66 Pa. C.S. § 1102(a). R.D. at 27, 37 and 43.

**3. Allowance for Funds Used During Construction (AFUDC), Deferral of Depreciation and Transaction Costs**

The ALJ reviewed the term which provides: (1) that Aqua be permitted to defer AFUDC and depreciation related to post acquisition improvements not recovered through the DSIC for book and addressed in Aqua’s first base rate case; and (2) that the parties reserve the right to litigate claims of AFUDC, deferral depreciation and transaction costs in future rate cases. The ALJ agreed with the Joint Petitioners and found the settlement term protects the public interest and does not hinder any party from challenging the justness and reasonableness of any Company projects in the future rate base proceeding the include East Norriton assets. R.D. at 27-28.

**4. Distribution System Improvement Charge (DSIC) and Long Term Infrastructure Improvement Plan (LTIIP)**

The ALJ reviewed the settlement term concerning the DSIC. The term provides that: (1) Aqua shall be permitted to collect a DSIC related to the East Norriton system prior to the first base rate case in which the East Norriton assets are incorporated into rate base; and (2) if the Commission approves proposed modification to its LTIIP to include the East Norriton System, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas.

The ALJ concluded the term regarding the DSIC to be appropriate and reasonable, and that it balances the capital improvement needs of the newly acquired East Norriton customers with Aqua’s existing customers. The ALJ noted that this provision permits the Company to allocate the costs of any capital projects initiated for East Norriton while preserving the established priority of capital projects and addressing needs of Aqua’s service territory and exiting customers. R.D. at 28-29.

**5. Ratemaking Rate Base - Fair Market Value**

The ALJ reviewed the settlement term which provides that Aqua shall be permitted to use a value of $20,750,000 for ratemaking rate base purposes. The ALJ noted that the proposed purchase price of East Norriton’s wastewater system is $21,000,000, and that the proposed purchase price was below the average fair market valuation of $24,674,297 ($24,284,000+$25,064,594)/2) of two appraisals for the East Norriton wastewater system, and is consistent with Section 1329(c)(2).[[13]](#footnote-14)

The ALJ concluded that acceptance of the agreed upon value was a reasonable compromise of the Parties’ positions and in the public interest. R.D. at 29-30.

**6. Appraisal Adjustments**

As stated, *supra*, Aqua shall be permitted to use $20,750,000 for ratemaking rate base for the acquired assets, after adjustments were made to the appraisals of Gannett Fleming Valuation and Rate Consultants, LLC and AUS Consultants, Inc. Aqua also agrees that in future Section 1329 filings, Aqua 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.

Settlement at 8.

The ALJ stated that the Joint Petitioners’ agreement to make adjustments to the ratemaking rate base reflects a compromise of the various positions of the Joint Petitioners and is reasonable and prudent for consistency. The ALJ found it compelling that the Parties have agreed to the adjustments by implementing provisions adopted in *Cheltenham* in this proceeding. The ALJ concluded that this provision of the Settlement is in the public interest. R.D. at 30-31.

**7. East Norriton Rates**

The ALJ agreed with the Joint Petitioners that the settlement terms allow for Township customers to retain existing rates until new rates are set by the Company’s next base rate proceeding. The ALJ noted the rates are reasonable and provide protections to both existing Aqua customers and East Norriton customers. The ALJ also noted that in a base rate proceeding more comprehensive data is accessible to make a fair and reasonable determination on rates, and curtailed litigation, time and resources in this proceeding. Therefore, the ALJ found the settlement terms regarding rates to be in the public interest and recommended that the terms be approved without modification. R.D. at 31-32.

**8. Welcome Letter and Low Income Outreach**

Currently, East Norriton customers are billed on a quarterly basis and does not distinguish between the customer’s class, i.e. residential, commercial or industrial customers. Through the Settlement, Aqua agreed to send out a welcome letter 20 days after the closing of the transaction has occurred. The welcome letter will include:

1. Information on converting from quarterly to monthly billing;
2. Aqua’s low-income programs; and
3. Aqua’s contact information.

The low-income programming information will include descriptions of eligibility guidelines and contact information of the Company for further inquiries. R.D. at 32.

The ALJ found that the above settlement provisions are reasonable, and it is appropriate for East Norriton customers to receive notice regarding their change in billing frequency from quarterly to monthly and available customer assistance programs for low-income customers. The ALJ also noted that it ensures that Aqua provides information including financial assistance to maintain access to wastewater service for eligible East Norriton customers and promotes a policy of the General Assembly in the Responsible Utility Customer Protection Act. 66 Pa. C.S. § 1402(3). The ALJ finds that this provision furthers the public interest. R.D. at 32-33.

**9. Easements**

The ALJ notes that the APA addresses the transfer of system easements and rights of way for East Norriton piping. Aqua St. No. 1-R (non-proprietary) at 18. Through the Settlement, Aqua agreed that on March 31, 2020, it will provide an update to the public advocates (I&E, the OCA and the OSBA), and a final update before the closing of these contractual real property rights to ensure that the parties will be informed of the status of any missing real property rights. R.D. at 33.

The ALJ found the above provision as reasonable and a compromise to a contentious issue between the Parties. The ALJ also found it to be in the public interest. R.D. at 33-34.

**10. Warranty**

The ALJ noted that as a compromise to a dispute on warranty of acquired wastewater assets of East Norriton, the Parties agreed through the Settlement to amend the APA[[14]](#footnote-15) to warrant that East Norriton wastewater system assets are fit at the time of closing of this transaction. The ALJ found the warranty provision as reasonable, prudent and afforded Aqua the capability to pursue a breach of warranty claim if the East Norriton wastewater system is not operational at the closing of the transaction. R.D. at 34-35.

As noted, on March 23, 2020, Aqua filed its first Amendment to the APA, that became effective on March 3, 2020, to effectuate a term in the Settlement that amends the APA to warrant that East Norriton wastewater system assets are fit at the time of closing of the acquisition.

**11. Legal Fees**

In the Settlement, Aqua agreed to separately identify in its next base rate case any legal fees included in its closing cost of this transaction and to specify any amounts expended by Aqua on behalf of East Norriton with the statutory advocates (I&E, the OCA and the OSBA). The ALJ agreed that it is appropriate to review whether the legal fees have accrued above the threshold of $20,000 during an Aqua base rate case. The ALJ found that it is in the public interest to have this term addressed in a future base rate case where certainty of the amount and the appropriates of said fees can be determined. R.D. at 35-36.

**12. Tariff**

The ALJ recommended the adoption of a *pro forma* tariff that was attached to the Application as Exhibit G, that adopts the current rates of East Norriton and includes all rates, rules and regulations regarding conditions of Aqua’s wastewater service and full disclosure of rates to the public. The ALJ found that the *pro forma* tariff is in the public interest recommended its approval effective upon the Commission’s approval of the instant Application. R.D. at 37.

**13. Approval of Agreements under Section 507**

The ALJ concluded that, the APA between the Township and Aqua entered on October 29, 2018, and seven contracts that are assigned in this proceeding are reasonable, legal and valid. The ALJ also noted that there is no record of any opposition to the issuance of any of the eight Certificates of Filing, and therefore recommended that the Commission grant approval by the issuance of Certificates of Filing. R.D. at 37-38.

**14. Standard Settlement Conditions**

The Settlement contained additional standard terms typically included in many settlements before the Commission, which serve to protect the rights of the various parties to pursue their original litigation positions in the event the Commission modifies the settlement in any way. Joint Petitioners have waived their right to file Exceptions if ALJ Jones recommends approval of this Joint Petition without modification. These standard terms provide that the Settlement is conditioned upon the Commission’s approval of the terms and conditions contained in the Settlement without modification. Settlement at 10-11. The ALJ found the terms to be reasonable and in the public interest and recommended that they be approved. R.D. at 36.

**15. Protestants**

After concluding her review of the Joint Petition’s terms and conditions, the ALJ reviewed the positions brought forward by three *pro se* Protestants. The ALJ noted that none of the *pro se* Protestants choose to oppose the settlement, rather one protestant withdrew his protest, and another chose to join the Settlement. Similarly, neither of the two intervenors, East Norriton and the Union, opposed the Settlement. Five of the six witness that testified at the Smart Hearing stated they did not want their rates to increase. However, the Settlement ensures that there is no immediate rate increase for East Norriton or Aqua customers as the current rates of East Norriton customers will be implemented after the transaction is approved. Accordingly, the ALJ found that the objections to the Application voiced by the five Smart Hearing witnesses is rebutted by the directives implementing rates agreed upon in the Settlement. R.D. at 39.

The ALJ reached the conclusion that the Petitioners have established that the proposed terms and conditions of the Settlement will promote increased efficiency of service and capital improvements in a cost-effective manner and is in the public interest. The ALJ also found that the Settlement would yield positive benefits resulting from the acquisition that are consistent with *City of York, Popowsky, and McCloskey*. Accordingly, the ALJ recommended granting of the Application and the Joint Petition for Approval of Settlement and for the Commission to approve and adopt the Settlement without modification. R.D. at 39.

**D. OCA Exceptions**

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

As noted above, on March 20, 2020, the OCA filed Exceptions seeking clarification of the ALJ’s findings, while supporting adoption of the Joint Petition without modification. Specifically, the OCA avers that certain factual findings by the ALJ in her Recommended Decision are not addressed in the Joint Petition. As such, the OCA maintains that references are extraneous to, and unnecessary, for the adoption of the Joint Petition without modification. The OCA submits that either the Commission should provide clarification or refrain from adopting specific references in the ALJ’s Recommended Decision, and that with that qualification it supports the adoption the Joint Petition without modification. Exc. at 1-3.

Specifically, the OCA proposes that the ALJ’s Recommended Decision be clarified by deletion of the following language:

APW has agreed not to raise rates on its existing customers; therefore, there will not be any immediate impact on their rates. Aqua Exhibit No. 1, Application ¶ 51.g, ENT Stmt. in Support at 6.

Exc. at 2, *citing* R.D. at 25;

Five of the six witnesses that testified at the smart hearing stated they did not want their rates to increase. See *supra* at 6-8.

However, the Settlement ensures that there is no immediate rate increase for ENT or APW customers as the current rates of ENT customers will be implemented after the transaction is approved. Any rate increase to ENT or APW customers would be due to a future base rate case filing and the approval of the Commission.

I find that the objections to this Application voiced by these five smart hearing witnesses is rebutted by the directives concerning implementing rates agreed upon in the Settlement.

Exc. at 3, *citing* R.D. at 39.

The OCA submits that the above portions of the Recommended Decision’s discussion of rates do not reflect the terms of settlement reached by the Parties. As such, the OCA submits for purposes of clarification that an agreement not to raise rates on existing customers is not a component of the proposed transaction. Exc. at 3.

The OCA requests that the Commission clarify, or refrain from adopting, certain aspects of the Recommended Decision, consistent with the foregoing Exceptions. With that qualification, the OCA supports the ALJ’s recommendation to approve the Joint Petition for Settlement without modification. Exc. at 4, *citing* R.D. at 25 and 39.

As noted above, no Replies to the OCA’s Exceptions were filed.

**E. Disposition**

1. **OCA’s Exceptions**

With respect to the OCA’s Exceptions requesting modification of the Recommended Decision *via* limited deletions of references to issues that were contested on the record and not expressly resolved by the terms and conditions of the Joint Petitions, we agree with the OCA. We note that no Party filed Replies in opposition to the OCA’s Exceptions and that the deletions requested for purposes of clarification do not interfere with the adoption of the terms and conditions of the Joint Petition, as amended, without modification. Rather, the proposed deletions of the language, quoted above, at pages 25 and 39, of the Recommended Decision, deletes *dicta* from the Recommended Decision which is immaterial to our review and decision whether to adopt the Joint Petition.

Therefore, we will grant the OCA’s Exceptions, and modify the ALJ’s Recommended Decision by deleting the language, as quoted above, for purposes of clarification. *See* R.D. at 25 and 39.

1. **The Settlement**

With respect to the Joint Petition seeking approval of Aqua’s Application, as summarized above, the ALJ recommended approval of each of the settlement terms, without modification, as being in the public interest. R.D. at 19, 37, 39 41-42. We concur.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7.

Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission’s decision, yielding significant expense savings for the company’s customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Id.*

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R‑00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

The Joint Petition reflects the consensus of the Parties that the terms and conditions benefit all interested parties, including securing a lower rate increase than might have otherwise resulted from protracted litigation. The Joint Petition resolves the issues necessary for the ultimate resolution of the present proceeding. It also removes several potentially contentious issues that would have prolonged or required further litigation or administrative proceedings. The benefits of approving the Joint Petition are numerous and will result in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Joint Petition provides regulatory certainty with respect to the disposition of issues which benefits all parties.

We agree with the ALJ’s analysis and conclusion that the provisions of the Joint Petition are in the public interest. Accordingly, we shall adopt the ALJ’s recommendation and approve the Joint Petition, without modification.

**Conclusion**

We have reviewed the record as developed in this proceeding, including the ALJ’s Recommended Decision and the Exceptions filed thereto. Based upon our review, evaluation and analysis of the record evidence, we shall adopt the ALJ’s recommendations and the clarifications to the Recommended Decision addressed in the OCA Exceptions.

We conclude that Aqua has shown, by a preponderance of substantial evidence, that it possesses technical, financial and legal fitness, to operate as a wastewater service provider. We note that Aqua has experience in improving acquired wastewater systems service and making improvements to those systems. *See* I&E Stmt. in Support at 8.

We also conclude that approval of the Application will provide affirmative public benefits to customers of Aqua, customers of East Norriton and the public. Furthermore, the negatives of any future rate increase are outweighed by the gains realized by the Township, the customers of Aqua and the customers of East Norriton by addressing the wastewater service issues for infrastructure improvement and maintenance. We also find that Aqua has shown by the preponderance of the evidence that the eight contracts at issue in this proceeding are reasonable, legal and valid; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed on March 20, 2020, by the Office of Consumer Advocate, to the Recommended Decision of Administrative Law Judge Angela T. Jones, issued on March 13, 2020, are granted, and the Recommended Decision shall be modified for clarification purposes, at pages 25 and 39, consistent with this Opinion and Order.

2. That the Recommended Decision of Administrative Law Judge Angela T. Jones, that was issued on March 13, 2020, is adopted as modified, consistent with this Opinion and Order.

3. That the Joint Petition for Approval of Settlement of All Issues filed by Aqua Pennsylvania Wastewater Inc., the East Norriton Township, the Office of Consumer Advocate, the Office of Small Business Advocate and the Bureau of Investigation and Enforcement (together, Joint Petitioners) on February 6, 2020, at Docket No. A-2019-3009052, including all terms and conditions thereof, is approved without modification.

1. That the Application filed by Aqua Pennsylvania Wastewater, Inc. on July 30, 2019, is granted, subject to the following conditions (subsections and paragraph numbers are listed as they appear in the original settlement filed with the Commission):
2. In the first base rate case that includes East Norriton Township’s wastewater system assets, Aqua Pennsylvania Wastewater, Inc. will submit a cost of service study that removes all revenues, expenses and rate base associated with the operation of the East Norriton Township’s wastewater system assets.
3. In the first base rate case that includes East Norriton Township’s wastewater system assets, Aqua Pennsylvania Wastewater, Inc. will also provide a separate cost of service study for the East Norriton Township’s wastewater system assets consistent with typically filed ratemaking exhibits including, but not limited to the following: (1) Rate Base (Measures of Value); (2) Statement of Operating Income; and (3) Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.
4. Pursuant to 66 Pa. C.S. § 1329(f), Aqua Pennsylvania Wastewater, Inc. is permitted to accrue an Allowance for Funds Used During Construction. Any claims related to the accrual of Allowance of Funds Used During Construction for non-distribution system improvement charge for eligible post-acquisition improvements shall be made in the next Aqua Pennsylvania Wastewater, Inc. base rate case following the plant additions.
5. Pursuant to 66 Pa. C.S. § 1329(f), Aqua Pennsylvania Wastewater, Inc. is permitted to defer depreciation related to post-acquisition improvements not recovered through the DSIC [Distribution System Improvement Charge] for book and ratemaking purposes. Any rate claims related to the deferral of depreciation for book and ratemaking purposes on non-distribution system improvement charge for eligible post-acquisition improvements shall be made in the next Aqua Pennsylvania Wastewater, Inc. base rate case following the plant additions.
6. That Aqua Pennsylvania Wastewater, Inc. promptly following the closing of the acquisition, shall file a compliance tariff supplement with the Commission, consistent with the *pro forma* tariff supplement containing the existing rates of East Norriton Township at Exhibit G of the Application, to be effective on one day’s notice.
7. That upon the Commission’s approval of a modification to Aqua Pennsylvania Wastewater, Inc.’s Long Term Infrastructure Improvement Plan to include the East Norriton Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall be permitted to collect a Distribution System Improvement Charge related to the East Norriton Township wastewater system prior to the first base rate case in which the East Norriton Township assets are incorporated into rate base.
8. That in Long Term Infrastructure Improvement Plans or Annual Asset Optimization Plans that include the East Norriton Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall not reprioritize other existing capital improvements that Aqua Pennsylvania Wastewater, Inc. already committed to undertake in other service territories.
9. That Aqua Pennsylvania Wastewater, Inc. shall send, within 20 days following closing of acquisition, a welcome letter to East Norriton Township wastewater customers, which shall include information regarding the conversion to monthly billing for wastewater service, Aqua Pennsylvania Wastewater, Inc.’s available low-income programs and eligibility requirements for participation in the programs and Aqua Pennsylvania Wastewater, Inc.’s contact information.
10. That in the next base rate case that includes East Norriton Township’s wastewater system assets, Aqua Pennsylvania Wastewater, Inc. shall separately identify any legal fees included in Aqua Pennsylvania Wastewater, Inc.’s transaction and closing costs pursuant to the Asset Purchase Agreement between Aqua Pennsylvania Wastewater, Inc. and East Norriton Township and specify amounts expended by Aqua Pennsylvania Wastewater, Inc on behalf of East Norriton Township.
11. That Aqua Pennsylvania Wastewater, Inc. shall file, within 30 days of closing of the acquisition, the municipal agreement set forth in subsection (a) through (h) herein under a separate “U” docket number. The Commission’s Secretary’s Bureau shall issue Certificates of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 507, for the following agreements between Aqua Pennsylvania Wastewater, Inc. and a Township/Municipal Authority:
12. Asset Purchase Agreement By and Among the Township of East Norriton, as Seller, and Aqua Pennsylvania Wastewater, Inc., as Buyer, Dated as of October 29, 2018;
13. Assignment of the Agreement with Joint Sewer Authority, dated November 12, 2003, by and among the East Norriton-Plymouth-Whitpain Joint Sewer, East Norriton Township, Whitpain Township and Plymouth Township addressing service to the Burnside Reserve development;
14. Assignment of the Agreement, dated July 18, 1994, by and among East Norriton Township, Whitpain Township and John DiSanto;
15. Assignment of the Agreement, dated August 13, 1991 by and between the Plymouth Township Municipal and Plymouth Township and the East Norriton Sewer and East Norriton Township Board of Supervisors;
16. Assignment of the Agreement, dated September 9, 2007, by and among East Norriton Township, Whitpain Township and the Automobile Dealers Association of Greater Philadelphia;
17. Assignment of the Joint Treatment Agreement, dated October 5, 1959, among the East Norriton-Plymouth Joint Sewer, the Township of East Norriton, the Township of Plymouth, the East Norriton Township Municipal and the Plymouth Township Municipal Authority;
18. Assignment of the Intermunicipal Sewage Treatment Service Agreement, dated August 14, 1991 by and among the East Norriton-Plymouth Joint Sewer and East Norriton Township, Plymouth Township and Whitpain Township, East Norriton Township Municipal and Plymouth Township Municipal Authority;
19. 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.
20. That Aqua Pennsylvania Wastewater, Inc., shall file within 30 days of closing of the acquisition, a verified statement at this Docket notifying the Commission whether the following requirements have been met or complied with:
21. Settlement ¶ 23.I (Welcome letter);
22. Settlement ¶ 23.J (Available Low Income Programs); and
23. Settlement ¶ 23.K (Easement).
24. That the Commission shall issue Certificates of Public Convenience under 66 Pa. C.S. §§ 1102(a) and 1103(a) evidencing Commission approval of: (1) the transfer, by sale, of East Norriton Township’s assets, properties and rights related to its wastewater system to Aqua Pennsylvania Wastewater, Inc. as provided in the Application; and (2) Aqua Pennsylvania Wastewater Inc’s right to begin to offer, render, furnish or supply wastewater service in the areas served by East Norriton Township, as indicated in the Application.
25. That for purposes of Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. § 1329(c), a rate base addition of $20,750,000 associated with the acquisition of the East Norriton Township’s wastewater system assets is approved.
26. That Certificates of Filing for approval for the Asset Purchase Agreement By and Between East Norriton Township, as Seller, and Aqua Pennsylvania Wastewater, Inc., as Buyer, dated as of October 29, 2018, and the First Amendment to the Asset Purchase Agreement (reflecting warranties of merchantability and fitness of assets), as of March 3, 2020,shall be issued.
27. That any other approvals or certificates appropriate, customary, or necessary under the Public Utility Code to carry out the Transaction contemplated in the Application in a lawful manner shall be issued.
28. That any filings designated as “confidential” be placed in the non-public folders by the Secretary of the Pennsylvania Public Utility Commission.
29. That a copy of the Order be served upon the East Norriton Township Board of Supervisors, the East Norriton Township Planning Commission, the Montgomery County Commissioners, the Montgomery County Planning Commission, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Revenue’s Bureau of Corporate Taxes, and the Department of Environmental Protection-Southeast Regional Office and its Central Office Bureau of Regulatory Counsel.

13. That upon receipt of a notice of closing of the transaction, or upon the return of the Certificate of Public Convenience regarding this transaction, pursuant to the Ordering Paragraphs of this Opinion and Order at Docket No. A-2019-3009052, this proceeding be marked closed.

**BY THE COMMISSION**,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 21, 2020

ORDER ENTERED: May 21, 2020

1. Signatories to the Joint Petition, filed on February 6, 2020, include Aqua, the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and East Norriton (Joint Petitioners). [↑](#footnote-ref-2)
2. In addition, four other individuals, Kathleen Wesolowski, Mary Rose Alexander, Pamela Burke and Margaret Daly, all Aqua customers, filed separate protests indicating their disagreement with potential rate increases from Aqua’s asset purchase and acquisition of East Norriton customers. [↑](#footnote-ref-3)
3. Aqua did not oppose the intervention but proposed conditions on the Union’s participation in the proceeding. [↑](#footnote-ref-4)
4. Specifically, the First Amendment deletes the entirety of the last paragraph in Section 2.01 of the APA and replaced it with the following language:

   “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 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.”

   According to Aqua, the remainder of Section 2.01 remains unchanged. [↑](#footnote-ref-5)
5. An “acquiring public utility” is defined as a water or wastewater public utility subject to regulation under the Code “that is acquiring a selling utility as the result of a voluntary arm’s-length transaction between the buyer and seller.” 66 Pa. C.S. § 1329(g). [↑](#footnote-ref-6)
6. 66 Pa. C.S. § 1329(c)(2) “The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.” [↑](#footnote-ref-7)
7. The JSA WWTP was constructed in approximately 1960 and provided basic primary treatment. The plant was upgraded to provide advanced secondary treatment with nitrogen removal in approximately 2007. Most of the East Norriton wastewater system was originally constructed in two phases in the 1960s and 1970s. Various areas have been replaced and several developments have been added from the mid-1970s through 2012. However, the average age of the pipe in the Township wastewater system is approximately 50 years old. Aqua St. No. 2 at 7-8. [↑](#footnote-ref-8)
8. The legal standards in relation to Section 1329 acquisitions have been further clarified by the Pennsylvania Commonwealth Court in *McCloskey v. Pa. PUC*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019). These include considerations of the impact on rates as well as the adequacy of notice to the customers of both the acquiring and acquired entities. *See e.g.*, 195 A.3d 1066-1067, 1069. [↑](#footnote-ref-9)
9. The OCA does not join in this paragraph but does not oppose it. R.D. at 12, n. 3. [↑](#footnote-ref-10)
10. Aqua and East Norriton agree that, at the time of Aqua’s next base rate case, the timing of the rate effect will be proposed pursuant to the terms of Section 7.03(a). All parties reserve their rights to address Aqua’s proposal. R.D. at 14, n. 4. [↑](#footnote-ref-11)
11. *See* Joint Petition, n. 18. 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. [↑](#footnote-ref-12)
12. *See* Joint Petition, n. 19. *Pa. PUC v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103, Opinion and Order entered July 14, 2011, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). *See also Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985). [↑](#footnote-ref-13)
13. Section 1329 of the Code, 66 Pa. C.S. § 1329, set forth procedures which permit a public utility to use the fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. [↑](#footnote-ref-14)
14. The Parties agreed to amend page 13 of Exhibit B of Aqua’s Application and the APA. Settlement at 9. [↑](#footnote-ref-15)