

COMMONWEALTH OF PENNSYLVANIA



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December 14, 2020

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

Re: Application of Aqua Pennsylvania Wastewater Inc.
pursuant to Sections 507, 1102 and 1329 of the Public
Utility Code for Approval of its Acquisition of the
Wastewater System Assets of the Delaware County
Regional Water Quality Control Authority
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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The Honorable F. Joseph Brady (**e-mail only**)
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Certificate of Service

*300483

CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania Wastewater :
Inc. pursuant to Sections 507, 1102 and 1329 :
of the Public Utility Code for Approval of its : Docket No. A-2019-3015173
Acquisition of the Wastewater System Assets :
of the Delaware County Regional Water Quality :
Control Authority :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 14th day of December 2020.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater Inc. pursuant to Sections 507, 1102 :
and 1329 of the Public Utility Code for : Docket No. A-2019-3015173
Approval of its Acquisition of the Wastewater :
System Assets of the Delaware County :
Regional Water Quality Control Authority :

REPLY BRIEF OF
THE OFFICE OF CONSUMER ADVOCATE

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I. STATEMENT OF THE CASE

A. Procedural History

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Briefs of Aqua Pennsylvania Wastewater Inc. (Aqua or Company), and The Delaware County Regional Water Quality Control Authority (DELCORA or Authority). On December 1, 2020, the OCA, the Bureau of Investigation and Enforcement (I&E), the Office of Small Business Advocate (OSBA), Kimberly-Clark (KCC), the Municipal Protestants (Edgmont Township, et al.), the County of Delaware, Sunoco Partners Marketing and Terminals L.P./Energy Transfer's (SPMT), DELCORA, and Aqua filed Main Briefs. The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on all issues. Thus, in this Reply Brief, the OCA will respond to only those matters raised by Aqua and DELCORA that were not previously addressed or that require clarification.

B. Overview of the Proposed Transaction

The OCA's overview of the proposed transaction is contained in the OCA's Main Brief.

OCA M.B. at 3-4.

II. BURDEN OF PROOF

The burden of proof applicable in this matter is addressed in detail in the OCA's Main Brief. OCA M.B. at 4-5. The OCA further notes, however, that as the party with the burden of proof, Aqua must conclusively demonstrate how its claims are justified under the facts and law.

The Pennsylvania Supreme Court has stated:

[T]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations and that is the burden which the utility patently failed to carry.

Berner v. Pa. P.U.C., 382 Pa. 622, 631, 116 A.2d 738, 744 (1955). The Commission has also addressed this standard in its rate determinations:

The Respondent, Equitable, has the burden of persuasion in the issue of the reasonableness of an expense level. Respondent must affirmatively establish, on the record, that the test year claim is a reasonable and appropriate amount.

Pa. P.U.C. v. Equitable Gas Co., 57 PaPUC 423, 471 (1983) (emphasis added); accord, University of Pennsylvania v. Pa. P.U.C., 86 Pa. Commw. 410, 485 A.2d 1217 (1984). Aqua must affirmatively establish, on the record, that the test year claim is reasonable and appropriate.

III. STATEMENT OF QUESTIONS PRESENTED

The OCA's statement of questions presented is contained in the OCA's Main Brief. OCA M.B. at 5.

IV. SUMMARY OF ARGUMENT

Aqua argues that, to the extent the OCA's testimony is considered, the Commission should assign it no weight. Aqua's arguments are inconsistent with Commission precedent. The OCA presented credible and persuasive testimony that identifies several adjustments to the appraisals that are required to correct errors and remove unsupported adjustments. The OCA's witness is well-qualified in the area of public utility ratemaking and presented reasonable adjustments to the UVE appraisals to ensure that the proposed transaction complies with the Pennsylvania Public Utility Code, Commission precedent, and principles of public utility ratemaking. Aqua's arguments to the contrary are without merit. The OCA's testimony should be given full weight and its recommended adjustments to the UVE appraisals should be adopted.

The OCA submits that the proposed transaction should not be approved. The OCA, however, identified several conditions that should be imposed if the Commission determines to approve the proposed transaction under Section 1102 in addition to the necessary adjustments to ratemaking rate base under Section 1329. The OCA's recommended conditions are particularly important given the magnitude of the estimated revenue deficiency that will result if the proposed

transaction is approved.¹

Additionally, many of the OCA's conditions are necessary in light of the proceeding before the Court of Common Pleas regarding certain issues that overlap with the instant proceeding. Among these issues is the formation of a Trust as a consequence of the proposed transaction. The OCA submits that the proposed Trust, if found to be lawful and in compliance with Commission rules and regulations, could help to address the negative impact on both the DELCORA customers and the existing Aqua customers.

Should the Commission proceed in making a determination regarding the proposed transaction, however, the conditions proposed by the OCA should be adopted as part of the Commission's determination as they are necessary to ensure that affirmative public benefits result from the proposed transaction. For all of these reasons and as discussed in the OCA's Main Brief and further herein, the OCA recommends that, if the Commission approves the application under Section 1102, certain conditions and adjustments are necessary to protect the public interest.

V. REPLY ARGUMENT

A. Section 1329

1. Legal Standard for Section 1329 Approvals

The legal standard for Section 1329 approvals is addressed in detail in the OCA's Main Brief. OCA M.B. at 8-9.

2. Challenges to the UVE Appraisals

a. Section 1329 Does Not Eliminate the Commission's Authority to Determine Rate Base or Prohibit the Consideration of the OCA's Testimony on Fair Market Value

Aqua argues that the Commission should adopt a limited standard of review provided that "Mr. Smith did not perform an appraisal of the DELCORA wastewater system asset and presented

¹ Aqua estimated an \$8,908,000 revenue deficiency for the DELCORA system if the \$276,500,000 rate base is approved. OCA M.B. at 6.

no evidence showing that he has the experience or legal competency to critique the appraisals of certified UVEs.” Aqua M.B. at 11. Following Aqua’s logic regarding the need for a complete appraisal by the OCA’s witness, even when there are errors and bias in the Utility Valuation Expert (UVE) appraisal calculations, as the OCA has demonstrated here, the Commission could not adjust the appraisals. See Aqua. M.B. at 23. In addition, Aqua’s arguments about OCA witness Smith’s expertise are completely without merit. As discussed more below, Mr. Smith is eminently qualified to review the appraisals and present necessary adjustments based on both his financial and ratemaking expertise.

Aqua’s position has been previously rejected by the Commission and it should be rejected in this proceeding as well. Section 1329 creates a valuation process, which begins with two UVEs providing individual appraisals of “fair market value.” 66 Pa. C.S. § 1329(a)(3). The statute anticipates that these appraisals will differ and provides for the appraisals to be averaged. 66 Pa. C.S. § 1329(g). The fact that two UVEs, who both must comply with the Uniform Standards of Professional Appraisal Practice (USPAP) and employ the Cost, Market, and Income approaches, may recommend different fair market values establishes that the appraisal process is not simply a “formulaic” mathematical exercise. The UVEs are required to make judgments in each type of analysis and in how much weight is given to each approach. OCA M.B. at 7. Thus, the consumer interest can only be protected if the Commission may consider evidence regarding errors and unsupported adjustments in the UVE appraisals.

The Commission has stated that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals and make arguments as to their reasonableness and to recommend adjustments.” See Application of Aqua Pennsylvania Wastewater, Inc., A-2016-2580061, Order at 53 (June 29, 2017) (New Garden). The Commission may use its expertise, as it

did in other Aqua Section 1329 acquisitions such as New Garden and Limerick, to interpret Section 1329 as permitting the review of UVE appraisals.²

The Commission recently re-iterated that Section 1329 contains no prohibitions on the ability of parties to review the UVE appraisals as to their reasonableness and stated as follows:

[T]he Commission has already considered and rejected Aqua's position and determined that Section 1329 contains no prohibitions on the ability of parties, or the Commission, to review the UVE appraisals as to their reasonableness and, accordingly, propose, or adopt, adjustments to the UVE appraisals. Specifically, in the *Limerick Order*, citing to the *New Garden Order*, we rejected Aqua's position in those cases, the position Aqua reiterated in this proceeding. *Limerick Order* at 35-36.

Application of Aqua Pennsylvania Wastewater, Inc., A-2019-3008491, Order at 39 (Nov. 5, 2019) (Cheltenham).

The OCA notes that Mr. Smith is a well-qualified expert in the area of ratemaking and financial issues related to utilities. OCA M.B. at 3. As discussed in the OCA's Main Brief, Mr. Smith is a Senior Regulatory Consultant at Larkin & Associates, PLLC, an accounting and regulatory consulting firm. OCA M.B. at 3. The firm performs independent regulatory consulting primarily for public service/utility commission staffs and consumer interest groups. OCA M.B. at 3. Larkin & Associates has extensive experience in the utility regulatory field as expert witnesses in over 400 regulatory proceedings including numerous telephone, water and sewer, gas, and electric matters. OCA M.B. at 3. Mr. Smith is both a licensed CPA as well as member of the Michigan Bar.³ OCA M.B. at 3. The OCA's expert is eminently qualified in utility ratemaking issues and utility regulatory policies, is legally competent, and is a credible expert witnesses in this matter.

² See Application of Aqua Pennsylvania Wastewater, Inc., A-2017-2605434, Order at 36 (Nov. 29, 2017) (Limerick) ("We agree that Section 1329 does not prevent a review of the UVE assumptions for reasonableness, and for the reasons discussed below, we find that the ALJ appropriately considered several of the recommendations to the fair market appraisals of the Limerick system.").

³ Mr. Smith's extensive education and experience has been summarized and attached to his Direct Testimony (OCA St. 1) as Attachment A.

The OCA submits that non-UVes are permitted to recommend adjustments as there is no prohibition on the ability of the parties to recommend adjustments in order to ensure that proposed transactions under Section 1329 comply with Pennsylvania law and result in just and reasonable rates. The law is clear that the Commission has the authority to make adjustments to the appraisal results of the UVes in order to establish the fair market value. Aqua's argument that the OCA's testimony and adjustments should be given no weight is unreasonable as Mr. Smith is a credible expert testifying before the Commission. The Commission has authority and discretion to review the UVE appraisals under Section 1329 and should adopt the adjustments recommended by OCA witness Smith.

b. The OCA's Adjustments to the UVE Appraisals Are Supported by the Record

Aqua argues that the appraisal adjustments recommended by Mr. Smith should not be adopted. Aqua M.B. at 11. As discussed above, Mr. Smith is highly qualified to review the appraisals and present his critiques. Unlike the UVes, Mr. Smith employed standard financial and regulatory principles to make recommendations as to how to adjust for assumptions within the UVE appraisals that are unreasonable or inconsistent with utility practice. The analyses of the UVE appraisals conducted by Mr. Smith derived from standard financial and business concepts properly based on his financial and utility ratemaking expertise. OCA M.B. at 2.

Moreover, while Aqua argues that Mr. Smith lacks the experience to critique appraisals, the Company also critiques Mr. Smith for not presenting an appraisal. See Aqua M.B. at 11. The OCA, however, is not required to submit an appraisal under Section 1329, and only the buyer and seller's appraisals are considered in the average. 66 Pa. C.S. § 1329(g). As such, Aqua's argument that Mr. Smith's testimony lacks support because Mr. Smith did not perform an appraisal is unreasonable.

For the foregoing reasons, the OCA submits that the Commission should reject Aqua's arguments that the OCA's valuation testimony should be given no weight. The OCA's recommendations regarding errors and unsupported adjustments in the UVE appraisals are fully supported by the record as discussed in the OCA's Main Brief and herein, warrant consideration by the Commission, and should be adopted.

c. Cost Approach

i. Mr. Smith's Adjustments to the Gannett Fleming Cost Approach Adjustments are Reasonable

As discussed in greater detail in the OCA's Main Brief, OCA witness Smith recommended adjustments to the depreciation rates used in Gannett Fleming's Cost Approach as Aqua will be applying Aqua's depreciation rates approved in the Company's most recent base rate case to the DELCORA system when it includes the DECORA acquisition in base rates. OCA M.B. at 12. According to Aqua, the use of the Company's depreciation rates as part of the cost approach "does not meet a standard of value of fair market value and is a direct violation of Section 1329 of the Code." Aqua M.B. at 12. Aqua also argues that Mr. Smith's recommendation is internally inconsistent as he only recommended applying Aqua's depreciation rates to accounts that would lower the asset value under the Cost Approach and does not apply Aqua's depreciation rates to all plant accounts. Aqua M.B. at 12. Aqua also notes that Mr. Smith did not provide a statistical analysis to support the use of Aqua's depreciation rates for the DELCORA assets. Aqua M.B. at 12-13. As discussed below, these arguments are without merit.

OCA witness Smith reviewed the calculations contained the Company's rebuttal testimony and determined that, despite the increase in the Cost Approach valuation as a result of applying Aqua's Commission-approved depreciation rate, the Company's depreciation rates should be applied to the Cost Approach. OCA St. 1 SR at 15. Mr. Smith stated in surrebuttal testimony that

his recommendation did not change. OCA St. 1 SR at 15. As such, Aqua's claims of internal inconsistency are not reflected in the record and are unreasonable.

The OCA submits that it is unreasonable for Aqua's UVE to apply depreciation rates that are contrary to the reality of Commission-approved depreciation rates which Aqua will be utilizing for the acquired plant. To be clear, Aqua indicated that it will use the depreciation rates approved in Aqua's last base rate case for the acquired DELCROA assets if the acquisition is approved. OCA M.B. at 12; OCA St. 1 SR at 16; OCA St. 1 at 12. Instead of utilizing Aqua's depreciation rates that will be applied to the acquired system which were approved by the Commission, however, Mr. Walker substituted subjective determinations and introduced his own depreciation judgment.

Using the depreciable lives from Aqua's last base rate case that Aqua stated it would use for the acquired DELCORA wastewater utility assets, if applied to all of the sewer utility asset accounts, would result in Replacement Cost Accumulated Depreciation of \$414,305,664 rather than the \$392,724,620 Replacement Cost Accumulated Depreciation used in the Gannett Fleming valuation study. OCA St. 1 SR at 16; Aqua St. 8R at 8.

Aqua's depreciation rates, which will be applied to the acquired plant, were available at the time of Mr. Walker's appraisal. OCA St. 1 SR at 17-18. Rather than using the depreciation rates and Iowa curves that Aqua has stated it would apply if it is permitted to acquire the DELCORA system, however, Mr. Walker used different depreciation rates and Iowa curves, based on his subjective experience, which resulted in a higher valuation under his Cost Approach. OCA St. 1 SR at 18.

The OCA further submits that Aqua's argument that Mr. Smith's recommendation is in direct violation of Section 1329 is inaccurate. Aqua argues that "[u]nder the standard of value of fair market value, the buyer is a hypothetical or generic entity, not Aqua Pennsylvania, not

Pennsylvania-American, or any other specific entity.” Aqua M.B. at 12. Aqua’s argument, however, has recently been rejected by both ALJ Jones and the Commission. In Cheltenham, the Commission stated as follows regarding the application of the USPAP to Section 1329:

Furthermore, we have already declared in the FSIO, Appendix C, that materials submitted in support of a request for Section 1329 fair market valuation pursuant to the USPAP must conform to applicable Pennsylvania law even if in conflict with USPAP. For purposes of Section 1329, we expressly stated that Pennsylvania law includes the Pennsylvania Constitution, statutes, regulations, court precedent, and administrative rules and orders issued by administrative agencies.

Therefore, we agree with the OCA and the ALJ that the statutory appraisal process is not simply a formulaic mathematical exercise, nor is the Commission acting as some type of USPAP-compliance board. We agree that review of the appraisals provided by Aqua and Cheltenham UVEs shows that there are judgments made in each type of analysis as well as in how much weight is to be given to each approach. We also agree that it would be inconsistent with the requirements of the Code and prior Commission orders to permit Aqua to simply present a rate base number, show that the appraisers chose numbers to fill in all the blanks in the formulas and based solely upon the judgments of the UVEs, and to not permit any review or challenges of those inputs, methods or judgments.

Cheltenham at 39-40. Moreover, in Limerick, the Commission was clear that the USPAP is not the controlling text for Section 1329 valuations involving regulated utilities. Limerick at 58. Simply put, the “standard of fair market value” that Aqua refers to is not controlling law under Section 1329.

The OCA submits that Mr. Smith’s recommended adjustment is not a violation of Section 1329, but rather is a reasonable adjustment in compliance with ratemaking principles and Pennsylvania law.

ii. Mr. Smith’s Adjustments to the ScottMadden Cost Approach
Adjustments Are Reasonable

As noted *supra*, OCA witness Smith recommended that depreciation rates approved in Aqua’s previous base rate case should be applied to the acquired plant, as those Aqua depreciation rates actually will be applied to the acquired plant given Aqua’s status as a regulated public utility. OCA M.B. at 14; OCA St. 1 at 60. Aqua argues that ScottMadden is not bound by Aqua’s

decisions as the useful lives in ScottMadden’s Cost Approach “were based upon the System of Accounts for Water and Wastewater –with 200 or more connections as published by the Public Utility Commission of Texas.” Aqua M.B. at 13. Aqua also claims that the Commission found that a service life of 75 years was appropriate for mains in a separate application proceeding. Aqua M.B. at 13. Lastly, Aqua claims that Mr. Smith did not present evidence which questions the integrity of ScottMadden’s reference material. Aqua M.B. at 14.

The OCA submits that applying depreciation lives to a Pennsylvania wastewater facility derived from a publication by the Public Utility Commission of Texas is inappropriate. OCA St. 1 SR at 11. Aqua has Pennsylvania wastewater utility assets and depreciation lives have been established for those assets by the PUC. OCA St. 1 SR at 11. The useful lives recommended by Mr. Smith are based on the useful lives provided by Aqua’s Wastewater Depreciation Study. OCA St. 1 SR at 11. Simply put, better Pennsylvania-specific information is available and should be used. OCA St. 1 SR at 11.

As such, and for the reasons discussed above and contained in the OCA’s Main Brief, the OCA submits that Mr. Smith’s recommended adjustment to apply Aqua’s Commission-approved depreciation rates to the DELCORA wastewater appraisals should be adopted.

d. Income Approach

i. Mr. Smith’s Gannett Fleming Income Approach Adjustments Are Reasonable

Aqua criticizes Mr. Smith for recommending the use of net plant value from time period 24 (Year 2044) as the terminal value for the DELCORA plant. Aqua M.B. at 20. Aqua argues that Mr. Walker presented an evidentiary analysis demonstrating that net plant value is not a good proxy or measure for future market value. Aqua M.B. at 20-21. Aqua also lists “other assertions” that Mr. Walker reviewed and countered. Aqua M.B. at 21.

As explained in the OCA's Main Brief, the assumptions used by Mr. Walker are not consistent with ratemaking principles and are flawed. OCA M.B. at 22. Mr. Smith noted that the approach to quantifying the terminal value should recognize that the wastewater assets are for a regulated public utility, not an unregulated business. OCA St. 1 at 54. Mr. Smith further testified as follows:

[R]ate regulated public utilities have traditionally been distinguishable and distinguished from business enterprises that operate in competitive markets and without price regulation. Because of the monopoly nature and cost regulation, the approach to determining a terminal value for a rate regulated public utility is therefore different than for a business that is not a monopoly and is not subject to cost-based rate regulation. The utility valuation must consider the present value of the net income derived from the utility asset. The utility asset at the end of the valuation period is represented by its remaining net book value (plant less accumulated depreciation), which would generally be recoverable unless there were some type of disallowance for imprudence, unreasonableness, etc. As I explained above, applying traditional concepts of cost-based utility regulation indicate that an approach to terminal value for a rate regulated public utility should focus on the remaining amount of net plant, not on a perpetual capitalization of prospective earnings.

OCA St. 1 SR at 19.

The OCA submits that the valuation results for each proposed transaction should be evaluated based on the specific information contained in each application. The traditional concepts of cost-based utility regulation indicate that an approach to terminal value for a rate-regulated public utility should focus on the remaining amount of net plant, not on a perpetual capitalization of prospective earnings. OCA St. 1 SR at 19. If a firm is expected to earn a return on its investment at its cost of capital and also recover its depreciation expense, the present value of that future cash flow is exactly equal to the present value of its investment. OCA St. 1 SR at 13. Therefore, it is reasonable to base the terminal value for a rate-regulated monopoly utility on the remaining amount of net plant.

As such, OCA witness Smith adjusted Gannett Fleming's Income Approach as follows:

As shown on Exhibit RCS-3, pages 2 and 3, I have recalculated the valuation of the terminal value using the amount of Net Plant less Accumulated Deferred Income Taxes (ADIT) remaining at the end of Year 24. Exhibit RCS-3, page 2, shows the calculations under municipal ownership, with an indicated value result of \$346,369,318. Page 3 shows the calculations under IOU ownership with an indicated value result of \$263,757,613. The two indicated value results are averaged, as shown on Exhibit RCS-3, page 1, for an adjusted Income Approach value of \$305,063,465. The difference in the indicated value of \$82,690,835 results from the different approach to calculating the "terminal" value for a regulated public utility, which is different than the "terminal" value calculation for a non-regulated business.

OCA M.B. at 22; OCA St. 1 at 54-55. The adjusted Income Approach value of \$305,063,465 is \$82,690,835 lower than Mr. Walker's proposed amount of \$387,754,301 and should be adopted.

OCA M.B. at 22; OCA St. 1 at 55.

ii. Mr. Smith's ScottMadden Income Approach Adjustments Are Reasonable

As discussed in the OCA's Main Brief, Mr. Smith adjusted Mr. D'Ascendis' Income Approach by recalculating the valuation of the terminal value using the amount of Net Plant less Accumulated Deferred Income Taxes (ADIT) projected to be remaining at the end of 2049. OCA M.B. at 21; OCA St. 1 at 61. Aqua argues that Mr. Smith "provided no theoretical or academic support for the use of projected net plant less ADIT as the terminal value for a going concern." Aqua M.B. at 22. Aqua further notes that Mr. D'Ascendis provided citations to valuation literature to support his calculation of terminal value. Aqua M.B. at 22.

Contrary to Aqua's assertions, Mr. Smith's testimony provided both theoretical and academic support regarding the use of projected net plant less ADIT as the terminal value. Mr. Smith testified as follows:

Rate regulated public utilities have traditionally been distinguishable and distinguished from business enterprises that operate in competitive markets and without price regulation. Two attributes of a public utility business are important distinguishing factors. The first is the special public importance or necessity of the types of services supplied by the utility. The second is the possession of utility plants having technical characteristics leading to monopoly or at least to ineffective forms of competition.² As put simply by Clemens: "Necessity and monopoly are

almost prerequisites of public utility status.”³ Because of the monopoly nature and cost regulation, the approach to determining a terminal value for a rate regulated public utility is therefore different than for a business that is not a monopoly and is not subject to cost-based rate regulation.

For a rate regulated public utility, a valuation method, is “any method used to place a value on an asset.”⁴ The valuation under the income approach is “based on the present value of net income expected to be derived from the asset.”⁵ It is therefore crucial for a rate regulated public utility that the value under the income approach is based on the net income expected to be derived from the asset. Thus, the utility valuation must consider the present value of the net income derived from the utility asset. The utility asset at the end of the valuation period is represented by its remaining net book value (plant less accumulated depreciation), which would generally be recoverable unless there were some type of disallowance for imprudence, unreasonableness, etc. For an investor-owned public utility that is subject to federal income taxes, the rate base would also typically include a deduction for accumulated deferred income taxes. The recovery of the remaining undepreciated net book value of the prudently incurred utility plant, possibly less the related Accumulated Deferred Income Taxes (“ADIT”), would therefore constitute the terminal value, that would need to be discounted.

For a rate regulated public utility, it has long been recognized that amounts representing capitalized earnings should not be included in a rate base.⁶ The value of plant for a rate regulated public utility cannot be determined by capitalization of prospective earnings, in the manner of commercial property used in a competitive enterprise free from regulation.⁷ Similarly, it has been observed that a utility regulatory commission should not arrive at a fair value rate base by capitalizing earnings under the utility’s existing rates.⁸ These traditional concepts of cost-based utility regulation indicate that an approach to terminal value for a rate regulated public utility should focus on the remaining amount of net plant, not on a perpetual capitalization of prospective earnings.

OCA St. 1 SR at 11-13. Additionally, Mr. Smith testified as follows:

As a matter of arithmetic, as well as financial theory, if a firm is expected to earn a return on its investment at its cost of capital and also recover its depreciation expense, the present value of that future cash flow is exactly equal to the present value of its investment. Therefore, a more appropriate terminal value (before discounting) in the twentieth year is the net plant in service (and net of ADIT if available) at that point in time. This net investment amount is then discounted back to the present value to determine the ultimate terminal value in present value terms.

² See, e.g., Bonbright, *Principles of Public Utility Rates*, Columbia University Press, 1969 edition at 8.

³ See, Eli W. Clemens, *Economics and Public Utilities* (New York, 1950) at 25.

⁴ See, e.g., Edison Electric Institute, *Glossary of Electric Utility Terms*.

⁵ *Id.*

⁶ See, e.g., 32 Public Utility Reports 3rd p.43 and PUR 3rd Valuation §31.

⁷ *Id.* Also see, Re: New York Teleph. Co. (1954) 5 PUR 3rd 33.

⁸ *Id.*, Also see, Re: Western Carolina Teleph. Co. (1962) 45 PUR 3rd 120.

OCA St. 1 SR at 13-14.

Aqua's assertion that Mr. Smith provided no theoretical or academic support is without merit. Moreover, the OCA submits that Mr. D'Ascendis' mere citation to literature supporting his calculation of terminal value does not justify his terminal value calculation in the context of Section 1329 acquisitions in a rate-regulated market. For the reasons discussed in the OCA's Main Brief and *supra*, Mr. Smith's recommended adjustment to the ScottMadden Income Approach should be adopted.

e. Market Approach

i. Mr. Smith's Adjustments to the Gannett Fleming Market Result are Reasonable

As discussed in the OCA's Main Brief, OCA witness Smith recommends removing the Ex-Ante amounts used in Mr. Walker's Selected Transaction method and using only the median of the Ex-Post amounts because the Ex-Ante amounts are essentially initial estimates (as opposed to the actual transaction).⁴ OCA M.B. at 16; OCA St. 1 at 58. Aqua argues that the use of Ex-Post amounts should be rejected. Aqua M.B. at 15. According to Aqua, Commission-determined rate base value does not change the price bid and paid by a buyer. Aqua M.B. at 15. Aqua also argues that the metrics used in the Selected Transaction method are time period sensitive. Aqua M.B. at 16. Lastly, Aqua argues that Mr. Walker verified his Market Approach results by using a merger of two Connecticut Investor Owned Utilities (IOUs) with another Connecticut water company as a check. Aqua M.B. at 16.

The OCA submits that fair market appraisals under Section 1329 should not be used for the purpose of validating the purchase price, but should be used to establish the fair market value in compliance with Section 1329. For completed transactions, the actual results are known. OCA St.

⁴ The OCA further notes that the purchase prices used by Mr. Walker do not reflect the purchase prices involved in the actual transactions. OCA St. 1 at 58; OCA Ex. RCS-4.

1 SR at 19. Using the purchase price, and not accounting for the fact that there is a Commission-approved ratemaking rate base, is inappropriate in the context of a Section 1329 Fair Market Valuation. The OCA submits that when the actual fair market value which will be placed into ratemaking rate base under Section 1329 is known, it should be used instead of inaccurate estimates from historical transactions. OCA St. 1 SR at 19.

Aqua claimed that the use of ex-post, Commission determined ratemaking rate base values in the Selected Transaction method was rejected by ALJ Jones and the Commission in the Cheltenham proceeding. Aqua M.B. at 15. The OCA notes, however, that ALJ Jones properly recommended an additional jurisdictional exception in regard to the UVEs' use of purchase prices as opposed to Commission-approved ratemaking rate base for Section 1329 acquisitions in the Market Approach in the Cheltenham proceeding.⁵ Aqua's argument that using a Commission-determined ratemaking rate base as a market comparable would represent a hypothetical assumption does not recognize the fact that a Market Approach input that is in excess of fair market value will produce a result that is in excess of fair market value. Moreover, ratemaking rate base is not hypothetical, it is a rate base determined and approved by the Commission in each Section 1329 case and is the amount the Commission has determined represents fair market value. The OCA submits that this adjustment is reasonable and should be adopted given that the continued use of purchase prices in excess of fair market value in Section 1329 fair market value appraisals will continue to exacerbate UVE calculations of fair market value in future appraisals.

Section 1329 of the Public Utility Code provides the basis for fair market value acquisitions of municipal systems and using the ratemaking rate base as determined by the Commission ensures that the value used in Section 1329 appraisals is not in excess of the fair market value determined by the Commission. Aqua's logic creates an unreasonable situation in which purchase prices that

⁵ See Application of Aqua Pennsylvania Wastewater, Inc., A-2019-3008491, Recommended Decision at 38-39 (Aug. 1, 2019).

are in excess of Commission-approved ratemaking rate bases are used in the Market Approach instead of the actual ratemaking rate bases with the dual effect of increasing the instant appraisal valuation, and potentially leading to an increase in Commission-approved ratemaking rate base in future acquisitions.

Additionally, Aqua incorrectly stated in its Main Brief as follows:

A Commission determined ratemaking rate base value for an entity does not change the price bid and paid by a buyer.

Aqua M.B. at 15. To the contrary, the Commission-approved ratemaking rate base for an entity in previous Section 1329 acquisitions has affected the price paid by a buyer. See Application of Pennsylvania-American Water Co., Inc., A-2017-2606103, Order (Oct. 26, 2017) (McKeesport); Application of Pennsylvania-American Water Co., Inc., A-2018-3002437, Order (Oct. 25, 2018) (Sadsbury). The OCA submits that it is inappropriate to use the proposed purchase prices agreed to in asset purchase agreements for systems acquired under Section 1329 as a substitute for the Commission-approved ratemaking rate base of the system.

Aqua also argues that there is no justification for using the Commission-approved ratemaking rate base for the McKeesport and Limerick Section 1329 acquisitions instead of the purchase price, because Mr. Walker's method relied on and reflected information that was known at the time the winning purchase price was given and the metrics are time-period sensitive. Aqua M.B. at 15-16. The OCA submits that the Commission-approved ratemaking rate base is the determination of fair market value under Section 1329 of the Public Utility Code. The Commission-approved ratemaking rate base for the McKeesport acquisition was known at the time when Mr. Walker was performing his appraisal. Nevertheless, Mr. Walker instead relied on the purchase price for the system. As such, Aqua's claim that the metrics are time-period sensitive is without merit. Moreover, in regard to the Limerick Section 1329 acquisition, the OCA submits that there is no reasonable justification or basis for using the higher purchase price (in excess of

\$10,000,000 over the ratemaking rate base) when analyzing the Limerick acquisition in the context of a Market Approach appraisal under Section 1329 instead of the fair market value approved by the Commission in a Section 1329 proceeding.

Lastly, Aqua noted that Gannett Fleming relied on a “planned merger” of SJW Group and Connecticut Water Service, Inc. through a stock purchase as a check and verification of the indicated value for the Cheltenham system. Aqua M.B. at 16. Aqua stated as follows in its Main Brief:

Although the acquisition is not directly applicable to the Wastewater System, it does provide a range of indicated value for the Wastewater System which Gannett relied on as a check.

Aqua M.B. at 16. Gannett Fleming’s appraisal further states that “Connecticut Water is a fully integrated company while the Wastewater System is not.” Application Exh. Q at 47. The OCA notes, however, that this acquisition was withdrawn over a year prior to Mr. Walker’s appraisal.⁶ The OCA submits that a withdrawn acquisition that has not been approved is not a reliable check on the fair market value of the DELCORA system.

ii. Mr. Smith’s Adjustments to the ScottMadden Market Result are Reasonable

Aqua argued that, in regard to the ScottMadden Market Approach, Mr. Smith’s criticism of the comparable sales method is illogical and contrary to reference materials. Aqua M.B. at 17. Aqua also argued as follows:

Any homeowner, for example, would, obviously, want to know the recent sales history of other homes on their block – comparable sales, in other words – before putting their home up for sale. It is no different for utility fair market valuation.

Aqua M.B. at 17.

⁶ See Application of SJW Group and Connecticut Water Service, Inc. for Approval of Change of Control, Docket No. 18-07-10, Docket Closing (Dec. 3, 2018) (SJW-Connecticut Water).

This reasoning is without merit. The OCA generally agrees that in a competitive market, the purchase price would be used in the appraisal. While the use of the “purchase price” may be appropriate in an open and competitive market, however, it is not a reasonable substitute for Commission oversight within a regulatory framework. Comparable acquisitions used in the Market Approach analysis must be limited to the valuation permitted by Section 1329 in order to not overstate the fair market value.

As discussed in detail in the OCA’s Main Brief, Mr. D’Ascendis’ comparable sales result produced indicated values of \$811,451,586 and \$1,276,340,191, respectively. OCA M.B. at 17-18. The OCA’s primary concern with Mr. D’Ascendis’ Comparable Sales Method is that it lacks demonstrated reliability and use in actual transactions, especially when applied to valuing a wastewater utility system that has unique characteristics and which is subject to cost-based utility regulation. OCA St. 1 SR at 14.

The OCA submits that the Comparable Sales Method’s production of an indicated result that DELCORA wastewater system is worth over a billion dollars more than the agreed upon purchase price in this proceeding illustrates the serious shortcomings of this method, and weighs against its use in the Commonwealth in valuing utilities in the context of a regulated public utility framework. OCA M.B. at 17. Attempting to apply a value per connection from one utility onto another utility, from water utilities onto a wastewater utility, from combination water/wastewater utilities onto a wastewater utility, or from a group of utilities that serves primarily end-use customers onto a utility that has a substantial wholesale customer base is not conceptually sound and is almost assured to produce valuation results that are highly abnormal and unreliable, as is the case here. OCA St. 1 SR at 14.

f. Conclusion

OCA witness Smith concluded that under Section 1329, the \$276.5 million purchase price proposed by Aqua, should be used as the Fair Market Value for the DELCORA wastewater utility assets because that amount is below the average adjusted result of the ScottMadden and Gannett Fleming valuations. OCA M.B. at 22-23; OCA Table I at Col. G, Ln. 15; OCA St. 1SR at 15; OCA Exh. RCS-1 at Col. G, Ln. 15. The Section 1329 Fair Market Value analyses conducted by Mr. Walker and Mr. D’Ascendis, however, contain flaws. The OCA submits that the OCA’s adjustments to the UVE appraisals discussed *supra* are reasonable and should be adopted by the Commission.

B. Section 1102/1103 Standards – Public Interest

1. Section 1102/1103 – Legal Principles

The legal standard for Section 1102/1103 approvals is addressed in detail in the OCA’s Main Brief. OCA M.B. at 23-26.

2. Fitness

As specified in the OCA’s Main Brief, the OCA does not present any evidence regarding Aqua’s fitness and does not contest Aqua’s fitness. OCA M.B. at 26.

3. Affirmative Public Benefits

Under Sections 1102 and 1103 of the Public Utility Code, the standard for reviewing the benefits of an application is whether the transaction will provide substantial, affirmative benefits to the public. See City of York v. Pa. PUC, 295 A.2d 825, 828 (Pa. 1972); 66 Pa. C.S. §§ 1102, 1103. The transaction must affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way; the mere absence of any adverse effect is not sufficient. 295 A.2d at 828. When the “public interest” is considered, the benefits and detriments

to all affected parties must be considered. See Middletown Twp. v. Pa. P.U.C., 482 A.2d 674, 682 (1984).

In this proceeding, it is undisputed that DELCORA would benefit from the proposed transaction. As discussed more fully in OCA's Main Brief, DELCORA would receive approximately \$276 million or 44% more than the net book value of the system. OCA St. 1 at 24; OCA M.B. at 25. Aqua anticipates implementing DELCORA's planned capital program for routine plant upgrades, collection system work and pump station upgrades. Aqua Exh. V at 9; OCA M.B. at 25. Additionally, Aqua has committed to preserving jobs by hiring all DELCORA employees. Aqua Exh. W1 at 5-14; OCA M.B. at 25.

The Application as filed offers no support for concluding that existing Aqua wastewater and water customers will receive any net benefit or that the DELCORA customers will see a net benefit after the rate stabilization fund (DELCORA Customer Trust) is depleted. OCA M.B. at 25. In fact, the record demonstrates that these customers will experience substantial harm that is not outweighed by any purported benefits that Aqua ascribes to the proposed transaction. OCA M.B. at 23-40. As such, under the Application as filed, Aqua has failed to demonstrate the necessary public benefits required for approval of this Application. Even the Trust, as the firmest benefit identified, is subject to uncertainty. Therefore, the Application should not be approved or at a minimum, only be approved with the adoption of appropriate and necessary conditions, including those recommended by the OCA.

As explained more fully in the OCA's testimony and Main Brief, DELCORA's customers will likely see large rate increases in future Aqua base rate cases. OCA St. 1 at 31; OCA M.B. at 27-28. Additionally, to the extent that DELCORA customers are not paying full cost of service, Aqua's existing water and wastewater customers will bear the difference between the DELCORA rates and the DELCORA cost of service. OCA St. 1 SR at 23; OCA M.B. at 37. Consequently, it

remains imperative that, if the Commission approves the acquisition, the conditions summarized in Section V.C. below be required to limit ratepayer exposure to the risks of the acquisition and to ensure that ratepayers receive a fair allocation of the benefits of the acquisition. Aqua has agreed to several of the OCA's recommendations. Where Aqua disagrees, the OCA has expounded upon its reasoning below.

a. It Is Appropriate to Establish a Separate Rate Zone for DELCORA Customers

Aqua agrees with the OCA that a separate Cost of Service Study (COSS) will remain an obligation at least as long as the Trust provides the bill assistance payments. Aqua M.B. at 55. Despite its agreement, Aqua argues that the OCA's recommendation to establish a separate rate zone for the existing DELCORA customers is inappropriate. Aqua M.B. at 55. Aqua contends that this issue does not need to be addressed in the current acquisition and instead the OCA will have the opportunity to address this issue and make any proposal in a future Aqua base rate proceeding. Aqua M.B. at 55.

Aqua's effort to postpone addressing this issue until the next rate case is improper. OCA witness Smith makes clear in testimony, that although Aqua references economies of scale, the Company has not provided any showing of cost reductions or efficiencies that will be produced by the acquisition of the DELCORA customers. OCA St. 1 at 31; OCA M.B. at 37. Simply having more customers does not create economies of scale. Stated otherwise, if the DELCORA customers do not pay even their full cost of service, they will not share the costs of infrastructure improvements for other parts of Aqua's service territory. OCA St. 1 at 31; OCA St. 1SR at 28; OCA M.B. at 37. The development of the rates to be established for the acquired DELCORA customers would presumably be informed by the results of the separate COSS. Id.

Having a separate rate zone for the acquired DELCORA customers would therefore facilitate the development of the rates based on the separate COSS and would also facilitate

transparency with the Application of the funds from the DELCORA Customer Trust. OCA St. 1 SR at 23. Mr. Smith goes on to testify:

The acknowledgement that a separate rate zone for acquired DELCORA customers is needed for the above-stated reasons would not pre-determine the specific rate design for that rate zone. The details of rate development for that separate DELCORA rate zone would then subsequently be addressed in the future Aqua base rate proceedings that included the acquired DELCORA wastewater customers. Consequently, I continue to recommend that establishing a separate rate zone for acquired DELCORA customers be included as a condition to approving the proposed transaction.

Id. Thus, OCA witness Smith recommends while the Trust is functioning to limit increases to DELCORA customers, the DELCORA customers should be a separate rate zone. Infra, Section V.C.

As such, if the Commission approves the acquisition, the approval should be conditioned on a requirement that Aqua establish a separate rate zone for the DELCORA system now. OCA St. 1 at 31; OCA St. 1 SR at 28. While the Trust (or some acceptable alternative) is in place and providing rate mitigation for former DELCORA customers, the DELCORA rate zone should reflect the full cost of service and related revenue requirement for that rate zone with no costs shifted outside of that rate zone. Infra, Section V.C.

b. DELCORA Has Yet to Convincingly Address Whether it Has the Legal Authority to Transfer the Wastewater Utility Assets and Related Contracts to Aqua

Aqua argues that DELCORA's testimony "convincingly addressed its legal authority" to transfer the wastewater utility assets and related contracts to Aqua. Aqua M.B. at 55. In its Main Brief, DELCORA similarly argues that it "is beyond dispute that DELCORA has this authority." DELCORA M.B. at 20 (endorsing the section of Aqua's Main Brief relating to conditions for approval).

This confidence is misplaced as the transaction between Aqua and DELCORA is currently a contested legal issue. OCA St. 1 at 44; OCA M.B. at 32. Specifically, Delaware County is disputing the legality of the Trust in the Court of Common Pleas. OCA St. 1 at 44;

OCA M.B. at 33. The ongoing case before the Court of Common Pleas will impact the Application and could come into conflict with the Commission's determination in this proceeding. Id.

Explicitly, OCA witness Smith advises that approval of the Application without a resolution of the issues identified in the Petition filed in the Court of Common Pleas could lead to irreparable harm for existing Aqua and DELCORA customers. OCA St. 1 at 44; OCA M.B. at 33. The Court of Common Pleas proceeding encompasses the same Asset Purchase Agreement as the instant proceeding and includes many of the same parties in the instant case, including Aqua and DELCORA. Id. Consequently, the OCA submits that DELCORA must address convincingly whether it has the legal authority to transfer the wastewater utility assets and related contracts to Aqua before the transaction can close. OCA St. 1 at 44; OCA M.B. at 33; infra, Section V.C. Additionally, the issues being raised by some of the resale customers regarding the resale and transfer of previous agreements, should be resolved before the transaction can close. Those agreements are tied to expected revenues. Infra, Section V.C.

c. The Trust Agreement Is Not Clear Regarding the Establishment of the Trust and its Exclusive Use for the Benefit of Former DELCORA Wastewater Customers and New Customers in the Former DELCORA Service Territory

Aqua disagrees with OCA witness Smith's assessment that the Trust and its governing documentation need to be clarified prior to approval of Aqua's Application. Specifically, Aqua opposes Mr. Smith's assessment, arguing the "Trust Agreement is clear both regarding the establishment of the Trust and its exclusive use for the benefit of former DELCORA wastewater customers and new customers . . ." Aqua M.B. at 56.

As explained in OCA's Main Brief, viewed in the best light, the DELCORA Customer Trust would reduce the impact of Aqua's bills by crediting the difference between the PUC approved rates Aqua charges to the former DELCORA customers and the 3% annual cap on

increases outlined in the APA. OCA St. 1 at 42; OCA M.B. at 33-34. Significantly, OCA witness Smith points out that the 3% referenced is not stated in a tariff. OCA St. 1 at 42; OCA M.B. at 34. Moreover, as further explained in OCA's Main Brief, DELCORA explained that the parties can update the governing Memorandum of Understanding (MOU) to include "checks and balances" of the commitment to the 3% annual increase limit, if the Commission approves Aqua's proposal to include a customer assistance payment on DELCORA customer bills. OCA St. 1 at 43; OCA M.B. at 34. Regarding the governing documents, if the Commission does not approve Aqua's proposal to apply Trust disbursements as customer assistance payments on DELCORA customer bills, DELCORA responded:

DELCORA signed an Asset Purchase Agreement with Aqua. DELCORA has decided to use the proceeds of the sale to be applied to DELCORA customer bills for the benefit of DELCORA customers. If the customer assistance payment cannot be included on DELCORA customer bills, DELCORA will explore different options whereby the Trust assets will be distributed directly to customers, consistent with the signed irrevocable Trust Agreement.

OCA St. 1 at 43; OCA M.B. at 34. As a result of this ambiguity, OCA witness Smith testified that DELCORA must provide clarity as to how the DELCORA Rate Stabilization Fund Trust Agreement between DELCORA as Settlor and Univest Bank and Trust Co. as Trustee, with the Effective Date of December 27, 2019 will function to insulate DELCORA wastewater customers from rate increases. OCA St. 1 at 41, 67; infra, Section V.C.

d. Aqua Must File Quarterly (Not Annual) Reports Demonstrating How Customer Bill Assistance Payments Are Being Applied on Aqua's Bills to DELCORA Customers

Aqua asserts that it is willing to file annual reports, but not quarterly reports such as Mr. Smith recommended in his testimony. Aqua M.B. at 56. Aqua's Main Brief lacks any discussion as to why annual reports are, in its opinion, more appropriate than OCA's recommended quarterly reports. Conversely, through Mr. Smith's testimony, OCA's Main Brief describes in great detail why quarterly reporting is required to ensure that the DELCORA commitment to use the proceeds

of the transaction to benefit customers is being achieved. OCA St. 1 at 40, 67; OCA M.B. at 35-

36. In response to Aqua, Mr. Smith testified:

To assure that the payments are being properly applied from the inception, I recommend that quarterly reports be required at least for the first full year of DELCORA Customer Trust operation. If it is determined at the end of the first full year of such operation that the Trust is operating as intended without any concerns, problems or issues, the reporting after that point could revert to annual reporting.

OCA St. 1 SR at 25. Additionally, the reports should also show how the DELCORA Customer Trust amounts are being applied to reduce the Aqua rate increases to DELCORA wastewater utility customers that will be occurring under Aqua ownership. OCA 1SR. at 25; OCA M.B. at 36.

As such, and for the reasons discussed above and contained in the OCA's Main Brief, the OCA submits that Mr. Smith's recommendation of quarterly reports provides the necessary clarity needed into this possible transaction.

e. Conclusion

For all of these reasons, Aqua has not established, under Section 1102 and 1103, that the transaction provides any substantial, affirmative public benefit to the existing Aqua customers. Consequently, the record shows instead that both Aqua's current customers and the DELCORA's customers could suffer considerable harm. Therefore, the Application should not be approved or at a minimum, only be approved with the adoption of appropriate and necessary conditions, including those recommended by the OCA herein.

4. Public Interest

Addressed above and also in the OCA's Main Brief in Section V.B.

a. Common Pleas Litigation

Addressed above and also in the OCA's Main Brief in Section V.B.

b. Rate Stabilization Trust

Addressed above and also in the OCA's Main Brief in Section V.B.

c. Other

Addressed above and also in the OCA's Main Brief in Section V.B.

5. Environmental Aspects of the Proposed Transaction

As specified in the OCA's Main Brief, the OCA does not present any evidence regarding the environmental aspects of the proposed transaction. OCA M.B. at 40.

6. Conclusion – Public Interest and Benefit

For all of these reasons, Aqua has not established, under Section 1102 and 1103, that the transaction provides any substantial, affirmative public benefit to the existing Aqua customers. Instead, the record shows that both Aqua's current customers and the DELCORA customers could suffer considerable harm. The OCA submits that the Commission must deny the Application.

C. Recommended Conditions

If the Commission determines to approve the acquisition, the OCA submits that the following conditions, at a minimum, are required to limit ratepayer exposure to the risks of the acquisition and to ensure that ratepayers receive a fair allocation of the benefits of the acquisition.

- 1) The 12.55% average rate increase for DELCORA ratepayers that Aqua has estimated could occur in the next Aqua wastewater rate case should be mitigated to avoid rate shock associated with the change in ownership. The DELCORA Customer Trust Fund (or some acceptable alternative) should be used to limit the annual rate increases to DELCORA waste water utility customers under Aqua ownership to no more than 3 percent annually, until the approximated \$200 million projected for funding the DELCORA Customer Trust (or some acceptable alternative) has been fully applied for such rate increase mitigation purposes.
- 2) While the Trust is functioning to limit increases to DELCORA customers, the DELCORA customers should be a separate rate zone. The separate rate zone and its separate cost of service study should remain an obligation at least as long as the Trust provides the rate mitigation.
- 3) At the time of filing its next base rate case, Aqua shall submit a cost of service study that removes all costs and revenues associated with the operations of the DELCORA wastewater system. Aqua shall also provide a separate cost of service study for the DELCORA system at the time of the filing of Aqua's next base rate case.

- 4) While the Trust (or some acceptable alternative) is in place and providing rate mitigation for former DELCORA customers, the DELCORA rate zone will reflect the full cost of service and related revenue requirement for that rate zone and no costs will be shifted outside of that rate zone.
- 5) Consistent with Aqua's proposal, when Aqua modifies its LTIP to include the DELCORA wastewater utility, any DELCORA-related projects reflected in the revised LTIP should be in addition to, and not reprioritize, any capital improvements that Aqua was already committed to undertake for existing customers.
- 6) DELCORA must address convincingly whether it has the legal authority to transfer the wastewater utility assets and related contracts to Aqua.
- 7) DELCORA must provide clarity as to how the DELCORA Rate Stabilization Fund Trust Agreement between DELCORA as Settlor and Univest Bank and Trust Co. As Trustee, with the Effective Date of December 27, 2019 will function to insulate DELCORA wastewater customers from rate increases.
- 8) Aqua and DELCORA should revise the MOU to add details regarding how the Trust proceeds will be properly credited to the former DELCORA customers as set forth in responses to OCA and County discovery.
- 9) The customer assistance payments from the DELCORA Customer Trust on Aqua's billings to DELCORA wastewater utility customers should be separately shown on the bills to help make this part of the public benefit transparent to the DELCORA wastewater utility customers who are receiving the bill assistance.
- 10) The operation of the DELCORA Customer Trust, i.e., the DELCORA Rate Stabilization Fund should be reviewed and monitored in quarterly reports which show how amounts are being applied to reduce the Aqua rate increases to DELCORA wastewater utility customers that would be occurring under Aqua ownership.
- 11) In the period from the date when the acquisition is consummated through the effective date of new rates for the acquired DELCORA wastewater utility customers in Aqua's next base rate case, the impact on income tax expense from repairs deductions claimed by Aqua on DELCORA wastewater utility system assets should be recorded in a regulatory liability account and addressed in Aqua's next base rate case in which rates for the acquired DELCORA wastewater utility customers are addressed.
- 12) The issues being raised by some of the resale customers' resale transfer of the agreements should be resolved before the transaction can close. Those agreements are tied to expected revenues.

D. Section 507 Approvals

As specified in the OCA's Main Brief, the OCA does not present any evidence regarding 507 Approval aspects of the Proposed Transaction. OCA M.B. at 42.

1. Legal Principals

Addressed above.

2. Municipal Protestants' Contracts

Addressed above.

a. Introduction

Addressed above.

b. Edgmont Township's Contract

Addressed above.

c. Lower Chichester Township's Contract

Addressed above.

d. Southwest Delaware County Municipal Authority's Contract

Addressed above.

e. Trainer Borough's Contract

Addressed above.

f. Upland Borough's Contract

Addressed above.

3. Contracts Other than Municipal Protestant's Contracts

Addressed above.

E. Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

Addressed above.

VI. CONCLUSION

For the reasons stated above and in the OCA's Main Brief, if the Commission approves the application under Sections 507, 1102 and 1329, the Office of Consumer Advocate's proposed conditions should be adopted, including the OCA's proposed adjustments to the appraisals.

Respectfully submitted,

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