



VIA E-FILING

March 18, 2024

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**RE: Aqua Pennsylvania, Inc.
Implementation of Section 1329 of the Public Utility Code
Docket No. M-2016-2543193**

Dear Secretary Chiavetta:

Please find enclosed here the Comments of Aqua Pennsylvania, Inc. to the Pennsylvania Public Utility Commission's Tentative Supplemental Implementation Order regarding the Implementation of Section 1329 of the Public Utility Code Entered February 7, 2024, at the above docket.

If you have any questions regarding this notice, please contact me at 610-645-1130.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alexander R. Stahl".

Alexander R. Stahl
Regulatory Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Section 1329 of the : Docket No. M-2016-2543193
Public Utility Code :

Comments of
Aqua Pennsylvania, Inc.

Dated: March 18, 2024

applications, the Commission again sought input on ways to improve the implementation of Section 1329, and on March 2, 2019, the Commission issued its First Supplemental Implementation Order.² By the Motion of Chairman DeFrank on February 1, 2024, the Chairman moved to develop a second supplemental implementation order seeking comments on four subjects: (1) public input hearings, (2) rate impact notice, (3) default weighting for appraisals, and (4) reasonableness review ratio. On February 7, 2024, the Commission issued the TSIO on Chairman DeFrank’s motion. Aqua commends the Commission for its continued initiatives to make improvements to the Section 1329 process in the Commonwealth. It is with this background that Aqua provides the following suggestions and clarifying comments for the Commission’s consideration.

II. COMMENTS TO THE TSIO

Aqua supports the TSIO and believes that the Commission’s TSIO will be beneficial to processing fair market value (“FMV”) applications before the Commission.

A. Public Input Hearings

Aqua supports the Commission’s proposal of holding two public hearings on a proposed transaction under Act 12. Aqua agrees with the language that leaves flexibility in the description of the venue because selling utilities come in all different shapes and sizes. Aqua also agrees with the description of a public meeting so that the community leaders that are making the decision to sell can help decide where the best location is to communicate with their residents. Aqua intends to comply with these requirements in good faith and in making sure the public is informed. In anticipation of comments which may request more definitive definitions and prescriptive language on this topic, Aqua advises that there are a limited number of acquiring utilities that use FMV at

² *Implementation of Section 1329 of the Public Utility Code*, Final Supplemental Implementation Order, Docket No. M-2016-2543193 (Mar. 2, 2019) (hereinafter “2019 Order”).

this time. If there are future examples provided in the Applications that suggest buyers and sellers are not acting in a good faith effort to comply with this section as drafted, that could be easily remedied in the future.

B. Rate Impact Notice

The TSIO notes three items that must be verified or declared under an affidavit dealing with notice about potential rate impacts. The first is that “[b]oth parties acknowledge the selling utility is aware of the potential rate impacts the transaction may have on the selling utility’s customers. This would include detailing the overall dollar and percentage impact implicated from stand-alone rates from transaction prices.”³ Aqua supports this recommendation because it underscores full transparency and knowledge about potential rate increases which may result from a sale. It also encourages a dialogue about potential rate increases that will likely occur whether or not a sale occurs. This verification or affidavit should be included within the initial application.

For the second recommendation, the Company believes that the Commission should clarify that this is not a new requirement and that this is part of the Implementation Orders already in existence. The Company would like to clarify that this verification or affidavit related to “[t]he selling utility has public communicated such implications on rates through notices issued to its existing customers”⁴ is provided after the buying and the selling utilities have completed notice to all existing and acquired customers during the conditional acceptance period.

The Commission proposed that verification or affidavit be provided *within the initial application*. The initial application is the application filed with the Commission prior to any completeness review by Commission staff and information filed under that completeness review. The current practice under FMV proceedings is that the notice to existing and acquired customers

³ TSIO at 4

⁴ Id.

occurs after the initial application is filed, after conditional acceptance is granted, but before final acceptance and perfection of an application. The Company submits that requiring an affidavit *within the initial application* that “[t]he selling utility has publicly communicated such implications on rates through notices issued to its existing customers”⁵ could be falsely interpreted to require an individual notice be sent out before an application is filed with the Commission to comply with this requirement and a second individual notice that would be sent during the conditional acceptance period under the existing notice requirements for FMV applications. It should be noted that the notices that the Company currently provides to existing and acquired customers includes information concerning the date of the filing, the estimated protest period, and the estimated Commission public meeting date that an order on the transaction may be issued. These dates are unknown and cannot be estimated before an application is conditionally accepted by the Commission. The Company suggests that the Commission clarify that the **current formal notice to customers for the PUC proceeding remains unchanged and that the affidavit related to the second bullet point on notice occur after conditional acceptance, but before final acceptance of an application.**

On the third recommendation, the TSIO states that “[b]oth parties understand that the Commission may shift rate allocations in a manner different from any commitments in the underlying application.”⁶ Aqua supports this recommendation as it encourage the dialogue on the Commission’s rate setting authority. This affidavit should be in included within the initial application.

Finally, Aqua supports communicating rate impacts to the acquired customers on a full cost of service basis. Aqua’s notices to customers in all its FMV applications where notice was

⁵ Id.

⁶ Id.

provided were presented on a full cost of service, or stand-alone, basis. Providing the stand-alone rate fully informs customers of the potential rate impact that may occur through a FMV application. Utilities using FMV should also be able to provide other rate impact estimates in the notice in addition to the stand-alone rate impact. As the Commission has previously stated “the Section 1329 valuation could have a highly unlikely rate effect of \$0. Equally unlikely is a full allocation of all costs — acquisition and perhaps others — to a rate division consisting of only the customers of the acquired municipal system. The more likely *outcome* is indeterminate; it will be found somewhere between possible extremes.”⁷ For this reason Aqua submits that along with showing the stand-alone rate impact in the customer notice, the utilities using FMV should be able to provide alternate examples of the rate impact that includes some cost allocation (not necessary an Act 11 wastewater to water shift). Some form of cost allocation is more likely to be the outcome of the impact of the transaction (i.e., “a highly unlikely rate effect of \$0. Equally unlikely is a full allocation of all costs”). Acknowledging on one hand that the full cost of service should be shown, it must also be acknowledged that some form of cost sharing (within the wastewater revenue requirement alone or the water revenue requirement alone) can occur which would show a lower rate impact and may be more in line with the outcome in a base rate proceeding.

To summarize the above, an affidavit stating that “[b]oth parties acknowledge the selling utility is aware of the potential rate impacts the transaction may have on the selling utility’s customers. This would include detailing the overall dollar and percentage impact implicated from stand-alone rates from the transaction price”⁸ and “[b]oth parties understand the Commission may shift rate allocations in a manner different from any commitments made in the underlying

⁷ 2019 Order at 32. (emphasis original).

⁸ TSIO at 4.

application.”⁹ can be submitted within the initial application, with an additional affidavit filed after notices are completed during the conditional acceptance period that states “[t]he selling utility has publicly communicated such implications on rates through notices issued to its existing customers.”¹⁰

C. Default Weights for Appraisals

The Company agrees with the Commission that default equal weighting should be required unless adequate justification is provided by the utility valuation expert (“UVE”) to deviate from the default weighting.

D. Reasonableness Review Ratio

The Company generally agrees with the Commission’s Reasonableness Review Ratio (“RRR”) proposal. It should be noted that using a 10-year average for the RRR would reduce the overall RRR using the existing data.

The Company would also like to clarify its recommendation on the application of the RRR to specific transactions. The RRR will be published by the Commission annually. However, FMV transactions often span multiple years from bid process, or negotiation, through application preparation and ultimate processing of the application before the Commission. As such the RRR at the time the buying and selling entity entering into an asset purchase agreement (“APA”) may be different than the RRR that is published at the time the transaction is before the Commission for decision. The Company submits that the RRR that should apply to a transaction is the RRR that was in place at the time the buying and selling entity entered into the APA.

The Company would also like to recommend and ask the Commission to make clear that the RRR should dictate what is allowed in ratemaking rate base, and it does not impact the purchase

⁹ Id.

¹⁰ Id.

price of a transaction. Buying and selling entities may enter into agreements at purchase prices that are greater than the RRR indicates. The difference between the purchase price and the RRR would be goodwill.

E. Timing to Effectuate Proposed Changes

The Company appreciates the Commission's acknowledgment that some FMV transactions have been months and years in the works prior to this TSIO. The Company would propose that for any FMV application that comes before the Commission where the APA was executed prior to the entry of the final supplemental implementation order under this TSIO should be grandfathered. These transactions were entered into without the benefit of the guidance of the Commission's TSIO and, therefore, should not be evaluated under these standards. Significant time and effort have been put into these transactions and the TSIO could disrupt the foundations of the transaction unless they are grandfathered. Therefore, to ensure equal footing for transactions going forward, the Company submits that the final order in this proceeding should only apply to FMV applications where the APA was executed after the final order is issued.

F. Other Comments – Affirmative Public Benefit

As part of this TSIO, the Company would propose that the Commission include for further clarity, examples of what public benefits should be included in a FMV application that would satisfy the substantial public benefits test that is being used to evaluate FMV applications in its current form. At this juncture, it is unclear and is leading to increased litigation and appeals. Each FMV application will have a rate impact of some kind, and often the benefits that derive from these transactions are realized over many years and are not immediately quantifiable at the time the FMV application is being processed before the Commission.

The Commission should provide further guidance stating that evidence of an affirmative public benefit for a water and wastewater acquisition is compliance with the guardrails associated with the RRR. Compliance with the RRR is meant to address the impact on customer rates. The Company believes the Commission should provide further guidance and weighting on what constitutes additional evidence of affirmative public benefits. Examples of affirmative public benefits include but are not limited to:

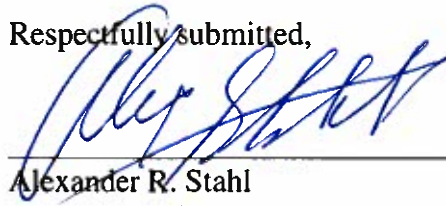
- addressing operational, staffing, managerial and financial issues;
- consolidating water and wastewater systems;
- economies of scale;
- charging appropriate rates to ensure maintenance and replacement of infrastructure;
- accelerated infrastructure replacement plans;
- training for employees and emergency response best practices;
- asset management;
- water quality compliance;
- addressing sanitary sewer overflows, consent orders, notices of violation;
- cyber security planning and execution; and
- standard operating procedures and safety protocols.

This is not an exhaustive list but would provide guidance as to what types of issues the Commission believes support a substantive public benefit.

III. CONCLUSION

Aqua appreciates the opportunity to comment on the Tentative Supplemental Implementation Order and asks that the Commission consider its comments. Aqua looks forward to continuing to work with the Commission on these issues. Please direct any questions with regard to these comments to the undersigned.

Respectfully submitted,



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Dated: March 18, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Section 1329 of the : Docket No. M-2016-2543193
Public Utility Code :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals and in the manner listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Alexander R. Stahl

Dated: March 18, 2024