



VIA E-FILING

April 2, 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 Reply 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 "Alex 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 :

Reply Comments of
Aqua Pennsylvania, Inc.

Dated: April 2, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF AQUA PENNSYLVANIA, INC.
REGARDING THE
FEBRUARY 7, 2024 TENTATIVE SUPPLEMENTAL IMPLEMENTATION ORDER**

I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) appreciates the opportunity to file reply comments on the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Tentative Supplemental Implementation Order (“TSIO”) entered February 7, 2024 in Docket No. M-2016-2453193, regarding the implementation of Section 1329 of the Public Utility Code.

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 reply comments for the Commission’s consideration.

II. REPLY 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. Aqua provided comments on the TISO previously with limited clarifications and suggestions, and recommends the Commission adopt the TSIO with Aqua’s limited clarifications. The Company does not

support the majority of the additional requirements suggested by stakeholders and generally responds to those suggestions below.

A. Public Input Hearings

Aqua supports the Commission’s proposal of holding two public hearings on a proposed transaction under Act 12. A number of commenters provided recommendations in this area. Aqua reinforces its recommendation that communities across the Commonwealth vary in many different ways – from size of their footprint, geography, resources available to them, density of residents in the footprint and a host of other variables. Local community leaders should retain their rights and flexibility to communicate with their constituents and residents -- whether it be for a sale of water or wastewater assets or other decisions being made in their local community. The Commission’s language does this while also setting a minimum requirement.

In addition, in Aqua’s experience, sellers already have multiple public meetings, information sessions, and communications about the possibility of selling water or wastewater assets. All of these communications in turn are the catalyst for additional communications in the form of newspaper articles and social media communications.

Aqua agrees with the current TISO language that leaves flexibility in the description of the venue because selling utilities come in all different shapes, sizes, and resources. 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. As described in the TISO, the use of the word “public hearing” allows decision makers to communicate to their residents in the way that makes the most sense in the community. Some may choose to make it a more formal process with a moderator, some may choose to have an open public meeting that is transcribed. All of these communication methods can be described in the

Application process and at the very least, could be inquired about in discovery to confirm the commitments both sellers and buyers have made to ensure communications and public engagement are occurring. It should be emphasized that in 2024, customers are more informed, have greater access to detailed information, and can share thoughts and concerns more than any other time in history. Not only can they receive information about an action that their local leaders are taking, but they can also go to a website and read the details about a potential decision and share their thoughts and learn about the thoughts of other community member. As stated in its comments, Aqua intends to comply with these public hearing requirements in good faith and in making sure the public is informed.

B. Rate Impact Notice

Several commenters opine on providing information on rate impacts. It should be made very clear that utilities can provide estimates of rate impacts and that is what they are – estimates, because rates are ultimately determined by the PUC. In order for utilities to project future rate increases with certainty, the Commission would have to adopt a formula, or multi-year rate plan over a period of years. Therefore, arguments about future rate impacts are just that – arguments. The Commission should be wary of adopting the degree of detail on rate impacts and specificity that some commenters request during a FMV application as there are numerous factors that influence and impact how rates are ultimately established in a future base rate case that includes a system acquired under Section 1329. The details of any future rate increase are not known with the specificity assumed in the recommendation by some of the commentors.

Rate setting is an uncertainty that sellers take on in deciding to sell their system. Sellers no longer have direct control over their rate increases after they sell their system to a public utility, but do have the protections and review of the Commission staff, statutory advocates, and ultimately

the Commission. Being transparent about the uncertainty of future rate increases is just as important as transparency in communicating what estimated rate increases might be.

Aqua's current Section 1329 notices already provide both the stand alone cost of service rate which assumes the Commission would not allow cost sharing from the newly acquired system – whether that sharing is between wastewater systems or water systems. Aqua believes it is the most transparent way to inform community leaders and customers about potential rate increases.

C. Reasonableness Review Ratio

As stated in its comments, Aqua agrees with the Commission's Reasonableness Review Ratio ("RRR") proposal. Aqua does not agree with the recommendations to arbitrarily lower the RRR to a number not supported by readily observed public market valuations. The RRR is a significant proposal and will have an impact on the acquisition landscape in the Commonwealth. Aqua believes the application of the RRR will guide the stakeholders in this process. We believe that potential sellers and those that advise potential sellers will absolutely take into consideration the RRR in evaluating and negotiating a purchase price. The Company does not support any other actions at this time to change the Commission's RRR proposal and it should be given time to take effect, drive conversation for those stakeholders involved in these processes, and evaluate the impact.

D. Additional Reply Comments

More generally, Aqua does not agree with the notion that public utility assets should be classified as distressed or non-distressed. There are already municipal requirements for when bids are required, and the reality is that bidding often only serves to increase the purchase price. Nor does the Company agree with the OCA's change to the cost approach which recommended only using original cost new less depreciation. The method of determining the value under Section

1329 is fair market value and not the standard of value of original cost. This interpretation would remove the need to appraise the assets as it would not reflect a fair market value, but an original cost value, which is what Section 1329 was enacted to allow. In addition, the Company does not agree with the OCA's recommendation to permit the case to move forward prior to full acceptance being granted. The application is either perfected or not and the case should move forward with protests, intervention, and discovery only after it has been fully accepted. The Commission created the "pre-acceptance" process so that applications would have a standard set of information. Introducing more discovery, motion filings, and procedural objections – prior to the full acceptance process will only create confusion, delay, complication and cause more inefficiencies in the process.

Lastly, but most importantly, the Company stresses the importance of seeking clarity from the Commission on affirmative public benefit. Decades of policy and guidance from the Commission has created a platform supporting consolidation in the water and wastewater industry. Now, challenges at the PUC and the courts take significant amounts of time and resources. The Company encourages the PUC to bring greater clarity to what it believes constitutes affirmative public benefit. The following, among other considerations, could serve as important guardrails for utilities as to what constitutes affirmative public benefit:

- 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. More specifically, a transaction's approved ratemaking rate base, if in line with the RRR, is an affirmative public benefit. The Company notes that there is a difference between what is defined as purchase price and ratemaking rate base. The Commission should make it clear that the RRR dictates what is allowed in ratemaking rate

base, and it does not impact the purchase price of a transaction. The Commission also has the discretion to allow ratemaking rate base above the RRR where circumstances would support this outcome, (e.g., when the system is a troubled system). The Commission has consistently applied its discretion in determining the final ratemaking rate base and has applied adjustments to the appraisals in prior applications under Section 1329. 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.

- The rate increases from the acquisition of a water or wastewater utility that result in rates that are less than the utility's weighted average base rates for the majority of its existing customers and are phased in using the concept of gradualism constitutes affirmative public benefit.
- The Company also supports the Commission assessing the incremental Act 11 shift of wastewater costs to water customers, including a maximum shift of \$5.00 per month on a water customer bill for a specific proposed transaction and all prior wastewater transactions on a combined basis. Compliance with this amount is evidence of an affirmative public benefit.
- Our initial comments to the TSIO also included a list of other items that the Company believes constitute affirmative public benefits to a selling utility.

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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Phone: 610-645-1130
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Dated: April 2, 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).

VIA EMAIL

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Alexander R. Stahl

Dated: April 2, 2024