

March 6, 2017

*Via Electronic Filing*

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

In re: Docket No. A-2016-2580061  
Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329  
of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets  
of New Garden Township and the New Garden Township Sewer Authority

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Main Brief in support of the Application. Copies of the Main Brief are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

  
Thomas T. Niesen

cc: Certificate of Service (w/encl.)  
Alexander R. Stahl, Esquire (via email, w/encl.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

**The Honorable Steven K. Haas, Presiding**

---

**Application of Aqua Pennsylvania : Docket No. A-2016-2580061**  
**Wastewater, Inc. Pursuant to Sections :**  
**1102 and 1329 of the Public Utility Code :**  
**for Approval of its Acquisition of the :**  
**Wastewater System Assets of New Garden :**  
**Township and the New Garden Sewer :**  
**Authority :**

**MAIN BRIEF OF**  
**AQUA PENNSYLVANIA WASTEWATER, INC.**

Thomas T. Niesen, Esquire  
PA Attorney ID # 31379  
Thomas, Niesen & Thomas, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101

*Attorneys for  
Aqua Pennsylvania Wastewater, Inc.*

DATED: March 6, 2017

**TABLE OF CONTENTS**

I. STATEMENT OF THE CASE ..... 1

II. PROPOSED FINDINGS OF FACT ..... 4

AQUA AND NEW GARDEN ..... 4

ASSET PURCHASE AGREEMENT ..... 5

ASSETS BEING TRANSFERRED ..... 5

RATES ..... 6

INTEGRATION WITH CURRENT OPERATIONS ..... 7

DEP COMPLIANCE ..... 7

PLANNED CAPITAL IMPROVEMENTS ..... 8

FITNESS ..... 8

Legal Fitness ..... 8

Financial Fitness ..... 9

Technical and Managerial Fitness ..... 9

PUBLIC INTEREST AND AFFIRMATIVE PUBLIC BENEFITS ..... 10

Consolidation/Regionalization ..... 10

Capital Improvement Projects ..... 11

Long Term Operational Efficiencies ..... 11

Customer Growth and Long Term Cost Sharing ..... 11

Decreasing Cost Profile ..... 12

No Adverse Effect ..... 12

New Garden Wants to Sell its Wastewater System ..... 13

SECTION 1329 CONSIDERATIONS ..... 13

	Ratemaking Rate Base .....	13
	Rate Stabilization Plan .....	15
III.	STATEMENT OF QUESTIONS INVOLVED .....	17
IV.	SUMMARY OF ARGUMENT .....	18
V.	ARGUMENT .....	20
	A. Aqua’s Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority and Related Expansion of Service Territory Are Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public .....	20
	1. Legal Principles .....	20
	2. Aqua Is Fit to Acquire the New Garden System and Expand its Service Territory into New Garden Township .....	22
	3. Aqua’s Acquisition of the New Garden System and Expansion of Service Territory Are Supported by Affirmative Public Benefits .....	23
	Consolidation/Regionalization .....	23
	Capital Improvement Projects .....	24
	Long Term Operational Efficiencies .....	24
	Customer Growth and Long Term Cost Sharing .....	24
	Decreasing Cost Profile .....	24
	No Adverse Effect .....	25
	New Garden Wants to Sell Its Wastewater System .....	25
	4. The Public Interest Criticisms of I&E and the OCA Lack Evidentiary Support .....	25
	5. Conclusion .....	27
	B. The Ratemaking Rate Base Determined Pursuant to Section 1329(c)(2) of the Public Utility Code Is \$29,500,000 .....	27

1.	Legal Principles .....	27
2.	Ratemaking Rate Base is \$29,500,000 – The Lesser of the Negotiated Purchase Price and the Average of the Fair Market Value Appraisals .....	30
a.	The Efforts of I&E and the OCA to Involve Themselves in the Determination of Ratemaking Rate Base Under Section 1329 Should be Rejected .....	32
b.	Ms. Everett’s Appraisal Testimony Should Be Given No Weight .....	34
c.	Mr. Kubas’s Testimony Concerning Appraisal Work Papers in A Working Electronic Format Should Be Given No Weight .....	36
C.	Aqua Is Not Proposing a Rate Stabilization Plan .....	40
VI.	PROPOSED CONCLUSIONS OF LAW .....	43
	Background and Burden of Proof .....	43
	Aqua Is Fit to Acquire the New Garden Wastewater System and Initiate Wastewater Service in New Garden Township .....	45
	Public Interest and Affirmative Public Benefit .....	45
	Section 1329 and Ratemaking Rate Base .....	45
	Rate Stabilization Plan .....	46
VII.	PROPOSED ORDERING PARAGRAPHS .....	48
VIII.	CONCLUSION .....	49

## TABLE OF CITATIONS

### Cases

<i>Allegheny Airlines v. Pa. P.U.C.</i> , 465 F.2d 237 (3d Cir. 1972) .....	21
<i>City of York v. Pa. P.U.C.</i> , 295 A.2d 825 (Pa. 1972) .....	21, 23, 27, 44
<i>Commonwealth v. Segida</i> , 985 A.2d 871 (Pa. 2009) .....	29
<i>Edan Transportation Corp. v. Pa. P.U.C.</i> , 623 A.2d 6 (Pa. Cmwlth. 1993) .....	20, 43
<i>Erie Resistor Corp. v. Unemployment Com. Bd. of Review</i> , 166 A.2d 96 (Pa. Super. 1960) .....	20, 43
<i>Hostetter v. Pa. P.U.C.</i> , 49 A.2d 862 (Pa. Super. 1946) .....	21
<i>Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton</i> , Docket No. A-2016-2537209 (Opinion and Order entered October 19, 2016) .	21, 41, 44
<i>Joint Application of Peoples Natural Gas Company, LLC, Peoples TWP LLC, and Equitable Gas Company, LLC</i> , Docket No. A-2013-2353647, 309 P.U.R.3th 213 (2013) .....	21, 44
<i>Mill v. Comm., Pa. P.U.C.</i> , 447 A.2d 110 (Pa. Cmwlth. 1982) .....	20, 43
<i>Morgan Drive-Away, Inc. v. Pa. P.U.C.</i> , 293 A.2d 895 (Pa. Cmwlth. 1972) .....	21, 44
<i>Murphy v. Comm., Dept. of Public Welfare, White Haven Center</i> , 480 A.2d 382 (Pa. Cmwlth. 1984) .....	20-21, 43
<i>Norfolk &amp; Western Ry. v. Pa. P.U.C.</i> , 413 A.2d 1037 (Pa. 1980) .....	20, 43

<i>Popowsky v. Pa. P.U.C.</i> , 937 A.2d 1040 (Pa. 2007) .....	21, 23, 27, 44
<i>Re Byerly</i> , 270 A.2d 186 (Pa. 1970) .....	21, 44
<i>Re Glenn Yeager et al.</i> , 49 PA PUC 138 (1975) .....	21
<i>Re Pennsylvania American Water Company</i> , 85 PA PUC 548 (1995) .....	21, 44
<i>Re Perry Hassman</i> , 55 PA PUC 661(1982) .....	22, 23
<i>Samuel J. Lansberry, Inc. v. Pa. P.U.C.</i> , 578 A.2d 600 (Pa. Cmwlth. 1990) .....	20, 43
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.3d 854 (Pa. 1950) .....	20, 43

**Statutes, Regulations, Texts and Codes**

Act of Apr. 14, 2016, P.L. 76, No. 12 (Act 12 of 2016) .....	27
52 Pa. Code § 5.501 .....	3
1 Pa.C.S. § 1921(a) .....	29
1 Pa.C.S. § 1921(b) .....	29
2 Pa. C.S. § 704 .....	20, 43
66 Pa. C.S. § 332 .....	20, 43
66 Pa. C.S. § 1102 .....	<i>passim</i>
66 Pa. C.S. § 1102(a)(1) .....	20, 43, 48
66 Pa. C.S. § 1102(a)(3) .....	20, 43, 48
66 Pa. C.S. § 1103(a) .....	21, 44
66 Pa. C.S. § 1329 .....	<i>passim</i>
66 Pa. C.S. § 1329(a)(1) .....	33
66 Pa. C.S. § 1329(a)(2) .....	33
66 Pa. C.S. § 1329(a)(3) .....	29
66 Pa. C.S. § 1329(c)(2) .....	<i>passim</i>
66 Pa. C.S. § 1329(d) .....	30
66 Pa. C.S. § 1329(d)(1)(i) .....	1, 14, 31

66 Pa. C.S. § 1329(d)(1)(ii) .....	14
66 Pa. C.S. § 1329(d)(1)(iii) .....	14, 19, 31, 46
66 Pa. C.S. § 1329(d)(1)(iv) .....	14
66 Pa. C.S. § 1329(d)(1)(v) .....	<i>passim</i>
66 Pa. C.S. § 1329(d)(3) .....	31
66 Pa. C.S. § 1329(d)(3)(i) .....	31
66 Pa. C.S. § 1329(d)(4) .....	31
66 Pa. C.S. § 1329(g) .....	<i>passim</i>



## **I. STATEMENT OF THE CASE**

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), filed with the Public Utility Commission (“Commission”) on December 15, 2016, pursuant to Sections 1102 and 1329 of the Public Utility Code.

The Application asks the Commission to approve Aqua’s acquisition of the wastewater system assets of New Garden Township (“Township”) and the New Garden Township Sewer Authority (“Authority”) (collectively, with Township, “New Garden”) and allow Aqua to begin to provide wastewater service in New Garden Township.

The Application also asks the Commission for an order approving the acquisition that includes the ratemaking rate base of the wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code. The Application is the first filing submitted to the Commission pursuant to recently enacted Section 1329.

The Application totaled more than 4,500 pages. It included responses to over 60 Application Checklist items and 46 Exhibits including maps and service territory descriptions; the Asset Purchase Agreement and Amendments; financial information of both Aqua and the Authority; and numerous Department of Environmental Protection (“DEP”) Reports, Permits and Act 537 related documents.

As required by Section 1329(d)(1), the Application also included copies of the Fair Market Value Appraisal Reports of Gannett Fleming Valuation and Rate Consultants, LLC and AUS Consultants, Inc.; the purchase price of the selling utility as agreed to by the acquiring public utility and selling utility; the ratemaking rate base determined pursuant to Section 1329(c)(2); the transaction and closing costs incurred by the acquiring public utility that will be

included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.

The Bureau of Technical Utility Services (“TUS”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) were served with copies of the Application on December 15, 2016. Thereafter, the Company filed and served supplemental information on December 28, 2016, in response to information requests from TUS.

By Secretarial Letter dated December 30, 2016, the Commission, *inter alia*, acknowledged receipt of the Application and advised that notice of its filing would be published in the *Pennsylvania Bulletin* on January 7, 2017. The Application was assigned Docket No. A-2016-2580061.

I&E filed a Notice of Appearance on January 3, 2017, a Protest on or about January 10, 2017 and an Amended Protest on January 19, 2017. OCA filed a Protest and Public Statement on January 17, 2017. OSBA filed a Notice of Appearance and Public Statement on January 23, 2017. The Township and the Authority filed Petitions to Intervene in support of the Application on January 18, 2017.

Administrative Law Judge Steven K. Haas was assigned to preside over the matter. A prehearing conference was held on January 25, 2017, at which a litigation schedule was adopted providing for evidentiary hearings on February 16 and 17, 2017, and a final order of the Commission by June 30, 2017.

The evidentiary hearing was convened on February 16, 2017 before Judge Haas. Aqua actively participated in the hearing, presenting the testimony of William C. Packer, Mark J. Bubel, Sr., Harold Walker, III, and Jerome C. Weinert. Aqua’s Application, with Exhibits, also

was admitted into the evidentiary record. I&E, OCA, OSBA and New Garden actively participated in the evidentiary hearing.

Prior to the evidentiary hearing, Judge Haas issued an Order, dated January 27, 2017, denying an I&E Motion to Bifurcate and two Orders, dated January 24, 2017, denying I&E Motions to Dismiss Objections of Aqua to I&E Interrogatories.

Additionally, and prior to the evidentiary hearing, the Commission, on February 15, 2017, issued an Opinion and Order (“Order entered February 15”) addressing an I&E Petition for Expedited Interlocutory Review, Stay of Proceedings and Answer to Material Questions (“Petition”). The Order entered February 15, *inter alia*, declined to bifurcate and stay the proceeding.

Aqua submits this Main Brief in support of its Application filed with the Commission pursuant to Sections 1102 and 1329 of the Public Utility Code.<sup>1</sup>

---

<sup>1</sup> The major headings used herein are those identified in 52 Pa. Code § 5.501 – Content and Form of Briefs.

## II. PROPOSED FINDINGS OF FACT

### AQUA AND NEW GARDEN

1. Aqua is a certificated provider of wastewater service, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua St. No. 1 at 7, lines 3 through 6 and Aqua Exhibit No. 1, Application ¶ 7.

2. Aqua operates 31 wastewater treatment plants in the Commonwealth of Pennsylvania serving approximately 20,000 customers in Adams, Bucks, Carbon, Chester, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, and Wyoming Counties. Aqua St. No. 2 at 3, lines 1 through 10.

3. Aqua operates 17 wastewater systems in its Southeast Division that are in close proximity to the Township. Aqua St. No. 2 at 3, lines 6 through 10.

4. Aqua is a subsidiary of Aqua Pennsylvania, Inc. (“Aqua PA”). Aqua PA is the second largest investor owned water utility in the Commonwealth of Pennsylvania, providing service to 435,000 water customers. Aqua PA is one of eight regulated subsidiaries of Aqua America, Inc. (“Aqua America”). Aqua St. No. 1 at 4, line 19 through 5, line 4.

5. New Garden Township is a duly organized and validly existing Pennsylvania township of the Second Class. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 5, lines 13 through 17.

6. The New Garden Township Sewer Authority is a duly organized and validly existing Pennsylvania municipal authority established under the Municipal Authorities Act of 1945. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 5, lines 13 through 18.

7. New Garden Township and the New Garden Township Sewer Authority each owns portions of a community wastewater system that provides wastewater service to

approximately 2,100 customers in three service areas: the East End Service Area; the South End Service Area; and the Avondale Service Area. Aqua Exhibit No. 1, Application ¶ 8; Aqua St. No. 1 at 5, lines 13 through 19, and Aqua St. No. 2 at 3, lines 11 through 19.

#### **ASSET PURCHASE AGREEMENT**

8. Aqua and New Garden are parties to an Asset Purchase Agreement dated August 19, 2016 (“Agreement”), an Amendment to Asset Purchase Agreement dated October 17, 2016 and a Second Amendment to Asset Purchase Agreement dated November 16, 2016. Aqua Exhibit 1, Application ¶ 18; *see also* Aqua Exhibit No. 1, Exhibits C1, C2 and C3.

9. The negotiated purchase price, which is based on arms’ length negotiation, is Twenty-Nine Million Five Hundred Thousand Dollars (\$29,500,000.00). Aqua and New Garden are not affiliated with each other. Aqua Exhibit No. 1, Application ¶ 18 and Aqua St. No. 1 at 6, lines 9 and 10.

10. Aqua will use existing short term credit lines to purchase the wastewater system assets. The short term credit funding will likely be converted to a mix of long-term debt and equity capital at a later time. Aqua Exhibit No. 1, Application ¶ 18 and Aqua St. No. 1 at 6, lines 9 and 10 and at 8, lines 1 through 4.

#### **ASSETS BEING TRANSFERRED**

11. The wastewater system assets to be transferred are defined in Section 2.2 of the Agreement (“Assets”). The Assets include the specific assets, properties, powers and rights set forth in Schedule 2.2 of the Agreement: real estate, collection system, treatment facilities and miscellaneous assets. The real estate to be transferred includes fee title to the parcels associated with the treatment facilities and collection system and various easements. Aqua Exhibit No. 1, Application ¶ 19.

12. Excluded assets, as presented in Section 2.4 and Schedule 2.4 of the Agreement, include a cellular communications site, New Garden's cash and accounts receivable up to the date of Closing, customer sewer laterals, any and all piping and fixtures internal to each individual customer's residences or structures and certain identified vehicles and equipment. Aqua Exhibit No. 1, Application ¶ 20.

13. Aqua will satisfy and comply with all conditions and requirements of the permits specified in Schedule 2.6(a) of the Agreement upon transfer of the permits to Aqua. Aqua, also, is accepting assignment of the contracts listed on Schedule 2.6(b), section I, and will arrange for the termination or amendment of the contract listed on Schedule 2.6(b), section II, and the execution of a new agreement or, in the case of an amendment, an assignment that is agreeable to Aqua, as presented in Section 2.6 of the Agreement. Aqua Exhibit No. 1, Application ¶ 21.

14. All other liabilities and obligations shall remain the sole responsibility of the Township. Aqua Exhibit No. 1, Application ¶ 21.

## **RATES**

15. New Garden's current base residential quarterly charge is \$88.00 for usage between 0 and 5,000 gallons. The current base quarterly charge for commercial 1 and commercial 2 customers is \$121.00 and \$143.00, respectively, for usage between 0 and 5,000 gallons. For industrial customers, the current base quarterly charge is \$423.50 for usage between 0 and 5,000 gallons.<sup>2</sup> Aqua Exhibit No. 1, Application ¶ 27 and Exhibit H.

16. Aqua will charge New Garden's existing rates post-closing. Rate schedule pages implementing New Garden's existing rates are included as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 26 and Exhibit G.

---

<sup>2</sup> New Garden has no industrial customers. Aqua Exhibit No. 1, Application ¶ 8.

17. Aqua and New Garden have agreed that New Garden's existing rates will remain in effect for no less than seven hundred thirty (730) days from the Closing Date. Aqua Exhibit No. 1, Application ¶ 26 and Exhibit C, Paragraph 7.b. and Aqua St. No. 1 at 8, lines 8 through 11.

18. Aqua and New Garden also have agreed that, for the ten year period beginning on the Closing Date, future rate increases will not exceed a compounded annual growth rate ("CAGR") of 4%. Aqua Exhibit No. 1, Application ¶ 26 and Exhibit C, Paragraph 7.b. and Aqua St. No. 1 at 6, lines 9 through 13.

19. Based on the current rate schedule, Aqua projects annual revenue of \$2,250,000 from New Garden customers with annual operating expenses of \$715,000. Aqua Exhibit No. 1, Application ¶ 31 and ¶ 32 and Tr. 23, line 18, through Tr. 24, line 24.

20. Aqua's tariff rules and regulations will apply following closing, and after two complete billing cycles Aqua will have the option to convert quarterly billing to monthly billing. Aqua Exhibit No. 1, Application ¶ 28 and Aqua St. No. 1 at 6, lines 13 through 15.

#### **INTEGRATION WITH CURRENT OPERATIONS**

21. Aqua will operate and manage the wastewater system as a standalone system from its Southeastern Division office located in Bryn Mawr, Pennsylvania, which is approximately 29.5 miles from the New Garden wastewater system. It will use its current employees to operate the system with no physical or managerial changes to Aqua. Aqua Exhibit No. 1, Application ¶ 34, ¶ 38 and ¶ 39 and Aqua St. No. 2 at 10, lines 15 through 19.

#### **DEP COMPLIANCE**

22. Aqua is in good standing with DEP. Aqua Exhibit No. 1, Application ¶ 36.

23. New Garden has one outstanding Notice of Violation (“NOV”) from DEP dated July 7, 2015 concerning a shortfall in effluent spray disposal capacity at the South End Wastewater Treatment Plant. Aqua St. No. 2 at 5, lines 3 through 10. Aqua and New Garden are working with DEP to correct the shortfall. Aqua St. No. 2 at 5, lines 14 through 16.

## **PLANNED CAPITAL IMPROVEMENTS**

24. Two post-closing capital improvements are planned:

- (i) Replacement of a 6” diameter AC Force Main – the Route 41 force main – in the Avondale Service Territory is planned for 2018. The Route 41 force main is aged and has experienced several main breaks in recent years. The Route 41 Force Main Project will address the reliability of the Avondale Service Area conveyance system.
- (ii) The addition of a mechanical treatment system with stream discharge is planned for the South End Service Territory in 2018/early 2019 to make up the shortfall in spray irrigation disposal capacity at the South End WWTP. The South End mechanical plant with stream discharge will bring the New Garden system into compliance with DEP.

Aqua St. No. 2 at 6, line 27 through 7, line 6.

25. The estimated total cost of the capital improvements to the Route 41 force main and the South End Wastewater Treatment Plant is \$2.5 million. Aqua St. No. 1 at 6, lines 15 through 18.

## **FITNESS**

### **Legal Fitness**

26. Aqua is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania. There are no pending legal proceedings challenging Aqua’s ability to provide safe and adequate service to customers. Aqua St. No. 1 at 7, lines 3 through 6.



### **Financial Fitness**

27. Aqua is a Class A, Pennsylvania wastewater utility with total assets of \$100 million and annual revenues of \$12 million. Aqua St. No. 1 at 7, lines 12 through 14. As a direct subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities. Aqua St. No. 1 at 7, lines 22 and 23.

28. Aqua PA is a Class A water utility and the largest subsidiary of Aqua America, with total assets of \$3.8 billion and annual revenues of \$415 million in 2015. In 2015, Aqua PA had operating income of approximately \$208 million and net income of \$172 million. Aqua PA's cash flows from operations were \$170 million in 2015. Aqua St. No. 1 at 7, lines 7 through 14.

29. Aqua PA has a Standard and Poor's Rating of A+ and has approximately \$1.1 billion in outstanding long-term debt at a weighted average interest rate of approximately 4.5%. Aqua PA also has a \$100 million short term credit facility and access to equity capital as a subsidiary of Aqua America. Aqua St. No. 1 at 7, lines 15 through 23.

30. Aqua will finance the acquisition of the New Garden wastewater system using the existing short term credit facility. The short term funding will likely be converted to a mix of long-term debt and equity capital at a later time. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating. Aqua St. No. 1 at 8, lines 1 through 7.

### **Technical and Managerial Fitness**

31. Aqua will operate the system with its current staff of qualified wastewater operators. It has an existing operational presence in the area, four other wastewater treatment plants within 10 miles of the New Garden system and a fifth plant within 15 miles. Aqua St. No. 2 at 9, lines 3 through 7. The acquisition will easily fold into Aqua's existing wastewater

operations. Aqua St. No. 2 at 9, line 14; *see also* Aqua Exhibit No. 1, Application ¶ 34, ¶ 38, Exhibit L1 and Exhibit L2.

32. Aqua's employees will be supported by the area supervisor and other Aqua and Aqua PA employees as needed. Aqua St. No. 2 at 9, lines 12 through 16. Aqua and Aqua PA have acquired many wastewater and water systems in the last three decades. Aqua St. No. 2 at 11, lines 9 through 12.

33. Aqua strives to ensure that its collection, conveyance and pumping systems provide continuous, safe and reliable service. It has worked with the Commission and statutory advocates to acquire and improve troubled wastewater systems – the Washington Park Wastewater System, for example, Docket No. A-230550F2000. Aqua St. No. 2 at 11, lines 15 through 23.

## **PUBLIC INTEREST AND AFFIRMATIVE PUBLIC BENEFITS**

### **Consolidation/Regionalization**

34. The Commission has long supported the consolidation/regionalization of water/wastewater systems throughout Pennsylvania. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and resulting greater environmental/economic benefits. Ultimately, these benefits inure to customers both existing and acquired. Aqua St. No. 1 at 9, lines 5 through 12.

35. The New Garden system is exactly the kind of system that the Commission has historically encouraged companies such as Aqua to acquire. The acquisition represents an 11% increase in customers to the Company's wastewater operations, is adjacent to service areas the Company already operates, does not require extensive long term capital improvements, and is in a demonstrated area of natural customer growth. Aqua St. No. 1R at 8, lines 7 through 14.

36. Aqua, and its parent company, Aqua PA, have a proven track record of working within the Commission's consolidation/regionalization policy, assimilating wastewater and water systems and improving them over time. Aqua St. No. 1R at 8, lines 14 through 16. Aqua has the managerial, technical and financial resources to operate the New Garden system in a safe, reliable and efficient manner now and in the future and address any system deficiencies that may arise. Aqua St. No. 1 at 9, lines 13 through 18; *see also* Aqua Exhibit No. 1, Application ¶ 41.a.

#### **Capital Improvement Projects**

37. As addressed above, two significant capital projects, at a total estimated cost of \$2.5 million, are projected post-closing for the benefit of New Garden residents: the replacement of the 6" Route 41 AC Force Main in 2018 and the addition of a mechanical treatment system with stream discharge for the South End Wastewater Treatment Plant in 2018/early 2019. Aqua St. No. 1 at 10, lines 6 through 12 and Aqua St. No. 2 at 6, lines 27 through 31, through 7, lines 1 through 7.

#### **Long Term Operational Efficiencies**

38. Aqua operates four other wastewater treatment plants within 10 miles of the New Garden system and a fifth plant within 15 miles. Aqua St. No. 2 at 9, lines 3 through 7. Because it has operations in nearby areas, Aqua will be able to assume operation of the New Garden system without adding any additional operational or administrative staff. Aqua St. No. 1R at 10, lines 2 through 6. Operational efficiencies, ultimately, mitigate future rate increases. Aqua St. No. 1 at 10, lines 1 through 6.

#### **Customer Growth and Long Term Cost Sharing**

39. Aqua will increase its customer base by approximately 11% as a result of the acquisition. With a larger customer base, future infrastructure capital costs will be shared at a

lower incremental cost per Aqua customer. Aqua St. No. 1 at 9, lines 20 through 23 and at 10, lines 10 through 1.

40. There is, moreover, significant customer growth potential in the New Garden service area, which can be accommodated utilizing the current wastewater utility treatment infrastructure and without the need for additional capital. Customer growth will allow for still further long term cost sharing, further diluting the cost of service across even more customers and improving economies of scale. Aqua St. No. 1 at 10, lines 13 through 17 and Aqua St. No. 1R at 9, line 23 through 10, line 2.

#### **Decreasing Cost Profile**

41. Aqua is not projecting any other capital projects for the New Garden system after the completion of the Route 41 and South End projects. The expectation, rather, is that the future incremental investment needs will be minimal and less than the incremental investment needs of Aqua's other systems. The system, in other words, will exhibit a "decreasing cost profile" in the future, which means that it will become less costly each year under Aqua ownership and, when combined with the expected operational efficiencies and the anticipated customer growth, have the makings of a system that will provide long term benefits to existing customers by allowing the incremental cost of future capital improvements in other service areas to be spread across the larger customer base. Aqua St. No. 1 at 10, lines 6 through 12 and Aqua St. No. 1R at 9, lines 3 through 12.

#### **No Adverse Effect**

42. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Aqua Exhibit No. 1, Application ¶ 41.a. The acquisition, however, will address capital project needs of New Garden customers.

43. The acquisition will not have an adverse effect on the rates of either New Garden customers or the existing Aqua customers. Aqua will implement New Garden's existing rates upon Commission approval of the acquisition. Aqua St. No.1 at 10, lines 1 through 5 and Aqua St. No. 1R at 5, lines 15 through 18.

#### **New Garden Wants to Sell Its Wastewater System**

44. New Garden has agreed to sell its wastewater system. The public interest and need will be served by allowing Aqua, in lieu of New Garden, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. Aqua Exhibit No. 1, Application ¶ 41.b.

### **SECTION 1329 CONSIDERATIONS**

#### **Ratemaking Rate Base**

45. Aqua and New Garden have agreed to use the process presented in Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329, to determine the fair market value of the wastewater system assets and the ratemaking rate base. Aqua Exhibit No. 1, Application ¶ 42.

46. Aqua and New Garden agreed on a Licensed Engineer to complete the Assessment of Tangible Property and engaged Utility Valuation Experts ("UVE") to perform Fair Market Value analyses of the system in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), utilizing the cost, market, and income approaches. Aqua St. No. 1 at 11, lines 8 through 14; *see also* Aqua Exhibit No. 1, Application ¶ 53 and Exhibit AA.

47. Aqua engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett"). New Garden engaged the services of AUS Consultants, Inc. ("AUS"). Both firms were pre-certified as authorized UVEs by the Commission and are on the list of qualified

appraisers maintained by the Commission. Aqua St. No. 1 at 11, lines 14 through 19 and Aqua Exhibit No. 1, Application ¶ 48.

48. As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett and AUS were attached as Exhibit U and Exhibit V, respectively, to the Application. Aqua Exhibit No. 1, Application ¶ 43, Exhibit U and Exhibit V.

49. As required by Section 1329(d)(1)(ii), the purchase price agreed to by Aqua and New Garden was identified as \$29,500,000. Aqua Exhibit No. 1, Application ¶ 44.

50. As required by Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) was identified as \$29,500,000, being the lesser of the negotiated purchase price of \$29,500,000 and the average of the fair market value appraisals which is \$32,140,875 – determined by \$30,615,410 presented in the AUS appraisal and \$33,666,340 presented in the Gannett appraisal.<sup>3</sup> Aqua Exhibit No. 1, Application ¶ 45; *see also* Aqua St. No. 1 at 12, lines 5 through 10.

51. As required by Section 1329(d)(1)(iv), transaction and closing costs were identified as approximately \$55,000, which will be included in rate base. Aqua Exhibit No. 1, Application ¶ 46. Exact closing costs will be determined at closing. Aqua St. No. 1 at 13, lines 13 through 16.

52. As required by Section 1329(d)(1)(v), a tariff containing a rate equal to the existing New Garden rates at the time of acquisition was attached as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 47 and Exhibit G.

---

<sup>3</sup> The original Gannett appraisal of \$33,666,340 was revised at hearing to \$33,644,000 to reflect the removal of four vehicles and two mowers which are not part of the transaction. The reduction of the appraisal by approximately \$23,000 is insignificant and has no impact on the determination of the ratemaking rate base pursuant to Section 1329 of the Public Utility Code. Tr. 52, line 24 through Tr. 54, line 4. The original Gannett appraisal of \$33,666,340 is cited in the discussion of ratemaking rate base *infra*.

53. The UVEs were paid \$17,165 for the completed Fair Market Value Appraisal Reports. Documentation of the fees paid to each UVE was included with the Application as Exhibit W1 and Exhibit W2, respectively. Aqua Exhibit No. 1, Application ¶ 49, Exhibit W1 and Exhibit W2 and Aqua St. No. 1 at 12, lines 11 through 18.

54. The fees paid to the UVEs are reasonable based on the scope of work, the methods used as accepted industry practice, and that the UVEs' fees were less than 5% of the fair market value benchmark noted in the Final Implementation Order. Aqua St. No. 1 at 12, lines 14 through 19.

55. Statements of Gannett and of AUS verifying that they have no affiliation with Aqua or New Garden as specified in Section 1329 and that their Appraisals determined fair market value in compliance with USPAP, employing the cost, market and income approaches were attached to the Application as Exhibit X1 and Exhibit X2, respectively. Aqua Exhibit No. 1, Application ¶ 50, Exhibit X1 and Exhibit X2.

56. Aqua's contract with Gannett to undertake its Fair Market Value Appraisal was included as Exhibit A to Aqua Statement No. 1. Aqua St. No. 1 at 12, lines 18 and 19.

### **Rate Stabilization Plan**

57. Aqua is not proposing a rate stabilization plan. Aqua St. No. 1 at 12, lines 20 through 23 through 13, lines 1 and 2 and Aqua St. No. 1R at 4, lines 12 through 18.

58. Section 1329(g) defines a "rate stabilization plan" as "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case."

59. Section 1329(d)(1)(v) provides that the acquiring public utility shall include a tariff containing a rate equal to the existing rates of the selling utility at the time of the

acquisition with its Section 1102 application and, if applicable to the acquisition, a rate stabilization plan.

60. Section 1329(d)(4) further explains that the acquiring utility's tariff, submitted pursuant to subsection (d)(1)(v), shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate proceeding before the Commission.

61. A rate stabilization plan is not required for every Section 1329 submission and Aqua is not proposing a rate stabilization plan here.

62. Aqua's tariff, which is included as Exhibit G to Aqua Exhibit No. 1, does not propose to leave rates constant after the next base rate case; nor does the tariff phase in rates after the next base rate proceeding. Consistent with Section 1329(d)(4), Aqua's tariff will leave rates unchanged until new rates are approved in the next base rate proceeding. Aqua St. No. 1R at 5, lines 15 through 18.



### **III. STATEMENT OF QUESTIONS INVOLVED**

#### **Question No. 1**

Is Aqua's acquisition of the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority and related expansion of certificated service territory necessary or proper for the service, accommodation, convenience or safety of the public?

#### **Suggested Answer to Question No. 1**

Yes. Aqua's acquisition of the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority and related expansion of certificated service territory are necessary or proper for the service, accommodation, convenience or safety of the public.

#### **Question No. 2**

Pursuant to Section 1329 of the Public Utility Code, what is the ratemaking rate base of the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority?

#### **Suggested Answer to Question No. 2**

The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$29,500,000, being the lesser of the purchase price of \$29,500,000 negotiated by Aqua and New Garden and the average of the fair market value appraisals which is \$32,140,875.

#### **Question No. 3**

Is Aqua proposing a rate stabilization plan?

#### **Suggested Answer to Question No. 3**

No, Aqua is not proposing a rate stabilization plan. Rather, consistent with Section 1329(d)(1)(v) and Section 1329(d)(4), Aqua has presented a tariff rate equal to the existing rates of New Garden; said rate shall remain in effect until such time as new rates are approved in a future Aqua base rate proceeding.

#### **IV. SUMMARY OF ARGUMENT**

##### **Section 1102 and Certificates of Public Convenience**

The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. A certificate of public convenience will issue if the Commission finds or determines that the granting of a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit.

An existing provider of public utility service is presumed fit. No party rebutted the presumption of fitness and Aqua established its technical, legal and financial fitness by a preponderance of the evidence. Aqua is fit to acquire the New Garden wastewater system assets and to initiate wastewater service in New Garden Township.

Aqua demonstrated through a preponderance of the evidence that its acquisition of the New Garden wastewater system and initiation of wastewater service in New Garden Township will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways. Aqua's acquisition of the New Garden wastewater system and initiation of wastewater service in New Garden Township will further the public interest.

##### **Section 1329, Ratemaking Rate Base and Rate Stabilization**

Act 12 of 2016 amended Chapter 13 of the Public Utility Code adding a new Section 1329, 66 Pa.C.S. § 1329. Section 1329 addresses the valuation of municipal assets.

##### **Section 1329 – Ratemaking Rate Base**

If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts established and maintained by the Commission.

The selected UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches.

Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. New Garden engaged the services of AUS for the same purpose. Both firms were pre-certified as authorized UVEs.

Gannett's fair market value appraisal is \$33,666,340. AUS's fair market value appraisal is \$30,615,410. The average of the two is \$32,140,875. As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$29,500,000, being the lesser of the negotiated purchase price of \$29,500,000 and the average of \$32,140,875.

#### **Section 1329 – Rate Stabilization Plan**

Section 1329(d)(1)(v) provides that the acquiring public utility shall include a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition with its Section 1102 application and, if applicable to the acquisition, a rate stabilization plan. Section 1329(g) defines a "rate stabilization plan" as "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case."

Aqua is not proposing a rate stabilization plan. Its tariff does not propose to leave rates constant after the next base rate case; nor does the tariff phase in rates after the next base rate proceeding. Aqua's tariff will leave rates unchanged until new rates are approved in the next base rate proceeding.

## V. ARGUMENT

### A. Aqua's Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority and Related Expansion of Service Territory Are Necessary or Proper for the Service, Accommodation, Convenience or Safety of the Public

#### 1. Legal Principles

The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3).

The burden of proving entitlement to a certificate is upon the applicant as it is the applicant that is seeking a proposed rule or order. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

In *Se-Ling Hosiery*, the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party.

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

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. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v.*

*Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a). In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Pennsylvania Supreme Court explained in the context of a utility merger that the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger.

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

Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). An existing provider of public utility service is presumed fit. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).<sup>4</sup> The burden of proof to rebut the presumption is on Protestants. *Re Byerly*, 270 A. 2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. P.U.C.*, 293 A.2d 895 (Pa. Cmwlth. 1972).

---

<sup>4</sup> A continuing public need is also presumed where public utility service is already being provided in the service territory subject to the application. *See Re Glenn Yeager et al.*, 49 PA PUC 138 (1975); *Hostetter v. Pa. P.U.C.*, 49 A.2d 862 (Pa. Super. 1946); *Allegheny Airlines v. Pa. P.U.C.*, 465 F.2d 237 (3d Cir. 1972).

## **2. Aqua Is Fit to Acquire the New Garden System and Expand its Service Territory into New Garden Township**

As a certificated provider of utility service, Aqua's fitness is presumed. No evidence was offered to rebut the presumption. Aqua, nevertheless, presented substantial evidence that it is legally, financially and technically fit. The Commission addressed the fitness criteria in *Re Perry Hassman*, 55 PA PUC 661 (1982).

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

As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Aqua is a Class A wastewater utility with total assets of \$100 million and annual revenues of \$12 million. As a direct subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities.

Aqua PA is a Class A water utility and the largest subsidiary of Aqua America. In 2015, Aqua PA had operating income of approximately \$208 million, net income of \$172 million and cash flow from operations of \$170 million. Aqua PA has a Standard and Poor's Rating of A+.

Aqua PA has a \$100 million short term credit facility and access to equity capital as a subsidiary of Aqua America. Aqua will use the short term credit facility to finance the acquisition. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating. No party presented any evidence challenging Aqua's financial fitness.

As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Aqua has a current staff of qualified wastewater operators and other employees and supervisors fully qualified and capable of operating the system. It operates other wastewater treatment plants in close proximity to the New Garden system. The acquisition will easily fold into Aqua's existing wastewater operations. No party presented any evidence challenging Aqua's technical/managerial fitness.

**3. Aqua's Acquisition of the New Garden System and Expansion of Service Territory Are Supported by Affirmative Public Benefits**

Aqua's acquisition of the New Garden system and expansion of service territory are supported by affirmative public benefits. Proposed findings of fact, based on a preponderance of the evidence, substantial evidence, and addressing the many benefits, were presented in Section II *supra*. Summarized from the proposed findings, the public benefits, consistent with *City of York* and *Popowsky*, are as follows:

**Consolidation/Regionalization**

The New Garden system represents an 11% increase in wastewater customers, is adjacent to existing Aqua service areas, does not require extensive long term capital improvements and is in a demonstrated area of natural customer growth. It is exactly the kind of system that the Commission encourages utilities such as Aqua to acquire to further the Commission's consolidation/regionalization goals. Through consolidation/regionalization, the utility industry (and, ultimately, its customers both existing and acquired) has a better chance to realize the benefits of better management practices, economies of scale, and resulting greater environmental/economic benefits.

### **Capital Improvement Projects**

Two significant capital projects, at a total estimated cost of \$2.5 million, are projected post-closing: the replacement of the 6” Route 41 AC Force Main and the addition of a mechanical treatment system with stream discharge for the South End Wastewater Treatment Plant. Aqua has the financial and technical ability to undertake and complete these projects for the benefit of New Garden customers.

### **Long Term Operational Efficiencies**

Aqua operates four other wastewater treatment plants within 10 miles of the New Garden system and a fifth plant within 15 miles. Aqua, consequently, will be able to operate the system without adding any additional operational or administrative staff. Operational efficiencies, such as the above, ultimately, mitigate future rate increases for the benefit of customers.

### **Customer Growth and Long Term Cost Sharing**

With a significantly larger customer base as a result of the transaction, future infrastructure capital costs will be shared at a lower incremental cost per Aqua customer. Significant customer growth is also expected in the New Garden area and this growth can be accommodated within the current wastewater utility treatment infrastructure and without the need for additional capital. Customer growth will allow for additional long term cost sharing, further diluting the cost of service across even more customers and improving economies of scale for the benefit of customers.

### **Decreasing Cost Profile**

The expectation, after completion of the Route 41 and South End projects, is that future incremental investment needs will be minimal and less than the incremental investment needs of Aqua’s other systems. The system will become less costly each year under Aqua ownership and,



when combined with the expected operational efficiencies and the anticipated customer growth, have the makings of a system that will provide long term benefits to existing customers by allowing the incremental cost of future capital improvements in other service areas to be spread across a significantly larger customer base.

#### **No Adverse Effect**

The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. The acquisition, however, will address capital project needs of New Garden customers, as already stated.

The acquisition will not have an adverse effect on the rates of either New Garden customers or the existing Aqua customers. Aqua will implement New Garden's existing rates upon Commission approval of the acquisition.

#### **New Garden Wants to Sell its Wastewater System**

New Garden has agreed to sell its wastewater system. The public interest and public need will be served by allowing Aqua, in lieu of New Garden, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. Aqua has the managerial, technical and financial resources to operate the New Garden system in a safe, reliable and efficient manner now and in the future and address any system deficiencies that may arise.

#### **4. The Public Interest Criticisms of I&E and the OCA Should Be Given No Weight**

I&E witness Kubas claimed that the Application only generalizes public benefits. I&E St. No. 1 at 13. OCA witness Everette testified that the Application overstates benefits to existing customers and that simply adding customers does not create economies of scale. OCA

St. No. 1 at 22 – 24. The assertions of Mr. Kubas and Ms. Everette were addressed by Aqua witness Packer.

Mr. Packer disagreed with Mr. Kubas and testified that the Company provided more than generalizations.<sup>5</sup> In response to Mr. Kubas, Mr. Parker explained that:

- Aqua provided testimony regarding the immediate and future capital needs of New Garden, and that those capital needs in the short term, will allow for sustained operations in the future.
- It can be expected that the incremental, future investment needs of New Garden will be less than those of the Company's existing systems, which means that the New Garden system will become less costly each year under the Company's ownership.
- With the expectation that the Company will likely realize operational efficiencies as a result of already owning systems in the area and the New Garden service area is an area of proven natural customer growth, there is the makings of a system that will provide long term benefits to existing customers.
- Mr. Kubas's testimony fails to recognize Aqua's proven track record of acquiring wastewater systems such as New Garden and integrating them for the benefit of both existing and acquired customers.

Contrary to the testimony of Mr. Kubas, Aqua has provided more than generalized benefits in support of the Application.

Mr. Packer also disagreed with Ms. Everette's claims that the Company is overstating benefits and with her assertion that simply adding customers does not create economies of scale:

I disagree that benefits are overstated. The issue with the OCA's assertion is that it is focused on the short term and the utility business is anything but short term. The Commission has consistently applied a long-term philosophy toward its policy of promoting further consolidation of water and wastewater utilities alike. The benefits I have previously mentioned suggest a system that will have a decreasing cost profile in the future, further enhanced by the likelihood of greater customer growth without the need for additional capital. Furthermore, the OCA assertion makes no mention of the fact that the Company has operations in the nearby service

---

<sup>5</sup> Aqua St. No. 1R at 9, lines 1 through 15; See, also, Section 11, ¶ 34 through ¶ 44, *supra*, and Section V.A.3, *supra*.

area and will be able to assume the operations of New Garden without adding any additional operational or administrative staff, which is just one example of operational efficiency that will be achieved amongst others over the long term operation of this system. A point in time measurement of any system is not indicative of the long term benefits that can be realized and have been realized over many acquisitions in the Company's history.<sup>6</sup>

Contrary to the testimony of Ms. Everette, Aqua has not overstated the public benefits of the transaction. Ms. Everette's criticism is inappropriately based on a short term outlook.

## **5. Conclusion**

Aqua's acquisition of the wastewater system assets of New Garden Township and the New Garden Township Sewer Authority and related expansion of certificated service territory are necessary or proper for the service, accommodation, convenience or safety of the public. Aqua submitted a preponderance of evidence and substantial evidence supporting numerous benefits consistent with *City of York* and *Popowsky*. Claims of I&E and the OCA that benefits were only generalized or overstated should be given no weight.

### **B. The Ratemaking Rate Base Determined Pursuant to Section 1329(c)(2) of the Public Utility Code Is \$29,500,000**

#### **1. Legal Principles**

On April 14, 2016, Governor Wolf signed Act 12 of 2016 ("Act 12") into law.<sup>7</sup> Act 12 amended Chapter 13 of the Public Utility Code by adding a new Section 1329, 66 Pa.C.S. § 1329. The new provision became effective on June 13, 2016.<sup>8</sup>

Section 1329 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

---

<sup>6</sup> Aqua St. No. 1R at 9, lines 16 through 23 and 10, lines 1 through 8.

<sup>7</sup> Act of Apr. 14, 2016, P.L. 76, No. 12.

<sup>8</sup> Order entered February 15 at 5.

or entities. It is a voluntary process to determine the fair market value of an acquired water or wastewater system at the time of acquisition.<sup>9</sup>

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 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.<sup>10</sup>

Section 1329 also allows the acquiring utility's post-acquisition improvement costs not recovered through a distribution system improvement charge ("DSIC") to be deferred for book and ratemaking purposes.<sup>11</sup>

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.<sup>12</sup>

The Section is also beneficial to the selling municipality, which may have a financial need to monetize their utility systems. Section 1329 creates a streamlined process for a municipality to obtain fair market value in a regulatory setting without the burden of expensive and time-consuming litigation. In order to protect the public interest and at the same time avoid increasing costs for the statutory advocates, the General Assembly required the use of Commission approved UVEs to represent the public interest and the use of a specific formula for the calculation of ratemaking rate base.

If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts established and maintained by the

---

<sup>9</sup> Order entered February 15 at 5.

<sup>10</sup> Order entered February 15 at 5.

<sup>11</sup> Order entered February 15 at 5 – 6.

<sup>12</sup> Order entered February 15 at 6.

Commission. The selected UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches.<sup>13</sup>

In regard to the ratemaking rate base, the General Assembly directed as follows:

(c) **Ratemaking rate base.** – The following apply:

(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.<sup>14</sup>

Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).

The statutory language enacted by the General Assembly in Section 1329(c)(2) and reproduced above is clear and unambiguous and phrased in mandatory terms. When the language of a statute is free from all ambiguity, the letter of the statute is to be followed. 1 Pa.C.S. § 1921(b).<sup>15</sup>

Although the interpretation of Section 1329(c)(2) has been the source of considerable controversy thus far in this first application proceeding under Act 12, Aqua believes that the proper interpretation is clear because the statutory language is clear.

In its Order entered February 15, the Commission relied on the clear and unambiguous, “express” language of Section 1329(d), “phrased in mandatory terms,” to address I&E’s Petition,

---

<sup>13</sup> Order entered February 15 at 6; 66 Pa.C.S. § 1329(a)(3).

<sup>14</sup> 66 Pa.C.S. § 1329(c)(2) (emphasis added).

<sup>15</sup> The Statutory Construction Act of 1972 explains that “[t]he object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly.” 1 Pa.C.S. § 1921(a). In order to ascertain the intent of the General Assembly, the ruling body should first look at the plain language of the statute. *Commonwealth v. Segida*, 985 A.2d 871, 874 (Pa. 2009). When the language of the statute is free from all ambiguity, the letter of the statute is to be followed. 1 Pa.C.S. § 1921(b).

denying bifurcation and holding that Section 1329 requires Commission action within six months.<sup>16</sup> The “express” language of Section 1329(c)(2) is no less clear and no less mandatory.

As set forth hereinafter, applying the clear statutory language, the ratemaking rate base of the New Garden system is \$29,500,000.

**2. Ratemaking Rate Base Is \$29,500,000 – The Lesser of the Negotiated Purchase Price and the Average of the Fair Market Value Appraisals**

Aqua and New Garden negotiated a purchase price of \$29,500,000 for the wastewater system. The price was the result of voluntary arm’s length negotiations. Aqua and New Garden are not affiliated with each other. They agreed to use the process presented in Section 1329 to determine the fair market value of the wastewater system and the ratemaking rate base.

---

<sup>16</sup> The Commission explained as follows:

The language under Section 1329(d)(1) expressly provides that a public utility must submit an “*application*” for a certificate of public convenience to acquire municipally-owned water or wastewater assets under Section 1102 of the Code. If both the buyer and seller agree to proceed under Section 1329, the public utility “shall include as an attachment to its *application*” all of the information contained in Section 1329(d)(1)(i) to (v). Thereafter, the Commission “shall issue a final order on an *application* submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1).” 66 Pa. C.S. § 1329(d)(2) (emphasis added). We find this express language to be clear and unambiguous. It requires that once a utility applicant invokes Section 1329 and provides the information required under Section 1329(d), the Commission must issue an order within six months.

Because the language in Section 1329(d) is phrased in mandatory terms, there would appear to be no discretion to authorize an extension of the deadline period for a Commission decision as it relates to acquiring public utilities. Moreover, the Commission is prevented from inserting or reading into the statute words that do not appear in the text if the existing text makes sense and the implied reading would change the existing meaning or the effect of the actual language. *Pa School Boards Ass’n, Inc. v. Cmwlth., Public School Employees’ Retirement Bd.*, 580 Pa. 610, 621, 863 A.2d 432, 439 (Pa. 2004). If we were to read in words permitting a bifurcation, the six-month deadline under Section 1329(d)(2) would appear to be rendered inapplicable or superfluous. Under a bifurcated process there would be one proceeding under Section 1102 to determine the fitness without a Commission time limitation and a second proceeding to determine valuation under Section 1329 with a six-month time requirement. However, any time constraint under Section 1329 would become ineffectual or irrelevant if another integrated proceeding under Section 1102 could be extended for an indefinite time period.

Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. New Garden engaged the services of AUS for the same purpose. Both firms were pre-certified as authorized UVEs by the Commission and are on the list of qualified appraisers maintained by the Commission.

Gannett's fair market value appraisal is \$33,666,340. AUS's fair market value appraisal is \$30,615,410. The average of the two is \$32,140,875. As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$29,500,000, being the lesser of the negotiated purchase price of \$29,500,000 and the average of \$32,140,875.

As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett and AUS were attached as Exhibit U and Exhibit V, respectively, to the Application. Verified Statements of Gannett and of AUS, verifying that their Appraisals determined fair market value in compliance with the USPAP, employing the cost, market and income approaches, were attached to the Application as Exhibit X1 and Exhibit X2, respectively.

Section 1329(d)(3)(i) provides that if the Commission issues an order approving an application under Section 1329, the order "shall include[] the ratemaking rate base of the selling utility, as determined under subsection (c)(2)." 66 Pa.C.S. § 1329(d)(3)(i). The express language of Section 1329(d)(3) is clear and unambiguous and phrased in mandatory terms.

The Commission's Order approving Aqua's acquisition of the New Garden wastewater system must include a determination that the ratemaking rate base is \$29,500,000.

**a. The Efforts of I&E and the OCA to Involve Themselves in the Determination of Ratemaking Rate Base Under Section 1329 Should Be Rejected**

In their direct and surrebuttal testimonies, I&E witness Kubas and OCA witness Everette challenged Aqua's request for a determination that the ratemaking rate base of the acquired system is \$29,500,000. Mr. Kubas testified that his effort to evaluate the Application had been frustrated. I&E St. No. 1 at 10. Ms. Everette recommended a ratemaking rate base of \$28,882,607. OCA St. No. 1 at 21.

Respectfully, the efforts of I&E and the OCA to proactively challenge the formulaic approach and insert their respective views in the determination of ratemaking rate base under Section 1329 must be rejected as contrary to clear and unambiguous statutory language and the objectives of the General Assembly.<sup>17</sup> In order to protect the public interest and at the same time avoid increasing costs for the statutory advocates, the General Assembly required the use of Commission approved UVEs to fully represent the public interest and the use of a specific formula for the calculation of ratemaking rate base. The averaging of the appraisals and then the comparison to the purchase price is the mechanism which addresses any *de minimis* errors or fluctuations which could change the fair market value of the assets. To hold otherwise, defeats the purpose of the UVEs, creates unnecessary redundancies and circumvents the General Assembly's approach.

The General Assembly did not intend for the fair market value determination to be a matter of traditional litigation. The General Assembly, instead, created a new paradigm for Section 1329 proceedings where the acquiring utility and the selling municipality agree to use

---

<sup>17</sup> At hearing, Aqua's motions to strike the pages of the direct and surrebuttal testimonies of Mr. Kubas and Ms. Everette attempting to criticize the Fair Market Value Appraisals of Gannett and AUS were denied with the objective of creating a complete record for Commission consideration. Tr. 94 – 102 and 118 and 119.



the Section 1329 procedures with consumer protections built into the statute. Implementing the clear language of Section 1329, fair market value is determined by the UVEs.<sup>18</sup>

Each of the acquiring public utility and selling utility chooses a UVE from the list maintained by the Commission.<sup>19</sup> Each UVE then performs a separate appraisal for the purpose of establishing fair market value.<sup>20</sup> Each UVE determines fair market value in compliance with USPAP.<sup>21</sup> The ratemaking rate base of the selling utility is then the lesser of the purchase price negotiated by the acquiring public utility and selling utility or the fair market value.<sup>22</sup>

The foregoing is based on carefully crafted and clear statutory wording and Aqua submits that the statutory wording must be followed. There is no room and no legislated authorization within the carefully crafted and clear statutory language for involvement by I&E or the OCA in the determination of the fair market value of the selling utility or in a determination of whether the valuation arrived at pursuant to the clear statutory language is appropriate.

The development and use of the UVE is a consumer protection required by the General Assembly so that two impartial, independent and qualified experts provide fair market value determinations. The statutory requirement that the UVEs determine fair market value in compliance with USPAP, employing the cost, market and income approaches is a further consumer protection.

The two independent fair market determinations are then averaged and compared to the purchase price. It is a formulaic process designed to streamline the process with the aforementioned built in consumer protections. Aqua submits that the statutory formulaic process

---

<sup>18</sup> 66 Pa. C.S. § 1329(a)(1).

<sup>19</sup> 66 Pa. C.S. § 1329(a)(1).

<sup>20</sup> 66 Pa. C.S. § 1329(a)(2).

<sup>21</sup> 66 Pa. C.S. § 1329(a)(3).

<sup>22</sup> 66 Pa. C.S. § 1329(c)(2).

must be followed. The Statutory Construction Act requires that it be followed. Respectfully, there is no need to have two impartial, independent and qualified experts and three statutory advocates engaged in the process. Doing so would circumvent the General Assembly's intent.

In sum, the express language of Section 1329 is clear and unambiguous and phrased in mandatory terms. The Commission should implement the legislated paradigm for these proceedings and conclude that the General Assembly did not contemplate litigation or the involvement of either I&E or the OCA in the determination of ratemaking rate base under Section 1329. The General Assembly carefully prescribed this exact approach to avoid increased litigation costs while still having a mechanism to protect customers built into the formulaic approach. The Commission has no statutory authority to consider the ratemaking rate base testimony of Mr. Kubas and Ms. Everette.

**b. Ms. Everette's Appraisal Testimony Should Be Given No Weight**

Ms. Everette recommends a ratemaking rate base of \$28,882,607. OCA St. No. 1 at 25, line 3. Neither Ms. Everette nor the OCA is a registered UVE (Tr. 121, lines 19 through 25) and Ms. Everette's recommendation directly contradicts the intent and process prescribed in Section 1329.

Ms. Everette is not a member of the American Society of Appraisers. She did not perform a fair market value appraisal. She reviewed the appraisals of Gannett and AUS. None of the testimonies listed in her curriculum vitae has to do with appraisals. She was not engaged by either Aqua or New Garden to perform a fair market value analysis. Tr. 120, line 12 through Tr. 122, line 13.

Ms. Everette selectively relied on the parts of the Gannett and AUS Appraisals that would produce a lower ratemaking rate base than the Gannett and AUS appraisal results. *See*

Aqua St. No. 3R at 7, lines 1-7. This selective reliance is exactly what the General Assembly prohibited by setting forth the prescribed process in Section 1329.

In respect to Ms. Everette's analysis of the Gannett appraisal, Mr. Walker explained that:

- The correction referenced in footnote 8 of OCA Statement No. 1 was to the text in the Gannett Report (Exhibit U, page 32) where the phrase "\$40.0 million" was corrected to "\$36.0 million" during discovery. However, the "IOU ownership valuation" was not changed, and remains \$28.5 million, because only the citation was incorrect, not the calculation. Aqua St. No. 3R at 3, lines 11-22 and Tr. 56, line 21 through Tr. 57, line 7.
- Gannett is not aware of any appraisals that have used authorized returns on equity or authorized returns on equity for DSIC purposes as being appropriate for use in the income approach for fair market appraisals. Aqua St. No. 3R at 4, lines 1-10.
- Ms. Everette's recommended use of a 9.02% cost of common equity is inconsistent with OCA recommendations in other proceedings. Aqua St. No. 3R at 4, line 11 through 5, line 2.
- Gannett did not use a 2.66% discount rate under the municipal ownership assumption. Gannett used a 3.66% discount rate. Aqua St. No. 3R at 5, line 11 through 6, line 6 and Tr. 58, lines 4-15.
- Ms. Everette's testimony about the basis for customer growth is incorrect. The assessment of growth is based on independent population growth projections published by the Delaware Valley Regional Planning Commission and the potential for septic system conversions is based on the Pennsylvania Department of Environmental Protection's 25 year life-span of an on-lot septic system coupled with the fact that 72% of Township's homes were built before the year 2000. Aqua St. No. 3R at 5, lines 7-10; *see also* Tr. 58, line 16 through 59, line 11.
- The reason growth increases value is simply growth produces higher cash flows than if no growth is assumed. The reason growth increases value by "x-percent" or "y-percent" is a function of the level of the discount rate; the higher the discount rate, the lower the impact of growth on the results produced. Although she challenged the Gannett growth assessment, Ms. Everette did not document or provide any evidence regarding growth whatsoever. Ms. Everette assumed zero growth but provided no support for this assumption. Aqua St. No. 3R at 6, line 15 through 7, line 15.

Mr. Weinert explained that Ms. Everette mischaracterizes the AUS appraisal. The AUS appraisal does not assign zero (0%) percent weight to the income and market approaches to value. Mr. Weinert explained in this regard that Ms. Everette appears to think, incorrectly, that the appraisal process is one of collecting data, running calculations and those calculations produce a value. The appraisal process, instead, is one of collecting data, analyzing the data for each of the cost, income and market approaches and letting those three approaches lead to a conclusion as to overall value. All three approaches were considered by AUS in arriving at the conclusion that the fair market value of the wastewater system is \$30,615,410. Aqua St. No. 4R at 12, line 13 through 13, line 18.

Ms. Everette's appraisal testimony and criticism of the Gannett and AUS Fair Market Value Appraisals should be given no weight.

**c. Mr. Kubas's Testimony Concerning Appraisal Work Papers in A Working Electronic Format Should Be Given No Weight**

Mr. Kubas recommends that the request to reflect \$29,500,000 of plant in rate base be denied because Aqua did not include work papers in a working electronic format with the Application when filed on December 15, 2016. He asserts that work papers in a working electronic format were not provided until January 25, 2017. I&E St. No. 1 at 10, lines 14 through 20.

Aqua understood the Commission's Final Implementation Order in Docket No. M-2016-2543913 to require electronic working files, that being an electronic copy of the filing, which the Company provided on December 15, 2016 when it filed the Application. The Commission accepted the Application as complete on December 30, 2016. Aqua St. No. 1R at 7, lines 5 through 10.

In the Company's experience, any request for work papers in a working electronic format such as Microsoft Excel, are invariably clearly stated as "electronic Microsoft (MS) Excel files with all formulae and links intact." Aqua St. No. 1R at 7, lines 17 through 22 through 8, lines 1 through 4. That clear statement is not part of the Final Implementation Order.

"Electronic formula intact" is not part of the description of "working electronic format" in the Final Implementation Order as presented by Mr. Kubas in his direct testimony. *See* I&E St. No. 1 at 4, lines 4 and 5 and Tr. 104, line 22 through T. 105, line 2. Significantly, to the extent the Order mentions work papers of the two appraisals, there is no mention, at all, of "electronic" files of any kind. *See* I&E St. No. 1 at 4, lines 6 and 7 and Tr. 105, lines 3-10.

Subsequent to the filing of the Application, I&E requested MS Excel files, which the Company, in fact, provided on January 9, 2017. *See* Aqua Exhibit No. 2. To be clear, the Company worked proactively to accommodate I&E's request and tried to work through the issue as this was the first case under Section 1329. Unfortunately, through an issue with its email systems, I&E did not receive the MS Excel files.<sup>23</sup> The Company learned, on January 17, 2017, that I&E did not receive the email and, on that date, provided a CD copy of the files to I&E. Aqua St. No. 1R at 7, lines 10 through 16.

Within this controversy over electronic files, it must be recognized that I&E was served with a copy of the Application on December 15, 2016. While Mr. Kubas has focused on certain aspects of the Application, the other parts of it were available for his review for an extended period of time. In addition, Mr. Kubas acknowledges receiving Excel files on January 17, 2017, and follow up Excel files on January 25, 2017. I&E St. No. 1 at 6, lines 8 through 10; at 7, line

---

<sup>23</sup> The OCA, however, did receive the email correspondence of January 9, 2017. Aqua St. No. 1R at 7, lines 10 through 16.

22; at 8, lines 1 and 2 and lines 12 through 14; at 9, lines 2 through 4; at 10, lines 2 through 4 and lines 17 through 20.

As mentioned above, Mr. Kubas had been reviewing the Application, which contained 4,500 pages of information specifically requested by the Commission to expedite the 1329 process, since before the Commission's acceptance on December 30, and he continued to review the Application after December 30. Tr. 105, line 23 through Tr. 106, line 3.

Mr. Kubas acknowledges continuing to review the Application between January 5 and January 17. Tr. 110, line 25 through Tr. 111, line 2. He also acknowledges doing a "limited review" of the Excel files after January 25. Tr. 111, line 25 through Tr. 112, line 4. If I&E needed more time to review the Application after January 25, I&E could have asked for the opportunity to file supplemental direct testimony. It did not. Tr. 112, lines 22-25.

Aqua believes, moreover, that Mr. Kubas is overstating alleged deficiencies with the Gannet Excel files. There were 32 Gannet electronic "books" provided to I&E on January 17. Mr. Kubas had difficulty with just one of the 32 "books" and his claim that numbers in the "book" were hard typed before being provided to I&E is incorrect. Aqua St. No. 3R at 2, lines 8-17 and Tr. 113, lines 1-12.<sup>24</sup>

Aqua also believes that Mr. Kubas is overstating alleged deficiencies with the AUS Excel files. It is important to note that Mr. Weinert addressed the substantial effort of AUS to provide

---

<sup>24</sup> Gannett electronic "Book 3" is a Microsoft Excel worksheet file that contains both text numbers, or "hard typed" numbers, and calculated values. The data contained in "Book 3" came directly from a PDF (Portable Document Format) file of page 3-1 of AUS Consultants' original cost study of the fixed capital and the theoretical depreciation calculations of the Sewer System assets as of June 30, 2016 ("OCLD Study") that was part of Aqua's filing. Specifically, a single page PDF file of OCLD Study page 3-1 was saved/exported from Adobe Acrobat to Excel. In Excel, the saved/exported PDF file is displayed as text only (i.e., no formulas). All calculation (formula) made by Gannett Fleming in "Book 3" are still contained in that Excel file. The majority of "Book 3" is text, or "hard typed," simply because Gannett only required values and calculations (formulas) for a narrow amount of data shown on OCLD Study page 3-1 for the limited intended purpose of extracting capital recovery rates. As stated previously, all calculation (formula) made by Gannett in "Book 3" are still contained in that Excel file. Aqua St. No. 3R at 2, lines 8-17.

I&E with Excel files including the initial group of Excel files received by I&E on January 17, 2017, the conference call with I&E on January 23, 2017 and the follow up group of Excel files received by I&E on January 25, 2017. Aqua St. No. 4R at 7, line 7 through 12, line 11.

In the testimony below, Mr. Weinert addressed Mr. Kubas's claims that there were links missing from the Excel files provided and errors in the electronic spreadsheet files:

Q. PLEASE RESPOND TO I&E'S STATEMENT THAT THERE WERE MISSING LINKS TO OTHER FILES.

A. The above discussion answers the question of electronic files, there were three missing links in the files I provided. Two were from spreadsheets that were used in the past of other work in which I imported report or spreadsheet formats to begin the appraisal of New Garden's property. The links were residuals link that were not necessary after I began to input the New Garden specific information, One link was related to the Original Cost study which AUS Consultants performed for New Garden and that file was provided (Avondale Sewer District Inventory.pdf.xlsx) along with the previously described RCN and RCNLD spreadsheet in a separate spreadsheet.

Q. PLEASE ADDRESS I&E'S STATEMENT THAT THERE WERE ERRORS IN THE SPREADSHEET FILES PROVIDED.

A. Yes. There were two reference errors:

- one reference error in a spreadsheet tab that was not used in the appraisal which I neglected to delete.
- And the second reference error related to partial year's data related to New Garden's financials for the period January 1 through June 30, 2016 which did not contain enough detail for use in our appraisal. I deleted the data and there was another tab in the spreadsheet which referred to that data producing the error reference. The data was not part of the final appraisal product.

As such, the errors cited to by I&E had no impact on the results of the fair market appraisal.

Aqua St. No. 4R at 11, line 3 through 12, line 11.

Mr. Kubas's testimony concerning appraisal work papers in a working electronic format should be given no weight.

**C. Aqua Is Not Proposing a Rate Stabilization Plan**

Section 1329(d)(1)(v) provides that the acquiring public utility shall include a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition with its Section 1102 application and, if applicable to the acquisition, a rate stabilization plan.

Section 1329(d)(4) further explains that the acquiring utility's tariff, submitted pursuant to subsection (d)(1)(v), shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate proceeding before the Commission.

A rate stabilization plan is not required for every Section 1329 submission and Aqua is not proposing a rate stabilization plan here. Section 1329(g) defines a "rate stabilization plan" as "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case."

Aqua's tariff, which is included as Exhibit G to Aqua Exhibit No. 1, does not propose to leave rates constant after the next base rate case; nor does the tariff phase in rates after the next base rate proceeding. Consistent with Section 1329(d)(4), Aqua's tariff will leave rates unchanged until new rates are approved in the next base rate proceeding.

Separate from the Company's tariff rate proposal, Section 7.b of the Agreement provides that the Company will continue to charge the New Garden customers their current rates for 730 days following closing and that the 10 year CAGR inclusive of DSIC shall not exceed 4%.

I&E witness Kubas characterizes Section 7.b as a "rate stabilization plan." I&E St. No. 1 at 11 – 13. OCA witness Everett recommends that, if it approves the Application, including the CAGR and rate freeze provisions, the Commission should retain authority to allocate revenue, if



appropriate, to New Garden customers in excess of the contract term. OCA St. No. 1 at 6, lines 7 through 8.

Similar to Ms. Everette's testimony, OSBA witness Kalcic recommends that the Commission reject the CAGR and rate freeze or, in the alternative, direct Aqua to impute revenues to New Garden customers, as necessary, to make up any difference between otherwise applicable rate increases and increases limited by the CAGR. OSBA St. No. 1.

Contrary to the concerns of I&E, the OCA and the OSBA, the ratemaking impact of the contract terms will be addressed in a future base rate case. In its recent Opinion and Order entered October 19, 2016, in *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209, the Commission stated:

As to the concerns raised by I&E and the OCA regarding the alleged detriments of the acquisition to PAWC's existing customers, we note that these concerns center on the potential rate effects of the acquisition. However, we are not in a position to thoroughly adjudicate ratemaking issues relating to the acquisition in this proceeding. Nor do we find that this acquisition proceeding is the appropriate context for addressing these rate issues. The record does not contain sufficient evidence to allow us to evaluate the specific effects of the acquisition on PAWC's revenue requirement or to decide cost allocation and rate design matters. Such issues are better reserved for a future base rate proceeding.<sup>25</sup>

Consistent with the foregoing, a proposal asking the Commission to address future rates would have been premature. Rather than address rate impact now, the Company believes it is appropriate for it to close the transaction, assume the operation of the New Garden system and

---

<sup>25</sup> *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209 (Opinion and Order entered October 19, 2016), slip op. at 50; Aqua St. No. 1R at 3, lines 10 through 25.

have an opportunity to integrate it into its entire system thus realizing the effects of any operational efficiency. Aqua St. No. 1R at 5, lines 8 through 11.

Finally, the Company does not have a consolidated rate, or even rate zones, in its tariff for its wastewater customers. Each of the Company's approximately 30 systems operates under their own separate tariff pages. The New Garden customers will come into the Company's tariff as their own separate tariff page. Aqua St. No. 1R at 5, lines 11 through 15.

In the end, Aqua's proposed rate schedule tariff pages do no more, in this proceeding, than implement the existing New Garden rates consistent with Section 1329(d)(1)(v). The proper time for addressing the ratemaking impact of the contract terms is the next Aqua base rate proceeding. Aqua is not proposing a rate stabilization plan and the positions of I&E, the OCA and the OSBA should be denied.

## VI. PROPOSED CONCLUSIONS OF LAW

### Background and Burden of Proof

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §§ 1102 and 1329.

2. The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3).

3. The burden of proving entitlement to a certificate is upon the applicant as it is the applicant that is seeking a proposed rule or order. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990). The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery, supra*. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. *Id.*

4. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. 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. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

5. A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

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

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

8. Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A- 2013-2353647, 309 P.U.R.4th 213 (2013).

9. An existing provider of public utility service is presumed fit. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995). The burden of proof to rebut the presumption is on Protestants. *Re Byerly*, 270 A. 2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. P.U.C.*, 293 A.2d 895 (Pa. Cmwlth. 1972).

**Aqua Is Fit to Acquire the New Garden Wastewater System and Initiate Wastewater Service in New Garden Township**

10. No party rebutted the presumption of fitness and Aqua established its technical, legal and financial fitness by a preponderance of the evidence and substantial evidence.

11. Aqua is fit to acquire the New Garden wastewater system assets and to initiate wastewater service in New Garden Township.

**Public Interest and Affirmative Public Benefit**

12. Aqua demonstrated through a preponderance of the evidence and substantial evidence that its acquisition of the New Garden wastewater system and initiation of wastewater service in New Garden Township will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways.

13. Aqua's acquisition of the New Garden wastewater system and initiation of wastewater service in New Garden Township will further the public interest.

**Section 1329 and Ratemaking Rate Base**

14. Act 12 of 2016 amended Chapter 13 of the Public Utility Code adding a new Section 1329, 66 Pa.C.S. § 1329.

15. Section 1329 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.

16. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts established and maintained by the Commission. The selected UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches. 66 Pa.C.S. § 1329(a).

17. Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. New Garden engaged the services of AUS for the same purpose. Both firms were pre-certified as authorized UVEs by the Commission and are on the list of qualified appraisers maintained by the Commission.

18. In regard to the ratemaking rate base, the General Assembly directed as follows for acquisitions proceeding under Section 1329:

(c) **Ratemaking rate base.** – The following apply:

(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.

19. Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).”

20. Gannett’s fair market value appraisal is \$33,666,340. AUS’s fair market value appraisal is \$30,615,410. The average of the two is \$32,140,875. As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$29,500,000, being the lesser of the negotiated purchase price of \$29,500,000 and the average of \$32,140,875.

### **Rate Stabilization Plan**

21. Section 1329(d)(1)(v) provides that the acquiring public utility shall include a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition with its Section 1102 application and, if applicable to the acquisition, a rate stabilization plan.

22. Section 1329(d)(4) further explains that the acquiring utility's tariff, submitted pursuant to subsection (d)(1)(v), shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate proceeding before the Commission.

23. A rate stabilization plan is not required for every Section 1329 submission and Aqua is not proposing a rate stabilization here. Section 1329(g) defines a "rate stabilization plan" as "[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case."

24. Aqua's tariff, which is included as Exhibit G to Aqua Exhibit No. 1, does not propose to leave rates constant after the next base rate case; nor does the tariff phase in rates after the next base rate proceeding. Consistent with Section 1329(d)(4), Aqua's tariff will leave rates unchanged until new rates are approved in the next base rate proceeding.

25. Aqua is not proposing a Rate Stabilization Plan.

## **VII. PROPOSED ORDERING PARAGRAPHS**

IT IS ORDERED:

1. That the Application filed by Aqua Pennsylvania Wastewater, Inc. is approved.
2. That the Office of the Secretary issue Certificates of Public Convenience evidencing the right of Aqua Pennsylvania Wastewater, Inc., under Sections 1102(a)(1) and 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1) and 1102(a)(3), (a) to acquire, by purchase, the wastewater system assets of New Garden Township and the New Garden Sewer Authority situated within portions of New Garden and Kennett Townships, Chester County, Pennsylvania; and (b) to begin to offer, render, furnish or supply wastewater service to the public in portions of New Garden Township, Chester County, Pennsylvania.
3. That, pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, the ratemaking rate base of the New Garden wastewater system assets is \$29,500,000.



### **VIII. CONCLUSION**

For the reasons set forth above, Aqua Pennsylvania Wastewater, Inc. requests that the Public Utility Commission approve its Application filed pursuant to Section 1102 and 1329 of the Public Utility Code, and:

- a. Issue Certificates of Public Convenience under Section 1102:
  - (1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of New Garden; and
  - (2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory.
- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
  - (1) Include within its territory all the Requested Territory;
  - (2) Adopt and apply within the Requested Territory, New Garden's rates as Aqua's Base Rates; and
  - (3) Apply Aqua's *Rules and Regulations* within the Requested Territory.
- c. As part of its Order approving the Application include a determination that the ratemaking rate base of the New Garden system is \$29,500,000 pursuant to Section 1329(c)(2); and
- d. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code as may be appropriate.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER, INC.**

By 

Thomas T. Niesen  
PA Attorney ID No. 31379  
Thomas, Niesen & Thomas, LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101  
tniesen@tntlawfirm.com  
Tel: (717) 255-7600

*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: March 6, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

---

**The Honorable Steven K. Haas, Presiding**

---

**Application of Aqua Pennsylvania Wastewater, Inc. : Docket No. A-2016-2580061  
Pursuant to Sections 1102 and 1329 of the Public :  
Utility Code for Approval of its Acquisition of the :  
Wastewater System Assets of New Garden Township :  
and the New Garden Sewer Authority :**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 6<sup>th</sup> day of March, 2017, served a true and correct copy of the foregoing Main Brief of Aqua Pennsylvania Wastewater, Inc. upon the persons and in the manner set forth below:

**VIA ELECTRONIC AND 1<sup>ST</sup> CLASS MAIL**

The Honorable Steven K. Haas  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
sthaas@pa.gov

Carrie B. Wright, Prosecutor  
Gina L. Miller, Prosecutor  
Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Post Office Box 3265  
Harrisburg, PA 17105-3265  
carwright@pa.gov  
ginmiller@pa.gov

Sharon E. Webb  
Assistant Small Business Advocate  
Office of Small Business Advocate  
Suite 202, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
swebb@pa.gov

Christine Maloni Hoover  
Erin L. Gannon  
Senior Assistant Consumer Advocates  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
choover@paoca.org  
egannon@paoca.org

Vincent M. Pompo, Esquire  
Alex Baumler, Esquire  
Lamb McErlane PC  
24 E. Market St.  
P.O. Box 565  
West Chester, PA 19381-0565  
vpompo@lambmcerlane.com  
abaumler@lambmcerlane.com



---

Thomas T. Niesen  
PA Attorney ID No. 31379