

August 11, 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-2017-2605434  
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 Limerick Township

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Dear Secretary Chiavetta:

We are counsel for 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**

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

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**Application of Aqua Pennsylvania : Docket No. A-2017-2605434**  
**Wastewater, Inc. Pursuant to Sections :**  
**1102 and 1329 of the Public Utility Code :**  
**for Approval of its Acquisition of the :**  
**Wastewater System Assets of Limerick :**  
**Township :**

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

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DATED: August 11, 2017

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## 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 May 19, 2017, 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 Limerick Township (“Limerick” or “Township”) and allow Aqua to begin to provide wastewater service in Limerick 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 and for such other approvals, certificates, registrations and relief, if any, under the Public Code that may be required with respect to the acquisition.

The Application totaled more than 2,500 pages. It included responses to over 60 Application Checklist items and 35 Exhibits including a map and service territory description; the Asset Purchase Agreement; financial information of both Aqua and the Township; 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 (“Gannett”) and Herbert, Rowland & Grubic, Inc. (“HRG”); 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; a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition; and a proposed Rate Stabilization Plan.

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 May 19, 2017. Thereafter, the Company filed and served supplemental information on May 30, 2017, in response to information requests from TUS.

By Secretarial Letter dated May 31, 2017, the Commission, *inter alia*, acknowledged receipt of the Application and advised that notice of its filing would be published in the *Pennsylvania Bulletin* on June 10, 2017. The Application was assigned Docket No. A-2017-2605434.

I&E filed a Notice of Appearance on June 9, 2017. OCA filed a Protest and Public Statement on June 9, 2017. On June 21, 2017, Limerick filed a Petition to Intervene in support of the Application.

Administrative Law Judge Steven K. Haas was assigned to preside over the matter. A prehearing conference was held on June 28, 2017, at which a litigation schedule was adopted providing for evidentiary hearings on July 20 and 21, 2017.

The evidentiary hearings were convened on July 20 and 21, 2017 with Judge Haas presiding. Aqua actively participated in the hearings, presenting the testimony of William C. Packer, Mark J. Bubel, Sr., Harold Walker, III, and Adrienne M. Vicari, P.E. Aqua’s Application, with Exhibits, also was admitted into the evidentiary record. I&E, OCA and Limerick also actively participated.

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>

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<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 LIMERICK

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 6, lines 20 through 22, and Aqua Exhibit No. 1, Application ¶ 7.

2. Aqua operates 34 wastewater treatment plants in the Commonwealth of Pennsylvania serving approximately 20,000 customers in Adams, Bucks, Carbon, Chester, Clarion, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, Venango and Wyoming Counties. Aqua St. No. 2 at 3, lines 7 through 11.

3. Aqua operates 17 wastewater systems in its Southeast Division that are in proximity to the Township. Aqua St. No. 2 at 3, lines 12 through 14.

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 5, lines 5 through 19.

5. Limerick 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, line 22.

6. Limerick Township owns and operates a sanitary wastewater collection and treatment system that provides sanitary wastewater service to 5,434 customers within a portion of Limerick Township, Montgomery County. Aqua Exhibit No. 1, Application ¶ 8; Aqua St. No. 1 at 5, lines 21 through 25, and Aqua St. No. 2 at 3, line 19, through page 5.

## **ASSET PURCHASE AGREEMENT**

7. Aqua and Limerick are parties to an Asset Purchase Agreement dated November 16, 2016. Aqua Exhibit 1, Application ¶ 5 and ¶ 18; *see also* Aqua Exhibit No. 1, Exhibit C.

8. The negotiated purchase price, which is based on arms' length negotiation, is Seventy-Five Million One Hundred Thousand Dollars (\$75,100,000.00). Aqua and Limerick are not affiliated with each other. Aqua Exhibit No. 1, Application ¶ 18 and Aqua St. No. 1 at 6, lines 6 through 10.

9. Aqua will use short term credit lines to fund the transaction. The short term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. Aqua St. No. 1 at 7, lines 18 through 20; *see also* Aqua Exhibit No. 1, Application ¶ 18.

## **ASSETS BEING TRANSFERRED**

10. The wastewater system assets to be transferred are the "Acquired Assets" and have the meaning specified in Section 2.01 of the Agreement. The Acquired Assets include all real property Limerick owns and uses in the operation of the wastewater system and all sanitary wastewater related treatment and conveyance facilities, including the Possum Hollow Waste Water Treatment Plant ("PHWWTP"), the King Road Waste Water Treatment Plant ("KRWWTTP") and all pipes, pumping stations, manholes and pipelines and billing and collections related assets necessary to run the system. Aqua Exhibit No. 1, Application ¶ 19.

11. Acquired Assets also include the contracts identified on Schedule 4.15 of the Agreement to which Limerick is a party (the "Assigned Contracts"). Since contract parties, other than Limerick, are identified by name, Schedule 4.15 and the Assigned Contracts are considered CONFIDENTIAL. Copies of CONFIDENTIAL Schedule 4.15 and the CONFIDENTIAL Assigned Contracts were included with the Application as Confidential Exhibit F and admitted into evidence as CONFIDENTIAL Aqua Exhibit No. 4. Aqua Exhibit No. 1, Application ¶ 20 and Tr. 13 and 20.

12. "Excluded Assets," which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, contracts that are not Assigned Contracts, cash and cash equivalents (other than Equivalent Dwelling Unit ("EDU") Fee Cash) and the assets, properties and rights set forth in Schedule 2.02(i) of the Agreement. Aqua Exhibit No. 1, Application ¶ 22.

13. "Assumed Liabilities" has the meaning specified in Section 2.04(a) of the Agreement and include all liabilities and obligations arising out of or relating to Aqua's ownership or operation of the wastewater system and the Acquired Assets on or after Closing. Aqua Exhibit No. 1, Application ¶ 23.

## **RATES**

14. Limerick's current sewer user rental rates, for customers with water meters, are comprised of two components: a base charge and a usage charge. The base charge assessed upon each private residential unit (an EDU) is \$337.20 per annum, payable as \$84.30 per quarter billing period, which includes up to 1,000 cubic feet of usage per quarter (7,481 gallons of usage per quarter). Usage above base quarterly usage is charged at \$4.84 per 100 cubic feet (\$6.46 per 1,000 gallons). A residential user without a water meter is billed a flat rate of \$85.00 per quarter billing period. Aqua Exhibit No. 1, Application ¶ 30 and Exhibit H.

15. Aqua will charge Limerick's existing rates post-closing. Rate schedule pages implementing Limerick's existing rates are included as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 29 and Exhibit G.

16. Aqua and Limerick agreed, in Section 7.05 of the Asset Purchase Agreement, that Aqua's Base Rate to Limerick customers may not increase until after the third anniversary of the Closing Date. Aqua Exhibit No. 1, Application ¶ 29 and Exhibit C, Section 7.05, and Aqua St. No. 1 at 8, lines 2 through 6. This contractual commitment is not part of the Company's

proposed rate schedule. *See* Aqua Exhibit No. 1, Application Exhibit G.

17. Based on the current rate schedule, Aqua projects annual revenue of \$3,688,000 from Limerick customers with annual operating and maintenance expenses of \$2,000,000. Aqua Exhibit No. 1, Application ¶ 34 and ¶ 35.

18. Aqua will implement its Rules and Regulations to govern the provision of wastewater service. Aqua Exhibit No. 1, Application ¶ 31 and Aqua St. No. 1 at 6, lines 11 and 12.

### **INTEGRATION WITH CURRENT OPERATIONS**

19. Aqua will operate and manage the wastewater system as a standalone system, but within Aqua's footprint, from its Southeastern Division Office located in Bryn Mawr, Pennsylvania. The KRWWTP and the PHTWWTP are approximately 19 miles from the Division Office. Aqua is not anticipating any physical or managerial changes at its Southeastern Division Office as a result of the acquisition. Aqua, however, is planning to employ seven Township operational employees. Aqua Exhibit No. 1, Application ¶ 37, ¶ 42 and ¶ 43 and Aqua St. No. 2 at 10, lines 1 through 17.

### **DEP COMPLIANCE**

20. Aqua is in good standing with DEP. Aqua Exhibit No. 1, Application ¶ 40.

21. Aqua is not aware of any current environmental compliance issues for the Limerick wastewater system. Copies of Discharge Monitoring Reports for the KRWWTP and for the PHWWTP, from January 2012 through December 2016, were included with the Application to document compliance with DEP requirements. Aqua Exhibit No. 1, Application ¶ 39.

### **PLANNED CAPITAL PROJECTS**

22. Aqua is planning capital projects as follows over the next 10 years at an estimated total cost of \$8,300,000:

**King Road WWTP service territory:**

Location	Item	Approximate Cost
WWTP	Sludge dewatering project and general plant improvements	\$1.28M
Collection System	Sewer lining, repair, and general infiltration and inflow reduction projects	\$0.63M
Pump Stations	<ul style="list-style-type: none"> <li>- PS #5: Formal odor control system, crane repairs, electrical repairs, wet well interior corrosion protection, general station repairs, pump electrical controls modifications</li> <li>- PS #7: Electrical controls upgrade</li> <li>- PS #10: Lightning and surge protection.</li> <li>- PS #3: Raise excessively deep valve vault, new pumps and rails, ARV replacement on FM.</li> <li>- PS #19: Pump replacement.</li> <li>- SCADA installed at all PS's.</li> <li>- Odor control on all FM ARV's.</li> </ul>	\$3.49M
Sub-total King Road Service Area		\$5.40M

**Possum Hollow WWTP Service Territory**

Location	Item	Approximate Cost
WWTP	Modify sludge wasting arrangement and general plant improvements	\$0.38M
Collection System	Sewer lining, repair, and general infiltration and inflow reduction projects	\$0.38M
Pump Stations	<ul style="list-style-type: none"> <li>- PS #1: General valving replacements, building repair.</li> <li>- SCADA installed at all PS's.</li> <li>- Odor control on all FM ARV's.</li> </ul>	\$0.56M
Sub-total Possum Hollow Service Area		\$1.32M

**Total System Capital Projects**

Location	Item	Approximate Cost
Total System	IT Transition	\$0.05M
Total System	IT CAPX	\$1.53M
Sub-total King Road Service Area (from above)		\$1.32M
Sub-total Possum Hollow Service Area (from above)		\$5.40M
<b>TOTAL</b>		<b>\$8.30M</b>

Aqua St. No. 2 at 6, line 22, through 8, line 3.

## **FITNESS**

### **Legal Fitness**

23. 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 6, lines 20 through 21.

### **Financial Fitness**

24. Aqua is a Class A, Pennsylvania wastewater utility with total assets of \$111 million and annual revenues of \$12 million. Aqua St. No. 1 at 7, lines 6 through 8. As a direct subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities. Aqua St. No. 1 at 7, lines 15 and 16.

25. Aqua PA is a Class A water utility and the largest subsidiary of Aqua America, with total assets of \$3.9 billion and annual revenues of \$418 million in 2016. In 2016, Aqua PA had operating income of approximately \$213 million and net income of \$173 million. Aqua PA's cash flows from operations were \$186 million in 2016. Aqua St. No. 1 at 7, lines 2 through 8.

26. 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 9 through 16.

27. Aqua will finance the acquisition of the Limerick 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 shortly after closing. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating. Aqua St. No. 1 at 7, lines 18 through 23.



### **Technical and Managerial Fitness**

28. Seven existing Limerick employees will integrate with Aqua and continue to operate the Limerick wastewater system. Management, customer service, regulatory compliance, engineering, financial and ancillary services will be provided seamlessly from the Southeastern Division Office in Bryn Mawr. Aqua St. No. 2 at 10, lines 5 through 17; *see also* Aqua Exhibit No. 1, Application ¶ 37, ¶ 42, Exhibit K1, Exhibit K2 and Exhibit K3.

29. Aqua and Aqua PA have 17 operators, many holding dual water and wastewater certifications, which may be called upon to assist in the operation of the system, if needed. Aqua St. No. 2 at 10, lines 19 and 20. Aqua and Aqua PA have acquired many wastewater and water systems in the last three decades. Aqua St. No. 2 at 12, lines 1 and 2.

30. 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 12, lines 1 through 11.

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

#### **Consolidation/Regionalization**

31. 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. Consolidation/regionalization also enhances the quality of ratepayers' daily lives, promotes community economic development and provides environmental enhancements. Ultimately, these benefits inure to customers both existing and acquired. Aqua St. No. 1 at 8, line 12, through

9 line 2 and *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order entered August 17, 2006) (“*Policy Statement*”), slip op. at 18, cited therein.

32. Aqua, and its parent company, Aqua PA, have a proven track record of working within the Commission’s consolidation/regionalization policy and assimilating wastewater and water systems. Aqua has acquired 15 wastewater systems over the past 10 years. Aqua St. No. 1 at 9, lines 10 through 18. The proposed acquisition is no exception to the principles noted in the *Policy Statement*. Aqua and Aqua PA have successfully acquired numerous water/wastewater utilities over the past 130 years. Aqua St. No. 1 at 8, line 21, through 9, line 2.

33. Aqua has the managerial, technical and financial resources to continue to operate, maintain and improve the Limerick system in a safe, reliable and efficient manner now and in the future. Aqua Exhibit No. 1, Application ¶ 45.a.

**Benefits to Limerick Township Customers**

34. Limerick Township customers will become part of a larger-scale, efficiently operated, wastewater utility that over time will likely yield further operating efficiencies and improve long-term viability as envisioned in the *Policy Statement*. The acquisition will not have any immediate impact on the rates of Township customers. Aqua’s last base rate proceeding was in 2010. Aqua St. No. 1 at 9, line 19, through 10, line 6.

35. Additionally, as addressed above, capital projects, at a total estimated cost of \$8.3 million, are projected post-closing for the benefit of Limerick residents in both the King Road and Possum Hollow service areas. Aqua St. No. 2 at 6, line 22, through 8, line 3.

**Long Term Operational Efficiencies – Decreasing Cost Profile**

36. Aqua operates three other wastewater treatment plants within 22 miles of the Limerick system. Aqua St. No. 2 at 9, lines 9 through 11. Aqua is not anticipating any physical or

managerial changes as a result of the acquisition but is planning to employ seven Township operational employees. Aqua Pennsylvania also will be moving its Gilbertsville office to the existing offices at Limerick's KRWWTWP. Combining these offices will promote cross-training between water and wastewater operators, further the Company's integration process, and help reduce office rental expense. Aqua Exhibit No. 1, Application ¶ 43 and Aqua St. No. 2 at 10, line 5, through 11, line 13.

37. The Limerick system, similar to the New Garden system, will have a "decreasing cost profile" in the future, which will be enhanced by the likelihood of greater customer growth without the need for additional capital. Aqua St. No. 1R at 9, lines 3 through 12. It is also reasonable to expect that as the system is operated over time, well beyond ten years, additional economies of scale will be realized. In the long term, this acquisition will provide opportunities for cost spreading. Aqua St. No. 1R at 8, lines 13 through 17, and 9, lines 18 through 23, and 15, line 22 through 16, line 4.

#### **Benefits to Existing Customers of Aqua**

38. Aqua will increase its customer base by approximately 27% as a result of the acquisition. With a larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers. The Limerick system is in generally good condition and will likely be operated many years without extensive capital investment. Aqua St. No. 1 at 10, lines 8 through 12.

39. There is, moreover, significant customer growth potential in the Limerick service area, which can be accommodated utilizing the current sewer utility treatment infrastructure. As of the filing of the Application, the Township is billing approximately 7,300 EDUs but capacity of 8,400 EDUs has been purchased on the system which represents an approximate 15% increase in billing units. Aqua St. No. 1 at 10, lines 13 through 20, and Aqua St. No. 1R at 6, lines 8

through 12.

40. Customer growth will allow for further spreading of the cost of service across even more customers improving economies of scale as the system is integrated into Aqua. Aqua and Aqua PA have a long history of acquiring and operating smaller and mid-size systems. Over the long term, acquisitions have benefitted existing (and acquired) customers as well as the Commonwealth of Pennsylvania. Aqua St. No. 1 at 10, line 13, through 11, line 2 and Aqua St. No. 1R at 6, lines 8 through 12.

41. Additionally, and as addressed further below under the heading “Rate Stabilization Plan,” based on extremely conservative assumptions (a continuing rate for Limerick customers of \$70 per month and no further growth in customers beyond Year 10), Aqua’s rate stabilization plan projects a positive rate benefit for existing customers, as early as Year 15/16. With less conservative assumptions (additional customer growth and additional rate increases to Limerick customers within the first ten years), the positive rate benefit easily occurs by Year 10 – within the Year 7/8 time frame. Tr. 22, line 2, through 23, line 2, and Tr. 24, line 10, through 25, line 9.

#### **No Adverse Effect**

42. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Because the system is in generally good condition, significant infrastructure improvements will not need to be shared among current customers. Aqua Exhibit No. 1, Application ¶ 45.a.

43. The acquisition will not have any immediate impact on the rates of either Limerick customers or the existing Aqua customers. Aqua Exhibit No. 1, Application ¶ 45.e.

44. Aqua will implement Limerick’s existing rates upon Commission approval of the acquisition. Aqua Exhibit No. 1, Application ¶ 29.

### **Limerick Wants to Sell Its Wastewater System**

45. Limerick has agreed to sell its wastewater system. The public interest and need will be served by allowing Aqua, in lieu of Limerick, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. Aqua Exhibit No. 1, Application ¶ 45.b.

### **SECTION 1329 CONSIDERATIONS**

#### **Ratemaking Rate Base**

46. Aqua and Limerick 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 ¶ 46.

47. Aqua and Limerick 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, line 16, through 12, line 3; *see also* Aqua Exhibit No. 1, Application ¶ 57 and Exhibit W.

48. Aqua engaged the services of Gannett. Limerick engaged the services of HRG. 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, line 16, through 12, line 3, and Aqua Exhibit No. 1, Application ¶ 52.

49. As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett and HRG were attached as Exhibit Q and Exhibit R, respectively, to the Application. Aqua Exhibit No. 1, Application ¶ 47, Exhibit Q and Exhibit R.

50. As required by Section 1329(d)(1)(ii), the purchase price agreed to by Aqua and Limerick was identified as \$75,100,000. Aqua Exhibit No. 1, Application ¶ 48.

51. As required by Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) was identified as \$75,100,000, being the lesser of the negotiated purchase price of \$75,100,000 and the average of the fair market value appraisals which is \$78,494,000 – determined by \$80,098,000 (rounded) presented in the Gannett appraisal and \$76,890,000 presented in the HRG. Aqua Exhibit No. 1, Application ¶ 49; *see also* Aqua St. No. 1 at 12, lines 6 through 11.

52. As required by Section 1329(d)(1)(iv), transaction and closing costs were identified as approximately \$250,000, which will be included in rate base. Aqua Exhibit No. 1, Application ¶ 50. Exact closing costs will be determined at closing. Aqua St. No. 1 at 17, lines 4 through 6.

53. As required by Section 1329(d)(1)(v), a tariff containing a rate equal to the existing Limerick rates at the time of acquisition was attached as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 51 and Exhibit G.

54. The UVEs were paid \$75,608.49 for the completed Fair Market Value Appraisal Reports. Documentation of the fees paid to each UVE was included with the Application as Exhibit S1 and Exhibit S2, respectively. Aqua Exhibit No. 1, Application ¶ 53, Exhibit S1 and Exhibit S2 and Aqua St. No. 1 at 12, line 19.

55. 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, line 21, through 13, line 3.

56. Statements of Gannett and of HRG verifying that they have no affiliation with Aqua or Limerick 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 T1 and Exhibit T2, respectively. Aqua Exhibit No. 1, Application ¶ 54, Exhibit T1 and Exhibit T2.

57. 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 13, lines 1 and 2. Limerick's contract with Gannett to undertake its Fair Market Value Appraisal was included with the additional information submitted on May 30, 2017. *See* Aqua Exhibit 5 at 3.

### **Rate Stabilization Plan**

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." In its Final Implementation Order at Docket No. M-2016-2543193, the Commission concluded that "rate stabilization plans will be subject to review in each rate case for reasonableness and should not place long term burdens on the acquiring utility's existing ratepayers." Aqua St. No. 1 at 13, lines 5 through 9.

59. Aqua will charge Limerick's existing rates post-closing. Rate schedule pages implementing Limerick's existing rates are included as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 29 and Exhibit G.

60. Aqua's proposed rate stabilization plan is presented in Exhibit D to Aqua Statement No. 1. The plan is illustrative of the potential rate impact on existing customers.

61. Aqua's rate stabilization plan proposes to split the Section 1329 ratemaking rate base of \$75,100,000 into two parts: (1) a ratemaking initial rate base of \$60,000,000 and (2) a \$15,100,000 Regulatory Asset. The Regulatory Asset will be gradually transferred into rate base over approximately 7.2 years ( $\$15.1\text{M} / \$2.1\text{M} = 7.2$  years) based on a composite depreciation rate of 3.5% ( $\$2.1\text{M} = \$60\text{M} \times 3.5\%$  composite depreciation rate). The portion of the regulatory asset recognized as rate base would then be amortized into income at the same rate as the rate

base, which would begin after the first base rate case. Subsequent additions to the regulatory asset would not begin amortizing until the next base rate case. Aqua St. No. 1 at 5, lines 1 and 2, at 13, lines 14 through 20, and at 15, line 11, through 16, line 3.

62. Applying the foregoing, Exhibit D to Aqua Statement No. 1 presents two calculations of potential rate impact on existing customers:

- a. The first calculation assumes a rate filing in year two, midway through the three year rate freeze period. The rate stabilization plan demonstrates that the Limerick system would need an approximate revenue increase of \$6,300,000 above anticipated revenues of \$4,800,000 in year two. If included in the context of a consolidated rate filing, these costs would be spread amongst the Company's existing sewer and water customers. On a consolidated basis, the monthly cost impact on customers is \$1.16.
- b. The second calculation assumes increases in customers, operating expenses, and a projected gradually increasing rate base to year seven. It, also, assumes rates for Limerick customers of \$70 per month. Exhibit D shows that an approximate \$6,650,000 rate increase for the Limerick system would be required above present revenues of \$5,500,000, of which \$4,650,000 would be applied to Limerick customers in order to arrive at an approximately \$70 per month residential sewer bill. This would leave approximately \$2,000,000 of revenue requirement to be spread amongst the Company's existing sewer and water customers, as part of a consolidated base rate case. On a consolidated basis, the monthly cost impact on customers is \$0.37.

Aqua St. No. 1 at 16, lines 4 through 19.

63. The rate stabilization plan is based on extremely conservative assumptions (a



continuing rate for Limerick customers of \$70 per month and no further growth in customers beyond Year 10). Even under these assumptions, a “cross-over” occurs, with the rate impact on existing customers “going the other way,” *i.e., benefitting existing customers*, as early as Year 15/16, not a long period of time in the utility world. With less conservative assumptions (additional customer growth and additional rate increases to Limerick customers within the first ten years), the “cross-over” point, *i.e., the benefit to existing customers*, easily occurs by Year 10 – within the Year 7/8 time frame. Tr. 22, line 2, through 23, line 2, and Tr. 24, line 10, through 25, line 9.

64. The proposed rate stabilization plan accomplishes gradual rate stabilization, while also stabilizing earnings over the same period of time for the Limerick system and its growing customer base. Aqua St. No. 1 at 13, lines 14 through 20, and at 16, line 20, through 17, line 2, and Aqua St. No. 1R at 3, lines 18 and 19.

65. Ultimately, any plan would have to be reviewed for reasonableness and approved in a base rate case. The Company believes, however, that the proposal reflected in Exhibit D is a reasonable approach to address rate stabilization for its customers. Aqua St. No. 1 at 13, lines 14 through 20, and at 16, line 20, through 17, line 2, and Aqua St. No. 1R at 3, lines 18 and 19.

66. Aqua also presented as Exhibit C to Aqua Statement No. 1 an analysis of the potential rate impact based on a rate base claim of \$75,100,000. Aqua St. No. 1 at 13, line 21, through 14, line 22, and Exhibit C.

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

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

Is Aqua's acquisition of the wastewater system assets of Limerick Township 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 Limerick Township 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 Limerick Township?

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

The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$75,100,000, being the lesser of the purchase price of \$75,100,000 negotiated by Aqua and Limerick and the average of the fair market value appraisals which is \$78,494,000.

#### **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 Limerick wastewater system assets and to initiate wastewater service in Limerick Township.

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

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

Section 1329 of the Public Utility Code, 66 Pa.C.S. § 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. Limerick engaged the services of HRG for the same purpose. Both firms were pre-certified as authorized UVEs.

Gannett's fair market value appraisal is \$80,098,000 (rounded). HRG's fair market value appraisal is \$76,890,000. The average of the two is \$78,494,000. As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$75,100,000, being the lesser of the negotiated purchase price of \$75,100,000 and the average of \$78,494,000.

#### **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 presented rate schedule tariff pages proposing to implement the existing Limerick rates post-closing. It also presented a rate stabilization plan that projects a positive rate impact for existing Aqua customers, as early as Year 15/16, based on extremely conservative assumptions, and, with less conservative assumptions, a positive rate impact for existing customers easily occurring by Year 10 – within the Year 7/8 time frame.

## V. ARGUMENT

### A. Aqua's Acquisition of the Wastewater System Assets of Limerick Township 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>2</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).

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<sup>2</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 Limerick System and Expand its Service Territory into Limerick Township**

As a certificated provider of utility service, Aqua's fitness is presumed. 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 \$111 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 2016, Aqua PA had operating income of approximately \$213 million, net income of \$173 million and cash flow from operations of \$186 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. While I&E witness Apetoh expressed concern that the acquisition of the Limerick system would place Aqua in a net loss position and be a contributing factor in a decision to file a general rate increase soon

after the Application is approved, Mr. Apetoh did not assert that Aqua is not financially fit.<sup>3</sup>

As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Aqua is planning to employ seven current Limerick employees who will continue to operate the system. Aqua has a current staff of qualified wastewater operators and other employees and supervisors to assist when needed and who are fully qualified and capable of operating the system.

Aqua operates other wastewater treatment plants in close proximity to the Limerick system. Two of those plants, Media and Willistown, are activated sludge plants similar to Limerick. 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 Limerick System and Expansion of Service Territory Are Supported by Affirmative Public Benefits**

In its recent Opinion and Order entered June 29, 2017, in Aqua's New Garden Application proceeding<sup>4</sup> ("*New Garden*"), the Commission cited the following public benefits from the testimony of Aqua witnesses Packer and Bubel in concluding that Aqua's acquisition of the New Garden system would "affirmatively promote the 'service, accommodation, convenience or safety of the public' in some substantial way."<sup>5</sup>

- The acquisition will further the benefits of regionalization and economies of scale in the Pennsylvania wastewater sector.
- The New Garden system will be able to draw upon the experience of wastewater professionals throughout the much larger Aqua organization.
- The acquisition will have no negative effect on the quality or quantity of service provided to existing Aqua customers.

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<sup>3</sup> I&E St. No. 1 at 7, line 5, through 8, line 2. In his rebuttal testimony, Aqua witness Packer explained that Mr. Apetoh's assessment is incorrect. Aqua will have positive net income of approximately \$2.0 million after the transaction. It will not have a net income loss as claimed by Mr. Apetoh. Aqua St. No. 1R at 13, lines 1 through 22.

<sup>4</sup> *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*, Docket No. A-2016-2580061, Opinion and Order entered June 29, 2017.

<sup>5</sup> *New Garden*, slip op. at 67 and 68.



The Commission held that the foregoing are consistent with the *Policy Statement*, where the Commission explained that further consolidation of the water and wastewater industry in Pennsylvania may also result in greater economic and environmental benefits to customers.<sup>6</sup>

The Commission in *New Garden* also agreed with Aqua that its acquisition of the New Garden system will benefit both Aqua and New Garden customers by sharing the costs of future infrastructure investments at a lower incremental cost per customer since the acquisition will increase Aqua's wastewater geographic service territory and customer base by eleven percent and will occur in a service territory location with projected customer growth. The Commission explained that all of these factors demonstrate that the acquisition likely will provide the long-term benefit of cost sharing.<sup>7</sup>

The Commission acknowledged, further, that Aqua provided persuasive testimony that its acquisition of the New Garden system would have no adverse result on existing operations. The Commission recited that Aqua already has four existing wastewater treatment plants within ten miles of the New Garden system. It recited, further, that although Aqua did identify two near-term capital investments necessary in the New Garden system, Aqua testified that over time the acquired system will become less costly to operate.<sup>8</sup>

Finally, and significantly, the Commission held that it was of the opinion that approval of Aqua's acquisition of the New Garden system is consistent with the General Assembly's clear support and encouragement of municipal wastewater acquisitions at valuation levels higher than traditional original cost measures.<sup>9</sup>

The Commission's finding of affirmative public benefit in *New Garden* is consistent with

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<sup>6</sup> *New Garden*, slip op. at 68.

<sup>7</sup> *New Garden*, slip op. at 68.

<sup>8</sup> *New Garden*, slip op. at 68.

<sup>9</sup> *New Garden*, slip op. at 68.

similar Commission conclusions in other proceedings. Notably, in its decision last year approving Pennsylvania-American Water Company's acquisition of the Scranton Sewer Authority<sup>10</sup> ("*Scranton Sewer Authority*"), the Commission, citing *City of York, Popowsky* and *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674 (Pa. Cmwlth. 1984) ("*Middletown*"), relied on the following public benefits:<sup>11</sup>

- PAWC is better positioned to own and operate the combined wastewater system and to implement the necessary capital improvements to the system. PAWC is the Commonwealth's largest water and wastewater provider, with total assets of \$3.9 billion and annual revenues of \$613 million for 2015, including operating income of approximately \$307 million and net income of approximately \$143 million;
- PAWC has an established track record with extensive experience in water and wastewater capital improvement projects;
- PAWC currently operates fifteen wastewater treatment plants in Pennsylvania, including three biological nutrient removal wastewater treatment plants, similar to the Scranton Sewer Authority system;
- As a subsidiary of American Water Works Company, Inc., PAWC has available to it the resources of American Water Works Service Company, Inc., including access to professionals with expertise in various specialized areas;
- PAWC has a \$220 million line of credit through American Water Capital Corp. a wholly owned subsidiary of American Water Works Company, Inc. PAWC carries a corporate credit rating of "A3" from Moody's Investors Services and an "A" rating from Standard and Poor's Rating Services;
- PAWC is better capable of meeting the future capital needs of the Scranton system and this is a substantial public benefit of the transaction;
- The significantly greater size of PAWC's customer base and substantial financial resources will allow PAWC to leverage economies of scale in providing wastewater service to SSA's customers, which will mitigate the need for larger and more frequent rate increases that may prevail should SSA continue to own and operate the combined system;
- The Commission finds that due to its size, its considerable experience and technical expertise in the operation and maintenance of wastewater systems, and its superior

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<sup>10</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.

<sup>11</sup> See *Scranton Sewer Authority*, slip op. at 46 – 50.

financial resources, PAWC is better positioned to efficiently operate and maintain the combined system, and to successfully fulfill environmental requirements in a safe and economical manner;

- PAWC's existing customers also stand to benefit from enhanced economies of scale and from the additional revenues generated as a result of the addition of SSA's 31,000 wastewater customers to PAWC's overall customer base.

The many public benefits relied on by the Commission in *Scranton Sewer Authority* and *New Garden* are, likewise, present here in support of Aqua's acquisition of the Limerick system and the expansion of Aqua's wastewater service into a portion of Limerick Township. Proposed findings of fact, based on a preponderance of the evidence and substantial evidence, and addressing the many public benefits, were presented in Section II *supra*. Summarized from the proposed findings, the public benefits, consistent with *City of York, Popowsky, Scranton Sewer Authority* and *New Garden*, are as follows:

#### **Consolidation/Regionalization**

- 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. Consolidation/regionalization also enhances the quality of ratepayers' daily lives, promotes community economic development and provides environmental enhancements. Ultimately, these benefits inure to customers both existing and acquired. The transaction will further the Commission's consolidation/regionalization objectives. Aqua St. No. 1 at 8, lines 12 through 9 at 2 and *Policy Statement*, slip op. at 18.
- Aqua, and its parent company, Aqua PA, have a proven track record of working within the Commission's consolidation/regionalization policy and assimilating wastewater and water systems. Aqua has acquired 15 wastewater systems over the past 10 years. The proposed acquisition is no exception to the principles noted in the *Policy Statement*. Aqua and Aqua PA have successfully acquired numerous water/wastewater utilities over the past 130 years. Aqua St. No. 1 at 8, lines 21 through 9, line 18.
- Aqua has the managerial, technical and financial resources to continue to operate, maintain and improve the Limerick system in a safe, reliable and efficient manner now and in the future. Aqua Exhibit No. 1, Application ¶ 45.a.

### **Benefits to Limerick Township Customers**

- Limerick Township customers will become part of a larger-scale, efficiently operated, wastewater utility that over time will likely yield further operating efficiencies and improve long-term viability as envisioned in the *Policy Statement*. Aqua St. No. 1 at 9, line 19, through 10, line 6.
- While the Limerick system is in generally good condition and can likely be operated many years without extensive capital investment,<sup>12</sup> Aqua is planning capital projects totaling \$8,300,000 over the next ten years. Aqua St. No. 2 at 7 and 8.

### **Long Term Operational Efficiencies – Decreasing Cost Profile**

- Aqua operates three other wastewater treatment plants within 22 miles of the Limerick system. Aqua is not anticipating any physical or managerial changes as a result of the acquisition but is planning to employ seven Township operational employees. Aqua Pennsylvania also will be moving its Gilbertsville office to the existing offices at Limerick’s KRWTP. Combining these offices will promote cross-training between water and wastewater operators, further the Company’s integration process, and help reduce office rental expense. Aqua Exhibit No. 1, Application ¶ 43 and Aqua St. No. 2 at 9, lines 9 through 11, and 10, line 5 through 11, line 13.
- The Limerick system, similar to the New Garden system, will have a “decreasing cost profile” in the future, which will be enhanced by the likelihood of greater customer growth without the need for additional capital. It is reasonable to expect that as the system is operated over time, well beyond ten years, additional economies of scale will be realized. In the long term, this acquisition will provide opportunities for cost spreading. Aqua St. No. 1R at 8, lines 13 through 17, and 9, lines 3 through 12, and lines 18 through 23, and 15, line 22 through 16, line 4.

### **Benefits to Existing Customers of Aqua**

- Aqua will increase its customer base by approximately 27% as a result of the acquisition. With a larger customer base, future infrastructure investment across the state will be shared at a lower incremental cost per customer for all of Aqua’s customers. Aqua St. No. 1 at 10, lines 8 through 12 and Aqua Exhibit No. 1, Application ¶ 45.f.
- The acquisition, moreover, comes with the expectation of significant future customer growth, which can be accommodated utilizing the current wastewater utility treatment infrastructure. The Township is billing approximately 7,300 EDUs but capacity of 8,400 EDUs has been purchased on the system which represents an approximate 15% increase in billing units. Aqua St. No. 1 at 10, lines 13 through 20 and Aqua St. No.

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<sup>12</sup> The King Road WWTP and the Possum Hollow WWTP were constructed in approximately 2007 and 2003, respectively. Aqua St. No. 2 at 6, lines 19 through 21. Approximately one-half of the project dollars are for pump stations. Aqua St. No. 2 at 7.

1R at 6, lines 8 through 12.

- Customer growth will allow for further spreading of the cost of service across even more customers improving economies of scale as the system is integrated into Aqua. Aqua and Aqua PA have a long history of acquiring and operating smaller and mid-size systems. Over the long term, acquisitions have benefitted existing (and acquired) customers as well as the Commonwealth of Pennsylvania. Aqua St. No. 1 at 10, line 13, through 11, line 2, Aqua St. No. 1R at 6, lines 8 through 12 and Aqua Exhibit No. 1, Application ¶ 45.f.
- Based on extremely conservative assumptions (a continuing rate for Limerick customers of \$70 per month and no further growth in customers beyond Year 10), Aqua's rate stabilization plan projects a positive rate benefit for existing customers, as early as Year 15/16. With less conservative assumptions (additional customer growth and additional rate increases to Limerick customers within the first ten years), the positive rate benefit easily occurs by Year 10 – within the Year 7/8 time frame. Tr. 22, line 2, through 23, line 2, and Tr. 24, line 10, through 25, line 9.

#### **No Adverse Effect**

- The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Aqua Exhibit No. 1, Application ¶ 45.a. The acquisition, however, will address capital project needs of Limerick customers.
- The acquisition will not have an immediate impact on the rates of either the Limerick customers or the existing customers of Aqua. Aqua has not had a base rate increase since 2010. Aqua Exhibit No. 1, Application ¶ 45.e.
- Aqua will implement Limerick's existing rates upon Commission approval of the acquisition. Aqua Exhibit No. 1, Application ¶ 29.

#### **Limerick Wants to Sell Its Wastewater System**

- Limerick has agreed to sell its wastewater system. The public interest and need will be served by allowing Aqua, in lieu of Limerick, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The Limerick system will benefit from the support of wastewater professionals throughout Aqua's organization. Aqua Exhibit No. 1, Application ¶ 45.b.

Along with the foregoing, as noted in *New Garden*, Aqua's acquisition of the Limerick system is consistent with the General Assembly's clear support and encouragement of municipal wastewater acquisitions at valuation levels higher than traditional original cost measures.

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

I&E witness Apetoh claimed that the acquisition is not in the public interest; that it would have a negative impact on Aqua's present financial condition; that the approval of ratemaking rate base of \$75,100,000 would have a detrimental impact on Aqua's existing customers; and that the rate freeze will have a negative impact on Aqua's existing customers.<sup>13</sup>

OCA witness Everette testified that Aqua did not provide specific public benefits of the acquisition; that Limerick is not a small, troubled system that needs to be acquired; and that the acquisition would harm both existing and Limerick customers.<sup>14</sup>

The criticisms of Mr. Apetoh and Ms. Everette center upon a concern with the potential ratemaking impact of the acquisition. The Commission addressed the very same concern in *New Garden*. There, as here, Aqua proposed a "tariff containing a rate equal to the existing rates of the selling utility." Recognizing that Aqua was not proposing any rate changes and that rates would be addressed in the next base rate case, the Commission in *New Garden* rejected the public benefit concerns of I&E and the OCA.<sup>15</sup> The ratemaking concerns of Mr. Apetoh and Ms. Everette, likewise, should be rejected here.

**a. Public Interest Testimony of I&E Witness Apetoh**

Aqua witness Packer disagreed with Mr. Apetoh and testified that Mr. Apetoh's assessment of the financial impact of the acquisition was overstated. On a total company basis, Aqua will have positive net income of approximately \$2,000,000 following its acquisition of the Limerick system (contrary to the net income *loss* of \$1,700,000 claimed by Mr. Apetoh). Under the assumptions presented in its rate stabilization plan, Aqua will have positive net income of

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<sup>13</sup> I&E St. No. 1 at 6 and 7 and Aqua St. No. 1R at 10, line 22, through 11, line 5.

<sup>14</sup> OCA St. No. 1 at 7 through 17 and Aqua St. No. 1R at 5, lines 8 through 13.

<sup>15</sup> *New Garden*, slip op. at 68 – 71.

approximately \$2,400,000 (again, contrary to the net income *loss* of \$1,300,000 claimed by Mr. Apetoh).<sup>16</sup>

Mr. Apetoh's analysis also seems to be based on the incorrect assumption that the Company's analysis of potential rate impacts is cumulative. While the Company's analysis shows that rates for Limerick customers will need to increase at some point in the future, to assume that those impacts are ultimately realized by customers, cumulatively, is not an accurate presentation and not what the Company's analysis shows.<sup>17</sup>

Rate impacts will be determined in the context of a base rate case and are dependent on a variety of factors, including the level of rates to be charged for the Limerick system. This Application proceeding should not be viewed as a substitute for a full base rate case, which would address many factors of the Company's consolidated cost of service as part of a robust evidentiary record.<sup>18</sup>

The Company's rate stabilization plan analysis of potential rate impact was prepared as a year-by-year stand-alone analysis of operating income and associated operating income deficiency "if" a rate case was filed in any one of the ten years and identifies the impact on rates during both before and after the expiration of the rate freeze period. This analysis is dependent on the frequency, timing, and final Commission approved rates of the Limerick system in future base rate cases. Significantly, under reasonable assumptions of future Limerick rates and customer growth, it is likely that existing customers will see a rate benefit within 10 years of closing.<sup>19</sup>

**b. Public Interest Testimony of OCA Witness Everette**

Mr. Packer also disagreed with Ms. Everette's testimony concerning public benefits. Ms.

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<sup>16</sup> Aqua St. No. 1R at 13, lines 17 through 22.

<sup>17</sup> Aqua St. No. 1R at 12, lines 7 through 12.

<sup>18</sup> Aqua St. No. 1R at 12, lines 12 through 16.

<sup>19</sup> Aqua St. No. 1R at 11, line 21, through 12, line 6.

Everette's claim that the Limerick System is neither small nor troubled and, therefore, does not need to be acquired is inconsistent "with the General Assembly's clear support and encouragement of municipal wastewater acquisitions at valuation levels higher than traditional original cost measures" as recognized by the Commission in *New Garden*.<sup>20</sup>

Similar to her analysis in *New Garden*, Ms. Everette's analysis is focused on the short term. The utility business, however, is anything but short term. The benefits of regionalization and consolidation are realized over the long-term. The Commission has consistently applied a long-term philosophy toward its policy of promoting further consolidation of water and wastewater utilities alike, a policy most recently demonstrated by the Commission's recognition of public benefits in *New Garden*.<sup>21</sup>

Ms. Everette also expressed concern with the potential rate impact on Limerick and existing customers of Aqua. As a threshold matter, we emphasize, again, and as the Commission did in *New Garden*, that Aqua will adopt the existing Limerick Township rates. Future rate changes for Limerick and existing customers of Aqua will be fully vetted in the Company's next base rate case.<sup>22</sup>

Ms. Everette attempted to support her rate concerns with an analysis of Mr. Packer's Exhibits. In her Exhibits AAE-2A, AAE-2B, AAE-3A, and AAE-3B, Ms. Everette modified Mr. Packer's original Exhibit C and rate stabilization plan Exhibit D, to include lines 19 – 20, which show the total cost of service. She continues and concludes that, even after the ten years, the Limerick system does not provide any cost benefit to Aqua's existing customers.<sup>23</sup>

Mr. Packer explained that his rate stabilization plan analysis of potential rate impact is only an estimate of the expected cost of service at a single point or year. It is essentially a

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<sup>20</sup> Aqua St. No. 1R at 6, line 13, through 7, line 8, and *New Garden*, slip op. at 68.

<sup>21</sup> Aqua St. No. 1R at 5, line 14, through 6, line 12.

<sup>22</sup> Aqua St. No. 1R at 7, lines 9 through 18.

<sup>23</sup> Aqua St. No. 1R at 7, lines 9 through 18.



“what-if” analysis that quantifies the impacts “if” the Company were to file a base rate case in any one year, how the provisions of the asset purchase agreement impact the calculations, and how the Company’s proposal for the utilization of a regulatory asset would also impact cost of service if rates for the Limerick system were set to approximately \$70.<sup>24</sup> Contrary to Ms. Everette’s testimony, with reasonable assumptions of customer growth and additional rate increases to Limerick customers within the first ten years, a positive rate benefit for Aqua’s existing customers easily occurs by Year 10 – within the Year 7/8 time frame.<sup>25</sup>

Mr. Packer explained further that the Company’s rate stabilization plan is non-binding and will be fully adjudicated in a future base rate case proceeding. While the Company’s analysis is based on a residential rate of approximately \$70 per month, the Commission ultimately has the authority to set the final rate and, in-doing so, could change any analysis submitted in this proceeding. Furthermore, if the Company were to file multiple rate cases during this period, it is reasonable to expect that the rates would also increase for the Limerick system, hence further lowering any short term impacts.<sup>26</sup>

Ms. Everette also expressed concern with a significant increase in rate base and rate base per customer that she claims will occur as a result of the acquisition. Similar comparisons and concerns were made by Ms. Everette and rejected by the Commission in *New Garden*. Limerick’s rates today are charged according to EDU’s and not just a customer charge per connection. There are approximately 7,300 EDU’s currently being billed in Limerick, with additional purchased EDU’s that bring the total to approximately 8,400 EDU’s. As such, this investment initially represents approximately \$10,290 per EDU and \$8,940 per EDU

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<sup>24</sup> Aqua St. No. 1R at 7, line 19, through 8, line 2.

<sup>25</sup> Tr. 22, line 2, through 23, line 2, and Tr. 24, line 10, through 25, line 9.

<sup>26</sup> Aqua St. No. 1R at 8, lines 3 through 12.

respectively.<sup>27</sup>

The acquisition will not be harmful to Limerick and existing customers of Aqua. Utility system acquisitions are a long term process, not a short term one. It is over the long term that the benefits of acquisitions such as Limerick ultimately yield synergies and economies of scale. The Limerick system is one with a declining cost profile, not requiring ongoing extensive capital improvements. The Company will integrate this system as it has many others and begin to provide excellent utility service with benefits to customers.<sup>28</sup>

## **5. Conclusion – Public Interest and Benefit**

Aqua’s acquisition of the wastewater system assets of Limerick Township 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*, *Popowsky*, *Scranton Sewer Authority* and *New Garden*. Claims of I&E and the OCA that Aqua failed to demonstrate substantial affirmative public benefits should be given no weight.

### **B. The Ratemaking Rate Base Determined Pursuant to Section 1329(c)(2) of the Public Utility Code Is \$75,100,000**

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

Act 12 of 2016 (“Act 12”)<sup>29</sup> amended Chapter 13 of the Public Utility Code by adding a new Section 1329, 66 Pa.C.S. § 1329. 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. It is a voluntary process to determine the fair

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<sup>27</sup> Aqua St. No. 1R at 9, lines 1 through 11.

<sup>28</sup> Aqua St. No. 1R at 9, line 16, through 10, line 4.

<sup>29</sup> Act of Apr. 14, 2016, P.L. 76, No. 12.

market value of an acquired water or wastewater system at the time of acquisition.<sup>30</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>31</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>32</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>33</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 Commission. The selected UVEs perform independent fair market value appraisals of the

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<sup>30</sup> *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*, Docket No. A-2016-2580061, Opinion and Order entered February 17, 2017 ("New Garden Order entered February 15"), slip op. at 5.

<sup>31</sup> *New Garden Order entered February 15*, slip op. at 5.

<sup>32</sup> *New Garden Order entered February 15*, slip op. at 5 – 6.

<sup>33</sup> *New Garden Order entered February 15*, slip op. at 6.

system in compliance with USPAP, employing the cost, market and income approaches.<sup>34</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>35</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>36</sup>

As set forth hereinafter, applying the clear statutory language, the ratemaking rate base of the Limerick system is \$75,100,000.

**2. Ratemaking Rate Base Is \$75,100,000 – The Lesser of the Negotiated Purchase Price and the Average of the Fair Market Value Appraisals**

Aqua and Limerick negotiated a purchase price of \$75,100,000 for the wastewater system. The price was the result of voluntary arm’s length negotiations. Aqua and Limerick 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.

Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. Limerick engaged

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<sup>34</sup> *New Garden Order entered February 15*, slip op. at 6; 66 Pa.C.S. § 1329(a)(3).

<sup>35</sup> 66 Pa.C.S. § 1329(c)(2) (emphasis added).

<sup>36</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).

the services of HRG 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 \$80,098,000 (rounded). HRG's fair market value appraisal is \$76,890,000. The average of the two is \$78,494,000. As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$75,100,000, being the lesser of the negotiated purchase price of \$75,100,000 and the average of \$78,494,000.

The results of the Gannett analyses and calculations for each applicable approach are detailed throughout the Gannett Report and are summarized as follows:<sup>37</sup>

<u>Valuation Approach</u>	<u>Indicated Value</u>
Cost Approach	\$86,086,756
Income Approach	\$75,204,407
Market Approach	\$79,002,980
<b>Recommendation</b>	<b>\$80,098,000</b>

The results of the HRG analyses and calculations for each applicable approach are detailed throughout the HRG Report and are summarized as follows:<sup>38</sup>

<u>Valuation Approach</u>	<u>Indicated Value</u>
Cost Approach	\$90,050,000
Income Approach	\$62,760,000
Market Approach	\$77,855,000
<b>Recommendation</b>	<b>\$76,890,000</b>

As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett and HRG were attached as Exhibit Q and Exhibit R, respectively, to the Application. Verified Statements of Gannett and of HRG, 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 T1 and Exhibit T2, respectively.

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<sup>37</sup> Aqua Exhibit No. 1, Exhibit Q, Letter of April 21, 2017, at 2.

<sup>38</sup> Aqua Exhibit No. 1, Exhibit R, Page 2

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 Limerick wastewater system must include a determination that the ratemaking rate base is \$75,100,000.

**a. The Effort of the OCA to Determine Ratemaking Rate Base Under Section 1329 Should Be Rejected**

In its direct and surrebuttal testimonies, OCA witnesses Everette and Watkins challenged the fair market value appraisals of the UVEs and Aqua’s request for a determination that the ratemaking rate base of the acquired system is \$75,100,000. The testimony of Ms. Everette addressed the HRG cost and market approaches.<sup>39</sup> The testimony of Mr. Watkins was limited to the HRG and Gannett income approaches.<sup>40</sup>

The OCA recommends a ratemaking rate base of \$60,976,180.<sup>41</sup> Respectfully, the efforts of the OCA to proactively challenge the statutory formulaic approach and submit its own ratemaking rate base under Section 1329 must be rejected as contrary to clear and unambiguous statutory language and the objectives of the General Assembly.

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

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<sup>39</sup> Tr. 130, line 23 through 131, line 7. Although Ms. Everette did not address the Gannett fair market value appraisal, she incorporated Mr. Watkins’ adjusted income approach to value into the OCA’s proposal. In doing so, Ms. Everette engaged in an improper, selective choosing of appraisal results reported by Gannett. Aqua St. No. 3R at 16, lines 1 through 8.

<sup>40</sup> OCA St. No. 1 at 3, lines 2 through 12.

<sup>41</sup> OCA St. No. 1S at 22.

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 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>42</sup>

Each of the acquiring public utility and selling utility chooses a UVE from the list maintained by the Commission.<sup>43</sup> Each UVE then performs a separate appraisal for the purpose of establishing fair market value.<sup>44</sup> Each UVE determines fair market value in compliance with USPAP.<sup>45</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>46</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 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

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<sup>42</sup> 66 Pa. C.S. § 1329(a)(1).

<sup>43</sup> 66 Pa. C.S. § 1329(a)(1).

<sup>44</sup> 66 Pa. C.S. § 1329(a)(2).

<sup>45</sup> 66 Pa. C.S. § 1329(a)(3).

<sup>46</sup> 66 Pa. C.S. § 1329(c)(2).

compliance with USPAP, employing the cost, market and income approaches is a further consumer protection.

The two independent fair market value 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 must be followed. The Statutory Construction Act requires that it be followed.

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 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 Ms. Everette and Mr. Watkins.

**b. The Appraisal Testimony of Ms. Everette and Mr. Watkins Was Not Performed in Compliance with USPAP and Should Be Given No Weight**

Section 1329(a)(3) requires that fair market valuation be determined in compliance with USPAP. Contrary to the clear and unambiguous wording of Section 1329(a)(3), the appraisal criticisms of Ms. Everette and Mr. Watkins are not based on USPAP but rather are based on the “just and reasonable” ratemaking standard found in Section 1301 of the Public Utility Code.<sup>47</sup>

Ms. Everette’s testimony is clear. She specifically asks that the Commission consider the “just and reasonable” ratemaking standard in determining the outcome of this case.<sup>48</sup> She is not

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<sup>47</sup> 66 Pa. C.S. § 1301.

<sup>48</sup> OCA St. No. 1 at 18, lines 11 through 16; *also see* Tr. 133, lines 10 and 11.



asking the Commission to consider USPAP.

Ms. Vicari of HRG challenged Ms. Everette's testimony and the OCA's attempt to depart from the USPAP standard:<sup>49</sup>

"... The UVE is required to perform an appraisal to arrive at the Fair Market Value (FMV) of the System while considering three different approaches: Cost, Market, and Income. HRG's Market Value Approach was lower than the other UVE's, yet no adjustment was recommended to the other UVE's analysis. It seems that the OCA's approach is purely from a future rate making perspective and not a Fair Market Value perspective as called for in Section 1329 of the Code. The proposed adjustments to HRG's Fair Market Value seems more related to lowering the 'average' appraisal than for ascertaining Fair Market Value of the Limerick Township System, which appears to be inconsistent with the intent of the legislation as it applies to the sale of municipal and authority water and wastewater systems.

Mr. Watkins' testimony is, likewise, clear. He was not engaged to address fair market valuation in compliance with USPAP. The service agreement between the OCA and Mr. Watkins, which was admitted into the record as Aqua Cross Examination No. 1, makes no reference to, or mention of, USPAP.<sup>50</sup> The OCA stipulated that its service agreement with Mr. Watkins does not reference USPAP.<sup>51</sup>

Additionally, on cross examination, Ms. Everette admitted that she did *not* cite USPAP in either her direct or surrebuttal testimonies.<sup>52</sup> On cross examination, Mr. Watkins, likewise, admitted that he did *not* refer to or mention USPAP in either his direct or surrebuttal testimonies.<sup>53</sup>

The valuation criticisms of Ms. Everette and Mr. Watkins, which are *not based on USPAP*, are neither relevant nor material to the determination of fair market value in *compliance with USPAP*. The valuation criticisms of Ms. Everette and Mr. Watkins are entitled to no

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<sup>49</sup> Aqua St. No. 4R at 2, lines 15 through 24.

<sup>50</sup> Tr. 91 – 95.

<sup>51</sup> Tr. 95.

<sup>52</sup> Tr. 131, line 21, through 132, line 5.

<sup>53</sup> Tr. 97, lines 4 through 13.

weight.

**c. Ms. Everett's Criticism of the Fair Market Value Appraisals Should Be Given No Weight**

Ms. Everett is not a Utility Evaluation Expert. She did not perform a fair market value appraisal. She reviewed the appraisals of Gannett and HRG. With the exception of her testimony in the recent *New Garden* proceeding, none of the testimonies listed in her curriculum vitae has to do with appraisals. She was not engaged by either Aqua or Limerick to perform a fair market value analysis.<sup>54</sup>

Ms. Everett selectively criticized parts of the HRG appraisal that would produce a lower ratemaking rate base than the HRG appraisal results. This selective reliance is exactly what the General Assembly prohibited by setting forth the process prescribed in Section 1329.

Ms. Everett criticized parts of the HRG Market and Cost Approaches. Ms. Vicari testified as follows in respect to Ms. Everett's Market Approach criticisms:

**HRG's Market Approach**

- Ms. Everett criticized the sample of transactions, dating back to 2014, that HRG used to calculate the average selling price per customer. Her criticism, which suggests a sample bias, is not appropriate. HRG's first priority was to find recent wastewater transfers where there was sufficient reliable information in order to calculate the price per customer. HRG intended to include transactions that were either to be completed under Act 12 or could have been in anticipation of the passage of Act 12, but the only identifiable Act 12 transaction was the New Garden Township sale. It is clear from Schedule D – Market Comps, included in the HRG working papers that the average cost per user increased significantly after the passage of Act 12 of 2016. The sample HRG used includes transactions prior to the enactment of Act 12 and to that extent, understates the FMV. Prior to Act 12, the average price per customer was in the range of \$7,000 to \$8,000 while the price per customer for the New Garden Township system was nearly double that to \$14,008. Had HRG relied on this single transaction and used the 5,434 customers as suggested by the OCA, HRG's Market Value appraisal would have increased to \$76,119,742, an increase of \$13,359,742. Oddly, this may have been more acceptable to OCA since OCA did not propose any

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<sup>54</sup> Tr. 131, lines 8 through 20, and 135, line 10, through 136, line 17.

adjustment to Gannett's UVE Market Value appraisal of \$79,002,980.<sup>55</sup>

- Ms. Everette criticized the inclusion of capital improvements in the selling price of the systems included in the sample of transactions. Her criticism is not appropriate. USPAP and the Final Implementation Order *require* consideration of capital improvements in the Fair Market Value Appraisal. The listing of Limerick assets prepared by Pennoni engineers identified \$4,533,000 in capital improvements planned by Limerick. Ms. Everette faults the HRG analysis for failing to reflect \$8.3 million of capital improvements planned by Aqua but, contrary to Ms. Everette's testimony, HRG had no knowledge of that dollar figure. HRG had the asset list prepared by Pennoni and appropriately considered those dollars in its market approach to fair market value.<sup>56</sup>
- Ms. Everette criticized the customer growth considered by HRG in its market approach. Her criticism is not appropriate. USPAP *requires* consideration of customer growth in the Fair Market Value Appraisal. Ms. Everette assumes, incorrectly, that 7,246 customers overstates today's Fair Market Value. Customer growth is relevant because, not only does Aqua acquire the physical assets, the customer base, all related utility property and a franchise area, but also benefits from an ongoing mandatory connection ordinance. All future development that can be served by the System *must* connect to it or violate the Limerick Township ordinance. Furthermore, there are currently 8,423 billable EDUs connected to the system indicating a revenue stream greater than that suggested by the 5,434.<sup>57</sup>

Summarizing her disagreement with Ms. Everette's criticism of the HRG Market Approach, Ms. Vicari explained that there are different techniques for determining market value but HRG chose a transparent and direct approach and that HRG's Market Value Approach is properly stated at \$62,760,000. HRG's inclusion of five transactions dating back to 2014 actually lowered the cost per customer and should not be considered a negative. While there can be some regulatory debate over the treatment of capital additions anticipated as part of the selling price or included in the rate base as they are incurred, they are none the less inducements to enter into the agreement and should be viewed as part of the compensation. HRG's inclusion of future users in the Market Value Approach approximates the value of the mandatory connection

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<sup>55</sup> Aqua St. No. 4R at 4, lines 12 through 26.

<sup>56</sup> Aqua St. No. 4R at 5, lines 1 through 17, and Tr. 60, line 24, through 61, line 25.

<sup>57</sup> Aqua St. No. 4R at 5, line 18, through 6, line 2, and Tr. 62, line 1, through 63, line 23.

requirement.<sup>58</sup>

Turning to the HRG Cost Approach, Ms. Vicari explained that HRG trended the asset listing and historical costs provided by Pennoni, the third part engineer, and trended them to today's values using the Construction Cost Index published by Engineering News Record ("ENR"), and current construction costs for gravity sewer mains. Ms. Vicari testified as follows in respect to Ms. Everette's Cost Approach criticisms:

### **HRG's Cost Approach**

- Ms. Everette criticized HRG's use of the ENR Index to calculate reproduction cost. Her criticism is not appropriate. It is unclear whether Ms. Everette had a particular problem with the Index other than she wanted to include in the record the components of the Index suggesting that it may not somehow be consistent with the nature of the assets that were being trended. If Ms. Everette had a more favored index, she did not disclose it in her direct testimony. HRG used the ENR Construction Cost Index as an indicator of general inflation in order to determine an approximate Reproduction Cost – Schedule C. HRG computed depreciation using the estimated life of the individual assets and the year they were placed in service. HRG did not suggest that the ENR Index would produce the precise Reproduction Cost for every asset, but, because the index was available for each and every year assets were put in service, it provided the overall increase in asset values over time.<sup>59</sup>
- Ms. Everette criticized the use of current construction costs for gravity sewer mains. Her criticism is not appropriate. The use of an alternative valuation methodology for collector sewer mains is a special circumstance. The original cost of gravity collector sewer mains was \$15,213,236. There are 355,000 linear feet (L.F.) of main, which calculates to \$42.85 per L.F. This is a very low number compared with historical construction costs and construction components that are included. There is no separate listing for installation cost, pipe bedding, backfill, manholes, engineering design, and surface restoration. For this reason, HRG developed a profile of 2016 construction costs for sewer mains of various size installed in the Montgomery County and Chester County area based on public bidding information through the industry service, PennBID. These are actual costs for projects in the same general vicinity as Limerick and HRG believes it to be more representative than an index trending that appears to be a very low cost.<sup>60</sup>

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<sup>58</sup> Aqua St. No. 4R at 6, lines 3 through 21.

<sup>59</sup> Aqua St. No. 4R at 7, lines 13 through 26.

<sup>60</sup> Aqua St. No. 4R at 8, lines 1 through 22, and Tr. 60, line 24, through 61, line 25.

Summarizing her disagreement with Ms. Everette’s criticism of the HRG Cost Approach, Ms. Vicari noted that, while the HRG Cost Approach is higher than the Gannett Cost Approach, it is almost exactly the same, except for the Going Value addition. Yet, Ms. Everette offered no criticism of the Gannett Cost Approach. This suggests that Ms. Everette is not pursuing a determination of Fair Market Value but, rather, is simply attempting, inappropriately and contrary to Section 1329, to drive down one valuation in order to lower the “average” of the two to affect the determination of ratemaking rate base.<sup>61</sup>

**d. Mr. Watkins’ Criticism of the Fair Market Value Appraisals Should Be Given No Weight**

Mr. Watkins is not a Utility Evaluation Expert. He did not perform a fair market value appraisal.<sup>62</sup> Mr. Watkins’ testimony was limited to critiquing the Income Approach of both HRG and Gannett. The Income Approach is only one aspect of fair market valuation. A proper valuation requires consideration of all three approaches – Market, Cost and Income – not just one approach, to reach a conclusion as to value. Ms. Vicari explained that, of the three Approaches, the Income Approach may be the least reliable indicator of fair market value because it requires many judgments of future circumstances that are unpredictable and beyond the control of the UVE.<sup>63</sup>

Ms. Vicari testified as follows in respect to Mr. Watkins’ criticisms of the HRG Income Approach:

**HRG’s Income Approach**

- Mr. Watkins criticized the HRG Income Approach for not considering the seller’s perspective. His criticism is not appropriate. HRG used the purchaser’s perspective because a seller would be guided by how much a

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<sup>61</sup> Aqua St. No. 4R at 9, line 14, through 10, line 4.

<sup>62</sup> Tr. 97, line 14, through 98, line 9.

<sup>63</sup> Aqua St. No. 4R at 10, lines 6 through 22.

buyer would be willing to pay. For example, if the price from the seller's perspective is below the value to the buyer, then the buyer would be guided not by the lower value of continued ownership but by the value to the buyer. Conversely, if the value of continued ownership is higher than the value to the purchaser, it is illogical that the buyer would be interested in purchasing an asset that has less value to the buyer than to the seller. Consequently, analysis from the seller's perspective would have little value for establishing the FMV other than to know the value of continued ownership for decision purposes.<sup>64</sup>

- Mr. Watkins criticized HRG's consideration of "going value." His criticism is not appropriate. Going value is an appropriate consideration under USPAP. It is an estimate to reflect the real cost for a start-up business and for which a seller should receive compensation. Going value is not related to acquiring customers. It, instead, represents the cost associated with forming the entity. Going value is unrelated to Aqua. Going value represents the costs incurred by Limerick when Limerick began operations. Ms. Vicari testified that, in her experience as a professional engineer, a significant amount of funds is needed to get a system up and going and that Limerick Township should be compensated for that going value.<sup>65</sup>
- Mr. Watkins made changes to income tax rates that resulted in a lower value. His tax rate changes are not appropriate. Modifications to taxes would also result in changes to the Revenue Requirement which Mr. Watkins did not consider. To the extent that taxes increase, the Revenue Requirement increases. A regulated utility is permitted to recover the full cost of rendering utility service. The assumed rate increases would correspondingly increase, resulting in a greater income value than as developed by Mr. Watkins.<sup>66</sup>
- Mr. Watkins proposed changes in the discount rate used by HRG based on his opinion of the rate of return on equity. His proposed changes are not appropriate. The equity rate that should be used for valuation purposes is the rate that Aqua is currently earning from operations, not a cost of equity rate that Mr. Watkins proposes based on a recently litigated rate filing. It has been some time since Aqua's most recent rate case. At that time a rate of return based on the revenue, expenses depreciation and rate base was authorized. Since that time, there have been changes in revenues, expenses and utility plant investment. For example, during the year 2015, utility plant in service increased by \$18,152,894, an increase in the return that will not be reflected in the rate base until the next general rate increase. In other words, no return has been earned on plant additions since the prior rate filing other than revenue eligible for the distribution system infrastructure charge (DSIC) generated revenue. No estimate of the erosion of return has been presented and the rate used by Mr. Walker should be considered unreliable and raises the question of

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<sup>64</sup> Aqua St. No. 4R at 12, lines 3 through 13.

<sup>65</sup> Aqua St. No. 4R at 14, line 3, through 16, line 2 and Tr. 65, line 12, through 66, line 17.

<sup>66</sup> Aqua St. No. 4R at 13, line 20, through 14, line 2.

validity of Mr. Walker's proposed discount rate.<sup>67</sup>

- Mr. Watkins proposed that the income valuation under investor ownership shown in his Schedule GAW-7 should be calculated on the traditional ratemaking measure of value based on Original Cost and associated annual depreciation. His proposal is clearly inconsistent with the Final Implementation Order and Section 1329. The Order is not specific and appropriately leaves decisions to the judgment of the UVE. It states on page 2 that "Section 1329 establishes an alternative process for valuing certain water and wastewater systems for ratemaking purposes."<sup>68</sup>

Mr. Watkins' criticisms of the Gannett fair market value appraisal are limited to the income approach to valuation in two areas. Mr. Watkins disagrees with the use of a "terminal value" in the Discounted Cash Flow ("DCF") model in the thirteenth year of the model. He also disagrees with the discount rates used in the Gannett model. Mr. Watkins' criticisms of the Gannett Income Approach are not in accordance with accepted valuation practice.<sup>69</sup>

Mr. Walker addressed Mr. Watkins' criticisms of the Gannett Income Approach as follows:

#### **Gannett's Income Approach**

- Mr. Watkins misunderstands the use of a "terminal value" in a DCF analysis. The use of a "terminal value" in a DCF analysis is reasonable and is in accordance with accepted valuation practice. Within the DCF analyses, the "terminal value" is simply a point in the time in which the growth in annual Debt Free Net Cash Flows changes from multiple growth rates to a constant growth rate. Within the DCF analyses, the growth rate of annual Debt Free Net Cash Flows during time periods 1 through 13 (year 2018 through 2030) changes multiple times due to the various assumptions listed in the Gannett Fair Market Value appraisal report (Exhibit Q). Subsequent to time period 13 (year 2030), the growth in annual Debt Free Net Cash Flows is a constant growth rate. The use of a "terminal value" in a DCF analyses is a mathematical shortcut to avoid having to show and/or calculate annual Debt Free Net Cash Flows for hundreds of time periods, or hundreds of years, and is reasonable and is in accordance with accepted valuation practice. Schedule 2 of Aqua Statement No. 3R proves the results of the DCF analyses are the same regardless if a "terminal value" is used or if the annual Debt Free Net

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<sup>67</sup> Aqua St. No. 4R at 13, lines 3 through 19.

<sup>68</sup> Aqua St. No. 4R at 11, lines 1 through 10.

<sup>69</sup> Aqua St. No. 3R at 3, line 16, through 4, line 14.

Cash Flows are calculated for hundreds of time period, or hundreds of years. Again, the use of a “terminal value” in a DCF analyses is only a mathematical shortcut.<sup>70</sup>

- Mr. Watkins’ cost of capital or discount rates that he developed purportedly from the Township’s capital costs and from Aqua’s capital costs are not reasonable and not in accordance with accepted valuation practice used for market valuation purposes as explained at pages 6 through 8 of Aqua Statement No. 3R. Utility Commission authorized returns on equity are not appropriate for use in the Income Approach for fair market value purposes. Aqua witness Walker was not aware of any appraisals that have used authorized returns on equity as being appropriate for use in the Income Approach. Since Mr. Watkins’ cost of capital or discount rates are not in accordance with accepted valuation practice used for market valuation purposes, the results of his DCF calculations are meaningless.<sup>71</sup>

In further response to the testimony of Mr. Watkins, Mr. Walker explained that Mr. Watkins’ overall recommendation suggests a multiple of Original Cost New property, plant and equipment of 0.80x when the known and measurable market multiples of the Comparable Group’s property, plant and equipment are 1.08x to 1.44x their Original Cost New at the same point in time. Mr. Watkins provided no evidence to support the notion that the Wastewater System’s assets are worth 26% to 44% less than similar assets of the Comparable Group based on their Original Cost New property, plant and equipment.<sup>72</sup>

Further, Mr. Watkins’ overall recommendation suggests a multiple of Original Cost Less Depreciation property, plant and equipment of 1.10x when the known and measurable market multiples of the Comparable Group’s property, plant and equipment are 1.47x to 1.96x their Original Cost Less Depreciation at the same point in time. Mr. Watkins provided no evidence to support the notion the Wastewater System’s assets are worth 25% to 43% less than similar assets of the Comparable Group based on their Original Cost Less Depreciation property, plant and

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<sup>70</sup> Aqua St. No. 3R at 9, line 6, through 12, line 12.

<sup>71</sup> Aqua St. No. 3R at 6, line 1, through 9 line 5, and 12, line 20, through 13, line 18.

<sup>72</sup> Aqua St. No. 3R at 14, line 20, through 15, line 6.



equipment.<sup>73</sup>

### 3. Conclusion – Section 1329 Fair Market Valuation

As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$75,100,000, being the lesser of the negotiated purchase price of \$75,100,000 and the average of the UVE appraisals of \$78,494,000. The OCA’s criticisms of the appraisals should be given no weight.

#### C. Aqua’s 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. 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 was included as Exhibit G to Aqua Exhibit No. 1, proposes to implement the Limerick rates in effect at closing (inclusive of any approved surcharge or cost pass-through). The tariff, however, 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.

Along with its proposed tariff implementing current Limerick rates, Aqua presented a rate stabilization plan in Exhibit D to Aqua Statement No. 1. Through Exhibit D, the Company proposes to split the Section 1329 ratemaking rate base of \$75,100,000 into two parts: (1) an

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<sup>73</sup> Aqua St. No. 3R at 15, lines 7 through 13.

initial ratemaking rate base of \$60,000,000 and (2) a \$15,100,000 Regulatory Asset.<sup>74</sup>

As explained in the Proposed Findings of Fact, Section II, *supra*, the Regulatory Asset will be gradually transferred into rate base over approximately 7.2 years. The portion of the regulatory asset recognized as rate base would then be amortized into income at the same rate as the rate base, which would begin after the first base rate case. Subsequent additions to the regulatory asset would not begin amortizing until the next base rate case.

The rate stabilization plan is based on extremely conservative assumptions (a continuing rate for Limerick customers of \$70 per month and no further growth in customers beyond Year 10). Even under these assumptions, a “cross-over” occurs, with the rate impact on existing customers “going the other way,” *i.e.*, *benefitting existing customers*, as early as Year 15/16. With less conservative assumptions (additional customer growth and additional rate increases to Limerick customers within the first ten years), the “cross-over” point, *i.e.*, *the benefit to existing customers*, easily occurs by Year 10 – within the Year 7/8 time frame.

Ultimately, any rate stabilization plan would have to be reviewed for reasonableness and approved in a base rate case. The Company believes, however, that the proposal reflected in Exhibit D is a reasonable approach to address rate stabilization for its customers.

1. **The Rate Stabilization Plan Testimony of I&E Witness Maurer and OCA Witness Everette Should Be Given No Weight**

I&E witness Maurer and OCA witness Everette oppose the use of a regulatory asset as a mechanism in the rate stabilization plan. They view its use as atypical and inconsistent with established rate making principles and in violation of Section 1329. Their opposition should be denied.

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<sup>74</sup> Aqua St. No. 1 at 13, lines 14 through 16.

Regulatory assets have a great deal of flexibility in their use and, in this case, the Company's proposal is reasonable and permitted. While typically used as a recovery mechanism of expenses over future periods, regulatory assets have been included as a component of rate base. The Company, for example, has regulatory assets in rate base today, such as its FAS109 – Unfunded Deferred Income Taxes and FAS 143 – Net Negative Salvage.<sup>75</sup>

If the rate stabilization plan were approved in its next base rate case, Aqua would record a regulatory asset of \$15,100,000 on its balance sheet (not an “unspecified” account off the balance sheet as Ms. Maurer contends). The remaining portion, \$60,000,000, would be recorded as net utility plant and Aqua would begin depreciating it upon closing. The Company would forgo the carry cost on the unamortized portion of the regulatory asset until such time as the portion is recognized in a subsequent base rate case and amortization on it begins.<sup>76</sup>

The Company's rate stabilization plan results in a delayed recovery of the portion of the ratemaking rate base attributed to the regulatory asset. The delay in rate base recognition benefits customers. As set forth above, with reasonable assumptions, a rate benefit for existing customers easily occurs by Year 10.<sup>77</sup>

Finally, the proposed regulatory asset is not contrary to Section 1329 as suggested by Ms. Maurer. The regulatory asset is simply a proposal. Any further questions about it can be fully vetted in Aqua's next base rate case.<sup>78</sup>

## **2. Conclusion – Rate Stabilization Plan**

Aqua's rate stabilization plan, including the use of a regulatory asset for a portion of the \$75,100,000 ratemaking rate base is permitted, reasonable, and, ultimately, beneficial to customers. The plan will be fully vetted and reviewed in the Company's next base rate case.

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<sup>75</sup> Aqua St. No. 1R at 4, lines 4 through 10, and 17, lines 9 through 13.

<sup>76</sup> Aqua St. No. 1R at 17, lines 13 through 20.

<sup>77</sup> Aqua St. No. 1R at 4, line 11, through 5, line 2.

<sup>78</sup> Aqua St. No. 1R at 17, lines 21 through 23.

The Commission should accept Aqua's rate stabilization plan and deny the opposition of Ms. Maurer and Ms. Everette.

**D. Other Approval, Certificates, Registrations and Relief, If Any, Under the Code**

In the Wherefore Clause of its Application, Aqua asks the Commission to, *inter alia*, issue certificates of public convenience authorizing the acquisition, an Order approving the Application that includes ratemaking rate base of \$75,100,000 and such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the Limerick wastewater system assets. Aqua's request for all required approvals includes Certificates of Filing, to the extent required by Section 507,<sup>79</sup> for the APA and the assignments of contracts to be entered into between Aqua and Limerick at closing. The APA was included as Exhibit C to the Application<sup>80</sup> and assignments of contracts are discussed in Paragraph 20 of the Application.<sup>81</sup>

In *New Garden*, I&E filed a petition for reconsideration claiming that additional approvals, other than those expressly set forth in the Commission's Opinion and Order entered June 29, 2017, including Certificates of Filing under Section 507 for the APA and contract assignments between Aqua and New Garden Township, were required. Aqua opposed the I&E petition. A Commission decision on the I&E petition has not yet been issued. To avoid similar controversy here, Aqua asks that the Commission acknowledge, in its Opinion and Order, issuance of all required approvals, certificates, registrations and relief, including, Certificates of Filing, to the extent required under Section 507, for the APA and contract assignments between Aqua and Limerick Township.

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<sup>79</sup> 66 Pa. C.S. § 507.

<sup>80</sup> Aqua Exhibit No. 1, Application, Exhibit C.

<sup>81</sup> Aqua Exhibit No. 1, Application ¶ 20 and Confidential Exhibit F.

## 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 Limerick Wastewater System and Initiate Wastewater Service in Limerick 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 Limerick wastewater system assets and to initiate wastewater service in Limerick Township.

**Public Interest and Affirmative Public Benefit**

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

13. Aqua's acquisition of the Limerick wastewater system and initiation of wastewater service in Limerick 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. Limerick engaged the services of HRG 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 \$80,098,000 (rounded). HRG’s fair market value appraisal is \$76,890,000. The average of the two is \$78,494,000. As directed by the General Assembly in Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$75,100,000, being the lesser of the negotiated purchase price of \$75,100,000 and the average of \$78,494,000.

#### **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. 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.



24. Aqua's rate stabilization plan, which is included as Exhibit D to Aqua Statement No. 1, proposes to split the Section 1329 ratemaking rate base of \$75,100,000 into two parts two parts: (1) a ratemaking initial rate base of \$60,000,000 and (2) a \$15,100,000 regulatory asset.

25. The regulatory asset will be gradually transferred into rate base over approximately 7.2 years. The portion of the regulatory asset recognized as rate base would then be amortized into income at the same rate as the rate base, which would begin after the first base rate case. Subsequent additions to the regulatory asset would not begin amortizing until the next base rate case.

26. The proposed rate stabilization plan accomplishes gradual rate stabilization, while also stabilizing earnings over the same period of time for the Limerick system and its growing customer base.

27. Ultimately, any rate stabilization plan would have to be reviewed for reasonableness and approved in a base rate case. However, the proposal reflected in Exhibit D is a reasonable approach to address rate stabilization for Aqua's customers.

## **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 Limerick Township situated within a portion of Limerick Township, Montgomery County, Pennsylvania; and (b) to begin to offer, render, furnish or supply wastewater service to the public in a portion of Limerick Township, Montgomery County, Pennsylvania.
3. That, pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, the ratemaking rate base of the Limerick wastewater system assets is \$75,100,000.
4. That all such other approvals, certificates, registrations and relief as may be required under the Public Utility Code for Aqua to acquire the Limerick wastewater system assets are hereby issued.

## 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 Limerick; 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, Limerick'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 Limerick system is \$75,100,000 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 

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*Counsel for Aqua Pennsylvania Wastewater, Inc.*

Date: August 11, 2017

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**Application of Aqua Pennsylvania : Docket No. A-2017-2605434**  
**Wastewater, Inc. Pursuant to Sections :**  
**1102 and 1329 of the Public Utility Code :**  
**for Approval of its Acquisition of the :**  
**Wastewater System Assets of Limerick :**  
**Township :**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 11<sup>th</sup> day of August, 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  
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Pennsylvania Public Utility Commission  
P.O. Box 3265  
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