



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 5, 2017

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

Re: Application of Pennsylvania-American Water Company - Wastewater under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §1329, for approval of the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of The Municipal Authority of the City of McKeesport's assets related to its wastewater collection and treatment system and other related transactions;
Docket No. A-2017-2606103

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply Brief** in the above-captioned proceeding.

Copies are being served as evidenced in the attached Certificate of Service. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Miller

Prosecutor

Bureau of Investigation and Enforcement
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GLM/snc
Enclosure

cc: ALJ Mark A. Hoyer
ALJ Mary D. Long
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Pennsylvania-	:	
American Water Company-	:	
Wastewater under Section 1329 of the	:	
Public Utility Code for Approval of	:	Docket No. A-2017-2606103
the use for ratemaking purposes of	:	
the lesser of the fair market value or	:	
the negotiated purchase price of The	:	
Municipal Authority of the City of	:	
McKeesport's assets related to its	:	
wastewater collection and treatment	:	
system and other related transactions	:	
	:	

**REPLY BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: September 5, 2017

TABLE OF CITATIONS

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I. INTRODUCTION

A. Procedural History and Overview of the Transaction

The Bureau of Investigation & Enforcement (“I&E”) incorporates, by reference, the Introduction and Overview of the Proposed Transaction sections contained in its timely-filed Main Brief of August 22, 2017.¹ By way of supplemental information, alongside I&E, Pennsylvania-American Water Company, Inc. (“PAWC”), the Municipal Authority of the City of McKeesport's (“MACM”), and the Office of Consumer Advocate (“OCA”) also filed their Main Briefs on August 22, 2017. Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502² of the Pennsylvania Public Utility Commission (“Commission”) Regulations, I&E submits this Reply Brief.

II. STATEMENT OF QUESTIONS PRESENTED

Question: Should PAWC’s Application be approved only upon the condition that it be required to perform the cost of service study recommended by I&E?

Suggested Answer: Yes. As filed, PAWC’s Application may expose its existing customers to an undetermined, but potentially substantial rate impact without preserving the Commission’s ability to review and, if appropriate, mitigate that impact in a future base rate case. To ensure that this transaction is in the public interest, the Commission should condition its approval on PAWC undertaking a cost of service study that (1) separates capital expenses and operating costs for MACM’s sanitary and storm water functions and (2) separately identifies the plant in service costs at the time that the Port

¹ I&E Main Brief, pp. 1-6.

² 52 Pa. Code §§ 5.501-5.502.

Vue system was purchased, the cost of any Port Vue plant retirements, and the cost of any Port Vue plant investment.

III. LEGAL STANDARDS

A. Burden of Proof

As I&E explained in its Main Brief, PAWC bears the burden of proving that it is entitled to receive the approvals being sought in the Application.³ PAWC's burden of proof must be satisfied "by establishing a preponderance of evidence which is substantial and legally credible."⁴ In order to meet its burden of proof, PAWC must "present evidence more convincing, by even the smallest amount, than that presented by any opposing party."⁵ To satisfy its burden, PAWC must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved.⁶ Specific to this case, PAWC has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 1329 of the Public Utility Code⁷ ("Code").

B. Legal Standard for Section 1102 Approval

The standards for the issuance of a Certificate of Public Convenience, which PAWC seeks in this proceeding, are set forth in Sections 1102 and 1103 of the Code. A Certificate of Public Convenience shall be granted "only if the commission shall find or

³ 66 Pa. C.S. § 332(a).

⁴ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁵ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁶ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. 1990).

⁷ 66 Pa. C.S. § 507 ("Section 507"); 66 Pa. C.S. § 1102 ("Section 1102"); 66 Pa. C.S. § 1103 ("Section 1103"); 66 Pa. C.S. § 1329 ("Section 1329").

determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”⁸ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁹ Additionally, Section 1103 requires PAWC to prove that it is technically, legally, and financially fit to own and operate the assets it will acquire from MACM.¹⁰ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”¹¹ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹² In this case, I&E avers that only conditional approval of PAWC’s Application is warranted.

C. Legal Standard for Section 1329 Approval

Section 1329 of the Public Utility Code is a newly enacted statute which prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for

⁸ 66 Pa. C.S. § 1103(a).

⁹ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

¹⁰ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

¹¹ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

¹² 66 Pa. C.S. § 1103(a).

ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts ("UVEs"). Notably, a Commission Order approving a transaction under Section 1329 is permitted to include "[a]dditional conditions of approval."¹³

D. Legal Standard for Section 507 Approval

PAWC's request to assume enumerated municipal contracts currently held by MACM is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.

¹³ 66 Pa. C.S. § 1329 (d)(3)(ii); *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*, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017) ("Aqua/New Garden Section 1329 Case").

IV. SUMMARY OF THE ARGUMENT

I&E incorporates the Summary of the Argument section of its Main Brief.¹⁴ PAWC's Application, as filed, is not in the public interest because it would expose PAWC's existing customers to an undetermined, but potentially substantial rate impact. The uncertain impact is compounded by the fact that PAWC's Application does not provide the Commission with an avenue to review and, if appropriate, mitigate this uncertain impact in a future base rate case. To ensure that this transaction is in the public interest, I&E recommends that the Commission condition its approval on PAWC undertaking a cost of service study that (1) separates capital expenses and operating costs for MACM's sanitary and storm water functions and (2) separately identifies the plant in service costs at the time that the Port Vue system was purchased, the cost of any Port-Vue plant retirements, and the cost of any Port Vue plant investment. Although PAWC opposes I&E's cost of service study condition as being unnecessary, costly, and unreasonable, these arguments are contradicted by the record and contrary to weight of the evidence in this proceeding; therefore, they should be rejected.

Additionally, this case underscores the need for the scope of review of UVEs' fair market values appraisals that the Commission adopted in the first Section 1329 case, filed by Aqua Pennsylvania Wastewater, Inc. to acquire the New Garden township wastewater system ("*Aqua/New Garden*").¹⁵ In *Aqua/New Garden*, the Commission determined that it retained the authority "to review and analyze the UVE evaluations to determine

¹⁴ I&E Main Brief, pp. 10-11.

¹⁵ Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061 (Order entered June 29, 2017).

compliance with the USPAP standards and whether the cost, market, and income approaches were accurately applied to the UVEs' analyses."¹⁶ Ultimately, the Commission held that Section 1329 permits the Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the UVEs.¹⁷ Despite *Aqua/NewGarden's* answer to the question of scope of review in Section 1329 proceedings, PAWC and MACM have attempted to circumvent it by imposing their own unsupported scopes of review. As I&E explains, their combined arguments are untimely, procedurally inappropriate, have already been rejected *Aqua/New Garden*. Accordingly, these arguments must be rejected here, too.

The necessity and importance of the *Aqua/New Garden* scope of review is highlighted in the fundamental flaws that I&E identified in MACM's fair market value appraisal performed by Herbert, Rowland & Grubic, Inc. ("HRG").¹⁸ These flaws included (1) HRG's unsupported going value adjustment analysis, which artificially inflated the value of the MACM assets, (2) HRG's reliance upon an outdated edition of the Uniform Standards of Professional Appraisal Practice ("USPAP"); and (3) HRG's market approach that disregarded the appraiser's own articulated standard. Although I&E does not dispute the ratemaking rate base value that PAWC proposes, I&E avers that this proceeding provides the Commission with an opportunity to reject, and where possible, to deter, appraisal practices that artificially inflate fair market value and offend the public interest.

¹⁶ *Aqua/New Garden* Section 1329 Case, Docket No. A-2016-2580061, p. 34 (Order entered June 29, 2017).

¹⁷ *Id.* at 35.

¹⁸ I&E Main Brief, pp. 31-40.

V. ARGUMENT

A. Section 1102 Approvals

1. Public Benefits

I&E's Main Brief recognized the Commission's obligation to consider the benefits and detriments of this acquisition "with respect to the impact on all affected parties,"¹⁹ including PAWC's existing customers. In acknowledging that obligation, I&E pointed out that PAWC's Application provides substantial public benefits for MACM customers. These benefits included, but are not limited to, improvement of municipal finances in the MACM service area, the numerous customer service and service benefits that MACM customers will receive as PAWC customers, and PAWC's access to capital that will better facilitate improvements to the MACM system.²⁰

In I&E's view, the most important benefit is PAWC's commitment to address the MACM system's environmental compliance issues. I&E agrees with MACM that that PAWC's plan to bring the MACM system into environmental compliance operates not just as a benefit to MACM, but also to the general public.²¹ This benefits the public because, as MACM indicates, environmental contamination and pollution caused by the MACM is not confined to the strict boundaries of the service area.²² As MACM rightly points out, Pennsylvania's Constitution recognizes that environmental

¹⁹ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

²⁰ I&E Main Brief, pp. 13-14.

²¹ MACM Main Brief, pp. 13-14.

²² *Id.*

protection measures benefit to all Pennsylvanians, and that Pennsylvanians should have access to pure water.²³

The record in this case demonstrates that MACM's system had the following compliance issues pending with the Pennsylvania Department of Environmental Protection ("Pa. DEP") and/or the Allegheny County Health Department: (1) McKeesport Construction-Related Dry-Weather Overflows; (2) Duquesne Long Term control Plan ("LTCP"); (3) Dravosburg LTCP; (4) Dravosburg Mine Discharges; (5) Dravosburg Nine Minimum Controls Plan ("NMCP"); (6) Port Vue LTCP; (7) Port Vue Grade 4 and 5 Defects; and (8) Port Vue NMCP.²⁴ As an example of the reality of these compliance issues, 53 residential customers in the Dravosburg borough portion of the MACM service area are not connected to MACM's system and sanitary-only flows from these homes are currently discharged untreated into mine holes.²⁵ The record also indicates that PAWC has committed to undertaking numerous projects necessary to facilitate environmental compliance measures in the MACM system, and the estimated costs of those projects is \$37,066,723.²⁶ Accordingly, I&E agrees that PAWC's commitment to bring the MACM system into environmental compliance is an important public benefit.

Despite the numerous MACM benefits, and the important public benefits that the acquisition may produce, the Commission still must consider the benefits of the

²³ MACM Main Brief, pp. 13-14; Pa. Const. Art. 1, § 27.

²⁴ I&E Ex. No. 2, Sch. 2, p. 1 of 19.

²⁵ I&E Ex. No. 2, Sch. 2, p. 7 of 19.

²⁶ I&E St. No. 2, p. 12.

transaction as they pertain to PAWC's existing customers. As PAWC's Main Brief correctly notes "[a]n acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of the transaction."²⁷ In applying the *CMV Sewage* standard that PAWC highlights, the Commission must be advised of the fact that the adverse impact of the transaction upon PAWC's customers will not be fully known until PAWC's next base rate case.²⁸

I&E previously argued that the benefits that PAWC has identified for its existing customers are either not actual benefits or they are tentative and generalized benefits.²⁹ I&E maintains its stated position and continues to disagree with PAWC's claim that because existing customers' rates will not immediately increase as a result of the acquisition operates as a public benefit.³⁰ Instead, this is more of a detriment than a benefit because the lack of an immediate impact will be short-lived. PAWC's customers will be impacted by a substantial rate increase if, or when, MACM's \$162 million ratemaking rate base is approved.³¹

I&E recognizes that PAWC expects that the acquisition will mitigate the level of net plant investment per customer by adding more customers to share future infrastructure investment costs.³² This will eventually help PAWC maintain reasonable rates for customers in the future because of the expansion of its customers base.³³

²⁷ PAWC Main Brief, p. 16, quoting *Application of CMV Sewage Co., Inc.*, 2008 Pa. PUC LEXIS 950 ("CMV Sewage").

²⁸ I&E St. No. 2, pp. 7-8.

²⁹ I&E Main Brief, pp. 14-16.

³⁰ MACM Main Brief, p. 28.

³¹ I&E St. No. 2, pp. 7-8.

³² *Id.* at pp. 17-18.

³³ PAWC Application, Appendix A-14; PAWC St. No. 1, pp. 17-18; PAWC St. No. 4, pp. 8-9.

Although I&E does not dispute the value of these benefits to existing customers, they are tentative, unquantified, and not guaranteed to materialize in the foreseeable future.³⁴ The speculative nature of the benefits for existing customers stands in stark contrast to the fact that there will certainly be a measurable rate impact for PAWC's customers in its next base rate case if the MACM rate base is established at \$162 million in this case. This disparity is only further exacerbated by the fact that the actual rate impact of this transaction cannot be reasonably predicted.³⁵ Accordingly, the public interest requires that if the Commission approves PAWC's Application, it must ensure that a mechanism exists to measure the true impact of this transaction and to preserve all future ratemaking options for when the impact is known. For this reason, and as more thoroughly explained below, I&E recommends that the Commission approve PAWC's Application conditionally.

2. Cost of Service Studies

As I&E indicated in its Main Brief,³⁶ in order to protect ratepayers, PAWC should be required to provide a separate cost of service study for the MACM system that separates capital expenses and operating costs for sanitary and storm water functions. Additionally, I&E recommends that Port Vue-specific plant costs of the MACM system be identified separately within the overall MACM cost of service study. The evidence in this proceeding supports the need for these conditions to be imposed for four reasons: (1) the uncertain rate impact upon PAWC's customers; (2) MACM's status as a combined

³⁴ I&E Main Brief, pp. 14-16.

³⁵ PAWC Main Brief, p. 30.

³⁶ I&E Main Brief, p. 16.

sewer overflow system implicates unique and additional costs; (3) recognition of Commission precedent; and (4) the circumstances surrounding MACM's acquisition of the Port Vue system and the substantial environmental remediation costs.³⁷ The OCA supports I&E's cost of service recommendation as to the MACM system,³⁸ but PAWC and MACM oppose I&E's recommendation.

PAWC seeks to evade the cost of service condition by arguing that it would not be reasonable in this case for the following reasons: (1) the Commission should not necessarily order a cost of service study for every acquisition; (2) a cost of service study is not necessary since the Legislature amended the Code to clarify that combined sewer overflow service is jurisdictional service; (3) the cost of these studies is expensive for ratepayers; (4) that the cost of service study recommendation is at odds with single tariff pricing; and (5) tracking Port Vue costs would be burdensome.³⁹ MACM offers no argument of its own, but it simply seeks to adopt PAWC's opposition to the cost of service condition for the first time.⁴⁰ Notably, MACM made no mention of, took no position on, and produced no evidence regarding the I&E's cost of service study recommendations during the evidentiary portion of this case; therefore, MACM has no underlying basis for adopting PAWC's position now. Regardless, as I&E will explain below, PAWC's arguments against I&E's cost of service conditions are without merit and they should be rejected.

³⁷ Id. at pp. 16-30.

³⁸ OCA Main Brief, p. 26.

³⁹ PAWC Main Brief, pp. 32-34.

⁴⁰ MACM Main Brief, p. 19.

First, PAWC's argument that the Commission should not necessarily order a cost of service study for every acquisition is misplaced because I&E has not made any recommendation beyond the scope of this case. Instead, I&E has already explained that the need for a cost of service study should be assessed on a case-by-case basis, and that I&E is only recommending that the cost of service study be provided in this proceeding.⁴¹ Accordingly, PAWC's argument against a universal cost of service requirement in Section 1329 proceedings is not responsive to I&E's position and it should be rejected. Similarly, PAWC's second argument, which appears to assert that the Code's recent classification of sewer overflow service as jurisdictional somehow negates the need for a cost of service study, is also misplaced. As I&E previously explained, the Code provision that PAWC is relying upon simply amended the definition of 'wastewater' to include "storm water which is or will become mixed with waters... within a combined sewer system."⁴² Despite the recent amendment, the Code in no way establishes a basis for how storm water costs are allocated or recovered from ratepayers.⁴³ Accordingly, as the Code fails to address storm water cost allocation, PAWC cannot rely upon it to support the proposition that a cost of service study is not necessary in this case.

I&E's Main Brief has already addressed PAWC's third claim, alleging that cost of service studies are too expensive for ratepayers.⁴⁴ As explained, even at PAWC's estimated cost of \$75,000, this amount is not too costly when viewed in comparison to

⁴¹ I&E St. No. 2-SR, p. 16.

⁴² 66 Pa. C.S. § 102; I&E St. No. 2, p. 22.

⁴³ I&E St. No. 2, p. 22.

⁴⁴ I&E Main Brief, p. 20.

the estimated \$1.11 - \$1.31 million of transaction and closing costs that PAWC anticipates will result from this transaction.⁴⁵ As I&E has averred, and PAWC has not disputed, the benefit to ratepayers from the cost of service study to ensure that ratemaking options are preserved in future rate cases is far greater than the high transaction and closing costs that do not appear to have any ratepayer benefit.⁴⁶ Furthermore, although PAWC continues to allege that paying for the cost of service study is unnecessary since I&E can simply request “cost of service information through discovery during a rate case,”⁴⁷ this position is unsupported. On the contrary, as I&E witness Cline explained, there is no guarantee that this information would be available through the discovery process.⁴⁸ Importantly, without this cost of service study, the information may not be available in the form necessary to properly allocate costs and determine just and reasonable rates in PAWC’s next base rate case, irrespective of the discovery process. For this reason, PAWC’s arguments regarding the cost associated with preparing the cost of service study are unsupported.

Likewise, I&E has already addressed PAWC’s fourth argument regarding single tariff pricing. As previously explained, cost of service studies are compatible with single tariff pricing because they allow the parties and the Commission to make an informed decision of when single tariff pricing is appropriate.⁴⁹ The studies simply serve as guides to help ensure that certain customers and customer classes are not allocated an excessive

⁴⁵ PAWC St. No. 4-R, pp. 11-12.

⁴⁶ I&E St. No. 2-SR, p. 15.

⁴⁷ PAWC Main Brief, p. 34.

⁴⁸ I&E St. No. 2-SR, p. 16.

⁴⁹ I&E St. No. 2-SR, p. 16; I&E Main Brief, p. 20.

level of costs while ensuring that rates are not merged into single tariff pricing too quickly.⁵⁰ Accordingly, PAWC's arguments on these bases are without merit and they should be rejected.

Finally, although PAWC concludes that tracking Port Vue costs would be burdensome, it has not provided any evidence to support that conclusion. Instead, PAWC argues that Port Vue is part of the MACM system and there is no rational basis to believe that the Commission would entertain a separate rate zone for such a small portion of the system.⁵¹ The problem with PAWC's contention here is that it is not responsive to I&E's recommendation. I&E has never opined that the Port Vue area should be a separate rate zone. Instead, I&E simply indicated that the segregation of Port Vue-specific plant in service costs is necessary to provide parties with an opportunity to assess these costs because of the manner in which MACM acquired Port Vue and the substantial environmental remediation that Port Vue requires. Taking these factors into consideration, it is important to segregate the Port Vue costs as recommended so that parties and the Commission can review these costs and preserve all ratemaking options for assigning those costs in the future.

Despite PAWC's arguments, it has not refuted the need for the cost of service study recommended by I&E. Additionally, PAWC has ignored the fact that absent the cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing PAWC customers and to provide any appropriate relief to existing customers,

⁵⁰ Id.

⁵¹ PAWC Main Brief, p. 34.

could be compromised.⁵² Accordingly, the evidence in this proceeding supports I&E's recommendation that the Commission should condition its approval on PAWC undertaking a cost of service study that (1) separates capital expenses and operating costs for MACM's sanitary and storm water functions and (2) that separately identifies the plant in service costs at the time that the Port Vue system was purchased, the cost of any Port-Vue plant retirements, and the cost of any Port Vue plant investment.

3. Section 1329 Approvals

1. Scope of Review

This case underscores the need for the scope of review of UVEs' fair market values appraisals that the Commission sanctioned in the first Section 1329 proceeding. In the *Aqua/New Garden* case, the Commission expressly considered and answered the question of whether parties are permitted to challenge UVEs fair market values in Section 1329 proceedings. The Commission concluded that the appropriate scope of review is driven by not only Section 1329, but also by Sections 505 and 1103(b) of the Code. Combined, Sections 505 and 1103 provided the Commission with the authority to conduct an inquiry into the value of the assets to be acquired and to "make such inquiries, physical examinations, valuations, and investigations. . ." as deemed necessary to render a finding or determination.⁵³

The Commission determined that it retained the authority "to review and analyze the UVE evaluations to determine compliance with the USPAP standards and whether the

⁵² I&E St. No. 2-SR, p. 4.

⁵³ *Aqua/New Garden* Section 1329 Case, Docket No. A-2016-2580061, p. 34 (Order entered June 29, 2017).

cost, market, and income approaches were accurately applied to the UVEs' analyses."⁵⁴

The Commission determined that nothing in Section 1329 abrogated or repealed Section 505 and 1103, and that these Sections could act in harmony with Section 1329.⁵⁵

Ultimately, the Commission held that Section 1329 permits the Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the UVEs.⁵⁶

Importantly, in defining the scope of review for UVE appraisals, the Commission has previously rejected many of the identical arguments that PAWC and MACM made in this proceeding. Their untimely and procedurally inappropriate attempts to circumvent *Aqua/New Garden* must be rejected. More specifically, Aqua objected to the finding that the Commission and other parties may review and analyze the fair market value appraisals of the UVEs to ensure that the public interest is protected. Aqua argued against parties' review of UVE appraisals by asserting that that the General Assembly intended to avoid the review, analysis, debate and traditional litigation of the fair market appraisals and the work product of the UVEs.⁵⁷ Of special import here is the fact that the Commission has already considered and rejected these arguments in determining the appropriate scope of review in Section 1329 proceedings.

⁵⁴ Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 34 (Order entered June 29, 2017).

⁵⁵ Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 35 (Order entered June 29, 2017).

⁵⁶ Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, Aqua Exceptions, pp. 25-26.

⁵⁷ Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, Aqua Exceptions, p. 26.

MACM's Untimely Argument Asserts an Incorrect Scope of Review Based Upon an Incorrect Interpretation of *Aqua/New Garden*

During the entire evidentiary portion of this proceeding, MACM failed to make any argument regarding the scope of review of this case.⁵⁸ Now, for the first time, in its Main Brief, MACM argues that Section 1329 does not allow for I&E or the OCA's judgment regarding appraisal value, and allows only for assessment of compliance with USPAP standards and verifying accuracy.⁵⁹ Although MACM's argument is misplaced, as explained below, it is also untimely. To the extent that MACM intended to advance this argument, the appropriate time to assert it was during the evidentiary hearing when both I&E and OCA successfully moved for the admission of their written testimony into the evidentiary record. The issue of scope of review was properly before the ALJs then, because the testimony that I&E moved to admit raised questions about HRG's reliance upon a 2015 Industrial Appraisal Company appraisal,⁶⁰ and OCA's direct and surrebuttal testimony of witnesses Everette and Watkins recommended numerous financial adjustments to HRG's appraisal.⁶¹ Presumably, these pieces of testimony exceed the scope of review that MACM seeks to impose.

Yet, counsel for MACM made no motion to strike these testimonies at any time during the course of the proceeding. Additionally, counsel for MACM failed to object to

⁵⁸ MACM was not a party to the Stipulation of the Parties Regarding Objections and Preservation of Issues that PAWC, I&E, and OCA entered into at the beginning of this proceeding. As explained on page 2 of I&E's Main Brief, the Stipulation memorialized these parties' agreement to withhold objections and arguments regarding the proper scope of Section 1329 proceedings, including the proper scope of discovery and the Commission's scope and standard of review in such proceedings. Instead, these parties agreed to reassert their positions as represented in the Aqua case.

⁵⁹ MACM Main Brief, pp. 22-23.

⁶⁰ I&E St. No. 1, p. 8.

⁶¹ OCA St. No. 1; OCA St. No. 2; OCA St. No. 1S; OCA St. No. 2S.

the admission of these testimonies into the record at the evidentiary hearing, and instead remained silent as these testimonies were admitted into the record.⁶² Accordingly, counsel for MACM's inaction at the evidentiary hearing cannot now be cured during the briefing process, and MACM's untimely attempt to limit the scope of this proceeding should be denied.

Aside from being untimely, MACM's scope of review argument relies upon an incorrect interpretation of *Aqua/New Garden*. Despite the clear language of *Aqua/New Garden*, MACM somehow contrives an "abuse of professional judgment standard" as the appropriate scope of review.⁶³ According to MACM, the professional judgment standard encompasses a review of appraisals solely for determining "compliance with USPAP and review for accuracy-factual mistakes or other clear errors in the calculations that have a significant effect on the resulting appraisal."⁶⁴ I&E submits that the "professional judgment standard" was never articulated in *Aqua/New Garden*, and it is completely unclear how MACM could possibly extract this new standard of review from the *Aqua/New Garden* case. MACM's proposed "professional judgment standard" ignores the Commission's investigative and valuation authority as conveyed under Sections 505 and 1103 and is contrary to the Commission's determination in *Aqua/New Garden*.

⁶² Tr. at 135-136, 139, 159.

⁶³ MACM Main Brief, p. 23.

⁶⁴ Id. I&E notes that MACM provides no criteria for determining whether an error rises to the level of having a "significant effect" on the appraisal.

As explained above, the standard MACM seeks to impose was already rejected by the Commission in favor of the scope of review that permits parties to develop a record pertaining to the review and analysis of the UVEs' appraisal. Additionally, and as further evidenced by I&E and OCA's review and analysis of HRG's appraisal in this proceeding, investigation into UVE appraisals is necessary to protect the public interest. This proceeding serves as confirmation that the scope of review established in *Aqua/New Garden* is necessary to achieve that end. Accordingly, MACM's untimely and unsupported argument seeking to limit the scope of this proceeding is without merit and it should be rejected.

PAWC's Requested Reconsideration of *Aqua/New Garden* Fails to Assert Facts that Warrant Reconsideration

PAWC asks the Commission to reconsider the scope of review it established in *Aqua/New Garden*,⁶⁵ but it fails to assert any viable grounds for reconsideration. At the outset, I&E avers that it is procedurally inappropriate for PAWC to ask the ALJs to reconsider the Commission's *Aqua/New Garden* decision in this proceeding. Regardless, I&E submits that PAWC's request is baseless because, even assuming, *arguendo*, that the procedural defect was lifted, PAWC's argument fails the requisite standard for reconsideration. Reconsideration is not "a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them."⁶⁶ On the contrary, *Duick* is clear that reconsideration requires that a petition (or here, a

⁶⁵ PAWC Main Brief, p. 36.

⁶⁶ *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982) (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm'n*, 179 A. 850, 854 (Pa. Super. 1935)).

‘request’) identify “new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.”⁶⁷

In this case, PAWC fails the *Duick* standard because it simply seeks to resurrect an argument that the Commission previously rejected in *Aqua/New Garden*. In doing so, PAWC fails to offer a new and novel argument or considerations which appear to have been overlooked or not addressed by the Commission. Instead, PAWC merely alleges that “many issues of [Section 1329] interpretation are yet to be settled and it is appropriate for PAWC to urge the Commission to re-visit an issue at this time.”⁶⁸

More specifically, PAWC asks the Commission to adopt a much more limited scope of review that considers all appraisals that are performed by registered UVEs in accordance with Section 1329 to be deemed presumptively valid as a matter of law unless a party challenging the appraisal rebuts the presumption by clear and convincing evidence of factual error, abuse of discretion, fraud, illegality or bad faith.⁶⁹ Despite PAWC’s reassertion of this scope of review,⁷⁰ the Commission correctly rejected it in the *Aqua/New Garden* proceeding because it failed to provide the Commission with adequate oversight:

[W]e note that Aqua appears to agree with PAWC that the Commission has authority, in rare circumstances involving clear evidence of fraud, illegality or bad faith, to inquire whether the fair market value of the appraisals are valid and reliable. PAWC’s reasoning appears based, in part, on the argument that the UVEs are presumptively valid and

⁶⁷ Id. at 559 (1982).

⁶⁸ PAWC Main Brief, p. 36.

⁶⁹ Id. at 37.

⁷⁰ Although PAWC was not a party to the Aqua proceeding, it submitted an Amicus Curiae Brief asking the Commission to adopt the scope of review it again advocates here.

reasonable. However, it is unclear how such illicit actions would be uncovered without the ability of the Commission to investigate and analyze the bases of the UVE appraisals.⁷¹

Although PAWC now reasserts that same scope of review that the Commission rejected in *Aqua/New Garden*, it has failed to cure the defect identified in the Commission's prior consideration of this limited scope of review. The same hindrances that this standard would have imposed in *Aqua/New Garden* would translate to this proceeding. The evidence demonstrates that PAWC's proposed scope of review has already been expressly rejected by the Commission; therefore, reconsideration is unwarranted.

2. Challenge to Appraisals

In its Main Brief, PAWC inaccurately claims that I&E did not challenge the UVE's fair market value appraisals in this proceeding.⁷² Instead, it is only correct that I&E has not challenged the proposed ratemaking rate base, which is premised upon the purchase price of \$162 million, and not upon the average of two fair market value appraisals offered in this proceeding.⁷³ In a similar vein, MACM incorrectly claims that no party has submitted credible evidence that the UVEs abused their professional judgment in this case.⁷⁴ However, I&E has raised serious concerns regarding the methodology and applied standards of HRG's appraisal, which were clearly borne out at the evidentiary hearing in this case⁷⁵ and in I&E's Main Brief.⁷⁶

⁷¹ Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 35, footnote 6 (Order entered June 29, 2017).

⁷² PAWC Main Brief, p. 13.

⁷³ I&E Main Brief, p. 31.

⁷⁴ MACM Main Brief, p. 23.

⁷⁵ Tr. at 107-123.

⁷⁶ I&E Main Brief, pp. 31-40.

As described in more detail in I&E’s Main Brief, HRG employed an unsupported going value adjustment to its analysis, which artificially inflated the value of the MACM assets.⁷⁷ Additionally, HRG’s entire appraisal was based on an outdated edition of the Uniform Standards of Professional Appraisal Practice.⁷⁸ Furthermore, HRG’s cost approach relied upon information contained in a non-UVE’s incorrect and uncertified appraisal.⁷⁹ Finally, HRG’s market approach relied completely upon a mathematical calculation that was based entirely on unsupported assumptions and which failed to account for the condition of MACM’s assets.⁸⁰ MACM has only addressed three of these areas in its Main Brief. These areas include HRG’s market analysis, its \$17.3 million going value adjustment, and its reliance upon outdated USPAP. I&E will address these arguments respectively.

a. Unsupported Assumptions Made in HRG’s Market Approach

In its Main Brief, I&E demonstrated that HRG’s market approach contradicted the standards that it articulated for assessing market value,⁸¹ and MACM’s Main Brief did not refute these contradictions. Specifically, I&E pointed out that HRG defined market value as “the value established in a public market by exchanges between willing sellers and willing buyers not under duress.”⁸² HRG opined that in utility acquisitions, treatment facilities, ages, service areas, and physical condition are relevant considerations for

⁷⁷ I&E Main Brief, pp. 32-34.

⁷⁸ Id. at pp. 36-38.

⁷⁹ Id. at pp. 34-36.

⁸⁰ Id. at pp. 38-40.

⁸¹ I&E Main Brief, pp. 38-40.

⁸² PAWC Application, Appendix A-5, HRG Appraisal, p. 7.

potential purchasers.⁸³ According to HRG, a system that requires substantial repairs and upgrades would be less attractive and a buyer “would seek a substantial discounted purchase price for such a system.”⁸⁴ Despite HRG’s opinion regarding substantial discounts for systems that require repair and upgrades, HRG’s appraisal did not appear to contemplate such a discount for PAWC. This failure is notable because PAWC must spend approximately \$37,066,723 to bring the MACM system into compliance with the standards of the Environmental Protection Agency and with the Pa. DEP.⁸⁵ I&E submits that the need for PAWC to spend approximately \$37 million to rectify environmental compliance issues operates as a material repair or upgrade that warrants the “substantial discounts” that HRG’s opines that buyers typically demand.

Additionally, MACM attempts to support HRG’s market approach valuation of \$190,130,000 by pointing out that only one prior Section 1329 transaction was available as part of HRG’s analysis. According to MACM, the prior Aqua/New Garden transaction resulted in a per customer cost of \$14,008, which MACM uses to attempt to demonstrate the reasonableness of HRG’s \$8,661 per customer cost in this proceeding.⁸⁶ I&E avers that this comparison is irrelevant and it fails to overcome the fact that HRG’s market analysis was based only on an uninformed equation produced by an analysis of utility systems that are not comparable to the MACM system. As I&E argued in its Main Brief,⁸⁷ HRG failed to consider the condition of the systems of the five “comparable” sales it relied upon. This

⁸³ PAWC Application, Appendix A-5, HRG Appraisal, p. 48.

⁸⁴ PAWC Application, Appendix A-5, HRG Appraisal, p. 8.

⁸⁵ I&E St. No. 2, p. 12; I&E Ex. No. 2, Sch. 2.

⁸⁶ MACM Main Brief, pp. 27-28.

⁸⁷ I&E Main Brief, p. 39.

is evident in that its appraiser, Ms. Vicari, never physically inspected the MACM system or the five systems offered as comparable other than an unidentified portion of New Cumberland Borough system.⁸⁸ Furthermore, Ms. Vicari was also uncertain of whether any of the five referenced systems had environmental compliance issues.⁸⁹ Considering these facts, Ms. Vicari cannot compare the condition of the five previously acquired system to the MACM system. Accordingly, it remains unclear upon what bases the prior acquisition and the MACM transaction are comparable and premising MACM's market value upon the average of these acquisition results in an unsupported valuation. MACM's reliance upon the Aqua/New Garden transaction is misplaced and only serves to highlight HRG's flawed market approach valuation.

b. HRG's Selective and Unsupported Going Value Adjustment

MACM argues against the rejection of the \$17.3 million going value add-on that HRG employed in both the cost and income approaches of its fair market value appraisal. In support of its position, MACM alleges that to comply with USPAP, and in order for the Commission to avoid "complete guesswork" a going value add-on must be included in the cost approach.⁹⁰ Although MACM does not make the same claim regarding the income approach, it nonetheless avers that the \$17.3 million going value add-on is appropriate in that approach too, so as to compensate MACM for its "upfront investment."⁹¹

⁸⁸ Tr. at 108, 116.

⁸⁹ Tr. at 117.

⁹⁰ MACM Main Brief, p. 33.

⁹¹ Id.

I&E rejects MACM's arguments in support of the going value adjustment. First, MACM has failed to point to any provision of USPAP that requires HRG to establish and add a \$17.3 million going value premium on top of its cost and income approach results. As I&E pointed out, PAWC's appraiser Jerome Weinert did not include a separate going value quotient to add on top of his appraisal results;⁹² and he nevertheless certified his compliance with the 2016-2017 USPAP.⁹³ Therefore, not only is there no evidence in this proceeding to support MACM's argument that USPAP requires acceptance of HRG's significant \$17.3 million going value adjustment, but the available evidence contradicts that claim.

In its Main Brief, MACM attempts to rely upon USPAP Rule 1.4(e) to support HRG's going value adjustment. According to MACM, this rule "requires an appraiser to **consider** when analyzing the assemblage of various component parts of a property to also analyze the effect on value, if any, of the assemblage."⁹⁴ After citing to the rule, MACM fails to make any meaningful connection between it and HRG's \$17.3 million going value adjustment, therefore raising more questions about the basis for the adjustment. Accordingly, I&E submits that there is no better explanation for HRG's application of this adjustment than the rationale contained within its fair market value appraisal:

It is readily apparent that an established enterprise has an incremental value in excess of the cost value of the physical facilities. A wastewater system requires a substantial

⁹² Tr. at 120.

⁹³ PAWC Application, Appendix A-14, St. No. 7, p. 14; PAWC Application, Appendix A-5, AUS appraisal, p. 37, Compliance with Uniform Standards of Professional Appraisal Practice (USPAP) 2016-2017.

⁹⁴ MACM Main Brief, p. 32 (emphasis added).

investment in collection, treatment and disposal plant, a component of the value. In addition, an entity must acquire a customer base, hire employees, develop an accounting and record keeping process and develop operating and management policies and procedures. This process takes time and the entity will incur losses during initial years. As a component of the value of an enterprise, the cumulative losses should be considered in addition to the cost of the facilities for acquisition purposes. A calculation of an estimate of the going value to reflect the cumulative losses is presented in Schedule O of the Appendix.⁹⁵

I&E submits that, based on the criteria above, HRG has failed to support its going value adjustment in this case.

Instead, the evidence reveals that MACM is relying upon PAWC's resources and expertise to ensure job protection for its employees, improve existing customer service with better and more accessible customer service,⁹⁶ and thus PAWC is not benefitting from MACM in these regards. Likewise, MACM's record keeping processes and operating procedures do not warrant a going value premium, as evidenced by the fact that MACM failed to maintain records of its utility plant costs⁹⁷ and as further evidenced by the existing Pa. DEP and Allegheny Health Department compliance issues that PAWC must now address. Notably, Ms. Vicari added the going value adjustment of \$17.3 million without knowing whether PAWC was already paying MACM for its going value as part of the purchase price of the transaction.⁹⁸ Considering these facts, I&E submits that the public interest requires that HRG's going value adjustment be denied.

⁹⁵ PAWC Application, Appendix A-5, HRG Appraisal, pp. 12.

⁹⁶ PAWC Application, Appendix A-14, St. No. 6, p. 3.

⁹⁷ PAWC Application, Appendix A-5, HRG Appraisal, p. 4.

⁹⁸ Tr. at 120.

Finally, the Commission should reject MACM’s insinuation that HRG’s going value adjustment should naturally exist in the context of a Section 1329 case. MACM argues that going value of property “should not be stripped out of fair market value simply because it was not included in ratemaking rate base prior to the passage of Section 1329.”⁹⁹ I&E avers that the converse of MACM’s argument is true: Section 1329 does not require UVEs to add going value premiums on top of their cost and income approaches; therefore, these adjustments are not presumptively valid simply because they occur in the context of Section 1329. This is an important point since the record in this case bears out the fact that Ms. Vicari has only selectively included a going value adder in three out of the five or six Pennsylvania utility appraisals that she has performed in her professional career.¹⁰⁰ During the evidentiary hearing, Ms. Vicari admitted that of the Pennsylvania utility appraisals that she completed, she has only ever employed the separate going value addition for Section 1329 cases.¹⁰¹ There is nothing in Section 1329 that requires going value adjustments or premiums; therefore, the fact that Ms. Vicari offered the unsupported adjustment in the context of this Section 1329 proceeding in no way bolsters its validity. Accordingly, HRG’s going value adjustment should be denied.

c. HRG’s Failure to Use the Most Recent Uniform Standards of Professional Appraisal

In its Main Brief, the limited extent that MACM acknowledges HRG’s reliance upon 2014-2015 USPAP standards is encompassed in a footnote asking that “the Court”

⁹⁹ MACM Main Brief, p. 35.

¹⁰⁰ Tr. at 121.

¹⁰¹ Tr. at 123.

take judicial notice of the 2016-2017 USPAP standards *sua sponte*.¹⁰² The footnote indicates as follows:

I&E noted in the Hearing that Ms. Vicari was consulting the 2014-2015 version of USPAP, rather than the most up-to-date version from 2016-2017. The most recent version of USPAP is available at <http://www.uspap.org/index.html#4>. The Authority asks the Court *sue sponte* to take notice of the 2016-2017 USPAP standards. OCA and I&E will have the opportunity to argue against taking, notice of the 2016-2017 USPAP standards or in favor of the Court's taking notice of additional facts in their respective Reply Briefs in accordance with 52 Pa. Code § 5.408.¹⁰³

Although I&E disagrees that MACM's footnote is a procedurally appropriate way to afford affected parties with notice, this section of its Reply Brief will serve to oppose MACM's request. MACM's request should be rejected because it seeks to admit appraisal standards that were not employed by its UVE and are therefore not relevant and which will only serve to confuse the issues in this case.

First, MACM's UVE, HRG, did not use the 2016-2017 USPAP standards. This is clear from the record as HRG's appraiser, Ms. Vicari clearly indicated that her appraisal relied upon the 2014-2015 edition of the USPAP.¹⁰⁴ Not only did Ms. Vicari not rely upon the 2016-2017 addition of USPAP, but she also was unaware of its existence.¹⁰⁵ Under these facts, the 2016-2017 USPAP standards could not have had any bearing on HRG's fair market valuation. Therefore, MACM has no basis to request judicial notice of these standards, as they clearly do not underlie HRG's fair market value appraisal.

¹⁰² MACM Main Brief, p. 20, footnote 64.

¹⁰³ Id.

¹⁰⁴ Tr. at 111.

¹⁰⁵ Id.

Additionally, although MACM's request for judicial notice appears to be confined to the 2016-2017 USPAP standards, to the extent that its request strays beyond notice and supports an underlying motive to compare these standards with the outdated standards that HRG used, this tactic must be rejected. Put another way, if judicial notice is granted, it must be made clear that MACM has no evidentiary basis to ask parties or the Commission to conclude that HRG's reliance upon the 2014-2015 USPAP somehow comported with the 2016-2017 USPAP. Furthermore, MACM should not be afforded any basis to argue that HRG's use of the outdated USPAP had no material impact on its fair market valuation, as this conclusion would rely upon an evidentiary determination that has not been borne out in the record. Accordingly, as MACM's request for judicial notice will only invite confusion of the issues in this case, it should be denied.

3. Ratemaking rate base

As previously explained, PAWC's Application asks the Commission to issue an Order establishing the ratemaking rate base of the MACM assets at \$162 million.¹⁰⁶ In this case, pursuant to Section 1329, this amount represents the lower of PAWC and MACM's negotiated purchase price, \$162 million, and the average of two fair market value appraisals completed by each of these parties' UVEs. I&E does not oppose the proposed value of the ratemaking rate base; however, I&E continues to assert that MACM's fair market value appraisal performed by HRG was fundamentally flawed.

¹⁰⁶ PAWC Application, ¶2; PAWC Application, Appendix A-14, St. No. 1, pp. 11-12; I&E Main Brief, p. 30.

I&E believes that HRG's flawed appraisal process in this case highlights the need for the Commission's scope of review as adopted in *Aqua/New Garden*.

The record in this case shows that HRG's appraisal practices relied upon incorrect information and unsupported assumptions, which artificially inflated the value of MACM's assets.¹⁰⁷ I&E also submits that it is telling that PAWC itself had reservations regarding HRG's appraisal. More specifically, upon learning of HRG's \$207,010,000 fair market valuation for the MACM system, PAWC negotiated the \$162 million purchase price because the average of the UVEs appraisals became unacceptably high and PAWC believed approval of this transaction would have been jeopardized.¹⁰⁸

Fortunately, and to PAWC's credit, fair market value here was predicated upon PAWC's purchase price for the MACM system and not upon the average of the UVEs' appraisals.

Nonetheless, I&E incorporates and reasserts the arguments it presented regarding these issues in its Main Brief,¹⁰⁹ and urges the Commission to recognize and, to the extent possible, deter HRG's future attempts to artificially inflate fair market value. It cannot be ignored that the fair market valuations are a key element of the equation that culminates in a ratemaking rate base determination for acquired property in Section 1329 proceedings. Once established in Section 1329 proceedings, the ratemaking rate base determination will have real and measurable consequences for ratepayers. The public interest demands that ratepayers be protected from UVEs that, whether strategically or

¹⁰⁷ Tr. at 107-122.

¹⁰⁸ PAWC Application, Appendix A-14, St. No. 1 p. 11.

¹⁰⁹ I&E Main Brief, pp. 31-40.

haphazardly, escalate fair market value determinations with unsupported adjustments or rely upon incorrect and outdated information.

VI. CONCLUSION

The proposed transaction, as filed, will not affirmatively promote the public interest in a substantial way. Conditions must be imposed prior to granting the requested certificates of public convenience to protect the interests of PAWC's existing customers. Accordingly, if the transaction is approved, I&E respectfully requests that the Administrative Law Judges recommend that the Commission condition its approval on PAWC undertaking a cost of service study that (1) separates capital expenses and operating costs for MACM's sanitary and storm water functions and (2) that separately identifies the plant in service costs at the time that the Port Vue system was purchased, the cost of any Port-Vue plant retirements, and the cost of any Port Vue plant investment.

Respectfully submitted,



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvania-American
Water Company - Wastewater under Section
1329 of the Pennsylvania Public Utility
Code, 66 Pa. C.S. §1329, for approval of the
use for ratemaking purposes of the lesser of
the fair market value or the negotiated
purchase price of The Municipal Authority of
the City of McKeesport's assets related to its
wastewater collection and treatment system
and other related transactions;

Docket No. A-2017-2606103

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated September 5, 2017, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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