**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held April 19, 2018 | |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman  Norman J. Kennard, Statements, Dissenting  David W. Sweet  John F. Coleman, Jr., Statement | | |
| Application of Aqua Pennsylvania Wastewater, Inc. | | A-2017-2605434 |
| Pursuant to Sections 1102 and 1329 of the | |  |
| Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Limerick Township | |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition) of Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company) filed on December 14, 2017, seeking reconsideration of our Opinion and Order entered on November 29, 2017 (*November 2017 Order*), relative to the above-captioned proceeding. On December 22, 2017, and December 29, 2017, the Office of Consumer Advocate (OCA) and the Commission’s Bureau of Investigation and Enforcement (I&E) filed their respective Answers to the Petition. For the reasons stated below, we shall deny the Petition.

1. **History of the Proceeding**

On May 19, 2017, Aqua filed an Application seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of Limerick Township, Montgomery County, Pennsylvania (Township), (2) the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of the Township, and (3) an order approving the acquisition that includes the ratemaking rate base of the Township’s wastewater system assets pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 1329(c)(2). By Secretarial Letter dated May 31, 2017, the Commission acknowledged receipt of the completed Application.

On June 9, 2017, I&E filed a notice of appearance and the OCA filed a protest to the Application. The Commission published a notice of the Application in the *Pennsylvania Bulletin* on June 10, 2017. 47 *Pa. B.* 3324. On June 21, 2017, the Township filed a Petition to Intervene. By Order issued June 28, 2017, the ALJ granted the Township’s Petition and established a litigation schedule.

The ALJ conducted an evidentiary hearing on July 20-21, 2017, at which each Party was represented by counsel. During the hearing, testimony and exhibits were presented and cross examination was conducted. Aqua offered five statements and seven exhibits, which were admitted into the record. I&E presented four statements and two exhibits that were admitted into the record. The OCA presented four statements and one exhibit, all of which were admitted into the record.

The Parties filed Main Briefs on August 11, 2017, and Reply Briefs on August 18, 2017. On August 18, 2017, the record was closed upon receipt of the Reply Briefs.

In the Recommended Decision issued on September 18, 2017, the ALJ recommended approving the Application with an adjustment to the proposed rate base value and with certain conditions. As noted above, Aqua, I&E, and the OCA filed Exceptions on October 3, 2017. On October 10, 2017, Aqua, I&E and the OCA filed Replies to Exceptions.

In our *November 2017 Order*, we denied the Exceptions of Aqua, I&E and the OCA and adopted the Recommended Decision. As previously stated, Aqua filed the instant Petition on December 14, 2017. By Order entered December 21, 2017, we granted the Petition, pending further review of, and consideration on, the merits. On December 22, 2017, and December 29, 2017, the OCA and I&E filed their respective Answers to the Petition.

This is Aqua’s second Application proceeding under Sections 1102 and 1329 being considered by the Commission. In the first proceeding, the Commission approved Aqua’s Application to acquire the wastewater system assets of New Garden Township and New Garden Sewer Authority (Aqua-New Garden proceeding). *See 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 (Order entered June 29, 2017) (*Aqua - New Garden Application Order*) and the Order on Reconsideration of the *Aqua - New Garden Application Order*, Docket No. A-2016-2580061 (Order entered October 5, 2017) (*Aqua - New Garden Reconsideration Order*).[[1]](#footnote-1)

1. **Discussion**
2. **Legal Standards**

Before addressing the Petition, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993).

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard, we agree with the court in the *Pennsyl­vania Railroad Company* case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked by the Commission.

*Duick,* 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

1. ***November 2017 Order***
2. **Rate Stabilization Plan**

In our *November 2017 Order*, we first addressed Aqua’s Exception No. 1 which challenged the ALJ’s recommendation pertaining to the rate stabilization plan and the rate freeze issue. The ALJ reasoned that, as a condition for approval of the instant Application, the Commission retains the authority to allocate revenues, if appropriate, to Limerick customers in excess of the restrictions in the APA[[2]](#footnote-2) and that Aqua and its shareholders bear all risks of a shortfall between revenues it is permitted to recover and costs it incurs with respect to the Limerick system.[[3]](#footnote-3)

We denied Aqua’s Exception No. 1, agreeing with the ALJ’s adoption of the OCA’s suggested conditions of approval of the instant Application in his Recommended Decision. We disagreed with Aqua’s comparison of this case with the PAWC-Scranton proceeding[[4]](#footnote-4) as a basis for its argument against the conditions for approval. We concurred with the OCA’s contention that both cases are not entirely analogous.[[5]](#footnote-5)

Next, we addressed Aqua’s Exception No. 2, in which Aqua disagreed with the ALJ’s denial of its proposal to split the $75.1 million ratemaking rate base into an initial rate base of $60 million and a regulatory asset of $15.1 million. In our disposition, we agreed with the ALJ’s recommendation and the arguments put forth by the opposing Parties regarding this issue. We concurred that Aqua’s proposal is inconsistent with the procedural requirements articulated in Section 1329 and with traditional ratemaking principles. We agreed that the circumstances for allowing a regulatory asset does not prevail in the instant proceeding. Accordingly, we did not believe Aqua’s regulatory asset proposal was appropriate in this proceeding and denied Aqua’s Exception No. 2. *November 2017 Order* at 34.

1. **Approval of the Rate Base Value**

As a preliminary matter under the rate base value determination, we considered Aqua’s Exception No. 3, which contended that the General Assembly did not intend for fair market valuation to be a matter of traditional litigation. We emphasized our conclusion in the *Aqua – New Garden Application Order* that Section 1329 permits the Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value (FMV) appraisals of the utility valuation experts (UVEs).[[6]](#footnote-6) Here, we noted, the ALJ appropriately relied on our prior ruling in allowing the Parties to question and challenge the fair market value appraisals and the proposed rate base value of the acquired assets, and to submit evidence and develop a record in support of their respective positions. Finding no error in the ALJ’s handling of the evidentiary record, we denied Aqua’s Exception. *November 2017 Order* at 35-36.

We further addressed Aqua’s argument, pertaining to the OCA’s proposed adjustments of HRG’s income approach valuation. In the beginning of this Exception, the Company repeated its arguments that the adopted adjustments are contrary to the clear intent of Section 1329 and that the Parties’ should not be able to challenge the fair market value appraisals. Aqua further argued that because the OCA’s adjustments are based on the “just and reasonable” ratemaking standard rather than the Uniform Standards of Professional Appraisal Practice (USPAP) standard, they should be rejected and the ALJ’s recommendations should be denied. Aqua Exc. at 11-14.

In response, the OCA stated that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals as to their *reasonableness*.” OCA R. Exc. at 9 (citing *Aqua – New Garden Application Order* at 53). The OCA also noted that while Section 1329 requires that UVEs adhere to the USPAP standards in their valuations, the legislation does not prohibit a review of the assumptions utilized by the UVEs for reasonableness and conformance to the standards of the industry being valued. OCA R. Exc. at 9-10 (citing 66 Pa. C.S. § 1329(a)(3)). We agreed that Section 1329 does not prevent a review of the UVE assumptions for reasonableness, and for the reasons discussed below, we find that the ALJ appropriately considered several of the recommendations to the fair market appraisals of the Limerick system. *November 2017 Order* at 36.

Moving to the disposition of the rate base valuation, we summarized the proposed adjustments by the OCA and the recommendations adopted by the ALJ. We indicated that the OCA made certain adjustments to both Gannett and HRG’s fair market appraisals, some of which were adopted by the ALJ in his Recommended Decision. In particular, the OCA made two adjustments to Gannett’s income approach but the ALJ did not adopt them. The OCA also made five adjustments to HRG’s income approach, all of which were adopted by the ALJ. In addition, the OCA made four adjustments to HRG’s cost approach, three of which were adopted by the ALJ. Lastly, the OCA made two adjustments to HRG’s market approach. The ALJ adopted one of the adjustments regarding customer count and rejected the OCA’s adjustment regarding the inclusion of future capital improvements under HRG’s market approach. R.D. at 27-31.

The following table summarizes the original appraisals filed by HRG and Gannett:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **HRG** | Value |  | **Gannett** | Value |
| Income |  |  | Income |  |
| Cost |  |  | Cost |  |
| Market |  |  | Market |  |
|  |  |  |  |  |
| Average |  |  | Average |  |
| **Recommendation** |  |  | **Recommendation** |  |

The following table summarizes the fair market value appraisals with the adjustments recommended by the ALJ:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **HRG** | Value |  | **Gannett** | Value |
| Income |  |  | Income |  |
| Cost |  |  | Cost |  |
| Market |  |  | Market |  |
|  |  |  |  |  |
| Average |  |  | Average |  |
| **Recommendation** |  |  | **Recommendation** |  |

The average of the two valuations is $64,373,378. R.D. at 31. The Parties raised various Exceptions to the adjustments adopted and rejected by the ALJ. Ultimately, we denied each of the Exceptions and adopted the ALJ’s recommendations in their entirety.[[7]](#footnote-7)

1. **Public Interest and Affirmative Public Benefits**

Moving to the Exceptions of I&E and the OCA challenging the findings of the ALJ as to the findings of public interest and affirmative public benefits, we addressed our guidance in the *Aqua – New Garden Application Order*. Although the ALJ referenced that prior proceeding, we explained that he independently evaluated the record in this matter and determined that the Company established that the transaction is in the public interest and that the public at large, including Aqua’s existing customers, will realize affirmative public benefits for purposes of the Application. We agreed with the ALJ that the affirmative public benefits shown by the Company and the additional conditions outlined in the Recommended Decision – requiring a cost of service study in the next rate case and mandating that Aqua’s shareholders bear the risk of any shortfall between revenue from Limerick’s customers and the cost of providing service – will assure that the public interest obligations under the Code are satisfied and that the Application will result in affirmative public benefits. *November 2017 Order* at 68.

1. **Imposition of 6-Month Statute of Limitations**

Additionally, we denied the OCA’s Exception objecting to the ALJ’s conclusion that a decision on the Application must be issued within the statutory six-month deadline. We agreed with the ALJ that consistent with our prior determination in the Aqua – New Garden proceeding, both, the Section 1329 and 1102 considerations in this proceeding were required to be concluded within the six-month deadline set forth in Section 1329(d)(2). *November 2017 Order* at 70.

1. **Remaining Issues**

The remainder of our *November 2017 Order* addressed Exceptions by the Parties pertaining to a variety of issues including, contracts between public utilities and municipalities, a separate cost of service study during the next base rate case, and the filing of a revised Distribution System Improvement Charge tariff and a Long Term Infrastructure Improvement Plan. We denied each of these Exceptions.[[8]](#footnote-8)

1. **Petition and Answers**

In its Petition, Aqua requests that we reconsider the *November 2017 Order* based on three arguments. First, the Company contends that the Commission must apply the clear and unambiguous language of Section 1329 and preclude challenges to the fair market valuation appraisal reports. Second, Aqua argues that the Commission, in adopting adjustments to the appraisal of one of the UVEs, overlooked and failed to appropriately consider and apply the unbiased independence of the UVE. Last, the Company asserts that the *November 2017 Order* is internally inconsistent.

As to its first argument, Aqua submits that the Commission committed a clear error of law by concluding that Section 1329 of the Code permits a review of UVE assumptions for reasonableness. According to the Company, the Commission has engaged in an impermissible rewriting of the statute by applying a reasonableness standard that is not mentioned or included in Section 1329. Rather, Aqua asserts, the Commission has replaced the USPAP standard with a discretionary standard pertaining to FMV appraisal reports that was not intended by the General Assembly. The Company proffers that nothing in the language of Section 1329 permits an adjustment to the ratemaking base regardless of the purported reasonableness of the adjustment. Petition at 5-6.

As to its second argument in support of the Petition, Aqua argues that Section 1329 establishes a process by which UVEs prepare independent and unbiased FMV appraisal reports employing the cost, market and income approaches. Indeed, the Company contends, the statute requires UVEs to be independent experts qualified by the Commission who use the information provided to them from an engineer’s assessment of utility plant. The Company proffers that the General Assembly required an averaging to account for varying differences of assumptions or inadvertent errors. Instead of accepting the FMV appraisal reports, Aqua asserts, the Commission improperly considered adjustments proposed by the OCA’s witnesses who were not legally qualified or certified as UVEs. The Company argues that the Commission’s adoption of the adjustments is a direct violation of the clear statutory mandate in Section 1329 and contravenes the purpose of having UVEs in the first place. Petition at 7-9.

Aqua states that the Commission has injected traditional rate case type procedures in the fair market valuation process and ignored the General Assembly’s directive to limit fair market value appraisal reporting to the figures provided by qualified UVEs. Moreover, the Company portends that the Commission ignored its own internal UVE application safeguards which assure that only independent and unbiased UVEs are involved in the process. *Id.* at 9-10.

In its final argument, Aqua cites to the ALJ’s Finding of Fact No. 52, which provides that the FMV appraisals were performed in compliance with the USPAP using the cost, market and income approaches. According to the Company, our *November 2017 Order* did not reject or modify this finding of fact and thereby incorporated and adopted it by reference. However, Aqua contends that the Commission, in adjusting one of the FMV appraisals, overlooked the unchallenged finding that the appraisal was prepared in compliance with the USPAP employing the cost, market and income approaches. Specifically, the Company highlights the reduction of HRG’s fair market value appraisal from $76,890,000 to $48,648,708. Aqua contends that the *November 2017 Order* offers no explanation of how the adjustments to the HRG appraisal are necessary to bring it into compliance with the USPAP employing the cost, income and market approaches. Instead, the Company asserts that no adjustments are necessary to bring the report into compliance because both the ALJ and the Commission found that HRG properly prepared its analysis employing the methods required under Section 1329. Petition at 10-11.

The Company requests that the Commission reconsider its Order and accept the HRG fair market value appraisal report without adjustment. *Id.* at 12.

In its Answer to the Petition, the OCA submits that the Commission should deny the Petition because Aqua failed to present any new or novel argument or evidence. Instead, the OCA asserts, the Company restated arguments previously considered by the Commission. According to the OCA, the arguments are primarily based on Aqua’s own interpretation of Section 1329 which the Commission evaluated and rejected. Specifically, the OCA cites to our discussion in the *November 2017 Order* and our review and analysis of the FMV appraisal of the UVEs in the *Aqua – New Garden Application Order* as follows:

[T]he OCA states that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals as to their *reasonableness*.” OCA R. Exc. at 9 (citing *Aqua – New Garden Application Order* at 53). The OCA also notes that while Section 1329 requires that UVEs adhere to the USPAP standards in their valuations, the legislation does not prohibit a review of the assumptions utilized by the UVEs for reasonableness and conformance to the standards of the industry being valued. OCA R. Exc. at 9-10 (citing 66 Pa. C.S. § 1329(a)(3)). We agree that Section 1329 does not prevent a review of the UVE assumptions for reasonableness….

OCA Answer at 5 (quoting *November 2017 Order* at 36). Thus, the OCA adds, the Commission already considered and rejected Aqua’s argument that the Parties are prevented from challenging the appraisals based on a reasonableness standard. OCA Answer at 5.

Additionally, the OCA argues that the Company’s alternative arguments – that Section 1329 requires the Commission to approve impartial and independent UVEs and that the USPAP standards are the only measures by which the Commission should adhere – were already raised by the Company and addressed by the Commission. According to the OCA, the Commission concluded that Section 1329 does not prevent a review of the UVE assumptions for reasonableness and that the ALJ appropriately considered several recommendations to the appraisals of the Limerick system. Thus, the OCA continues, the Commission did not overlook the Company’s arguments. Regarding the adoption of the finding that the HRG FMV appraisal was performed in compliance with the USPAP, the OCA contends that our adjustments for reasonableness are not inconsistent. Instead, the OCA argues that Section 1329 requires UVEs to comply with the USPAP, while Sections 1301 of the Code, 66 Pa. C.S. § 1301, requires rates to be just and reasonable. The OCA submits that both of these separate requirements must be followed. OCA Answer at 6-7.

In its Answer to the Petition, I&E argues that the Company cited to arguments raised in briefs and exceptions that were found to be unpersuasive by the Commission. I&E submits that the Commission expressly considered and answered the question of whether parties are permitted to challenge UVE fair market valuations in Section 1329 proceeding. According to I&E, the Commission concluded that the appropriate standard of review is driven by Section 1329 as well as Sections 505 and 1103 of the Code, 66 Pa. C.S. §§ 503, 1103. I&E continues that the Commission has already concluded that it retains the authority to conduct an inquiry into the assets being acquired and to make such inquiries, physical examinations, valuations, and investigations deemed necessary to render a finding or determination. I&E Answer at 4 (citing *Aqua – New Garden Application Order* at 34).

I&E emphasizes our prior determination in the *Aqua – New Garden Application Order* that we retained the authority “to review and analyze the UVE evaluations to determine compliance with the USPAP standards and whether the cost, market, and income approaches were accurately applied to the UVEs’ analyses.” *Id.* Moreover, I&E notes our conclusion that Section 1329 did not abrogate or repeal Sections 505 or 1103 of the Code and contends that these sections could act in harmony with Section 1329. I&E Answer at 4-5.

I&E rejects the Company’s conclusion that only a perfunctory review of the FMV is permissible under Section 1329 because it would require the Commission to accept any submitted appraisal on its face without any ability to verify its basis. *Id.* at 6‑7. I&E also argues that, although certification as a UVE qualifies an appraiser to submit a FMV determination in this proceeding, “it cannot act as an advance guarantee that any appraisal that the UVE submits is compliant with the [USPAP] or that the UVE’s appraisal truly employs the cost, market and income approaches.” *Id.* at 8. Further, I&E submits that Aqua’s proposed review standard is inconsistent with the timeline and procedure contemplated in Section 1329. According to I&E, no Commission review period would be necessary under Aqua’s scenario thereby making the six-month review period in Section 1329 superfluous. Such a narrow interpretation by the Company, I&E states, is contrary to the robust litigation procedure envisioned the Commission and evidenced by the filing of testimony, hearings, briefs, and exceptions during the six-month review period. I&E also emphasized the Commission concerns about affording due process to the parties and the development of a full and complete record for Commission review. I&E Answer at 8-9 (citing *Implementation of Section 1329 of the Public Utility Code*,Final Implementation Order, Docket No. M-2016-2543193 (Order entered October 27, 2016) at 35).

1. **Disposition**

As stated above, petitions for reconsideration are governed by *Duick*, which essentially requires a two-step analysis. First, we determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. However, we will not necessarily modify our prior decision just because a party offers a new and novel argument or identifies a consideration that was overlooked or not addressed by the Commission in its previous order. The second step of the *Duick* analysis is therefore to evaluate the new or novel argument, or overlooked consideration, to determine whether to modify our previous decision.

Here, it is evident that Aqua is reasserting previously raised arguments that have already been addressed by the Commission. In this proceeding, Aqua filed Exceptions contending that the ALJ erred by permitting any adjustments to the HRG’s FMV appraisal because the adjustments were contrary to the clear intent of Section 1329 and that the Parties should not be able to challenge the appraisals. Additionally, the Company argued in its Exceptions that adjustments based on a “just and reasonable” ratemaking standard rather than the USPAP standard violate Section 1329. Aqua Exc. at 11-14.

In our response, we explained that the ALJ appropriately relied on our holding in the *Aqua – New Garden Application Order* 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. We credited the ALJ’s development of the evidentiary record which allowed the Parties to question and challenge the appraisals and the proposed rate base of the acquired assets and to submit evidence and develop a record in support of their respective positions. Further, as correctly noted by the OCA, we held that Section 1329 does not prevent a review of the UVE assumptions for reasonableness. *November 2017 Order* at 36.

Additionally, it is clear that the issues raised in this Petition were also previously addressed in the Aqua – New Garden proceeding. *Aqua – New Garden Application Order* at 29-35. As emphasized by I&E, the Commission found that the appropriate standard of review in Section 1329 proceedings is driven by Section 1329 as well as Sections 505 and 1103 of the Code, 66 Pa. C.S. §§ 503, 1103. This finding is pertinent to the Company’s argument that the *November 2017 Order* is internally inconsistent. The Commission’s implicit adoption of Finding of Fact No. 52, that the UVE appraisals were performed in compliance with the USPAP standards, did not create an inconsistency. As explained in the *Aqua – New Garden Application Order*, Section 1329 should be construed in conjunction with both Sections 505 and Section 1103(b) of the Code. See *Aqua – New Garden Application Order* at 34. Thus, while Section 1329 requires an analysis of adherence to the USPAP standards, Sections 505 and 1103(b) permit the Commission to conduct an investigation into the property valuation. The Commission’s adoption of Finding of Fact No. 52 is consistent with the Commission’s authority to conduct an investigation into the property valuation in Section 1329 proceedings. We see no reason to disturb our prior determination as to this issue.

Accordingly, we shall decline to exercise our discretion to reconsider our *November 2017 Order*.

1. **Conclusion**

Based on the foregoing discussion, we shall deny the Petition consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

That the Petition for Reconsideration of Aqua Pennsylvania Wastewater, Inc., filed on December 14, 2017, is denied, consistent with this Opinion and Order.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 19, 2018

ORDER ENTERED: April 19, 2018

1. On November 3, 2017, the OCA filed a Petition for Review of the *Aqua – New Garden Application Order* as subsequently upheld by the *Aqua - New Garden Reconsideration Order*. *McCloskey v. Pa. PUC*, Docket No. 1624 C.D. 2017 (Pa. Cmwlth. filed November 3, 2017). Thereafter, Aqua filed a Petition for Review (Cross Appeal to 1624 C.D. 2017) of both the *Aqua – New Garden Application Order* and the *Aqua - New Garden Reconsideration Order*. *Aqua Pennsylvania Wastewater, Inc. v. Pa. PUC*, Docket No. 1692 C.D. 2017 (Pa. Cmwlth. filed November 17, 2017). However, on January 22, 2018, the Commonwealth Court granted Aqua’s unopposed application to discontinue its Petition for Review at 1692 C.D. 2017. [↑](#footnote-ref-1)
2. The APA includes a three year “rate freeze,” which provides that Limerick customers will be charged the existing Limerick rates for a period of not less than three years. According to Aqua, while the APA includes a three-year rate freeze, there is no provision within the APA that provides for a limitation on rate increases. Aqua Exc. at 3 (citing Aqua Stmt. 1 at 6). [↑](#footnote-ref-2)
3. Ordering Paragraph 3 of the ALJ’s Recommended Decision states:

   That the Commission retains the authority to allocate revenues, if appropriate, to the Limerick Township customers that are in excess of the restrictions outlined in the Asset Purchase Agreement. Aqua Pennsylvania Wastewater, Inc. and its shareholders should bear all risk of a shortfall between revenues it is permitted to recover under its Asset Purchase Agreement with Limerick Township and the costs that Aqua Pennsylvania Wastewater, Inc. incurs with respect to the acquired system. To the extent that Aqua Pennsylvania Wastewater, Inc. is unwilling or unable to charge costs in excess of the limitations provided in the Asset Purchase Agreement, the excess costs should be borne by its shareholders and not spread to other ratepayers.

   R.D. at 53. [↑](#footnote-ref-3)
4. *Joint Application of Pennsylvania-American Water Company and the Sewer Authority of the City of Scranton*, Docket No. A-2016-2537209 (Order entered October 19, 2016). [↑](#footnote-ref-4)
5. Our discussion and disposition of the rate freeze issue is found on pages 25 to 31 of the *November 2017 Order*. [↑](#footnote-ref-5)
6. Aqua selected Gannett Fleming Valuation and Rate Consultants, LLC and the Township selected Herbert, Rowland & Grubic, Inc. (HRG) as their respective UVEs to prepare FMV appraisals of Limerick’s sewage collection and treatment system assets. Based on Gannett’s appraisal, the FMV for the Township’s wastewater system was $80,098,000. HRG calculated a fair market value of $76,890,000. The FMV average of the two appraisals was $78,494,000. Application at 15. [↑](#footnote-ref-6)
7. Since the Petition does not specifically address our disposition of these Exceptions, we will not discuss them herein. For a full discussion of the rate base valuation adjustments, see pages 35 to 67 of our *November 2017 Order*. [↑](#footnote-ref-7)
8. For a full discussion of these issues, which are not raised in the Petition, and our disposition of these issues, see pages 70 to 81 of our *November 2017 Order*. [↑](#footnote-ref-8)