

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. :
pursuant to Sections 507, 1102 and 1329 of the :
Public Utility Code for Approval of its Acquisition : A-2019-3009052
of the Wastewater System Assets of East Norriton :
Township :

RECOMMENDED DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This Application seeks approval from the Pennsylvania Public Utility Commission (Commission) of the acquisition of a municipal wastewater system and a ratemaking rate base, which was reached through a full settlement of the dispute. The Joint Petition for Approval of Settlement (Joint Petition or Settlement) permits Aqua Pennsylvania Wastewater, Inc. (APW, Aqua, Applicant or Company) to acquire substantially all of the wastewater system assets of East Norriton Township (ENT or Township) and to establish a ratemaking rate base of \$20,750,000. The original Application requested the Commission's approval to establish a ratemaking rate base of \$21,000,000, which is the purchase price of the wastewater system assets of ENT.

This decision recommends that the Settlement be approved in its entirety without modification because it complies with the relevant sections of the Pennsylvania Public Utility Code (Code) regarding the acquisition of wastewater system assets, is consistent with Commission regulations promoting settlements and is in the public interest. This decision also recommends approval of contracts, including assignments of contracts between APW and ENT

pursuant to Section 507 of the Code. The statutory six-month deadline for Commission action on this matter is May 29, 2020.

HISTORY OF THE PROCEEDING

On July 30, 2019, Aqua filed an Application requesting the Commission's approval of its acquisition of the wastewater system assets of ENT and approval of the ratemaking rate base of these assets as determined by Sections 1102 and 1329 of the Code. 66 Pa.C.S. §§ 1102 and 1329. Aqua also requested approval of contracts, including assignments of contracts pursuant to Section 507 of the Code. 66 Pa.C.S. § 507. Aqua made several requests for extension of time to file the requisite data for the Application, which were granted.

On September 6, 2019, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, Public Statement and Notice of Appearance of Shelby Linton-Keddie, Esquire. On September 11, 2019, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement at this docket. On October 25, 2019, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance of Gina Miller, Esquire and Erika McLain, Esquire. On October 31, 2019, the OSBA filed a Notice to withdraw the appearance of Ms. Linton-Keddie, and filed the Notice of appearance of Ms. Erin Fure, Esquire.

By Secretarial letter on November 26, 2019, the Commission accepted the Aqua Application and it was assigned to Administrative Law Judge (ALJ) Angela T. Jones.

On December 2, 2019, Stanley Mansell and Christine and Michael Maddalo filed Protests. On December 5, 2019, the OCA filed a Notice of Appearance of Santo Spataro, Esquire.

A Hearing Notice dated December 3, 2019, directed a prehearing conference to convene telephonically on December 30, 2019.

By Prehearing Conference Order dated December 4, 2019, the undersigned provided, among other things, procedural rules for this proceeding, amendments to discovery, and a

proposed procedural schedule with firm dates for the filing of any Reply Briefs and the Public Meeting date for which this matter will be presented on the agenda before the Commissioners.

On December 9, 2019, counsel for ENT filed a Petition to Intervene. Also, on December 9, 2019, Allen Dalton filed a Protest of this Application.

By letter dated December 12, 2019, Mr. Mansell stated his desire to withdraw his protest.¹ A separate Initial Decision was issued on January 3, 2020, granting the withdrawal request, finding that Mr. Mansell's withdrawal was in the public interest. The Commission granted Mr. Mansell's Withdrawal Petition by Final Order entered on March 3, 2020.

On December 13, 2019, by email the ALJ received a proposed procedural schedule that was agreed to by the parties represented by counsel (APW, ENT, I&E, OCA and OSBA). Also, on December 13, 2019, the ALJ received by email a petition for protective Order.

On December 21, 2019, the Commission published Notice of this Application in the *Pennsylvania Bulletin*. Germane to this proceeding the December 21, 2019 Notice stated in part, "Formal protests and petition to intervene must be filed in accordance with 52 Pa.Code (relating to public utilities) on or before January 6, 2020." 49 Pa.B. 7555 (Dec. 21, 2019).

On December 30, 2019, the prehearing conference convened as scheduled. The following parties participated:

1. APW
2. ENT
3. I&E
4. Mrs. Christine Maddalo
5. OCA
6. OSBA

The procedural schedule was established at the prehearing conference and confirmed by Order dated December 31, 2019. The procedural schedule incorporated a smart

¹ On December 16, 2019, the Secretary's Bureau received the Withdrawal Petition from Mr. Mansell, but it did not have an original signature. The undersigned provided said Withdrawal Petition that had an original signature to the Secretary's Bureau by memorandum dated December 17, 2019.

hearing to convene on Monday, January 13, 2020. Protestants Christine and Michael Maddalo chose to be inactive participants. Mr. Allen Dalton became an inactive participant because he did not attend the scheduled prehearing conference or provide a written statement to be treated as an active participant as directed by Prehearing Conference Order.

A Hearing Notice dated January 3, 2020, indicated a public input hearing to be conducted by telephone, in-person and live video broadcast through the Internet (smart hearing).

The Petition for Protective Order was granted on January 6, 2020.

On January 10, 2020, Joel P. Trigiani, Esquire, filed a Petition to Intervene (Intervention) on behalf of the Laborers District Council of the Philadelphia Metropolitan Area and Vicinity (Union).

On January 13, 2020, at 10:00 a.m., the smart hearing convened as scheduled. The following parties appeared at the smart hearing:

1. Thomas Niesen, Esquire – APW;
2. Alexander Stahl, Esquire – Aqua PA, Inc.;
3. Thomas Wyatt, Esquire – ENT;
4. Gina Miller, Esquire –I&E;
5. Harrison Breitman, Esquire – OCA;
6. Erin Fure, Esquire – OSBA;
7. Mrs. Christina Maddalo – pro se.

A smart hearing was held as scheduled on January 13, 2020. At the conclusion of the smart hearing on January 13, 2020, the undersigned directed that the parties provide any objection to the Union’s Intervention by no later than close of business day (4:30 p.m.) on Wednesday, January 15, 2020.

On January 15, 2020, counsel for APW filed an Answer to the Intervention in which APW did not oppose the Intervention but proposed conditions on the Union’s participation in the proceeding.

On January 16, 2020, an Order was issued granting the Intervention of the Union without conditions.

On January 23, 2020, the active parties emailed the ALJ stating they had reached a settlement in principle and requested that the scheduled evidentiary hearing be conducted telephonically. The evidentiary hearing convened telephonically at 10:00 a.m. on Friday, January 24, 2020. The following active parties appeared:

1. Thomas Niesen, Esquire – APW;
2. Alexander Stahl, Esquire – Aqua PA, Inc.;
3. Thomas Wyatt, Esquire – ENT;
4. Matthew Olesh, Esquire – ENT;
5. Gina Miller, Esquire – I&E;
6. Erika McLain, Esquire – I&E;
7. Harrison Breitman, Esquire – OCA;
8. Erin Gannon, Esquire – OCA;
9. Santo Spataro, Esquire – OCA; and
10. Erin Fure, Esquire – OSBA.

Various parties identified testimony, documents and exhibits which were admitted into the record without objection. The active parties also addressed modifying the procedural schedule in light of the proposed Settlement.

The parties agreed to a modified schedule which was memorialized in an Interim Order issued on January 24, 2020. The Order directed settlement documents to be submitted by no later than February 18, 2020. Counsel for the OCA agreed to mail the proposed Settlement to the inactive participants with a cover letter by no later than February 6, 2020. Any filings by the inactive participants to join, object or comment on the Settlement were due no later than February 18, 2020. The mailing to the inactive participants would include a cover letter for procedural direction that was approved by the ALJ on February 5, 2020.

On February 6, 2020, APW, ENT, I&E, OCA and OSBA (collectively, Joint Petitioners) filed a Joint Petition for Approval of Settlement. Also, on February 6, 2020, the Settlement was mailed to the inactive participants for their comments. The Union did not join in

the Settlement but did not oppose it. The OCA filed its Statement in Support of the Settlement on February 6, 2020.

On February 14, 2020, I&E filed its Statement in Support of the Settlement. Also, on February 14, 2020, Mr. Dalton filed a letter indicating that he read the Settlement and joins the Settlement. On February 18, 2020, both APW and ENT filed separate Statements in Support of the Settlement. None of the inactive participants, other than Mr. Dalton, filed comments on the Settlement.

The record closed by Order on February 18, 2020. The matter is ripe for decision.

BACKGROUND

Pursuant to Sections 1102 and 1329 of the Public Utility Code (Code) the Applicant requests the Commission to approve:

- (1) The acquisition of the ENT wastewater system assets by APW;
- (2) The right of APW to begin providing wastewater service in the corresponding service territory of ENT; and
- (3) The ratemaking rate base of ENT wastewater system assets as determined by Section 1329(c)(2) of the Code.

66 Pa.C.S. §§ 1102 and 1329, Application at 2. APW and ENT reached an agreement, the Asset Purchase Agreement (APA), dated October 29, 2018, which is submitted for the Commission to review and issue an Order and certificates of public convenience approving the items requested in the Application. *Id.* The purchase price of ENT wastewater system assets is \$21,000,000. *Id.* at 5. The ENT wastewater system assets include, *inter alia*:

- (1) Assets, properties and rights of the Township used in its wastewater system;
- (2) All pipes, pumping stations, hoists, generators, manholes and pipelines; and
- (3) All billing and collections necessary to run the system.

Id. The ENT wastewater system assets also include seven contracts identified in the APA to which the Township is a party. *Id.* APW is also requesting the issuance of certificates of filing pursuant to Section 507 of the Code regarding these seven contracts and the APA. *Id.*, at 17.

A. Applicant

APW (the acquiring entity) is a regulated public utility company existing under the laws of the Commonwealth of Pennsylvania. APW provides wastewater service to approximately 28,000 customer accounts. APW's service territory covers Adams, Bucks, Carbon, Chester, Clarion, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, Venango, and Wyoming Counties. Aqua St. No.2 at 3. APW operates 37 wastewater treatment plants throughout the Commonwealth. Twenty systems of APW's Southeast Division are in proximity to ENT. *Id.* APW and its parent company, Aqua Pennsylvania, Inc. (Aqua PA) have about 600 employees with expertise in providing water and wastewater service to Pennsylvania citizens. *Id.*

B. ENT

ENT (selling utility) is a township of the Second Class that owns and operates a sanitary wastewater collection system providing wastewater service to 4,966 customers. Application at 3. The Township does not distinguish between residential, commercial and industrial customer classes. The wastewater flow for ENT customers was approximately 988,750,00 gallons for 2018. *Id.*, at 7. ENT bills its customers on a quarterly basis. *Id.*

ENT has metered sewer customers, flat rate sewer customers and metered well customers. Metered customers are charged a minimum bill of \$63.25 per quarter which includes 4,000 gallons of usage with a rate of \$6.54 per 1,000 gallons for usage above the minimum. Flat rate customers are charged \$115.64 per quarter. Certain customers within the Township that are connected to Whitpain Township but billed by ENT are charged \$95.00 per quarter. *Id.*, at 7-8.

The original cost, by year and major plant category, of ENT's used and useful plant in service is \$16,212,760 with a related calculation depreciation reserve of \$7,664,762. *Id.* at 5.

ENT's collection system has approximately 59 miles of gravity sewer collection mains and intercepts in sizes ranging from eight inches to 24 inches in diameter with 9 dedicated pump stations and approximately four miles of force mains sized four to 16 inches. A surge tank is located at the Einstein Road Pump Station to assist with maintaining flows during wet weather. *Id.* at 4. Certain Township customers are connected to Whitpain Township and Plymouth Township mains due to availability of sewer mains located near the properties. Arrangements for the service of customers are set forth in the contracts to be assigned to APW.

Wastewater treatment is provided by the East Norriton-Plymouth-Whitpain-Joint Sewer Authority (JSA WWTP) at its wastewater treatment plant in Plymouth Township. Water service is provided by Pennsylvania-American Water Company and private wells. *Id.*

The JSA WWTP was constructed in approximately 1960 and provided basic primary treatment. The plant was upgraded to provide advanced secondary treatment with nitrogen removal in approximately 2007. Most of the ENT wastewater system was originally constructed in two phases in the 1960s and 1970s. Various areas have been replaced and several developments have been added from the mid-1970s through 2012. However, the average age of the pipe in the ENT wastewater system is approximately 50 years old. Aqua St. No. 2 at 7-8.

ENT experienced 25 sanitary sewer overflows (SSO) in 2018, with three of the occurrences due to blockages from roots and grease. The remainder of the occurrences were due to wet weather events. *Id.* at 6. ENT received a letter from the Pennsylvania Department of Environment Protection (DEP) dated July 15, 2019, which noted DEP's belief that the Township is subject to an excessive amount of wet weather inflow and infiltration (I&I). DEP also noted that the sewers tributary to the Norris City Pump Station are hydraulically overloaded. *Id.* at 6-7.

SMART HEARING TESTIMONY

A total of six witnesses testified at the smart hearing. Five of the six witnesses opposed the approval of this Application. One witness suggested the Application be approved subject to addressing concerns of the contracted workforce. The testimony of the smart hearing is summarized below.

A. Daniel L. Woodall, Jr.

Mr. Woodall testified on behalf of the Union's local in Montgomery County. Tr. 15, 17.² The Union is comprised of skilled men and women laborers who perform, among other things, utility infrastructure construction and repair. Tr. 18. The Union's local has approximately 6,500 members in the city and surrounding areas and maintain and repair critical gas and water infrastructure, including work on the sanitary sewer system in the Township. *Id.* The Union requested the Commission to consider the impact the proposed transaction may have on the employees of the collective bargaining unit, the local economy, workforce development, public safety and consumer protection. Tr. 19.

Currently, ENT is a public system subject to state laws that seek to ensure that qualified local utility contractors can competitively bid on projects and workers are paid the prevailing wage rate and corresponding benefits. Tr. 20. Under a privatized utility, these laws may no longer be applicable and may result in loss of work or reduction of wages for union members or eroded standards of labor. Tr. 20-21.

Mr. Woodall requested the approval of the Application include:

- (1) maintenance of wages and benefits for the contracted workforce;
- (2) continued application of prevailing wage standards in the future;
and
- (3) continued use of a highly trained, qualified workforce to perform construction. Tr. 23.

² The pages of the transcripts for this proceeding were not numbered consecutively. The reference to "Tr." is to the transcript dated January 13, 2020.

B. Christina C. Maddalo

Ms. Maddalo is an Aqua PA water and wastewater service customer who resides in Eagle Rock community, Hazelton, Pennsylvania. Tr. 25, 27. Ms. Maddalo stated that she just received notice this summer of a raise in her rates by an estimate of 5.83% due to the acquisition of Cheltenham Township. Tr. 25. When she subsequently received her water bill, the Eagle Rock customer realized a 15% increase in rates. Tr. 25-26. Ms. Maddalo became alarmed when she received another letter from Aqua PA for a proposed acquisition of ENT referencing the potential of another increase in rates. Tr. 26. She is opposed to the acquisition because it can affect the rates for her water service. Tr. 27. She does not oppose a small increase, but she cannot sustain \$15.00 or \$20.00 increases per month on a retirement income. Tr. 27.

C. Kathleen Wesolowski

Ms. Wesolowski resides in Hazle Township, Pennsylvania where she receives water and wastewater service from Aqua PA. Tr. 30, 32. Ms. Wesolowski is opposed to the pending acquisition because along with the acquisition comes a rate increase to existing customers in their water bill. Tr. 30. The last increase was not even a year ago and it resulted in a rate increase of about 15% which is difficult to sustain on a fixed income. Tr. 31. Ms. Wesolowski is not opposed to Aqua PA expanding their facilities, but such expansion should be paid by the shareholders and not the ratepayers who do not have any options for the provider of water service. Tr. 31.

D. Mary Rose Alexander

Ms. Alexander resides in Hazelton, Pennsylvania where Aqua PA provides her with water and wastewater services. Tr. 35. Ms. Alexander experienced a rate increase of about \$10.00 from May 2019 to June 2019. Tr. 36.

E. Pamela Burke

Ms. Burke is opposed to the acquisition because it will affect her rates as an Aqua PA water and wastewater customer in Hazle Township, Luzerne County, Pennsylvania. Tr. 37-39. Ms. Burke is concerned that the acquisition will affect her water supply in the future. Tr. 39.

F. Margaret Daly

Ms. Daly resides in Hazle Township, Luzerne County, Pennsylvania where she receives water and wastewater services from Aqua PA. Ms. Daly opposes the acquisition because she believes her rates for Aqua PA's services will increase which she would have to bear on a fixed income. Tr. 41. Ms. Daly stated that if Aqua PA wants to increase their business, the costs to increase the business should not be borne by its customers. Tr. 41-42.

DESCRIPTION OF THE SETTLEMENT

The Joint Petition includes the terms and conditions of the Settlement relating to the agreed upon fair market value for ratemaking purposes at \$20,750,000, the rate treatment of the acquired system assets, cost of service study considerations, distribution system improvement charge (DSIC) considerations, long-term infrastructure improvement plan (LTIP) considerations, allowance for funds used during constructions (AFUDC) considerations, warranty and legal fees concerning this transaction, and other rate-related issues and agreements necessary to effectuate the transaction. The Joint Petition is supported by statements from all the signature parties.

TERMS OF SETTLEMENT

A. Approval of Application and Acquisition

- (1) The Commission should approve Aqua's acquisition of the East Norriton Township wastewater collection system assets and Aqua's right to begin to offer, render, furnish, or supply wastewater service in the areas served by East Norriton.

- (2) The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.³

B. Tariff

The pro forma tariff submitted by Aqua with the Application, including all rates, rules and regulations regarding conditions of Aqua's wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

C. Cost of Service Study

- (1) In the first base rate case that includes East Norriton wastewater system assets, Aqua will submit a wastewater cost of service study that removes all costs and revenues associated with the operation of the East Norriton system.

- (2) In the first base rate case that includes East Norriton wastewater system assets, Aqua will also provide a separate cost of service study for the East Norriton system. Aqua will file a Cost of Service Study separately for the East Norriton system consistent with typically filed rate making exhibits including, but not limited to the following: Rate Base (Measures of Value), Statement of Operating Income, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

D. AFUDC, Deferral of Depreciation and Transaction Costs

- (1) Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge ("DSIC") for book and ratemaking purposes, will be addressed in Aqua's first base rate case which includes East Norriton wastewater system assets.

- (2) Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties assent to this agreement should not be construed to operate as its preapproval of Aqua's requests.

³ The OCA does not join in this paragraph but does not oppose it.

E. DSIC and LTIP

- (1) Upon approval by the Commission of a modification to its LTIP to include the East Norriton wastewater system, Aqua shall be permitted to collect a DSIC related to the East Norriton wastewater system prior to the first base rate case in which the East Norriton assets are incorporated into rate base.
- (2) In LTIPs or Annual Asset Optimization Plans that include the East Norriton wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. This section does not limit Aqua's current practice and ability to allocate projects as needed by Aqua necessary for its capital program, but recognizes that any East Norriton system infrastructure will be in addition to capital improvements already planned.

F. Fair Value Ratemaking Rate Base

Pursuant to Section 1329(c), Aqua shall be permitted to use \$20,750,000 for ratemaking rate base for the acquired assets.

G. Appraisal Adjustments

- (1) Aqua acknowledges that the statutory advocates made adjustments to the appraisals of Gannett Fleming Valuation and Rate Consultants, LLC and AUS Consultants, Inc. Aqua agrees that in future Section 1329 filings, Aqua will support the following positions:

Cost Approach: Consistent with the Commission's Order in the Cheltenham Acquisition case (Docket No. A-2019-3008491), the service lives applicable to East Norriton wastewater's gravity mains and manholes is established at a maximum of 75 years.

- (2) Aqua and the statutory parties reserve the right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings, including methodologies, inputs and assumptions that were present in this case but not challenged by the statutory parties or that were accepted by the Commission.

H. East Norriton Rates

- (1) The current average East Norriton residential rate is \$38.52 per month based on 4,000 gallons of monthly usage. As set forth in the notice sent to East Norriton customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on East Norriton's wastewater customers of 34.84%.⁴
- (2) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the East Norriton customers that are in excess of the restrictions contained in Section 7.03(a) of the Asset Purchase Agreement.

I. Welcome Letter

Aqua will send a welcome letter to East Norriton Wastewater customers within 20 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

J. Low Income [sic] Program Outreach

Within the same Welcome Letter identified in the previous term, Aqua shall include information regarding its low income [sic] programs. The welcome letter shall include, at a minimum, a description of the available low income [sic] programs eligibility requirements for participation in the programs, and Aqua's contact information.

K. Easements

Aqua and East Norriton Township will work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement ("APA") by Closing. Aqua will provide an update to I&E, OCA, and OSBA on March 31, 2020 and a final update before Closing regarding the status of the transfer of real property rights including easements related to the system. This provision does not limit Aqua and East Norriton Township's ability to go to Closing if any missing easements are not transferred at the time of Closing.

⁴ Aqua and East Norriton agree that, at the time of Aqua's next base rate case, the timing of the rate effect will be proposed pursuant to the terms of Section 7.03(a). All parties reserve their rights to address Aqua's proposal.

L. Warranty

Aqua and East Norriton Township agree to amend page 13 of Exhibit B of Aqua's Application, the APA, to warrant that the East Norriton assets are fit for a particular purpose at the time of closing and sale as follows:

Except as expressly set forth in this agreement, seller makes no express or implied representations or warranties of any kind whatsoever, including any representation as to the physical condition or value of any of the acquired assets or the system, or the future profitability or future earnings performance of the acquired assets or the system or any future ratemaking that may be allowed by the PAPUC for any of the acquired assets. All implied warranties of merchantability and fitness for a particular purpose ~~are expressly excluded~~ **are valid only until the time of closing**. Notwithstanding the foregoing, seller is not aware of any material defect in the performance or operation of the physical assets constituting the system.

M. Legal Fees

In its next base rate case, Aqua shall separately identify any legal fees included in its transaction and closing costs pursuant to the APA between Aqua and East Norriton Township and specify amounts expended by Aqua on behalf of East Norriton. The statutory advocates reserve the right to challenge the reasonableness, prudence, and basis for such fees.

LEGAL STANDARDS

In this case, the Applicant requests approval of, among other things,

(1) the acquisition, by APW, of the assets, properties and rights related to the wastewater system of East Norriton Township pursuant to Sections 1102, 1329 and 507 of the Code, 66 Pa.C.S. §§ 1102, 1329 and 507;

(2) the ratemaking rate base of the East Norriton Township wastewater system pursuant to Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2);

(3) the issuance of necessary certificates of filing for several agreements related to the transaction pursuant to 66 Pa.C.S. § 507;

(4) a pro forma tariff to become effective upon the closing of the transaction; and

(5) the use of the value for the ratemaking rate base for the acquisition at \$20,750,000.

The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa.C.S. § 332. APW as the Applicant is the proponent of any rule or order and has the burden of proving its entitled to certification. APW must sustain its burden by a preponderance of the evidence, or evidence more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990).

Any finding of fact necessary to support an adjudication of the Commission must be based on substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Pa. Pub. Util. Comm'n*, 557 A.2d 1110 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 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. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (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).

Section 1102 of the Code provides that the Commission must issue a certificate of public convenience as a legal prerequisite to a public utility offering service or abandoning service and certain property transfers by public utilities. 66 Pa.C.S. § 1102(a)(1)-(3). In the instant proceeding, the acquisition of the East Norriton Township facilities by APW and the commencement of wastewater service by APW in the requested service territory requires approval of the Commission as evidenced by its issuance of a certificate of public convenience. 66 Pa.C.S. § 1102(a)(1) and (3).

Before the Commission may issue a certificate of public convenience it must find that the granting of said certificate is necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa.C.S. § 1103(a). Consequently, APW must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v.*

Pa. Pub. Util. Comm'n, 295 A.2d 825, 828 (Pa. 1972). The benefits can be in the form of new, improved or more efficient service, accommodation, convenience and safety to the public. When examining the benefits and detriments of a transaction, the analysis must be on all affected parties, not merely a particular group or particular geographic area. *Middletown Township v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa.Cmwlth. 1984). Additionally, the Pennsylvania Commonwealth Court recently ruled that the Commission is required to address the rate impact of an acquisition when deciding whether there is a substantial public benefit. *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055, 1066 (Pa.Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*).

While *McCloskey* ruled that rate impact must be addressed, it recognized that “the Commission is charged with deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.” 195 A.3d 1067 (Pa.Cmwlth. 2018). Thus, the rate impact alone is not dispositive in the Commission’s determination of substantial affirmative benefits but is weighed against other positive factors in a balancing test to ultimately determine whether substantial affirmative benefits flow to the ratepayers. This is the primary objective of the law. *Id.*, see also, *Popowsky*, 937 A.2d 1040 (Pa. 2007).

Even where the Commission finds sufficient public benefit to grant a certificate of public convenience and that approval is necessary or proper for the service, accommodation, convenience or safety of the public, the Commission has the discretion to impose conditions that it deems to be just and reasonable. *Middlesex Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa.Cmwlth. 1984). When the Commission considers the public interest, it contemplates the benefits and detriments of the acquisition measured against the impact on all affected parties and not merely one particular group or geographic subdivision. *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674 (Pa.Cmwlth. 1984).

Furthermore, pursuant to 66 Pa.C.S. § 1103, APW must show that it is technically, legally and financially fit to own and operate the assets of ENT. *Seaboard Tank Lines b. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa.Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa.Super. 1958).

Section 1329 of the Code, 66 Pa.C.S. § 1329, set forth procedures which permit a public utility to use the fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. Section 1329 addressed the valuation of the assets of municipally owned or authority owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge (DSIC). Section 1329 also enables a public utility or other acquiring entity's post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. Section 1329 helps to 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.

Once the parties agree to the Section 1329 process, an acquiring public utility and the seller of the municipal system must each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. The acquiring public utility and the seller select one licensed engineer to assess the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code, 66 Pa.C.S. § 1102, and include the following as an attachment to the acquiring public utility's application:

- (1) copies of the UVE appraisals;
- (2) the agreed purchase price;
- (3) the ratemaking rate base;
- (4) the transaction and closing costs incurred by the acquiring public utility to be included in its rate base;
- (5) the tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition; and
- (6) a rate stabilization plan, if applicable.

66 Pa.C.S. § 1329(d)(1).

It is noted that the purchase price of ENT at \$21,000,000 is an amount lower than the fair market value of the acquired assets initially determined by the UVEs, which is the

average of the acquiring public utility's UVE's value at \$24,284,000 and the seller's UVE's value at \$25,064,594 or \$24,674,297 ($(\$24,284,000 + \$25,064,594) / 2 = \$24,674,297$). Aqua Application, Exhibit Q and Exhibit QR, Aqua Exhibit 1, Section XI at 14-16. In compliance with 66 Pa.C.S. § 1329(c)(2)⁵ the value for the ratemaking rate base would have been \$21,000,000. The Settlement shows that the parties have agreed to modify the ratemaking rate base of the acquired asset from \$21,000,000 which was the purchase price to \$20,750,000. The discussion below recommends that the Settlement be approved without modification.

APW seeks approval of the APA and other connected agreements pursuant to Section 507 of the Code. 66 Pa.C.S. § 507. Under Section 507 of the Code, the Commission may approve a contract between a public utility and a municipal corporation by issuing a certificate of filing or instituting proceedings to determine whether there are any issues with the reasonableness, legality or any other matter affecting the validity of the contract. 66 Pa.C.S. § 507. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval.

Commission policy promotes settlements. 52 Pa.Code §§ 5.231 and 69.401. Settlements lessen the time and expense that parties may expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401. Many proceedings are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs associated with cross-examination of witnesses, preparing briefs and reply briefs, preparing exceptions and reply exceptions, and the potential of briefs and reply briefs necessary for appeal of the Commission decision yields significant savings for the company's customers. This result supports the long-standing policy of the Commission to encourage settlements.

⁵ 66 Pa.C.S. § 1329(c)(2) states, "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."

The active parties to this proceeding have presented a settlement for Commission approval. By definition, a “settlement” is a compromise of the position held by the parties of interest to foster and promote the public interest. When active parties reach a settlement and present the same to the Commission for approval, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. C S Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991). See also, *Pa. Pub. Util. Comm’n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa. PUC 1 (1985).

To determine that the acquisition is in the public interest,

[T]he Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky v. Pa. Pub. Util. Comm’n, 937 A.2d 1040, 1057 (Pa. 2007).

DISCUSSION OF SETTLEMENT

A. Chapter 11 of the Code Approvals

a. Applicant’s Fitness

As mentioned above, an applicant must demonstrate that it possesses technical, legal and financial fitness to provide the proposed service. In this proceeding, there is no dispute that APW possesses the necessary fitness. Commission precedent reveals that the issue of whether a certificated public utility possesses the requisite legal and technical fitness is a rebuttable presumption for certificated public utilities in application proceedings. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa.Cmwlt. 1992); *see also, McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055 (Pa.Cmwlt. 2018), appeal docketed, No. 743 MAL 2018 (Pa. 2018). As an existing, certified Pennsylvania public utility, APW has a presumption of legal and technical fitness. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*,

601 A.2d 1308, 1310 (Pa.Cmwlth. 1992); *Re: Byerly*, 270 A.2d 186 (Pa. 1970); *Morgan Drive-Away, Inc. v. Pa. Pub. Util. Comm'n*, 293 A.2d 895 (Pa.Cmwlth. 1972).

Regarding technical fitness, APW must show that it has adequate staff, facilities and operating skills to provide the proposed service. *Re: Perry Hassman*, 55 Pa. PUC 661 (1982) (*Re: Perry Hassman*); *Mertz White Ways Tours v. Pa. Pub. Util. Comm'n*, 201 A.2d 446 (Pa.Super. 1964). APW presented evidence that it currently provides wastewater service to approximately 28,000 wastewater customers in Adams, Bucks, Carbon, Chester, Clarion, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, Venango, and Wyoming Counties in Pennsylvania. Aqua St. No. 1 at 9. APW operates 37 wastewater treatment plants. *Id.*, at 8.

Aqua PA is the parent company of APW. Aqua PA is the second largest investor owned regulated water and wastewater utility operating in Pennsylvania. Aqua PA provides water and wastewater utility service to approximately 464,000 customers, consisting of 436,000 water customers and 28,000 wastewater customers. *Id.* Aqua PA employs approximately 600 employees that have the expertise to provide water and wastewater service to their customers. *Id.*

APW must show that it obeys the Code and the Commission's regulations. *Re: Perry Hassman, supra.* APW is currently operating in Pennsylvania under certificates of public convenience issued to it by the Commission. There are no pending legal proceedings challenging APW's ability to provide safe and adequate service to customers. Aqua St. No. 1 at 10.

APW must demonstrate that it has sufficient financial resources to provide the proposed service. *Re: Perry Hassman, supra.* Aqua PA, the parent company to APW, is a Class A water utility in Pennsylvania and the largest subsidiary of Aqua America, with total utility plant assets of \$4.3 billion and annual revenues of \$438 million in 2018. Aqua PA had operating income of approximately \$232 million and net income of \$181 million. Its cash flow from operations was approximately \$270 million. Aqua PA has a A+ rating from Standard and Poor's Rating Service. Aqua St. No. 1 at 10.

APW, as a subsidiary of Aqua PA, has access to Aqua PA's financing capabilities. APW is a Class A wastewater utility in Pennsylvania, with access to all of Aqua PA's financing capabilities. *Id.*, at 11. APW's witness testified that APW will finance the transaction by using existing short-term credit lines. The Company expects to convert the short-term credit to a mix of long-term debt and equity capital shortly after closing the proposed transaction. *Id.*

No party presented evidence challenging the fitness of APW to provide the proposed service. Rather, the Joint Petitioners agreed that APW has the requisite technical, financial and legal fitness to own and operate the ENT system. Joint Petition at ¶ 24; APW Stmt. in Support at 5-6; ENT Stmt. in Support at 3-4; I&E Stmt. in Support at 7-8.

The record evidence shows that APW is technically, legally and financially fit to own and operate the assets it would acquire through the proposed transaction and to provide the proposed service to the public.

b. Affirmative Public Benefits

1. Consolidation/Regionalization

Aqua PA and APW have successfully acquired water and wastewater utilities over the past 130 years. Aqua St. No. 1 at 13-14. APW possesses technical, managerial and financial resources to operate, maintain and improve the ENT system in a safe, reliable and efficient manner. Aqua St. No. 1 at 14, Aqua Exhibit No. 1, Application ¶ 51a. APW has acquired 16 wastewater systems over the past 10 years. Aqua Stmt. in Support at 6. APW and Aqua PA have a track record of working within the Commission's consolidation and regionalization policy to assimilate wastewater and water systems. *Id.* Through consolidation and regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale and greater environmental and economic benefits. One such benefit is that APW is projecting less operating and maintenance costs for the ENT system as a result of a reduction in costs for wastewater treatment and efficiencies in administrative and general costs. Aqua St. No. 1 at 16, ENT Stmt. in Support at 4.

Consolidation and regionalization also enhance the quality of ratepayers' daily lives, promotes community economic development and provides environmental enhancements. These benefits inure to both existing and acquired customers. Aqua Stmt. in Support at 6.

The Commission stated in its *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry." Docket No. M 0051926 (Final Order entered August 17, 2006) at 18 (*Final Policy Statement*). APW contends that the acquisition of ENT will further the Commission's consolidation and regionalization objectives. Aqua St. No. 1 at 13. I agree. APW, as a subsidiary of Aqua PA, is indeed a larger, more viable entity as compared to ENT. The benefits cited above by APW are not disputed. For APW to acquire ENT is to fulfill the objective of the *Final Policy Statement* of the Commission.

2. Benefits to Township Customers

Customers of ENT will benefit from the technical experience and fitness of APW in deploying resources and capital improvements. Capital projects are estimated at \$16 million over a 10-year period after closing of this transaction. Aqua St. No. 1 at 16, Aqua St. No. 2 at 8. ENT customers will likely experience, over time, efficiencies and improved long-term viability because the facilities are part of a larger scale, more efficiently operated wastewater service. Aqua St. No. 1 at 15, ENT Stmt. in Support at 4.

APW will implement the existing rates of ENT upon the approval of the Application. Aqua Exhibit G (*pro forma* tariff). Consequently, ENT customers will not experience an immediate rate increase due to the acquisition. ENT Stmt. in Support at 5. The Settlement will implement the *pro forma* tariff, which is ENT's current rates inclusive of any Commission permitted or required surcharges or pass through costs. Aqua St. No. 1 at 11-12. Although the OSBA initially contested whether no change in rates for the Township customers benefited existing customers of APW, the acknowledgement by Joint Petitioners that: (1) the Commission retains the authority to set rates and allocate revenues to ENT customers; and (2) the OSBA has the right to challenge any rate proposals regarding ENT in its first base rate case

after the acquisition, caused the OSBA not to oppose the Settlement term. OSBA Stmt. in Support 4.

Township residents and taxpayers through the transaction will no longer be burdened with the capital projects necessary for the maintenance and DEP compliance of the system. The Township will have the “financial flexibility to undertake other capital projects without having to raise taxes and will avoid the financial difficulty that it could face in making the considerable improvements needed to the system.” ENT Stmt. in Support at 5. APW will offer employment to all current employees of the Township that work on system, which promotes job preservation and operational continuity. *Id.* ENT wants to sell its wastewater system so that APW, in lieu of the Township, will provide the wastewater service and will address the issues of regulatory requirements and capital expenditures. Application ¶ 51.b.

i. Enhanced Customer Service

APW provides a toll-free customer service telephone number which is operational from 8:00 a.m. to 5:00 p.m. for regular business and 24 hours, 7 days a week, 365 (366 in a leap year) days a year for emergency response. Aqua St. No. 1 at 17, ENT Stmt. in Support at 5. Township customers will have access to APW’s website to establish an account and to pay bills online. *Id.* Through the online portal, Township customers may sign up for alerts and notifications connected with their accounts, to be sent to their phone or email address. These mechanisms provide new ways for Township customers to be informed about their wastewater service. *Id.*

ii. Enhanced Protections to Customer Billing and Payment

APW has set procedures in place to provide for billing, payment, collection, termination, reconnection, payment arrangements, medical certifications, informal and formal complaints under Chapter 14 of the Code. APW has a customer care team to resolve service and billing issues. Aqua St. No. 1 at 17-18, ENT Stmt. in Support at 5. Said procedures were not required under ENT.

3. Benefits to Existing APW Customers

The customer base of APW will increase by 20% as a result of the acquisition. The increase in customer base will spread any future investments in infrastructure over a larger number of APW customers, resulting in a lower incremental cost per customer. Aqua St. No. 1 at 16, ENT Stmt. in Support at 5-6.

APW has agreed not to raise rates on its existing customers; therefore, there will not be any immediate impact on their rates. Aqua Exhibit No. 1, Application ¶ 51.g, ENT Stmt. in Support at 6. At its initially proposed ratemaking rate base of \$21,000,000, APW is acquiring ENT customers at a lower rate base per customer, which is \$4,229, than compared to APW's existing systems most recently included in its 2018 rate case at approximately \$7,750. Aqua St. No. 1 at 16, I&E Exhibit No. 2, Schedule 6. Moreover, APW explained,

[E]ven after applying the entire revenue deficiency to the current average monthly bill of a residential customer in East Norriton of approximately \$39 per month using four thousand gallons, the adjusted average bill would increase to approximately \$52 per month (a 35% increase). This is less than [Aqua's] existing average wastewater rates include in its most recent rate case of approximately \$68.27.

Aqua St. No. 1 at 16, ENT Stmt. in Support at 6. APW contends the fact that rate base and rates are less than APW's current rates are evidence of the economies of scale as a result of the acquisition. Aqua St. No. 1 at 17.

I find significant affirmative benefits as discussed above. APW has provided substantial evidence that the acquisition will yield benefits to both the Township customers, APW customers and the public.

c. Hypothetical Future Rate Impact Balanced Against Other Factors

This transaction furthers the Commission's consolidation and regionalization policy. See *supra* at 18. APW contends, "there will be both tangible and intangible positive

factors that are realized as a result of this transaction including capital improvements, expense efficiencies and economies of scale.” Aqua St. No. 1 at 19-20.

I find that any hypothetical future rate increase is outweighed by the furtherance of the Commission’s consolidation and regionalization policy, realized economies of scale for Township customers and APW customers by spreading capital expenditures for wastewater service improvements over a larger customer base, and the expertise of APW’s labor force and internal procedures in addressing wastewater service issues.

d. Section 1103(a) Settlement Conditions

1. Cost of Service Study (Settlement ¶ 23, C)

I&E and the OCA recommended that APW provide a separate cost of service study of the ENT system which identifies the plant in service at the time of purchase; the cost of any plant retirements; and the cost of any plant investment. I&E St. No. 2 at 23-24, OCA St. 1 at 20. The OCA simply states that the separate cost of service study will enable rates established in the base rate case to accurately reflect the costs of the ENT system. OCA St. 1 at 20. I&E asserts the cost of service study protects ratepayers. I&E Stmt. in Support at 9. The benefit of the cost of service study is it:

- (1) determines the cost to operate ENT’s system separately;
- (2) calculates the cost of APW’s different services;
- (3) separates the costs between APW’s different customer classes and service territories;
- (4) attributes costs to APW’s different customer classes and service territories;
- (5) determines how costs will be recovered from APW’s different customer classes and service territories;
- (6) establishes whether and to what extent subsidization exists; and
- (7) aids to determine the appropriate amount of revenue requirement necessary to be shifted from wastewater to water customers

I&E St. No. 2 at 23-25. I&E contends that without the cost of service study the cost to operate the wastewater system of ENT is unknown. I&E Stmt. in Support at 10.

APW agreed through the Settlement to submit in its first base rate case that includes ENT a cost of service study that removes all costs and revenues associated with the operation of ENT and a cost of service study exclusively for the wastewater system of ENT. APW noted that in the recent *Application of Aqua Pa. Wastewater, Inc. Pursuant to Section 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Twp., and Contracts between Aqua Pa. Wastewater, Inc. and Cheltenham Twp.*, Docket No. A-2019-3008491 (Opinion and Order entered November 5, 2019) (*Cheltenham*) the Commission conditioned approval by directing the submission of a separate cost of service study. APW Stmt. in Support at 10, citing *Cheltenham*, at 86. This precedent used in a similarly situated acquisition of a municipal authority by APW is compelling to be used in this Application.

I agree that this condition precedent enables establishing the rates of ENT customers and APW customers more accurately. This precedent used in a similarly situated acquisition of a municipal authority by APW is compelling to be used in this Application. I find that this condition is in the public interest and is warranted.

2. AFUDC – Deferral of Depreciation and Transaction Costs (Settlement ¶ 23.D)

Through the Settlement, APW agreed that any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC will be addressed in APW’s first base rate case which includes the assets of ENT. The Settlement also states that the Joint Petitioners reserve the right to litigate claims for AFUDC, deferral depreciation and transaction costs in future rate cases.

APW noted that a similar condition was directed by the Commission in *Cheltenham*. APW Stmt. in Support at 10, citing *Cheltenham*, at 86. I&E contends this provision recognizes the potential of APW to invoke portions of post-acquisition projects and permits review of APW’s proposed treatment of the same projects in future base rate cases. I&E Stmt. in Support at 10. I&E asserted the public interest is protected with this provision because it ensures that interested parties are not hindered in developing a full and complete record for the Commission for determining ratemaking issues. *Id.*, at 10-11. OCA asserted that this provision

preserves all parties' ability to challenge the reasonableness and prudence of the Company's projects claims in future base rate cases as well as facilitating a comprehensive review of said base rate case. OCA Stmt. in Support at 6.

I find that this provision protects the public interest because it does not hinder any party from challenging the justness and reasonableness of any Company projects in the future rate base proceedings that would include ENT assets. It is important that the Commission have a complete and accurate record concerning all Company projects in the base rate case that includes ENT assets. To operate otherwise may fail to protect the ratepayers from inaccurate cost allocation, which may lead to unjust or unreasonable rates.

3. DSIC and LTIP (Settlement ¶ 23.E)

The Joint Petitioners agree through the Settlement that upon the Commission's approval of a modification to APW's LTIP, the Company shall be permitted to collect a DSIC prior to the first base rate case which incorporates the ENT area plant-in-service into the rate base. The Settlement states that APW will revise its LTIP to include ENT projects before it begins charging the DSIC to ENT customers. Furthermore, APW agreed that in LTIPs or Annual Asset Optimization Plans that include the ENT wastewater system it will not reprioritize other existing capital improvements already committed to by the Company.

APW emphasized that this provision does not limit the Company from allocating projects under the LTIP necessary for its capital program, but the provision recognizes that any ENT system infrastructure capital improvements will be in addition to and secondary to those already planned. APW Stmt. in Support at 11. The provision also permits any improvements to the ENT system to be funded through APW's DSIC program in addition to already existing projects under the Company's LTIP. *Id.*

While I&E took no position on this provision it preserved the right, through the Settlement, to address this issue in future base rate, LTIP and DSIC proceedings. I&E contended that this provision serves the public interest because APW has agreed that existing project commitments will not be reprioritized. I&E Stmt. in Support at 11. However, improvements to

ENT infrastructure may be funded through DSIC which will benefit ENT customers with safer and reliable service. I&E Stmt. in Support at 11-12.

The OCA states that this Settlement term permits ENT customers to begin contributing up to 5% of their total wastewater bill toward DSIC-eligible capital projects. OCA Stmt. in Support at 4. The OCA states that this Settlement provision ensures that projects and expenditures already planned for existing APW customers will not be given less priority as a result of the ENT acquisition through approval of this Application. *Id.*, at 5.

I find this provision balances the capital improvement needs of the newly acquired ENT customers with APW's existing customers. It is apparent that ENT infrastructure improvements are needed, and this provision permits the Company to allocate the costs of any capital projects initiated for ENT while preserving the established priority of capital projects and addressing needs of APW's service territory and existing customers. I find this balancing appropriate and reasonable.

4. Ratemaking Rate Base – Fair Market Value (Settlement ¶ 23.F)

As stated above, see *supra* at 15, UVEs' fair market value was \$24,284,000 and \$25,064,594, APW and ENT, respectively. The average of the two appraisals of fair market value of ENT's wastewater system is \$24,674,297. Aqua Exhibit 1, Section XI, at 14-16. The proposed purchase price of ENT's wastewater system is \$21,000,000. Aqua Exhibit 1, Section X1, at 14-16.

Consistent with 66 Pa. C.S. § 1329(c)(2), the Applicant submitted the determination for the value of the ratemaking rate base to be the lesser amount between the proposed purchase price and the average of the appraised fair market values or \$21,000,000. This value was contested by both I&E and OCA. Through the Settlement the value of the ratemaking rate base was agreed upon at \$20,750,000, which is less than the value produced in compliance with the Section 1329(c)(2) of the Code.

I&E found errors in both of the UVEs' fair market value appraisals which warranted adjustment downward. I&E St. No. 1, at 43-44 (non-proprietary), I&E Exhibit No. 1, Schedule 18 (non-proprietary). I&E asserts that the Settlement value is a reasonable compromise and is consistent with its findings. I&E Stmt. in Support at 13.

A revision to the purchase price requires an amendment to the APA and a corresponding filing pursuant to Section 507 of the Code, which is not proposed under the Settlement. 66 Pa.C.S. § 507. Because the proposed ratemaking rate base under the Settlement is less than the purchase price, accepting the Settlement accepts the adjustments to the UVEs appraisals, generally. Implementing this provision curtails and reduces the time and resources that may have otherwise been expended if the value were disputed. I find that acceptance of the agreed to value is a reasonable compromise of the parties' positions and is in the public interest.

5. Appraisal Adjustments (Settlement ¶ 23.G)

Through the Settlement APW has agreed that in future Section 1329 filings consistent with *Cheltenham*, Docket No. A-2019-3008491 (Opinion and Order entered November 5, 2019), the service lives of ENT's gravity mains and manholes is established at a maximum of 75 years. Both I&E and OCA challenged what was used by the UVEs in the cost approach methodology for fair market value appraisal in this Application. I&E St. No. 2 at 15; OCA St. 1 at 25, 27, OCA St. 1S at 3-8. The provision also notes that the Company and I&E, OCA and OSBA reserved the right to present adjustments and oppose other methodologies, inputs and adjustments that were not challenged by I&E, OCA and OSBA or that were accepted by the Commission.

APW states that this provision is in the public interest because it limits the litigation expense and helps preserve the administrative resources that would have been expended if the provision were not in place. APW Stmt. in Support at 16.

OCA states that this provision preserves accepted financial and ratemaking principles and fosters consistency and reliability in data used for appraisals. OCA Stmt. in Support at 5.

I&E states that the agreement to adjust this input yields accuracy and consistency in the cost approach methodology for fair market valuation. I&E Stmt. in Support at 15-16, I&E St. No. 2 at 17-18. I&E contends that the agreed adjustment guards against an overstated valuation which would understate the depreciated value of the asset and overstate the remaining value. This inaccuracy is not in the public interest because the rate base would be inflated causing the ratepayers to overpay. I&E Stmt. in Support at 15-16, I&E St. No. 1 at 16 (non-proprietary).

OSBA has reviewed and analyzed the testimony related to the fair market value of the ENT wastewater system and agreed with the \$20,750,000 amount to be used for ratemaking rate base purposes. OSBA Stmt. in Support at 4.

It is compelling that the Commission address the service life of gravity mains and manholes as a similarly situated acquired asset in *Cheltenham*. While the Commission's determination in *Cheltenham* was fact-based upon the evidence in that proceeding, I agree that it is reasonable and prudent for consistency to implement it in this proceeding. See *Cheltenham*, (Opinion and Order entered November 5, 2019) at 44-45. Moreover, it is compelling that the parties have agreed to this adjustment. I conclude that this provision of the Settlement is in the public interest.

6. ENT Rates (Settlement ¶ 23.H)

The current average rate for an ENT residential customer is \$38.52 per month based on 4,000 gallons of monthly usage. Aqua St. No. 1 at 18, Application Exhibit I2. Through the Settlement the ENT customers will retain existing rates.

OSBA initially challenged whether it was beneficial to the existing APW ratepayers for ENT customers to retain existing rates subsequent to the effective date of the new rates in the Company's next base rate proceeding. OSBA St. No. 1 at 3-7. OSBA has concluded that any challenge to the rate proposals concerning ENT's wastewater system can be addressed in the first base rate case following the approval of this Application.

It is appropriate to review any rate proposals concerning ENT's wastewater system in the first base rate case concerning ENT's assets because comprehensive data of the costs of service by customer class and any potential subsidies will be evident through the cost of service study to be presented. OSBA concluded, based on the agreements obtained through the Settlement, that to await the comprehensive cost of service study in the first base rate case that includes ENT wastewater assets is prudent, reasonable and in the interests of the commercial and industrial customers of both APW and ENT. OSBA Stmt. in Support at 4.

It is compelling that OSBA determined it prudent to refrain from any challenge to ENT rates until the first base rate case that include ENT wastewater assets. I agree that in a base rate proceeding more comprehensive data is accessible to make a fair and reasonable determination on rates. It also curtails litigation, time and resources in this proceeding to pursue any challenge to the ENT customer rates in the first base rate proceeding. Therefore, I find that this provision is in the public interest.

7. Welcome Letter and Low-Income Outreach (Settlement ¶¶ 23.I&J)

ENT customers are currently billed on a quarterly basis. APW Application at 7. ENT does not distinguish between customer class, i.e. residential, commercial or industrial customers. *Id.*

Through the Settlement APW agreed to send out a welcome letter 20 days after the closing of the transaction has occurred. Joint Petition at 8. The welcome letter will include:

- (1) Information on converting from quarterly to monthly billing;
- (2) APW low-income programs; and
- (3) APW's contact information.

Id. The low-income programming information will include descriptions of eligibility guidelines and contact information of the Company for further inquiries.

APW states that through these Settlement provisions the ENT customers will receive notice of billing being converted from quarterly to monthly in a timely manner and will

gain information to enable an informed decision about eligibility and participation in low-income programs. APW Stmt. in Support at 12.

I&E contends the Settlement provision will ensure that low-income customers will be aware of available opportunities for financial assistance which will facilitate access to wastewater service for eligible customers. I&E asserts that the provision is consistent with the statutory policy to ensure wastewater service availability to all customers on reasonable terms and conditions. I&E Stmt. in Support at 17-18 citing 66 Pa.C.S. § 1402(3).⁶

I agree that notice to the ENT customers regarding their change in billing frequency from quarterly to monthly and available customer assistance programs for low-income customers is reasonable, appropriate, and therefore, in the public interest. The provisions ensure that APW provides information including financial assistance to maintain access to wastewater service for eligible ENT customers and promotes a policy of the General Assembly in the Responsible Utility Customer Protection Act. 66 Pa.C.S. § 1402(3). Consequently, I find that this provision furthers the public interest.

8. Easements (Settlement ¶ 23.K)

The APA is an agreement between APW and ENT which, in part, addresses the transfer of system easements and rights of way for ENT piping. Aqua St. No. 1-R (non-proprietary) at 18. Through the Settlement, APW agreed to provide an update to the public advocates (I&E, OCA and OSBA) on March 31, 2020, and a final update before the closing of these contractual real property rights to ensure that the parties will be informed of the status of any missing real property rights.

I&E argues there exists uncertainty in whether the appropriate easements or access to public rights-of-way would be transferred at closing because the Township's Abstractor's report was not complete. Application, Exhibit Z, No. 9, I&E St. No. 2, at 19. I&E asserts that ratepayers should not be at risk for untimely transactions that do not include the

⁶ 66 Pa.C.S. § 1402(3) states, "Through this chapter, the General Assembly seeks to ... ensure that service remains available to all customers on reasonable terms and conditions."

necessary real property rights for APW to access and address wastewater service issues. I&E St. No. 2SR, at 18.

I&E contends the Settlement provision protects the public interest because it holds APW and ENT accountable to identify, transfer and pay the costs of all property rights for APW's operation of the ENT wastewater system. I&E Stmt. in Support at 20. This provision provides a mechanism to ensure that the public advocates are informed of the status of any missing property rights and empowers the same public advocate to take action so that APW ratepayers do not pay any costs associated with obtaining the necessary land rights for wastewater service use. Additionally, the provision gives APW a means to monitor any missing easements to ensure it has what is necessary for land access to deliver wastewater service or to develop a plan to address the appropriate means to obtain land access to deliver wastewater service. *Id.*, 20-21. I&E agreed that this provision does not preclude APW and ENT from closing the transaction if any easements remain missing at closing. APW Stmt. in Support at 12.

This provision yielded a compromise to a contentious issue between APW, ENT and I&E. I find that the provision is reasonable and, as a compromise to obtain a settlement, it promotes the public interest.

9. Warranty (Settlement ¶ 23.L)

I&E stated its concern regarding ENT's disclaimer of certain warranties. I&E highlighted that evidence supports ongoing I&I and SSO events plagued ENT's wastewater system, and approximately 25 years ago, pressure testing of ENT's wastewater system was conducted to reveal approximately 65% of the pipes joints failed the pressure testing. Additionally, I&E contended that it appears no further testing has been conducted and, absent meaningful improvements, the piping has only continued to deteriorate. The I&I and SSO issues have warranted DEP's prohibition of new connections in a certain portion of ENT's system due to hydraulic overloads. I&E St. No. 1 at 39-40. These concerns amounted to I&E questioning whether the acquisition of the ENT system would yield the value assessed for a system fit to operate as a wastewater system for APW customers. *Id.*, at 40-41.

APW and ENT agreed through Settlement to amend the APA to warrant that ENT wastewater system assets are fit at the time of closing of this transaction. Thus, this provision is an express guarantee through warranty that the system at the time of closing is fit for operation.

Like the easement provision of the Settlement, the modification to the APA under the warranty provision is a compromise to a dispute of positions between APW, ENT and I&E. I find that the warranty provision is reasonable, prudent and in the public interest in that it affords APW the capability to pursue a breach of warranty claim if the ENT wastewater system is not operational at the closing of the transaction.

10. Legal Fees (Settlement ¶ 23.M)

I&E raised concern that APW's commitment in Section 7.05(d) of the APA to pay ENT's legal fees in excess of \$20,000 is not within the scope of Section 1329. 66 Pa.C.S. § 1329(b)(3) states, "Fees paid to utility valuation experts may be included in the transaction and closing costs associated with acquisitions by the acquiring utility or entity." Legal fees are not permitted by statute to be included in the ratemaking rate base or otherwise passed on to the ratepayer. I&E St. No. 2 at 23.

In the Settlement APW agreed to separately identify in its next base rate case any legal fees included in its closing cost of this transaction and to specify any amounts expended by APW on behalf of ENT with the statutory advocates (I&E, OCA and OSBA). The statutory advocates have reserved the right to dispute the reasonableness, prudence and rationale for such fees in the next base rate case involving the ENT wastewater system through this Settlement provision. Joint Petition at 23.M.

APW asserts that this provision allows any legal fees of ENT to be examined during a future base rate case where said fees can be diligently scrutinized and therefore, comprehensively protect the interests of the ENT customers, the APW ratepayers and the Company. APW Stmt. in Support at 13.

I&E supports this provision of the Settlement because it enables a basis, procedure and forum under which any legal fees to be recovered from ENT's customers can be sought. The provision also enables separate identification of any ENT legal fees so that any interested party and the Commission may readily proportion any claimed fee appropriately. I&E Stmt. in Support at 26-27. It also preserves I&E's ability to dispute any claimed cost by APW for legal fees in the future base rate case concerning ENT's wastewater system and provides certainty of any claimed costs that will only become apparent after the acquisition. *Id.*, at 27.

I agree that it is appropriate to review whether the legal fees have accrued above the threshold of \$20,000 during an APW base rate case. As noted above, the ratemaking rate base for the ENT system is below the purchase price. It is concerning that APW may pay ENT for costs that could have been incorporated into the purchase price. I find it is in the public interest to have this term addressed in the future base rate case where certainty of the amount and the appropriateness of said fees can be determined.

11. Summary Concerning Settlement Conditions

Based on the analysis of the Settlement conditions I find said conditions are just and reasonable as presented. I recommend acceptance of the conditions without modification.

e. Approval of Acquisition (Settlement ¶ 23.A)

ENT assets consist of approximately 59 miles of gravity sewer collection mains and interceptors and four miles of force mains with nine pump stations, and a surge tank located at the Einstein Pump Station. Application at 4, ¶ 12. APW seeks to provide service to approximately 4,966 wastewater customers of ENT. Aqua St. No. 2 at 4.

The above discussion shows APW's fitness, albeit technical, financial and legal, to operate as a wastewater service provider. It is also noted that APW has experience in improving acquired wastewater systems service and making improvements to those systems. I&E Stmt. in Support at 8.

The above discussion also shows affirmative public benefits gained from the Settlement by the customers of APW, customers of ENT, the Township and the public. Furthermore, the negatives of any future rate increase are outweighed by the gains realized by the Township, the customers of APW and the customers of ENT by addressing the wastewater service issues for infrastructure improvement and maintenance.

I find that the granting of a certificate of public convenience as evidence of Commission approval of acquisition of ENT by APW is warranted. Therefore, it is recommended that the Commission approve the acquisition by APW of ENT.

f. Tariff (Joint Petition ¶ 23(B))

The Application at Exhibit G is a *pro forma* tariff proposed to become effective upon the closing of the acquisition. The Joint Petitioners support the *pro forma* tariff which adopts the current rates of ENT. I&E Stmt. in Support at 8. The *pro forma* tariff includes all rates, rules and regulations regarding the conditions of wastewater service provided by APW and is a full disclosure of rates to the public.

I find the adoption of the *pro forma* tariff is in the public interest and recommend it to become effective upon the Commission approval of the Application.

B. Section 507 of the Code Approvals

The Settlement requests the Commission to issue Certificates of Filing as required by Section 507 of the Code for the following:

- i. Asset Purchase Agreement, dated October 29, 2018, by and between East Norriton Township and Aqua Pennsylvania Wastewater, Inc.
- ii. Assignment of the Agreement with Joint Sewer Authority, dated November 12, 2003, by and among the East Norriton-Plymouth-Whitpain Joint Sewer Authority, East Norriton Township, Whitpain Township and Plymouth Township addressing service to the Burnside Reserve development.

- iii. Assignment of the Agreement, dated July 18, 1994, by and among East Norriton Township, Whitpain Township and John DiSanto.
- iv. Assignment of the Agreement, dated August 13, 1991 by and between the Plymouth Township Municipal Authority and Plymouth Township and the East Norriton Sewer Authority and East Norriton Township Board of Supervisors.
- v. Assignment of the Agreement, dated September 9, 2007, by and among East Norriton Township, Whitpain Township and the Automobile Dealers Association of Greater Philadelphia.
- vi. Assignment of the Joint Treatment Agreement, dated October 5, 1959, among the East Norriton-Plymouth Joint Sewer Authority, the Township of East Norriton, the Township of Plymouth, the East Norriton Township Municipal Authority and the Plymouth Township Municipal Authority.
- vii. Assignment of the Intermunicipal Sewage Treatment Service Agreement, dated August 14, 1991 by and among the East Norriton-Plymouth Joint Sewer Authority and East Norriton Township, Plymouth Township and Whitpain Township, East Norriton Township Municipal Authority and Plymouth Township Municipal Authority.
- viii. Assignment of the Supplement No. 1 to Intermunicipal Sewage Treatment Service Agreement, dated on or about October 25, 2005, among the East Norriton-Plymouth-Whitpain Joint Sewer Authority and East Norriton Township, Plymouth Township and Whitpain Township.

There is no record of any opposition to the issuance of any of the above eight Certificates of Filing.

I find that APW has shown by the preponderance of the evidence that the eight contracts at issue in this proceeding are reasonable, legal and valid; therefore, I recommend that the Commission grant approval by Certificates of Filing.

C. Conclusion and Recommendation

There are three *pro se* Protestants to this proceeding:

- (1) Allen Dalton;
- (2) Christine and Michael Maddalo; and
- (3) Stanley Mansell.

It is significant that none of the *pro se* Protestants choose to oppose the Settlement. Rather, one, Mr. Mansell, chose to withdraw his protest and another, Mr. Dalton, chose to join the Settlement. Similarly, neither of the two intervenors, ENT and the Union, opposed the Settlement and none of the public advocates, I&E, OCA and OSBA opposed the Settlement. Rather, ENT, I&E, OCA and OSBA were signature parties to the Settlement and provided written support thereof. It is compelling that there is no written opposition to the Settlement from either active or inactive parties to this proceeding.

Five of the six witnesses that testified at the smart hearing stated they did not want their rates to increase. See *supra* at 6-8. None of these five witnesses are ENT customers. However, the Settlement ensures that there is no immediate rate increase for ENT or APW customers as the current rates of ENT customers will be implemented after the transaction is approved. Any rate increase to ENT or APW customers would be due to a future base rate case filing and the approval of the Commission.

I find that the objections to this Application voiced by these five smart hearing witnesses is rebutted by the directives concerning implementing rates agreed upon in the Settlement.

The Joint Petitioners have established that the proposed terms and conditions of the Settlement will promote increased efficiency of service and capital improvements in cost effective manners that are in the public interest. I find that the Settlement yields positive benefits resulting from the acquisition that are consistent with *City of York*, *Popowsky* and *McCloskey*. Therefore, it is recommended that the Commission grant the Application and the Joint Petition for Approval of Settlement and approve and adopt the Settlement in its entirety without modification.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this proceeding. 66 Pa.C.S. §§ 1102 and 1329.
2. APW as the party seeking a rule or order from the Commission has the burden of proof to establish that it is entitled to the relief sought. 66 Pa.C.S. § 332(a).
3. APW must prove its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 500 (Pa.Cmwlth. 1990), appeal denied, 603 A.2d 863 (Pa. 1992); *Application of Utilities, Inc., of Pennsylvania for approval to begin to offer, render, furnish or supply wastewater disposal and treatment service to the public in additional territory in West Bradford Twp., Chester County, Pennsylvania*, Docket No. A-230013F0003, 2004 Pa. PUC LEXIS 17 (Order entered February 19, 2004).
4. To meet its burden of proof, APW must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
5. A certificate of public convenience is 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. APW is the party to whom the wastewater system assets and service obligations would be transferred, and therefore, must demonstrate by a preponderance of the evidence that it is technically, legally and financially fit to provide the proposed service. 66 Pa.C.S. §§ 1102 and 1103; *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762, 764 (Pa.Cmwlth. 1985).
7. APW has sufficient staff, professionals, facilities and operating expertise to provide the proposed service. *Re: Perry Hassman*, 55 Pa. PUC 661 (1982).

8. APW has complied with the Public Utility Code and the Commission's regulations, demonstrating it legally fit to provide the proposed service. *Re: Perry Hassman*, 55 Pa. PUC 661 (1982).

9. APW has shown sufficient financial resources to provide the proposed service. *Re: Perry Hassman*, 55 Pa. PUC 661 (1982).

10. APW has proven by a preponderance of the evidence that the acquisition is in the public interest because it will result in affirmative public benefits. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972).

11. The Joint Petitioner's proposed rate base value for APW of \$20,750,000 for the acquired assets is reasonable and in the public interest. 66 Pa.C.S. § 1103(a).

12. APW has shown that the eight contracts concerning its proposed transaction are reasonable and legally valid. 66 Pa.C.S. § 507.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Settlement, filed February 6, 2020, by Aqua Pennsylvania Wastewater, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and East Norriton Township at Docket No. A-2019-3009052, including all terms and conditions thereof be approved without modification.

2. That the Application of Aqua Pennsylvania Wastewater, Inc seeking approval under 66 Pa.C.S. §§ 1102 and 1329 of the Pennsylvania Public Utility Code, of its

acquisition of the wastewater system assets of East Norriton Township, Montgomery County, Pennsylvania at Docket No. A-2019-3009052 be approved with certain conditions as described herein.

3. That a Certificate of Public Convenience be issued pursuant to 66 Pa. C.S. § 1102(a)(3) of the Pennsylvania Public Utility Code, evidencing Commission approval of the acquisition by Aqua Pennsylvania Wastewater, Inc. of the wastewater system assets of East Norriton Township, subject to the following conditions:

a. That Aqua Pennsylvania Wastewater, Inc. and East Norriton Township shall work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement by closing. Aqua Pennsylvania Wastewater, Inc. shall provide an update to the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate on March 31, 2020 and a final update before closing regarding the status of the transfer of real property rights including easements related to the wastewater system.

b. That Aqua Pennsylvania Wastewater, Inc. and East Norriton Township shall amend page 13 of Exhibit B of Aqua Pennsylvania Wastewater, Inc.'s Application, the Asset Purchase Agreement, to warrant that the East Norriton Township assets are fit for a particular purpose at the time of closing and sale as follows,

Except as expressly set forth in this agreement, seller makes no express or implied representations or warranties of any kind whatsoever, including any representation as to the physical condition or value of any of the acquired assets or the system, or the future profitability or future earnings performance of the acquired assets or the system or any future ratemaking that may be allowed by the Pennsylvania Public Utility Commission for any of the acquired assets. All implied warranties of merchantability and fitness for a particular purpose ~~are expressly excluded~~ **are valid only until the time of closing.** Notwithstanding the foregoing, seller is not aware of any material defect in the

performance or operation of the physical assets constituting the system.

This amended agreement shall be filed by Aqua Pennsylvania Wastewater, Inc. at this Docket prior to closing and at least 30 days prior to the amended agreement's effective date.

c. That Aqua Pennsylvania Wastewater, Inc. shall notify the Commission within ten days of closing of the transaction.

d. That if Aqua Pennsylvania Wastewater, Inc. determines the transaction will not occur, Aqua Pennsylvania Wastewater, Inc. shall promptly file notice of such determination with the Commission and return this Certificate of Public Convenience to the Commission and this Certificate of Public Convenience shall be cancelled without further action of the Commission.

4. That upon receipt of a notice of closing of the transaction, a Certificate of Public Convenience be issued pursuant to 66 Pa. C.S. § 1102(a)(1)(i) of the Pennsylvania Public Utility Code, authorizing Aqua Pennsylvania Wastewater, Inc. to begin to offer, render, furnish, or supply wastewater service to the public in portions of East Norriton Township, Montgomery County, consistent with the depiction and description provided in the Application's Revised Exhibit A filed October 21, 2019 at Docket No. A-2019-3009052, subject to the following conditions:

a. That in the first base rate case that includes East Norriton Township wastewater system assets, Aqua Pennsylvania Wastewater, Inc. shall file a wastewater cost of service study that removes all costs and revenues associated with the operation of the East Norriton Township system.

b. That in the first base rate case that includes East Norriton Township wastewater system assets, Aqua Pennsylvania Wastewater, Inc. shall file a separate cost of service study for the East Norriton Township system consistent with typically filed rate making exhibits including, but not limited to

the following: (1) Rate Base (Measures of Value); (2) Statement of Operating Income; and (3) Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

c. That claims related to the accrual of Allowance of Funds Used During Construction for non-distribution system improvement charge eligible post-acquisition improvements shall be made in the next Aqua Pennsylvania Wastewater, Inc. base rate case following the plant additions.

d. That rate claims related to the deferral of depreciation for book and ratemaking purposes on non-distribution system improvement charge eligible post-acquisition improvements shall be made in the next Aqua Pennsylvania Wastewater, Inc. base rate case following the plant additions.

e. That Aqua Pennsylvania Wastewater, Inc. promptly following the closing of the acquisition, shall issue a compliance tariff supplement, consistent with the *pro forma* tariff supplement containing the existing rates of East Norriton Township at Exhibit G of the Application, to be effective on one day's notice.

f. That upon approval by the Commission of a modification to Aqua Pennsylvania Wastewater, Inc.'s Long Term Infrastructure Improvement Plan to include the East Norriton Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall be permitted to collect a Distribution System Improvement Charge related to the East Norriton Township wastewater system prior to the first base rate case in which the East Norriton Township assets are incorporated into rate base.

g. That in Long Term Infrastructure Improvement Plans or Annual Asset Optimization Plans that include the East Norriton Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall not reprioritize other existing capital improvements that Aqua Pennsylvania Wastewater, Inc. already committed to undertake in other service territories.

h. That Aqua Pennsylvania Wastewater, Inc. shall send a welcome letter to East Norriton Township wastewater customers within 20 days following closing, which shall include information regarding the conversion to monthly billing for wastewater service, Aqua Pennsylvania Wastewater, Inc.'s available low-income programs and eligibility requirements for participation in the programs and Aqua Pennsylvania Wastewater, Inc.'s contact information.

i. That in Aqua Pennsylvania Wastewater, Inc.'s next base rate case, Aqua Pennsylvania Wastewater, Inc. shall separately identify any legal fees included in Aqua Pennsylvania Wastewater, Inc.'s transaction and closing costs pursuant to the Asset Purchase Agreement between Aqua Pennsylvania Wastewater, Inc. and East Norriton Township and specify amounts expended by Aqua Pennsylvania Wastewater, Inc on behalf of East Norriton Township.

5. That Aqua Pennsylvania Wastewater, Inc. within 30 days of closing of the acquisition, shall file the municipal agreement set forth in subsection (a) through (h) herein under a separate "U" docket number, and that the Commission's Secretary issue a Certificate of Filing under Section 507 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 507, for each of the following municipal agreements filed with the Commission:

a. Asset Purchase Agreement, dated October 29, 2018, by and between East Norriton Township and Aqua Pennsylvania Wastewater, Inc. and the Amendment to Asset Purchase Agreement, to be filed by Aqua Pennsylvania Wastewater, Inc., by and between East Norriton Township and Aqua Pennsylvania Wastewater, Inc.

b. Assignment of the Agreement with Joint Sewer Authority, dated November 12, 2003, by and among the East Norriton-Plymouth-Whitpain Joint Sewer Authority, East Norriton Township, Whitpain Township and Plymouth Township addressing service to the Burnside Reserve development.

c. Assignment of the Agreement, dated July 18, 1994, by and among East Norriton Township, Whitpain Township and John DiSanto.

d. Assignment of the Agreement, dated August 13, 1991 by and between the Plymouth Township Municipal Authority and Plymouth Township and the East Norriton Sewer Authority and East Norriton Township Board of Supervisors.

e. Assignment of the Agreement, dated September 9, 2007, by and among East Norriton Township, Whitpain Township and the Automobile Dealers Association of Greater Philadelphia.

f. Assignment of the Joint Treatment Agreement, dated October 5, 1959, among the East Norriton-Plymouth Joint Sewer Authority, the Township of East Norriton, the Township of Plymouth, the East Norriton Township Municipal Authority and the Plymouth Township Municipal Authority.

g. Assignment of the Intermunicipal Sewage Treatment Service Agreement, dated August 14, 1991 by and among the East Norriton-Plymouth Joint Sewer Authority and East Norriton Township, Plymouth Township and Whitpain Township, East Norriton Township Municipal Authority and Plymouth Township Municipal Authority.

h. Assignment of the Supplement No. 1 to Intermunicipal Sewage Treatment Service Agreement, dated on or about October 25, 2005, among the East Norriton-Plymouth-Whitpain Joint Sewer Authority and East Norriton Township, Plymouth Township and Whitpain Township.

6. That Aqua Pennsylvania Wastewater, Inc., within 30 days of closing of the acquisition, shall file a verified statement at this Docket notifying the Commission whether the following requirements have been met or complied with:

- a. Settlement ¶ 23.I;
- b. Settlement ¶ 23.J; and
- c. Settlement ¶ 23.K.

7. That for purposes of Section 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1329(c)(2), the ratemaking rate base of the East Norriton Township wastewater system assets is \$20,750,000.

8. That a copy of the Commission's Order be served upon the East Norriton Township Board of Supervisors, the East Norriton Township Planning Commission, the Montgomery County Commissioners, the Montgomery County Planning Commission, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Revenue's Bureau of Corporate Taxes, and the Department of Environmental Protection-Southeast Regional Office and its Central Office Bureau of Regulatory Counsel.

9. That upon receipt of a notice of closing of the transaction, or upon the return of the Certificate of Public Convenience regarding this transaction, pursuant to Ordering Paragraph No. 3.d., this proceeding be marked closed.

Date: March 10, 2020

_____/s/
Angela T. Jones
Administrative Law Judge