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December 1, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Application of Aqua Pennsylvania Wastewater Inc. pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority
Docket No. A-2019-3015173

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Re: Application of Aqua Pennsylvania Wastewater Inc. pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority	:	Docket No. A-2019-3015173

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 1st day of December 2020.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania Wastewater Inc. pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority	:	Docket No. A-2019-3015173

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Dated: December 1, 2020

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I. STATEMENT OF THE CASE

A. Procedural History

On March 3, 2020, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code requesting that the Public Utility Commission (Commission): (1) approve the acquisition of the wastewater system assets (Assets) of Delaware County Regional Water Quality Control Authority (DELCORA or Authority) wastewater collection and treatment system; (2) approve the right of Aqua to provide wastewater service in the requested territory; and (3) include, in its Order approving the acquisition, the ratemaking rate base of the Assets as determined under Section 1329(c)(2) of the Public Utility Code. Application at ¶ 3.

Aqua also requested approval of the Asset Purchase Agreement (APA) dated September 17, 2020, with the Authority, pursuant to Section 507 of the Public Utility Code, and requested that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. Application at ¶ 5. DELCORA provides direct retail service to approximately 16,000 customers and provides collection, conveyance, and treatment service to approximately 200,000 Equivalent Dwelling Units in Delaware and Chester Counties, Pennsylvania, transmitting, and treating approximately 65 million gallons per day. Application at ¶ 8; Exh. I1. Moreover, DELCORA provides wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities. Id.

On March 26, 2020, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement. The OCA filed a Protest and Public Statement on April 2, 2020. On April 2, 2020, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. On May 18, 2020, the County of Delaware, Pennsylvania (Delaware County) filed a Petition to Intervene. On June 17, 2020, Edgmont Township, Delaware County, Pennsylvania (Edgmont Township) filed a Petition to Intervene. On June 25, 2020, DELCORA filed a Petition to Intervene. On July 17, 2020, Southwest Delaware County Municipal Authority (SDCMA) filed a Protest. On August 7, 2020, Lower Chichester Township and Upland Borough filed a Protest. On August 17, 2020 Trainer Borough filed a Protest. On August 17, 2020, Edgmont Township filed a Protest and a Petition for Leave to Withdraw the Petition to Intervene. On August 28, 2020, Sunoco Partners Marketing and Terminals L.P./Energy Transfer (Sunoco) filed a Protest to the Application. On August 31, 2020, Kimberly-Clark Pennsylvania, LLC and Kimberly-Clark, Corporation (Kimberly Clark) filed a Protest to the Application.

By Secretarial Letter dated July 27, 2020, the Commission informed Aqua that it had accepted the Application for filing. A prehearing conference order was issued on August 3, 2020, directing the parties to submit a prehearing conference memorandum by August 31, 2020. On August 7, 2020, Delaware County filed a Petition to Stay the proceeding until January 31, 2021, and a request for Commission review of a material question. That matter was denied by Commission Opinion and Order dated August 31, 2020. On August 14, 2020, the OCA filed a Motion to Extend the Statutory deadline 60 days or to March 26, 2021. By Order dated August 18, 2020, ALJ Jones directed the parties to respond to the OCA Motion by August 24, 2020. Multiple parties filed responses to OCA's Motion to Extend. By Order dated August 31, 2020, Chief ALJ Charles Rainey granted the OCA Motion extending the statutory deadline to March 26,

2021. On August 31, 2020, the Commission denied the Delaware County Petition to Stay and interlocutory review of material question.

A prehearing conference was held on September 2, 2020. On September 29, 2020, the OCA served the direct testimony of Ralph Smith.[1] I&E, OSBA, Delaware County, Kimberly Clark, SDCMA, Sunoco, Edgmont Township, Lower Chichester, and Upland Borough also served direct testimony on September 29, 2020. The Applicant served rebuttal testimony on October 20, 2020, and I&E, and the OCA served surrebuttal testimony on November 02, 2020. Hearings were held on November 9 and 10, 2020, where the Applicants' witnesses provided oral rejoinder testimony and the OCA submitted its testimony into the record. Pursuant to the schedule, the OCA files this Main Brief in support of its position.

B. Overview of the Proposed Transaction

Aqua proposes to pay $276,500,000 for DELCORA's assets. Application at ¶ 24. Aqua chose to file its application under Section 1329 in addition to Sections 1102 and 507 of the Public Utility Code. Aqua requests that the purchase price of $276,500,000 be approved for ratemaking purposes as it is lower than the average of the two appraisals provided with its application. See 66 Pa. C.S. § 1329(c)(2). In addition, Aqua seeks approval of the APA with DELCORA as well as other municipal agreements, pursuant to Section 507 of the Public Utility Code, and requested that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. Application at ¶¶ 5, 72. The APA includes provisions

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[1] Ralph Smith is a Senior Regulatory Consultant at Larkin & Associates, PLLC, an accounting and regulatory consulting firm. The firm performs independent regulatory consulting primarily for public service/utility commission staffs and consumer interest groups. Larkin & Associates has extensive experience in the utility regulatory field as expert witnesses in over 400 regulatory proceedings including numerous telephone, water and sewer, gas, and electric matters. Mr. Smith is both a licensed CPA as well as member of the Michigan Bar. Mr. Smith's extensive education and experience has been summarized and attached to his Direct Testimony (OCA St. 1) as Attachment A.

stating that DELCORA will take a portion of the proceeds of the Proposed Transaction and place them into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the Trust through Aqua's billing process. Application at ¶ 36. The APA also requires Aqua to implement rates that are no higher than DELCORA's rates in effect at closing. Application at ¶ 36. Moreover, in accordance with Section 1102 of the Public Utility Code, Aqua is requesting a Certificate of Public Convenience in order to provide wastewater services to the DELCORA customers. Application at ¶ 5. Separate customer notices were sent to DELCORA customers and Aqua's current customers informing them of the proposed transaction and the potential rate impact.

II. BURDEN OF PROOF

Under Sections 315(c) and 332 of the Public Utility Code, the burden of proof rests with the Applicant. Section 332 states:

> (a) Burden of proof. - Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

66 Pa. C.S. § 332. Section 315(c) places the burden of proof upon the Applicant. It states that:

> In any proceeding upon the motion of the commission, involving the service or facilities of any public utility, the burden of proof to show that the service and facilities involved are adequate, efficient, safe, and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(c). Therefore, it is the Applicant that has the burden of demonstrating by a preponderance of the evidence that the proposed acquisition by Aqua meets the requirements of Pennsylvania law. See Lansberry v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990) (Lansberry). More precisely, the Applicant's case must be more convincing than the case presented by the challenger. Se-Ling Hosiery, Inc. v. Margulies, 413 A.2d 845 (Pa. 1950).

The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Even where a party established a prima facie case, the party with the burden of proof must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary." Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983). Additionally, the evidence must be substantial and legally credible, and cannot be mere "suspicion" or a "scintilla" of evidence. Lansberry at 602.

Finally, the Applicant has the burden of proving that the acquisition will "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." City of York v. Pa. PUC, 295 A.2d 825, 828 (Pa. 1972); 66 Pa. C.S. § 315(c).

III. STATEMENT OF QUESTIONS INVOLVED

Q. Whether the valuations provided pursuant to Section 1329 are reasonable under Chapter 13 of the Public Utility Code and accepted financial and ratemaking principles?

Suggested Answer: No.

Q. Whether the proposed transaction establishes affirmative public benefits.

Suggested Answer: No.

Q. If the Commission approves the application under Section 1102, are any conditions necessary.

Suggested Answer: Yes.

IV. SUMMARY OF ARGUMENT

The proposed transfer of the DELCORA wastewater system to Aqua was filed under Sections 507, 1102, and 1329 of the Public Utility Code. 66 Pa. C.S. §§ 507, 1102, 1329. As it pertains to Section 1329, it should be emphasized that the statutory appraisal process is not a simple formulaic mathematical exercise. Review of the appraisals provided by Aqua and DELCORA show that there are judgments made in each type of analysis as well as in how much weight is given to each approach. The average of the two appraisals is $358,538,500. OCA St. 1 at 24; OCA Exh. RCS-1. The appraisals submitted by Aqua for the Seller and Buyer must be modified to reflect a number of adjustments that are necessary to account for accepted ratemaking and regulatory principles. The adjusted appraisals result in an average of appraisals of $280,655,000. OCA Table I at Col. G, Ln. 13; OCA Exh. RCS-1 at Col. G, Ln. 13; OCA St. 1 at 24. Aqua's proposed purchase price to acquire the DELCORA wastewater system is $276,500,000. OCA St. 1 at 23. As the purchase price is less than the average of the two adjusted appraisals, the appropriate amount for the DELCORA wastewater system for ratemaking rate base purposes is $276,500,000 under Section 1329.

In addition to the necessary adjustments to the appraisals under Section 1329, necessary and appropriate conditions should be imposed under Section 1103 to ensure that the transaction meets the legal standards. The OCA has identified several conditions that the OCA submits should be imposed if the Commission determines to approve the proposed transaction under Section 1102. These conditions are particularly important because Aqua witness Packer estimated an $8,908,000 revenue deficiency for the DELCORA system if the $276,500,000 rate base is approved.[2] Aqua St. 2, App. A. If the full revenue requirement is recovered only from the DELCORA customers, it would require a 12.55% rate increase to DELCORA customer rates as a result of the acquisition. OCA St. 1 at 26.

The OCA further notes that there is a proceeding before the Court of Common Pleas regarding certain issues that overlap with the instant proceeding. Among these issues is the

[2] DELCORA's current revenue is approximately $71 million. Aqua St. 2, App. A.

formation of a Trust as a consequence of the proposed transaction. The OCA submits that the proposed Trust, if found to be lawful and in compliance with Commission rules and regulations, can help address the negative impact on both the existing DELCORA customers and the acquiring Aqua customers. Should the Commission proceed in making a determination regarding the proposed transaction, however, the conditions proposed by the OCA should be adopted as part of the Commission's determination as they are necessary to ensure that affirmative public benefits result from the proposed transaction.

The OCA further recognizes that other parties to this proceeding have proposed certain conditions that the OCA did not address in brief. To be clear, the OCA takes no position on the positions presented by the other parties but does not oppose the conditions raised by the other parties to this proceeding. For all of these reasons and as discussed further herein, the OCA recommends that, if the Commission approves the application under Section 1102, certain conditions are necessary to protect the public interest.

V. ARGUMENT

A. Section 1329

1. Introduction

Section 1329 was enacted in April 2016 and became effective on June 29, 2016. Act 2016-12 (HB 1326). Section 1329 provides, *inter alia*, that when a regulated water or wastewater utility acquires a municipal water or wastewater provider, the regulated utility can ask for ratemaking treatment of the acquired utility's assets using fair market value. 66 Pa. C.S. § 1329. As set forth in Section 1329(a) and (b), the process for determining the fair market value is based on two separate appraisals each using the Cost, Market and Income approaches. 66 Pa. C.S. §§ 1329(a)(3), (b). The appraisals are then averaged to determine the fair market value, 66 Pa. C.S. § 1329(g) and the lesser of the purchase price or the fair market value is what the acquiring utility will present as the proposed rate base. 66 Pa. C.S. § 1329(c)(2). This is not a simple mathematical exercise. The appraisals reflect the judgments and choices made by each utility valuation expert as will be discussed below.

In this proceeding, the two appraisal values were $408,883,000 (Gannett Fleming) and $308,194,000 (ScottMadden). The average of the two appraisals is $358,538,500. OCA Exh. RCS-1. Aqua has proposed a rate base of $276,500,000 (the purchase price) for the DELCORA assets it will acquire because the purchase price is lower than the average of the two appraisals. Using an engineering assessment performed by Pennoni Associates, Inc., Gannett Fleming shows the original cost of DELCORA's wastewater collection and treatment system and land to be $263,682,616.[3] OCA St. 1 at 23. With calculated accumulated depreciation of $71,908,130,[4] the net book value of the DELCORA wastewater utility assets is $191,774,486.[5] Id.

As discussed below, the OCA submits that the UVE appraisals submitted as part of Aqua's Application contain errors and flaws and must be adjusted to properly determine the fair market value for ratemaking purposes.

2. Section 1329 – Legal Principles

Pursuant to Section 1329, upon agreement by the acquiring public utility and the selling entity, "two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value" and each "shall determine fair market value" in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) based on the

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[3] See Application Exh. Q, Fair Market Value Appraisal Report as of December 31, 2019 for Aqua prepared by Gannett Fleming ("Gannett Fleming Report") at 27-28.
[4] Gannett Fleming Report at 28.
[5] This value does not reflect an offset for contributions, pursuant to 1329, as it would under normal ratemaking.

cost, market, and income approaches. 66 Pa. C.S. § 1329(a). "The ratemaking rate base shall be the lesser of the purchase price negotiated by the acquiring public utility . . . and selling utility or the fair market value of the selling utility." 66 Pa. C.S. § 1329(c)(2).

The Applicant must provide to the Commission copies of the appraisals, the purchase price, the ratemaking rate base, the closing costs, and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1). Regardless of whether the Applicant meets the requirements of Section 1329, the Applicant still has the burden of proving that it satisfies the requirements of Sections 1102 and Section 1103 of the Public Utility Code. See McCloskey v. Pa. PUC, 195 A.3d 1055, 1064 (Pa. Commw. 2018) (New Garden); 66 Pa. C.S. §§ 1102, 1103. Moreover, the Commission has determined that UVEs are required to apply jurisdictional exceptions under the valuation approaches, in order to establish appropriate guidelines and consistent assumptions for Section 1329 Fair Market Value appraisals, to comply with Commission precedent, and to reduce variances in the appraisals for the same property. Application of Aqua Pennsylvania Wastewater, Inc., A-2019-3008491, Order at 6-7 (Nov. 5, 2019) (Cheltenham).

3. Aqua's Application

The appraisals contained in Aqua's application were prepared by Gannett Fleming for Aqua and ScottMadden for DELCORA.

Gannett Fleming's appraisal determined as follows:

Gannett Fleming Valuation Summary			
Valuation Approach	Individual Result	Weight	Weighted Result
Cost Approach	$ 399,664,113	33%	$ 131,889,157
Income Approach	$ 387,754,301	33%	$ 127,958,919
Market Approach	$ 438,337,696	34%	$ 149,034,817
Total			$ 408,882,893
Conclusion			$ 408,883,000

OCA St. 1 at 46.

ScottMadden's appraisal is summarized as follows:

ScottMadden Valuation Summary			
Valuation Approach	Individual Result	Weight	Weighted Result
Cost Approach	$ 292,413,993	45%	$ 131,586,297
Income Approach	$ 291,863,370	50%	$ 145,931,685
Market Approach	$ 613,520,480	5%	$ 30,676,024
Total			$ 308,194,006
Conclusion			$ 308,194,000

OCA St. 1 at 60.

4. Challenges to UVE Appraisals

As shown above, ScottMadden gives different weight to each approach while Gannett Fleming gives equal weight to the Cost, Income, and Market approaches. OCA Table I. Even before reviewing the specifics of each consultant's analyses, it is clear that judgment is involved in the inputs used, the weighting given to each approach and the determinations. That is why two UVEs have reached different Fair Market Value (FMV) results for the DELCORA system. See 66 Pa. C.S. §§ 1329(a)(2)-(3).

OCA witness Smith calculated that the adjusted Gannett Fleming appraisal result would be $343,140,000, and the adjusted ScottMadden appraisal result would be $218,170,000, in order to properly reflect financial and ratemaking principles. OCA Table I at Col. G, Ln. 5, 10; OCA Exh. RCS-1, Col. G, Ln. 5, 10. The recalculated average of the two appraisal results is $280,655,000. OCA Table I at Col. G, Ln. 13; OCA Exh. RCS-1 at Col. G, Ln. 13. OCA witness Smith concluded that under Section 1329, the $276.5 million purchase price, as proposed by the Company, would be used as the Fair Market Value for the DELCORA wastewater utility assets because that amount is below the average adjusted result of the ScottMadden and Gannett Fleming valuations. OCA Table I at OCA Exh. RCS-1 at Col. G, Ln. 15; OCA St. 1SR at 15; OCA Exh. RCS-1 at Col. G, Ln. 15. The OCA submits, however, that the Commission must carefully consider the flaws in the appraisal results identified in the OCA's testimony.

a. Cost Approach

Cost Approach is defined as, "A procedure to estimate the current costs to reproduce or create a property with another of comparable use and marketability."[6] See OCA St. 1 at 46. OCA witness Smith recommended adjustments to both Gannet Fleming's and ScottMadden's Cost Approach valuations.

i. Gannett Fleming Depreciation Rates

In Gannet Fleming's appraisal, Mr. Walker used the original cost of the assets by NARUC account of $263,682,616 from the engineer's assessment and calculated accrued depreciation related to those assets through December 31, 2019 of $71,908,130 for net original cost book value

[6] The American Society of Appraisers "Approaches to Value" accessed Jan. 27, 2017, http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value.

of $191,774,486. OCA St. 1 at 47; PAWC Exh. Q at 110. DELCORA's audited financial statement for December 31, 2018, however, indicated that the cost of DELCORA's system was $240,841,951 for capital assets net of accumulated depreciation. OCA St. 1 at 47; PAWC Exh. J2 at 21. A DELCORA audited financial statement for December 31, 2019 indicated that the cost of DELCORA's capital assets, net of accumulated depreciation as of December 31, 2019 was $260,506,518. OCA St. 1 at 48; OCA Exh. RCS-8 at 64.

The Company intends to apply its depreciation rates that were approved in the Company's most recent base rate case to the DELCORA system when it includes the DECORA acquisition in base rates. OCA St. 1 at 48. OCA witness Smith recommends that the Company's depreciation rates approved in the Company's last rate base case also be utilized in Gannett Fleming's Cost approach. OCA St. 1 at 49-50.

One specific asset which OCA witness Smith recommended an adjustment to Mr. Walker's appraisal was for the operations center. Gannet Fleming's UVE utilized a 60 year service life for DELCORA's operations center while OCA witness Smith recommends that a 50 year service life be used for the DELCORA operations center, which will continue to be used under Aqua ownership. OCA St. 1 at 49. Aqua has indicated that for base rate purposes, the Company will depreciate DELCORA's operations center over 50 years in accordance with Aqua's existing depreciation rates for structures approved by the Commission in Aqua' last base rate case. OCA St. 1 at 48-49. ScottMadden's UVE correctly utilized a 50-year service life for the DELCORA operations center. OCA St. 1 at 49.

The OCA submits that it is unreasonable for Aqua's UVE to apply depreciation rates that are contrary to the reality of Commission-approved depreciation rates which Aqua will be utilizing for the acquired plant. On a similar issue in a prior Section 1329 case, the Commission set forth the information necessary for a utility to meet its burden of proof. In Cheltenham, when addressing a calculation of service lives for depreciation purposes, the Commission determined as follows:

> Upon review of the record, the ALJ's Recommended Decision and the Parties' Exceptions, we find that the ALJ properly considered and rejected Aqua's arguments regarding the use of a 90-year service life for VCP mains, laterals, and manholes in the AUS' cost approach. Aqua did not meet its burden of proof on this issue. It presented no testimony to support its arguments that "[t]he AUS extended service lives are also supported by the Engineer's Assessment and the AUS detailed cost approach calculations" and that using relining techniques extends the life expectancy of the mains. Aqua Exc. at 7. Mr. Weinert, AUS' UVE, in testimony did not address the relining of mains, so it is not clear whether AUS considered the relining of a very small portion of the collection mains to be relevant to the service life of the collection mains.

Cheltenham at 44.

As such, OCA witness Smith adjusted Gannett Fleming's cost approach to use a 50 year life in order to accurately reflect how the acquired plant will be depreciated. OCA St. 1 at 49. Using the depreciable lives from Aqua's last base rate case that Aqua stated it would use for the acquired DELCORA wastewater utility assets, if applied to all of the sewer utility asset accounts, would result in Replacement Cost Accumulated Depreciation of $414,305,664 rather than the $392,724,620 Replacement Cost Accumulated Depreciation used in the Gannett Fleming valuation study. OCA St. 1SR at 16. Mr. Walker's Cost Approach valuation would be reduced by the difference of $21,581,044. OCA St. 1SR at 17; Aqua St. 8R at 8; Aqua Exh. HW-1R at Exh. 1.

ii. ScottMadden Depreciation Rates

ScottMadden's appraisal resulted in a cost approach valuation of $292,413,993. OCA St. 1 at 60. To reach his cost approach valuation, Mr. D'Ascendis calculated a reproduction cost new minus depreciation value of $292,413,993 using the Handy-Whitman and Producers Pricing Indices to trend the original cost, from which he subtracted a calculated amount for depreciation of DELCORA's wastewater utility assets. OCA St. 1 at 60.

As noted *supra*, OCA witness Smith recommended that depreciation rates approved in Aqua's previous base rate case should be applied to the acquired plant, as Aqua depreciation rates are what will be applied to the acquired plant given Aqua's status as a regulated public utility. OCA St. 1 at 60. OCA witness Smith made an adjustment to three accounts in the ScottMadden cost approach in order to reflect the useful lives that Aqua utilizes for its plant:

(1) Account 362.2 Special Collecting Structures,

(2) Account 380.3 Treatment and Disposal Equipment – Pump Stations, and

(3) Account 380.4 Treatment and Disposal Equipment.

OCA St. 1 at 60. The useful lives for Account 362.2 – Special Collecting Structures – were adjusted from 75 years to 40 years. OCA St. 1 at 60. The useful lives for Account 380.3 – Treatment and Disposal Equipment – Pump Stations, and Account 380.4 –Treatment and Disposal Equipment, were both adjusted from 50 to 40 years. OCA St. 1 at 60. The OCA's adjustment reduces the ScottMadden Cost Approach amount by $35,019,728. OCA St. 1 at 60-61; OCA Exh. RCS-5. OCA witness Smith's adjustments should be adopted as the adjustments reflect the depreciation rates used by Aqua and approved by the Commission in its most recent base rate case.

b. Market Approach

Market Approach, also called the Sales Comparison Approach, is defined as, "A procedure to conclude an opinion of value for a property by comparing it with similar properties that have been sold or are for sale in the relevant marketplace by making adjustments to prices based on marketplace conditions and the properties' characteristics of value."[7] See OCA St. 1 at 55. OCA

[7] The American Society of Appraisers "Approaches to Value." American Society of Appraisers accessed January 27, 2017: http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value.

witness Smith made several adjustments to the Market Approaches in both appraisals. As such, each appraisal's Market Approach will be discussed separately.

i. Gannett Fleming Market Approach Valuation

Aqua witness Walker's Market Approach resulted in a valuation of $438,337,696. OCA St. 1 at 56. To reach his Market Approach conclusion, Mr. Walker used two methods and used a combination of results under his market multiples method and selected transaction method to arrive at his valuation. OCA St. 1 at 56. The OCA did not recommend any adjustments to Gannett Fleming's market multiples method. As such, the discussion in this section is limited to the selected transaction methodology conducted by Aqua witness Walker.

Aqua witness Walker defines the selected transactions method as follows:

> The selected transactions method used certain public information relating to the purchase or sales of businesses involved in the same or a similar business line as the Wastewater System to calculated (sic) market multiples at the time of transaction (sale/purchase). The calculated market multiples determined by the market multiples method and the selected transaction method were then multiplied by the corresponding Wastewater System financial and operating statistic to produce an indicated value for the Wastewater System.

Aqua Exh. X at 13.

Mr. Walker distinguished transactions involving water and wastewater utilities with "integrated" systems, i.e., having both treatment plants and collection/distribution and those not having treatment plants. OCA St. 1 at 56. As the DELCORA wastewater system includes treatment plants and a collection system, Mr. Walker weighted his calculation to emphasize his comparable results for "integrated" systems. OCA St. 1 at 57. Mr. Walker used medians of both Ex-Ante and Ex-Post amounts for previously acquired plant under Section 1329 in his valuation. OCA St. 1 at 57-58. The Ex-Ante amounts are projected amounts and the Ex-Post amounts are the actual amounts for each respective Section 1329 transaction. OCA St. 1 at 58.

The OCA submits that the purchase prices used by Mr. Walker are in excess of the fair market value for each respective Section 1329 acquisition and that the purchase prices should be reduced to their approved fair market values. OCA witness Smith recommends removing the Ex Ante amounts from the valuation calculation and using only the median of the Ex-Post amounts because the Ex-Ante amounts are essentially initial estimates (as opposed to the actual transaction).[8] OCA St. 1 at 58. The OCA submits that using the actual fair market value involved in the respective acquisitions instead of proposed purchase prices is a more reasonable approach as it reflects the actual amount ultimately included in rate base. Id. Reliance on purchase prices that were found to be in excess of fair market value is not reasonable. Id. OCA witness Smith testified as follows:

> [F]or completed transactions, the actual results are known. Thus, continuing to rely upon pre-bid estimates, particularly where the actual results are known and have shown in a number of instances that the pre-bid estimates were off-mark and thus mis-estimated the final approved results, usually on the high side, seems likely to only result in perpetuating higher valuation estimates. Where actual information is known, that should be used in place of inaccurate pre-bid estimates from historical transactions. In this context, the purchase price reflected in an Asset Purchase Agreement may not be the ratemaking rate base approved by the Commission. My recommendation is that for completed transactions, the Commission-approved ratemaking rate base should be used, if lower than the purchase price, as set forth in Section 1329.

OCA St. 1SR at 19.

OCA witness Smith made an adjustment to match the final Fair Market Values approved in each respective Section 1329 acquisition proceeding. OCA witness Smith further recommended the following adjustments:

> Some of the amounts for Gross Property, Plant & Equipment "PP&E" and Net PP&E were also adjusted because the amounts shown for some of the acquisitions were inconsistent with the amounts used for DELCORA. Mr. Walker used OCNLD

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[8] The OCA further notes that the purchase prices used by Mr. Walker do not reflect the purchase prices involved in the actual transactions. OCA St. 1 at 58; OCA Ex. RCS-4.

> amounts for DELCORA. I adjusted the Gross PP&E and Net PP&E amounts to OCNLD for the acquisitions in which the OCNLD amounts were not used by Mr. Walker.

OCA St. 1 at 58-59. OCA witness Smith's adjustments results in a decrease of $15,591,769 to Mr. Walker's Market Valuation Approach. Id. at 59.

ii. ScottMadden Market Approach Valuation

Mr. D'Ascendis' Market Approach methodology produces a result of $613,520,596. OCA Table I at Col. A, Ln. 8; OCA St. 1 at 62. To reach this result, Mr. D'Ascendis utilized two methods: 1) Market-to-Book Multiple Method; 2) Comparable Sales Method. OCA St. 1 at 62.

For his Market-to-Book Method, Mr. D'Ascendis applied Market-to-Book ratios of publicly traded water utilities to the book value of DECLROA as of December 31, 2018. OCA St. 1 at 62. Mr. D'Ascendis calculated a market-to-book ratio of 2.246 to reach his recommended value of $413,589,365 under the Market-to-Book Multiple Method. Id.

Mr. D'Ascendis' Comparable Sales Method was derived from researching transactions involving companies who acquired a 100% interest of a water or sewer company since 2015. OCA St. 1 at 62. Mr. D'Ascendis' research was drawn from 69 results around the country, only 20 of which were Pennsylvania acquisitions. Id. Mr. D'Ascendis calculated an implied enterprise value of 4.10 per utility connection for the country and 6.45 for Pennsylvania. Id. He then applied both of these values to the total number of DELCORA's wastewater connections to get indicated values of $811,451,586 and $1,276,340,191, respectively.[9] OCA St. 1 at 69. The lower of the indicated values produced by Mr. D'Ascendis' Comparable Sales Method, $811,451,596, was selected as

[9] The OCA notes that the Comparable Sales Method's determination that the DELCORA wastewater system is worth over a billion dollars more than the agreed upon purchase price in this proceeding illustrates the serious shortcomings of the Comparable Sales Method, and its use in the Commonwealth in valuing utilities within the context of a regulated public utility framework.

his Comparable Sales Method result. Id. Mr. D'Ascendis then averaged his two Market Approach method results to reach his Market Approach valuation of $613,520,596. Id.

The OCA submits that Mr. D'Ascendis' Comparable Sales Method is not a reliable method due to the lack of demonstrated reliability and use in actual transactions. OCA St. 1 at 63. Simply put, the Comparable Sales Method produces inflated results. Id. As such, it should be excluded from the valuation results. Id.

OCA witness Smith recommended an adjustment to the ScottMadden Market Approach, excluding the Comparable Sales Method calculation and using only the result from Mr. D'Ascendis' Market to Book valuation methodology. OCA St. 1 at 63. This adjustment reduces the ScottMadden Market Approach amount by $197,931,116. Id.; OCA Exh. RCS-7.

c. Income Approach

i. Introduction

The theory behind Income Approach valuation is that the value of a business is the future economic benefit that ownership will provide. OCA St. 1 at 50. The Income approach is defined as:

> A procedure to conclude an opinion of present value by calculating the anticipated monetary benefits (such as a stream of income) for an income-producing property.

Id.[10] OCA witness Smith described the Income Approach models utilized by the UVEs in this proceeding as follows:

> The income approach models utilized by both the buyer and seller employ a discounted cash flow model wherein annual cash flows are projected based upon forecasted levels of revenues, cash O&M expenses, income taxes, capital expenditures and changes in working capital. These annual cash flows are modeled for a set number of years into the future and then a terminal value is added to the previous discounted annual cash flows as a measure of the expected cash flows in perpetuity.

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[10] Citing "Approaches to Value." The American Society of Appraisers accessed March 5, 2020.

OCA St. 1 at 51.

The fundamental flaw in both UVE models is that the calculation of terminal values for the DELCORA system. OCA St. 1 at 51. OCA witness Smith notes that, in calculating terminal values, both UVEs utilized a "capitalization rate" to project future cash flows in perpetuity. OCA witness Smith testified as follows:

> In simple terms, each UVE calculated a terminal value (in nominal terms) by applying the projected cash flow in the last year of the model to a capitalization rate. Specifically, the last model year's annual cash flow is multiplied by 1, and then divided by the calculated capitalization rate. Mathematically, this approach escalates annual cash flows at a constant annual growth rate (percent) in perpetuity. It essentially assumes that net cash flows would grow at a constant annual growth rate to infinity. A capitalization rate is defined as a firm's total cost of capital (k) minus its expected future annual constant rate of growth (g).

OCA St. 1 at 51-52.

While the Income Approach is clearly appropriate for evaluating project feasibilities and for valuing unregulated business enterprises, Mr. Smith explained that there are limitations to the income method when valuing regulated public utilities. OCA St. 1 at 50-51. Regulated public utilities' revenues, income streams, and cash flows are directly based on the capital investments required to operate as a utility and rates are set using this rate base/rate of return method of ratemaking. Id. For a regulated utility, Mr. Smith explained:

> A utility's allowable revenue requirement is equal to its cash operating expenses plus depreciation plus a return on its net investment (rate base) plus income taxes on the return. Therefore, the resulting annual net cash flow is equal to depreciation plus the after-tax return on the net investment. As such, the higher the assumed level of investment, the higher the periodic cash flows and the higher the ultimate valuation.

OCA St. 1 at 51. It is important to understand that, for a regulated utility, the valuation is a direct function of, and is exactly equal to, the selected investment. OCA St. 1 at 52-53. This is the circularity issue identified by Mr. Smith that is present when using the Income Approach to value public utilities under rate base/rate of return regulation. Id. This limitation to the Income Approach has not been recognized by the Gannett Fleming and ScottMadden UVEs but should be considered when reviewing the assumptions used by each UVE in conducting the analyses.

Both UVEs used a capitalization rate to project future cash flows in perpetuity. OCA St. 1 at 52-53. As Mr. Smith stated, a regulated utility's net cash flow "is a direct function of its plant in service in that a utility's net cash flow can, and will, only grow with increases to its plant investment (rate base)." Id. He noted that, for discounted cash flow valuation purposes, "capital expenditures (that give rise to plant additions) are treated as a negative cash outflow during the year in which the expenditure is made and the utility recoups these additional investments over time through future depreciation rates (cash inflow)." Id.

Both UVEs, in estimating the terminal value, reflect capital expenditures in the last year of the model that are much less than the depreciation expense on plant during that year. OCA St. 1 at 53. That would mean that according to the assumptions and modeling done by each UVE, DELCORA would be depreciating and using up its plant faster than it is making investments to replace that plant, which could not be sustained. Id. The impact of those unfounded assumptions and modeling is to severely overstate the Income Approach valuation.

Mr. Smith adjusted the income approach of Gannett Fleming's and ScottMadden's UVEs to recalculate the terminal value using the amount of net plant less accumulated deferred income taxes projected to be remaining at the end of 2044 and 2049, respectively. OCA St. 1 at 54, 61. Mr. Smith's approach ensures that investors will earn a fair rate of return over the life of the plant in service and will recoup their initial investment through depreciation. Mr. Smith's approach does not increase rates to provide excessive returns over the life of the plant. Further, his approach is consistent with the most fundamental principles of ratemaking. The terminal value approach used by Aqua and DELCORA overstates the valuation and would result in excessive valuation and return and should not be adopted.

ii. ScottMadden Income Approach Adjustment

On behalf of DELCORA, Dylan D'Ascendis with ScottMadden developed an Income Approach resulting in an estimated fair market value of $291,863,370. OCA St. 1 at 61. ScottMadden allocated 50% weight to that approach which gave it a weighted value of $145,931,645. Id.

In his direct testimony, Mr. Smith discussed the structure and assumptions made in DELCORA witness D'Ascendis' Income Approach analyses. OCA St. 1 at 61-62. Mr. D'Ascendis' valuation using the Income Approach is based on a DCF analysis projected out to 2049 with a perpetuity value (i.e. a terminal value) used after the year 2049. Id. at 61. In Mr. D'Ascendis' DCF analysis, he makes assumption for operating revenues, operating expenses and future capital requirements, as well as a weighted average cost of capital of 6.94%. Id.

As discussed above, Mr. Smith recommended an adjustment to the terminal value used in the ScottMadden income approach. OCA St. 1 at 61-62. Mr. Smith recalculated the valuation of the terminal value using the amount of Net Plant less Accumulated Deferred Income Taxes (ADIT) projected to be remaining at the end of 2049. OCA St. 1 at 61. As ScottMadden did not calculate a projection of net plant, Mr. Smith used a net plant amount based on the Gannett Fleming calculations of net plant. Gannett Fleming projected net plant out to 2045. Id. Mr. Smith then extended the calculation to 2049 to derive the net plant amount used in this adjustment. OCA St. 1 at 61. Mr. Smith's adjustment to terminal value results in an Income Approach valuation of $163,125,306. Id. This adjustment reduces the ScottMadden Income Approach amount by $128,738,064. OCA St. 1 at 61-62; OCA Exh. RCS-6.

iii. Gannett Fleming Income Approach Adjustment

On behalf of Aqua, Harold Walker, of Gannett Fleming, developed a valuation under the Income Approach resulting in an estimated fair market value of $387,754,301. OCA St. 1 at 46. Aqua witness Walker allocated 33.33% weight to that approach which gave it a weighted value of $127,958,919. Id.

In reaching his Income Approach valuation, Mr. Walker averaged the median indicated value amounts of his DCF with capitalization of terminal values under municipal ownership results, and the median value amounts of his DCF capitalization of terminal value with investor owned utility ownership results. OCA St. 1 at 53. As discussed above, Mr. Smith noted that the approach to quantifying the terminal value should recognize that the wastewater assets are for a regulated utility, not an unregulated business. Id. at 54. As such, OCA witness Smith adjusted Gannett Fleming's Income Approach as follows:

> As shown on Exhibit RCS-3, pages 2 and 3, I have recalculated the valuation of the terminal value using the amount of Net Plant less Accumulated Deferred Income Taxes (ADIT) remaining at the end of Year 24. Exhibit RCS-3, page 2, shows the calculations under municipal ownership, with an indicated value result of $346,369,318. Page 3 shows the calculations under IOU ownership with an indicated value result of $263,757,613. The two indicated value results are averaged, as shown on Exhibit RCS-3, page 1, for an adjusted Income Approach value of $305,063,465. The difference in the indicated value of $82,690,835 results from the different approach to calculating the "terminal" value for a regulated public utility, which is different than the "terminal" value calculation for a non-regulated business.

OCA St. 1 at 54-55. The adjusted Income Approach value of $305,063,465 is $82,690,835 lower than Mr. Walker's proposed amount of $387,754,301. Id. at 55.

5. Conclusion

OCA witness Smith concluded that under Section 1329, the $276.5 million purchase price, as proposed by the Company, should be used as the Fair Market Value for the DELCORA wastewater utility assets because that amount is below the average adjusted result of the ScottMadden and Gannett Fleming valuations. OCA Table I at Col. G, Ln. 15; OCA St. 1SR at 15; OCA Exh. RCS-1 at Col. G, Ln. 15. The OCA submits, however, that the adjustments to the UVE appraisals discussed *supra* are reasonable and should be adopted by the Commission.

B. Section 1102/1103 Standards – Public Interest

1. Section 1102/1103 – Legal Principles

In addition to the requirements of Section 1329, the proposed transaction must satisfy Section 1102. 66 Pa. C.S. § 1102. As proposed, Aqua has not supported that the acquisition will produce affirmative public benefits for its existing wastewater and water customers and the acquired DELCORA customers. Aqua has failed to show that the transaction would provide the required affirmative benefits and therefore should not be approved or at a minimum, only be approved with the acceptance of the appropriate and necessary conditions, including those recommended by the OCA.

The Public Utility Code authorizes the Commission to permit a regulated public utility to begin to offer service in an additional territory and to acquire property used and useful in the public service, as is requested in this application.[11] 66 Pa. C.S. § 1102(a)(1), (3). The merits of

[11] Section 1102(a)(1) provides:

> (a) General Rule. Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:
>
>> (1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized by:
>>
>>> (i) A certificate of public convenience granted under this part…
>>
>> . . .
>>
>> (3) For any public utility… to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale

applications arising under Section 1102 are measured by the standards set forth in the City of York case. In City of York, the Supreme Court addressed a proposed merger of three telephone companies. The Pennsylvania Supreme Court specifically cited Section 203 of the Public Utility Code, the predecessor statute to Section 1103, and set forth the standard as follows:

> Section [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the "service, accommodation, convenience, or safety of the public" in some substantial way.

295 A.2d at 828 (quoted in Application of Pennsylvania-American Water Co., Docket No. A-2016-2537209, Order at 11 (Oct. 19, 2016)). This is the standard by which all mergers of Pennsylvania utility companies must be judged.

This standard was addressed by the Commonwealth Court in Middletown Township v. Pa. PUC, 482 A.2d 674 (Pa. Commw. 1984) (Middletown). In Middletown, in order to acquire part of the facilities of the Newtown Artesian Water Company, Middletown Township filed an application for a Certificate of Public Convenience. The ALJ determined that the acquisition would be a benefit to some customers, but would have an adverse impact on other customers. Id. at 679. The ALJ, therefore, denied the application. Id. The Commission adopted the ALJ's Initial Decision and the Township appealed. In hearing the appeal, the Commonwealth Court considered the City of York standard applicable through Section 1102 and Section 1103. The Court affirmed the Commission's decision to reject the merger stating, *inter alia*, that "when the 'public interest' is considered, it is contemplated that the benefits and detriments of the acquisition be measured as

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> or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

66 Pa. C.S. § 1102(a)(1). Section 1103 states that a certificate of public convenience will be granted only where necessary or proper for the service, accommodation, convenience or safety of the public. 66 Pa. C.S. § 1103(a).

they impact on all affected parties, and not merely on one particular group or geographic subdivision as might have occurred in this case." Id. at 682 (emphasis in original). The Court added that "the primary objective of the law in this area is to serve the interests of the public." Id.; see also Popowsky v. Pa. PUC, 937 A.2d 1040 (Pa. 2007).

In this proceeding, the Commission must fully consider the impacts of this acquisition on three specific groups of customers with respect to the traditional City of York affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers – who may potentially bear costs of the DELCORA system, if the Commission permits costs to be shifted under 66 Pa. C.S. § 1311(c), and (3) the existing DELCORA customers who will be transferred to Aqua.

It is well-established that the Delaware County Regional Water Quality Control Authority will benefit from the proposed transaction. DELCORA will receive approximately $276 million or 44% more than the net book value of the system. OCA St. 1 at 24. Aqua anticipates implementing DELCORA's planned capital program for routine plant upgrades, collection system work and pump station upgrades. Aqua Exh. V at 9. Additionally, Aqua has committed to preserving jobs by hiring all DELCORA employees. Id. at 19; Aqua Exh. W1 at 5-14.

There is, however, no support for concluding that existing Aqua wastewater and water customers will receive any net benefit or that the DELCORA customers will see a net benefit after the rate stabilization fund (DELCORA Customer Trust) is depleted. In fact, the record shows that these customers will experience substantial harm that is outweighed by any purported benefits. As such, under the Application as filed, Aqua has failed to demonstrate the necessary public benefits required for approval of this Application. Even the Trust, as the firmest benefit identified, is subject to uncertainty. Therefore, the application should not be approved or at a minimum, only be approved with the acceptance of the appropriate and necessary conditions, including those recommended by the OCA herein.

2. Fitness

The OCA did not present any evidence regarding Aqua's fitness.

3. Affirmative Public Benefits

An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction. Application of CMV Sewage Co., Inc., 2008 Pa. PUC LEXIS 950, *30 (CMV). In order to determine whether benefits meet this standard, the Commission may consider: "(1) the legal and technical fitness of the purchasing entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence." Application of North Heidelberg Water Co., 2010 Pa. PUC LEXIS 919, *20.

The OCA recommends that the Commission deny the application, as filed, on the basis that the acquisition as proposed by the Applicant would create significant additional costs and presents significant risks to Pennsylvania ratepayers and would not provide substantial affirmative public benefits. OCA St. 1 at 66. Further, the OCA submits that if the Commission approves the acquisition, the conditions propounded by the OCA are required to limit ratepayer exposure to the risks of the acquisition and to ensure that ratepayers receive a fair allocation of the benefits of the acquisition. Id. As discussed below, the benefits identified by Aqua are simply generalizations that do not address the corresponding harm to existing Aqua wastewater and water customers, and to the DELCORA customers.

In this proceeding, Aqua alleges that its existing wastewater customers will benefit from the proposed transaction because, at some time in the future, they will benefit from regionalization and consolidation. Aqua St. No. 1 at 10; Aqua St. No. 2 at 8; Aqua St. No. 2R at 3. Specifically, Aqua witness Packer states:

> "Through the acquisition of the DELCORA assets and mergers of its operations, Aqua will further the Commission's goals of regionalization. By creating a large scale, concentrated wastewater operation in the Company's largest service area, this will likely create efficiencies in operations through economies of scale. Ultimately, these benefits inure to customers both existing and acquired. Although the Proposed Transaction does not involve the acquisition of a smaller system, the principles noted by the Commission in the aforementioned policy statement still apply . . ."

Aqua St. No. 2 at 8. However, these claims lack concrete details as highlighted in OCA witness Smith's Direct Testimony:

> While Aqua claims that the transaction will create larger scale efficient wastewater system by increasing the size of Aqua Pennsylvania Wastewater, the Company has not demonstrated how, or when, economies of scale will be achieved as a result of the transaction.

OCA St. 1 at 31. Mr. Packer did not provide any other support to demonstrate how or when customers will benefit in the future or make any projections about how many more systems must be acquired and at what cost to turn costly acquisitions like DELCORA into a benefit.

Aqua witness Packer further argues, that affirmative benefits from regionalization and consolidation should be evaluated over a longer timeframe and more broadly, stating that the "positive factors from the Proposed Transaction outweigh the possibility of increased rates" and that these transactions "are consistent with the Commission's consolidation/regionalization policy." Aqua St. No. 2 at 13. Mr. Packer further states the Company's application demonstrates that there will be both "tangible and intangible" factors that are "likely realized," including economies of scale. Aqua St. No. 1 at 13. In the case of DELCORA, the purchase price is 44% (approximately $84.7 million) over the net book value. OCA St. 1 at 23-24.

Although the Company has not provided data to support its claimed benefit of economies of scale, it has however, provided estimated rate increases to the DELCORA customers. Aqua notified DELCORA customers of an estimated 12.55% increase to their bill. Application Exh. I2 through I12; OCA St. 1 at 33. Furthermore, as provided in Aqua's application, Aqua's notice to its existing wastewater and water utility customers, presents a 14.32% increase for wastewater customers and a 4.58% increase for water customers. OCA St. 1 at 25; Application Exh. I1. OCA witness Smith explains that Aqua's claims regarding the acquisition benefiting existing customers remain vague, unsupported, and unquantified. OCA St. 1 at 65. Further, regarding the resulting increases for Aqua's existing customers, OCA witness Smith testified:

> **Q. Do you have other concerns about the impact of the proposed transaction?**
>
> A. Yes. The proposed transaction creates harm for the existing Aqua customers (wastewater and water). The harms of the proposed transaction include rate increases to existing Aqua wastewater and water utility customers. Aqua Pennsylvania's current wastewater and water customers are projected to experience rate increases as a result of Aqua's acquisition and will not receive any immediate benefit from the transaction.

OCA St. 1 at 31. The estimated increases to Aqua's existing and acquired customers do not account for the impact of the proposed Trust. The Trust, if approved with the OCA's accompanying conditions, will provide the most identifiable benefit to the customers, as discussed below, but only for the term of the Trust.

a. <u>The Rate Stabilization Fund (DELCORA Customer Trust)</u>

Regarding the estimated 12.55% increase to DELCORA customers' bills, this increase does not consider the effect that the DELCORA Customer Trust would have to assist DELCORA customers in paying for their own cost of service in their utility bills for a limited time. OCA St. 1 at 33. The DELCORA Customer Trust would hold a portion of the sales proceeds and make payments to the benefit of DELCORA ratepayers to offset rate increases above 3% per year under Aqua ownership. <u>Id.</u> at 9-10. As explained by DELCORA, the Commission will set rates for the

DELCORA wastewater utility ratepayers after Closing, then Customer Assistance Payments from the DELCORA Customer Trust will be used for payments applied to the DELCORA Customer bills. See OCA St. 1 at 34-35.

DELCORA considers the Customer Trust to be a key benefit of the proposed transaction. As part of the Application, Aqua submitted the following testimony of Robert Willert:

> Q. Please further describe the benefits of the Proposed Transaction.
>
> A. The impact on bills for DELCORA's customers was one of the driving forces behind this transaction and is the primary benefit. The majority of the sale proceeds will be placed in an irrevocable trust for the benefit of DELCORA's customers. It is my understanding that this is a relatively unique feature for a transaction of this nature and provides a substantial benefit to our customers.

Aqua St. No. 5 at 11. DELCORA's position is that the Trust is a unique primary benefit of the proposed transaction as the proceeds will be used to gradually stave off Aqua's imminent bill increases. OCA witness Smith also identifies the Trust as a "very important component of the proposed transaction." OCA St. 1 at 32-33; OCA St. 1SR at 6.

As stated earlier, Aqua's notice to DELCORA customers, which communicated an increase of 12.55%, did not account for the temporary rate relief provided through the Trust. OCA St. 1 at 33. As detailed more thoroughly by Ralph Smith in his Direct Testimony:

> **Q. Has DELCORA clarified how the funds in the DELCORA Customer Trust would be applied to offset the rate increases under Aqua ownership to DELCORA wastewater utility customers?**
>
> A. Yes. As clarified in DELCORA's response to SWDCMA-I-8, the funds from the DELCORA Trust would be applied to mitigate rate increases under Aqua's ownership for the following types of customers:
>
> a. Those who were retail customers of DELCORA on the date of the Asset Purchase Agreement.
> b. Those who were wholesale customers of DELCORA on the date of the Asset Purchase Agreement where the wholesale customer agrees to the assignment of its contract to Aqua.
> c. Those who become retail customers of DELCORA between the date of the Asset Purchase Agreement and the date of closing.

d. Those who become wholesale customers of DELCORA between the date of the Asset Purchase Agreement and the date of closing.
e. Those who become retail customers of Aqua in the former DELCORA service area after the date of closing.
f. Those who become wholesale customers of Aqua in the former DELCORA service area after the date of closing.

OCA St. 1 at 33-34. Conversely, regarding DELCORA's wholesale customers, Aqua states that on the date of the Asset Purchase Agreement where the wholesale customer does not agree to the assignment of its contract to Aqua, such an entity may not be eligible to receive the benefit of the customer assistance payments from the DELCORA Customer Trust:

> If a municipality does not agree to assign and amend their contract such that charges for service will be in accordance with Aqua's tariff, Aqua will continue to provide service to that entity; however, that entity may not be eligible to receive the benefit of the customer assistance payments from the DELCORA Customer Trust. The Company would operate under the provisions of its tariff.

OCA St. 1 at 34. Additionally, Aqua has indicated that it would begin charging DELCORA wastewater customers a DSIC after Aqua updates its LTIIP.[12] Id. at 40. DELCORA has indicated that funds from the DELCORA Customer Trust would be used to offset DSIC charges, thereby limiting annual increases under Aqua ownership to no more than 3% per year. See OCA St. 1 at 40, 45.

[12] OCA witness Smith explained that Aqua will implement DELCORA's DSIC that allows Aqua to recover additional costs related to improvements:

> As detailed in Article 7.04 of the APA, Aqua will implement DELCORA's wastewater rates that are effective at the date of closing. Aqua will also implement surcharges such has the Distribution System Improvement Charge (DSIC) and Tax Adjustment Surcharge to DELCORA's base rates, after closing. Mr. Packer states that base rates for DELCORA's wastewater customers will be addressed and adjusted, as appropriate and without any form of contractual restriction, in Aqua's first base rate case following the transaction (Aqua Statement No. 2, pages 4 through 5). In Aqua's first base rate case following closing that includes DELCORA customers, he indicates that the acquired DELCORA customers will be billed at the full Commission approved rate from Aqua's base rate case.

OCA St. 1 at 20.

i. DSIC for DELCORA Customers

Section 1329(d)(4) permits the acquiring utility to collect a DSIC from the time that a tariff goes into effect until such time as new rates are approved for the acquiring utility in a base rate case. 66 Pa. C.S. § 1329(d)(4). Consistent with the Final Implementation Order implementing Act 11 of 2012, if Aqua determined to charge a DSIC to the DELCORA customers prior to establishing rates for those customers in a base rate proceeding, the Company should file a revised tariff to reflect this change and a revised LTIIP. Implementation of Act 11 of 2012, M-2012-2293611, Final Implementation Order at 28 (Aug. 2, 2012).

The OCA submits that if DELCORA customers will begin paying a DSIC prior to effective date of rates established in Aqua's next base rate case, the Commission should condition its approval of the transaction by requiring that Aqua file the required tariff changes and revised LTIIP no later than 30 days after entry of the Commission order in this proceeding. Additionally, consistent with Aqua's proposal, when Aqua modifies its LTIIP to include the DELCORA wastewater utility, any DELCORA-related projects reflected in the revised LTIIP should be in addition to, and not reprioritize, any capital improvements that Aqua was already committed to undertake for existing customers. OCA St. 1 at 67; infra Section V.C.

b. The Proposed Trust, if Found to be Lawful and Able to Credit Customers' Bills Within the PUC Code, Can Help Address the Negative Impact on the DELCORA Customers and Existing Aqua Customers.

OCA witness Ralph Smith testified the Trust is a very important component of the proposed transaction. OCA St. 1 at 32-33; OCA St. 1SR at 6. DELCORA testifies that the sale proceeds will be used first to pay any existing liabilities, then, the balance of the proceeds will be placed into the Trust, "with the exception of any reasonable reserves." OCA St. 1 at 36. DELCORA's preliminary estimates for the amount to be transferred to the trust is approximately

$200 million. OCA witness Ralph Smith notes however, DELCORA has not yet identified a specific amount to be placed into the Trust:

> As of June 10, 2020, it would take approximately $171,032,462 to defease DELCORA's outstanding bond issues. As of May 31, 2020, DELCORA has $17,007,273 in other outstanding liabilities (which includes $6,383,067 in current portion of bond debt), as well as $14,099,693 in other long-term debt. There will be some expenses related to reviewing the calculations agent's work.

OCA St. 1 at 37. Additionally, DELCORA has stated:

> After closing, DELCORA anticipates retaining a de minimus amount of money on hand to administer its obligations to oversee the Trust, which are delineated in the trust documents. The precise amount has not yet been determined. There are no anticipated reserves in the Trust, the Trust is to be used in its entirety for the benefit of customers.

OCA St. 1 at 38. Subtracting the above-identified amounts from the Applicant's proposed sales price of $276.5 million is consistent with DELCORA's estimate that funding for the DELCORA Customer Trust could be as much as $200 million when the additional explanation provided by DELCORA is considered. Id.

The Trust is currently a contested legal issue. Specifically, Delaware County is disputing the legality of the Trust in the Court of Common Pleas. OCA St. 1 at 44. The ongoing case before the Court of Common Pleas will impact the Application and could come into conflict with the Commission's determination in this proceeding. Id. Explicitly, OCA witness Smith advises that approval of the Application without a resolution of the issues identified in the Petition filed in the Court of Common Pleas by Delaware County could lead to irreparable harm for existing Aqua and DELCORA customers. OCA St. 1 at 44. The Court of Common Pleas proceeding encompasses the same Asset Purchase Agreement as the instant proceeding and includes many of the same parties in the instant case, including Aqua and DELCORA.[13] Id. Consequently, OCA witness Smith contends that DELCORA must address convincingly whether it has the legal authority to transfer the wastewater utility assets and related contracts to Aqua. Id. at 67; infra Section V.C. Additionally, the issues being raised by some of the resale customers regarding the resale and transfer of previous agreements, should be resolved before the transaction can close. Those agreements are tied to expected revenues. Infra, Section V.C.

Yet, DELCORA argues, despite legal challenges to the Trust, that "DELCORA is committed to use the proceeds from the transaction to benefit ratepayers." OCA St. 1 at 39. Indeed DELCORA further states "[i]f the Trust is ruled invalid, DELCORA will provide the money to ratepayers directly in a way of its choosing consistent with its commitment made in the Trust and its commitment at multiple public venues." Id. Notably, while the Trust is DELCORA's preferred vehicle for providing for mitigation of future rate increases, which the Applicant claims is the primary benefit of the transaction, this is not a commitment from Aqua. OCA St. 1 at 43.

All funds in the Trust are to be used for the benefit of DELCORA's current wastewater utility customers or new Aqua customers in the former DELCORA service territory. OCA St. 1 at 40. DELCORA indicates that the DELCORA Customer Trust will not make any payments to Aqua that Aqua retains (and does not transfer back to customers in the form of bill credits).

Viewed in the best light, the DELCORA Customer Trust would reduce the impact of Aqua's bills by crediting the difference between the PUC approved rates Aqua charges to the

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[13] On August 14, 2020, the OCA filed a Brief in Support of the Petition of the County of Delaware, Pennsylvania for a Stay and Request for Commission Review and Answer to a Material Question (OCA Brief in Support) in support of a stay of the acquisition proceeding before the Commission pending resolution of the outcome of the Court of Common Pleas proceeding. The Commission denied the petition on August 31, 2020, which could result in parties litigating issues in this docket that are also subject to an ongoing Court of Common Pleas proceeding.

former DELCORA customers and the 3% increase outlined in the APA. As explained by DELCORA:

> [t]he payment amount due from the Trust is the difference in authorized tariff rates and a 3 percent increase each year starting on the effective date of new rates of Aqua's in the first base rate case that includes DELCORA customers following a sale of the system.

OCA St. 1 at 42. OCA witness Smith points out that the 3% referenced is not stated in a tariff. Id. Moreover, DELCORA further explained that the parties can update the governing MOU to include "checks and balances" of the commitment to the 3% annual increase limit, if the Commission approves Aqua's proposal to include a customer assistance payment on DELCORA customer bills. OCA St. 1 at 43. Regarding what document would govern the "checks and balances" if the Commission does not approve Aqua's proposal to apply Trust disbursements as customer assistance payments on DELCORA customer bills, DELCORA responded:

> DELCORA signed an Asset Purchase Agreement with Aqua. DELCORA has decided to use the proceeds of the sale to be applied to DELCORA customer bills for the benefit of DELCORA customers. If the customer assistance payment cannot be included on DELCORA customer bills, DELCORA will explore different options whereby the Trust assets will be distributed directly to customers, consistent with the signed irrevocable Trust Agreement.

OCA St. 1 at 43. OCA witness Smith therefore testified that DELCORA must provide clarity as to how the DELCORA Rate Stabilization Fund Trust Agreement between DELCORA as Settlor and Univest Bank and Trust Co. As Trustee, with the Effective Date of December 27, 2019 will function to insulate DELCORA wastewater customers from rate increases. Id. at 41, 67; infra Section V.C.

The trust could avoid the shift of costs to existing Aqua customers for a time. Aqua estimated an increase of 14.32% to Aqua's existing wastewater customers, increase of 4.58% to Aqua's existing water customers, and Aqua's estimated 12.55% increase to DELCORA wastewater utility customers (assuming some shifting of the cost to serve DELCORA customers to existing Aqua water and wastewater customers). Application Exh. I1 through I12. These increases relate in part to the $276.5 million acquisition price, which if the transaction is approved, would be included in Aqua's rate base.

OCA witness Smith points out that the Trust is not a direct benefit to Aqua's existing customers but notes that it could provide an indirect benefit to existing Aqua water and wastewater utility customers by minimizing cost shifting. OCA St. 1SR at 5. Aqua estimates that the transaction will increase its existing water and wastewater customer's rates and no Trust proceeds will be applied for those increases. Id.

Based on these facts, Mr. Smith makes several recommendations to ensure that the Trust provides the alleged benefits. First, Smith recommends:

> that the DELCORA revenue requirement should be calculated on its own and that the DELCORA Customer Trust be used to fund the difference between the full revenue requirement and the cap from the Asset Purchase Agreement applicable to the DELCORA customers being acquired by Aqua. Also, Act 11 permits a utility to shift a portion of revenue requirement increases for wastewater utility customers onto the utility's existing water utility customers, but as a condition of approval, no such shifting should be allowed to occur during the period in which the DELCORA Customer Trust is providing rate relief for the DELCORA customers that are acquired by Aqua.

OCA St. 1SR at 6. By avoiding the shift of the increased revenue requirements for Aqua's acquired DELCORA wastewater customers onto Aqua's existing water customers pursuant to Act 11, there would be an indirect, temporary benefit. Conditioning approval of the transaction on the requirement that no revenue shall be shifted to Aqua's existing customers would indirectly benefit and mitigate the harms while the DELCORA Customer Trust is operating.

Second, Mr. Smith recommends that the application of funds from the DELCORA Customer Trust be monitored and quarterly reporting should be required to ensure that the DELCORA commitment to use the proceeds of the transaction to benefit customers is being achieved. OCA St. 1 at 40, 67; infra Section V.C. Aqua agrees with this recommendation in part:

> As stated on page 24 of Mr. Packer's rebuttal testimony, Aqua agrees with filing annual reports showing how customer bill assistance payments are being applied to Aqua's bills to DELCORA customers. The recommendation in my direct testimony provided for quarterly reports. To assure that the payments are being properly applied from the inception, I recommend that quarterly reports be required at least for the first full year of DELCORA Customer Trust operation. If it is determined at the end of the first full year of such operation that the Trust is operating as intended without any concerns, problems or issues, the reporting after that point could revert to annual reporting.

OCA St. 1SR at 25. The reports should also show how the DELCORA Customer Trust amounts are being applied to reduce the Aqua rate increases to DELCORA wastewater utility customers that would be occurring under Aqua ownership. Id.

The OCA submits that these conditions regarding the Trust will better ensure that the promised benefit of the Trust for consumers materializes to its full extent.

c. The Transaction Should Be Approved Only Accompanied With the OCA's Recommendations.

In the CMV case discussed above, the Commission concluded that the adverse impacts of the proposed transaction for the existing customers outweighed the benefits. 2008 Pa. PUC LEXIS 950, * 32. The customers proposed to be acquired were currently receiving service from a system that was in compliance with applicable environmental laws and regulations. While the CMV system might have required upgrades to comply with stricter environmental requirements at an unknown future date, there was no certain evidence on that point. The Commission stated:

> The advantages alleged by NCTSA do not outweigh the certain, immediate adverse impacts of this transaction. The proposed transaction will result in an immediate $1,800 cost for Colonial Crossings customers, which is in addition to an average rate increase of approximately $70 per quarter, or 54% compared to existing rates. We find that the ALJ correctly weighed the evidence before him, and concluded that the costs of the proposed transaction for the Colonial Crossings customers outweigh the benefits for those customers.

Id. at *32. As in CMV, the alleged benefits of acquiring the DELCORA system are disputed, however as stated by OCA witness Smith:

> Having approximately $200 million of rate relief (based on the anticipated stated funding amount for the DELCORA Customer Trust) clearly would be a benefit to Aqua's acquired DELCORA customers.

OCA St. 1SR at 6. Paying approximately $200 million less to Aqua for wastewater utility service while the DELCORA Customer Trust is operational is clearly more beneficial to Aqua's acquired DELCORA customers than paying $200 million more. Id.

Although Aqua references economies of scale, the Company has not provided any showing of cost reductions or efficiencies that will be produced by the acquisition of the DELCORA customers. OCA St. 1 at 31. Simply having more customers does not create economies of scale. Stated otherwise, if the DELCORA customers do not pay even their full cost of service, they will not share the costs of infrastructure improvements for other parts of Aqua's service territory. The development of the rates to be established for the acquired DELCORA customers would presumably be informed by the results of the separate COSS. Having a separate rate zone for the acquired DELCORA customers would therefore facilitate the development of the rates based on the separate COSS and would also facilitate transparency with the application of the funds from the DELCORA Customer Trust. OCA St. 1SR at 23. Mr. Smith goes on to testify:

> The acknowledgement that a separate rate zone for acquired DELCORA customers is needed for the above-stated reasons would not pre-determine the specific rate design for that rate zone. The details of rate development for that separate DELCORA rate zone would then subsequently be addressed in the future Aqua base rate proceedings that included the acquired DELCORA wastewater customers. Consequently, I continue to recommend that establishing a separate rate zone for acquired DELCORA customers be included as a condition to approving the proposed transaction.

Id. Thus, OCA witness Smith recommends while the Trust is functioning to limit increases to DELCORA customers, the DELCORA customers should be a separate rate zone. OCA St. 1SR at 22-23; infra Section V.C. The separate rate zone and its separate cost of service study should remain an obligation at least as long as the Trust provides the rate mitigation. Id.

Mr. Smith recommends the Commission approve the acquisition, if the approval be conditioned on a requirement that Aqua provide a separate Cost of Service Study for the DELCORA system. OCA St. 1 at 31. Aqua appeared to agree with the OCA's recommendation in rebuttal and stated as follows:

> Aqua agrees that the separate COSS will remain an obligation at least as long as the Trust provides the bill assistance payments . . . As previously stated in response to I&E witness Gumby, Aqua, in its next rate filing, will file COSS calculations separately for the DELCORA system and for the City of Chester consistent with typically filed ratemaking 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.

Aqua St. 2R at 22. The OCA submits that the Cost of Service Study should be consistent with the Cost of Service Study required by the Commission in New Garden, which states as follows:

> Accordingly, as a condition to approval of this acquisition, we direct Aqua to file a cost-of-service analysis in its next base rate proceeding, similar to the outcome we directed in *PAWC Scranton Order*. Specifically, Aqua shall develop and file a cost-of-service study in its next rate case pursuant to our Regulations that separates the costs, capital, and operating expenses of providing wastewater service to the New Garden customers as a stand-alone rate group.

New Garden at 69 (internal citations omitted).

As such, if the Commission approves the acquisition, the approval should be conditioned on a requirement that Aqua provide a separate Cost of Service Study for the DELCORA system in its next base rate case in order to provide complete information about the cost of service of the DELCORA system. OCA St. 1 at 31; OCA St. 1SR at 28. While the Trust (or some acceptable alternative) is in place and providing rate mitigation for former DELCORA customers, the DELCORA rate zone should reflect the full cost of service and related revenue requirement for that rate zone with no costs shifted outside of that rate zone. Infra, Section V.C.

As noted, the DELCORA Customer Trust Fund (or some acceptable alternative) should be used to limit the annual rate increases to DELCORA wastewater utility customers under Aqua ownership to no more than 3 percent annually, until the approximated $200 million projected for funding the DELCORA Customer Trust (or some acceptable alternative) has been fully applied for such rate increase mitigation purposes. Additionally, The customer assistance payments from the DELCORA Customer Trust on Aqua's billings to DELCORA wastewater utility customers should be separately shown on the bills to help make this part of the public benefit transparent to the DELCORA wastewater utility customers who are receiving the bill assistance.

Lastly, OCA witness Smith recommended that the impact on income tax expense from repairs deductions claimed by Aqua for DELCORA wastewater utility system assets be recorded in a regulatory liability account and addressed in Aqua's first base rate case in which rates for the acquired DELCORA wastewater utility customers are addressed. OCA St. 1 at 64. In rebuttal, Aqua agreed with OCA witness Smith's recommendation. See OCA St. 1SR at 26; PAWC St. 2R at 24-25. As such, the OCA respectfully requests that the Commission include OCA witness Smith's recommended condition regarding the treatment of tax repairs deductions as part of its Order in this proceeding.

4. Public Interest

Addressed above.

a. Common Pleas Litigation

Addressed above.

b. Rate Stabilization Trust

Addressed above.

c. Other

Addressed above.

5. Environmental Aspects of the Proposed Transaction

The OCA did not present any evidence regarding the environmental aspects of the proposed transaction.

6. Conclusion – Public Interest and Benefit

In addition to the requirements of Section 1329, the proposed transaction must satisfy Section 1102. 66 Pa. C.S. § 1102. As a result of the proposed transaction, DELCORA customers may see large rate increases after future Aqua base rate cases. Moreover, to the extent that DELCORA customers are not paying full cost of service, Aqua's existing water and wastewater customers will bear the difference between the DELCORA rates and the DELCORA cost of service.

If the Commission approves the acquisition, the conditions summarized in Section V.C. of this Brief are required to limit ratepayer exposure to the risks of the acquisition and to ensure that ratepayers receive a fair allocation of the benefits of the acquisition.

C. Recommended Conditions

1) The 12.55% average rate increase for DELCORA ratepayers that Aqua has estimated could occur in the next Aqua wastewater rate case should be mitigated to avoid rate shock associated with the change in ownership. The DELCORA Customer Trust Fund (or some acceptable alternative) should be used to limit the annual rate increases to DELCORA waste water utility customers under Aqua ownership to no more than 3 percent annually, until the approximated $200 million projected for funding the DELCORA Customer Trust (or some acceptable alternative) has been fully applied for such rate increase mitigation purposes.

2) While the Trust is functioning to limit increases to DELCORA customers, the DELCORA customers should be a separate rate zone. The separate rate zone and its separate cost of service study should remain an obligation at least as long as the Trust provides the rate mitigation.

3) At the time of filing its next base rate case, Aqua shall submit a cost of service study that removes all costs and revenues associated with the operations of the DELCORA wastewater system. Aqua shall also provide

a separate cost of service study for the DELCORA system at the time of the filing of Aqua's next base rate case.

4) While the Trust (or some acceptable alternative) is in place and providing rate mitigation for former DELCORA customers, the DELCORA rate zone will reflect the full cost of service and related revenue requirement for that rate zone and no costs will be shifted outside of that rate zone.

5) Consistent with Aqua's proposal, when Aqua modifies its LTIIP to include the DELCORA wastewater utility, any DELCORA-related projects reflected in the revised LTIIP should be in addition to, and not reprioritize, any capital improvements that Aqua was already committed to undertake for existing customers.

6) DELCORA must address convincingly whether it has the legal authority to transfer the wastewater utility assets and related contracts to Aqua.

7) DELCORA must provide clarity as to how the DELCORA Rate Stabilization Fund Trust Agreement between DELCORA as Settlor and Univest Bank and Trust Co. As Trustee, with the Effective Date of December 27, 2019 will function to insulate DELCORA wastewater customers from rate increases.

8) Aqua and DELCORA should revise the MOU to add details regarding how the Trust proceeds will be properly credited to the former DELCORA customers as set forth in responses to OCA and County discovery.

9) The customer assistance payments from the DELCORA Customer Trust on Aqua's billings to DELCORA wastewater utility customers should be separately shown on the bills to help make this part of the public benefit transparent to the DELCORA wastewater utility customers who are receiving the bill assistance.

10) The operation of the DELCORA Customer Trust, i.e., the DELCORA Rate Stabilization Fund should be reviewed and monitored in quarterly reports which show how amounts are being applied to reduce the Aqua rate increases to DELCORA wastewater utility customers that would be occurring under Aqua ownership.

11) In the period from the date when the acquisition is consummated through the effective date of new rates for the acquired DELCORA wastewater utility customers in Aqua's next base rate case, the impact on income tax expense from repairs deductions claimed by Aqua on DELCORA wastewater utility system assets should be recorded in a regulatory liability account and addressed in Aqua's next base rate case in which rates for the acquired DELCORA wastewater utility customers are addressed.

12) The issues being raised by some of the resale customers' resale transfer of the agreements should be resolved before the transaction can close. Those agreements are tied to expected revenues.

D. Section 507 Approvals

The OCA did not present any evidence regarding the Section 507 Approval aspects of the Proposed Transaction.

1. Legal Principles

Addressed above.

2. Municipal Protestants' Contracts

Addressed above.

a. Introduction

Addressed above.

b. Edgmont Township's Contract

Addressed above.

c. Lower Chichester Township's Contract

Addressed above.

d. Southwest Delaware County Municipal Authority's Contract

Addressed above.

e. Trainer Borough's Contract

Addressed above.

f. Upland Borough's Contract

Addressed above.

3. Contracts Other Than Municipal Protestants' Contracts

Addressed above.

E. Other Approvals, Certificates, Registrations and Relief, If Any, under the Code

Addressed above.

VI. CONCLUSION

For the reasons stated above, if the Commission approves the application under Sections 1102 and 1329, the Office of Consumer Advocate's proposed conditions should be adopted, including the OCA's proposed adjustments to the appraisals.

Respectfully submitted,

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Dated: December 1, 2020
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Aqua Pennsylvania Wastewater, Inc.
Acquisition of Delaware County Regional Water Quality Control Authority Assets
Results of OCA Appraisal Adjustments

OCA Exhibit RCS-1
Docket No. A-2019-3015173

Line No.	Valuation Method	Appraisers' Results (A)	(B)	(C)	Results with OCA Adjustments (D)	(E)	(F)	(G)	
		Gannett Fleming Individual Results	Weight	Weighted Result	OCA Adjustment	Gannett Fleming Individual Results	Weight	Weighted Result	
1	Cost Approach	$ 399,664,113	33.0000%	$ 131,889,157	(100,465,415)	$ 299,198,698	33.0000%	$ 98,735,570	RCS-2
2	Income Approach	$ 387,754,301	33.0000%	$ 127,958,919	(82,690,835)	$ 305,063,466	33.0000%	$ 100,670,944	RCS-3
3	Market Approach	$ 438,337,696	34.0000%	$ 149,034,817	(15,591,769)	$ 422,745,927	34.0000%	$ 143,733,615	RCS-4
4	Total			$ 408,882,893				$ 343,140,129	
5	Conclusion			$ 408,883,000				$ 343,140,000	
		ScottMadden Individual Results	Weight	Weighted Result	OCA Adjustment	ScottMadden Individual Results	Weight	Weighted Result	Exhibit Reference
6	Cost Approach	$ 292,413,993	45.0000%	$ 131,586,297	(35,019,728)	$ 257,394,266	45.0000%	$ 115,827,420	RCS-5
7	Income Approach	$ 291,863,370	50.0000%	$ 145,931,685	(128,738,064)	$ 163,125,306	50.0000%	$ 81,562,653	RCS-6
8	Market Approach	$ 613,520,480	5.0000%	$ 30,676,024	(197,931,116)	$ 415,589,365	5.0000%	$ 20,779,468	RCS-7
9	Total			$ 308,194,006				$ 218,169,541	
10	Conclusion			$ 308,194,000				$ 218,170,000	

Line No.	**Summary of Results**	Appraiser Results	OCA Adjusted Results
11	Gannett Fleming	$ 408,883,000	$ 343,140,000
12	ScottMadden	$ 308,194,000	$ 218,170,000
13	Average	$ 358,538,500	$ 280,655,000
14	Purchase Price	$ 276,500,000	$ 276,500,000
15	**Lesser of Purchase Price and Fair Market Value**	**$ 276,500,000**	**$ 276,500,000**

Notes and Source:
Lines 1-5, Cols. A through C: Exhibit Q, Gannett Fleming Fair Market Value Appraisal report, Exhibit 19
Lines 6-10, Cols. A through C: Exhibit R, ScottMadden Fair Market Value Appraisal report, page 12

Appendix A

OCA – Sponsored Testimony, Schedules and Exhibits

The following OCA Testimony and Schedules were admitted into the record:

Direct Testimony of Ralph C. Smith, OCA Statement 1

OCA Appendix A – Background and Qualifications of Ralph C. Smith

OCA Exhibits – RCS-1, RCS-2, RCS-3, RCS-4, RCS-5, RCS-6, RCS-7, RCS-8

Surrebuttal Testimony of Ralph C. Smith, OCA Statement 1SR

OCA Exhibit – RCS-9

OCA PROPOSED FINDINGS OF FACT

I. STATEMENT OF THE CASE

A. Procedural History

1. DELCORA provides direct retail service to approximately 16,000 customers and provides collection, conveyance, and treatment service to approximately 200,000 Equivalent Dwelling Units in Delaware and Chester Counties, Pennsylvania, transmitting, and treating approximately 65 million gallons per day. Application at ¶ 8; Exh. I1.

2. DELCORA provides wholesale conveyance and treatment service to municipal and municipal authority customers within all or part of 49 municipalities. Application at ¶ 8; Exh. I1.

3. Two Public Input Hearings were held on September 16, 2020, the first at 1:00 p.m. and the second hearing at 6:00 p.m. at which, approximately a combined 16 people/entities testified. Tr. at 49-179.

B. Overview of the Proposed Transaction

4. Aqua proposes to pay $276,500,000 for DELCORA's assets. Application at ¶ 24.

5. Aqua filed its application under Section 1329 in addition to Sections 1102 and 507 of the Public Utility Code. Aqua requests that the purchase price of $276,500,000 be approved for ratemaking purposes as it is lower than the average of the two appraisals provided with its application. See 66 Pa. C.S. § 1329(c)(2); OCA St. 1 at 24.

6. Aqua seeks approval of the APA with DELCORA as well as other municipal agreements, pursuant to Section 507 of the Public Utility Code, and requested that the Commission issue an Order and Certificate of Public Convenience approving and addressing the items requested in this Application. Application at ¶¶ 5, 72.

7. The APA includes provisions stating that DELCORA will take a portion of the proceeds of the Proposed Transaction and place them into a trust for the benefit of the DELCORA customers, and is requesting to apply payments to DELCORA customers from the Trust through Aqua's billing process. Application at ¶ 36.

8. The APA requires Aqua to implement rates that are no higher than DELCORA's rates in effect at closing. Application at § 6.

9. In accordance with Section 1102 of the Public Utility Code, Aqua is requesting a Certificate of Public Convenience in order to provide wastewater services to the DELCORA customers. Application at ¶ 5.

10. Separate customer notices were sent to DELCORA customers and Aqua's current customers informing them of the proposed transaction and the potential rate impact. Application at ¶ 38.

V. ARGUMENT

A. Section 1329

11. In this proceeding, the two appraisal values were $408,883,000 (Gannett Fleming) and $308,194,000 (ScottMadden).

12. The average of the two appraisals is $358,538,500. OCA St. 1 at 24; OCA Exh. RCS-1.

13. Using an engineering assessment performed by Pennoni Associates, Inc., Gannett Fleming shows the original cost of DELCORA's wastewater collection and treatment system and land to be $263,682,616. OCA St. 1 at 23.

14. With calculated accumulated depreciation of $71,908,130, the net book value of the DELCORA wastewater utility assets is $191,774,486. This value does not reflect an offset for contributions, pursuant to 1329, as it would under normal ratemaking. OCA St. 1 at 23.

15. The OCA's adjusted Gannett Fleming appraisal result is $343,140,000, and the OCA's adjusted ScottMadden appraisal result is $218,170,000, in order to properly reflect financial and ratemaking principles. OCA Table I at Col. G, Ln. 5, 10; OCA Exh. RCS-1, Col. G, Ln. 5, 10.

16. The recalculated average of the two OCA-adjusted appraisal results is $280,655,000. OCA Table I at Col. G, Ln. 13; OCA Exh. RCS-1 at Col. G, Ln. 13.

17. Cost Approach is defined as, "A procedure to estimate the current costs to reproduce or create a property with another of comparable use and marketability." OCA St. 1 at 46.

18. In Gannet Fleming's appraisal, Mr. Walker used the original cost of the assets by NARUC account of $263,682,616 from the engineer's assessment and calculated accrued depreciation related to those assets through December 31, 2019 of $71,908,130 for net original cost book value of $191,774,486. OCA St. 1 at 47; PAWC Exh. Q at 110.

19. DELCORA's audited financial statement for December 31, 2018 indicated that the cost of DELCORA's system was $240,841,951 for capital assets net of accumulated depreciation. OCA St. 1 at 47; PAWC Exh. J2 at 21.

20. A DELCORA audited financial statement for December 31, 2019 indicated that the cost of DELCORA's capital assets, net of accumulated depreciation as of December 31, 2019 was $260,506,518. OCA St. 1 at 48; OCA Exh. RCS-8 at 64.

21. Aqua intends to apply its depreciation rates that were approved in the Company's most recent base rate case to the DELCORA system when it includes the DECORA acquisition in base rates. OCA St. 1 at 48.

22. Aqua's depreciation rates approved in the Company's last rate base case should be utilized in Gannett Fleming's Cost approach. OCA St. 1 at 49-50.

23. Gannet Fleming's UVE utilized a 60 year service life for DELCORA's operations center while OCA witness Smith recommends that a 50 year service life be used for the DELCORA operations center, which will continue to be used under Aqua ownership. OCA St. 1 at 49.

24. Aqua has indicated that for base rate purposes, Aqua will depreciate DELCORA's operations center over 50 years in accordance with Aqua's existing depreciation rates for structures approved by the Commission in Aqua' last base rate case. OCA St. 1 at 48-49.

25. ScottMadden's UVE utilized a 50-year service life for the DELCORA operations center. OCA St. 1 at 49.

26. Using the depreciable lives from Aqua's last base rate case that Aqua stated it would use for the acquired DELCORA wastewater utility assets, if applied to all of the sewer utility asset accounts, would result in Replacement Cost Accumulated Depreciation of $414,305,664 rather than the $392,724,620 Replacement Cost Accumulated Depreciation used in the Gannett Fleming valuation study. OCA St. 1 SR at 16.

27. Mr. Walker's Cost Approach valuation would be reduced by the difference of $21,581,044. OCA St. 1 SR at 17; Aqua St. 8R at 8; Aqua Exh. HW-1R at Exh. 1.

28. ScottMadden's appraisal resulted in a cost approach valuation of $292,413,993. OCA St. 1 at 60.

29. To reach his cost approach valuation, Mr. D'Ascendis calculated a reproduction cost new minus depreciation value of $292,413,993 using the Handy-Whitman and Producers Pricing Indices to trend the original cost, from which he subtracted a calculated amount for depreciation of DELCORA's wastewater utility assets. OCA St. 1 at 60.

30. OCA witness Smith made an adjustment to three accounts in the ScottMadden cost approach in order to reflect the useful lives that Aqua utilizes for its plant:
    (1) Account 362.2 Special Collecting Structures,
    (2) Account 380.3 Treatment and Disposal Equipment – Pump Stations, and
    (3) Account 380.4 Treatment and Disposal Equipment.
    OCA St. 1 at 60.

31. The useful lives for Account 362.2 – Special Collecting Structures – were adjusted from 75 years to 40 years. OCA St. 1 at 60.

32. The useful lives for Account 380.3 – Treatment and Disposal Equipment – Pump Stations, and Account 380.4 –Treatment and Disposal Equipment, were both adjusted from 50 to 40 years. OCA St. 1 at 60.

33. The OCA's adjustment reduces the ScottMadden Cost Approach amount by $35,019,728. OCA St. 1 at 60-61; OCA Exh. RCS-5.

34. The Market Approach, also called the Sales Comparison Approach, is defined as, "A procedure to conclude an opinion of value for a property by comparing it with similar

properties that have been sold or are for sale in the relevant marketplace by making adjustments to prices based on marketplace conditions and the properties' characteristics of value." OCA St. 1 at 55.

35. Aqua witness Walker's Market Approach resulted in a valuation of $438,337,696. OCA St. 1 at 56.

36. To reach his Market Approach conclusion, Mr. Walker used two methods and used a combination of results under his market multiples method and selected transaction method to arrive at his valuation. OCA St. 1 at 56.

37. Mr. Walker distinguished transactions involving water and wastewater utilities with "integrated" systems, i.e., having both treatment plants and collection/distribution and those not having treatment plants. OCA St. 1 at 56.

38. As the DELCORA wastewater system includes treatment plants and a collection system, Mr. Walker weighted his calculation to emphasize his comparable results for "integrated" systems. OCA St. 1 at 57.

39. Mr. Walker used medians of both Ex-Ante and Ex-Post amounts for previously acquired plant under Section 1329 in his valuation. OCA St. 1 at 57-58.

40. The Ex-Ante amounts are projected amounts and the Ex-Post amounts are the actual amounts for each respective Section 1329 transaction. OCA St. 1 at 58.

41. The Ex Ante amounts from the valuation calculation and using only the median of the Ex-Post amounts because the Ex-Ante amounts are essentially initial estimates (as opposed to the actual transaction). OCA St. 1 at 58.

42. OCA witness Smith's adjustments results in a decrease of $15,591,769 to Mr. Walker's Market Valuation Approach. OCA St. 1 at 59.

43. Mr. D'Ascendis' Market Approach methodology produces a result of $613,520,596. OCA Table I at Col. A, Ln. 8; OCA St. 1 at 62.

44. To reach his result, Mr. D'Ascendis utilized two methods: 1) Market-to-Book Multiple Method; 2) Comparable Sales Method. OCA St. 1 at 62.

45. For his Market-to-Book Method, Mr. D'Ascendis applied Market-to-Book ratios of publicly traded water utilities to the book value of DECLROA as of December 31, 2018. OCA St. 1 at 62.

46. Mr. D'Ascendis calculated a market-to-book ratio of 2.246 to reach his recommended value of $413,589,365 under the Market-to-Book Multiple Method. OCA St. 1 at 62.

47. Mr. D'Ascendis' Comparable Sales Method was derived from researching transactions involving companies who acquired a 100% interest of a water or sewer company since 2015. OCA St. 1 at 62.

48. Mr. D'Ascendis' research was drawn from 69 results around the country, only 20 of which were Pennsylvania acquisitions. OCA St. 1 at 62.

49. Mr. D'Ascendis calculated an implied enterprise value of 4.10 per utility connection for the country and 6.45 for Pennsylvania. OCA St. 1 at 62.

50. Mr. D'Ascendis then applied both of these values to the total number of DELCORA's wastewater connections to get indicated values of $811,451,586 and $1,276,340,191, respectively. OCA St. 1 at 62.

51. The lower of the indicated values produced by Mr. D'Ascendis' Comparable Sales Method, $811,451,596, was selected as his Comparable Sales Method result. OCA St. 1 at 62.

52. Mr. D'Ascendis then averaged his two Market Approach method results to reach his Market Approach valuation of $613,520,596. OCA St. 1 at 62.

53. OCA witness Smith recommended an adjustment to the ScottMadden Market Approach, excluding the Comparable Sales Method calculation and using only the result from Mr. D'Ascendis' Market to Book valuation methodology. OCA St. 1 at 63.

54. This adjustment reduces the ScottMadden Market Approach amount by $197,931,116. OCA St. 1 at 63; OCA Exh. RCS-7.

55. The Income approach is defined as: A procedure to conclude an opinion of present value by calculating the anticipated monetary benefits (such as a stream of income) for an income-producing property. OCA St. 1 at 50.

56. The fundamental flaw in both UVE models is that the calculation of terminal values for the DELCORA system. OCA St. 1 at 51.

57. In calculating terminal values, both UVEs utilized a "capitalization rate" to project future cash flows in perpetuity. OCA St. 1 at 50-51.

58. While the Income Approach is clearly appropriate for evaluating project feasibilities and for valuing unregulated business enterprises, Mr. Smith explained that there are limitations to the income method when valuing regulated public utilities. OCA St. 1 at 50-51.

59. Regulated public utilities' revenues, income streams, and cash flows are directly based on the capital investments required to operate as a utility and rates are set using this rate base/rate of return method of ratemaking. OCA St. 1 at 50-51.

60. For a regulated utility, the valuation is a direct function of, and is exactly equal to, the selected investment. OCA St. 1 at 52-53.

61. Both UVEs used a capitalization rate to project future cash flows in perpetuity. OCA St. 1 at 52-53.

62. Both UVEs, in estimating the terminal value, reflect capital expenditures in the last year of the model that are much less than the depreciation expense on plant during that year. OCA St. 1 at 53.

63. According to the assumptions and modeling done by each UVE, DELCORA would be depreciating and using up its plant faster than it is making investments to replace that plant, which could not be sustained. OCA St. 1 at 53.

64. Mr. Smith adjusted the income approach of Gannett Fleming's and ScottMadden's UVEs to recalculate the terminal value using the amount of net plant less accumulated deferred income taxes projected to be remaining at the end of 2044 and 2049, respectively. OCA St. 1 at 54, 61.

65. On behalf of DELCORA, Dylan D'Ascendis with ScottMadden developed an Income Approach resulting in an estimated fair market value of $291,863,370. OCA St. 1 at 61.

66. ScottMadden allocated 50% weight to that approach which gave it a weighted value of $145,931,645. OCA St. 1 at 60.

67. Mr. D'Ascendis' valuation using the Income Approach is based on a DCF analysis projected out to 2049 with a perpetuity value (i.e., a terminal value) used after the year 2049. OCA St. 1 at 61.

68. In Mr. D'Ascendis' DCF analysis, he makes assumption for operating revenues, operating expenses and future capital requirements, as well as a weighted average cost of capital of 6.94%. OCA St. 1 at 61.

69. Mr. Smith recalculated the valuation of the terminal value using the amount of Net Plant less Accumulated Deferred Income Taxes (ADIT) projected to be remaining at the end of 2049. OCA St. 1 at 61.

70. As ScottMadden did not calculate a projection of net plant, Mr. Smith used a net plant amount based on the Gannett Fleming calculations of net plant. Gannett Fleming projected net plant out to 2045. OCA St. 1 at 61.

71. Mr. Smith then extended the calculation to 2049 to derive the net plant amount used in this adjustment. OCA St. 1 at 61.

72. Mr. Smith's adjustment to terminal value results in an Income Approach valuation of $163,125,306. OCA St. 1 at 61.

73. This adjustment reduces the ScottMadden Income Approach amount by $128,738,064. OCA St. 1 at 61-62; OCA Exh. RCS-6.

74. On behalf of Aqua, Harold Walker, of Gannett Fleming, developed a valuation under the Income Approach resulting in an estimated fair market value of $387,754,301. OCA St. 1 at 46.

75. Aqua witness Walker allocated 33.33% weight to that approach which gave it a weighted value of $127,958,919. OCA St. 1 at 46.

76. In reaching his Income Approach valuation, Mr. Walker averaged the median indicated value amounts of his DCF with capitalization of terminal values under municipal ownership results, and the median value amounts of his DCF capitalization of terminal value with investor owned utility ownership results. OCA St. 1 at 53.

77. The adjusted Income Approach value of $305,063,465 is $82,690,835 lower than Mr. Walker's proposed amount of $387,754,301. OCA St. 1 at 55.

78. Under Section 1329, the $276.5 million purchase price, as proposed by Aqua, should be used as the Fair Market Value for the DELCORA wastewater utility assets because that amount is below the average adjusted result of the ScottMadden and Gannett Fleming valuations. OCA Table I at Col. G, Ln. 15; OCA St. 1SR at 15; OCA Exh. RCS-1 at Col. G, Ln. 15.

B. Section 1102/1103 Standards – Public Interest

1. Section 1102/1103 – Legal Principles

79. DELCORA will receive approximately $276 million or 44% more than the net book value of the system. OCA St. 1 at 24.

80. Aqua anticipates implementing DELCORA's planned capital program for routine plant upgrades, collection system work and pump station upgrades. Aqua Exh. V at 9.

81. Aqua has committed to preserving jobs by hiring all DELCORA employees. OCA St. 1 at 19; Aqua Exh. W1 at 5-14.

3. Affirmative Public Benefits

82. Aqua notified DELCORA customers of an estimated 12.55% increase to their bill. Application Exh. I2 through I12; OCA St. 1 at 33.

83. Aqua's notice to its existing wastewater and water utility customers, presents a 14.32% increase for wastewater customers and a 4.58% increase for water customers. OCA St. 1 at 25; Application Exh. I1.

a. The Rate Stabilization Fund (DELCORA Customer Trust)

84. Regarding the estimated 12.55% increase to DELCORA customers' bills, this increase does not consider the effect that the DELCORA Customer Trust would have to assist DELCORA customers in paying for their own cost of service in their utility bills for a limited time. OCA St. 1 at 33.

85. The DELCORA Customer Trust would hold a portion of the sales proceeds and make payments to the benefit of DELCORA ratepayers to offset rate increases above 3% per year under Aqua ownership. OCA St. 1 at 9-10.

86. As explained by DELCORA, the Commission will set rates for the DELCORA wastewater utility ratepayers after Closing, then Customer Assistance Payments from the DELCORA Customer Trust will be used for payments applied to the DELCORA Customer bills. See OCA St. 1 at 34-35.

87. Aqua has indicated that it would begin charging DELCORA wastewater customers a DSIC after Aqua updates its LTIIP. OCA St. 1 at 40.

88. DELCORA has indicated that funds from the DELCORA Customer Trust would be used to offset DSIC charges, thereby limiting annual increases under Aqua ownership to no more than 3% per year. See OCA St. 1 at 40, 45.

i. DSIC for DELCORA Customers

89. Section 1329(d)(4) permits the acquiring utility to collect a DSIC from the time that a tariff goes into effect until such time as new rates are approved for the acquiring utility in a base rate case. 66 Pa. C.S. § 1329(d)(4).

90. Consistent with the Final Implementation Order implementing Act 11 of 2012, if Aqua determined to charge a DSIC to the DELCORA customers prior to establishing rates for those customers in a base rate proceeding, the Company should file a revised tariff to reflect this change and a revised LTIIP. Implementation of Act 11 of 2012, M-2012-2293611, Final Implementation Order at 28 (Aug. 2, 2012).

b. The Proposed Trust, if Found to be Lawful and Able to Credit Customers' Bills within the PUC Code, Can Help Address the Negative Impact on the DELCORA Customers and Existing Aqua Customers

91. The Trust is currently a contested legal issue. OCA St. 1 at 43-44.

92. Delaware County is disputing the legality of the Trust in the Court of Common Pleas. OCA St. 1 at 44.

93. The Court of Common Pleas proceeding encompasses the same Asset Purchase Agreement as the instant proceeding and includes many of the same parties in the instant case, including Aqua and DELCORA. OCA St. 1 at 44.

94. DELCORA indicates that the DELCORA Customer Trust will not make any payments to Aqua that Aqua retains (and does not transfer back to customers in the form of bill credits).

OCA PROPOSED CONCLUSIONS OF LAW

1. The Applicant has the burden of demonstrating by a preponderance of the evidence that the proposed acquisition by Aqua meets the requirements of Pennsylvania law. See Lansberry v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990).

2. The Applicant's case must be more convincing than the case presented by the challenger. Se-Ling Hosiery, Inc. v. Margulies, 413 A.2d 845 (Pa. 1950).

3. The Pennsylvania Supreme Court has stated that the party with the burden of proof has a formidable task to show that the Commission may lawfully adopt its position. Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983).

4. Even where a party established a prima facie case, the party with the burden of proof must establish that "the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary." Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983).

5. The evidence must be substantial and legally credible, and cannot be mere "suspicion" or a "scintilla" of evidence. Lansberry v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. 1990).

6. The Applicant has the burden of proving that the acquisition will "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." City of York v. Pa. PUC, 295 A.2d 825, 828 (Pa. 1972); 66 Pa. C.S. § 315(c).

7. Section 1329 provides, *inter alia*, that when a regulated water or wastewater utility acquires a municipal water or wastewater provider, the regulated utility can ask for ratemaking treatment of the acquired utility's assets using fair market value. 66 Pa. C.S. § 1329.

8. As set forth in Section 1329(a) and (b), the process for determining the fair market value is based on two separate appraisals each using the Cost, Market and Income approaches. 66 Pa. C.S. §§ 1329(a)(3), (b).

9. The appraisals are then averaged to determine the fair market value, 66 Pa. C.S. § 1329(g) and the lesser of the purchase price or the fair market value is what the acquiring utility will present as the proposed rate base. 66 Pa. C.S. § 1329(c)(2).

10. Pursuant to Section 1329, upon agreement by the acquiring public utility and the selling entity, "two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value" and each "shall determine fair market value" in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) based on the cost, market, and income approaches. 66 Pa. C.S. § 1329(a).

11. "The ratemaking rate base shall be the lesser of the purchase price negotiated by the acquiring public utility . . . and selling utility or the fair market value of the selling utility." 66 Pa. C.S. § 1329(c)(2).

12. The Applicant must provide to the Commission copies of the appraisals, the purchase price, the ratemaking rate base, the closing costs, and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1).

13. Regardless of whether the Applicant meets the requirements of Section 1329, the Applicant still has the burden of proving that it satisfies the requirements of Sections 1102 and Section 1103 of the Public Utility Code. See McCloskey v. Pa. PUC, 195 A.3d 1055, 1064 (Pa. Commw. 2018); 66 Pa. C.S. §§ 1102, 1103.

14. The Commission has determined that UVEs are required to apply jurisdictional exceptions under the valuation approaches, in order to establish appropriate guidelines and consistent assumptions for Section 1329 Fair Market Value appraisals, to comply with Commission precedent, and to reduce variances in the appraisals for the same property. Application of Aqua Pennsylvania Wastewater, Inc., A-2019-3008491, Order at 6-7 (Nov. 5, 2019).

15. In Cheltenham, when addressing a calculation of service lives for depreciation purposes, the Commission determined as follows:

> Upon review of the record, the ALJ's Recommended Decision and the Parties' Exceptions, we find that the ALJ properly considered and rejected Aqua's arguments regarding the use of a 90-year service life for VCP mains, laterals, and manholes in the AUS' cost approach. Aqua did not meet its burden of proof on this issue. It presented no testimony to support its arguments that "[t]he AUS extended service lives are also supported by the Engineer's Assessment and the AUS detailed cost approach calculations" and that using relining techniques extends the life expectancy of the mains. Aqua Exc. at 7. Mr. Weinert, AUS' UVE, in testimony did not address the relining of mains, so it is not clear whether AUS considered the relining of a very small portion of the collection mains to be relevant to the service life of the collection mains.

Application of Aqua Pennsylvania Wastewater, Inc., A-2019-3008491, Order at 44 (Nov. 5, 2019).

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

17. 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).

18. In addition to the requirements of Section 1329, the proposed transaction must satisfy Section 1102. 66 Pa. C.S. § 1102.

19. The Public Utility Code authorizes the Commission to permit a regulated public utility to begin to offer service in an additional territory and to acquire property used and useful in the public service, as is requested in this application. 66 Pa. C.S. § 1102(a)(1), (3).

20. In this proceeding, the Commission must fully consider the impacts of this acquisition on three specific groups of customers with respect to the traditional City of York affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers – who may potentially bear costs of the DELCORA system, if the Commission permits costs to be shifted under 66 Pa. C.S. § 1311(c), and (3) the existing DELCORA customers who will be transferred to Aqua.

21. An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction. Application of CMV Sewage Co., Inc., 2008 PaPUC LEXIS 950, *30.

22. Under Section 1103, there is no support for concluding that existing Aqua wastewater and water customers will receive any net benefit or that the DELCORA customers will see a net benefit after the rate stabilization fund (DELCORA Customer Trust) is depleted.

23. Aqua's claims regarding the acquisition benefiting existing customers remain vague, unsupported, and unquantified. OCA St. 1 at 65.

24. The ongoing case before the Court of Common Pleas will impact the Application and could come into conflict with the Commission's determination in this proceeding. OCA St. 1 at 44.

25. The Trust could avoid the shift of costs to existing Aqua customers for a time. OCA St. 1 SR at 5.

26. The Application, as filed, would create significant additional costs and presents significant risks to Pennsylvania ratepayers and would not provide substantial affirmative public benefits. OCA St. 1 at 66.

27. Aqua has not 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. P.U.C., 295 A.2d 825 (Pa. 1972).

28. The Application should not be approved or at a minimum, only be approved with the acceptance of the appropriate and necessary conditions, including those recommended by the OCA.

29. Conditions on approval of the Application, including those propounded by the OCA, are necessary to limit ratepayer exposure to the risks of the acquisition and to ensure that ratepayers receive a fair allocation of the benefits of the acquisition. OCA St. 1 at 66.

OCA PROPOSED ORDERING PARAGRAPHS

It is hereby ORDERED THAT:

1. That the Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Delaware County Regional Water Quality Control Authority, be denied.

Or, in the alternative to the Application's denial:

1. The Application is approved conditioned on the following requirements:

    1) The 12.55% average rate increase for DELCORA ratepayers that Aqua has estimated could occur in the next Aqua wastewater rate case shall be mitigated to avoid rate shock associated with the change in ownership. The DELCORA Customer Trust Fund (or approved alternative) should be used to limit the annual rate increases to DELCORA waste water utility customers under Aqua ownership to no more than 3 percent annually, until the approximated $200 million projected for funding the DELCORA Customer Trust (or approved alternative) has been fully applied for such rate increase mitigation purposes.

    2) While the Trust (or approved alternative) is functioning to limit increases to DELCORA customers, Aqua shall establish and maintain the DELCORA customers in a separate rate zone.

    3) At the time of filing its next base rate case and in all future rate cases filed while the Trust (or approved alternative) provides rate mitigation, Aqua shall submit (1) a cost of service study that removes all costs and revenues associated with the operations of the DELCORA wastewater system and (2) a separate cost of service study for the DELCORA system.

    4) While the Trust (or approved alternative) is in place and providing rate mitigation for former DELCORA customers, the DELCORA rate zone shall reflect the full cost of service and related revenue requirement for that rate zone and no costs will be shifted outside of that rate zone.

    5) [If applicable because Trust is approved,] Aqua and DELCORA shall revise the MOU consistent with this Order.

    6) The customer assistance payments from the DELCORA Customer Trust (or approved alternative) on Aqua's billings to DELCORA wastewater utility customers shall be separately shown on the bills to help make this part of the public benefit transparent to the DELCORA wastewater utility customers who are receiving the bill assistance.

7) The operation of the DELCORA Customer Trust (or approved alternative) shall be reviewed and monitored in quarterly reports which show how amounts are being applied to reduce the Aqua rate increases to DELCORA wastewater utility customers that would be occurring under Aqua ownership.

8) Consistent with Aqua's proposal, when Aqua modifies its LTIIP to include the DELCORA wastewater utility, any DELCORA-related projects reflected in the revised LTIIP shall be in addition to, and not reprioritize, any capital improvements that Aqua was already committed to undertake for existing customers.

9) DELCORA shall address convincingly whether it has the legal authority to transfer the wastewater utility assets and related contracts to Aqua before the transaction can close.

10) In the period from the date when the acquisition is consummated through the effective date of new rates for the acquired DELCORA wastewater utility customers in Aqua's next base rate case, the impact on income tax expense from repairs deductions claimed by Aqua on DELCORA wastewater utility system assets shall be recorded in a regulatory liability account and addressed in Aqua's next base rate case in which rates for the acquired DELCORA wastewater utility customers are addressed.

11) Prior to closing, the issues raised by some of the resale customers' resale transfer of the agreements shall be resolved, as those agreements are tied to expected revenues.

2. The OCA's adjustments to the UVE appraisals are adopted.

3. In future appraisals filed under Section 1329, the depreciation rates approved by the Commission in the acquiring company's plant shall be utilized.

4. In future appraisals filed under Section 1329, the fair market value, as opposed to the purchase price, shall be utilized when valuing systems.

5. In future appraisals filed under Section 1329, the Comparable Sales Method shall not be utilized.

DATE: ________________ ______________________________________

Angela T. Jones
Administrative Law Judge

DATE: ________________ ______________________________________

F. Joseph Brady
Administrative Law Judge