

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2021-3024267
Wastewater, Inc. (hereinafter referred to as :
"Aqua" or "Applicant") pursuant to Sections :
1102 and 1329 of the Public Utility Code for: :

(1) approval of the acquisition by Aqua of :
the wastewater system assets of Lower :
Makefield Township ("LMT" or :
"Township") situated within the Township of :
Lower Makefield and Yardley Borough, :
Bucks County, Pennsylvania; :

(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in Lower :
Makefield Township, Bucks County, :
Pennsylvania; and :
:

(3) an order approving the acquisition :
that includes the ratemaking rate base of the :
Lower Makefield Township wastewater :
system assets pursuant to Section 1329(c)(2) :
of the Public Utility Code. :

Request for Approval of Contracts, :
including Assignments of Contracts, between :
Aqua and Lower Makefield Township, :
Pursuant to Section 507 of the Public Utility :
Code :

APPLICATION

To the Pennsylvania Public Utility Commission ("Commission"):

I. BACKGROUND

1. The name and address of Applicant are:

Aqua Pennsylvania Wastewater, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

2. The name, address and contact information for Applicant's counsel are:

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
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3. Pursuant to Sections 1102 and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102 and 1329, Applicant hereby requests that the Commission: (1) approve Aqua's acquisition of the wastewater system assets ("Assets") of LMT; (2) approve the right of Aqua to begin providing wastewater service in the requested territory, as shown as the area outlined in red on the map attached hereto as **Exhibit A** (the "Requested Territory");¹ 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.

4. The map of the Requested Territory includes a north arrow depicting map orientation, a graphic scale, the municipal boundaries of LMT and identification and depiction of all private and public roads relative to the Requested Territory. A bearing and angle description of the Requested Territory is included on Exhibit A. The Requested Territory is 17.5 square miles (11,205 acres).

5. Aqua and LMT have reached an agreement regarding the acquisition of the Township Assets, as evidenced by the *Asset Purchase Agreement*, dated as of September 17, 2020 and attached hereto as **Exhibit B** (the "Agreement"). Applicant respectfully requests that the Commission issue an *Order and Certificates of Public Convenience* approving and addressing the items requested in this Application.

6. An **Application Filing Checklist** identifying topics addressed and the section, paragraph and page number where they can be found is included with this Application.

¹ A CONFIDENTIAL facilities map is included with the Asset Inventory as addressed *infra*.

II. AFFECTED ENTITIES

7. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 45,000 customer accounts, as reflected in documents already on file with the Commission. Aqua's existing service territories cover various Counties throughout Pennsylvania including parts of Bucks County.

8. LMT is a duly organized and validly existing Township of the Second Class. Township owns the sanitary wastewater collection system which is operated by the Municipal Sewer Authority of the Township of Lower Makefield ("LMTSA") which provides sanitary wastewater service to approximately 11,151 customers in LMT.

9. Applicant incorporates into this Application other information on file with the Commission that establishes the fact that Aqua is qualified to provide adequate public wastewater service. Aqua will supplement this Application with all additional information the Commission may require. Financial Statements of Aqua for 2020 are attached hereto as **Exhibit C**.

III. PLANT-IN-SERVICE

10. Aqua will acquire LMT's wastewater collection system assets as defined in the Agreement. All assets are located in the Township except for a portion of a main that collects wastewater from a small segment of residents in Yardley Borough.²

11. A Sewage Facilities Assessment with Original Cost Estimate of the LMT Sanitary Sewer System, prepared by Ebert Engineering, Inc., Consulting Engineers ("Asset Inventory"), is

² The main is located on University Blvd. and is owned by LMT which loops into, then out of, Yardley Borough. The residents in Yardley Borough that are connected to this main are billed by Yardley Borough.

attached hereto as **Exhibit D**. The facilities map included with the Asset Inventory is considered CONFIDENTIAL.

12. The Asset Inventory explains that the LMT collection system has approximately 150 miles of gravity sewer collection mains, in sizes ranging from 4 inches to 30 inches in diameter with 14 dedicated pump stations. The Asset Inventory also shows the System has approximately 7 miles of force mains and 1 mile of low-pressure mains sized 1.5 to 12 inches.

13. A list of non-depreciable property is presented in Appendix I of the Asset Inventory. The LMT System has no plant held for future use and none is included in the Asset Inventory.

14. All component facilities are installed. The approximate time of installation of component facilities is addressed in Section IV of the Asset Inventory and in Mr. Bubel's testimony.

15. LMT does not own a wastewater treatment plant. Wastewater treatment is mainly provided by the Municipal Authority of the Borough of Morrisville ("MABM") at its Wastewater Treatment Plant in the Borough of Morrisville ("MABM WWTP") pursuant to a Wastewater Service Agreement, dated September 1, 1977, Amended as of February 18, 1982, October 8, 1991, and June 24, 1993, by and between LMT, LMTSA, MABM, Yardley Borough, and Yardley Borough Sewer Authority. Chapter 94 Reports of Lower Makefield Township for the Falls, Morrisville, Neshaminy, and Yardley service areas are attached hereto as **Exhibit E1**. Certain flows of LMT flow into Yardley Borough and are pumped back into LMT which then flows to the MABM WWTP. A copy of MABM's 2020 Chapter 94 Report to the Department of Environmental Protection ("DEP") for the MABM WWTP is attached hereto as **Exhibit E2**. The MABM WWTP Plant has a permitted capacity of 7.1 MGD with EL between EL 5 and EL 12.

16. Certain flow that is collected in LMT flows is sent through the Neshaminy Interceptor owned by the Bucks County Water and Sewer Authority ("BCWSA") which is ultimately transmitted

to the Philadelphia Water Department's ("PWD") Northeast Water Pollution Control Plant ("NEWPCP"). Certain residents in LMT known as the Falls Township Service Area are served and billed by the Township of Falls Authority ("TOFA").³ Also, certain flow from the Newtown Joint Municipal Authority is transported to LMT's Core Creek Interceptor which is then conveyed to BCWSA and ultimately treated at PWD's NEWPCP. A copy of PWD's 2020 Chapter 94 Report to the DEP for the NEWPCP is attached hereto as Exhibit E3. The PWD NEWPCP Plant has a permitted capacity of 210 MGD with EL between EL 5 and EL 18.

17. Elevation of the LMT collection system and the service area varies:

EL 176 to EL 286 along the western boundary.

EL 16 to EL 176 along the southern boundary.

EL 27 to EL 286 along the northern boundary.

EL 16 to EL 27 along the eastern boundary.

18. Water service in the Requested Territory is provided by Pennsylvania American Water Company, the MABM and private wells.

19. The original cost, by year and major plant category, of LMT's used and useful plant in service is \$32,003,924 with a related calculation depreciation reserve of \$12,195,650.

20. Tentative journal entries to record the transaction are presented in Section IV.

IV. ASSET PURCHASE AGREEMENT

21. The Asset Purchase Agreement is dated September 17, 2020. The purchase price is Fifty-Three Million Dollars (\$53,000,000.00).

22. The purchase price is based on arm's length negotiations. Aqua and Township are not affiliated with each other.

³ The Falls Township Service Area is not part of the Requested Territory.

23. Aqua will use short term debt initially for the purchase of the assets with the expectation that the short term debt will be converted to long term debt and equity capital at a later date.

24. The wastewater system assets to be transferred are the “Acquired Assets” and have the meaning specified in Section 2.01 of the Agreement. The Assets include the assets, properties and rights of the Township used in the system and all pipes, pumping stations, generators, manholes and pipelines and billing and collections related assets necessary to run the system.

25. Acquired Assets also include the eighteen contracts identified on Schedule 4.15 of the Agreement to which Township is a party (the “Assigned Contracts”). The Assigned Contracts are attached hereto as Exhibit F1, Exhibit F2, Exhibit F3, Exhibit F4, Exhibit F5, Exhibit F6, Exhibit F7, Exhibit F8, Exhibit F9, Exhibit F10, Exhibit F11, Exhibit F12, Exhibit F13, Exhibit F14, Exhibit F15, Exhibit F16, Exhibit F17, and Exhibit F18, respectively.⁴

F1 – Sewage Transportation Agreement, dated November 20, 2015, by and among the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township, and Yardley Borough Sewer Authority

F2 – Agreement, dated September 1, 1977, by and among the Municipal Authority of the Borough of Morrisville, Borough of Yardley, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

F3 – Agreement, dated February 18, 1982 by and between the Municipal Authority of the Borough of Morrisville, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

F4 – Amendment Agreement, dated October 8, 1991, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority⁵

⁴ As noted below, Exhibits F4, F6, F8, F13 and F17 are missing certain pages and/or exhibits. The Company and LMT have sought to obtain the missing items from the parties to the contracts through Right to Know (“RTK”) requests and have exhausted all avenues to obtain the missing pages/exhibits. No party to these agreements possesses these missing items. Should the documents/information requested via RTK be located and become available, Aqua will supplement the Application and record accordingly.

⁵ Exhibit A to F4 is missing. A RTK request was sent to the Borough of Yardley (“Yardley”) on January 27, 2021 and a response was received on January 28, 2021 indicating that Exhibit A could not be located. The RTK request and the Yardley response are included with Exhibit F4. A RTK request was sent to the MABM on January 27, 2021 and

F5 – Second Amendment Agreement, dated June 24, 1993, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority

F6 – Agreement, dated March 13, 1965, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield⁶

F7 – First Supplemental Agreement, dated February 6, 1975, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

F8 – Agreement, dated December 12, 1988, by and between the Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and the Township of Falls Authority⁷

F9 – Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority

F10 – Agreement, dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township Board of Supervisors, and Bucks County Water and Sewer Authority

F11 – Addendum Agreement to be attached and made part of the Agreement dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, and Lower Makefield Township Board of Supervisors

F12 – Agreement, dated October 23, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

a response was received on March 17, 2021 indicating that Exhibit A could not be located. The RTK request and the MABM response are included with Exhibit F4.

⁶ Exhibits A and B and a signature page for LMTSA to F6 are missing. A RTK request was sent to the TOFA on January 26, 2021 and a response was received on March 8, 2021 indicating that TOFA does not have a copy of this agreement. The RTK request and the TOFA response are included with Exhibit F6.

⁷ Exhibits A and B and an Engineering Report to F8 are missing. A RTK request was sent to the TOFA on January 26, 2021 and a response was received on March 8, 2021 indicating that while TOFA located the agreement, the missing items could not be located. The RTK request and the TOFA response are included with Exhibit F8.

F13 – Agreement, dated October 28, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield⁸

F14 – Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield

F15 – Agreement, dated January 28, 1980, by and between Middletown Township, Lower Makefield Township, the Municipal Sewer Authority of the Township of Lower Makefield, and the Bucks County Water and Sewer Authority

F16 – Addendum Agreement, dated April 11, 1989, by and between Middletown Township, Lower Makefield Township, and the Municipal Sewer Authority of the Township of Lower Makefield

F17 – Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield⁹

F18 – Water Service Termination Agreement, dated March 17, 2005, by and between Lower Makefield Township and the Municipal Authority of the Borough of Morrisville

26. Acquired Assets also include all Authorizations and Permits of or held by LMT (to the extent transferrable to Aqua under applicable Law), including all Authorizations and Permits which are environmental permits, other operating permits and those items listed or described on Schedule 4.13 of the Agreement.

27. “Excluded Assets,” which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, contracts that are not Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Schedule 2.02(i) of the Agreement.

⁸ Exhibits A through D to F13 are missing. A RTK request was sent to BCWSA on January 26, 2021 and a response was received on February 25, 2021 indicating that Exhibits A through D could not be located. The RTK request and the BCWSA response are included with Exhibit F13.

⁹ Exhibit A to F17 is missing. A RTK request was sent to Newtown Joint Municipal Authority (“NJMA”) on January 27, 2021 and a response was received on January 29, 2021 indicating that Exhibit A could not be located. The RTK request and the NJMA response are included with Exhibit F17.

28. "Assumed Liabilities" has the meaning specified in Section 2.04(a) of the Agreement and include all liabilities and obligations arising out of or relating to Aqua's ownership or operation of the wastewater system and the Acquired Assets on or after Closing.

29. The tentative journal entries to record the transfer in Aqua's accounts are:

	Debit	Credit
Utility Plant Purchased	\$53,000,000	
Cash/Short Term Debt		\$53,000,000

V. CUSTOMERS

30. LMT provides wastewater service to 11,151 customers of which 10,916 are residential and 235 are commercial.¹⁰ LMT does not have any industrial customers.

31. Wastewater flow for LMT customers was approximately 654,207,560 gallons for 2020. A breakdown of gallons treated by customer class is presented in Mr. Bubel's testimony.

32. Township projects growth of 1,272 Equivalent Dwelling Units over the next five years.

VI. RATES

33. After Closing, Aqua will implement LMT's sanitary wastewater rates in effect at closing as reflected on Schedule 7.03 of the Agreement. Aqua and LMT have agreed that rates shall not be increased until after the second anniversary of the Closing Date.¹¹ The Township presently bills on a quarterly basis. Aqua will convert certain customers who receive water service from Pennsylvania-American Water Company to monthly billing, and those customers that receive water service from MABM will continue with quarterly billing after closing. A schedule of rates tariff page

¹⁰ Twin homes, apartments, townhouses, duplexes, and condominiums are considered residential customers. Public, parochial and private schools are considered commercial customers in LMT.

¹¹ As explained in the testimony of Aqua witness Packer, the two-year rate freeze is not a rate stabilization plan.

implementing monthly/quarterly rates for Township customers post-closing is attached hereto as **Exhibit G**.

34. As presented in Schedule 7.03 of the Agreement, LMT has metered rates for sewer customers and flat rates for customers on private wells. Metered residential customers are charged a minimum bill of \$160.48 per quarter and a rate per 1,000 gallons as follows: First 10,000 Gallons \$4.73; Second 10,000 Gallons \$4.60; Third 10,000 Gallons \$4.81; Fourth 10,000 Gallons \$5.29; Fifth 10,000 Gallons \$5.90; Excess over 50,000 Gallons \$6.77. For other residential customers including twin-homes, apartments, townhomes, duplexes, condominiums, or other residential living arrangements rates are established as follows: (1) for a building with one meter and no more than two dwelling units \$269.22 per quarter, plus consumption for the building; (2) for a building with no water meter \$269.22 per quarter; and (3) apartment complexes, a per dwelling unit charge of \$160.48 per quarter, plus consumption determined by taking the total water consumption for the apartment complex divided by the number of dwelling units resulting in a consumption amount per dwelling unit. Dwellings with no water meter are charged \$269.22 per quarter. Commercial customers (which includes public, parochial, and private schools) are charged \$22.93 per 1,000 gallons for consumption, however, no bill to a commercial customer shall be less than \$297.65. A copy of LMT's currently effective Rate Ordinance is attached hereto as **Exhibit H**.

35. Upon Commission approval of this Application and completion of the proposed transaction, Aqua will begin to provide wastewater service in its name to the customers in the Requested Territory. It will implement its *Rules and Regulations* to govern the provision of wastewater service in the Requested Territory, as those *Rules and Regulations* are in effect from time to time for Aqua.

36. Copies of the notices that will be sent to customers of Aqua and to customers of LMT describing the filing and the anticipated effect on rates are attached hereto as **Exhibit I1** and **Exhibit I2**.

VII. COST OF SERVICE

37. Copies of LMT's Annual Financial Report for 2018 and 2019 are attached hereto as **Exhibit J1** and **Exhibit J2**. For the year ended December 31, 2019, the Township had approximately \$49,278,589 of long-term debt.

38. Copies of LMT's Adopted Annual Budgets for 2020 and 2021 are attached hereto as **Exhibit J3** and **Exhibit J4**.

39. A copy of LMT's most recent annual report filed with the Department of Community and Economic Development is attached hereto as **Exhibit K**.

40. Aqua projects annual revenue of \$10,038,836 from the LMT customers based on LMT's current rate schedule, calculated as follows:

	<i>Rate</i>	<i>Customers</i>		<i>Gallons</i>	<i>Revenue</i>
	<i>2020</i>	<i>2020</i>	<i>Method</i>	<i>2020</i>	<i>2020</i>
Service Charges:					
Residential					
Minimum Fee Per Quarter	\$160.48	10,916			\$7,007,199
first 10,000	\$4.37		per 1,000 Gallons Water Used	436,640,000	\$1,908,117
second 10,000	\$4.60		per 1,000 Gallons Water Used	178,257,497	\$819,984
third 10,000	\$4.81		per 1,000 Gallons Water Used		
forth 10,000	\$5.29		per 1,000 Gallons Water Used		
fifth 10,000	\$5.90		per 1,000 Gallons Water Used		
excess over 50,000 gallons	\$6.77		per 1,000 Gallons Water Used		
Subtotal Residential		10,916		614,897,497	\$9,735,300
Commercial	\$22.93	235	per 1,000 Gallons Water Used	13,237,524	\$303,536
Total Revenue at Present Rates		11,151		628,135,020	\$10,038,836

41. Aqua estimates annual operating and maintenance expenses of \$6,194,610 based on LMT's operating expenses presented in the 2019 financial statements, adjusted by the Company.

VIII. PROOF OF COMPLIANCE

42. Aqua will operate and manage the LMT wastewater system as a standalone collection system, but within Aqua's footprint, from its Willow Grove Division Office in Willow Grove, Pennsylvania. The system is approximately 14 miles from the Willow Grove Division Office. Mr. Matthew Miller will be the assigned Certified Wastewater Operator for the system. Mr. Miller's currently effective Wastewater Operator's License is attached hereto as **Exhibit L**.

43. The WQM Permit for the MABM WWTP issued in 2010 is attached as **Exhibit M1**. A WQM permit for the PWD NEWPCP is attached as **Exhibit M2**. The MABM WWTP and PWD NEWPCP are not part of the acquisition transaction. The National Pollution Discharge Elimination System Permits for the MABM WWTP and the PWD NEWPCP are attached hereto as **Exhibit N1** and **Exhibit N2**, respectively. Copies of Discharge Monitoring Reports ("DMR") for the MABM WWTP and the PWD NEWPCP, from January 2016 through December 2020, are attached hereto as **Exhibit N3** and **Exhibit N4**, respectively.

44. Notices of Violation/narrative reports issued by DEP to LMT over the past five years are attached hereto as **Exhibit O1** (Heacock Pump Station) and **Exhibit O2** (Esther Land and Irving Road). The explanations for the NOV's and corrective actions are included in the exhibits. LMT's current Corrective Action Plan ("CAP") related to the Neshaminy Interceptor is attached hereto as **Exhibit O3**. LMT's most recent update to its Connection Management Plan ("CMP") is attached hereto as **Exhibit O4**.

45. Aqua is a Class A utility. It is in good standing with DEP and in general compliance with DEP with regard to the provision of wastewater service.

46. The service area comprising the Requested Territory is consistent with LMT's service area mapped by the Township and in compliance with DEP approved Act 537 Plans. A copy of LMT's Act 537 Plan documents is attached hereto as Exhibit P1 (1999 Plan) and Exhibit P2 (Special Study 2018). A copy of the Morrisville Act 537 Plan is attached hereto as Exhibit P3. A copy of the Philadelphia Act 537 Plan is attached hereto as Exhibit P4. Aqua is not proposing to expand service beyond the sewerred areas.

47. The web address for the LMT Comprehensive Plan is: https://app.sharebase.com/#!/document/674886/share/129-ywJvLZJnykYdYK9crMfHunmyd-I_. The web address for the Bucks County Comprehensive Plan is: <https://dataportal-bucksgis.opendata.arcgis.com/pages/countywide-plans>.

48. Aqua has an existing operational presence and wastewater professionals in the area. Aqua provides wastewater service in Bucks County. Its Willow Grove Division Office is 14 miles from the LMT System, and the Southeastern Division Office is, moreover, approximately 27 miles from the LMT system. The acquisition will easily fold into Aqua's existing wastewater operations. A listing of Aqua's nearby territory and facilities is as follows:

Aqua Facilities	Location	Distance from Township
Peddlers View WWTP	Lahaska, PA	8
Willow Grove Office	Willow Grove, PA	14
Cheltenham System	Cheltenham, PA	15
Southeastern Division Office	Bryn Mawr, PA	27

49. Aqua is not anticipating any physical, operational or managerial changes at its Willow Grove Office as a result of the acquisition. Aqua will be adding three additional operators to address the day-to-day operations of LMT and those operators will also be used on other Aqua systems in the area.

50. Planned capital improvements are addressed in Mr. Bubel's testimony.

IX. AFFECTED PERSONS

51. No corporation or entity, except LMT, is now furnishing or has corporate or franchise rights to furnish wastewater service in the Requested Territory, and no competitive condition will be created by approval of this Application. Water and wastewater service providers abutting or within one mile of the Requested Territory are as follows:

- a. Within neighboring Yardley Borough, water service is provided by Pennsylvania-American Water Company. Wastewater service is provided by Yardley Borough Sewer Authority.
- b. Within neighboring Upper Makefield Township, water service is provided by Upper Makefield Township and private wells. Wastewater service is provided by Upper Makefield Township and private septic systems.
- c. Within neighboring Newtown Township, water service is provided by The Newtown Artesian Water Company. Wastewater service is provided by the Newtown Bucks County Joint Municipal Authority.
- d. Within neighboring Middletown Township, water service is provided by Bucks County Water and Sewer Authority, Lower Bucks County Joint Municipal Authority, and Newtown Artesian Water Company. Wastewater service is provided by Bucks County Water and Sewer Authority.
- e. Within neighboring Falls Township, water service is provided by Pennsylvania-American Water Company, the Municipal Authority of the Borough of Morrisville, and the Township of Falls Authority. Wastewater service is provided by Township of Falls Authority.
- f. Within neighboring Morrisville Borough, water service is provided by the Municipal Authority of the Borough of Morrisville. Wastewater service is provided by the Municipal Authority of the Borough of Morrisville.

X. REASONS SUPPORTING THIS APPLICATION

52. Approval of this Application is necessary or proper for the service, accommodation, convenience or safety of the public. As summarized below and discussed further in the testimonies

of Mr. Packer and Mr. Bubel, which as identified in Section XI below, are attached hereto as Exhibit U and Exhibit V:

a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of LMT, and to maintain the operations and make improvements to meet continuing and future customer needs.¹² The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;

b. LMT has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of LMT, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The LMT system will benefit from the support of wastewater professionals throughout Aqua's organization;

c. The acquisition is consistent with the Commission's long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."¹³ The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;

d. Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection

¹² As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

¹³ Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of the Township;

e. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) to support a conclusion that there is a public benefit to a transaction;

f. The acquisition of the LMT Sewer system will increase Aqua's customer base by approximately 25%. With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and

g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or Township customers. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While

McCloskey concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

XI. ADDITIONAL INFORMATION REQUIRED BY SECTION 1329 OF THE PUBLIC UTILITY CODE AND THE PUBLIC UTILITY COMMISSION'S 1329 CHECKLIST

53. Aqua and LMT have agreed to use the process presented in Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, to determine the fair market value of the Assets and the ratemaking rate base. Aqua's verified statement that it selected Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming") as its Utility Valuation Expert is attached hereto as **Exhibit AA1**. LMT's verified statement that it selected AUS Consultants ("AUS") as its Utility Valuation Expert is attached hereto as **Exhibit AA2**.

54. As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett Fleming, Utility Valuation Expert, and AUS, Utility Valuation Expert, are attached hereto as **Exhibit Q** and **Exhibit R**, respectively. Confidential and Proprietary Work Paper Files, in Excel Format, of Gannett Fleming and AUS are provided with the Application.

55. Applicant states that the purchase price of the Assets of the selling utility as agreed to by Aqua and LMT is \$53,000,000.

56. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$53,000,000, being the lesser of the purchase price of \$53,000,000 negotiated by Aqua and LMT and the average of the fair market value appraisals which is \$54,967,796 – determined by \$55,505,000 presented in the appraisal of Gannett Fleming and \$54,430,591 presented in the appraisal of AUS.

57. Aqua will incur transaction and closing costs of approximately \$320,000, which it will include in its rate base.

58. A schedule of rates tariff page implementing rates equal to the rates of LMT at the time of closing is attached hereto as Exhibit G, as previously stated.

59. Applicant verifies that Gannett Fleming was selected by Aqua, the acquiring public utility, and that AUS was selected by LMT, the selling municipality.

60. The Utility Valuation Experts were paid \$58,302 for the completed Fair Market Value Appraisal Reports. Documentation of the fees paid to Gannett Fleming and AUS, including the valuation service agreements and all associated invoices, are attached hereto as **Exhibit S1** and **Exhibit S2**, respectively. Fees paid to the Utility Valuation Experts did not exceed 5% of the fair market value of the selling utility.

61. Statements of Gannett Fleming and of AUS verifying that they have no affiliation with Aqua or LMT as specified in Section 1329; that their Appraisals determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of their report, employing the cost, market and income approaches; and that they applied applicable jurisdictional exceptions to their submitted Appraisal are attached hereto as **Exhibit T1** and **Exhibit T2**, respectively.

62. The testimony of William C. Packer, in support of this Application is attached hereto as **Exhibit U**. Mr. Packer's testimony explains that Aqua is not presenting a rate stabilization plan. Aqua is proposing to implement LMT's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding.

63. The testimony of Mark J. Bubel, Sr., in support of this Application is attached hereto as **Exhibit V**.

64. The testimony of Kurt M. Ferguson, Township Manager, LMT, in support of the Application is attached hereto as **Exhibit W**.

65. The Engineer's Asset Inventory of tangible assets of LMT is attached hereto as Exhibit D as aforesaid.

66. The testimony of Harold Walker, III, in support of the Gannett Appraisal is attached hereto as **Exhibit X**.

67. The testimony of Jerome C. Weinert in support of the AUS Consultants Appraisal is attached hereto as **Exhibit Y**.

68. Answers to the Section 1329 Application Standard Data Requests are attached hereto as **Exhibit Z**.

XII. SECTION 507 APPROVAL OF ASSIGNMENT OF CONTRACTS

69. Section 507 of the Code provides that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

70. Aqua requests that that the Commission, to the extent necessary, issue certificates for filing, pursuant to Section 507, for the following.

- i. F1 – Sewage Transportation Agreement, dated November 20, 2015, by and among the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township, and Yardley Borough Sewer Authority
- ii. F2 – Agreement, dated September 1, 1977, by and among the Municipal Authority of the Borough of Morrisville, Borough of Yardley, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- iii. F3 – Agreement, dated February 18, 1982 by and between the Municipal Authority of the Borough of Morrisville, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- iv. F4 – Amendment Agreement, dated October 8, 1991, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal

Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority

- v. F5 – Second Amendment Agreement, dated June 24, 1993, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority
- vi. F6 – Agreement, dated March 13, 1965, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- vii. F7 – First Supplemental Agreement, dated February 6, 1975, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- viii. F8 – Agreement, dated December 12, 1988, by and between the Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and the Township of Falls Authority
- ix. F9 – Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- x. F10 – Agreement, dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township Board of Supervisors, and Bucks County Water and Sewer Authority
- xi. F11 – Addendum Agreement to be attached and made part of the Agreement dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, and Lower Makefield Township Board of Supervisors
- xii. F12 – Agreement, dated October 23, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- xiii. F13 – Agreement, dated October 28, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- xiv. F14 – Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield

- xv. F15 – Agreement, dated January 28, 1980, by and between Middletown Township, Lower Makefield Township, the Municipal Sewer Authority of the Township of Lower Makefield, and the Bucks County Water and Sewer Authority
- xvi. F16 – Addendum Agreement, dated April 11, 1989, by and between Middletown Township, Lower Makefield Township, and the Municipal Sewer Authority of the Township of Lower Makefield
- xvii. F17 – Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield
- xviii. F18 – Water Service Termination Agreement, dated March 17, 2005, by and between Lower Makefield Township and the Municipal Authority of the Borough of Morrisville

XIII. OTHER APPROVALS, CERTIFICATES, REGISTRATIONS AND RELIEF, IF ANY

71. Aqua asks that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua’s acquisition of the LMT wastewater system assets.

XIV. CONCLUSION

WHEREFORE, Aqua requests that the Public Utility Commission approve this Application, filed pursuant to Sections 1102, 1329 and 507 of the Public Utility Code, and:

a. Issue *Certificates of Public Convenience* under §1102 of the Pennsylvania Public Utility Code:

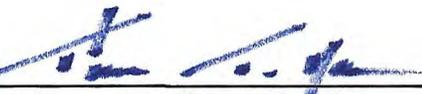
(1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of Lower Makefield Township; and

(2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory covered by this Application.

- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
- (1) Include within its territory all the Requested Territory covered by this Application;
 - (2) Adopt and apply Lower Makefield Township's rates as set forth in this Application as Aqua's Base Rates within the Requested Territory; and
 - (3) Apply Aqua's *Rules and Regulations* within the Requested Territory.
- c. Enter an *Order* approving this Application and Aqua's acquisition of the Assets and, as part of that *Order* include the ratemaking rate base of Lower Makefield Township as \$53,000,000 pursuant to Section 1329(c)(2) of the Public Utility Code;
- d. Approve Contracts, including Assignment of Contracts, between Aqua and the Township of Lower Makefield, pursuant to Section 507 of the Public Utility Code; and
- d. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the Lower Makefield Township wastewater system assets.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Date: May 14, 2021