

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania : Docket No. A-2021-3026132
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 East :
Whiteland Township ("EWT" or :
"Township") situated within the Township of :
East Whiteland, Chester County, :
Pennsylvania; :

(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in portions :
of East Whiteland Township, Chester :
County, Pennsylvania; and :

(3) an order approving the acquisition :
that includes the ratemaking rate base of the :
East Whiteland 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 East Whiteland Township, :
Pursuant to Section 507 of the Public Utility :
Code :

Request for Approval of a Contract :
between Affiliated Interests, Pursuant to :
Section 2102 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
tniesen@tntlawfirm.com
Tel. No. (717) 255-7600
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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 EWT; (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 EWT 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 approximately 8.37 square miles (5,358 acres).

5. Aqua and EWT have reached an agreement regarding the acquisition of the Township Assets, as evidenced by the *Asset Purchase Agreement*, dated as of January 8, 2021, and attached hereto as **Exhibit B** (the "**Agreement**"). Applicant respectfully requests that the Commission issue an

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

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.

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 Chester County.

8. EWT is a duly organized and validly existing Township of the Second Class. Township owns the sanitary wastewater collection system which provides sanitary wastewater service to approximately 3,895 customers in EWT.

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 EWT's wastewater collection system assets as defined in the Agreement. All assets are located in the Township except for the King Road Pump Station (Pump Station No. 12) which is located on the border between EWT and East Goshen Township.

11. A Sewage Facilities Assessment with Original Cost Estimate of the EWT Sanitary Sewer System, prepared by Pennoni Associates, Inc., Consulting Engineers (“Asset Inventory”), is attached hereto as **Exhibit D**. The facilities map included with the Asset Inventory is considered CONFIDENTIAL.

12. The Asset Inventory explains that the EWT collection system has approximately 57 miles of gravity sewer collection mains, in sizes ranging from 8 inches to 36 inches in diameter, and the System has approximately 5 miles of force mains in sizes ranging from 4 to 14 inches. The Asset Inventory also details the 12 Township owned pump stations.

13. A list of non-depreciable property is presented in Section 8 of the Asset Inventory. The EWT 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 8 of the Asset Inventory and in Mr. Bubel’s testimony.

15. Wastewater treatment is mainly provided by the Valley Forge Sewer Authority (“VFSA”) at its Wastewater Treatment Plant (“WWTP”) located in Schuylkill Township, Chester County, pursuant to a Wastewater Service Agreement, dated November 1, 1970, Amended as of December 1, 1974, January 1, 1983, December 2, 1985, and October 4, 1994, by and between VFSA, the Townships of Schuylkill, East Pikeland, Charlestown, EWT, Tredyffrin, Willistown, and Easttown, the Borough of Malvern, EWT Municipal Authority², Easttown Municipal Authority, and Tredyffrin Township Municipal Authority. EWT also owns the Malvern Hunt WWTP, which is in the process of being decommissioned and converted into a pump station. Following the decommissioning of the Malvern Hunt WWTP, which is expected to be completed in 2021, all wastewater flows previously sent to Malvern Hunt WWTP will be treated at the VFSA WWTP.

² The EWT Municipal Authority was terminated by Ordinance enacted on July 8, 2015.

Chapter 94 Reports to the Department of Environmental Protection (“DEP”) of EWT for the Malvern Hunt WWTP and the Township are attached hereto as **Exhibit E1**. The Malvern Hunt WWTP has a permitted capacity of 0.128 million gallons per day (“MGD”) with elevation (“EL”) between EL 356 and 362. A copy of VFSA’s 2020 Chapter 94 Report to DEP for the VFSA WWTP is attached hereto as **Exhibit E2**. The VFSA WWTP has a permitted capacity of 11.75 MGD with EL between EL 90 and EL 105.

16. EWT accepts flow into its Trunkline (“EWT Trunkline”) from the Borough of Malvern and Charlestown Township, which then flows for treatment at the VFSA. This arrangement is set forth in the EWT Trunkline Agreement of February 1, 1971, as amended December 12, 1979, and April 18, 2014. Additionally, EWT has several areas of its system that are on the border between EWT and East Goshen Township. While EWT owns the facilities within its borders, flows from these EWT customers are sent to the East Goshen Municipal Authority (“EGMA”) WWTP. These arrangements between EWT and East Goshen Township are set forth in the Exhibit F contracts. A copy of EGMA’s Chapter 94 Report is attached hereto as **Exhibit E3**. The EGMA WWTP has a permitted capacity of 0.75 MGD with EL between EL 365 and EL 380.

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

EL 354 to EL 566 along the western boundary.

EL 364 to EL 582 along the southern boundary.

EL 388 to EL 666 along the northern boundary.

EL 198 to EL 364 along the eastern boundary.

18. Water service in the Requested Territory is provided by Aqua PA and private wells.

19. The original cost, by year and major plant category, of EWT’s used and useful plant in service is \$44,447,309 with a related calculation depreciation reserve of \$10,491,713.

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

IV. ASSET PURCHASE AGREEMENT

21. The Asset Purchase Agreement is dated January 8, 2021. The purchase price is Fifty-Four Million Nine Hundred Thirty Thousand Dollars (\$54,930,000.00).

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

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 twenty-two contracts identified on Schedule 4.13 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, Exhibit F18, Exhibit F19, Exhibit F20, Exhibit F21, and Exhibit F22**, respectively.³

F1 – Valley Forge Treatment Plant Agreement, dated November 1, 1970, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Eastown; the Borough of Malvern; Malvern Municipal

³ As noted below, Exhibits F2 and F6 are missing certain pages and/or exhibits. The Company and EWT have sought to obtain the missing items from the parties to the contracts through Right to Know ("RTK") requests. Should the documents/information requested via RTK be located and become available, Aqua will supplement the Application and record accordingly.

Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; and Easttown Township Municipal Authority.

F2 – Composite Amendment No. 1 to Valley Creek Trunk Sewer Agreement, East Whiteland Trunk Line Agreement, and Valley Forge Sewage Treatment Plant Agreement dated December 1, 1974, by and between Tredyffrin Township Municipal Authority, Township of Tredyffrin, Township of Schuylkill, Township of East Pikeland, Township of Charlestown, Township of East Whiteland, Township of Willistown, Township of Easttown, Borough of Malvern, Valley Forge Sewer Authority, Malvern Municipal Authority, East Whiteland Municipal Authority, and Easttown Municipal Authority⁴

F3 – Amendment to Valley Forge Sewer Treatment Plant Agreement, dated January 1, 1983, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Easttown Municipal Authority; Tredyffrin Township Municipal Authority; and Willistown Township Municipal Authority

F4 – Supplement to Valley Forge Sewage Treatment Plant Agreement For the Purpose of Complying with United States Environmental Protection Agency Regulations, dated December 2, 1985, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; Easttown Township Municipal Authority, and Willistown Township Municipal Authority.

F5 – Addendum to Valley Forge Sewage Treatment Plant Agreement for the Purpose of Permitting and Administering the Sale of Reserved Capacity Among the Parties, dated May 26, 1994, by and between Valley Forge Sewer Authority, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; East Whiteland Township Municipal Authority; Easttown Municipal Authority; and Tredyffrin Township Municipal Authority

F6 – East Whiteland Trunk Line Agreement, dated February 1, 1971, by and between East Whiteland Municipal Authority, the Township of East Whiteland, Malvern Municipal Authority, the Borough of Malvern, and Valley Forge Sewer Authority⁵

F7 – Amendment to East Whiteland Trunk Line Agreement, dated December 12, 1979, by and between East Whiteland Municipal Authority, the Township of East Whiteland, the Borough of Malvern, Malvern Municipal Authority, and Valley Forge Sewer Authority

⁴ Signature Pages for Township of Schuylkill, Township of East Whiteland, Township of Willistown, Borough of Malvern, Malvern Municipal Authority, and East Whiteland Municipal Authority are missing.

⁵ Exhibit A to the agreement is missing.

F8 – Amendment to East Whiteland Trunkline Agreement, dated April 18, 2014, by and between East Whiteland Township, East Whiteland Municipal Authority, and Valley Forge Sewer Authority

F9 – Sidley Road Trunk Line Repairs Agreement, dated December 27, 1978, by and between East Whiteland Municipal Authority and Valley Forge Sewer Authority

F10 – Sewage Treatment Agreement, dated November 17, 1987, by and between East Goshen Township, East Goshen Municipal Authority, East Whiteland Township, and East Whiteland Municipal Authority

F11 – Agreement, dated September 14, 1993, by and between Willistown Township, East Whiteland Township and East Whiteland Municipal Authority

F12 – Agreement, dated July 10, 1995, by and between Malvern Borough, East Whiteland Township, and East Whiteland Municipal Authority

F13 – Sewage Treatment Agreement, dated October 17, 2000, by and between East Goshen Township, East Goshen Municipal Authority, East Whiteland Township, and East Whiteland Municipal Authority

F14 – Sewage Capacity / Service Agreement, dated November 1, 2000, by and between East Whiteland Township, East Whiteland Township Municipal Authority, Tredyffrin Township, Tredyffrin Township Municipal Authority, and Trammell Crow Northeast Metro Development, Inc.

F15 – Addendum to Sewage Capacity / Service Agreement, dated November 19, 2015, by and between East Whiteland Township and Tredyffrin Township with the joinders of RLD Atwater JV, LLC and The Haven At Atwater Village, LLC.

F16 – Sewage Treatment Agreement, dated March 2, 2004, by and between East Whiteland Township, East Goshen Township, and Malvern Institute for Psychiatric & Alcoholic Studies

F17 – Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority

F18 – Agreement with Public Utility or Municipality for Crossing Under Railroad Private Property, dated March 21, 1972, by and between Reading Company and East Whiteland Municipal Authority

F19 – License Agreement for Wire, Pipe and Cable Transverse Crossings and Longitudinal Occupations, dated July 11, 1975, by and between Penn Central Transportation Company and East Whiteland Municipal Authority

F20 – License Agreement, dated November 18, 1993, by and between National Railroad Passenger Corporation and East Whiteland Township Municipal Authority⁶

F21 – Amendment to License Agreement, dated May 6, 2002, by and between National Railroad Passenger Corporation and East Whiteland Township Municipal Authority⁷

F22 – License Agreement, dated September 10, 1999, by and between National Railroad Passenger Corporation and East Whiteland Township⁸

26. Acquired Assets also include all Authorizations and Permits of or held by EWT (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 4.12 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, spray irrigation system associated with the Malvern Hunt WWTP, contracts that are not Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Schedule 2.02(h) of the Agreement.

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	\$54,930,000	
Cash/Short Term Debt		\$54,930,000

⁶ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation prior to closing.

⁷ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation prior to closing.

⁸ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation prior to closing.

V. CUSTOMERS

30. EWT provides wastewater service to 3,895 customers which are broken down by District. District A and B 3,053 customers, District C 28 customers, District D 279 customers, District E 522 customers, and 13 high volume commercial customers.

31. Wastewater flow for EWT customers was approximately 505,789,000 gallons for 2020. The Township bills on an EDU basis and does not track usage by customer class, except for high volume users.

32. Township projects growth of 2,442 Equivalent Dwelling Units over the next five years.

VI. RATES

33. After Closing, Aqua will implement EWT's sanitary wastewater rates in effect at closing as reflected on Schedule 7.03(a) of the Agreement. Aqua and EWT have agreed that rates shall not be increased until after the third anniversary of the Closing Date.⁹ The Township presently bills on an annual basis. Aqua will convert EWT customers to monthly billing at closing. A schedule of rates tariff page implementing monthly rates for Township customers post-closing is attached hereto as Exhibit G.

34. As presented in Schedule 7.03(a) of the Agreement, EWT has flat rates for residential customers which are billed on an EDU basis. High volume customers, which are customers that have more than 100,000 gallons of water usage in a quarter, are billed a quarterly usage charge of \$6.20 per 1,000 gallons. A copy of EWT'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

⁹ As explained in the testimony of Aqua witness Packer, the three-year rate freeze is not a rate stabilization plan.

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 EWT 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 EWT's Annual Financial Report for 2019 and 2020 are attached hereto as **Exhibit J1** and **Exhibit J2**. For the year ended December 31, 2020, the Township had approximately \$44,707,000 of long-term debt, and the details of long-term debt obligations and debt service on the sewer system are described under Business-Type Activities in Exhibit J2, pages 53-55.

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

39. A copy of EWT'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 \$3,769,536 from the EWT customers based on EWT's current rate schedule, calculated as follows:

		<i>Customers</i>		<i>Gallons</i>	<i>EDU's</i>	<i>Revenue</i>
	<i>Current Rates</i>	<i>2020</i>	<i>Method</i>	<i>2020</i>	<i>2020</i>	<i>2020</i>
Service Charges:						
Sewer District A & B	\$400.00	3,053	per EDU annually		6,566	\$2,626,400
Sewer District C	\$542.00	28	per EDU annually		28	\$15,176
Sewer District D	\$600.00	279	per EDU annually		279	\$167,400
Sewer District E	\$480.00	522	per EDU annually		772	\$370,560
High Volume Customers	\$6.20 per 1,000 gallons	13	per 1,000 Gallons	58,064,516	13	\$360,000
Other Charges:						\$230,000
Total Revenue at Present Rates		3,895		58,064,516	7,658	\$3,769,536

41. Aqua estimates annual operating and maintenance expenses of \$1,965,601 based on EWT's operating expenses presented in the 2019 financial statements, adjusted by the Company.

VIII. PROOF OF COMPLIANCE

42. Aqua will operate and manage the EWT wastewater system as a standalone collection system, but within Aqua's footprint, from its Southeastern Division Office in Bryn Mawr, Pennsylvania. The system is approximately 11 miles from the Company's Southeastern Division Office. Mr. John M. Bright will be the assigned Certified Wastewater Operator for the system. Mr. Bright's currently effective Wastewater Operator's License is attached hereto as **Exhibit L**.

43. The Water Quality Management ("WQM") Permit for the Malvern Hunt WWTP issued in 2016 and the WQM Permit Application for the Pump Station are attached as **Exhibit M1**.¹⁰ A WQM permit for the VFSA WWTP is attached as **Exhibit M2**. A WQM permit for the EGMA WWTP is

¹⁰ As noted above, the Malvern Hunt WWTP is expected to be decommissioned prior to closing. If decommission of the Malvern Hunt WWTP occurs before closing, the 2016 WQM Permit for the WWTP will not be transferred.

attached as **Exhibit M3**. The VFSA WWTP and EGMA WWTP are not part of the acquisition transaction. The National Pollution Discharge Elimination System Permits for the VFSA WWTP and the EGMA WWTP are attached hereto as **Exhibit N1** and **Exhibit N2**, respectively. Copies of Discharge Monitoring Reports (“DMR”) for the Malvern Hunt WWTP, VFSA WWTP and the EGMA WWTP, from January 2016 through December 2020, are attached hereto as **Exhibit N3**, **Exhibit N4**, and **Exhibit N5**, respectively.

44. EWT did not have any Notices of Violation within the last five years. EWT was released from its Corrective Action Plan on September 1, 2015, by letter from DEP which is attached hereto as **Exhibit O**.

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 EWT’s sewage planning and in compliance with DEP approved Act 537 Plans. A copy of EWT’s Act 537 Plan documents is attached hereto as **Exhibit P1** (1995 Plan), **Exhibit P2** (Special Study 2011), **Exhibit P3** (Special Study 2013), **Exhibit P4** (Special Study 2015), **Exhibit P5** (Special Study 2016), and **Exhibit P6** (Planning Modules). A copy of the VFSA Act 537 Plan is attached hereto as **Exhibit P7**. A copy of the East Goshen Act 537 Plan is attached hereto as **Exhibit P8**. Aqua also has included in the Requested Territory areas of the Township under construction for sewage service anticipated to be completed after Closing. Copies of letters to EWT and Chester County Planning Commissions regarding Aqua’s Requested Territory are included as **Exhibit P9** and **Exhibit P10**.

47. The web address for the EWT Comprehensive Plan is: <http://www.eastwhiteland.org/DocumentCenter/View/446?dl=0>. The web address for the Chester County Comprehensive Plan is: <https://chescoplanning.org/Landscapes3/PDF/Landscapes3.pdf>.

48. Aqua has an existing operational presence and wastewater professionals in the area. Aqua provides wastewater service in Chester County and in neighboring Willistown Township. 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
Willistown Woods System	West Chester, PA	5 miles
Deerfield Knoll System	West Chester, PA	5 miles
Plumsock System	West Chester, PA	5 miles
Southeastern Division Office	Bryn Mawr, PA	11 miles

49. Aqua is not anticipating any physical, operational or managerial changes at its Southeastern Office as a result of the acquisition. Aqua will be adding 3 additional operators to address the day-to-day operations of EWT which are expected to be added in Q1 2022.

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

IX. AFFECTED PERSONS

51. No corporation or entity, except EWT, 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:

- i. Within neighboring Charlestown Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by VFSA and private septic systems.
- ii. Within neighboring Tredyffrin Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by Tredyffrin Township and private septic systems.
- iii. Within neighboring Willistown Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by Willistown Township, Aqua, and private septic systems.

- iv. Within neighboring Malvern Borough, water service is provided by Aqua PA and private wells. Wastewater service is provided by Malvern Borough and private septic systems.
- v. Within neighboring East Goshen Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by EGMA and private septic systems.
- vi. Within neighboring West Goshen Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by West Goshen Township Sewer Authority and private septic systems.
- vii. Within neighboring West Whiteland Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by West Whiteland Township and private septic systems.
- viii. Within neighboring Uwchlan Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by Uwchlan Township Municipal Authority and private septic systems.
- ix. Within neighboring West Pikeland Township, water service is provided by Aqua PA and private wells. Wastewater service is provided by Aqua and private septic systems.

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 EWT, and to maintain the operations and make improvements to meet continuing and future customer needs.¹¹ The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;

¹¹ As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

b. EWT has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of EWT, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The EWT 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."¹² 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 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

¹² 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),

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 EWT Sewer system will increase Aqua's customer base by approximately 9%. 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 EWT 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**. EWT’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 EWT is \$54,930,000.

56. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$54,930,000, being the lesser of the purchase price of \$54,930,000 negotiated by Aqua and EWT and the average of the fair market value appraisals which is \$56,724,729 – determined by \$55,668,000 presented in the appraisal of Gannett Fleming and \$57,781,458 presented in the appraisal of AUS.

57. Aqua will incur transaction and closing costs of approximately \$308,300, which it will include in its rate base.

58. A schedule of rates tariff page implementing rates equal to the rates of EWT 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 EWT, the selling municipality.

60. The Utility Valuation Experts were paid \$60,190.47 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 EWT 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**.¹³ Mr. Packer's testimony explains that Aqua is not presenting a rate stabilization plan. Aqua is proposing to implement EWT's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding following Closing of the transaction.

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

64. The testimony of John Nagel, Township Manager of EWT, in support of the Application is attached hereto as **Exhibit W**.

65. The Engineer's Asset Inventory of tangible assets of EWT 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**.

¹³ Exhibit U has an Appendix A, which is CONFIDENTIAL and is submitted in CONFIDENTIAL and PUBLIC forms.

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 contracts, which will be assigned to Aqua at closing.

- i. F1 – Valley Forge Treatment Plant Agreement, dated November 1, 1970, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; and Easttown Township Municipal Authority.
- ii. F2 – Composite Amendment No. 1 to Valley Creek Trunk Sewer Agreement, East Whiteland Trunk Line Agreement, and Valley Forge Sewage Treatment Plant Agreement dated December 1, 1974, by and between Tredyffrin Township Municipal Authority, Township of Tredyffrin, Township of Schuylkill, Township of East Pikeland, Township of Charlestown, Township of East Whiteland, Township of Willistown, Township of Easttown, Borough of Malvern, Valley Forge Sewer Authority, Malvern Municipal Authority, East Whiteland Municipal Authority, and Easttown Municipal Authority
- iii. F3 – Amendment to Valley Forge Sewer Treatment Plant Agreement, dated January 1, 1983, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Easttown Municipal Authority; Tredyffrin Township Municipal Authority; and Willistown Township Municipal Authority
- iv. F4 – Supplement to Valley Forge Sewage Treatment Plant Agreement For the Purpose of Complying with United States Environmental Protection Agency Regulations, dated December 2, 1985, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and

Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; Easttown Township Municipal Authority, and Willistown Township Municipal Authority.

- v. F5 – Addendum to Valley Forge Sewage Treatment Plant Agreement for the Purpose of Permitting and Administering the Sale of Reserved Capacity Among the Parties, dated May 26, 1994, by and between Valley Forge Sewer Authority, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; East Whiteland Township Municipal Authority; Easttown Municipal Authority; and Tredyffrin Township Municipal Authority
- vi. F6 – East Whiteland Trunk Line Agreement, dated February 1, 1971, by and between East Whiteland Municipal Authority, the Township of East Whiteland, Malvern Municipal Authority, the Borough of Malvern, and Valley Forge Sewer Authority
- vii. F7 – Amendment to East Whiteland Trunk Line Agreement, dated December 12, 1979, by and between East Whiteland Municipal Authority, the Township of East Whiteland, the Borough of Malvern, Malvern Municipal Authority, and Valley Forge Sewer Authority
- viii. F8 – Amendment to East Whiteland Trunkline Agreement, dated April 18, 2014, by and between East Whiteland Township, East Whiteland Municipal Authority, and Valley Forge Sewer Authority
- ix. F9 – Sidley Road Trunk Line Repairs Agreement, dated December 27, 1978, by and between East Whiteland Municipal Authority and Valley Forge Sewer Authority
- x. F10 – Sewage Treatment Agreement, dated November 17, 1987, by and between East Goshen Township, East Goshen Municipal Authority, East Whiteland Township, and East Whiteland Municipal Authority
- xi. F11 – Agreement, dated September 14, 1993, by and between Willistown Township, East Whiteland Township and East Whiteland Municipal Authority
- xii. F12 – Agreement, dated July 10, 1995, by and between Malvern Borough, East Whiteland Township, and East Whiteland Municipal Authority
- xiii. F13 – Sewage Treatment Agreement, dated October 17, 2000, by and between East Goshen Township, East Goshen Municipal Authority, East Whiteland Township, and East Whiteland Municipal Authority
- xiv. F14 – Sewage Capacity / Service Agreement, dated November 1, 2000, by and between East Whiteland Township, East Whiteland Township Municipal Authority, Tredyffrin Township, Tredyffrin Township Municipal Authority, and Trammell Crow Northeast Metro Development, Inc.

- xv. F15 – Addendum to Sewage Capacity / Service Agreement, dated November 19, 2015, by and between East Whiteland Township and Tredyffrin Township with the joinders of RLD Atwater JV, LLC and The Haven At Atwater Village, LLC.
- xvi. F16 – Sewage Treatment Agreement, dated March 2, 2004, by and between East Whiteland Township, East Goshen Township, and Malvern Institute for Psychiatric & Alcoholic Studies
- xvii. F17 – Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority
- xviii. F18 – Agreement with Public Utility or Municipality for Crossing Under Railroad Private Property, dated March 21, 1972, by and between Reading Company and East Whiteland Municipal Authority
- xix. F19 – License Agreement for Wire, Pipe and Cable Transverse Crossings and Longitudinal Occupations, dated July 11, 1975, by and between Penn Central Transportation Company and East Whiteland Municipal Authority
- xx. F20 – License Agreement, dated November 18, 1993, by and between National Railroad Passenger Corporation and East Whiteland Township Municipal Authority¹⁴
- xxi. F21 – Amendment to License Agreement, dated May 6, 2002, by and between National Railroad Passenger Corporation and East Whiteland Township Municipal Authority¹⁵
- xxii. F22 – License Agreement, dated September 10, 1999, by and between National Railroad Passenger Corporation and East Whiteland Township¹⁶

¹⁴ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation prior to closing.

¹⁵ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation prior to closing.

¹⁶ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation prior to closing.

XIII. SECTION 2102 APPROVAL OF CONTRACTS BETWEEN AFFILIATED INTERESTS

71. Section 2102 of the Code provides that, no contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission.

72. Upon Closing of the Proposed Transaction Aqua will take assignment from EWT of EWT's interest in the Wastewater Conveyance Agreement among Aqua Resources, Inc. and the Townships of Tredyffrin, EWT, Willistown, Charlestown, Schuylkill, East Pikeland and Easttown, Easttown Township Municipal Authority, the Borough of Malvern, Tredyffrin Township Municipal Authority, and VFSA, dated November 20, 2018, included and noted above as Exhibit F17. Aqua requests that the Commission, to the extent necessary, approve, pursuant to Section 2102, Exhibit F17, which will become an affiliated contract at Closing. Additional discussion is provided in Mr. Packer's Testimony, Exhibit U.

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

73. 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 EWT wastewater system assets.

XV. CONCLUSION

WHEREFORE, Aqua requests that the Public Utility Commission approve this Application, filed pursuant to Sections 1102, 1329, 507, and 2102 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 East Whiteland 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 East Whiteland 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 East Whiteland Township as \$54,930,000 pursuant to Section 1329(c)(2) of the Public Utility Code;

d. Approve Contracts, including Assignment of Contracts, between Aqua and East Whiteland Township, pursuant to Section 507 of the Public Utility Code;

e. Approve the Contract between Aqua and Aqua Resources, Inc., pursuant to Section 2102 of the Public Utility Code; and

f. 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 East Whiteland Township wastewater system assets.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 
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Date: July 23, 2021