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October 8, 2021

Via Electronic Filing

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

In re: Docket No. A-2021-3024267

Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Lower Makefield Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Joint Petition of the Company, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and Lower Makefield Township for Approval of Partial Settlement. Copies of the Joint Petition are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

cc: Certificate of Service (w/encl.)
The Honorable Jeffrey A. Watson, Administrative Law Judge (via email, w/encl.)
Alexander R. Stahl, Esq. (via email, w/encl.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Jeffrey A. Watson, Presiding

**Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102, 1329, and 507 of the Public Utility : Docket No. A-2021-3024267
Code for Approval of its Acquisition of the :
Wastewater System Assets of Lower :
Makefield Township :**

**JOINT PETITION OF AQUA PENNSYLVANIA WASTEWATER, INC., THE BUREAU
OF INVESTIGATION AND ENFORCEMENT, THE OFFICE OF CONSUMER
ADVOCATE, THE OFFICE OF SMALL BUSINESS ADVOCATE AND LOWER
MAKEFIELD TOWNSHIP FOR APPROVAL OF PARTIAL SETTLEMENT**

AND NOW come Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Lower Makefield Township (“Lower Makefield” or “Township”),¹ by their attorneys, and submit this Joint Petition for Approval of Partial Settlement (“Joint Petition”) of the above captioned Application proceeding. By this Joint Petition, Joint Petitioners propose a resolution of all but two issues² under the terms and conditions set forth below. In support thereof, Joint Petitioners submit as follows:

I. PROCEDURAL HISTORY

1. This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc., at Docket No. A-2021-3024267, filed with the Public Utility Commission (“Commission”) on May

¹ Aqua, I&E, OCA, OSBA and Township are, hereinafter, referred to, collectively, as “Joint Petitioners.”

² The two issues not resolved through settlement are (1) the determination of ratemaking rate base and (2) income tax savings on repairs deductions.

14, 2021, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”).

2. The Application asks the Commission to issue an order and certificates of public convenience pursuant to Section 1102 of the Code approving Aqua’s acquisition of the wastewater system assets of Lower Makefield Township and allowing Aqua to begin to provide wastewater service in portions of the Township.

3. The Application also asks that the Commission include in its order approving the acquisition, a determination that the ratemaking rate base of the assets being acquired by Aqua is \$53,000,000 pursuant to Section 1329(c)(2) of the Code.

4. The Application also seeks, to the extent necessary, approval of contracts, including assignment of contracts between Aqua and the Township pursuant to Section 507 of the Code and such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

5. The Bureau of Technical Utility Services (“TUS”), I&E, OCA and OSBA were served with copies of the Application on May 14, 2021. Thereafter, the Company filed and served supplemental information on June 9, June 10 and June 21, 2021, in response to information requests from TUS.

6. By letter dated June 25, 2021, the Commission conditionally accepted the Application for filing. In compliance with the conditional acceptance letter, Aqua provided individualized notice of the proposed acquisition to its water and wastewater customers and Lower Makefield provided individualized notice of the proposed acquisition to its wastewater customers. Aqua also published a notice of the filing of the Application in a newspaper of general circulation.

7. Following confirmation of the required notification, the Commission, by letter dated August 5, 2021, acknowledged its final acceptance of the Application and advised that notice

of the filing of the Application would be published in the Pennsylvania Bulletin on August 21, 2021, with a protest deadline of September 7, 2021.

8. OSBA filed a Notice of Intervention and Public Statement on June 9, 2021. I&E filed a Notice of Appearance on June 16, 2021. OCA filed a Protest and Public Statement on July 2, 2021.

9. Protests were also filed by John Char on August 2, 2021, Barry Summers on August 5, 2021, Kevin and Beth Cauley on August 13, 2021, Jaan Pesti on August 25, 2021, Peter A. Lachance on August 27, 2021, and Keisha Jackson-Spence on September 10, 2021,

10. By Notice dated August 12, 2021, the Commission scheduled a Call-In Telephonic Prehearing Conference for September 9, 2021, with Administrative Law Judge Jeffrey A. Watson presiding. Judge Watson issued a Prehearing Conference Order dated August 11, 2021, in advance of the Prehearing Conference.

11. The Call-In Telephonic Prehearing Conference was convened as scheduled on September 9, 2021. Aqua, I&E, OCA, OSBA, Lower Makefield, Mr. Summers and Mr. Lachance participated in the Conference.³ A litigation schedule was adopted providing for, *inter alia*, the distribution of direct testimony of other parties,⁴ rebuttal, surrebuttal and outlines of oral rejoinder testimony and evidentiary hearings on September 29 and 30, 2021.

12. On September 23, 2021, a Telephonic Public Input Hearing was held with Judge Watson presiding. Three witnesses offered testimony at the Telephonic Public Input Hearing. Written statements of direct and surrebuttal testimony of Mr. Summers were accepted into the

³ Subsequent to the Prehearing Conference, Judge Watson issued an Initial Decision, dated September 17, 2021, dismissing the Protest of Peter A. Lachance for lack of standing. Aqua and the Township had opposed Mr. Lachance's participation in the proceeding.

⁴ Aqua included the direct testimony of William C. Packer, Mark J. Bubel, Sr., Kurt M. Ferguson, Harold Walker, III, and Jerome C. Weinert as Exhibits U, V, W, X and Y, respectively, to its Application filed May 14, 2021.

record during the Telephonic Public Input Hearing.

13. The call-in evidentiary hearing was convened on September 29, 2021, as scheduled. Aqua advised that, as a result of settlement discussions, Aqua, I&E, OCA, OSBA and Lower Makefield had achieved a negotiated resolution of issues which could expedite the conduct of the evidentiary hearings.

14. Prior to the start of the hearing on September 29, 2021, Aqua, I&E, OCA, OSBA, and Lower Makefield submitted a Joint Stipulation for Admission of Testimony and Exhibits (“Joint Stipulation”) to Judge Watson providing, *inter alia*, for the stipulation of written testimony and exhibits into the evidentiary record and the waiver of cross examination of each other’s written testimony. Mr. Summers joined in the Joint Stipulation during the course of the hearing.

15. Judge Watson approved the Joint Stipulation by Interim Order, dated September 29, 2021, Approving Joint Stipulation for the Admission of Testimony and Exhibits, Providing for the Filing of Objections to Any Settlement and Responses to Objections and Revising Litigation Schedule (“Interim Order”).

16. Aqua actively participated in the hearing offering into the evidentiary record the direct and rebuttal testimony of William C. Packer,⁵ the direct and rebuttal testimony of Mark J. Bubel, Sr.,⁶ the direct and rebuttal testimony of Kurt M. Ferguson,⁷ the direct and rebuttal testimony of Harold Walker, III,⁸ and the direct and rebuttal testimony of Jerome C. Weinert.⁹ Aqua’s Application, with Exhibits,¹⁰ also was admitted into the evidentiary record.

⁵ Aqua Statement No. 1 and Aqua Statement No. 1-R.

⁶ Aqua Statement No. 2 and Aqua Statement No. 2-R.

⁷ Aqua Statement No. No. 3 and Aqua Statement No. 3-R.

⁸ Aqua Statement No. No. 4 and Aqua Statement No. 4-R.

⁹ Aqua Statement No. No. 5 and Aqua Statement No. 5-R.

¹⁰ Aqua Exhibit No. 1, with Exhibits A through AA2.

17. I&E actively participated in the evidentiary hearing offering into the evidentiary record the direct and surrebuttal testimony of D. C. Patel, along with an accompanying exhibit,¹¹ and the direct testimony of Ethan H. Cline.¹²

18. The OCA actively participated in the evidentiary hearing offering into the evidentiary record the direct and surrebuttal testimony of Ralph C. Smith¹³ with accompanying exhibits.

19. The OSBA actively participated in the evidentiary hearing offering into the evidentiary record the direct and surrebuttal testimony of Brian Kalcic, along with an accompanying exhibit.¹⁴

20. Lower Makefield also actively participated in the hearing but did not offer testimony or exhibits into the evidentiary record.

21. Upon discussion with Judge Watson, it was agreed and memorialized by Judge Watson in the Interim Order that a Joint Petition to approve a settlement or a partial settlement would be filed no later than October 8, 2021. Statements of Objections to any settlement or partial settlement would be filed no later than October 13, 2021, with Responses to Statements of Objections to be filed no later than October 18, 2021.

II. TERMS AND CONDITIONS IN PARTIAL SETTLEMENT OF PROCEEDING

22. Joint Petitioners agree to the following terms and conditions in Partial Settlement of this Application proceeding. With the exception of (1) the determination of ratemaking rate

¹¹ I&E Statement No. 1 with I&E Exhibit No. 1 and I&E Statement No. 1-SR.

¹² I&E Statement No. 2.

¹³ OCA Statement No. 1 with Exhibits RCS 1-5 and OCA Statement No. 1S with Exhibits RCS 1-SR, RCS 2-SR and RCS 5-SR.

¹⁴ OSBA Statement No. 1 with Exhibit BK-1 and OSBA Statement No. 1-S.

base and (2) income tax savings on repairs deductions, the Partial Settlement resolves all issues among the Joint Petitioners:

A. Approval of Application and Acquisition

- (1) The Commission should approve Aqua’s acquisition of Lower Makefield Township wastewater collection system assets and Aqua’s right to begin to offer, render, furnish, or supply wastewater service in the areas served by Lower Makefield.
- (2) The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.¹⁵

B. Tariff

The pro forma tariff submitted with the Application, as updated in Aqua’s supplemental information filed by letter dated June 21, 2021, including all rates, rules and regulations regarding conditions of Aqua’s wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

C. Engineering Assessment

On a going forward basis, Aqua will require engineering firms conducting Section 1329 assessments to present, as part of the engineering assessment, a detailed Engineer’s Assessment Study containing the seller’s utility assets description of the condition of inventory and assets. The designation of condition shall be limited to those assets that can be observed and whether the categories of system assets appraised are in poor, fair, good or very good condition

D. Easements and Other Property Rights

Aqua and Lower Makefield will work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement (“APA”) by Closing. However, Aqua shall be permitted in its discretion to close without the transfer of all of the Real Property Rights, provided that an escrow is established from the Purchase Price to be used to obtain any post-Closing transfers of the Real Property Rights. Aqua will provide an update to I&E, OCA, and OSBA approximately 30 days in advance of the anticipated Closing Date and a final update before Closing regarding the status of the transfer of real property rights including easements related to the system.

¹⁵ The OCA does not join in this Subparagraph A(2) but does not oppose Aqua’s request.

E. Cost of Service Study

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

F. Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

- (1) Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge (“DSIC”) for book and ratemaking purposes, will be addressed in Aqua’s first base rate case which includes Lower Makefield wastewater system assets.
- (2) Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties' assent to this agreement should not be construed to operate as its preapproval of Aqua's requests.

G. Long Term Infrastructure Improvement Plan (“LTIIIP”) and Distribution System Improvement Charge

- (1) If Aqua proposes to modify its LTIIIP to include the Lower Makefield wastewater system, the projects added for Lower Makefield will be in addition to those that Aqua plans for its existing systems.
- (2) In future LTIIIPs or Annual Asset Optimization Plans (“AAOP”) that include the Lower Makefield wastewater system, Aqua will not

reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua's current practice and ability to allocate projects as needed for its capital program.

- (3) Upon approval of the Commission of a modification to its LTIP which includes the Lower Makefield wastewater system, Aqua shall be permitted to collect a DSIC related to the Lower Makefield wastewater system prior to the first base rate case in which the Lower Makefield assets are incorporated into rate base.

H. Lower Makefield Rates

- (1) The current average Lower Makefield residential rate is \$74.32 per month based on four thousand seven hundred gallons of usage. As set forth in the notice sent to Lower Makefield customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on Lower Makefield wastewater customers of 28.17%.
- (2) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the Lower Makefield customers that are in excess of the restrictions contained in Section 7.03 of the APA.
- (3) Aqua and Lower Makefield agree that, at the time of Aqua's first base rate case that includes the Lower Makefield system, Aqua will propose the timing of the rate effect consistent with the terms of Section 7.03 of the APA. All parties reserve their rights to address Aqua's proposal.
- (4) In the first base rate proceeding filed by Aqua that includes Lower Makefield's wastewater system assets, Aqua shall propose to move the Lower Makefield system to its cost of service, based on a separate cost of service study for Lower Makefield's system; provided, however, that Aqua will not be obligated to propose Lower Makefield wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that Aqua may agree to rates other than those proposed for Lower Makefield customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and Lower Makefield reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua agrees to provide written notice to Lower Makefield

Township customers of the rate filing and the level of increase, if any, resulting from this provision.

I. Welcome Letter

Aqua will send a welcome letter to Lower Makefield Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

J. Legal Fees

In its next base rate case, Aqua shall separately identify any legal fees included in its transaction and closing costs pursuant to the APA between Aqua and Lower Makefield and specify amounts expended by Aqua on behalf of Lower Makefield. I&E, OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

III. JUSTIFICATION AND SUPPORT FOR SETTLEMENT

23. It is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement.¹⁶ Settlements lessen the time and expense of litigating a case and, thus, directly benefit all parties concerned. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.¹⁷ Aqua, I&E, OCA, OSBA and Lower Makefield agree that Aqua has the requisite technical, financial and legal fitness to own and operate the Lower Makefield system and submit that the resolution of issues as presented in this partial settlement will further the public interest. Their respective Statements in Support of the Partial Settlement are attached as Attachments A, B, C, D and E. Proposed Findings of Fact, Conclusions of Law and Ordering

¹⁶ 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

¹⁷ *Pa. P.U.C. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103, Opinion and Order entered July 14, 2011, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996 and *Pa. P.U.C. v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). See also *Pa.P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Paragraphs are attached as Attachments F, G and H, respectively.

IV. CONDITIONS OF PARTIAL SETTLEMENT

24. This Joint Petition is proposed to resolve all but two issues in the instant matter and, except as set forth above, is made without any admission against or prejudice to any positions which any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by anyone of the Joint Petitioners as provided below. Except as set forth above, Joint Petitioners agree that this Joint Petition shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

25. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein without modification. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn upon written notice to the Commission and all parties within three (3) business days by any one of the Joint Petitioners and, in such event, shall be of no force and effect. Regardless of whether this Partial Settlement is approved or not, no adverse inference shall be drawn to any party in this or any other proceeding as a consequence of this Partial Settlement. Joint Petitioners waive the right to file Exceptions on the issues in this Partial Settlement if Judge Watson recommends approval of this Joint Petition without modification.

WHEREFORE Aqua Pennsylvania Wastewater, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and Lower Makefield Township request that Administrative Law Judge Jeffrey A. Watson recommend approval of and that the Public Utility Commission grant and approve the Application of Aqua

Pennsylvania Wastewater, Inc. at PaPUC Docket No. A-2021-3024267 and, in resolution of all but two issues, order as follows:

(a) That the Joint Petition for Partial Settlement, filed on October 8, 2021, by Aqua Pennsylvania Wastewater, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and Lower Makefield Township, at PaPUC Docket No. A-2021-3024267, including all terms and conditions thereof, is approved without modification.

(b) That the Application filed by Aqua Pennsylvania Wastewater, Inc. on May 14, 2021, and accepted by the Commission on August 5, 2021, is granted, subject to resolution of the issues reserved for litigation and the following conditions, consistent with the Joint Petition for Partial Settlement:

Approval of Application and Acquisition

- (1) The Commission should approve Aqua's acquisition of Lower Makefield Township wastewater collection system assets and Aqua's right to begin to offer, render, furnish, or supply wastewater service in the areas served by Lower Makefield.
- (2) The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.

Tariff

The pro forma tariff submitted with the Application, as updated in Aqua's supplemental information filed by letter dated June 21, 2021, including all rates, rules and regulations regarding conditions of Aqua's wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

Engineering Assessment

On a going forward basis, Aqua will require engineering firms conducting Section 1329 assessments to present, as part of the engineering assessment, a detailed Engineer's Assessment Study containing the seller's utility assets description of the condition of inventory and assets. The designation of

condition shall be limited to those assets that can be observed and whether the categories of system assets appraised are in poor, fair, good or very good condition

Easements and Other Property Rights

Aqua and Lower Makefield will work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement (“APA”) by Closing. However, Aqua shall be permitted in its discretion to close without the transfer of all of the Real Property Rights, provided that an escrow is established from the Purchase Price to be used to obtain any post-Closing transfers of the Real Property Rights. Aqua will provide an update to I&E, OCA, and OSBA approximately 30 days in advance of the anticipated Closing Date and a final update before Closing regarding the status of the transfer of real property rights including easements related to the system.

Cost of Service Study

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

Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

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

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

Long Term Infrastructure Improvement Plan (“LTIIP”) and Distribution System Improvement Charge

- (1) If Aqua proposes to modify its LTIIP to include the Lower Makefield wastewater system, the projects added for Lower Makefield will be in addition to those that Aqua plans for its existing systems.
- (2) In future LTIIPs or Annual Asset Optimization Plans (“AAOP”) that include the Lower Makefield wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua’s current practice and ability to allocate projects as needed for its capital program.
- (3) Upon approval of the Commission of a modification to its LTIIP which includes the Lower Makefield wastewater system, Aqua shall be permitted to collect a DSIC related to the Lower Makefield wastewater system prior to the first base rate case in which the Lower Makefield assets are incorporated into rate base.

Lower Makefield Rates

- (1) The current average Lower Makefield residential rate is \$74.32 per month based on four thousand seven hundred gallons of usage. As set forth in the notice sent to Lower Makefield customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on Lower Makefield wastewater customers of 28.17%.
- (2) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the Lower Makefield customers that are in excess of the restrictions contained in Section 7.03 of the APA.
- (3) Aqua and Lower Makefield agree that, at the time of Aqua’s first base rate case that includes the Lower Makefield system, Aqua will propose the timing of the rate effect consistent with the terms of

Section 7.03 of the APA. All parties reserve their rights to address Aqua's proposal.

- (4) In the first base rate proceeding filed by Aqua that includes Lower Makefield's wastewater system assets, Aqua shall propose to move the Lower Makefield system to its cost of service, based on a separate cost of service study for Lower Makefield's system; provided, however, that Aqua will not be obligated to propose Lower Makefield wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that Aqua may agree to rates other than those proposed for Lower Makefield customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and Lower Makefield reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua agrees to provide written notice to Lower Makefield Township customers of the rate filing and the level of increase, if any, resulting from this provision.

Welcome Letter

Aqua will send a welcome letter to Lower Makefield Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

Legal Fees

In its next base rate case, Aqua shall separately identify any legal fees included in its transaction and closing costs pursuant to the APA between Aqua and Lower Makefield and specify amounts expended by Aqua on behalf of Lower Makefield. I&E, OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

- (c) That the Commission's Secretary issue a certificate of public convenience evidencing Aqua Pennsylvania Wastewater, Inc.'s right under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(1) and (2) of the Public Utility Code, 66 Pa.C.S. §§ 1102(a)(1), 1102(a)(3) and 1329(c)(1) and (2), to: (a) acquire, by sale, the wastewater system assets of Lower Makefield Township situated within Lower Makefield Township, Bucks County, Pennsylvania and (b) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer,

render, furnish and supply wastewater service to the public in portions of Lower Makefield Township, Bucks County, Pennsylvania.

(d) That within 10 days after closing of the acquisition, Aqua Pennsylvania Wastewater, Inc. shall file a tariff supplement in the form filed with Aqua's Application on May 14, 2021, as updated in Aqua Pennsylvania Wastewater, Inc.'s supplemental information filed by letter dated June 21, 2021, implementing rates for Lower Makefield Township customers post-closing.

(e) That the Secretary's Bureau shall issue certificates of filing pursuant to Section 507 for the following agreements between Aqua Pennsylvania Wastewater, Inc., and Lower Makefield Township:

- i. Asset Purchase Agreement, dated September 17, 2020, by and between Lower Makefield Township and Aqua Pennsylvania Wastewater, Inc.
- ii. 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
- iii. 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
- iv. 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
- v. 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
- vi. 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

- vii. 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
- viii. 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
- ix. 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
- x. Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- xi. 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
- xii. 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
- xiii. 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
- xiv. 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
- xv. Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield
- xvi. 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

- xvii. 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
- xviii. Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield

(f) That all other approvals, certificates, registrations and relief are hereby issued with respect to Aqua Pennsylvania Wastewater, Inc.'s acquisition of the wastewater system assets of Lower Makefield Township pursuant to Section 1102, 1329, and 507 of the Public Utility Code.

(g) That the proceeding at PaPUC Docket No. A-2021-3024267 is terminated and marked closed.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By: 

Thomas T. Niesen, Esquire
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Counsel for Aqua Pennsylvania Wastewater, Inc.

BUREAU OF INVESTIGATION AND ENFORCEMENT

By: _____

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Counsel for the Bureau of Investigation and Enforcement

OFFICE OF CONSUMER ADVOCATE

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LOWER MAKEFIELD TOWNSHIP

By: _____

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Counsel for Lower Makefield Township

Dated: October 8, 2021


Respectfully submitted,

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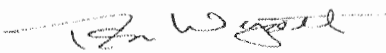
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Counsel for Lower Makefield Township

Dated: October 8, 2021

**ATTACHMENT A
STATEMENT IN SUPPORT OF
AQUA PENNSYLVANIA WASTEWATER, INC.**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Jeffrey A. Watson, Presiding

**Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102, 1329, and 507 of the Public Utility : Docket No. A-2021-3024267
Code for Approval of its Acquisition of the :
Wastewater System Assets of Lower :
Makefield Township :**

**STATEMENT OF AQUA PENNSYLVANIA WASTEWATER, INC.
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF PARTIAL SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), by its attorneys, and submits this statement in support of the Joint Petition for Approval of Partial Settlement (“Joint Petition”) submitted to the Public Utility Commission (“Commission”) by Aqua, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”) and Lower Makefield Township (“Lower Makefield” or “Township”).¹

I. INTRODUCTION

This proceeding concerns the Application of Aqua, filed with the Commission on May 14, 2021, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (“Code”). On October 8, 2021, Aqua, I&E, OCA, OSBA, and the Township filed a Joint Petition for Approval of Partial Settlement (“Joint Petition”) proposing a resolution of all but two issues in the proceeding.²

¹ Aqua, I&E, OCA, OSBA and Township are, hereinafter, referred to, collectively, as “Joint Petitioners.”

² The two issues not resolved through settlement are (1) the determination of ratemaking rate base and (2) income tax savings on repairs deductions.

Aqua supports the Joint Petition and submits that it should be approved, without modification. The settlement will further the public interest. Aqua, moreover, presented substantial evidence of affirmative public benefits in support of the settlement and its acquisition of the Lower Makefield wastewater system and the expansion of its service territory into portions of the Township.

II. PARTIAL SETTLEMENT

It is the stated policy of the Commission to encourage parties in contested proceedings to enter into settlements.³ Settlements eliminate the time, evidence gathering, witness preparation, witness examination and expenses of litigating a matter to its resolution, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.⁴ It is for these reasons, that settlements are encouraged by long-

³ 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

⁴ *Application of Aqua Pennsylvania Wastewater, Inc. – East Norriton Township*, Docket No. A-2019-3009052, mimeo at 35-36; *See also Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket Nos. R-2020-3019369 and R-2020-3019371, Recommended Decision of Administrative Law Judge Conrad Johnson dated December 22, 2020, mimeo at 122; *Pa. P.U.C. v. Buck Hill Water Company*, Docket No. R-2019-3007103, Recommended Decision of Administrative Law Judge F. Joseph Brady dated May 29, 2019, mimeo at 9-10; *Pa. P.U.C. v. Timberlee Valley Sanitation Company*, Docket No. R-2018-3003104, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated October 16, 2018, mimeo at 10; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2017-2631441, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated May 16, 2018, mimeo at 23; *Pa. P.U.C. v. Imperial Point Water Service Company*, Docket No. R-2012-2315536, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated June 25, 2013, mimeo at 11; *Pa. P.U.C. v. The Newtown Artesian Water Company*, Docket No. R-2011-2230259, Recommended Decision of Administrative Law Judge Elizabeth H. Barnes dated September 20, 2011, mimeo at 9; *Pa. P.U.C. v. Reynolds Disposal Company*, Docket No. R-2010-2171339, Recommended Decision of Administrative Law Judge Conrad A. Johnson dated January 11, 2011, mimeo at 12; *Pa. P.U.C. v. Lake Spangenberg Water Company*, Docket No. R-2009-2115743, Recommended Decision of Administrative Law Judge Ember S. Jandebour dated March 2, 2010, mimeo at 11; *Pa. P.U.C. v. Reynolds Water Company*, Docket No. R-2009-2102464, Recommended Decision of Administrative Law Judge Katrina L. Dunderdale dated February 16, 2010, mimeo at 5.

standing Commission policy.⁵

Despite the policy favoring settlements, it is well understood that the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest.⁶

Joint Petitioners submit that the Joint Petition is in the public interest. The Joint Petition resolves all but two issues necessary for the ultimate resolution of the proceeding. The benefits of approving the Joint Petition are numerous, as addressed below, and will result in savings of time and expense for all parties involved. By limiting the issues in controversy, it has already shortened the hearing and briefing process. It also lessens the likelihood of possible appellate court review and provides regulatory certainty with respect to the resolved issues, which benefits all parties.

Approval of the Joint Petition will also further the public interest by allowing the transaction to move forward thereby promoting the General Assembly's support and encouragement of municipal wastewater acquisitions.

III. SECTION 1102

A. Introduction

The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. A certificate of public convenience will issue "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).

⁵ *Pa. P.U.C., et al. v. Philadelphia Gas Works*, Docket No. R-2020-3017206, Opinion and Order entered November 19, 2020, mimeo at 13-14.

⁶ *Application of Aqua Pennsylvania Wastewater, Inc. – East Norriton Township, supra*, mimeo at 36, citing *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004) and *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

As addressed below, Aqua, in support of settlement, presented substantial evidence demonstrating that its proposed acquisition of the Lower Makefield wastewater system and proposed expansion of service territory into portions of the Township are necessary or proper for the service, accommodation, convenience, or safety of the public.

As also addressed below, the Commission, in granting certificates of public convenience, “may impose such conditions as it may deem just and reasonable.” 66 Pa.C.S. § 1103(a). I&E, OCA and OSBA proposed, and, in settlement, Aqua accepted several conditions for Commission approval of the transaction.

B. Legal Principles

In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Pennsylvania Supreme Court explained in the context of a utility merger that the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger.

The Pennsylvania Supreme Court addressed *City of York* in *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) (“*Popowsky*”), explaining that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018) (“*McCloskey*”), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court concluded that the Commission must address rate impact “in a general fashion” when deciding whether there is substantial public benefit to a transaction and determine whether the impact on rates is outweighed by the other positive factors that the acquisition serves a substantial public

benefit.

Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013).

C. Fitness

Joint Petitioners agree that Aqua has the requisite technical, financial and legal fitness to own and operate the Lower Makefield system.⁷

As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).⁸ The Commission addressed the fitness criteria in *Re Perry Hassman*, 55 PA PUC 661 (1982).

As to legal fitness, Aqua must demonstrate that it has obeyed the Public Utility Code and Commission Regulations. *Hassman, supra*. Aqua is a public utility operating under certificates of public convenience granted by the Commission. There are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service.⁹

As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Aqua is a Class A wastewater utility with total net utility plant assets of \$350 million and annual revenues of \$37 million.¹⁰ As a subsidiary of Aqua Pennsylvania, Inc. ("Aqua PA"), Aqua has access to Aqua PA's financing capabilities.¹¹

⁷ Joint Petition, ¶23.

⁸ A continuing public need is also presumed where public utility service is already being provided in the service territory subject to the application. *See Re Glenn Yeager et al.*, 49 PA PUC 138 (1975); *Hostetter v. Pa. P.U.C.*, 49 A.2d 862 (Pa. Super. 1946); *Allegheny Airlines v. Pa. P.U.C.*, 465 F.2d 237 (3d Cir. 1972).

⁹ Aqua St. No. 1 at 10.

¹⁰ Aqua St. No. 1 at 10.

¹¹ Aqua St. No. 1 at 11. Aqua PA is a Class A water utility and the largest subsidiary of Aqua America. In 2020, Aqua PA had operating income of approximately \$261 million, net income of \$187 million and cash flow from operations of \$231 million. Aqua PA has a Standard and Poor's Rating of A. Aqua St. No. 1 at 10.

As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Aqua will seamlessly integrate the operation of the Lower Makefield system into its current operations. The acquisition will easily fold into Aqua's existing wastewater operations.¹²

D. Public Benefits Resulting from the Settlement

Aqua presented substantial evidence in support of the partial settlement terms and conditions and the public benefits resulting from the acquisition. In summary form, the public benefits include:

Consolidation/Regionalization

- The Commission has long supported the consolidation/regionalization of water/wastewater systems throughout Pennsylvania. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale and resulting greater environmental/economic benefits. Consolidation/regionalization also enhances the quality of ratepayers' daily lives, promotes community economic development and provides environmental enhancements. Ultimately, these benefits inure to customers both existing and acquired. Aqua's acquisition of the Lower Makefield wastewater system will further the Commission's consolidation/regionalization objectives. Aqua St. No. 1 at 13 and *Policy Statement*, slip op. at 18.¹³
- Aqua, and its parent company, Aqua PA, have a proven track record of working within the Commission's consolidation/regionalization policy and assimilating wastewater and water systems. Aqua has acquired 16 wastewater systems over the past 10 years. The proposed acquisition is no exception to the principles noted in the *Policy Statement*. Aqua and Aqua PA have successfully acquired numerous water/wastewater utilities over the past 135 years. Aqua St. No. 1 at 13-14. Over the long term, this process has benefitted both current customers, future customers that were acquired and the Commonwealth. Aqua St. No. 1 at 17.
- Aqua has the managerial, technical and financial resources to continue to operate, maintain and improve the Lower Makefield system in a safe, reliable and efficient manner now and in the future. Aqua St. No. 1 at 14 and Aqua Exhibit No. 1, Application ¶ 52.a.

¹² Aqua Exhibit No. 1, Application ¶48; Aqua St. No. 2 at 14.

¹³ The *Policy Statement* is the Commission's *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Order entered August 17, 2006.

Benefits to Lower Makefield Township Customers

- Lower Makefield Township customers will become part of a larger-scale, efficiently operated, wastewater utility that over time will likely yield further operating efficiencies and improve long-term viability as envisioned in the *Policy Statement*. Aqua St. No. 1 at 15-16.
- Aqua is projecting less operating and maintenance costs under its ownership that will likely be realized through reductions in costs for wastewater treatment, as well as efficiencies in administrative and general costs, such as insurance, auditing, legal among others. Aqua St. No. 1 at 16.
- Inasmuch as there are meaningful investments needed, the customers of the Lower Makefield system will benefit greatly from the Company's technical experience and fitness in deploying resources towards capital improvements. Capital projects for the benefit of Lower Makefield residents are estimated at \$9.76 million over the 10 years post-closing. Aqua St. No. 1 at 16 and Aqua St. No. 2 at 9.

Enhanced Customer Service for Lower Makefield Township Customers

- Essential provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business. The same customer service number houses Essential's 24/7/365 emergency response. As an Aqua customer, a Lower Makefield resident will be able to go to the Aqua Companies' website and establish an account to pay their bills online. Lower Makefield customers can also sign up for notifications and alerts to be sent to their email address or phone concerning their service. This service allows customers to stay informed of events impacting their service. Aqua St. No. 1 at 17.

Enhanced Customer Billing and Payment Protections

- Aqua has procedures in place under Chapter 14 of the Code that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Aqua Services employs customer care teams to help resolve service and billing issues, and has an established process and procedure for addressing formal and informal complaints. Aqua St. No. 1 at 17 – 18.

Benefits to Existing Customers of Aqua – Increased Customer Base

- Aqua will increase its customer base by approximately 25% as a result of the acquisition. With a larger customer base, future infrastructure investment across the state will be shared at a lower incremental cost per customer for all of Aqua's customers. Aqua St. No. 1 at 16

Benefits to Existing Customers of Aqua – Economies of Scale

- Aqua is acquiring the Lower Makefield system at a lower rate base per customer of approximately \$5,000, than compared to the Company's existing systems most recently included in its 2018 Rate Case at approximately \$7,650. The fact that the rate base per customer is less than the Company's current rate base per customer demonstrates there are economies of scale that can be achieved as a result of this acquisition. Aqua St. No. 1 at 16 – 17.
- Aqua and Aqua PA have developed into the utilities they are today by acquiring and operating smaller and mid-sized systems. This progression has successfully happened over the last several decades and taken the form of both viable and non-viable systems. Over the long term, this process has benefitted existing customers as well as future customers that were acquired and the Commonwealth. Aqua St. No. 1 at 17.

No Adverse Effect

- The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Aqua Exhibit No. 1, Application ¶ 52.a.
- The acquisition will not have any immediate impact on the rates of either the Lower Makefield customers or the existing customers of Aqua. Aqua Exhibit No. 1, Application ¶ 51.g.
- Aqua will implement Lower Makefield's existing rates upon Commission approval of the acquisition. Aqua Exhibit No. 1, Application ¶ 33.

Lower Makefield Wants to Sell Its Wastewater System

- Lower Makefield has agreed to sell its wastewater system. The public interest and need will be served by allowing Aqua, in lieu of Lower Makefield, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The Lower Makefield system will benefit from the support of wastewater professionals throughout Aqua's organization. Aqua Exhibit No. 1, Application ¶ 52.b.

Significantly, together with the foregoing, Aqua's acquisition of the Lower Makefield wastewater system is consistent with Section 1329 of the Code and the General Assembly's clear support and encouragement of municipal wastewater acquisitions.

E. Potential Rate Impact Is Outweighed by Other Positive Factors

The settlement and acquisition will not have any immediate impact on the rates of either

existing customers of Aqua or existing customers of Lower Makefield Township. Aqua presented substantial evidence in support of settlement and demonstrated that the potential impact of future rate increases is outweighed by other positive factors summarized as follows:

No Change in Rates as A Result of Settlement

- Joint Petitioners agree that the pro forma tariff submitted by Aqua with its Application as updated in the supplemental information submitted by letter dated June 21, 2021, will be permitted to become effective upon Closing. The pro forma tariff will implement the Lower Makefield current rates inclusive of any then-existing miscellaneous fees and charges. Aqua St. No. 1 at 11.

Hypothetical Future Rate Impact

- The current average monthly bill of a residential customer in LMT, is approximately \$74.32 per month using four thousand seven hundred gallons. Applying 100% of the revenue deficiency to the existing rates, the average bill would increase to approximately \$95.26 per month or a 28.17% increase. Aqua St. No. 1 at 18.¹⁴
- This system, however, is being acquired at a rate base per customer that is less than the Company's existing systems, which demonstrates that economies of scale can be achieved as a result of this acquisition. Given this fact and the fact that there are again meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time. Aqua St. No. 1 at 16 and 18.
- While the rates of the LMT System are reasonably expected to increase, either on their own, or whether acquired by the Company, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base. This benefits both existing and acquired customers alike. Aqua St. No. 1 at 18.

Hypothetical Future Rate Impact Is Outweighed by Other Positive Factors

- While there is an expectation of increased rates as a result of the transaction, this is not unexpected. The possibility of increased rates is noted in *McCloskey*. The positive factors from the transaction outweigh the possibility of increased rates. This transaction and others like it further a recognized legislative objective and are consistent with the Commission's consolidation/regionalization policy. The Company's Application demonstrates that there will be both tangible and intangible positive factors that are likely realized as a result of this transaction, including capital improvements, expense efficiencies, and economies of scale and the flexibility to deal

¹⁴ A framework for addressing Lower Makefield rates in the first base rate proceeding that includes Lower Makefield's wastewater system assets is set forth in Section F, *infra*.

with rate impact over a much larger customer base. Aqua St. No. 1 at 18 –19.

In sum, the hypothetical future impact on rates is outweighed by the recognized benefit 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. Equally significant, the acquisition furthers the General Assembly's legislative objectives established through the enactment of Section 1329.

IV. TERMS AND CONDITIONS OF JOINT PETITION FOR PARTIAL SETTLEMENT

Aqua's acquisition of the wastewater system assets of Lower Makefield Township and related expansion of certificated service territory are necessary or proper for the service, accommodation, convenience or safety of the public.

Aqua submitted substantial evidence in support of the settlement and the many positive factors resulting from the acquisition consistent with *City of York, Popowsky* and *McCloskey*. In further support of the settlement, the evidence of record also demonstrates that hypothetical future rate impact is outweighed by other positive factors.

In settlement, Aqua also accepted several conditions for approval as proposed by I&E, OCA and OSBA consistent with Section 1103(a) of the Code. Joint Petitioners submit that the conditions are just and reasonable and Aqua accepts them in resolution of this proceeding.

The imposition of conditions is consistent with Section 1103(a) of the Code. The conditions include:

A. Approval of Application and Acquisition

Joint Petitioners have agreed that the Commission should approve Aqua's acquisition of the Lower Makefield Township wastewater collection system assets and Aqua's right to begin to offer, render, furnish, or supply wastewater service in the areas served by Lower Makefield. The

proposed transaction is supported by affirmative public benefits as set forth above and, as set forth below, Aqua, in settlement of the proceeding, has agreed to a list of conditions for approval of the transaction. Aqua submits the proposed transaction and expansion of service will further the public interest and that the partial settlement should be approved.

B. Tariff

Joint Petitioners have agreed that the pro forma tariff submitted by Aqua with its Application as updated in the supplemental information submitted by letter dated June 21, 2021, will be permitted to become effective upon Closing. The pro forma tariff will implement the Lower Makefield current rates inclusive of any then-existing miscellaneous fees and charges. 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 the Municipal Authority of the Borough of Morrisville will continue with quarterly billing after closing. There is no opposition to the proposed tariff. Aqua submits that the proposed tariff terms are reasonable.

C. Engineering Assessment

Aqua has agreed, in settlement and in response to concerns expressed by I&E,¹⁵ to require engineering firms conducting Section 1329 assessments to present, on a going forward basis as part of the engineering assessment, a detailed Engineer's Assessment Study containing the seller's utility assets description of the condition of inventory and assets. The designation of condition shall be limited to those assets that can be observed and whether the categories of system assets appraised are in poor, fair, good or very good condition. Aqua had opposed the I&E proposal as it is beyond the established requirements for an Engineer's Assessment and because the

¹⁵ See I&E St. No. 1 at 4 – 9.

information is already available to the Utility Valuation Experts.¹⁶ The condition will settle a contested issue in the proceeding and represents a reasonable resolution of opposing positions of Aqua and I&E. Aqua accepts this condition in resolution of this proceeding.

D. Easements and Other Property Rights

Aqua and Lower Makefield have a contractual provision in the Asset Purchase Agreement (“APA”) that Aqua believes reasonably and adequately addresses the transfer of system real property rights, easements and rights of way for Lower Makefield assets that has been in the ground for decades.¹⁷ Supplementing the contractual provision, Aqua has agreed, in settlement and in response to concerns expressed by I&E,¹⁸ to work with Lower Makefield to ensure the transfer of all real property rights including easements and missing easements as defined in the APA by Closing and to provide an update to I&E, OCA, and OSBA approximately 30 days in advance of closing and a final update before Closing regarding the status of the transfer of real property rights including easements. It is understood and agreed that this term does not preclude Aqua and Lower Makefield Township from closing the transaction if any easements remain missing at Closing, provided that an escrow is established from the purchase price to ensure transfer of the real property rights. The condition reflects a reasonable compromise of opposing positions of Aqua and I&E. Aqua accepts this condition in resolution of this proceeding.

E. Cost of Service Study

Aqua has agreed, in settlement, to submit, in its first base rate case that includes the Lower Makefield wastewater system assets, a wastewater cost of service study that removes all costs and revenues associated with the operation of the Lower Makefield system and to also submit a

¹⁶ Aqua St. No. 2-R at 2 – 4.

¹⁷ Aqua St. No. 1-R at 4.

¹⁸ See I&E St. No. 1 at 10 – 12.

separate cost of service study for the Lower Makefield system. In doing so, the cost to serve the Lower Makefield system will be separately identified and the Commission will be informed as to costs when new rates are being considered for implementation. The submission of a separate cost of service study has been a condition for Commission approval in other Section 1329 application proceedings, most recently in *Cheltenham*¹⁹ where a similar condition to meet the affirmative public benefit standard was directed by the Commission.²⁰ Aqua accepts this condition in resolution of this proceeding.

F. Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

Aqua has agreed, in settlement, that any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge (“DSIC”) will be addressed in Aqua’s first base rate case which includes Lower Makefield wastewater system assets and that Joint Petitioners reserve the right to litigate claims for AFUDC, deferral of depreciation and transaction costs in future rate cases. It is appropriate that these matters not be addressed here but rather await a future rate case where they can be fully vetted. A similar condition to meet the affirmative public benefit standard was directed by the Commission in *Cheltenham*.²¹ Aqua accepts this condition in resolution of this proceeding.

¹⁹ *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Township and Contracts between Aqua Pennsylvania Wastewater, Inc. and Cheltenham Township*, Docket No. A-2019-3008491, Opinion and Order entered November 5, 2019 (“*Cheltenham*”).

²⁰ *Cheltenham*, mimeo at 86.

²¹ *Cheltenham*, mimeo at 86 – 87.

G. Long Term Infrastructure Improvement Plan (“LTIP”) and Distribution System Improvement Charge

Aqua has agreed, in settlement, that, upon approval of a modification to its LTIP to include the Lower Makefield system, it shall be permitted to collect a DSIC related to the Lower Makefield wastewater system prior to the first base rate case in which includes the Lower Makefield assets. Aqua also has agreed, in settlement, that, in future LTIPs or Annual Asset Optimization Plans that include the Lower Makefield wastewater system, it will not reprioritize other existing capital improvements that it already committed to undertake. Significantly, the section does not limit Aqua’s current practice and ability to allocate projects as needed by Aqua necessary for its capital program but recognizes that any Lower Makefield system infrastructure will be in addition to capital improvements already planned. The condition allows for improvements to be made to the Lower Makefield system through Aqua’s DSIC program in addition to the already existing projects under the Company’s LTIP. Again though, projects under the LTIP may be allocated as necessary for Aqua’s capital program. Aqua accepts this condition in resolution of this proceeding.

H. Lower Makefield Rates

The Joint Petition acknowledges that the current average Lower Makefield residential rate is \$74.32 per month and that notice sent to Lower Makefield customers provided a non-binding estimated incremental rate effect of 28.17% as a result of the proposed rate base addition. Through settlement, the Joint Petitioners have agreed to a framework for addressing Lower Makefield rates in the first base rate proceeding that includes Lower Makefield’s wastewater system assets. It provides that (1) Aqua shall propose to move the Lower Makefield system to its cost of service, based on a separate cost of service study for Lower Makefield’s system; provided, however, that Aqua will not be obligated to propose Lower Makefield wastewater rates in excess of Aqua’s proposed Rate Zone 1 system-average rates; (2) Aqua may agree to rates other than those proposed

for Lower Makefield customers in the context of a settlement of the first base rate case; (3) at the time of Aqua's first base rate case that includes the Lower Makefield system, Aqua will propose the timing of the rate effect consistent with the terms of Section 7.03 of the APA; (4) Aqua will provide written notice to Lower Makefield customers of a base rate case filing and the level of increase in the first base rate case that includes the Lower Makefield assets; and (5) OCA, I&E, OSBA and Lower Makefield reserve their rights to fully address Aqua's proposal, and to make other rate proposals in the base rate case.

The settlement term reflects the negotiated resolution of the rate interests of I&E, OCA, OSBA, Aqua and Lower Makefield and Aqua accepts it in settlement of this proceeding. Significantly, the term also acknowledges that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the Lower Makefield customers that are in excess of the restrictions contained in Section 7.03 of the APA.

I. Welcome Letter

Aqua has agreed, in settlement, to send a Welcome Letter to Lower Makefield wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service. This settlement provision will ensure that Aqua's newly acquired Lower Makefield customers are made aware of the conversion to monthly billing in a timely manner. Aqua accepts this condition in resolution of this proceeding.

J. Legal Fees

Aqua has agreed, in settlement, to separately identify, in its next base rate case, any legal fees included in its transaction and closing costs and specify amounts expended by Aqua on behalf of Lower Makefield with I&E, OCA, and OSBA reserving the right to challenge the reasonableness, prudence, and basis for such fees. It is appropriate that these matters not be

addressed here but rather await a future rate case where they can be fully vetted. Aqua accepts this condition in resolution of this proceeding.

K. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

1. Section 507 Approval

Section 507 of the Code states 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.

The Joint Petition asks that the Commission issue Certificates of Filing, pursuant to Section 507, for the following:

- i. Asset Purchase Agreement, dated September 17, 2020, by and between Lower Makefield Township and Aqua Pennsylvania Wastewater, Inc.
- ii. 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
- iii. 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
- iv. 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
- v. 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
- vi. 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

- vii. 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
- viii. 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
- ix. 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
- x. Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- xi. 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
- xii. 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
- xiii. 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
- xiv. 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
- xv. Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield
- xvi. 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
- xvii. 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

xviii. Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield

There is no opposition to the issuance of the Certificates of Filing for the contracts listed above which are necessary for the ownership and operation of the Lower Makefield system and Aqua asks that the Commission issue the Certificates.

2. Other Approvals, Certificates, Registrations and Relief

As a final matter, Aqua's Application asked the Commission to issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the Lower Makefield wastewater system assets. Aqua asks that the Commission incorporate the above in its Opinion and Order approving the Application.

V. CONCLUSION

Aqua Pennsylvania Wastewater, Inc. respectfully requests that Administrative Law Judge Jeffrey A. Watson accept the foregoing in support of the Joint Petition for Approval of Partial Settlement and further that Administrative Law Judge Watson recommend approval of and the Public Utility Commission approve the Joint Petition for Approval of Partial Settlement without modification.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By


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Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: October 8, 2021

ATTACHMENT B
STATEMENT IN SUPPORT OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections :
1102, 1329 and 507 of the Public Utility : Docket No.: A-2021-3024267
Code for Approval of its Acquisition of :
The Wastewater System Assets of :
Lower Makefield Township :

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL
OF PARTIAL SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Erika L. McLain, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Partial Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Aqua Pennsylvania Wastewater, Inc. Company (“Aqua”), the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and Lower Makefield Township (“Lower Makefield”), parties to the above-captioned proceeding (collectively, the “Joint Petitioners”).

I. INTRODUCTION

A. Procedural History

1. On May 14, 2021, Aqua filed with the Commission its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), for, *inter alia*, (1) approval of its acquisition of the wastewater system assets of Lower Makefield Township; (2) approval of Aqua’s right to begin to offer, render, furnish and supply wastewater service to the public in portions of Bucks County, Pennsylvania; (3) an order approving the acquisition that includes the ratemaking rate base of the Lower Makefield wastewater system assets pursuant to Section 1329 of the Code; and (4) assignments of certain contracts, between pursuant to Section 507 of the Code.

2. By Secretarial Letter dated June 25, 2021 the Commission acknowledged receipt of Aqua’s Application, but it indicated that the Application would be accepted for filing only on a conditional basis. The conditions included, *inter alia*, satisfying the Commission’s requirements that Aqua (1) certify service of its Application to designated entities; (2) provide individualized notice of the proposed acquisition to all potentially affected water and wastewater customers in accordance with the Commission’s Final Supplemental Implementation Order entered February 28, 2019, at Docket No. M-2016-2543193; (3) publish notice of the Application once a week for two consecutive weeks in a newspaper of general circulation in the impacted area; and (4) notify the Commission after such publication occurred.

3. The following entities made filings regarding participation in this case: on June 16, 2021, I&E filed its Notice of Appearance in this case. On June 9, 2021, the OSBA filed a Notice of Intervention and Public Statement and on July 2, 2021, the OCA filed a

Protest and Public Statement in this case. On June 29, 2021, Lower Makefield Township filed a Petition to Intervene.

4. Protests were filed by John Char on August 2, 2021, Barry Summers on August 5, 2021, Kevin and Beth Cauley on August 13, 2021, Jaan Pesti on August 25, 2021, Peter A. Lachance on August 27, 2021, and Keisha Jackson-Spence on September 10, 2021.

5. On August 4, 2021, Aqua served the Commission's Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of June 25, 2021; therefore, Aqua requested that its Application be accepted for filing. By way of a Secretarial Letter of August 5, 2021, the Commission informed Aqua that its Application was accepted for filing.

6. On August 21, 2021, the Commission published notice of Aqua's Application in the Pennsylvania Bulletin, and it established a protest deadline of September 7, 2021. Thereafter, Aqua's Application was assigned to the Office of Administrative Law Judge, with Administrative Law Judge Jeffrey A. Watson ("ALJ Watson") presiding.

7. A telephonic Prehearing Conference was held on Thursday, September 9, 2021, at 10:00 a.m., before ALJ Watson. During the hearing, the parties and ALJ Watson established a litigation schedule and the procedures that would apply to this case. The determinations made at the Prehearing Conference were memorialized in ALJ Watson's Prehearing Order dated September 10, 2021.

8. On September 23, 2021, a telephonic public input hearing was held in this case at 6 p.m. Three witnesses testified at the public input hearing and the written direct and surrebuttal testimony of protestant Mr. Summers were moved into the record.

9. The evidentiary hearing was held as scheduled on September 29, 2021.

10. Prior to the hearing, Aqua, I&E, OCA, OSBA, and Lower Makefield submitted a Joint Stipulation for Admission of Testimony and Exhibits to ALJ Watson. The Joint Stipulation listed the testimony and exhibits to be included in the evidentiary record and the stipulating parties agreed to a waiver of cross-examination of each other's written testimony. During the hearing, protestant Mr. Summers joined in the Joint Stipulation.

11. The Joint Stipulation was approved by ALJ Watson by Interim Order dated September 29, 2021.

12. Consistent with the deadline set forth in the ALJ's Interim Order dated September 29, 2021, on October 8, 2021, the Joint Petitioners submitted the Partial Settlement. I&E submits this Statement in Support of Partial Settlement and avers that the Partial Settlement meets the requisite standards for approval and that it is in the public interest for the reasons explained below.

II. PARTIAL SETTLEMENT

It is the policy of the Commission to encourage settlements.¹ For the reasons discussed herein, I&E maintains that the Partial Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that subject to all of the Partial Settlement's terms and conditions, Aqua's Application satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated

¹ 52 Pa. Code § 5.231.

proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Partial Settlement is in the public interest and requests that the settlement terms be approved by the ALJ and the Commission without modification.

III. SECTION 1102

A. Legal Standards

(i) Section 1102 Approval

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.² The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103³ of the Code. A Certificate of Public Convenience shall be granted “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.”⁴ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁵ Additionally, pursuant to Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Lower Makefield Township.⁶ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all

² 66 Pa. C.S. § 1102(a).

³ 66 Pa. C.S. § 1103.

⁴ 66 Pa. C.S. § 1103(a).

⁵ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁶ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmmw. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

affected parties”⁷ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.⁸

(ii) Legal Standard for Section 1329 Approval

Section 1329 of the Public Utility Code is a newly enacted statute which prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”⁹

(iii) Legal Standard for Section 507 Approval

Aqua’s request to assume enumerated municipal contracts currently held by Lower Makefield Township is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any

⁷ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

⁸ 66 Pa. C.S. § 1103(a).

⁹ 66 Pa. C.S. § 1329 (d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.

IV. TERMS AND CONDITIONS OF JOINT PETITION FOR PARTIAL SETTLEMENT

A. Approval of the Application and Acquisition

Subject to all of terms and conditions of the Partial Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue Aqua a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). Aqua's Application requests permission for it to acquire substantially all Lower Makefield Township's assets, properties and rights related to its wastewater system and to obtain the Certificates of Public Convenience necessary for it to begin to offer wastewater service to the public in the Service Area. In total, through this acquisition, Aqua is seeking to provide service to Lower Makefield's approximately 11,151 wastewater customers.¹⁰ The record supports the findings that Aqua is technically, legally, and financially fit to acquire the Lower Makefield's wastewater services,¹¹ and no party has refuted those claims in the record.

Additionally, Aqua's Application will provide affirmative public benefits. The affirmative public benefits are fully set forth in Aqua's direct testimony, and include, *inter alia*, further the goal of regionalizing water systems, benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits.¹² Importantly, through the Partial Settlement, the value of the public benefits will be better realized because the Partial Settlement contains numerous terms to protect Aqua's

¹⁰ Aqua Application at Docket No. A-2021-3024267, ¶ 30.

¹¹ Aqua Application, Exhibit U, St. No. 1, pp. 10-11.

¹² Aqua Application, Exhibit U, St. No. 1, pp. 13-19.

ratepayers, both existing and those who will become Aqua's ratepayers through this transaction. The Partial Settlement will also ensure that Aqua's ratepayers receive the benefit of the bargain that Aqua negotiated without being subject to protracted and expensive litigation. Accordingly, through this Partial Settlement, I&E's identified concerns have been addressed and I&E opines that Aqua's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

B. Tariff

Pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff supplement, which is attached to Aqua's Application as Exhibit G, shall be permitted to become effective immediately upon closing of the transaction. Accordingly, the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of Aqua's wastewater service, and I&E submits that this full and accurate disclosure of rates is in the public interest.

C. Engineering Assessment

While there is no statutory requirement for the engineering report to provide a condition designation, the designation has been available in other Section 1329 cases and it has been relied upon by UVEs, and by I&E in its investigation. I&E avers that absent such designation, questions are raised about what assumptions each UVE made about asset conditions in his/her corresponding fair market value appraisal. Additionally, I&E envisions the possibility that absent the engineering report designating assets' condition, each UVE may make independent and conflicting determinations about the condition that would result in incongruent valuation assumptions and results. Ensuring that incongruent valuations are not produced in the future as a result of the engineering report's lack of condition designation

is necessary to protect the integrity of the fair market valuations and the Section 1329 process. For this reason, I&E avers that this provision will benefit Aqua, its ratepayers, parties, and the Commission; therefore, it is in the public interest.

D. Easements and Other Property Rights

I&E supports this term as necessary to protect the public interest in two ways. First, it is important to note that the public interest would be harmed if Aqua paid a purchase price that assumed that all rights necessary to operate Lower Makefield would be transferred, and at Lower Makefield's cost, and such action did not occur. To protect against this possibility, I&E fully supports the protection measure of the escrow account that would be imposed upon Lower Makefield to ensure that any right not transferred at closing must be financially accounted for via payment to the escrow account. Additionally, the public interest is protected because this term provides an additional layer of accountability that would not exist if Aqua and Lower Makefield would ever mutually decide to waive the applicable sections of the Asset Purchase Agreement that bind it to deliver good and marketable title to all real property necessary for the operation of the acquired system.¹³

Additionally, because Aqua has committed to providing I&E, OCA, and OSBA with an update on the status of the transfer of real property rights related to the system within 30 days of advance of the anticipated Closing Date, I&E will have a mechanism in place to gauge Lower Makefield's progress in meeting its property transfer obligations. Through this reporting mechanism, the public interest is further protected because by being informed of the status of any missing property rights, I&E will be empowered to take any action that may be warranted and available to ensure that Aqua's ratepayers are not paying for property rights

¹³ Aqua's Application, Exhibit B, Section 2.01, p. 11.

that are not obtained or paying any costs associated with obtaining those rights. At the same time, Aqua will be able to monitor any missing easements to either ensure that it does not encounter access issues, or, if such issues are identified, that it can develop a plan to address access. Accordingly, this term of the Joint Petition is in the public interest and it should be approved without modification.

E. Cost of Service Study

Pursuant to the Partial Settlement, at the time of its next base rate case that includes Lower Makefield's wastewater system assets, Aqua has agreed to provide a cost of service study that removes all costs and revenues associated with the operations of the Lower Makefield system. At the same time, Aqua also agrees to provide a separate cost of service study for the Lower Makefield system. I&E fully supports this term which is consistent with protecting the public interest.

I&E submits that the cost of service study will protect Aqua, its customers, the parties to this proceeding and the Commission. Specifically, the results of the cost of service study that Aqua has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit Aqua's ratepayers as well, because if Aqua's Application is approved, Aqua's existing customers will bear the rate impact. However, without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing Aqua customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised. Finally, Aqua's cost of service study commitment will serve the public interest because a cost of service study can establish the existence and extent of subsidization (inter and intra-class) and assist in determining the appropriate amount of revenue

requirement that is reasonable to be shifted from the wastewater customers to the water customers.

F. Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

Through the Settlement, the Joint Petitioners acknowledge that any claims that Aqua may make to accrue allowance for funds used during construction (“AFUDC”) and deferred depreciation for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in Aqua’s first base rate case which includes Lower Makefield’s wastewater system assets. Importantly, the Joint Petitioners agree that they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it recognizes the potential for Aqua to invoke portions of Section 1329 related to post-acquisition projects,¹⁴ it also empowers parties to review Aqua’s proposed treatment of those projects in a future base rate case. Preserving the ability to litigate any of Aqua’s proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

G. Long Term Infrastructure Improvement Plan (“LTIIP”) and Distribution System Improvement Charge (“DSIC”)

I&E’s investigation yielded no concerns regarding Aqua’s request for approval to collect a DSIC as permitted under Section 1329, as this request appeared to simply memorialize Aqua’s intention to employ certain provisions of Section 1329. Nonetheless, I&E reserves the right to address these issues in future proceedings, including base rate,

¹⁴ 66 Pa. C.S. §1329(f).

LTIP, and distribution system improvement charge proceedings, when additional information and facts are available and when these issues are ripe for review. While I&E still reserves its rights, I&E nevertheless opines that this term serves the public interest because Aqua has agreed that existing commitments will not be re-prioritized as a result of this term. With this in mind, acquired Lower Makefield customers will benefit from improved wastewater infrastructure, promoting safer and more reliable service. Therefore, I&E opines that this term is in the public interest.

H. Lower Makefield Rates

I&E took no position regarding the rates of Lower Makefield's customers. However, I&E reserves the right to address Lower Makefield's rates in future rate proceedings. From I&E's perspective, it is important not to make any assumptions about what rates may be appropriate for acquired Lower Makefield customers in the future because doing so may rely upon assumptions that may prove to be inaccurate and may not account for information and circumstances that emerge in the interim. This term is within the public interest because it complies with Section 1329, but it also preserves I&E's ability to address rates in the future while correctly recognizing the Commission's ultimate authority to set rates.

I. Welcome Letter

Pursuant to the Settlement, Aqua has agreed that as part of its Welcome Letter to newly acquired Lower Makefield customers, it will include information the conversion to monthly billing for their sewer service. I&E fully supports this term because ensuring that acquired customers fully understand the billing cycle of their new provider is prudent and in the public interest. Accordingly, I&E supports Aqua's settlement commitment to ensure that

acquired customers will have a clear understanding of their new billing period for wastewater service.

J. Legal Fees

I&E submits that Aqua's commitment to separately identify any legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between Aqua and Lower Makefield is consistent with ensuring that Aqua will only be permitted to recover prudently incurred costs from ratepayers. These terms are in the public interest because they protect ratepayers from paying unwarranted costs and promote rate affordability.

Additionally, this term also ensures that I&E will be able to challenge the basis of any claimed Lower Makefield legal fees, meaning that I&E has not forfeited its position that Section 1329 does not permit the acquiring utility to recover the seller's transaction and closing costs. Through this term, the public interest is protected because I&E has preserved its ability to challenge the permissibility of any claims that Aqua may make for 's legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.

Furthermore, as a condition of this portion of the Partial Settlement, Aqua agreed that if it ever does make a claim for any Lower Makefield legal fees in a future base rate case, it will separately identify those fees. From I&E's perspective, the separate identification of any such fees is important in that it ensures that I&E, other interested parties, and the Commission will easily be able to identify any portion of claimed fees. It is imperative that any claimed fees are readily identified to ease the administrative burden of uncovering this information when Aqua files its next rate case, which may be several years from now and be complicated by the complexity of the resulting rate investigation. Accordingly, these

combined commitments will protect Aqua's ratepayers from bearing the burden of Lower Makefield's legal fees.

K. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

Aqua's Application addresses the assignment of contracts¹⁵ which are critical to ensuring that Aqua's ratepayers are protected and that acquired customers will receive safe, adequate, and reliable service and thus within the public interest. Consistent with I&E's position that, subject to the terms and conditions of the Partial Settlement, Aqua's Application meets the requisite standards necessary for approval, I&E supports the Partial Settlement's provision that issuance of any necessary approvals or certificates necessary to carry out the transaction is appropriate and warranted.

V. CONCLUSION

Based upon I&E's analysis of the filing, acceptance of this proposed Partial Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation if the Partial Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the instant proceeding. If the ALJ recommends that the Commission adopt the Partial Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Partial Settlement, or any

¹⁵ Aqua's Application at Docket No. A-2021-3024267, ¶ 70.

additional matters, that may be proposed by the ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Partial Settlement as being in the public interest and respectfully requests that Administrative Law Judge Jeffrey A. Watson and, thereafter, the Commission, approve the terms and conditions contained in the foregoing Joint Petition for Approval of Partial Settlement without modification.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erika L. McLain".

Erika L. McLain
Prosecutor
PA Attorney ID No. 320526

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
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Dated: October 8, 2021

ATTACHMENT C
STATEMENT IN SUPPORT OF THE
OFFICE OF CONSUMER ADVOCATE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re: Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code for : Docket No. A-2021-3024267
Approval of its Acquisition of Wastewater :
System Assets of Lower Makefield :
Township :

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF PARTIAL SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Partial Settlement (Settlement) respectfully requests that the terms and conditions of the Partial Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

I. INTRODUCTION

On March 14, 2021, 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 of Lower Makefield Township (LMT), Bucks County; (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 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. LMT owns a sanitary wastewater collection system operated by the Municipal Sewer Authority of the Township of Lower Makefield, which provides direct wastewater service to 11,151 customers in Lower Makefield Township. Application at ¶ 8; Aqua St. 2 at 10. LMT does not own a wastewater treatment plant. Wastewater treatment is mainly provided by the Municipal Authority of the Borough of Morrisville and also by Yardley Borough Sewer Authority. Application at ¶ 15. All of LMT's ratepayers are charged either a metered rate or a flat rate (for customers not metered for water consumption, i.e. on private wells). Application at ¶ 34.

On June 9, 2021, the Office of Small Business Advocate filed a Notice of Intervention and Public Statement. On June 16, 2021, the Commission's Bureau of Investigation and Enforcement filed a Notice of Appearance. On June 29, 2021, Lower Makefield Township filed a Petition to Intervene. The OCA filed a Protest and Public Statement on July 2, 2021. Additionally, five protests were filed by pro se individuals

On June 30, 2021, Aqua filed a letter, with an attached verification, stating that it had complied with the notice requirements contained in the June 25, 2021 Secretarial Letter. By Secretarial Letter dated August 4, 2021, the Commission informed Aqua that it had accepted the Application for filing. .

A prehearing conference was held on September 9, 2021, in which the Company, Lower Makefield, OCA, I&E, OSBA, Barry Summers, and Peter LaChance participated. On September 10, 2021, the OCA served the direct testimony of Ralph Smith.¹ I&E, OSBA, Barry Summers,

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

and Peter LaChance also served direct testimony on September 10, 2021. The Applicant served rebuttal testimony on September 17, 2021. On September 23, 2021, a Public Input Hearing was held, at which time portions of Mr. Summer's direct testimony was admitted into the record. On September 24, 2021, the ALJ issued an order striking the testimony of Peter A. LaChance. The OCA, I&E, and OSBA, and Barry Summers served surrebuttal testimony on September 24, 2021. An evidentiary hearing was held on September 29, 2021, where the Applicants' witnesses provided oral rejoinder testimony and the OCA submitted its testimony into the record.

On October 8, 2021, a Joint Petition for Approval of Partial Settlement was filed. Two matters were reserved for litigation, which are the determination of ratemaking rate base and accounting for the impact of the tax savings resulting from claimed repairs deductions.

II. PARTIAL SETTLEMENT

The Commission encourages parties in contested on-the-record proceedings to settle cases. See 52 Pa. Code § 5.231. A settlement, by definition, reflects a compromise of the parties' positions. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the settlement serves the public interest. Pa. PUC v. CS Water and Sewer Assoc., 74 Pa. PUC 767, 711 (1991); Pa. PUC v. Philadelphia Electric Co., 60 Pa. PUC 1, 21 (1985). Although agreement was not reached on all issues, finding areas where the parties did agree and narrowing the scope of litigation helped to conserve time, effort and cost. Based on the review conducted by the OCA and its consultant, the OCA supports the provisions presented in the Partial Settlement which the OCA has joined. The Partial Settlement establishes a reasonable resolution of certain issues in this proceeding and should be approved as in the public interest. The OCA notes, however, that the OCA and the Company reserved two issues for

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.

litigation that have an impact on customer rate increases but are not addressed by the Partial Settlement: (1) the determination of ratemaking rate base, and; (2) the treatment of income tax savings on repairs deductions.

III. SECTION 1102

In addition to the requirements of Section 1329, the proposed transaction must satisfy Section 1102. 66 Pa. C.S. § 1102. 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.² 66 Pa. C.S. § 1102(a)(1), (3).

The merits of 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

² 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 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).

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 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 Lower Makefield system, if the Commission permits costs

to be shifted under 66 Pa. C.S. § 1311(c), and (3) the existing Lower Makefield customers who will be transferred to Aqua.

The terms of the transaction, as filed, would not produce affirmative public benefits for Aqua's existing wastewater and water customers and the acquired Lower Makefield customers. As such, if the Commission approves the acquisition, the OCA recommends that it should adopt appropriate and necessary conditions, including those recommended by OCA witness Smith. See OCA St. 1 at 10-11; OCA St. 1-SR at 20-21.

As further discussed below, the Partial Settlement adopts several of Mr. Smith's recommendations. As such, the OCA supports the conditions and mitigation measures contained in the Partial Settlement to help protect existing Aqua water and wastewater customers and the acquired LMT customers from the risks associated with the acquisition.

The two OCA recommendations not addressed by the settlement are (1) the determination of ratemaking rate base and (2) the treatment of income tax savings on repairs deductions. With regard to weighing the benefits and harms of the proposed acquisition, the outcome of the issues reserved for litigation will have an impact on customer rate increases that would be caused by the change in ownership of the LMT system.

IV. TERMS AND CONDITIONS OF JOINT PETITION FOR PARTIAL SETTLEMENT

The terms of the proposed Partial Settlement address most of the matters raised by the OCA in its testimony, including the separation of costs for the LMT system in cost of service studies submitted in Aqua's next base rate case, modification of Aqua's Long-Term Infrastructure Improvement Plan (LTIIIP) and related application of the Distribution System Improvement Charge (DSIC), as follows:

A. Approval of the Application ¶ 22(A).

The OCA submits that the terms and conditions of the proposed Partial Settlement will help protect existing Aqua water and wastewater customers and the acquired LMT customers from the risks associated with the acquisition. As already noted, two issues have been reserved for litigation.

B. Tariff ¶ 22(B).

Aqua submitted *pro forma* tariffs with the applications, which includes all rates, rules, and regulations regarding conditions of Aqua's water and wastewater service and requested that the tariffs become immediately effective upon closing of the transaction. See Application.. In furtherance of partial settlement, and for the reasons stated below, the OCA agreed that the *pro forma* tariffs submitted by Aqua should become immediately effective upon closing of the transaction.

C. Engineering Assessment ¶ 22(C).

As a term of the Partial Settlement, in Paragraph 22(C) Aqua agreed that in any future Section 1329 applications it submits, the engineering assessment required under 66 Pa. C.S. § 1329(a)(4) will designate the condition of the inventory and assets appraised. Aqua further agreed that such designation of condition shall be limited to whether the categories of system assets appraised are in poor, fair, good, or very good condition. This settlement provision helps to ensure that the engineering assessment required under the Public Utility Code contains sufficiently detailed information regarding the acquired plant and is in the public interest.

D. Easements, Rights of Ways and Liens ¶ 22(D).

As part of the Partial Settlement, Aqua and Lower Makefield agreed to continue working to achieve transfer of all real estate, easement rights, access to public rights-of-way, and liens that

must be transferred to Aqua by Closing. This provision helps to ensure that Aqua will obtain all transfers necessary to provide service consistent with its Applications.

E. Cost of Service Study and Rates ¶ 22(E).

In this proceeding, the OCA identified the need for a separate cost of service study for the Lower Makefield Township system in the first base rate case in which Aqua includes the Township assets in rate base. OCA St. 1 at 11, 19-20. A separate cost of service study will provide information to establish rates that reflect the costs for that system. Id.

The settlement addresses this issue. Paragraphs 22(E)(1) and 22(E)(2) provide that, in its first base rate case following closing, in which Aqua includes the Township assets in rate base, Aqua will submit a wastewater cost of service study that removes all costs and revenues associated with the Lower Makefield system. The Company will also provide a separate cost of service study for the Lower Makefield Township system. These settlement terms will provide a means for the parties to use the cost of service data to set rates for the Lower Makefield customers that differ, as appropriate, from rates established for other wastewater customers.

F. Allowance for Funds Used During Construction (AFUDC), Deferral of Depreciation ¶ 22(F).

The Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. The OCA's assent to Paragraph 22(F) should not be construed to operate as preapproval of Aqua's future requests. Paragraph 22(F) preserves all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims. Further, to facilitate the parties' review in Aqua's next base rate case, Paragraph J reflects Aqua's agreement to separately identify any legal fees included in its transaction and closing costs

pursuant to the Asset Purchase Agreement between Aqua and Lower Makefield Township and specify amounts expended by Aqua on behalf of Lower Makefield.

G. Long Term Infrastructure Improvement Plan and Distribution System Improvement Charge ¶ 22(G).

The parties to the proposed Settlement agreed that Aqua may apply the DSIC to customers in the Lower Makefield Township service area prior to the first base rate case in which the system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) if certain conditions are met. In particular, Paragraph 22(G)(1) states that if Aqua proposes to revise its LTIIIP to include Lower Makefield Township and related projects, the projects added for the acquired system will be in addition to those that Aqua plans for its existing systems. Moreover, under Paragraph 22(G)(3), Aqua agrees that the projects for Lower Makefield Township customers are in addition to the projects already included in its approved LTIIIP. This settlement term allows for Lower Makefield customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects.

Paragraph 22(G)(2) also provides that, if Aqua seeks to modify its LTIIIP to include the Lower Makefield system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. These terms help to ensure that projects and expenditures already planned for existing Aqua wastewater customers will not be given less priority as a result of the Lower Makefield acquisition.

H. Lower Makefield Rates ¶ 22(H).

Under the Partial Settlement, in the first base rate proceeding filed by Aqua that includes Lower Makefield's wastewater system assets, Aqua agrees to propose to move the Lower Makefield system to its cost of service, based on a separate cost of service study for Lower Makefield's system; provided, however, that Aqua will not be obligated to propose Lower

Makefield wastewater rates in excess of Aqua’s proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that Aqua may agree to rates other than those proposed for Lower Makefield customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and Lower Makefield reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. Additionally, in the next rate case, Aqua agrees to provide written notice to Lower Makefield Township customers of the rate filing and the level of increase, if any, resulting from this provision. Settlement ¶ 22(H)(4). Moreover, the Joint Petitioners expressly recognize the Commission’s ultimate ratemaking authority to set rates and that notwithstanding these provisions, the Joint Petitioners may enter into a settlement of the base rate case. Settlement ¶ 22(H)(2).

These provisions will provide information to establish rates that reflect the costs for the Lower Makefield system. Parties in the next Aqua base rate case would have the opportunity to propose that the resulting rates for the Lower Makefield customers should differ, as appropriate, from rates established for other wastewater customers. The provisions also establish a reasonable cap on the proposed rate increase for Lower Makefield customers and will permit the parties to address a reasonable increase for Lower Makefield customers in the next Aqua base rate case.

I. Welcome Letter ¶ I.

Aqua has agreed to provide information about Aqua’s low income programs in a welcome letter to the Lower Makefield Township system customers, within 30 days following the closing of the transaction. The welcome letter will include conversion to monthly billing. The OCA submits that this provision is reasonable and will provide timely information that may be helpful to some of the Lower Makefield customers.

J. Legal Fees ¶ J.

Paragraph J reflects Aqua's agreement to separately identify any legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreements between Aqua and Lower Makefield Township and specify amounts expended by Aqua on behalf of the Township. The OCA submits that this provision is in the public interest as it provides for a full review of any outside legal fees included in transaction and closing costs pursuant to the Asset Purchase Agreements in future rate cases.

K. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code ¶ 22.A(2)(c).

Under Paragraph 22.A(2) of the Joint Petition for Partial Settlement, Aqua's request for approval of Section 507 agreements is permitted. The OCA does not join in this provision but, in furtherance of settlement, does not oppose Aqua's request.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Partial Settlement should be approved.

Respectfully Submitted,

/s/Erin L. Gannon

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Dated: October 8, 2021

318410

ATTACHMENT D
STATEMENT IN SUPPORT OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102, 1329, and 507 of the Public Utility : **Docket No. A-2021-3024267**
Code for Approval of its Acquisition of the :
Wastewater System Assets of Lower :
Makefield Township :

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE JOINT PETITION OF AQUA PENNSYLVANIA
WASTEWATER, INC., THE BUREAU OF INVESTIGATION AND
ENFORCEMENT, THE OFFICE OF CONSUMER ADVOCATE, THE OFFICE
OF SMALL BUSINESS ADVOCATE AND LOWER MAKEFIELD TOWNSHIP
FOR APPROVAL OF PARTIAL SETTLEMENT**

I. INTRODUCTION

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50.

Pursuant to that statutory authority, the Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance, Notice of Intervention, and Public Statement in the above-captioned proceeding, which was initiated by the Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) on May 14, 2021 when it filed its *Application*. A full recitation of the procedural history in this case is provided in Paragraphs 1 through 21 of the *Joint Petition of Aqua Pennsylvania Wastewater, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and Lower Makefield Township for Approval of Partial Settlement* (“*Partial Settlement*”) that was filed in the proceeding on October 8, 2021. As a signatory

to the *Partial Settlement*, the OSBA adopts the procedural history outlined in the *Partial Settlement*.

The OSBA was an active participant in the litigation and the negotiations that led to the *Partial Settlement*. The *Partial Settlement* sets forth a comprehensive list of issues that were resolved through the negotiation process. The OSBA submits this statement in support of the *Partial Settlement*.

II. PARTIAL SETTLEMENT

With the exception of (1) the determination of ratemaking rate base and (2) income tax savings on repairs deductions, the *Partial Settlement* resolves all issues among the Joint Petitioners. (*Partial Settlement*, ¶ 22, at pp. 5-6).

III. SECTION 1102

Section 1102(a)(3) of the Pennsylvania Public Utility Code (“Code”), permits the following:

For any public utility or an affiliated interest of a public utility as defined in section 2101 (relating to definition of affiliated interest), except a common carrier by railroad subject to the Interstate Commerce Act, to acquire from, or to transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale 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.

The acquisition proposed under the *Partial Settlement* falls within the scope of Section 1102(a)(3) of the Code.

To receive LMT’s assets and service obligation, Aqua must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP*

LLC, and Equitable Gas Company, LLC, Docket No. A- 2013-2353647, 309 P.U.R.4th 213 (2013). The OSBA agrees with Aqua’s assertion in this proceeding that it is technically, legally and financially fit to receive LMT’s assets and service obligation. (*Partial Settlement*, ¶ 23, at p. 9).

Before Aqua may acquire LMT’s wastewater system assets, the Commission must grant approval in the form of a certificate of public convenience. 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3). A certificate of public convenience will be 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). The *Partial Settlement* requests that the Commission issue the necessary certificate of public convenience to Aqua. (*Partial Settlement*, at p. 14).

IV. TERMS AND CONDITIONS OF JOINT PETITION FOR PARTIAL SETTLEMENT

A. Approval of the Application and Acquisition

As a term of the *Partial Settlement*, the OSBA agrees that the Commission should approve Aqua’s acquisition of LMT’s wastewater system assets. (*Partial Settlement*, ¶ 22.A, at p. 6). Following investigation, the OSBA is satisfied that Aqua has demonstrated compliance with 66 Pa. C.S. §§ 1102 and 1329 in this proceeding.

B. Tariff

As the OSBA supports the approval of Aqua’s acquisition of LMT’s wastewater systems, it also agrees as part of the *Partial Settlement* that the *pro forma* tariff submitted with its *Application*, as updated in Aqua’s supplemental information filed by letter dated June 21, 2021, including all rates, rules and regulations regarding conditions

of Aqua's water and wastewater service, shall be permitted to become effective immediately upon closing of the acquisition. (*Partial Settlement*, ¶ 22.B at p. 6).

Throughout this proceeding the OSBA has had the opportunity to review, question, and comment on the *pro forma* tariffs and is satisfied that the tariffs submitted with the *Application* are proper.

C. Engineering Assessment

The OSBA determined that Aqua's commitment in the *Partial Settlement* to ensure that, in its future Section 1329 applications, the engineering assessment required will designate the condition of the appraised inventory and assets will benefit ratepayers by providing more information, and thereby simplifying issues, in future cases. (*Partial Settlement*, ¶ 22.C, at p. 6).

D. Easements and Other Property Rights

The OSBA supports the provisions pertaining to Easements and Other Property Rights. These provisions require Aqua to achieve transfer of all real property rights as required under the *Asset Purchase Agreement* ("APA") while simultaneously providing flexibility to Aqua to close without the transfer of all real property rights so long as an escrow is created to obtain post-closing real property transfers. (*Partial Settlement*, ¶ 22.D at pp. 6). Aqua must also provide updates at certain times to I&E, OCA and the OSBA (collectively, the "Statutory Advocates") regarding the status of the transfer of real property rights. (*Partial Settlement*, ¶ 22.D at p. 6). With the requirement to update the Statutory Advocates, the OSBA has the means to monitor these transfers, and take corrective action if necessary.

E. Cost of Service Study

The OSBA supports the provisions in the *Partial Settlement* related to the Cost of Service Study. These provisions commit Aqua to submit a wastewater cost of service study that removes all costs and revenues associated with the operation of the Lower Makefield system and to provide a separate cost of service study for the Lower Makefield system in the first base rate case that includes Lower Makefield wastewater system assets. (*Partial Settlement*, ¶ 22.E, at p. 7). Providing this information will better assist the OSBA in evaluating how best to advocate for small C&I customers in Aqua’s next base rate proceeding.

**F. Allowance for Funds Used During Construction (“AFUDC”),
Deferral of Depreciation and Transaction Costs**

The OSBA believes that the conditions in the *Partial Settlement* related to Allowance for Funds Used During Construction (“AFUDC”) and Deferral of Depreciation and Transaction Costs are reasonable as it creates a process to address claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC in Aqua’s first base rate case that includes Lower Makefield’s wastewater system assets. (*Partial Settlement*, ¶ 22.F.1, at p. 7).

Furthermore, under this section, the OSBA reserves its right to litigate its positions fully in future rate cases when these issues are ripe for review. (*Partial Settlement*, ¶ 22.F.2, at p. 7).

G. Long Term Infrastructure and Improvement Plan (“LTIIIP”) and Distribution System Improvement Charge

The OSBA accepts the provisions in the *Partial Settlement* relating to Aqua’s ability to modify its LTIIIP after acquiring LMT’s wastewater system assets. These provisions protect existing customers and ensure that Aqua will not unnecessarily reprioritize projects. (*Partial Settlement*, ¶¶ 22.G.1-2, at pp. 7-8). The OSBA also does not oppose the provisions in the *Partial Settlement* related to Aqua’s ability to collect a distribution system improvement charge (“DSIC”) prior to the first base rate case in which the Lower Makefield’s wastewater service area plant-in-service is incorporated into rate base. (*Partial Settlement*, ¶ 22.G.3, at p. 8). These conditions are consistent with 66 Pa. C.S. § 1329, and contain caveats that ensure existing customers will not be prejudiced.

H. Lower Makefield Rates

With regard to the Rates section of the *Partial Settlement*, the OSBA accepts the terms enumerated thereunder because it preserves the OSBA’s right to address Aqua’s rate proposals fully, and to make other rate proposals in the next base rate case, particularly with respect to the rate provisions contained in Section 7.03 of the APA. (*Partial Settlement*, ¶¶ 22.H.3-4, at p. 8). This section additionally requires Aqua to propose to move the Lower Makefield wastewater system customers to its cost of service in its next base rate case, but does not obligate Aqua to propose Lower Makefield wastewater rates in excess of Aqua’s proposed Rate Zone 1 system-average rates. (*Partial Settlement*, ¶¶ 22.H.4, at p. 8). The OSBA is satisfied that these provisions

protect Aqua's current customers from subsidizing the newly acquired customers on the Lower Makefield wastewater systems.

I. Welcome Letter

The OSBA supports the requirement in the *Partial Settlement* for Aqua to send to Lower Makefield wastewater customers a welcome letter regarding the conversion to monthly billing within thirty days after closing. (*Partial Settlement*, ¶ 22.I, at p. 9). This provision commits Aqua to providing its newly acquired customers with important information in a timely manner.

J. Legal Fees

The *Partial Settlement* requires Aqua, in its next base rate case, to identify any legal fees included in its transaction and closing costs pursuant to the *APA* between Aqua and Lower Makefield and specify amounts expended by Aqua on behalf of Lower Makefield. (*Partial Settlement*, ¶ 22.J, at p. 9). Under this provision, the OSBA reserved the right to challenge the reasonableness, prudence, and basis for such legal fees. (*Partial Settlement*, ¶ 22.J, at p. 9). The OSBA is satisfied that this provision protects small C&I customers as it requires Aqua to provide a meaningful opportunity for the Statutory Advocates to review these fees, and, if necessary, to challenge these fees.

K. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

As the OSBA has determined that the relief requested in the *Application*, as modified by the *Partial Settlement*, is in the public interest, the OSBA supports this provision that the Commission shall issue Certificates of Filing or approvals for the enumerated agreements in the *Partial Settlement* pursuant to 66 Pa. C.S. § 507 any other

necessary approvals to complete the acquisition of the Lower Makefield wastewater systems by Aqua.

V. CONCLUSION

Settlement of this proceeding avoids the litigation of complex, competing proposals and saves the possibly significant costs of further administrative proceedings. Such costs are borne not only by the Company, but ultimately by the Company's customers as well. Avoiding further litigation of this matter will serve judicial efficiency, and will allow the OSBA to more efficiently employ its resources in other areas.

For the reasons set forth in the *Partial Settlement*, as well as the additional factors enumerated in this statement, the OSBA supports the proposed *Partial Settlement* and respectfully requests that ALJ Watson and the Commission approve the *Partial Settlement* in its entirety without modification.

Respectfully submitted,



Erin K. Fure
Assistant Small Business Advocate
Attorney ID No. 312245

For:

Small Business Advocate

Office of Small Business Advocate
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Dated: October 8, 2021

ATTACHMENT E
STATEMENT IN SUPPORT OF
LOWER MAKEFIELD TOWNSHIP

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Jeffrey A. Watson, Presiding

Application of Aqua Pennsylvania Wastewater, Inc.	:	
under Sections 1102 and 1329 of the Pennsylvania Public	:	
Utility Code, 66 Pa. C.S. §§ 1102(a) and 1329 (relating	:	Docket No. A-2021-3024267
to enumeration of acts requiring certificate and valuation	:	
of acquired water and wastewater systems), for approval	:	
of: (1) the transfer, by sale, of substantially all of the	:	
wastewater collection and conveyance system assets,	:	
properties and rights of Lower Makefield Township	:	
(LMT) related to its wastewater collection and	:	
conveyance system; (2) the right of Aqua Pennsylvania	:	
Wastewater, Inc. to begin to offer or furnish wastewater	:	
service to the public in Lower Makefield Township,	:	
Bucks County, Pennsylvania; and (3) the use for	:	
ratemaking purposes of the lesser fair market value or the	:	
negotiated purchase price of the Lower Makefield	:	
Township assets related its wastewater collection and	:	
conveyance system.	:	

**STATEMENT OF LOWER MAKEFIELD TOWNSHIP IN SUPPORT OF PARTIAL
SETTLEMENT**

TO ADMINISTRATIVE LAW JUDGE WATSON:

Lower Makefield Township (“Lower Makefield” or the “Township”), by and through its attorneys, submits this statement in support of the Joint Petition for Approval of Partial Settlement (“Settlement”) submitted to the Public Utility Commission (“Commission”) by Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and Lower Makefield.¹ Lower Makefield respectfully requests that the Honorable Administrative

¹ Aqua, Lower Makefield, I&E, OCA, and OSBA are, hereinafter, referred to, collectively, as “Joint Petitioners.”

Law Judge Jeffrey A. Watson recommend approval of, and that the Commission approve, the Settlement, including all terms and conditions thereof, without modification.

I. Introduction

This proceeding concerns the Application of Aqua, filed with the Commission on May 14, 2021, for approval to acquire the wastewater system assets of Lower Makefield (the “System”) pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (the “Code”). On October 8, 2021, the Joint Petitioners filed the Settlement proposing a resolution of all but two issues in this proceeding. Lower Makefield supports the Settlement and submits that it should be approved without modification because the settlement will further the public interest.

II. Partial Settlement – Legal Principles

Pursuant to 52 Pa. Code § 5.231(a), it is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement. The Commission has further stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401. For example, settlements lessen the time and expense of litigating a case and, therefore, directly benefit all interested parties. As such, where all active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement is in the public interest. *See, e.g., Pa. Pub. Util. Comm’n v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991) and *Pa. Pub. Util. Comm’n v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

Further, the Pennsylvania Supreme Court has explained that in the context of a utility merger, the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger. *See City of York v. Pennsylvania Public Utility Commission*, 295 A.2d 825 (Pa. 1972).

Here, the Settlement proposes the resolution of all but two issues in this proceeding, which Joint Petitioners all agree is in the public interest. As stated above, Commission approval of the Joint Petition will not only minimize litigation and administrative burden of all parties, but will also further the public interest by allowing the transaction to move forward thereby fostering the Commission's stated goal of regionalizing wastewater systems within the Commonwealth. Thus, the Settlement should be approved without modification.

III. Section 1102 Standards – Fitness and Affirmative Public Benefits

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). Here, there is no dispute that Aqua has the requisite technical, financial and legal fitness to own and operate the System. *See* Joint Petition ¶ 23 (“Aqua, I&E, OCA, OSBA and Lower Makefield agree that Aqua has the requisite technical, financial and legal fitness to own and operate the System and submit that the resolution of issues as presented in this partial settlement will further the public interest.”). In fact, Aqua's fitness to provide wastewater service is presumed due to its status as a certificated provider of utility service in the Commonwealth. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

To show legal fitness, Aqua must demonstrate that it has obeyed the Code, as well as Commission Regulations and Orders. *Re Perry Hassman*, 55 PA PUC 661 (1982). Here, Aqua is a public utility operating under certificates of public convenience granted by the Commission with a good compliance history. Aqua St. No. 2, p. 16. Additionally, there are no pending legal proceedings that would suggest that Aqua is not legally fit to provide safe and adequate service. Aqua St. No. 1, p. 10. Aqua thus satisfies the criteria for legal fitness.

To show financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Aqua is a Class A water utility in the Commonwealth with total net utility plant assets of \$350 million and annual revenues of \$37 million in 2020. Aqua St. No. 1, p. 10. Aqua, as a subsidiary of Aqua Pennsylvania, Inc. (“Aqua PA”), has access to Aqua PA’s low-cost long-term debt financing instruments through the Pennsylvania Infrastructure Investment Authority (“PENNVEST”), Aqua PA’s short-term credit facility of \$100 million, and Aqua PA’s equity capital. *Id.*, p. 10-11. As such, Aqua satisfies this criterion as well.

Finally, to show technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Again, Aqua easily meets this standard. As stated above, Aqua already has a certificate to operate throughout the Commonwealth, and thus has in-depth expertise in operating wastewater collection and conveyance systems. Aqua St. No. 2, p. 16. For example, Aqua has experience working with the Commission and statutory advocates to acquire and improve wastewater systems. *See id.* (citing Washington Park Wastewater, Docket No. A230550F2000). This experience, combined with Aqua’s goal to always ensure that the collection, conveyance, and pumping systems it owns provide continuous safe and reliable service, renders Aqua technically fit to own and operate the System. *Id.*

Further, Aqua’s acquisition of Lower Makefield’s wastewater system assets will provide considerable public benefit for the Township, its residents, and customers. For example, the proposed transaction will greatly improve the Lower Makefield’s financial condition by providing the Township with a significantly increased reserve fund balance. Aqua St. No. 3, p. 11. The proposed transaction will not only increase the current reserve fund and provide the Township with flexibility to pay down its considerable outstanding debt, but it will also mitigate against the

risk of any future revenue shortfalls. *Id.* at 11–12. Additionally, given the time and economic impact on the Township from dealing with the System, this sale will permit the Township administration to reallocate administration time and expense to focus on other key initiatives in Lower Makefield. *Id.* at 12. Lastly, due to the increased costs associated with the various necessary upgrades and improvements to the System in connection with Pennsylvania Department of Environmental Protection (“DEP”) mandates, the sale to Aqua provides the best opportunity for an industry expert to provide maintenance work the System critically needs while simultaneously providing safe and reliable wastewater service. *See id; see also* Aqua St. No. R-3, p. 6.

As illustrated above, there is no dispute that Aqua has the requisite technical, legal, and financial fitness to own and operate the System and that the proposed transaction will provide a substantial public benefit to the Township, its residents, and its customer. Therefore, this Settlement should be approved without modification.

IV. Terms and Conditions of Joint Petition for Partial Settlement

The Joint Petitioners have agreed, in the partial settlement, to several conditions to be imposed by the Commission on approval of the proposed transaction. These conditions, explained in more detail below, are consistent with section 1103(a) of the Public Utility Code.

A. Approval of Application and Acquisition

Joint Petitioners agree that the Commission should approve Aqua’s application to acquire the System and Aqua’s right to begin to offer, render, furnish, or supply wastewater service in areas served by the Township. *See* Joint Petition ¶ 22(A). Additionally, and as described in more detail in subsection K below, Joint Petitioners request that the Commission issue all necessary approvals and certificates for the proposed transaction pursuant to 66 Pa C.S. § 507. *Id.*

B. Tariff

Joint Petitioners agree that the *pro forma* tariff that Aqua submitted with its application, and as updated in the supplemental information Aqua filed by letter dated June 21, 2021, including all rates, rules, and regulations regarding Aqua’s wastewater service may become effective immediately upon closing of the proposed transaction. *Id.* ¶ 22(B).

C. Engineering Assessment

Aqua has agreed to require all future engineering firms conducting section 1329 assessments to include a detailed description of the condition of inventory and assets; however, this requirement is limited to those assets that can be observed and whether the system assets are in poor, fair, good, or very good condition. *Id.* ¶ 22(C).

D. Easement and Other Property Rights

Aqua and the Township agreed to continue working to transfer all real property rights (*i.e.* easements associated with the System identified in the Asset Purchase Agreement dated September 17, 2020 attached as Exhibit B to Aqua’s Application) prior to closing of the proposed transaction. *Id.* ¶ 22(D). Nonetheless, pursuant to the Settlement, Aqua – at its own discretion – is permitted to close without the transfer of all real property rights as long as an escrow is established from the Purchase Price to be used for obtaining any post-closing transfers of real property rights. *Id.* Lastly, Aqua has agreed to provide an update to the statutory advocates on the status of the transfer of real property rights at least thirty (30) days prior to the anticipated closing date and a final status update before closing. *Id.*

E. Cost of Service Study

Aqua agreed to submit two separate cost of service studies (“COSS”) at the first base rate case that includes the System: (1) a COSS that removes all costs and revenues associated with the

operation of the System, and (2) a COSS that details costs and revenues for the System. *Id.* ¶ 22(E).

F. Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

Joint Petitioners agree that any claims for AFUDC and deferred depreciation related to post-acquisition improvement not recovered through the Distribution System Improvement Charge (“DSIC”) will be addressed at Aqua’s first base rate case that includes the System. *Id.* ¶ 22(F). However, Joint Petitioners reserve the right to litigate their positions in future rate cases regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to the proposed transaction when these issues are ripe for review. *Id.*

G. Long Term Infrastructure Improvement Plan (“LTIP”) and DSIC

Aqua agreed to modify its LTIP to include the projects necessary to improve the System. *Id.* ¶ 22(G). Aqua also agreed, however, not to reprioritize other existing capital improvements that it is already committed to undertake when it modifies its LTIP to include the System required improvements. *Id.* Further, Aqua shall be permitted to collect a DSIC related to the System prior to the first base rate case in which the Lower Makefield assets are incorporated into rate base. *Id.*

H. Lower Makefield Rates

The average residential rate in Lower Makefield is currently \$74.32 per month based on four thousand seven hundred (4,700) gallons of usage. Additionally, Aqua – in the notice Aqua sent to Lower Makefield customers in connection with its Application – provided an estimated, non-binding incremental rate effect of 28.17% for customers. *Id.* ¶ 22(H). Joint Petitioners acknowledge and understand that the Commission retains the authority to set rates for the Township’s customers at the first, and all future, base rate cases. In Aqua’s first base rate case that includes Lower Makefield, Aqua will propose to move Lower Makefield to its cost of service.

Aqua and Lower Makefield agree that Aqua will propose the timing of the rate affect consistent with Section 7.03 of the APA. Nonetheless, Joint Petitioners reserve their rights to fully address Aqua’s rate proposal, and to make other proposals, that includes the System. *Id.* However, Aqua will not be obligated to propose wastewater rates in excess of Aqua’s proposed Rate Zone 1 system-average rates. *Id.* Aqua will provide Lower Makefield customers with written notice of the first base rate case that includes Lower Makefield customers, including the level of increase.

I. Welcome Letter

Aqua has agreed to send a welcome letter to the acquired Lower Makefield wastewater customers within thirty (30) days following the closing of the proposed transaction. *Id.* ¶ 22(I). This letter will include—at a minimum—information regarding the transition to monthly billing for wastewater service. *Id.*

J. Legal Fees

Aqua must separately identify legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between Aqua and Lower Makefield, and specify amounts expended by Aqua on behalf of the Township. *Id.* ¶ 22(J). However, the statutory advocates reserve the right to challenge the reasonableness and basis for these legal fees. *Id.*

K. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code.

Section 507 of the Public Utility Code states 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 thirty (30) days prior to its effective date. *See* 66 Pa C.S. § 507. The Settlement requests that the Commission issue Certificates of Filing, pursuant to Section 507, for the following agreements between Aqua and Lower Makefield:

- Asset Purchase Agreement, dated September 17, 2020, by and between Lower Makefield Township and Aqua Pennsylvania Wastewater, Inc.
- 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
- 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
- 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
- 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
- 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
- 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
- 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
- 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
- Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- 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

- 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
- 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
- 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
- Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield
- 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
- 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
- Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield.

Lastly, the Township respectfully requests that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of Lower Makefield's wastewater system assets.

V. CONCLUSION

Lower Makefield respectfully requests that the Honorable Administrative Law Judge Jeffrey A. Watson recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Partial Settlement without modification.

Respectfully submitted,



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Counsel for Lower Makefield Township

Date: October 8, 2021

ATTACHMENT F
PROPOSED FINDINGS OF FACT

PROPOSED FINDINGS OF FACT

AQUA AND LOWER MAKEFIELD

1. Aqua is a certificated provider of wastewater service, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua St. No. 1 at 9 and Aqua Exhibit No. 1, Application ¶ 7.

2. Lower Makefield Township is a duly organized and validly existing Pennsylvania township of the Second Class. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 7.

3. Lower Makefield Township owns a sanitary wastewater collection system that provides sanitary wastewater service to 11,151 customers in Lower Makefield Township, Bucks County. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 9.

ASSET PURCHASE AGREEMENT

4. Aqua and Lower Makefield are parties to an Asset Purchase Agreement dated as of September 17, 2020. Aqua Exhibit 1, Application ¶ 5 and ¶ 21; *see also* Aqua Exhibit No. 1, Application Exhibit B.

5. The negotiated purchase price, which is based on arms' length negotiation, is Fifty-Three Million Dollars (\$53,000,000). Aqua and Lower Makefield are not affiliated with each other. Aqua Exhibit No. 1, Application ¶ 22 and Aqua St. No. 1 at 9.

ASSETS BEING TRANSFERRED

6. The wastewater system assets to be transferred 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. Aqua Exhibit No. 1, Application ¶ 24.

7. The wastewater system assets being transferred also include certain contracts to which Township is a party and all Authorizations and Permits of or held by the Township (to the

extent transferrable to Aqua under applicable Law), including all Authorizations and Permits which are environmental permits, other operating permits. Aqua Exhibit No. 1, Application ¶ 26.

FITNESS

8. Aqua is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania. Aqua is fit, in all respects, to own and operate the Lower Makefield wastewater system and provide wastewater service in Lower Makefield Township. Aqua St. No. 1 at 10-11.

RATE IMPACT

9. Rate impact is addressed in the Joint Petition for Partial Settlement and addressed further by the Joint Petitioners in their respective Statements in Support. Initially, Aqua will implement the Lower Makefield rates in effect as of closing. The Joint Petition for Partial Settlement addresses the submission of cost of service studies in the first base rate case that includes Lower Makefield wastewater system assets and the moving of Lower Makefield rates to cost of service in that first base rate case.

SECTION 507

10. Section 507 of the Code states 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.

11. As presented in the Joint Petition for Approval of Partial Settlement, Joint Petitioners ask that the Commission, to the extent necessary, issue certificates for filing, pursuant to Section 507, for eighteen contracts, including assignments of contracts between Aqua and Lower Makefield.

ATTACHMENT G
PROPOSED CONCLUSIONS OF LAW

PROPOSED CONCLUSIONS OF LAW

Background and Burden of Proof

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

2. The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3).

3. A certificate of public convenience will be 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).

4. In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972), the Pennsylvania Supreme Court explained in the context of a utility merger that the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger.

5. Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A- 2013-2353647, 309 P.U.R.4th 213 (2013).

Aqua Is Fit to Acquire the Lower Makefield Wastewater System and Initiate Wastewater Service in Lower Makefield Township

6. An existing provider of public utility service is presumed fit. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

7. Aqua is fit to acquire the Lower Makefield wastewater system assets and to initiate wastewater service in Lower Makefield Township.

Section 507

8. The following contracts, including the assignment of contracts ii through xviii, are accepted as valid pursuant to Section 507¹:

- i. Asset Purchase Agreement, dated September 17, 2020, by and between Lower Makefield Township and Aqua Pennsylvania Wastewater, Inc.
- ii. Sewage Transportation Agreement, dated November 20, 2015, by and among the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefiled Township, and Yardley Borough Sewer Authority
- iii. 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
- iv. 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
- v. 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
- vi. 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
- vii. 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
- viii. 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
- ix. 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

¹ The OCA does not join in this Paragraph 8 but does not oppose Aqua's request.

- x. Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- xi. 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
- xii. 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
- xiii. 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
- xiv. 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
- xv. Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield
- xvi. 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
- xvii. 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
- xviii. Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield

ATTACHMENT H
PROPOSED ORDERING PARAGRAPHS

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Joint Petition for Partial Settlement, filed on October 8, 2021, by Aqua Pennsylvania Wastewater, Inc., the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and Lower Makefield Township, at PaPUC Docket No. A-2021-3024267, including all terms and conditions thereof, is approved without modification.

2. That the Application filed by Aqua Pennsylvania Wastewater, Inc. on May 14, 2021, and accepted by the Commission on August 5, 2021, is granted, subject to resolution of the issues reserved for litigation and the following conditions, consistent with the Joint Petition for Partial Settlement:

Approval of Application and Acquisition

- (1) The Commission should approve Aqua's acquisition of Lower Makefield Township wastewater collection system assets and Aqua's right to begin to offer, render, furnish, or supply wastewater service in the areas served by Lower Makefield.
- (2) The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.

Tariff

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

Engineering Assessment

On a going forward basis, Aqua will require engineering firms conducting Section 1329 assessments to present, as part of the engineering assessment, a detailed Engineer's Assessment Study containing the seller's utility assets description of the condition of inventory and assets. The designation of condition shall be limited to those assets that can be observed and whether

the categories of system assets appraised are in poor, fair, good or very good condition

Easements and Other Property Rights

Aqua and Lower Makefield will work to ensure the transfer of all real property rights including easements and missing easements as defined in the Asset Purchase Agreement (“APA”) by Closing. However, Aqua shall be permitted in its discretion to close without the transfer of all of the Real Property Rights, provided that an escrow is established from the Purchase Price to be used to obtain any post-Closing transfers of the Real Property Rights. Aqua will provide an update to I&E, OCA, and OSBA approximately 30 days in advance of the anticipated Closing Date and a final update before Closing regarding the status of the transfer of real property rights including easements related to the system.

Cost of Service Study

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

Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

- (1) Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge (“DSIC”) for book and ratemaking purposes, will be addressed in Aqua’s first base rate case which includes Lower Makefield wastewater system assets.
- (2) Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve

the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties' assent to this agreement should not be construed to operate as its preapproval of Aqua's requests.

Long Term Infrastructure Improvement Plan (“LTIIIP”) and Distribution System Improvement Charge

If Aqua proposes to modify its LTIIIP to include the Lower Makefield wastewater system, the projects added for Lower Makefield will be in addition to those that Aqua plans for its existing systems.

In future LTIIIPs or Annual Asset Optimization Plans (“AAOP”) that include the Lower Makefield wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua’s current practice and ability to allocate projects as needed for its capital program.

Upon approval of the Commission of a modification to its LTIIIP which includes the Lower Makefield wastewater system, Aqua shall be permitted to collect a DSIC related to the Lower Makefield wastewater system prior to the first base rate case in which the Lower Makefield assets are incorporated into rate base.

Lower Makefield Rates

- (1) The current average Lower Makefield residential rate is \$74.32 per month based on four thousand seven hundred gallons of usage. As set forth in the notice sent to Lower Makefield customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on Lower Makefield wastewater customers of 28.17%.
- (2) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the Lower Makefield customers that are in excess of the restrictions contained in Section 7.03 of the APA.
- (3) Aqua and Lower Makefield agree that, at the time of Aqua’s first base rate case that includes the Lower Makefield system, Aqua will propose the timing of the rate effect consistent with the terms of Section 7.03 of the APA. All parties reserve their rights to address Aqua’s proposal.

- (4) In the first base rate proceeding filed by Aqua that includes Lower Makefield's wastewater system assets, Aqua shall propose to move the Lower Makefield system to its cost of service, based on a separate cost of service study for Lower Makefield's system; provided, however, that Aqua will not be obligated to propose Lower Makefield wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that Aqua may agree to rates other than those proposed for Lower Makefield customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and Lower Makefield reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua agrees to provide written notice to Lower Makefield Township customers of the rate filing and the level of increase, if any, resulting from this provision.

Welcome Letter

Aqua will send a welcome letter to Lower Makefield Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

Legal Fees

In its next base rate case, Aqua shall separately identify any legal fees included in its transaction and closing costs pursuant to the APA between Aqua and Lower Makefield and specify amounts expended by Aqua on behalf of Lower Makefield. I&E, OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

3. That the Commission's Secretary issue a certificate of public convenience evidencing Aqua Pennsylvania Wastewater, Inc.'s right under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(1) and (2) of the Public Utility Code, 66 Pa.C.S. §§ 1102(a)(1), 1102(a)(3) and 1329(c)(1) and (2), to: (a) acquire, by sale, the wastewater system assets of Lower Makefield Township situated within Lower Makefield Township, Bucks County, Pennsylvania and (b) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer, render, furnish and supply wastewater service to the public in portions of Lower Makefield Township, Bucks County, Pennsylvania.

4. That within 10 days after closing of the acquisition, Aqua Pennsylvania Wastewater, Inc. shall file a tariff supplement in the form filed with Aqua's Application on May 14, 2021, as updated in Aqua Pennsylvania Wastewater, Inc.'s supplemental information filed by letter dated June 21, 2021, implementing rates for Lower Makefield Township customers post-closing.

5. That the Secretary's Bureau shall issue certificates of filing pursuant to Section 507 for the following agreements between Aqua Pennsylvania Wastewater, Inc., and Lower Makefield Township:

- i. Asset Purchase Agreement, dated September 17, 2020, by and between Lower Makefield Township and Aqua Pennsylvania Wastewater, Inc.
- ii. 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
- iii. 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
- iv. 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
- v. 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
- vi. 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

- vii. 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
- viii. 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
- ix. 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
- x. Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- xi. 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
- xii. 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
- xiii. 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
- xiv. 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
- xv. Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield
- xvi. 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

- xvii. 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
- xviii. Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield

6. That all other approvals, certificates, registrations and relief are hereby issued with respect to Aqua Pennsylvania Wastewater, Inc.'s acquisition of the wastewater system assets of Lower Makefield Township pursuant to Section 1102, 1329, and 507 of the Public Utility Code.

7. That the proceeding at PaPUC Docket No. A-2021-3024267 is terminated and marked closed, following resolution of the issues reserved for litigation.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Administrative Law Judge Jeffrey A. Watson, Presiding

**Application of Aqua Pennsylvania :
Wastewater, Inc. Pursuant to Sections :
1102, 1329, and 507 of the Public Utility : Docket No. A-2021-3024267
Code for Approval of its Acquisition of the :
Wastewater System Assets of Lower :
Makefield Township :**

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of October, 2021, served a true and correct copy of the foregoing Joint Petition of Aqua Pennsylvania Wastewater, Inc., The Bureau of Investigation and Enforcement, The Office of Consumer Advocate, The Office of Small Business Advocate, and Lower Makefield Township for Approval of Partial Settlement upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

The Honorable Jeffrey A. Watson
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Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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