THOMAS, NIESEN & THOMAS, LLC
Attorneys and Counsellors at Law

THOMAS T. NIESEN
Direct Dial: 717.255.7641
tniesen@tntlawfirm.com

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 Company's Main Brief. Copies of the Main Brief 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

The Honorable Jeffrey A. Watson, Presiding

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	:	**Docket No. A-2021-3024267**

MAIN BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

Thomas T. Niesen, Esquire
PA Attorney ID # 31379
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101

Attorneys for
Aqua Pennsylvania Wastewater, Inc.

DATED: October 8, 2021

TABLE OF CONTENTS

Appendix A: PROPOSED FINDINGS OF FACT

Appendix B: PROPOSED CONCLUSIONS OF LAW

Appendix C: PROPOSED ORDERING PARAGRAPHS

TABLE OF CITATIONS

Cases

Statutes, Regulations, Texts and Codes

I. STATEMENT OF THE CASE

A. Procedural History

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. ("Aqua" or "Company"), at Docket No. A-2021-3024267, filed with the Public Utility Commission ("Commission") on May 14, 2021, pursuant to Sections 1102, 1329 and 507 of the Public Utility Code ("Code").

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 ("Lower Makefield" or "Township") and allowing Aqua to begin to provide wastewater service in portions of the Township.

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.

The Application, additionally, 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.

The Bureau of Technical Utility Services ("TUS"), the Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), and the Office of Small Business Advocate ("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.

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.

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.

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.

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.

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.

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.[1] A litigation schedule was adopted providing, *inter alia*, for evidentiary hearings on September 29 and 30, 2021 and memorialized in a Prehearing Order dated September

[1] 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.

10, 2021.

A Telephonic Public Input Hearing was held on September 23, 2021. Three witnesses offered testimony at the Telephonic Public Input Hearing.

The call-in evidentiary hearing was convened on September 29, 2021, as scheduled. Written testimony was admitted into the evidentiary record by stipulation and cross examination was waived. Oral rejoinder testimony by the Utility Valuation Experts was presented and cross examined.

On October 8, 2021, Aqua, I&E, OCA, OSBA and Lower Makefield filed a Joint Petition for Approval of a Partial Settlement proposing a resolution of all issues with the exception of (1) the determination of ratemaking rate base; and (2) the treatment of income tax savings on repairs deductions.

Aqua submits this Main Brief addressing the two unresolved issues in accordance with the revised litigation schedule presented in the 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.

B. <u>Overview of the Proposed Transaction</u>

Aqua is a certificated provider of wastewater service, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua provides wastewater service to approximately 45,000 customer accounts in various Counties throughout Pennsylvania including parts of Bucks County.

Lower Makefield is a duly organized and validly existing Pennsylvania township of the Second Class. Lower Makefield owns a sanitary wastewater collection system that provides sanitary wastewater service to 11,151 customers in the Township.

Aqua and Lower Makefield are parties to an Asset Purchase Agreement dated as of September 17, 2020. 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.

The wastewater system assets to be transferred include, *inter alia*, 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 and Lower Makefield have agreed to use the process presented in Section 1329 of the Code to determine the fair market value of the wastewater system assets and the ratemaking rate base.

II. **BURDEN OF PROOF**

As the proponent of a proposed rule or order, applicant has the burden of proof. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

In *Se-Ling Hosiery*, the Pennsylvania Supreme Court held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party.

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

As demonstrated herein, Aqua has met its burden of proof.

III. STATEMENT OF QUESTIONS INVOLVED

Question No. 1

Pursuant to Section 1329 of the Code, what is the ratemaking rate base of the wastewater system assets of Lower Makefield Township?

> **Suggested Answer to Question No. 1**
>
> The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is $53,000,000, being the lesser of the purchase price of $53,000,000 negotiated by Aqua and Lower Makefield and the average of the fair market value appraisals which is $54,967,796.

Question No. 2

Should the OCA's proposed accumulation of the income tax effect of repairs deductions in a regulatory liability account, to be addressed in Aqua's next rate case, be adopted as a condition for approval of the transaction?

> **Suggested Answer to Question No. 2**
>
> The Commission should reject the OCA's proposed condition for approval of the transaction and deny the proposed accumulation of the income tax effect of repairs deductions in a regulatory liability account.

IV. SUMMARY OF ARGUMENT

Section 1329 and Ratemaking Rate Base

Section 1329 of the Code addresses the valuation of municipal assets. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a Utility Valuation Expert ("UVE") from a list of experts maintained by the Commission.

Aqua engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett") to provide a fair market value appraisal in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), utilizing the cost, market and income approaches. Lower Makefield engaged the services of AUS Consultants, Inc. ("AUS") for the same purpose. Both firms were pre-certified as authorized UVEs.

Gannett's fair market value appraisal is $55,505,000. AUS' fair market value appraisal is $54,430,591. The average of the two is $54,967,796. The ratemaking rate base determined pursuant to Section 1329(c)(2) is $53,000,000, being the lesser of the negotiated purchase price of $53,000,000 and the average of $54,967,796.

The OCA proposed adjustments to the UVE appraisals which would reduce ratemaking rate base to $51,236,259. Initially, in direct testimony, the OCA recommended a ratemaking rate base of $51,355,259. The recommendation was reduced to $51,236,259 in surrebuttal testimony to correct an oversight on the part of OCA witness Smith. The appraisal adjustments proposed by the OCA and its proposed ratemaking rate base of $51,236,259 should be rejected.

Regulatory Liability Account to Accumulate Income Tax Effect of Repairs Deductions

The OCA's attempt to single out one component of the revenue requirement for the Lower Makefield system by imposing deferred accounting for the accumulated income tax effect of repairs deductions should be denied. The revenue requirement for the Lower Makefield system post-closing should be dealt with in the first rate case that includes the system.

V. ARGUMENT

A. Section 1329

1. Introduction

Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities.

For ratemaking purposes, the valuation is the lesser of the fair market value (*i.e.*, the average of the buyer's and seller's independently conducted appraisals) or the negotiated purchase price.

If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts maintained by the Commission. The UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches.

2. Legal Principles

In regard to the ratemaking rate base, Section 1329(c) directs as follows:

> **(c) Ratemaking rate base. –** The following apply:
>
> (2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the *fair market value* of the selling utility.[2]

Section 1329(g) defines "fair market value" as "[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2)."

The negotiated purchase price is $53,000,000. The average of the Gannett and AUS fair market value appraisals – the "fair market value" – is $54,967,796. The ratemaking rate base of

[2] 66 Pa.C.S. § 1329(c)(2) (emphasis added).

the Lower Makefield wastewater system, as determined in accordance with the clear and unambiguous statutory language, is, thus, $53,000,000.

3. Aqua's Application

Aqua and Lower Makefield negotiated a purchase price of $53,000,000 for the wastewater system. The price was the result of voluntary arm's length negotiations. Aqua and Lower Makefield are not affiliated with each other. They agreed to use the process presented in Section 1329 to determine the fair market value of the wastewater system and the ratemaking rate base.

Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. Lower Makefield engaged the services of AUS for the same purpose. Both firms are on the list of qualified appraisers maintained by the Commission. Both firms have extensive specific experience with the valuation and appraisal of utility assets.

Gannett's fair market value appraisal is $55,505,000. AUS' fair market value appraisal is $54,430,591. The average of the two is $54,967,796. The ratemaking rate base determined pursuant to Section 1329(c)(2) is $53,000,000, being the lesser of the negotiated purchase price of $53,000,000 and the average of $54,967,796.

The results of the Gannett analyses and calculations are as follows:[3]

Valuation Approach	Indicated Value	Weight	Weighted Value
Cost Approach	$54,531,935	33.33%	$18,175,494
Market Approach	$58,239,781	33.34%	$19,417,143
Income Approach	$53,741,785	33.33%	$17,912,137
		100%	$55,504,774
Conclusion			**$55,505,000**

[3] Aqua St. No. 4 at 13.

The results of the AUS analyses and calculations are as follows:[4]

Valuation Approach	Indicated Value	Weight	Weighted Value
Cost Approach	$51,414,555	50%	$25,707,278
Market Approach	$55,741,285	10%	$5,574,129
Income Approach	$57,872,959	40%	$23,149,184
		100%	$54,430,591
Conclusion			**$54,430,591**

Copies of the Fair Market Value Appraisal Reports of Gannett and AUS were attached as Exhibit Q and Exhibit R, respectively, to the Application. Verified Statements of Gannett and of AUS, verifying that their Appraisals determined fair market value in compliance with USPAP, employing the cost, market and income approaches, were attached to the Application as Exhibit T1 and Exhibit T2, respectively.

Section 1329 provides that if the Commission issues an order approving an application thereunder, the order "shall include the ratemaking rate base of the selling utility, as determined under subsection (c)(2)." The Commission's Order approving Aqua's acquisition of the Lower Makefield wastewater system should include a determination that the ratemaking rate base is $53,000,000.

4. Challenges to the UVE Appraisals

OCA witness Smith proposed adjustments to several of the UVE appraisal approaches. Mr. Smith, however, did not perform an appraisal of the Lower Makefield wastewater system asset[5] and presented no evidence showing he has the experience or legal competency to critique the appraisals of certified UVEs. Mr. Smith's adjustments do not meet a standard of value of fair market value and are in direct violation of Section 1329 of the Code.[6] The adjustments,

[4] Aqua St. No. 5 at 3.

[5] Aqua St. No. 4-R at 1.

[6] Aqua St. No. 4-R at 2.

consequently, should not be adopted.

a. Cost Approach

OCA witness Smith proposed an adjustment to the AUS Cost Approach analysis based on the use of shorter service life for Gravity Collection Mains. The use of a shorter service life reduces the valuation result under the Cost Approach. Mr. Smith did not propose an adjustment to the Gannett Cost Approach analysis.

i. The AUS Cost Approach – Service Life for Gravity Collection Mains

In the AUS appraisal, the Cost Approach to value is the cost to acquire or build a similar property based on reproduction/replacement cost. Within the AUS Cost Approach, service lives used in depreciation and functional obsolescence calculations were developed based on (1) the specific property and its use; (2) AUS' experience in developing depreciation studies for the water and wastewater industries; and (3) depreciation studies filed with Pennsylvania American Water Company ("PAWC") and Aqua rate cases.[7] Mr. Weinert explained that these considerations are appropriate for developing service lives as they reflect the survival / retirement characteristics of normal and functional service lives of water and wastewater properties.[8]

In support of the AUS development of service lives for the Cost Approach, Mr. Weinert emphasized that, in each of their recent rate case filings, PAWC and Aqua filed depreciation studies in support of their depreciation service lives and associated depreciation expenses contained within their revenue requirement calculations. The depreciation studies were prepared by Gannett, a recognized firm in the depreciation consulting area.[9] After thorough and careful

---

[7] Aqua Exhibit No. 1, Application Exhibit R at 5.

[8] Aqua St. No. 5 at 8.

[9] Aqua Exhibit No. 1, Application Exhibit R at 5.

analysis, Mr. Weinert used a service life of 80 years for Gravity Collection Mains in the AUS Cost Approach.[10]

OCA witness Smith recommends a shorter service life of 65 years for Gravity Collection Mains, which reduces the AUS Cost Approach by $4,714,000 from $51,414,555 to $46,700,407. In support of his recommendation Mr. Smith notes that Gannett used a service life of 65 years for Gravity Collection Mains in its Appraisal; that the issue was previously addressed in the Cheltenham proceeding; and a lack of documentation concerning the type and age of pipe in the Township system.[11]

Mr. Smith's attempt to criticize the AUS Appraisal by reference to the Gannett Appraisal is inappropriate. One would expect methods and results to differ from one appraisal to another. It is reasonable and appropriate that they do so.

More significantly, Mr. Weinert emphasized that Mr. Smith's attempt to shorten the service life for Gravity Collection Mains is not reflective of, and, is, indeed, at odds with, the new practice of relining existing pipe and associated manholes with cure-in-place plastic ("CIPP") linings, which significantly *extends* the life of existing pipe.[12]

Use of CIPP linings has the effect of extending the useful service life of mains and manholes by 50 years thus pushing the useful life of these assets into the low 100-year range. Mr. Weinert explained that this is the reason, if one closely examines the service life statistics, that PAWC service life statistics increase from one study to the next i.e., 2016 – 70-years to 2019 – 80 years. It can be anticipated that this increasing service life will continue as more mains and manholes are relined.

---

[10] Aqua Exhibit No. 1, Application Exhibit R at 6-7.

[11] OCA St. No. 1 at 35-38.

[12] Aqua St. No. 5-R at 6.

There is no evidence of record that Mr. Smith considered, or was even aware of, CIPP lining and its significance in the development of service lives within the Cost Approach to value. What is clear, however, is that Mr. Smith's criticism of Mr. Weinert's use of an 80-year service life for Gravity Collection Mains is not reasonable. As summarized by Mr. Weinert, Mr. Smith's proposed shortening of the service life of Gravity Collection Mains from 80 years to 65 years is an adjustment that is exactly "in the *wrong* direction."[13]

In further response to Mr. Smith, Mr. Weinert pointed out, once again, that a service life for Gravity Collection Mains in the range of 75 years to 80 years is supported by depreciation studies filed by Aqua and PAWC in their recent general rate proceedings.[14] The depreciation parameters determined in those depreciation studies were the result of analysis of historical survival and retirement experience over a wide span of years thus representing actual service life experience of wastewater plant.[15]

ii. Conclusion – AUS Cost Approach

Mr. Weinert's use of an 80-year service life for Gravity Collection Mains is reflective of new maintenance practices and consistent with recent depreciation studies of Aqua and PAWC. Mr. Smith's proposed reduction of the service life to 65 years is not. Mr. Smith's adjustment to the AUS Cost Approach to valuation should be rejected. The AUS Cost Approach to value is $51,414,555.

---

[13] Aqua St. No. 5-R at 6 (emphasis added).

[14] The three depreciation studies used in the AUS analysis included data dated back to the early 1900's in two cases and to the mid-1900's in the third case representing a span of time of over 100 years, which is well in excess of one lifecycle. In contrast, the West Virginia case cited by Mr. Smith dates back to only 1996, which is much less than one lifecycle and much less than what is necessary to have reliable statistical analysis of service life. Tr. 60.

[15] Aqua St. No. 5-R at 4-5.

b. Income Approach

i. Introduction

Section 1329 requires the UVEs to conduct a fair market value appraisal of the seller's system using the cost, market and income approaches to valuation. OCA witness Smith criticized the "terminal value" component of the Income Approaches of both Gannett and AUS. Rather than a present value determination of the terminal value, Mr. Smith proposes a terminal value using the amount of Net Plant less Accumulated Deferred Income Taxes ("ADIT").[16]

Mr. Smith's criticism of the Gannett and AUS terminal value has been presented in several Section 1329 proceedings and roundly rejected by the certified UVEs in each instance. The base failing of Mr. Smith's criticism is that it changes the present value analysis, essential to the Income Approach, to a hybrid analysis that incorporates part of a present value Income Approach with part of a future book value Cost Approach. As such, it is contrary to legislative intent and inconsistent with clear statutory language that requires a fair market value appraisal reflective of an Income Approach to valuation – not a hybrid Income Approach / Cost Approach to valuation.

The Commission rejected the proposed use of net plant as the terminal value in the Income Approach in the Cheltenham Section 1329 proceeding at Docket No. A-2019-3008491.[17] Mr. Smith candidly acknowledges that the Cheltenham proceeding, in fact, is one "specific Section 1329 acquisition case" where the Commission has rejected the use of net plant as the terminal value used in the Income Approach.[18] Mr. Smith makes no attempt to distinguish the present proceeding from the Cheltenham proceeding.

In his direct testimony, Mr. Smith testifies that the "income approach involves capitalizing

[16] OCA St. No. 1 at 33.

[17] Aqua St. No. 4-R at 7.

[18] OCA St. No. 1SR at 13.

and discounting a future income stream to a present value."[19] That being the case, it is simply wrong, and, indeed, inconsistent with his own testimony, for Mr. Smith to propose a terminal value based on something other than a present value analysis. The present value determinations of terminal value presented by Gannett and AUS in their respective Income Approaches are entirely consistent with the accepted definition of the Income Approach.

ii. The Gannett Income Approach

The Gannett Appraisal explains that the Income Approach theorizes that the value of a business is the future economic benefit that ownership will provide. Capitalizing or discounting a future income stream to a present value provides an indication of the value of a business. The capitalization or discount rate reflects future growth, business risk, economic factors, financial risk and industry risk of the assets.[20]

The two most common methods of the Income Approach are the capitalization of earning or cash flow method and the discounted cash flow method ("DCF"). The capitalization of earning method converts a single base economic income number to a value by dividing it by a capitalization rate. The DCF method uses estimates of future free cash flow and discounts them to arrive at a present value or price of the cash flows.[21] Gannett's Income Approach indicated a value of $53,741,785 for the Lower Makefield system.

Mr. Smith criticizes the manner of determining the "terminal value" used in the Gannett Income Approach (DCF model). Mr. Smith expresses concerns regarding the application of a capitalization rate concept to estimate terminal value. In lieu of a capitalization rate concept, Mr. Smith recommends use of net plant value as the terminal value in the Income Approach. The end-

[19] OCA St. No. 1 at 30.

[20] Aqua Exhibit No. 1, Application Exhibit Q at 27.

[21] Aqua Exhibit No. 1, Application Exhibit Q at 27-28.

result of Mr. Smith's adjustment to the "terminal value" in the DCF model is a downward, or negative, adjustment of $3,311,627 to the Gannett Income Approach to value.[22]

Mr. Smith's criticism of the Gannett terminal value should be denied. Gannett has applied a capitalization rate concept to estimate terminal value in *sixteen* Section 1329 proceedings and the Commission has not adjusted the concept in any one of those prior *sixteen* proceedings.[23] Judge Jones and the Commission, moreover, *rejected* the use of net plant value as the terminal value in the Cheltenham proceeding as set forth above.[24] Mr. Smith's proposal here, which is identical to the proposal rejected in Cheltenham, should again be rejected.[25]

Within the DCF model, the "terminal value" is simply a point in time in which the growth in annual Debt Free Net Cash Flows changes from multiple growth rates to a constant growth rate. Within the DCF analysis, the growth rate of annual Debt Free Net Cash Flows during time periods 1 through 24 (year 2022 through 2045) changes multiple times due to the various assumptions listed in the Gannet Appraisal. After time period 24 (year 2045), the growth in annual Debt Free Net Cash Flows is a constant growth rate. The "terminal value" is simply the present value of future Debt Free Net Cash Flows from time period 24 (year 2045) forward. Under the Income Approach, a terminal value can also be thought of as the future market value, or future sale price, of existing assets.[26] The Gannett terminal value at year 24 ranges from $55,984,235 to $63,887,294

---

[22] *See* Aqua St. No. 4-R at 2 and OCA St. No. 1 at 33. In his surrebuttal testimony, Mr. Smith increased his proposed adjustment to $4,024,687 to correct an oversight in preparing his Exhibit RCS-2. He suggests that this oversight occurred because Gannett had not identified an amount for Accumulated Deferred Income Taxes ("ADIT") in its valuation supporting details. OCA St. No. 1SR at 15. Mr. Smith's claimed oversight is addressed below.

[23] Aqua St. No. 4-R at 3.

[24] Aqua St. No. 4-R at 7.

[25] Mr. Smith's criticism of, and his proposed modification to the terminal value in the Gannett and AUS Income Approaches to value is also not in accord with the Commission's decision in *Limerick*. Following a lengthy discussion of the issue, the Commission in *Limerick* denied OCA Exceptions "convinced by Aqua's arguments in support of the 13-year model" used in the Gannett appraisal in that proceeding. *Application of Aqua Pennsylvania Wastewater, Inc. – Limerick Township,* Docket No. A-2017-2605434, slip opinion at 50.

[26] Aqua St. No. 4-R at 4.

from time period 24 (year 2045).[27]

Mr. Smith recommends using the $56.320 million net plant value from time period 24 (year 2045) as the terminal value. Mr. Smith's recommendation defeats or eliminates the need to appraise plant assets since the indicated value of net cost of the plant assets is simply the net cost of the plant assets under Mr. Smith's recommendation. If Mr. Smith were correct, then an original cost less depreciation analysis would be the only method needed to value assets. However, the value of the investment in plant and equipment for the Lower Makefield wastewater system assets is being determined in this proceeding based upon a standard of value of fair market value, not a standard of value of original cost.[28]

Mr. Smith's criticism of, and his proposed adjustment to, the Gannett Income Approach is not in accordance with valuation practice. The use of a "terminal value" in the DCF model is a mathematical shortcut to avoid having to show and/or calculate annual Debt Free Net Cash Flows for hundreds of time periods, or hundreds of years, and is practical and is in accordance with accepted valuation practice. Conversely, Mr. Smith's proposed alternative of using net plant value from time period 24 (year 2045) as the terminal value is not in accordance with accepted valuation practice and is not reasonable.[29]

Mr. Walker provided an evidentiary analysis demonstrating that "net plant value" is not a good measure or proxy for future market value. The Gannet Appraisal lists the current market multiples applicable to the corresponding financial and operating statistics of the Lower Makefield system.[30] These market multiples and the corresponding financial and operating statistics of the

[27] Aqua Exhibit No. 1, Application Exhibit Q, Exhibit 15, page 6.

[28] Aqua St. No. 4-R at 4-5.

[29] Aqua St. No. 4-R at 5; *see also* Tr. 40.

[30] Aqua Exhibit 1, Application Exhibit Q, Exhibit 17, page 1 of 3.

Lower Makefield wastewater system that were utilized by Mr. Smith are presented in "Table 1" at page 6 of Aqua Statement No. 4-R.[31]

As shown in "Table 1" of Aqua Statement No. 4-R, the indicated future market value in period 24 (year 2045) applicable to each metric range from $81.664 million to $169.716 million, and collectively proves net plant value (i.e., $56.320 million) is not a good measure or proxy of the future market value, or sales price, of existing assets since the indicated future market value is about 194% higher than Mr. Smith's recommendation of $56.320 million (year 2045).[32] Mr. Smith's "terminal value" criticism, accordingly, should be rejected.

Mr. Smith made other assertions that Mr. Walker reviewed and countered. First, in the context presented in Mr. Smith's testimony, Mr. Walker disagreed with Mr. Smith's assertion that a "regulated utility's net cash flow is a direct function of its plant in service." The value of the investment in plant and equipment for the Lower Makefield wastewater system assets is being determined in these proceedings. The appraised value estimated by AUS and Gannett is $54.4 million and $55.5 million, respectively (OCA Exhibit RCS-1). The purchase price negotiated by Aqua and the Township is $53.0 million (OCA Exhibit RCS-1); all of which are considerably higher than the present value of terminal value of net cost of the plant and equipment of $28.1 million to $10.0 million used by Mr. Smith (OCA Exhibit RCS-1, pages 2 and 3, respectively).[33]

Second, Mr. Smith is incorrect when he states that under the UVE assumptions and modeling techniques, the Lower Makefield wastewater utility is depreciating and using up its existing plant faster, and to a higher degree, than it is making investments to replace that plant. To the contrary, over the course of the 24-year DCF model the depreciation expense totals $48.251

[31] Aqua St. No. 4-R at 6.

[32] Aqua St. No. 4-R at 6-7.

[33] Aqua St. No. 4-R at 7.

million and the capital expenditures total $53.979 million (OCA Exhibit RCS-3, pages 2 and 3). In the 24th year (2045) the depreciation expense is $2.357 million and the capital expenditures are $2.321 million, a difference of less than 2%. With a net plant balance of $56.320 million (year 2045) and the small $0.036 million ($2.357 - $2.321) difference between depreciation expense and the capital expenditures, it would take 1,564 years to use up existing plant ($56.320 ÷ $0.036 = 1,564).[34]

Third, Mr. Smith, in his direct testimony, did not recalculate the valuation of the terminal value using the amount of net plant less accumulated deferred income taxes ("ADIT") remaining at the end of year 24 on Exhibit RCS-2 regarding Gannett Fleming's terminal value. He acknowledged that he did not do so in his surrebuttal testimony and then presented a revised terminal value net of ADIT. He claimed that his failure to reflect his ADIT adjustment in his initial presentation was an "oversight" and suggested that it occurred because Gannett had not identified an ADIT amount in its valuation support details.[35] Gannett was not the cause of Mr. Smith's oversight. Mr. Walker was clear in rejoinder that Mr. Smith would have had no reason to think that Gannett had subtracted ADIT or utilized deferred income taxes in his Income Approach. Mr. Smith's "oversight" was his doing and not the result of Gannet supporting details.[36]

Mr. Walker further addressed Mr. Smith's use of net plant as the terminal value in the Income Approach in his oral rejoinder testimony in response to Mr. Smith's surrebuttal testimony. He had four observational criticisms. First, as pointed out above, the use of original cost net plant as the terminal value is incorrect. Second, Mr. Smith used an incorrect present value factor of 7.61% to analyze and attempt to refute the Gannett analysis. Gannett used a present value factor

[34] Aqua St. No. 4-R at 8.

[35] OCA St. No. 1SR at 15.

[36] Tr. 43-44.

7.14%. Third, Mr. Smith used a hypothetical value for ADIT in his analysis, which is, simply, wrong. The ratio of ADIT to net plant is never the same for two companies or two Income Approaches. Fourth, Mr. Smith failed to include in his analysis the cash flows from the deferred taxes that created the ADIT. Including these positive cash flows in the analysis more than offset the negative effect of ADIT.[37]

Mr. Smith's criticisms of the Gannett Income Approach to value should be rejected.

iii. The AUS Income Approach

The AUS Fair Market Value Appraisal explains that the theory behind the income approach is that the value of a business is based on its economic returns. Capitalizing or discounting a future income stream to a present value provides an indication of the value of a business. The capitalization or discount rate reflects future growth, business risk, economic factors, financial risk and industry risk of the assets.[38] The AUS Income Approach indicated a value of $57,872,959 for the Lower Makefield system.

Similar to his proposed adjustment to the terminal value in the Gannett Income Approach, Mr. Smith proposed an adjustment to the terminal value in the AUS Income Approach based on the use of net plant as the terminal value. In support of his adjustment, Mr. Smith refers to the discussion of his adjustment to the terminal value in the Gannett Income Approach.[39] The end-result of Mr. Smith's adjustment is a downward, or negative, adjustment of $9.41 million to the AUS Income Approach to value.[40]

---

37 Tr. 42-47.

38 Aqua Exhibit No. 1, Application Exhibit Q at 33.

39 OCA St. No 1 at 38.

40 OCA St. No. 1 at 38.

Mr. Smith's proposed use of net plant as the terminal value in the AUS Income Approach to value should be denied and rejected for the same reasons set forth above in the discussion of Mr. Smith's proposed use of net plant as the terminal value in the Gannett Income Approach to value.

Mr. Weinert explained further why Mr. Smith's proposed use of net plant as the terminal value is not reasonable. Mr. Weinert pointed out that Mr. Smith's analysis replicates AUS' DCF analysis *with the exception of period 20 and beyond* for which he substituted a net book value adjusted for ADIT. Mr. Smith's analysis is incorrect in several ways:[41]

1. It eliminates the benefits to the owner and customers of operating the property efficiently.

2. It ignores that fact that the Lower Makefield property will continue to remain in service to the benefit of the owner and customers for many years past period 19 of the DCF analysis, which the capitalization of the operation's cashflows related to periods 20 and beyond is intended to represent.

3. It also ignores the fact that, during the forecast of future periods cashflows, each of those period's capital expenditures are reflected and during the forecast periods those capital expenditures amount to $7.6 million. These capital expenditures reflect plant renewal which will allow the Lower Makefield property to continue to provide service for the Lower Makefield customers, and as result will provide economic benefit to the property's owner which is the fundamental premise of the Income Approach in appraisal determination. As stated in the AUS appraisal, "The income approach to value establishes the value of the property based on its economic returns."

In the table presented in his rebuttal testimony, Mr. Weinert demonstrated that, if the AUS DCF forecast period is increased from 20 periods to 60 periods, the impact of ADIT declines from $4,871,174 to $948,406 with a corresponding present worth of cash flows being $57,809,909 (using Mr. Smith's methodology) in comparison to AUS' original Income Approach indicated value of $57,872,959. Clearly, Mr. Smith's adjustment of AUS' Income Approach to value by a negative $9.41 million to $48,462,957 does not capture or quantify the entirety of the economic

[41] Aqua St. No. 5-R at 9.

returns of Lower Makefield.[42]

c. Market Approach

Mr. Smith did not recommend any adjustments to the Gannett Market Approach to value.[43] Mr. Smith, however, did propose an adjustment to the AUS Market Approach to value. Specifically, he testified that the DELCORA acquisition be removed from AUS' comparison group.[44] The adjustment has no impact on AUS' Market Approach to value of $55,741,000.[45]

Mr. Weinert explained that, although the DELCORA acquisition has not been finalized, it is not necessary to exclude the Aqua-DELCORA wastewater acquisition as a comparable, as the purchase price used in the AUS Consultants Market Approach is a comparison of the purchase price as detailed in the initial asset purchase agreement to the various comparability measures, i.e., original cost less depreciation, replacement cost less depreciation, customers, and cash flows (EBITDA).[46] Since the comparison used is of a purchase price in the original asset purchase agreement, Mr. Smith's criticism of the AUS Market Approach and proposed removal of the Aqua-DELCORA transaction from the AUS comparables should be rejected.

5. Conclusion – Section 1329 Fair Market Valuation

The ratemaking rate base of the Lower Makefield wastewater system, determined pursuant to Section 1329(c)(2), is $53,000,000, being the lesser of the negotiated purchase price of $53,000,000 and the average of the UVE appraisals of $54,967,796. The OCA's criticisms of the appraisals should be rejected and given no weight.

---

[42] Aqua St. No. 5-R at 10-11 and Tr. 71-72.

[43] OCA St. No. 1 at 34.

[44] OCA St. No. 1 at 38-39.

[45] OCA St. No. 1 at 38-39.

[46] Aqua St. No. 5-R at 11-12.

B. Income Tax Savings on Repairs Deductions

OCA witness Smith recommends as a condition for approval of the Application that, from closing to the first base rate case that includes the Lower Makefield system, Aqua should record the income tax effect of repairs deductions in a regulatory liability account, which will be addressed in Aqua's first rate case that includes the Lower Makefield system. Mr. Smith contends that repairs deductions, if any, will be related to Aqua's ownership of the Lower Makefield system and could help offset rate increases Aqua projected.

Mr. Smith's attempt to single out one component of the cost of service for deferred accounting is unreasonable and inappropriate. The Lower Makefield system has a deficiency in revenue requirement at its existing rates. Given that it will be a few years before the system is presented in a base rate case, the deficiency in revenue requirement will be borne by the Company as regulatory lag without deferral. If the Company is able to yield any tax repair benefit, while unlikely and small in benefit, it would serve as an offset to this deficiency during the time before the rate case that includes the Township system.[47] When the Company does present itself before the Commission in a base rate case, any repair benefits will accrue to customers at that time and going forward.

Additionally, Internal Revenue Service regulations dictate that in order to claim repairs deductions on assets the wear and tear on those assets must have occurred during the taxpayer's use of the assets. The wear and tear on the system assets to date has been under the ownership of Lower Makefield, not Aqua. It is unlikely that any meaningful repair benefit would be realized on a recently acquired acquisition.

[47] Aqua St. No. 1-R at 10.

Mr. Smith's proposed condition and creation of a regulatory liability account should be denied.

VI. CONCLUSION

The Public Utility Commission should approve the Application of Aqua Pennsylvania Wastewater, Inc. as presented in the Joint Petition of Aqua, Lower Makefield, I&E, OCA and OSBA for Approval of Partial Settlement and as part of the Order approving the Joint Petition:

a. Include a determination that the ratemaking rate base of the Lower Makefield Township system is $53,000,000 pursuant to Section 1329(c)(2); and

b. Deny and reject the proposed accumulation of the income tax effect of repairs deductions in a regulatory liability account as a condition for approval of the transaction.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By ______________________

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com
Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: October 8, 2021

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.

SECTION 1329 CONSIDERATIONS

Ratemaking Rate Base

6. Aqua and Lower Makefield have agreed to use the process presented in Section 1329 of the Code to determine the fair market value of the wastewater system assets and the ratemaking rate base. Aqua Exhibit No. 1, Application ¶ 53.

7. Aqua and Lower Makefield agreed on a Licensed Engineer to complete the

Assessment of Tangible Property and engaged UVEs to perform Fair Market Value analyses of the system in accordance with USPAP, utilizing the cost, market, and income approaches. Aqua St. No. 1 at 20; *see also* Aqua Exhibit No. 1, Application ¶ 11 and Application Exhibit D.

8. Aqua engaged the services of Gannett. Lower Makefield engaged the services of AUS. Both firms were pre-certified as authorized UVEs and are on the list of qualified appraisers maintained by the Commission. Aqua St. No. 1 at 20 and Aqua Exhibit No. 1, Application ¶ 53.

9. As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett and AUS were attached as Exhibit Q and Exhibit R, respectively, to the Application. Aqua Exhibit No. 1, Application ¶ 54, Application Exhibit Q and Application Exhibit R.

10. As required by Section 1329(d)(1)(ii), the purchase price agreed to by Aqua and Lower Makefield was identified as $53,000,000. Aqua Exhibit No. 1, Application ¶ 55.

11. As required by Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is $53,000,000, being the lesser of the negotiated purchase price of $53,000,000 and the average of the fair market value appraisals which is $54,967,796 – determined by $55,505,000 presented in the Gannett appraisal and $54,430,591 presented in the AUS appraisal. Aqua Exhibit No. 1, Application ¶ 56; s*ee also* Aqua St. No. 1 at 20-21.

12. Statements of Gannett and of AUS verifying that they have no affiliation with Aqua or Lower Makefield as specified in Section 1329 and that their Appraisals determined fair market value in compliance with the most recent edition of USPAP, employing the cost, market and income approaches and that they complied with applicable jurisdictional exceptions were attached to the Application as Exhibit T1 and Exhibit T2, respectively. Aqua Exhibit No. 1, Application ¶ 61, Application Exhibit T1 and Application Exhibit T2.

13. Aqua's contract with Gannett to undertake its Fair Market Value Appraisal was

included as Exhibit S1 to the Application. Aqua St. No. 1 at 21. Lower Makefield's contract with AUS to undertake its Fair Market Value Appraisal was included as Exhibit S2 to Application. Aqua St. No. 1 at 21.

REGULATORY LIABILITY ACCOUNT FOR ACCUMULATING INCOME TAX EFFECT OF REPAIRS DEDUCTIONS

14. The Lower Makefield system has a deficiency in revenue requirement at its existing rates. Aqua St. No. 1-R at 10.

15. Given that it will be a few years before the system is presented in a base rate case, the deficiency in revenue requirement will be borne by the Company as regulatory lag. Aqua St. No. 1-R at 10.

16. Any tax repair benefit would serve as an offset to this deficiency. Aqua St. No. 1-R at 10.

17. It is not appropriate to single out the accumulating tax effect of repair deductions as one component of the cost of service of the Lower Makefield system and impose deferred accounting for it. Aqua St. No. 1-R at 10.

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. As the proponent of a proposed rule or order, an applicant has the burden of proof. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

3. The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery*, *supra*. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. *Id.*

4. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

5. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

Section 1329 and Ratemaking Rate Base

6. Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329, addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities.

7. In regard to the ratemaking rate base, the General Assembly directed as follows for acquisitions proceeding under Section 1329:

> **(c) Ratemaking rate base. –** The following apply:
>
> (2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

8. Section 1329(g) defines "fair market value" as "[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2)."

9. Gannett's fair market value appraisal is $55,505,000. AUS' fair market value appraisal is $54,430,591. The average of the two is $54,967,796. The ratemaking rate base determined pursuant to Section 1329(c)(2) is $53,000,000, being the lesser of the negotiated purchase price of $53,000,000 and the average of $54,967,796.

<u>Regulatory Liability Account for Accumulating Income Tax Effect of Repairs Deductions</u>

10. It is inappropriate to single out the income tax effect of repairs deductions as one component of the Lower Makefield cost of service and impose deferred accounting for it.

11. The OCA's proposed creation of a regulatory liability account for accumulating income tax effect of repairs deductions is denied.

PROPOSED ORDERING PARAGRAPHS

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That, pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, the ratemaking rate base of the Lower Makefield wastewater system assets is $53,000,000.

2. That the proposed accumulation of the income tax effect of repairs deductions in a regulatory liability account as a condition for approval of the transaction is denied.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

The Honorable Jeffrey A. Watson, Presiding

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	:	**Docket No. A-2021-3024267**

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of October, 2021, served a true and correct copy of the foregoing Main Brief of Aqua Pennsylvania Wastewater, Inc. upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

The Honorable Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
jeffwatson@pa.gov

Erika L. McLain, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
ermclain@pa.gov

Counsel for the Bureau of Investigation and Enforcement

Erin L. Gannon
Senior Assistant Consumer Advocate
Harrison W. Breitman
Assistant Consumer Advocate
Office of Consumer Advocate
EGannon@paoca.org
HBreitman@paoca.org

Counsel for the Office of Consumer Advocate

Erin K. Fure
Assistant Small Business Advocate
Office of Small Business Advocate
efure@pa.gov

Counsel for the Office of Small Business Advocate

Thomas S. Wyatt, Esquire
Matthew S. Olesh, Esquire
Sydney N. Melillo, Esquire
Obermayer, Rebmann, Maxwell & Hippel, LLP
Thomas.Wyatt@obermayer.com
Matthew.Olesh@obermayer.com
Sydney.Melillo@obermayer.com

Counsel for Lower Makefield Township

Barry Summers
BLSummers5@verizon.net

Kevin and Beth Cauley
artage2000@aolcom
jcauley679@aol.com

Peter A. Lachance
peter@LMTconstable.com

Jaan Pesti
jaansu@gmail.com

John C. Char
jack.char1@verizon.net

Keisha Jackson-Spence
chadabby28@yahoo.com

Thomas T. Niesen, Esquire
PA Attorney ID No. 31379