



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

October 19, 2021

**Via Electronic Filing**

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

Re: Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 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  
**I&E Pre-Served Testimony, Exhibit, and Verification Statements**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the following **Pre-Served Testimony, Exhibit, and Verification Statements** of the Bureau of Investigation & Enforcement's (I&E) witnesses that were admitted into the record at the evidentiary hearing held on September 29, 2021:

D. C. Patel: I&E Statement No. 1  
I&E Exhibit No. 1  
I&E Statement No. 1-SR  
Verification Statement

Ethan H. Cline: I&E Statement No. 2  
Verification Statement

Copies of this letter are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Erika L. McLain  
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ELM/ac  
Enclosure

cc: Honorable Jeffrey A. Watson (*Cover Letter and Certificate of Service only - via email*)  
Nick Miskanic, Legal Assistant (*Cover Letter and Certificate of Service only - via email*)  
Per Certificate of Service (*Cover Letter and Certificate of Service only - via email*)

**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 :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Letter Regarding Pre-Served Testimony, Exhibit, and Verification Statements** dated October 19, 2021, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

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**I&E Statement No. 1  
Witness: D.C. Patel**

**Application of Aqua Pennsylvania Wastewater, Inc.  
for Acquisition of the Wastewater Collection and Conveyance System Assets  
of Lower Makefield Township**

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

**Direct Testimony**

**of**

**D. C. Patel**

**Bureau of Investigation & Enforcement**

**Concerning:**

**Summary of 66 Pa. C.S. § 1102 and 66 Pa. C.S. § 1329  
Engineer's Assessment Study  
Easements and Other Property Rights**

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1 **INTRODUCTION OF WITNESS**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is D. C. Patel and my business address is Pennsylvania Public Utility  
4 Commission, Commonwealth Keystone Building, 400 North Street, Harrisburg,  
5 PA 17120.

6

7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by the Pennsylvania Public Utility Commission (Commission) in  
9 the Bureau of Investigation & Enforcement (I&E) as a Fixed Utility Financial  
10 Analyst.

11

12 **Q. WHAT IS YOUR EDUCATIONAL AND EMPLOYMENT  
13 BACKGROUND?**

14 A. My educational and professional background is set forth in the attached  
15 Appendix A.

16

17 **Q. PLEASE DESCRIBE THE ROLE OF I&E IN THIS PROCEEDING.**

18 A. I&E is responsible for protecting the public interest in proceedings before the  
19 Commission. The I&E analysis and testimony in this proceeding is based on its  
20 responsibility to represent the public interest. This responsibility refers to  
21 balancing the interests of ratepayers, the regulated utility, and the regulated  
22 community.

1 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?**

2 A. The purpose of my direct testimony is to address issues relating to the application  
3 of Aqua Pennsylvania Wastewater, Inc. (Aqua) for approval of the acquisition of  
4 the wastewater collection and conveyance system (Wastewater system) assets of  
5 Lower Makefield Township (LMT) in Bucks County, Pennsylvania. Specifically,  
6 I am addressing the engineer's assessment of LMT's wastewater system assets,  
7 and easements and other property rights.

8  
9 **Q. DOES YOUR DIRECT TESTIMONY INCLUDE AN EXHIBIT?**

10 A. Yes. I&E Exhibit No. 1 contains schedules that support my direct testimony.

11

12 **Q. WHAT IS AQUA REQUESTING IN THIS APPLICATION?**

13 A. First, under 66 Pa. C.S. §§ 1102 and 1329, Aqua is requesting approval to acquire  
14 LMT's wastewater system assets and the right to begin furnishing wastewater  
15 service in the areas currently served by LMT (Aqua Application, p. 2). Second,  
16 under 66 Pa. C.S. § 1329 (Section 1329), inter-alia Aqua is seeking to utilize the  
17 fair market value to establish the ratemaking rate base of \$53,000,000 for LMT's  
18 wastewater system assets based on the negotiated purchase price (Aqua  
19 Application, p. 5). Finally, under 66 Pa. C.S. § 507, Aqua is seeking approval for  
20 (a) the Asset Purchase Agreement dated September 17, 2020 entered between  
21 Aqua and LMT, and (b) the assignment of eighteen sewage conveyance and/or  
22 treatment agreements (including addendums to the agreements) entered among

1 LMT and other Township, Borough, and County municipal authorities (Aqua  
2 Application, p. 3 and pp. 20-21).

3  
4 **SUMMARY OF 66 PA. C.S. § 1329 AND 66 PA. C.S. § 1102**

5 **Q. WHAT TYPE OF FAIR MARKET VALUATION DOES SECTION 1329**  
6 **ALLOW?**

7 A. Section 1329 allows consideration of the fair market valuation of two independent  
8 utility valuation experts (UVEs) in the acquisition of water and wastewater  
9 systems owned by a municipal corporation or authority. One UVE is selected by  
10 the buyer and the other is selected by the seller. Each valuation must be made in  
11 compliance with the Uniform Standards of Professional Appraisal Practice  
12 (USPAP), employing the cost, market, and income approaches. Further, Section  
13 1329 states that the ratemaking rate base of the selling utility shall be the lesser of  
14 the negotiated purchase price or the fair market value of the selling utility.

15  
16 **Q. HOW ARE FAIR MARKET VALUATIONS INCORPORATED INTO A**  
17 **SECTION 1102 APPLICATION?**

18 A. The results of the UVEs' analyses are incorporated into the Section 1102  
19 application for a certificate of public convenience to be submitted to the  
20 Commission for approval.<sup>1</sup>

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<sup>1</sup> [http://www.puc.pa.gov/filing\\_resources/issues\\_laws\\_regulations/section1329\\_applications.aspx](http://www.puc.pa.gov/filing_resources/issues_laws_regulations/section1329_applications.aspx), (accessed on September 1, 2021).

1 **ENGINEER’S ASSESSMENT**

2 **Q. WHAT PROVISION OF SECTION 1329= ESTABLISHES THE FAIR**  
3 **MARKET VALUE OF A SELLING UTILITY?**

4 A. Section 1329(a) prescribes a procedure to be applied to determine the fair market  
5 value (appraisal) of the selling utility. As a part of this procedure, Section  
6 1329(a)(4) provides that,

7 The acquiring public utility or entity and selling utility shall  
8 engage the services of the same licensed engineer to conduct  
9 *an assessment of the tangible assets of the selling utility*. The  
10 assessment shall be incorporated into the appraisal under the  
11 cost approach required under paragraph (3).  
12

13 **Q. DID AQUA SUBMIT AN ENGINEER’S ASSESSMENT STUDY**  
14 **TO SUPPORT THE FAIR MARKET VALUE APPRAISALS IN ITS**  
15 **APPLICATION?**

16 A. Yes. Aqua’s application included an engineer’s assessment study/report (dated  
17 February 22, 2021 and revised on March 22, 2021) performed by Ebert  
18 Engineering, Inc. (Ebert) (Aqua filing, Exhibit D).  
19

20 **Q. HAVE YOU EXAMINED THE ENGINEER’S ASSESSMENT STUDY**  
21 **AS PART OF YOUR REVIEW IN THIS PROCEEDING?**

22 A. Yes.

1 **Q. BRIEFLY DESCRIBE THE CONTENTS OF THE ENGINEER'S**  
2 **ASSESSMENT STUDY.**

3 A. The engineer's assessment study/report includes an executive summary,  
4 methodology of study, system description, and the historical growth of wastewater  
5 system. Primarily, the study provides a list of the original cost of wastewater  
6 system assets in service as of March 22, 2021 by NARUC account with dollar  
7 amounts and development projects' status.

8  
9 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE ENGINEER'S**  
10 **ASSESSMENT STUDY?**

11 A. Yes. The engineer's assessment study performed by Frederick E. Ebert, (P. E.)  
12 did not include any comments about the visible condition, functionality, or  
13 usefulness, non-functional or idle, broken/damaged, improvements, and the overall  
14 status of the wastewater system assets.

15 In response to I&E-II-22, Aqua stated that per the Commission's Final  
16 Implementation Order of Section 1329 (entered on October 27, 2016, p. 10), an  
17 engineering assessment under Section 1329 is not required to include comments  
18 about the condition and functionality of system assets (I&E Exhibit No. 1,  
19 Schedule 1, p. 1).

20  
21 **Q. PLEASE CONTINUE.**

22 A. Gannett Fleming Valuation and Rate Consultants LLC (Gannett Fleming) an

1 appraiser appointed by Aqua notes in its Fair Market Value Appraisal that it relied  
2 on the engineering assessment of the wastewater system's facilities report and  
3 related files prepared by Ebert Engineering, Inc., to *confirm the condition of the*  
4 *wastewater system's property and equipment* (Aqua filing, Exhibit Q, p. 3 and p.  
5 23). However, as discussed above, Ebert's engineering assessment study does not  
6 include any comments about the condition or functionality of the system's assets.

7 I&E in its interrogatory (I&E-II-5) requested AUS Consultants (AUS) (an  
8 appraiser appointed by LMT) for identification and values considered in the  
9 valuation approach for the inefficient or broken system assets (requiring major  
10 repairs or replacement cost), and non-functional assets. In response, AUS states  
11 that the depreciation determination in the age-life depreciation reflects the  
12 deficiencies in the cost approach determination of original cost less depreciation  
13 (OCLD) and replacement cost less depreciation (CORLD) (I&E Exhibit No. 1,  
14 Schedule 1, p. 2). It appears from this response that AUS may not have  
15 considered or factored asset values for broken or non-functional assets in its  
16 valuation approach due to missing comments/information about the condition and  
17 functionality of the wastewater system assets in Ebert's engineering assessment  
18 study.

19  
20 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THE**  
21 **ENGINEER'S ASSESSMENT STUDY?**

22 A. I recommend that the Commission direct Aqua to present a detailed Engineer's

1 Assessment Study containing the seller's utility assets description with condition,  
2 functionality, and improvements required with the acquisition application under  
3 Section 1329 on a going-forward basis.  
4

5 **Q. WHY DO YOU BELIEVE THAT THE MISSING INFORMATION ABOUT**  
6 **THE CONDITION AND FUNCTIONALITY OF THE WASTEWATER**  
7 **SYSTEM ASSETS IN THE ENGINEER'S ASSESSMENT STUDY IS AN**  
8 **IMPORTANT BASIS FOR SUPPORTING THE DETERMINATION OF**  
9 **FAIR MARKET VALUE UNDER THE COST APPROACH METHOD?**

10 A. There are four reasons why I believe the engineer's assessment should designate  
11 the condition and functionality of the system. First, the UVEs rely on the list of  
12 assets and original cost of the seller's utility in performing the cost approach  
13 analysis because UVE's are neither appointed/designated as engineering experts  
14 nor are they expected to perform an engineering assessment of the system assets.  
15 Second, the assessment of current condition, functionality, and the recent  
16 improvements/upgrades of the system assets are important drivers for UVEs in  
17 determining the assets' usefulness and expected service lives in the cost approach  
18 analysis. Third, missing information about the abnormality or adversity in the  
19 assets' conditions frustrate the test of used and usefulness of the system assets in  
20 providing the wastewater service (by the buyer utility). This missing information  
21 about the system's assets could impact the true and correct fair market value  
22 determination under the cost approach. It is important that both UVEs operate

1 under the same set of facts. Without such designation from the engineer's  
2 assessment, it cannot be assumed that both UVEs are valuing the system according  
3 to the same conditions, which can impact the valuations.

4 Lastly, it is equally important to note that the intent and purpose of Section  
5 1329(a)(4) is that the licensed engineer conducts an *assessment of the tangible*  
6 *assets* and not just compiles and provides an inventory list of assets (with original  
7 costs) to be transferred. I reiterate that the engineer's assessment of the tangible  
8 assets' conditions would aid the UVEs in performing an appraisal analysis and in  
9 determining the information-based conclusion of fair value.

10  
11 **Q. DID I&E RAISE CONCERNS REGARDING MISSING INFORMATION**  
12 **OR COMMENTS ABOUT THE CONDITION OF SYSTEM ASSETS IN**  
13 **THE ENGINEER'S ASSESSMENT STUDY PRESENTED IN ANY OTHER**  
14 **RECENT 1329 ACQUISITION PROCEEDINGS?**

15 A. Yes. I&E raised concern about the engineer's assessment study in the settlement  
16 negotiation/agreement of Pennsylvania American Water Company's (PAWC)  
17 Section 1329 application for the acquisition of Upper Pottsgrove Township's  
18 (UPT) wastewater system assets (at Docket No. A-2020-3021460). In this  
19 proceeding, the engineer's assessment study did not include any comments about  
20 the condition and functionality or usefulness of UPT's wastewater system assets.  
21 The Administrative Law Judge (ALJ) agreed with I&E's contention contained in

1 the settlement agreement and in his recommended decision (RD)<sup>2</sup> directed PAWC  
2 to ensure that, in any future Section 1329 applications PAWC submits, the  
3 engineering assessment required under 66 Pa. C.S. § 1329(a)(4) will designate the  
4 condition of the inventory and assets appraised. Such designation of condition  
5 shall be limited to whether the categories of system assets appraised are in poor,  
6 fair, good, or very good condition.

7  
8 **Q. DID YOU REVIEW ANY OTHER ENGINEER ASSESSMENT STUDIES**  
9 **THAT INCLUDED AN ASSESSMENT OF CONDITION IN OTHER**  
10 **ACQUISITION PROCEEDINGS UNDER SECTION 1329?**

11 A. Yes. In my recent review of PAWC's Section 1329 acquisition applications for  
12 Royersford Borough - Wastewater System (at Docket No. A-2020-3019634),  
13 Valley Township - Water System (at Docket No. A-2020-3019859), and Valley  
14 Township - Wastewater System (at Docket No. A-2020-3020178), the Engineer's  
15 Assessment Studies issued by Pennoni Associates, Inc. did include a brief  
16 description and assessment about the condition of system assets under acquisition.

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<sup>2</sup> Administrative Law Judge recommended decision in PAWC Section 1329 application at Docket No. A-2020-3021460 (RD issued on July 30, 2021, p. 117).

1 **EASEMENTS AND OTHER PROPERTY RIGHTS**

2 **Q. AS A PART OF AQUA’S APPLICATION, DID AQUA INDICATE THAT**  
3 **IT IDENTIFIED ALL REAL ESTATE, INCLUDING EASEMENT**  
4 **RIGHTS, ACCESS TO PUBLIC RIGHTS-OF-WAY, AND LIENS THAT**  
5 **MUST BE TRANSFERRED TO AQUA TO FACILITATE AQUA’S**  
6 **OPERATION OF LMT’S WASTEWATER SYSTEM?**

7 A. No. In response to I&E-II-23, Aqua referenced Standard Data Request No. 9  
8 (Aqua filing, Exhibit Z), which indicates that Aqua is not presently aware of any  
9 needed leases, easements, or access to public rights-of-way that will not be  
10 transferred at closing. The mapping of easements and rights-of-way from the  
11 Township’s Abstractor’s report is not yet complete (I&E Exhibit No. 1,  
12 Schedule 2, p. 1). Additionally, in response to I&E-III-1, Aqua states that LMT’s  
13 abstractor, Action Title Search, began title work on March 15, 2021, and is  
14 compiling a list of easements including all other property rights and the complete  
15 report is expected in the next few months. Aqua further states that while the list is  
16 being compiled by the abstractor, there are easements that still need to be  
17 obtained; however, at this time there are no known easements that will not be  
18 transferred at closing (I&E Exhibit No. 1, Schedule 2, pp. 2-3).

19  
20 **Q. WHAT IS YOUR CONCERN ABOUT MISSING EASEMENTS AS**  
21 **DISCUSSED ABOVE?**

22 A. In the absence of the abstractor’s search report that will identify the missing

1 easements and other property rights, the UVEs' presumptive valuation of LMT's  
2 system being conveyed with all land rights necessary to operate the system,  
3 including easement rights, is likely flawed or inaccurate. This is true because  
4 unless LMT conveys all necessary easements and access to public rights-of-way to  
5 Aqua at closing, the UVEs' appraisals, which assume that all necessary property  
6 rights will be transferred to Aqua, will be factually inaccurate and invalid.

7  
8 **Q. DO YOU HAVE ANY RECOMMENDATION FOR EASEMENTS AND**  
9 **OTHER PROPERTY RIGHTS?**

10 A. Yes.

11  
12 **Q. WHAT IS YOUR RECOMMENDATION?**

13 A. I recommend that the Commission condition the approval of Aqua's Application  
14 that the closing of the transaction not be permitted to occur unless and until LMT  
15 has (1) identified all missing easements including rights-of-way and other property  
16 rights; (2) taken any and all necessary actions to obtain the missing easements and  
17 other property rights so that they may be conveyed to Aqua at closing; and  
18 (3) borne all costs and expenses for obtaining and conveying the missing  
19 easements and other property rights so that Aqua's ratepayers are not burdened  
20 with those costs and expenses.

21 Additionally, I recommend that the Commission condition the approval of  
22 Aqua's Application that for circumstances beyond LMT's control where it is

1 unable to transfer all missing easements including rights-of-way and other  
2 property rights before or at the closing of the transaction, Aqua and LMT may at  
3 their discretion close the transaction without the transfer of missing easements and  
4 other property rights, provided that an escrow account be established of an  
5 appropriate dollar amount from the purchase price to be used to obtain any post-  
6 closing transfers of the easements and other real property rights.

7  
8 **Q. WHAT IS THE BASIS OF YOUR RECOMMENDATION?**

9 A. Adopting the above condition is necessary to ensure that the UVEs' assumption  
10 that all necessary land rights would be conveyed to Aqua at closing is accurate. I  
11 note that Section 6.05 of the Asset Purchase Agreement (Aqua filing, Exhibit B,  
12 pp. 26-27) provides a process for identification and conveyance of property  
13 easements and other property rights. However, in Section 6.06 (Unscheduled Real  
14 Property) of the Asset Purchase Agreement (Aqua filing, Exhibit B, pp. 27-28),  
15 Aqua and LMT have acknowledged that LMT may own interests in or have the  
16 legal right to use or occupy the real property and easements that are necessary or  
17 essential to the operation of the wastewater system and that are not specifically  
18 identified in Schedule 4.09 of the Asset Purchase Agreement. Therefore, it is very  
19 important and essential that the Commission adopt the condition I recommend  
20 herein to ensure that ratepayers are protected from the uncertainty and the costs of  
21 acquiring the missing easements and other property rights necessary for Aqua's  
22 operation of LMT's wastewater system.

1 **OVERALL RECOMMENDATION**

2 **Q. WHAT IS YOUR OVERALL RECOMMENDATION?**

3 A. I recommend that if the Commission approves Aqua’s Application, that it do so  
4 contingent on the conditions identified by I&E witness Ethan Cline in I&E Statement  
5 No. 2 and on the conditions I have discussed above. I have summarized my  
6 recommended conditions as follows:

- 7 • The Commission should require Aqua to present a detailed Engineer’s  
8 Assessment Study containing the seller’s utility asset descriptions with  
9 condition, functionality, and improvements required with the acquisition  
10 applications under Section 1329 on a going-forward basis.
- 11 • The Commission should require LMT to (1) identify all missing easements  
12 including rights-of-way and other property rights; (2) take any and all  
13 necessary actions to obtain the missing easements and other property rights so  
14 they may be conveyed to Aqua at closing; and (3) bear all costs and expenses  
15 for obtaining and conveying the missing easements and other property rights so  
16 that Aqua’s ratepayers are not burdened with those costs and expenses.

17 Additionally, the Commission should condition the approval of Aqua’s  
18 Application that in circumstances beyond LMT’s control where it is unable to  
19 transfer all missing easements including rights of way and other property rights  
20 before or at the closing of the transaction, Aqua and LMT may at their  
21 discretion close the transaction without the transfer of all missing easements  
22 and other property rights, provided that an escrow account be established of an

1            appropriate dollar amount from the purchase price to be used to obtain any  
2            post-closing transfers of easements and other real property rights.

3

4    **Q.    DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

5    A.    Yes. However, I reserve the right to supplement my testimony or to revise  
6            recommendations if additional issues or facts arise during this proceeding.

**D. C. Patel**  
**Professional and Educational Background**

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**EXPERIENCE:**

- Pennsylvania Public Utility Commission, Harrisburg, Pennsylvania  
June 2015 to present  
Fixed Utility Financial Analyst, Bureau of Investigation and Enforcement
- Pennsylvania Insurance Department, Harrisburg, Pennsylvania  
March 2013 - June 2015  
Insurance Company Financial Analyst, Bureau of Company Licensing & Financial Analysis
- Pennsylvania Department of Revenue, Harrisburg, Pennsylvania  
November 2010 - March 2013  
Accounting Assistant, Bureau of Corporation Taxes (Accounting)
- Hersha Hospitality Management, Harrisburg, Pennsylvania  
June 2007 - November 2010  
Staff Accountant (Taxes), Accounting Department
- Corporate Experience-India  
February 1987 - April 2007  
Worked as Company Secretary for three different companies during this period, which were listed on the Stock Exchanges.

**EDUCATION/CERTIFICATION:**

- Gujarat State University, Ahmedabad, India:
  - Bachelor of Commerce (Major concentration: Accounting)  
June 1980 - April 1983
  - Bachelor of Law  
June 1983 - December 1988
- The Institute of Company Secretaries of India, New Delhi, India:
  - Post Graduate Professional Degree: Company Secretary  
June 1983 - December 1985

**RATE CASE TRAINING:**

- Attended 37<sup>th</sup> Western NARUC Utility Rate School in May 2016

**WORKED ON THE FOLLOWING CASES (Testimony not required):**

- R-2021-3024349 - Columbia Gas of Pennsylvania, Inc. (§ 1307(f))
- R-2021-3023541 - National Fuel Gas Distribution Corporation (§ 1307(f))
- A-2020-3020178 - PA American Water Co. (Valley Township WW System Acquisition - § 1329)
- A-2020-3019859 - PA American Water Co. (Valley Township Water System Acquisition - § 1329)
- A-2020-3021460 - PA American Water Co. (Upper Pottsgrove Township WW System Acquisition - § 1329)
- U-2020-3015258 - Pittsburgh Water and Sewer Authority
- R-2020-3019661 - PECO Energy Co. - Gas Operations (§ 1307(f))
- R-2019-3008255 - Columbia Gas of Pennsylvania, Inc. (§ 1307(f))
- R-2018-3001568 - PECO Energy Co. - Gas Operations (§ 1307(f))
- R-2018-3000253 - Columbia Gas of Pennsylvania, Inc. (§ 1307(f))
- A-2017-2629534 - PPL Electric Utilities (Restructuring Plan)
- R-2017-2631441 - Reynolds Water Co.
- R-2017-2602611 - PECO Energy Co. - Gas Operations (§ 1307(f))
- R-2016-2567893 - Andreassi Gas Co.
- R-2016-2525128 - Columbia Water Co. - Marietta Division
- R-2015-2479962 - Corner Water Supply and Service Corporation
- R-2015-2479955 - Allied Utility Services, Inc.
- R-2015-2493905 - Sands, Inc.

**SUBMITTED TESTIMONY IN THE FOLLOWING CASES:**

- R-2021-3024773 et al. - Pittsburgh Water and Sewer Authority
- R-2021-3024601 - PECO Energy Co. - Electric Operations
- R-2020-3018921 - PECO Energy Co. - Gas Operations
- A-2020-3019634 - PA American Water Co. (Royersford Borough WW System Acquisition - § 1329)
- R-2020-3017951 et al. - Pittsburgh Water and Sewer Authority
- R-2020-3018993 - Columbia Gas Pennsylvania, Inc. (§ 1307(f))
- R-2019-3008208 - Wellsboro Electric Company
- R-2019-3008212 - Citizens Electric Company of Lewisburg, PA
- A-2019-3008491 - Aqua Pennsylvania Wastewater, Inc. (Cheltenham Township WW System Acquisition - § 1329)
- R-2018-3006814 - UGI Utilities, Inc. (Gas Division)
- M-2018-2640802 and M-2018-2640803 - Pittsburgh Water and Sewer Authority
- R-2018-3002645 and 3002647 - Pittsburgh Water and Sewer Authority
- R-2018-3000834 - Suez Water Pennsylvania, Inc.
- R-2018-2647577 - Columbia Gas of Pennsylvania, Inc.
- R-2017-2595853 - Pennsylvania American Water Co.
- P-2016-2526627 - PPL Electric Utilities Corp. (DSP IV)
- R-2016-2529660 - Columbia Gas of Pennsylvania, Inc.
- R-2016-2554150 - City of DuBois - Bureau of Water
- R-2016-2580030 - UGI Penn Natural Gas, Inc.

**I&E Exhibit No. 1  
Witness: D. C. Patel**

**Application of Aqua Pennsylvania Wastewater, Inc. for Acquisition of the  
Wastewater Collection and Conveyance System Assets of Lower Makefield  
Township**

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

**Exhibit to Accompany**

**the**

**Direct Testimony**

**of**

**D. C. Patel**

**Bureau of Investigation & Enforcement**

**Concerning:**

**Summary of 66 Pa. C.S. § 1102 and 66 Pa. C.S. § 1329  
Engineer's Assessment Study  
Easements and Other Property Rights**

Respondent: Mark J. Bubel, Sr.

Date: 08/16/2021

**APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

**DOCKET NO. A-2021-3024267**

**BUREAU OF INVESTIGATION AND ENFORCEMENT**

**SET II INTERROGATORIES**

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**I&E-II-22** Reference the Engineer's Assessment Study (Exhibit D) issued by Ebert Engineering, Inc's (Ebert) detailing LMT wastewater system assets inventory as of March 22, 2021. Explain why the engineering assessment study did not include any comments about the conditions and functionality of system assets.

**RESPONSE**

Per the Commission's Final Implementation Order of Section 1329 (October 27, 2016, p. 10, an engineering assessment under Section 1329 is not required to include comments about the conditions and functionality of system assets.

Respondent: Jerome C. Weinert

Date: 08/16/2021

**APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

**DOCKET NO. A-2021-3024267**

**BUREAU OF INVESTIGATION AND ENFORCEMENT**

**SET II INTERROGATORIES**

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**I&E-II-5** Reference the Aqua filing, Exhibit R concerning the AUS Fair Market Value Appraisal, identify wastewater system operational issues (i.e., overflow and leakages negatively impacting the stormwater system, inefficient or broken system assets requiring major repairs or replacement cost), and non-functional assets including values that are included/considered in each specific valuation approach.

**RESPONSE**

The appraisal's depreciation determination reflected in the age-life depreciation reflects the deficiencies in the cost approach's determination of original cost less depreciation (OCLD) and replacement cost less depreciation (CORLD). As the OCLD and CORLD cost approach determinations are used in two of comparable sales statistics in the market approach, the depreciation described for the cost approach is also factored into the market approach determination. In the income approach, the future capital expenditures address the renewal of the existing facilities for the deficiencies described in the interrogatory question. Since one of the market comparable statistics used in the market approach is purchase price to cash flow (EBITDA) the impact of the future capital expenditures is also considered in the market approach.

Respondent: William C. Packer

Date: 08/16/2021

**APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

**DOCKET NO. A-2021-3024267**

**BUREAU OF INVESTIGATION AND ENFORCEMENT**

**SET II INTERROGATORIES**

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**I&E-II-23** Reference the Asset Purchase Agreement, Section 4.09 provisions regarding transfer of LMT Township's real estate including leases, easement rights, and access to public rights-of-way related to the system. Provide the following:

- A. Indicate whether LMT has identified all real estate, including leases, easement rights, and access to public rights-of-way that must be transferred to Aqua to facilitate Aqua's operation of the LMT Township wastewater system.
- B. If LMT has identified all real estate, including leases, easement rights, and access to public rights-of-way that must be transferred to Aqua to facilitate Aqua's operation of the LMT wastewater system, state whether it has the present ability to transfer them to Aqua. If not, explain why not.
- C. If LMT has not identified all real estate, including leases, easement rights, and access to public rights-of-way that must be transferred to Aqua to facilitate Aqua's operation of the LMT's wastewater system, explain why not and provide the anticipated date that identification will be complete.

**RESPONSE**

- A. Please see Application Exhibit Z, Standard Data Request No. 9.
- B. Please see the response to A., above.
- C. The Abstractor's report is currently being developed and identifying where easements are needed for system assets. The report is expected to be completed prior to closing.

Respondent: Kurt M. Ferguson  
Date: 08/30/2021

**APPLICATION OF AQUA PENNSYLVANIA WASTEWATER, INC.**

**DOCKET NO. A-2021-3024267**

**BUREAU OF INVESTIGATION AND ENFORCEMENT**

**SET III INTERROGATORIES**

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**I&E-III-1** Reference Aqua's response to I&E-II-23 regarding the transfer of Lower Makefield Township's (LMT) real estate including leases, easement rights, and access to public rights-of-way related to the wastewater system:

- A. Provide the name of abstractor, date when abstractor commenced title search assignment, and the expected date when the final abstractor's report will be available.
- B. Provide a listing of all identified and missing real estate, leases, easement rights, and access to public rights-of-way that must be transferred to Aqua to facilitate Aqua's operation of LMT's wastewater system.
- C. State whether LMT expects to transfer all missing easements, leases, and right of way to Aqua before the closing date; and
- D. If the response to Part C above is no, explain how Aqua and LMT will handle the transfer of missing easements, leases, and right of way after the closing date.

**RESPONSE**

- A. The Township has engaged Action Title Research. The Township began its title work on March 15, 2021. The abstractor is expected to complete its report in the next few months.
- B. The Township's abstractor is compiling the list of easements to be transferred, including all other property rights as related to the sale. This list is not yet complete. Upon completion of the final list, a copy will be provided.
- C. While the list being compiled by the abstractor notes there are easements that still need to be obtained, at this time there are no known easements that will not be transferred at closing.

- D. If easements remain outstanding to be transferred at closing, the parties will use the processes set forth in Section 6.05 of the Asset Purchase Agreement.

**I&E Statement No. 2  
Witness: Ethan H. Cline**

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

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

**Direct Testimony**

**of**

**Ethan H. Cline**

**Bureau of Investigation and Enforcement**

**Concerning:**

**Cost of Service Study**

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1 **INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Ethan H. Cline. My business address is 400 North Street, Harrisburg,  
4 Pennsylvania 17120.

5

6 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

7 A. I am employed by the Pennsylvania Public Utility Commission (“Commission”) in  
8 the Bureau of Investigation and Enforcement (“I&E”) as a Fixed Utility Valuation  
9 Engineer.

10

11 **Q. WHAT IS YOUR EDUCATIONAL AND EMPLOYMENT EXPERIENCE?**

12 A. Appendix A, which is attached to my testimony, describes my educational  
13 background and professional experience.

14

15 **Q. PLEASE DESCRIBE THE ROLE OF I&E IN THIS PROCEEDING.**

16 A. I&E is responsible for protecting the public interest in proceedings before the  
17 Commission. The I&E analysis in the proceeding is based on its responsibility to  
18 represent the public interest. This responsibility requires balancing the interests of  
19 the ratepayers, the company, and the regulated community.

1 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2 A. The purpose of my direct testimony is to address regulatory issues relating to the  
3 Application (“Application” or “Transaction”) of Aqua Pennsylvania Wastewater,  
4 Inc. (“Aqua” or “Company”) for approval of its acquisition of the wastewater  
5 system assets of Lower Makefield Township (“Lower Makefield”), related  
6 wastewater service rights, fair market valuation ratemaking treatment, accrual and  
7 deferral of certain post-acquisition improvement costs, and certain contracts with  
8 municipal corporations.

9

10 **Q. DOES YOUR DIRECT TESTIMONY INCLUDE AN EXHIBIT?**

11 A. No.

12

13 **Q. WHAT IS AQUA REQUESTING IN THIS APPLICATION?**

14 A. Under 66 Pa. C.S. § 1102 (“Section 1102”), Aqua is requesting approval to  
15 acquire the Lower Makefield wastewater collection system and for the right to  
16 begin providing wastewater service in the areas currently served by Lower  
17 Makefield. Additionally, under 66 Pa. C.S § 1329 (“Section 1329”), Aqua is  
18 seeking to utilize the fair market value for the ratemaking rate base of Lower  
19 Makefield assets. Aqua is also requesting that the Commission approve, if  
20 necessary, its acquisition agreement with Lower Makefield and the assignment of  
21 eighteen contracts with municipalities under 66 Pa. C.S. § 507. (Aqua St. No. 1,  
22 p. 6).

1 **Q. WHY DOES AQUA NEED APPROVAL OF THE ACQUISITION UNDER**  
2 **SECTION 1102?**

3 A. Section 1102 requires the Commission to issue a Certificate of Public  
4 Convenience prior to the Company acquiring the wastewater assets of Lower  
5 Makefield and providing wastewater service in Lower Makefield’s service  
6 territory. The Commission will only grant a Certificate of Public Convenience if it  
7 determines that such a certificate is "necessary or proper for the service,  
8 accommodation, convenience or safety of the public.” (66 Pa. C.S. § 1103(a)).  
9 Further, “the Commission, in granting such certificate, may impose such  
10 conditions as it may deem to be just and reasonable.” (66 Pa. C.S. § 1103(a)).

11  
12 **Q. WHAT DOES 66 Pa. C.S. § 1329 ALLOW?**

13 A. Section 1329 allows investor owned water and wastewater utilities to use the fair  
14 market valuation in the acquisition of water and wastewater systems that are  
15 owned by a municipal corporation or authority. Using the Section 1329  
16 framework enables the investor owned utility to establish the ratemaking rate base  
17 of the acquired property in the same proceeding that it seeks to acquire the  
18 property.

19  
20 **Q. WHAT DOES THE FAIR MARKET VALUE APPROACH REQUIRE?**

21 A. The fair market valuation approach dictates that once the buyer and the seller  
22 agree to its use, they must engage the services of a licensed engineer to conduct an

1 assessment of the tangible assets of the seller. The licensed engineer assessment is  
2 then presented to two utility valuation experts (“UVE”), one to represent the buyer  
3 and one to represent the seller, to conduct independent analyses based on the  
4 Uniform Standards of Professional Appraisal Practice, employing the cost, market  
5 and income approaches. The results of the UVEs’ analyses are then incorporated  
6 into the application submitted to the Commission for approval under Section 1102  
7 of the Code.<sup>1</sup> For ratemaking purposes, the valuation will be the lesser of the fair  
8 market value or the negotiated purchase price. Finally, Section 1329 allows the  
9 acquiring public utility’s post-acquisition improvement costs not recovered  
10 through a distribution system improvement charge to be deferred for book and  
11 ratemaking purposes.

12  
13 **Q. WHAT ISSUES WILL YOU ADDRESS IN YOUR DIRECT TESTIMONY?**

14 A. My direct testimony addresses the necessity of requiring Aqua to undertake a Cost of  
15 Service Study for the Lower Makefield assets in its next base rate case.

16  
17 **Q. WHAT IS I&E’S OVERALL RECOMMENDATION REGARDING THE**  
18 **ACQUISITION?**

19 A. I&E’s overall recommendation is that the Commission approve Aqua’s Application

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<sup>1</sup> [http://www.puc.pa.gov/filing\\_resources/issues\\_laws\\_regulations/section1329\\_applications.aspx](http://www.puc.pa.gov/filing_resources/issues_laws_regulations/section1329_applications.aspx)

1 on the condition of the inclusion of a separate cost of service study as I discuss  
2 below.

3  
4 **DESCRIPTION OF THE SYSTEM**

5 **Q. PLEASE DESCRIBE THE LOWER MAKEFIELD SYSTEM.**

6 A. Lower Makefield currently provides wastewater service to approximately 11,151  
7 customers using a system that includes, but is not limited to, collection and  
8 conveyance assets, pumping stations, manholes, and land and land rights (Aqua St.  
9 No. 1, p. 9). The collected wastewater is then treated at the Morrisville Borough  
10 Wastewater Treatment Plant and the City of Philadelphia Water Pollution Control  
11 Plant. The Lower Makefield System also utilizes the conveyance facilities of the  
12 Borough of Yardley, the Bucks County Water and Sewer Authority, Middletown  
13 Township, and the Township of Falls Authority to transport its wastewater for  
14 treatment. (Aqua St. No. 3, p. 7). The assets that Aqua is seeking to purchase from  
15 Lower Makefield consists of approximately 835,770 linear feet of mains,  
16 approximately 3,891 manholes, 14 pump stations, and associated infrastructure and  
17 appurtenances. (Aqua St. No. 3, p. 7).

18  
19 **Q. WHAT IS THE CONDITION OF LOWER MAKEFIELD'S WASTEWATER  
20 COLLECTION AND CONVEYANCE ASSETS?**

21 A. According to witness Ferguson on pages 7-8 of Aqua Statement No. 3, the Lower  
22 Makefield system current has an Act 537 plan with the Pennsylvania Department of

1 Environmental Protection (“DEP”) and submitted a Corrective Action Plan to the  
2 DEP in November 2018, which includes an Inflow and Infiltration abatement plan  
3 along with a Connection Management Plan.  
4

5 **COST OF SERVICE STUDY**

6 **Q. WHAT IS YOUR COST OF SERVICE STUDY RECOMMENDATION?**

7 A. I recommend that Aqua provide a separate cost of service study for the Lower  
8 Makefield system in its next rate case that separately identifies the plant in service  
9 costs at the time the Lower Makefield system was purchased, the cost of any plant  
10 retirements, and the cost of any plant investments.  
11

12 **Q. WHY IS KNOWING THE COST TO SERVE THE LOWER MAKEFIELD  
13 SYSTEM IMPORTANT?**

14 A. In general, the primary goal of a cost of service study is to determine a utility’s  
15 revenue requirement to provide service to its different customer classes. In this  
16 case, a cost of service study for the Lower Makefield wastewater system is  
17 beneficial because it:

- 18 • Determines the cost to operate the Lower Makefield wastewater system  
19 separately;
- 20 • Calculates the costs of the utility’s different services;
- 21 • Separates the costs between the utility’s different customer classes and  
22 service areas;

- 1           • Attributes costs to the utility’s different customer classes and service areas;
- 2           and
- 3           • Determines how costs will be recovered from the utility’s different
- 4           customer classes and service areas.

5           Moreover, a cost of service study can establish the existence and extent of  
6           subsidization (inter- and intra-class) and assist in determining the appropriate  
7           amount of revenue requirement to be shifted from wastewater customers to water  
8           customers, which Aqua has utilized in past base rate cases. Therefore, without the  
9           cost of service study that includes segregated wastewater costs, the appropriate  
10          ratemaking recommendations for those costs cannot be proposed or implemented.  
11          Additionally, and specifically for the present case, a separate cost of service study  
12          will help to determine the proper allocation of a revenue shortfall among Aqua’s  
13          existing customers.

14

15   **Q.   HAS THE COMMISSION PREVIOUSLY ADDRESSED THE**  
16   **IMPORTANCE OF REQUIRING COST OF SERVICE STUDIES FOR**  
17   **ACQUIRED SYSTEMS?**

18   A.   Yes. The topic of a separate cost of service study being required for a Section  
19   1329 acquisition was first broached in Aqua’s acquisition of New Garden at  
20   Docket No. A-2016-2580061, which was the first proceeding before the  
21   Commission to employ the fair market valuation under Section 1329. In that case,  
22   the Commission required Aqua to prepare a cost of service study for use in its next

1 base rate case to separate the costs, capital, and operating expenses of providing  
2 wastewater service to the newly acquired New Garden customers. Pages 69-70 of  
3 the Commission’s Order approving Aqua’s acquisition of the New Garden system,  
4 states the following:

5 Specifically, Aqua shall develop and file a cost-of-service  
6 study in its next rate case pursuant to our regulations that  
7 separates costs, capital, and operating expenses of providing  
8 wastewater service to the New Garden customers as a stand-  
9 alone rate group. Moreover, Aqua is directed to address the  
10 pros and cons of designing New Garden rates as a separate rate  
11 group. As a result, all parties and the Commission will be  
12 informed of the overall rate impact on Aqua customers and,  
13 alternatively, the result of establishing New Garden as a  
14 separate rate zone.

15 Additionally, as far as I am aware, the provision of separate cost of service studies  
16 have been approved by the Commission in all Section 1329 proceedings to date.  
17 Specifically, the three most recent Section 1329 proceedings culminated in  
18 settlement agreements that were approved by the Commission and which adopted  
19 cost of service studies of acquired systems as a condition of settlement. These  
20 three proceedings were Pennsylvania American Water Company’s (“PAWC”)  
21 acquisition of the Royersford Borough system,<sup>2</sup> PAWC’s acquisition of the

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<sup>2</sup> Application of PAWC under Sections 507, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of wastewater system assets of Royersford Borough at Docket No. A-2020-3019634, p. 35 (Order entered May 7, 2021).

1 wastewater assets of Borough of Kane Authority<sup>3</sup>, and Aqua’s acquisition of the  
2 wastewater system assets of East Norriton Township.<sup>4</sup>

3

4 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

5 A. Yes. However, I reserve the right to supplement or revise my recommendations if  
6 additional information is received that would alter my position in this direct  
7 testimony.

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<sup>3</sup> Application of PAWC under Sections 507, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of water treatment and distribution system assets of Borough of Kane Authority at Docket No. A-2020-3021460, p. 3 (Order entered June 18, 2020).

<sup>4</sup> Application of Aqua under Sections 507, 1102, and 1329 of the Public Utility Code for Approval of its Acquisition of wastewater system assets of East Norriton Township at Docket No. A-2019-3009052, p. 38 (Order entered May 21, 2020).

ETHAN H. CLINE

PROFESSIONAL EXPERIENCE AND EDUCATION

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**EXPERIENCE:**

03/2009 - Present

**Bureau of Investigation and Enforcement, Pennsylvania Public Utility Commission - Harrisburg, Pennsylvania**

Fixed Utility Valuation Engineer – Assists in the performance of studies and analyses of the engineering-related areas including valuation, depreciation, cost of service, quality and reliability of service as they apply to fixed utilities. Assists in reviewing, comparing and performing analyses in specific areas of valuation engineering and rate structure including valuation concepts, original cost, rate base, fixed capital costs, inventory processing, excess capacity, cost of service, and rate design.

06/2008 – 09/2008

**Akens Engineering, Inc. - Shiremanstown, Pennsylvania**

Civil Engineer – Responsible, primarily, for assisting engineers and surveyors in the planning and design of residential development projects

10/2007 – 05/2008

**J. Michael Brill and Associates - Mechanicsburg, Pennsylvania**

Design Technician – Responsible, primarily, for assisting engineers in the permit application process for commercial development projects.

01/2006 – 10/2007

**CABE Associates, Inc. - Dover, Delaware**

Civil Engineer – Responsible, primarily, for assisting engineers in performing technical reviews of the sewer and sanitary sewer systems of Sussex County, Delaware residential development projects.

**EDUCATION:**

Pennsylvania State University, State College, Pennsylvania  
Bachelor of Science; Major in Civil Engineering, 2005

- Attended NARUC Rate School, Clearwater, FL
- Attended Society of Depreciation Professionals Annual Conference and Training, 2017, 2018, and 2019

**TESTIMONY SUBMITTED:**

I have testified and/or submitted testimony in the following proceedings:

1. Clean Treatment Sewage Company, Docket No. R-2009-2121928
2. Pennsylvania Utility Company – Water Division, Docket No. R-2009-2103937
3. Pennsylvania Utility Company – Sewer Division, Docket No. R-2009-2103980
4. UGI Central Penn Gas, Inc., 1307(f) proceeding, Docket No. R-2010-2172922
5. AQUA Clarion Wastewater Operations, Docket No. R-2010-2166208
6. AQUA Claysville Wastewater Operations, Docket No. R-2010-2166210
7. Citizens' Electric Company of Lewisburg, Pa, Docket No. R-2010-2172665
8. City of Lancaster – Bureau of Water, Docket No. R-2010-2179103
9. Peoples Natural Gas Company LLC, Docket No. R-2010-2201702
10. UGI Central Penn Gas, Inc., Docket No. R-2010-2214415
11. Pennsylvania-American Water Company, Docket No. R-2011-2232243
12. Pentex Pipeline Company, Docket No. A-2011-2230314
13. Peregrine Keystone Gas Pipeline, LLC, Docket No. A-2010-2200201
14. Philadelphia Gas Works 1307(f), Docket No. R-2012-2286447
15. Peoples Natural Gas Company LLC, Docket No. R-2012-2285985
16. Equitable Gas Company, Docket Nos. R-2012-2312577, G-2012-2312597
17. City of Lancaster – Sewer Fund, Docket No. R-2012-2310366
18. Peoples TWP, LLC 1307(f), Docket No. R-2013-2341604
19. UGI Penn Natural Gas, Inc. 1307(f), Docket No. R-2013-2361763
20. UGI Central Penn Gas, Inc. 1307(f), Docket No. R-2013-2361764
21. Joint Application, Docket Nos. A-2013-2353647, A-2013-2353649, A-2013-2353651
22. City of Dubois – Bureau of Water, Docket No. R-2013-2350509
23. The Peoples Water Company, Docket No. R-2013-2360798
24. Pennsylvania American Water Company, Docket No. R-2013-2355276
25. Generic Investigation Regarding Gas-on-Gas Competition, Docket Nos. P-2011-227868, I-2012-2320323
26. Philadelphia Gas Works 1307(f), Docket No. R-2014-2404355
27. Pike County Light and Power Company (Gas), Docket No. R-2013-2397353
28. Pike County Light and Power Company (Electric), Docket No. R-2013-2397237
29. Peoples Natural Gas Company LLC 1307(f), Docket No. R-2014-2403939
30. UGI Penn Natural Gas, Inc. 1307(f), Docket No. R-2014-2420273
31. UGI Utilities, Inc. – Gas Division 1307(f), Docket No. R-2014-2420276
32. UGI Central Penn Gas, Inc. 1307(f), Docket No. R-2014-2420279
33. Emporium Water Company, Docket No. R-2014-2402324
34. Borough of Hanover – Hanover Municipal Water, Docket No. R-2014-2428304
35. Philadelphia Gas Works 1307(f), Docket No. R-2015-2465656
36. Peoples Natural Gas Company LLC 1307(f), Docket No. R-2015-2465172
37. Peoples Natural Gas Company – Equitable Division 1307(f), Docket No. R-2015-2465181
38. PPL Electric Utilities Corporation, Docket No. R-2015-2469275
39. UGI Penn Natural Gas, Inc. 1307(f), Docket No. R-2015-2480934

40. UGI Central Penn Gas, Inc. 1307(f), Docket No. R-2015-2480937
41. UGI Utilities, Inc. – Gas Division 1307(f), Docket No. R-2015-2480950
42. UGI Utilities, Inc. – Gas Division, Docket No. R-2015-2518438
43. Joint Application of Pennsylvania American Water, et al., Docket No. A-2016-2537209
44. UGI Utilities, Inc. – Gas Division 1307(f), Docket No. R-2016-2543309
45. UGI Central Penn Gas, Inc. 1307(f), Docket No. R-2016-2543311
46. City of Dubois – Company, Docket No. R-2016-2554150
47. UGI Penn Natural Gas, Inc., Docket No. R-2016-2580030
48. UGI Central Penn Gas, Inc. 1307(f), Docket No. R-2017-2602627
49. UGI Penn Natural Gas, Inc. 1307(f), Docket No. R-2017-2602633
50. UGI Utilities, Inc. – Gas Division 1307(f), Docket No. R-2017-2602638
51. Application of Pennsylvania American Water Company Acquisition of the Municipal Authority of the City of McKeesport, Docket No. A-2017-2606103
52. Pennsylvania American Water Company, Docket No. R-2017-2595853
53. Pennsylvania American Water Company Lead Line Petition, Docket No. P-2017-2606100
54. UGI Utilities, Inc. – Electric Division, Docket No. R-2017-2640058
55. Peoples Natural Gas Company, LLC – Peoples and Equitable Division 1307(f), Docket Nos. R-2018-2645278 & R-2018-3000236
56. Peoples Gas Company, LLC 1307(f), Docket No. R-2018-2645296
57. Columbia Gas of Pennsylvania, Inc., Docket No. R-2018-2647577
58. Duquesne Light Company, Docket No. R-2018-3000124
59. Suez Water Pennsylvania, Inc., Docket No. R-2018-3000834
60. Application of Pennsylvania American Water Company Acquisition of the Municipal Authority of the Township of Sadsbury, Docket No. A-2018-3002437
61. The York Water Company, Docket No. R-2018-3000006
62. Application of SUEZ Water Pennsylvania, Inc. Acquisition of the Water and Wastewater Assets of Mahoning Township, Docket Nos. A-2018-3003517 and A-2018-3003519
63. Pittsburgh Water and Sewer Authority, Docket Nos. R-2018-3002645 and R-2018-3002647
64. Joint Application of Aqua America, Inc. et al., Acquisition of Peoples Natural Gas Company LLC, et al., Docket Nos. A-2018-3006061, A-2018-3006062, and A-2018-3006063
65. Implementation of Chapter 32 of the Public Utility Code Regarding Pittsburgh Water and Sewer Authority, Docket Nos. M-2018-2640802 and M-2018-2640803
66. Philadelphia Gas Works 1307(f), Docket No. R-2019-3007636
67. People Natural Gas Company, LLC, Docket No. R-2018-3006818
68. Application of Pennsylvania American Water Company Acquisition of the Steelton Borough Authority, Docket No. A-2019-3006880
69. Application of Aqua America, Inc. et al., Acquisition of the Wastewater System Assets of the Township of Cheltenham, Docket No. A-2019-3006880
70. Philadelphia Gas Works, Docket No. R-2019-3009016
71. Wellsboro Electric Company, Docket No. R-2019-3008208
72. Valley Energy, Inc., Docket No. R-2019-3008209
73. Citizens’ Electric Company of Lewisburg, Pa, Docket Non. R-2019-3008212

74. Application of Aqua America, Inc. et al., Acquisition of the Wastewater System Assets of the East Norriton Township, Docket No. A-2019-3009052
75. Peoples Natural Gas Company, LLC 1307(f), Docket No. R-2020-3017850
76. Peoples Gas Company, LLC 1307(f), Docket No. R-2020-3017846
77. Philadelphia Gas Works, Docket No. R-2020-3017206
78. Pittsburgh Water and Sewer Authority, Docket Nos. R-2020-3017951 et al.
79. Columbia Gas of Pennsylvania, Docket No. R-2020-3018835
80. Pennsylvania America Water Company, Docket Nos. R-2020-3019369 and R-2020-3019371
81. PECO Energy Company – Gas Division, Docket No. R-2020-3019829
82. PGW 1307(f), Docket No. R-2021-3023970
83. Peoples Natural Gas Company, LLC 1307(f), Docket No. R-2021-3023965
84. Peoples Gas Company, LLC 1307(f), Docket No. R-2021-3023967
85. UGI Utilities, Inc. – Electric Division, Docket No. R-2021-3023618
86. Columbia Gas of Pennsylvania, Inc., Docket No. R-2021-3024926
87. Duquesne Light Company, Docket No. R-2021-3024750
88. UGI Utilities, Inc. – Gas Division 1307(f), Docket No. R-2021-3025652
89. Pittsburgh Water and Sewer Authority, Docket Nos. R-2021-3024773 et al.

**I&E Statement No. 1-SR  
Witness: D. C. Patel**

**Application of Aqua Pennsylvania Wastewater, Inc. for Acquisition of  
the Wastewater Collection and Conveyance System Assets of Lower  
Makefield Township**

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

**Surrebuttal Testimony**

**of**

**D. C. Patel**

**Bureau of Investigation and Enforcement**

**Concerning:**

**Summary of 66 Pa. C.S. § 1102 and 66 Pa. C.S. § 1329  
Engineer's Assessment Study  
Easements and Other Property Rights**

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1 **INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is D. C. Patel, and my business address is Pennsylvania Public Utility  
4 Commission, Commonwealth Keystone Building, 400 North Street, Harrisburg,  
5 PA 17120.

6  
7 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

8 A. I am employed by the Pennsylvania Public Utility Commission (Commission) in  
9 the Bureau of Investigation & Enforcement (I&E) as a Fixed Utility Financial  
10 Analyst.

11

12 **Q. ARE YOU THE SAME D. C. PATEL WHO SUBMITTED DIRECT**  
13 **TESTIMONY IN THIS PROCEEDING?**

14 A. Yes. I submitted I&E Statement No. 1 and I&E Exhibit No. 1 in this proceeding.

15

16 **Q. DOES YOUR SURREBUTTAL TESTIMONY INCLUDE AN**  
17 **ACCOMPANYING EXHIBIT?**

18 A. No. I refer to my direct testimony and its accompanying exhibit in this surrebuttal  
19 testimony (I&E Statement No. 1 and I&E Exhibit No. 1).

20

21 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

22 A. The purpose of my surrebuttal testimony is to respond rebuttal testimony of William

1 C. Packer, Controller of Aqua Pennsylvania Wastewater, Inc. (Aqua) (Aqua  
2 Statement No. 1-R) and Mark J. Bubel, Sr., Project Engineer III of Aqua (Aqua  
3 Statement No. 2-R).

4  
5 **ENGINEER'S ASSESSMENT**

6 **Q. SUMMARIZE YOUR RECOMMENDATION IN DIRECT TESTIMONY**  
7 **FOR THE ENGINEER'S ASSESSMENT STUDY.**

8 A. I recommended that the Commission direct Aqua to present a detailed Engineer's  
9 Assessment Study containing the seller's utility assets description with condition,  
10 functionality, and improvements required with the acquisition application under  
11 Section 1329 on a going-forward basis (I&E Statement No. 1, pp. 6-7).

12  
13 **Q. WHY DID YOU RECOMMEND THAT AQUA BE REQUIRED TO**  
14 **PRESENT A DETAILED ENGINEER'S ASSESSMENT STUDY**  
15 **CONTAINING THE SELLER'S UTILITY ASSETS DESCRIPTION**  
16 **DETAILING THE CONDITION, FUNCTIONALITY, AND**  
17 **IMPROVEMENTS REQUIRED WITH THE ACQUISITION**  
18 **APPLICATION UNDER SECTION 1329 ON A GOING-FORWARD**  
19 **BASIS?**

20 A. There are several reasons that justify the engineer's assessment study should include  
21 information about the condition, functionality, and improvements required to the  
22 system assets, which are discussed in my direct testimony (I&E Statement No. 1, pp.

1 7-8). Most importantly, (a) the missing information about the abnormality or  
2 adversity in the assets' condition and functionality frustrates the test of used and  
3 usefulness of the system assets in providing wastewater service for the buying utility  
4 (I&E Statement No. 1, p. 7). This missing information about the system's assets  
5 could impact the true and correct fair market value determination under the cost  
6 approach; and (b) the legislative intent and purpose of Section 1329(a)(4) is that  
7 the licensed engineer conducts an *assessment of the tangible assets* and not just  
8 compiles and provides an inventory list of assets (with original costs) to be  
9 transferred (I&E Statement No. 1, p. 8).

10  
11 **Q. DID ANY COMPANY WITNESS RESPOND TO YOUR**  
12 **RECOMMENDATION?**

13 A. Yes. Aqua witness Mark J. Bubel, Sr. responded to my recommendation (Aqua  
14 Statement 2-R, pp. 2-4).

15  
16 **Q. SUMMARIZE MR. BUBEL'S RESPONSE CONCERNING THE**  
17 **ENGINEER'S ASSESSMENT STUDY.**

18 A. First, Mr. Bubel disagrees with my recommendation and states that per the  
19 Commission's final implementation order (entered on October 27, 2016), the  
20 Commission required (a) an inventory of the used and useful utility plant assets to  
21 be transferred, compiled by year and account; and (b) a list of all non-depreciable

1 property such as land and rights-of-way in the Engineer's Assessment Study  
2 (Aqua Statement No. 2-R, pp. 2-3).

3 Second, he states that Aqua provided information to its Utility Valuation  
4 Expert (UVE) regarding the violations, corrective action plans, connection  
5 management plans, and other available information on file with the Pennsylvania  
6 Department of Environmental Protection (DEP) and this information contained a  
7 description of the condition and deficiency of the system. He then asserts that  
8 both UVEs have considered the system assets' age and needed capital for the  
9 system asset improvements in their appraisals, which addresses assets used and  
10 usefulness concerns (Aqua Statement No. 2-R, pp. 3-4).

11  
12 **Q. WHAT IS YOUR RESPONSE TO MR. BUBEL'S POSITION ON YOUR**  
13 **RECOMMENDATION CONCERNING THE ENGINEER'S ASSESSMENT?**

14 A. First, I reiterate that 66 Pa. C.S. § 1329(a)(4) stipulates that the acquiring public  
15 utility or entity and selling utility shall engage the services of the same licensed  
16 engineer to conduct *an assessment of the tangible assets of the selling utility*. The  
17 purpose and intent of this section is not just to compile and provide a list of assets  
18 (with original costs) to be transferred but to maintain consistency within the UVE  
19 appraisals in so far as the conditions of the system to be appraised. The  
20 Commission in its implementation order provided guidance about the main content  
21 and basic information that, at a minimum, should be included in the engineer's  
22 assessment study. It should be noted that Section 1329(a)(4) requires a licensed

1 engineer provide an assessment of tangible assets not just a listing of the inventory  
2 of assets. Furthermore, the detailed assessment of the tangible assets' conditions  
3 and functionality would aid the UVEs in factoring any loss in the value of assets  
4 due to functional obsolescence while performing an appraisal analysis per the  
5 Uniform Standards of Professional Appraisal Practice and in determining the  
6 information-based conclusion of fair market value as discussed in direct testimony  
7 (I&E Statement No. 1, pp. 5-8).

8 Second, although Mr. Bubel asserts that Aqua provides its UVE with  
9 information regarding the DEP violations, corrective action plans, connection  
10 management plans, and other information describing deficiencies in the system  
11 assets, this information may be related to specific assets and does not provide all-  
12 inclusive and conclusive evidence about the conditions and functionality of all the  
13 assets of the system under acquisition. There may be several unidentified assets  
14 within the system that are broken or non-functional, which are not used or useful  
15 in providing wastewater services and still they are included in the asset inventory  
16 for valuation purposes. Additionally, UVEs reliance on the age of assets for  
17 determination of depreciation and the need for future capital improvement would  
18 not address the concern about the broken or non-functional assets' usefulness in  
19 providing wastewater services. Most importantly, although Aqua provides certain  
20 information on the condition of the system to be acquired to its UVE, Aqua cannot  
21 verify that the seller's UVE is utilizing the same information as Aqua's UVE  
22 when forming its appraisal on the system. In short, an engineer's (as an expert)

1 evaluation of the condition and functionality of all assets would aid UVEs in  
2 determining the true fair market value of the system assets and would ensure that  
3 both UVEs are assessing the system under the same set of facts.  
4

5 **Q. DO YOU HAVE ANY UPDATES TO YOUR DISCUSSION IN DIRECT**  
6 **TESTIMONY?**

7 A. Yes. Most recently, the Commission acknowledged I&E's concern about the  
8 engineer's assessment study in Pennsylvania American Water Company's  
9 (PAWC) Section 1329 application for the acquisition of Upper Pottsgrove  
10 Township's wastewater system assets (at Docket No. A-2020-3021460) and  
11 directed PAWC to ensure that, in any future Section 1329 applications it submits,  
12 the engineering assessment required under 66 Pa.C.S. § 1329(a)(4) will designate  
13 the condition of the inventory and assets appraised.<sup>1</sup>  
14

15 **Q. DO YOU HAVE ANY CHANGES TO YOUR RECOMMENDATION IN**  
16 **RESPONSE TO MR. BUBEL'S REBUTTAL TESTIMONY?**

17 A. No. I continue to recommend that the Commission direct Aqua to present a  
18 detailed Engineer's Assessment Study containing the selling utility's assets  
19 including a description of the condition, functionality, and improvements required

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<sup>1</sup> Application of Pennsylvania American Water Co. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Upper Pottsgrove Township, Docket No. A-2020-3021460 (Order entered September 15, 2021), p. 3.

1 for each asset with the acquisition application under Section 1329 on a going-  
2 forward basis (I&E Statement No. 1, pp. 6-7).

3  
4 **EASEMENTS AND OTHER PROPERTY RIGHTS**

5 **Q. SUMMARIZE YOUR RECOMMENDATION IN DIRECT TESTIMONY**  
6 **FOR THE MISSING EASEMENTS AND OTHER PROPERTY RIGHTS.**

7 A. I recommended that the Commission condition approval of Aqua's Application  
8 and the closing of the transaction not being permitted to occur unless and until  
9 Lower Makefield Township (LMT) has (1) identified all missing easements  
10 including rights-of-way and other property rights; (2) taken any and all necessary  
11 actions to obtain the missing easements and other property rights so that they may  
12 be conveyed to Aqua at closing; and (3) borne all costs and expenses for obtaining  
13 and conveying the missing easements and other property rights so that Aqua's  
14 ratepayers are not burdened with those costs and expenses (I&E Statement No. 1,  
15 p. 11).

16 Additionally, I recommended that the Commission condition the approval  
17 of Aqua's Application that for circumstances beyond LMT's control where it is  
18 unable to transfer all missing easements including rights-of-way and other  
19 property rights before or at the closing of the transaction, Aqua and LMT may at  
20 their discretion close the transaction without the transfer of missing easements and  
21 other property rights, provided that an escrow account be established of an  
22 appropriate dollar amount from the purchase price to be used to obtain any post-

1 closing transfers of the easements and other real property rights (I&E Statement  
2 No. 1, pp. 11-12).

3  
4 **Q. WHY DID YOU RECOMMEND CONDITIONS OF APPROVAL FOR**  
5 **MISSING EASEMENTS AND OTHER PROPERTY RIGHTS?**

6 A. First, in Aqua's Application (Exhibit Z, Responses to Standard Data Request No.  
7 9), Aqua admitted that it is not presently aware of any needed leases, easements,  
8 or access to public rights-of-way that will not be transferred at closing. The  
9 mapping of easements and rights-of-way from LMT's Abstractor's report is not  
10 yet complete (I&E Statement No. 1, p. 10). Second, in response to I&E-III-1,  
11 Aqua stated that LMT's abstractor, Action Title Search, began title work on  
12 March 15, 2021, and is compiling a list of easements including all other property  
13 rights and the complete report is expected in the next few months (I&E Statement  
14 No. 1, p. 10).

15 Considering the uncertainty about the identification and transfer of missing  
16 easement rights and the cost involved, I raised my concern to bring notice of this  
17 fact to the Commission and other parties in this proceeding.

18  
19 **Q. DID ANY COMPANY WITNESS RESPOND TO YOUR**  
20 **RECOMMENDATION?**

21 A. Yes. Aqua witness William C. Packer responded to my recommendation (Aqua  
22 Statement No. 1-R, pp. 3-5).

1 **Q. SUMMARIZE MR. PACKER’S RESPONSE CONCERNING MISSING**  
2 **EASEMENTS AND OTHER PROPERTY RIGHTS.**

3 A. First, Mr. Packer disagrees with my recommendation and states that my  
4 recommendation is already contemplated in the Asset Purchase Agreement (APA)  
5 entered between Aqua and LMT on September 17, 2020, and therefore, my  
6 recommendation is not required. He then states that per Section 6.05 of the APA,  
7 LMT is required to take any and all actions (including the use of its power of  
8 condemnation) to obtain any missing easements so the same may be sold,  
9 assigned, transferred, and conveyed to Aqua at the closing at its cost and expense  
10 (Aqua Statement No. 1-R, p. 4).

11 Second, Mr. Packer states that per Section 6.06 of the APA, if a parcel of  
12 unscheduled real property is discovered subsequently, then LMT shall convey,  
13 assign, or otherwise transfer any rights to each parcel of unscheduled real  
14 property, with no adjustment to the purchase price, in such a manner as to provide  
15 Aqua with reasonable assurances that Aqua will have the right to use or occupy  
16 the unscheduled real property as it was used by LMT as of the effective date  
17 (Aqua Statement No. 1-R, pp. 4-5).

18 Considering the above provisions in the APA, Mr. Packer opines that my  
19 recommended conditions about identification and transfer of missing easements  
20 and other property rights and establishing an escrow account of an appropriate  
21 dollar amount from the purchase price for covering those missing easements and

1 other property rights (that could not be transferred at the closing) are redundant  
2 and unnecessary.

3  
4 **Q. WHAT IS YOUR RESPONSE TO MR. PACKER'S POSITION ON YOUR**  
5 **RECOMMENDATIONS CONCERNING THE EASEMENTS AND OTHER**  
6 **PROPERTY RIGHTS?**

7 A. First, per Aqua's response, the mapping of easements and rights-of-way from the  
8 Township's Abstractor's (Action Title Search) report is not yet complete and the  
9 abstractor is compiling a list of easements including all other property rights and  
10 the complete report is expected in the next few months (I&E Exhibit No. 1,  
11 Schedule 2, p. 1). At this time, LMT and Aqua are not aware of the missing  
12 easements and other property rights and it is uncertain whether LMT will be able  
13 to transfer all missing easements and other property rights (upon identification) to  
14 Aqua at closing. Though, Sections 6.05 and 6.06 of the APA obligate LMT to  
15 transfer all missing easements and other property rights at a later time, it is  
16 important to ensure that ratepayers are protected from post-transaction uncertainty  
17 and the costs involved in acquiring and transferring the missing easements and  
18 other property rights necessary for Aqua's operation of LMT's wastewater system  
19 as discussed in my direct testimony (I&E Statement No. 1, pp. 11-12).

1 **Q. DO YOU HAVE ANY UPDATES TO YOUR DISCUSSION IN DIRECT**  
2 **TESTIMONY?**

3 A. Yes. Most recently, the Commission acknowledged I&E’s concern about the  
4 missing easements and other property rights in PAWC’s Section 1329 application  
5 for the acquisition of Upper Pottsgrove Township’s wastewater system assets (at  
6 Docket No. A-2020-3021460) and directed PAWC and the Township to continue  
7 working to achieve the transfer of real property rights and permitted PAWC at its  
8 discretion, to close the transaction without the transfer of all real property rights,  
9 provided that an escrow account is established from the purchase price to be used  
10 to obtain any post-closing transfers of the real property rights.<sup>2</sup>

11  
12 **Q. DO YOU HAVE ANY CHANGES TO YOUR RECOMMENDATION IN**  
13 **RESPONSE TO MR. PACKER’S REBUTTAL TESTIMONY?**

14 A. No. In order to memorialize unidentified/missing easements and property rights at  
15 the present time and to eliminate post-acquisition/closing uncertainty and concern  
16 about the transfer of missing easements and other property rights when known or  
17 reported at later time and the related transfer costs, I continue with my  
18 recommendation regarding the easements and other property rights as discussed  
19 above and in my direct testimony (I&E Statement No. 1, pp. 11-12).

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<sup>2</sup> Application of Pennsylvania American Water Co. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Upper Pottsgrove Township, Docket No. A-2020-3021460 (Order entered September 15, 2021), p. 3.

1 **CONCLUSION**

2 **Q. SUMMARIZE YOUR RECOMMENDATIONS AS UPDATED IN THIS**  
3 **SURREBUTTAL TESTIMONY.**

4 A. After reviewing Aqua’s responses to my recommendations in direct testimony, I  
5 continue to recommend that if the Commission decides to approve Aqua’s  
6 Application, it should consider imposing the conditions (summarized below) as it  
7 deems just and reasonable to protect the interest of Aqua’s ratepayers.

8 **Engineer’s Assessment:**

9 The Commission should require Aqua to present a detailed Engineer’s Assessment  
10 Study containing the seller’s utility asset descriptions with condition,  
11 functionality, and improvements required with the acquisition applications under  
12 Section 1329 on a going-forward basis.

13 **Easements and Other Property Rights:**

14 The Commission should require LMT to (a) identify all missing easements  
15 including rights-of-way and other property rights; (b) take any and all necessary  
16 actions to obtain the missing easements and other property rights so they may be  
17 conveyed to Aqua at closing; and (c) bear all costs and expenses for obtaining and  
18 conveying the missing easements and other property rights so that Aqua’s  
19 ratepayers are not burdened with those costs and expenses.

20 Additionally, the Commission should condition the approval of Aqua’s  
21 Application that in circumstances beyond LMT’s control where it is unable to  
22 transfer all missing easements including rights of way and other property rights

1 before or at the closing of the transaction, Aqua and LMT may at their discretion  
2 close the transaction without the transfer of all missing easements and other  
3 property rights, provided that an escrow account be established of an appropriate  
4 dollar amount from the purchase price to be used for obtaining any post-closing  
5 transfers of easements and other real property rights.

6

7 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

8 A. Yes.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 the :  
Wastewater System Assets of Lower :  
Makefield Township :

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**VERIFICATION OF D. C. PATEL**

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I, **D. C. Patel**, on behalf of the Bureau of Investigation and Enforcement, hereby verify that **I&E Statement No. 1, I&E Exhibit No. 1, and I&E Statement No. 1-SR** were prepared by me or under my direct supervision and control.

Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same if called to the stand at any evidentiary hearing held in this matter.

This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Signed in Enola, Pennsylvania, this 28th day of September 2021.

/s/ DCPatel  
D. C. Patel

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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 the :  
Wastewater System Assets of Lower :  
Makefield Township :

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**VERIFICATION OF ETHAN H. CLINE**

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I, **Ethan H. Cline**, on behalf of the Bureau of Investigation and Enforcement, hereby verify that **I&E Statement No. 2** was prepared by me or under my direct supervision and control.

Furthermore, the facts contained therein are true and correct to the best of my knowledge, information and belief and I expect to be able to prove the same if called to the stand at any evidentiary hearing held in this matter.

This Verification is made subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Signed in Mechanicsburg, Pennsylvania, this 28th day of September 2021.

/s/ Ethan H. Cline  
Ethan H. Cline