



COMMONWEALTH OF PENNSYLVANIA

April 8, 2022

E-FILED

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

**Re: Aqua Pennsylvania Wastewater, Inc. Section 1329 Application for the
Acquisition of East Whiteland Township's Wastewater System Assets / Docket
No. A-2021-3026132**

Dear Secretary Chiavetta:

Enclosed please find the Main Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Erin K. Fure

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

Enclosures

cc: Brian Kalcic
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc. :
Section 1329 Application for the :
Acquisition of East Whiteland Township's : **Docket No. A-2021-3026132**
Wastewater System Assets :
:

**MAIN BRIEF ON BEHALF
OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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For: The Small Business Advocate

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Date: April 8, 2022

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I. STATEMENT OF THE CASE

The Office of Small Business Advocate (“OSBA”) is an agency of the Commonwealth of Pennsylvania authorized by the Small Business Advocate Act (Act 181 of 1988, 73 P.S. §§ 399.41 – 399.50) to represent the interests of small business consumers as a party in proceedings before the Pennsylvania Public Utility Commission (“Commission”).

The OSBA files this Brief in accordance with 52 Pa. Code. § 5.305(c).

A. Procedural History

On July 23, 2021, Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) filed an Application for approval of the acquisition of the wastewater system assets owned by East Whiteland Township (“EWT” or “Township”) to Aqua (“*Application*”).

On August 18, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On August 20, 2021, a Secretarial Letter was issued granting Aqua’s request to extend the initial review period.

On August 25, 2021, Aqua submitted answers to the Bureau of Technical Utility Services’ (“TUS”) requests for additional information.

On August 26, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On August 26, 2021, a Secretarial Letter was issued granting Aqua’s request to extend the initial review period.

On August 26, 2021, the OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement.

On September 2, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On September 2, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On September 16, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On September 16, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On September 17, 2021, the Office of Consumer Advocate ("OCA") filed a Notice of Appearance, Protest and Public Statement.

On September 23, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On September 24, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On September 30, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 1, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

The Commission's Bureau of Investigation and Enforcement ("I&E") filed its Notice of Appearance on October 4, 2021.

On October 7, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 7, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On October 14, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 15, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On October 21, 2021, Aqua sent a letter to the Secretary of the Commission requesting an extension of the initial review period.

On October 22, 2021, a Secretarial Letter was issued granting Aqua's request to extend the initial review period.

On October 29, 2021, Aqua submitted answers to TUS's requests for additional information.

On December 17, 2021, Aqua submitted answers to TUS's requests for additional information.

By Secretarial Letter dated December 20, 2021, the *Application* was conditionally accepted by the Commission.

On December 21, 2021, Aqua filed a letter detailing its compliance with the December 20, 2021 Secretarial Letter conditionally accepting the *Application*.

On January 25, 2022, Aqua filed a letter submitting a certificate verifying service of the *Application* on designated entities as well as the proof of publication.

On February 3, 2022, EWT filed a Petition to Intervene.

On February 4, 2022, a Secretarial Letter was issued which finalized acceptance of the *Application* and set March 7, 2022 as the deadline for protests or petitions to intervene.

On February 4, 2022, a Notice was issued that a telephonic Prehearing Conference was scheduled for March 8, 2022 before Administrative Law Judge (“ALJ”) Marta Guhl.

On February 4, 2022, a Protest was filed by Mr. Richard J. Gage.

On February 14, 2022, a letter and memorandum were submitted by the Valley Forge Sewer Authority.

On February 23, 2022, ALJ Guhl issued a Prehearing Conference Order.

On March 4, 2022, Aqua filed a Petition for Protective Order.

On March 7, 2022, a Telephonic Public Input Hearing Notice was issued scheduling a public input hearing for March 22, 2022 at 6 p.m.

The telephonic Prehearing Conference was held as scheduled on March 8, 2022.

On March 11, 2022, the OSBA, I&E, and OCA served direct testimony.

On March 15, 2022, a Telephonic Hearing Notice was issued scheduling evidentiary hearings for March 31, 2022 and April 2, 2022.

On March 16, 2022, a Protective Order was issued.

On March 16, 2022, Prehearing Order #1 was issued.

On March 18, 2022, Aqua and EWT served rebuttal testimony.

On March 22, 2022, the public input hearing was held as scheduled.

On March 25, 2022, the OSBA, I&E, OCA, and Aqua served surrebuttal testimony.

Evidentiary hearings were held on March 31, 2022. During the evidentiary hearings, the OSBA’s direct¹ and surrebuttal testimony² were admitted into the evidentiary record.

¹ OSBA St. No. 1, the Direct Testimony of Brian Kalcic, including Exhibit BK-1, an Appendix, and Mr. Kalcic’s signed verification.

² OSBA St. No. 1-S, the Surrebuttal Testimony of Brian Kalcic, including Mr. Kalcic’s signed verification.

On March 31, 2022, a Cancellation Notice was issued, which notified the parties that the evidentiary hearing scheduled for April 1, 2022 was cancelled.

On April 4, 2022, a Briefing Order was issued.

B. Overview of the Proposed Transaction

In the *Application*, Aqua requested that the Commission approve Aqua’s acquisition of the wastewater system assets of EWT and permit Aqua to begin to provide wastewater service in the requested territory (“Transaction”). (*Application*, p. 2, ¶3, p. 24).

Aqua is a regulated public utility engaged in the wastewater service business. (*Application*, p. 3, ¶ 7). Aqua furnishes wastewater service to approximately 45,000 customer accounts. (*Application*, p. 3, ¶ 7). EWT owns a sanitary wastewater collection system that provides sanitary wastewater service to approximately 3,895 customers. (*Application*, p. 3, ¶ 8). In the *Application*, Aqua proposed that it would acquire EWT’s wastewater collection assets, which are located within the Township with the exception of one area.³ (*Application*, p. 3, ¶ 10). The EWT collection system has approximately 57 miles of gravity sewer collection mains and 12 Township-owned pump stations. (*Application*, p. 4, ¶ 12).

Aqua proposed to purchase the EWT wastewater assets for \$54,930,000. (*Application*, p. 6, ¶ 21). On January 20, 2021, Aqua and EWT reached an agreement regarding the proposed Transaction, memorialized in the *Asset Purchase Agreement* attached as Exhibit B to the *Application*. (*Application*, p. 3, ¶ 5). Section 7.03 of the *Asset Purchase Agreement* states that Aqua “shall implement [EWT’s] sanitary wastewater base rates then in effect at Closing...as [Aqua’s] effective sanitary wastewater base rates” and that Aqua “shall not propose to increase

³ The King Road Pump Station (Pump Station No. 12) is located on the border between EWT and East Goshen Township. (*Application*, p.4, ¶ 10).

Base Rates until after the third anniversary of the Closing Date.” (Exhibit B to *Application*, p. 27; *see also Application* p. 10, ¶ 33).

II. BURDEN OF PROOF

Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

III. STATEMENT OF QUESTIONS INVOLVED

Should the Commission, as a condition for approval of the *Application*, reject any rate freeze for EWT customers that extends beyond the effective date of new rates in Aqua's first base rate case following the Close of the proposed Transaction?

Suggested Answer: Yes. In the alternative, if the Commission does not reject the rate freeze, the Commission should direct Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case following the Close of Aqua's acquisition of EWT's wastewater assets.

IV. SUMMARY OF ARGUMENT

As a condition of approving the proposed Transaction, the ALJ and the Commission should either (1) reject any rate freeze for EWT customers that extends beyond the effective date of new rates in the Company's next base rate case, or, alternatively (2) impute revenues to EWT customers to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case following the Close of the proposed Transaction.

The three-year rate freeze commitment found in Section 7.03 of the *Asset Purchase Agreement* may delay the movement of Township-acquired customers toward cost of service and exacerbate the difference in rates paid by Township-acquired customers and Aqua's non-Township-acquired customers. Should Aqua file a base rate proceeding which concludes prior to the third anniversary of the Close of the Transaction, the rate freeze would cause the subsidy received by Township-acquired customers from non-Township-acquired customers to increase, in violation of the Commission's long-standing policy of implementing single tariff pricing. Moreover, such an outcome would be prejudicial toward Aqua's current customers.

V. ARGUMENT

A. Sections 1102/1103

1. Introduction

Section 1102 of the Code states:

Upon the application of any public utility and the approval of such application by the commission, evidenced by its certificate of public convenience first had and obtained, and upon compliance with existing laws, it shall be lawful:

(1) For any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory....

(3) For any public utility or an affiliated interest of a public utility ... to acquire from, or transfer to, any person or corporation, including a municipal corporation, by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service.

(66 Pa. C.S. §§ 1102(a)(1), (3)). The Commission shall grant a certificate of public convenience “only if the [C]ommission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” (66 Pa. C.S. § 1103(a)). In granting a certificate of public convenience, the Commission may impose such conditions as it deems to be just and reasonable. (66 Pa. C.S. § 1103(a)).

An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958). An applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

2. Fitness

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

3. Substantial Affirmative Public Benefits

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

4. Conclusion

The OSBA took no position on the issues in this section. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

B. Section 1329

1. Introduction

On April 14, 2016, Governor Tom Wolf signed Act 12 of 2016, which amended Chapter 13 of the Code by adding 66 Pa. C.S. § 1329. A proceeding was established at Docket No. M-2016-2543193 concerning the implementation of Section 1329. Section 1329 allows a public utility to use fair market valuation for municipal-owned water and wastewater systems located in Pennsylvania.

2. Legal Principles

Section 1329 provides that the following procedure should be used to determine the fair market value of the selling water/wastewater system:

- (1) The commission will maintain a list of utility valuation experts from which the acquiring public utility or entity and selling utility will choose.
- (2) Two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.

(3) Each utility valuation expert shall determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.

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

(5) Each utility valuation expert shall provide the completed appraisal to the acquiring public utility or entity and selling utility within 90 days of execution of the service contract.

(66 Pa. C.S. § 1329(a)). Additionally, Section 1329 directs that the ratemaking rate base of the selling utility shall be included into (1) the rate base of the acquiring utility during that utility's next base rate case or (2) the entity in its initial tariff filing. (66 Pa. C.S. § 1329(b)(1)).

Furthermore, "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." (66 Pa. C.S. § 1329(b)(2)). "Fair market value" is defined as "the average of the two utility valuation expert appraisals conducted under subsection (a)(2)." (66 Pa. C.S. § 1329(g)).

3. Aqua's Application

In its *Application*, Aqua asserted that the purchase price is \$54,930,000.00.

(*Application*, p. 6, ¶ 21). The *Application* indicated that the appraisal of Gannet Fleming valued the EWT system at \$55,668,000 and the appraisal of AUS valued the EWT system at \$57,781,458, with an average of the two appraisals being \$55,668,000. (*Application*, p. 18, ¶ 56).

4. Challenges to UVE Appraisals

a. Cost Approach

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

b. Market Approach

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

c. Income Approach

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

5. Conclusion

The OSBA took no position on the issues in this section. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

C. Recommended Conditions

During this proceeding, the OSBA raised concerns regarding the rate freeze commitment contained in Section 7.03 of the *Asset Purchase Agreement*, which includes the following provisions:

(1) there shall be no change in the current effective rates paid by Township customers upon the close of the proposed transaction; (2) Aqua shall not propose to implement a base rate increase for Township customers “until after the third anniversary of the Closing Date” of the proposed transaction; (3) Aqua shall apply, at and after Closing, its then-existing miscellaneous fees and charges, and rules and regulations for wastewater service as set forth in Aqua’s tariff within the Whiteland service area; and (4) Buyer shall include the rate provisions in Section 7.03(a) in its requested PaPUC Governmental Approval.

(OSBA St. 1, p. 2).

Aqua anticipates Closing on the proposed Transaction to occur “soon after the final Commission decision” in this matter, which is expected to be issued on July 14, 2022. (OSBA St. 1, pp. 3-4, quoting Aqua’s response to OSBA-I-2). Aqua also currently has a base rate case pending before the Commission, with the Commission’s final decision expected in May 2022. (OSBA St. 1, p. 4). The current average monthly bills paid by Township customers are much lower than those paid by Aqua’s existing wastewater customers, with the average monthly bill paid by residential customers in the Township 22.4% to 48.3% lower than Aqua’s Rate Zone 1 equivalent residential bill. (OSBA St. 1, p. 4). When compared to Aqua’s proposed Rate Zone 1 wastewater system rates in the currently pending base rate case, the average monthly bill paid by residential customers in the Township is 35.5% to 57% lower. (OSBA St. 1, p. 5). Moreover, depending on the timing of Aqua’s next rate case, the three-year rate freeze commitment in Section 7.03 of the *Asset Purchase Agreement* could extend beyond the effective date of new rates that results from Aqua’s first base rate case following the Closing of the proposed Transaction.⁴ (OSBA St. 1, p. 6; OSBA St. 1-S, p. 2).

It would be entirely inappropriate to freeze the Township’s rates for any period of time beyond the effective date of new rates in Aqua’s first base rate proceeding following the Close of the Transaction. The Township’s customers already pay considerably less than the system average rate for wastewater service, and allowing Aqua to freeze the Township’s rates in its next

⁴ Mr. Kalcic provided the following example: “assuming the Closing date of the proposed transaction were to be July 31, 2022, the proposed base rate freeze for Whiteland customers would remain in place until July 31, 2025. If Aqua were to file its next base rate case on or before October 30, 2024, the Township’s rate freeze would extend beyond the effective date of new rates in Aqua’s next rate proceeding.” (OSBA St. 1, p.6).

rate case would increase the annual subsidy received by Township customers at the conclusion of that rate proceeding. (*OSBA St. 1*, p. 7).

Aqua has not committed to maintaining a three-year period between rate case filings and is not subject to a stay-out commitment at this time. In short, absent a decision by the Company to extend its current three-year rate case filing cycle, there is every possibility that the rate commitment contained in Section 7.03 of the *Asset Purchase Agreement* would freeze East Whiteland's rates beyond the effective date of new rates in Aqua's first rate case after Closing. (*OSBA St. 1-S*, p. 2). Such an outcome would exacerbate the rate differential between Aqua's existing wastewater customers and those customers Aqua acquires from the proposed Transaction with the Township.

All of Aqua's base wastewater rates should be evaluated in each of the Company's base rate proceedings, and all rate areas should exhibit movement toward the system average wastewater rate (or cost of service) in each rate case, consistent with the Commission's long-standing policy of implementing single tariff pricing. (*OSBA St. 1*, p. 7). As a condition for the approval of the proposed Transaction, the ALJ and the Commission should, in accordance with 66 Pa. C.S. § 1103 (a), reject the rate freeze commitment found in Section 7.03 of the *Asset Purchase Agreement*. (*OSBA St. 1*, p. 8). Such condition would (1) be just and reasonable, (2) protect Aqua's current wastewater customers from unwarranted rate increases, and (3) comply with the Commission's policy of implementing single tariff pricing.

The OSBA alternatively proposes that the ALJ and the Commission direct Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case after the Close of the proposed Transaction. (*OSBA St. 1*, p. 8).

With regard to the OSBA's alternative proposal, Aqua witness Mr. William C. Packer testified in his rebuttal testimony that:

[T]he Tobyhanna Sewer System acquired by the Company was included in Rate Zone 4, despite the fact that the asset purchase agreement also had a rate freeze provision. The Company's proposed tariff treated the existing rates in effect through the duration of the rate freeze period as a special charge. Once the expiration of the contractual rate freeze elapsed, those customers immediately became subject to Rate Zone 4 tariff rates. Nonetheless, the Company's proof of revenue was calculated at the full cost of service rate, not the frozen existing rate, thus no existing customer was harmed or paid for the rate freeze. If the same situation would occur for EWT, the Company would make a similar proposal for the EWT system and its customers.

(*Aqua St. 1-R*, pp. 3-4). The OSBA's rate freeze concerns would be satisfied if Aqua committed to addressing EWT's rate freeze in the same manner used for the acquired Tobyhanna Sewer System in Aqua's first base rate proceeding following the Close of the proposed Transaction.

(*OSBA St. 1-S*, p. 3). While Mr. Packer's testimony suggests Aqua does not have an issue with the OSBA's alternative proposal, it stops short of committing Aqua to using that method to address EWT's rate freeze; as such, the OSBA requests that the ALJ and the Commission order Aqua to address EWT's rate freeze in the same manner used for the acquired Tobyhanna Sewer System in Aqua's first base rate proceeding following the Close of the proposed Transaction, if the rate freeze is not rejected in its entirety.

D. Section 507 Approvals

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

E. Section 2102 Approval

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

F. Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code

The OSBA took no position on this issue. Nevertheless, the OSBA reserves its right to address any arguments concerning this issue in a reply brief, exceptions, or reply exceptions.

VI. CONCLUSION WITH REQUESTED RELIEF

In view of the foregoing, the OSBA respectfully requests that, as a condition for approval of the *Application*, the ALJ and the Commission reject any rate freeze, including the rate commitment contained in Section 7.03 of the *Asset Purchase Agreement*, that extends beyond the effective date of new rates in Aqua's first base rate case following the Close of the Transaction. Alternatively, the OSBA respectfully requests that, as a condition for approval of the *Application*, the ALJ and the Commission direct Aqua to impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in Aqua's first base rate case following the close of the Transaction.

Respectfully submitted,

/s/ Erin K. Fure

Erin K. Fure

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Dated: April 8, 2022

APPENDICES

Appendix A: PROPOSED FINDINGS OF FACT

1. Section 7.03 of the *Asset Purchase Agreement* commits Aqua to implement a rate freeze for Township customers that would last until the third anniversary of the Closing date of the proposed transaction.
2. The rate freeze commitment contained Section 7.03 of the *Asset Purchase Agreement* is unjust and unreasonable.
3. The current average monthly bills paid by Township customers are lower than those paid by Aqua's existing wastewater customers, with the average monthly bill paid by residential customers in the Township 22.4% to 48.3% lower than Aqua's Rate Zone 1 equivalent residential bill.
4. Aqua currently has a base rate case pending before the Commission, with the Commission's final decision expected in May 2022.
5. When compared to Aqua's proposed Rate Zone 1 wastewater system rates in the currently pending base rate case, the average monthly bill paid by residential customers in the Township is 35.5% to 57% lower.
6. Allowing Aqua to freeze the Township's rates in its next rate case would increase the annual subsidy received by Township customers at the conclusion of that rate proceeding.
7. All of Aqua's base wastewater rates should be evaluated in each of the Company's base rate proceedings, and all rate areas should exhibit movement toward the system average wastewater rate (i.e. cost of service) in each rate case, consistent with the Commission's long-standing policy of implementing single tariff pricing.
8. It is just and reasonable that, as a condition of approving the proposed Transaction, the rate freeze in Section 7.03 of the *Asset Purchase Agreement* be rejected.

9. Rejecting the rate freeze, as a condition of approving the proposed Transaction, would protect Aqua's current customers.
10. Rejecting the rate freeze, as a condition of approving the proposed Transaction, would comply with the Commission's policy of implementing single tariff pricing.
11. It is just and reasonable that, as a condition of approving the proposed Transaction and an alternative to rejecting the rate freeze, Aqua must impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any increase otherwise applicable to EWT in Aqua's first base rate case after the Close of the proposed Transaction.
12. Requiring Aqua to impute revenues to EWT customers, as a condition of approving the proposed Transaction, would protect Aqua's current customers.
13. Requiring Aqua to impute revenues to EWT customers, as a condition of approving the proposed Transaction, would comply with the Commission's policy of implementing single tariff pricing.

Appendix B: PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, these application proceedings. 66 Pa. C.S. §§ 1102, 1103 and 1329.
2. Aqua has the burden of proof in these proceedings. 66 Pa. C.S. § 332(a).
3. The Commission may issue a certificate of public convenience upon a finding that “the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a).
4. A certificate of public convenience is required for “any public utility to begin to offer, render, furnish or supply within this Commonwealth service of a different nature or to a different territory than that authorized” 66 Pa. C.S. § 1102(a)(1).
5. A certificate of public convenience is required for “any public utility . . . to acquire from . . . any person or corporation, including a municipal corporation, by any method or device whatsoever . . . the title to, or possession or use of, any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(3).
6. An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240, 243 (Pa. Super. 1958).
7. An applicant for a certificate of public convenience must demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 449 Pa. 136, 151, 295 A.2d 825, 828 (1972).

8. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).
9. The Commission may impose as a condition of approving the proposed Transaction that the rate freeze in Section 7.03 of the *Asset Purchase Agreement* be rejected, as such condition is just and reasonable.
10. Alternatively, the Commission may impose as a condition of approving the proposed Transaction the requirement that Aqua must impute revenues to EWT customers, as necessary, to make up for the revenue shortfall associated with any increase otherwise applicable to EWT in Aqua's first base rate case after the Close of the proposed Transaction, as such condition is just and reasonable.

Appendix C: PROPOSED ORDERING PARAGRAPHS

1. Consistent with Section 1103(a) of the Pennsylvania Public Utility Code, the Commission finds that it is just and reasonable to impose the following condition(s) prior to granting approval of Aqua's *Application*:

(a) The base rate freeze commitment in Section 7.03 of the *Asset Purchase Agreement* shall have no force or effect in any proceeding before the Pennsylvania Public Utility Commission.

(or, alternatively)

(a) Aqua shall impute revenues to EWT customers, as necessary, in order to make up for the revenue shortfall associated with any rate increase otherwise applicable to EWT in the Aqua's first base rate case after the Close of the proposed Transaction.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aqua Pennsylvania Wastewater, Inc. Section :
1329 Application for the Acquisition of East :
Whiteland Township’s Wastewater System : **Docket No. A-2021-3026132**
Assets :
:

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated: April 8, 2022