



THOMAS, NIESEN & THOMAS, LLC

Attorneys and Counsellors at Law

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

April 8, 2022

Via Electronic Filing

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

In re: Docket No. A-2021-3026132
Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329, 507
and 2102 of the Public Utility Code for Approval of its Acquisition of the Wastewater
System Assets of East Whiteland Township

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Main Brief. Copies of the Main Brief are being served upon the persons and in the manner set forth on the certificate of service attached to it.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By

Thomas T. Niesen

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

Application of Aqua Pennsylvania : Docket No. A-2021-3026132
Wastewater, Inc. Pursuant to Sections :
1102, 1329, 507 and 2102 of the Public :
Utility Code for Approval of its :
Acquisition of the Wastewater System :
Assets of East Whiteland Township :

MAIN BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

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

*Attorneys for
Aqua Pennsylvania Wastewater, Inc.*

DATED: April 8, 2022

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I. STATEMENT OF THE CASE

A. Procedural History

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), filed with the Public Utility Commission (“Commission”) on July 23, 2021, pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code (“Code”).

The Application asks the Commission to issue an order and certificates of public convenience pursuant to Section 1102 of the Code approving Aqua’s acquisition of the wastewater system assets of East Whiteland Township (“East Whiteland” or “Township”) and allowing Aqua to begin to provide wastewater service in portions of the Township.

The Application also asks that the Commission include in its order approving the acquisition, a determination that the ratemaking rate base of the assets being acquired by Aqua is \$54,930,000 pursuant to Section 1329(c)(2) of the Code.

The Application, additionally, seeks, to the extent necessary, approval of contracts, including assignment of contracts between Aqua and the Township pursuant to Section 507 of the Code, a request for approval of a contract between affiliated interests pursuant to Section 2102 of the Code and such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

The Bureau of Technical Utility Services (“TUS”), the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and the Office of Small Business Advocate (“OSBA”) were served with copies of the Application on July 23, 2021. Thereafter, the Company filed and served supplemental information on August 25, 2021, October 29, 2021, and December 17, 2021, in response to information requests from TUS.

By letter dated December 20, 2021, the Commission conditionally accepted the Application for filing. In compliance with the conditional acceptance letter, Aqua provided

individualized notice of the proposed acquisition to its water and wastewater customers and East Whiteland provided individualized notice of the proposed acquisition to its wastewater customers. Aqua also published a notice of the filing of the Application in a newspaper of general circulation.

Following confirmation of the required notification, the Commission, by letter dated February 4, 2022, acknowledged its final acceptance of the Application and advised that notice of the filing of the Application would be published in the Pennsylvania Bulletin on February 19, 2022, with a protest deadline of March 7, 2022.

OSBA filed a Notice of Intervention and Public Statement on August 26, 2021. OCA filed a Protest and Public Statement on September 17, 2021. I&E filed a Notice of Appearance on October 4, 2021. East Whiteland filed a petition to intervene on February 3, 2022. Richard Gage filed a Protest on February 4, 2022.

By Notice dated February 4, 2022, the Commission scheduled a Call-In Telephonic Prehearing Conference for March 8, 2022, with Administrative Law Judge Marta Guhl presiding. Judge Guhl issued a Prehearing Conference Order, dated February 23, 2022, in advance of the Prehearing Conference.

The Call-In Telephonic Prehearing Conference was convened as scheduled on March 8, 2022. Aqua, I&E, OCA, OSBA and East Whiteland participated in the Conference. A litigation schedule was adopted providing, *inter alia*, for evidentiary hearings on March 31 and April 1, 2022, and memorialized in Prehearing Order #1, dated March 16, 2022.

A Telephonic Public Input Hearing was held on March 22, 2022. Approximately 6 witnesses offered testimony at the Telephonic Public Input Hearing.

The call-in evidentiary hearing was convened on March 31, 2022. Written testimony of Aqua, East Whiteland, I&E, OCA and OSBA, and a statement of Mr. Gage was admitted into the evidentiary record.

Aqua submits this Main Brief in accordance with the litigation schedule presented in Prehearing Order #1.

B. Overview of the Proposed Transaction

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

East Whiteland is a duly organized and validly existing Pennsylvania township of the Second Class. East Whiteland owns a sanitary wastewater collection system that provides sanitary wastewater service to approximately 3,895 customers in the Township.

Aqua and East Whiteland are parties to an Asset Purchase Agreement dated as of January 8, 2021. The negotiated purchase price, which is based on arms' length negotiation, is Fifty-Four Million Nine Hundred Thirty Thousand Dollars (\$54,930,000). Aqua and East Whiteland are not affiliated with each other.

The wastewater system assets to be transferred include, *inter alia*, the assets, properties and rights of the Township used in the system and all pipes, pumping stations, generators, manholes and pipelines and billing and collections related assets necessary to run the system.

Aqua and East Whiteland have agreed to use the process presented in Section 1329 of the Code to determine the fair market value of the wastewater system assets and the ratemaking rate base.

II. BURDEN OF PROOF

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

P.U.C., 578 A.2d 600 (Pa. Cmwlth. 1990).

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

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Mill v. Comm.*, *Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); 2 Pa.C.S. § 704.

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

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

III. STATEMENT OF QUESTIONS INVOLVED

Question No. 1

Is Aqua’s acquisition of the wastewater system assets of East Whiteland Township and related expansion of certificated service territory necessary or proper for the service, accommodation, convenience or safety of the public?

Suggested Answer to Question No. 1

Yes. Aqua’s acquisition of the wastewater system assets of East Whiteland Township and related expansion of certificated service territory are necessary or proper for the service, accommodation, convenience or safety of the public.

Question No. 2

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

Suggested Answer to Question No. 2

The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is

\$54,930,000, being the lesser of the purchase price of \$54,930,000 negotiated by Aqua and East Whiteland and the average of the fair market value appraisals which is \$56,724,729.

Question No. 3

Pursuant to Section 507 of the Code, are the contracts between Aqua and East Whiteland Township, including assignments of contracts, reasonable, legal and valid?

Suggested Answer to Question No. 3

The contracts between Aqua and East Whiteland Township, including assignments of contracts, are reasonable, legal and valid pursuant to Section 507 of the Code.

Question No. 4

Pursuant to Section 2102 of the Code, should the Commission approve East Whiteland Township's assignment of the Wastewater Conveyance Agreement with Aqua Resources, Inc.?

Suggested Answer to Question No. 4

The Commission should approve East Whiteland Township's assignment of the Wastewater Conveyance Agreement with Aqua Resources, Inc.

IV. SUMMARY OF ARGUMENT

Sections 1102/1103 and Certificates of Public Convenience

Section 1102 of the Code requires Commission approval through the issuance of a Certificate of Public Convenience ("CPC") for a public utility to expand its service territory and to acquire property used or useful in the public service.

Section 1103 of the Code provides that a CPC will issue if the Commission finds or determines that the granting of a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.

Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit.

An existing provider of public utility service is presumed fit. Aqua, nevertheless,

established its technical, legal and financial fitness by a preponderance of the evidence. Aqua is fit to acquire the East Whiteland Township system and to initiate wastewater service in East Whiteland Township's service territory ("Requested Territory").

Aqua demonstrated that the proposed transaction will further a legislative objective and affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways.

Section 1329 and Ratemaking Rate Base

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

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

The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$54,930,000, being the lesser of the negotiated purchase price of \$54,930,000 and \$56,724,729, which is the average of the Gannett and AUS Appraisals.

V. ARGUMENT

A. Section 1102/1103

Section 1102 of the Code requires Commission approval through the issuance of a CPC for a public utility to expand its service territory and to acquire property used or useful in the public service.

Section 1103 of the Code provides that a CPC will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Supreme Court explained in the context of a utility merger that the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the merger.

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

Popowsky further explains that demonstration of affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” The Commission, moreover, can, under Section 1103(a), impose conditions that it deems just and reasonable.

More recently, the Commonwealth Court in *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019) (“*McCloskey*”) held that Commission findings: i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky*, to support a

conclusion that there is a public benefit to a transaction.¹

McCloskey also explains that the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition. Significantly, however, the Court recognized that rate impact is not dispositive in the Commission’s determination of affirmative benefits and that “the Commission is charged with deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.”

Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). An existing provider of public utility service is presumed fit. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995). The burden of proof to rebut the presumption is on Protestants. *Re Byerly*, 270 A. 2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. P.U.C.*, 293 A.2d 895 (Pa. Cmwlth. 1972).

1. Fitness

As a certificated provider of utility service, Aqua’s fitness is presumed. Aqua, nevertheless, presented substantial evidence that it is legally, financially and technically fit.

The Commission addressed the fitness criteria in *Re Perry Hassman*, 55 PA PUC 661 (1982).

As to legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission regulations. *Hassman, supra*. Aqua is a public utility operating under Commission granted certificates of public convenience. There are no pending legal proceedings challenging Aqua’s

¹ As noted in *McCloskey*, “[a]s per [*Popowsky*] these aspirational statements are substantial evidence to support the notion that there is a public benefit for the merger.” 195 A. 3d at 1065.

ability to provide safe and adequate service.² Aqua is legally fit.

Aqua is also financially fit. As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Aqua is a Class A wastewater utility with total assets of \$350 million and annual revenues of \$32 million. As a direct subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities.³

Aqua will use existing short-term credit lines to fund the acquisition.⁴ The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The transaction is not expected to have any effect on Aqua PA's corporate credit rating.⁵

As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service. *Hassman, supra*. Aqua will provide management, customer service, regulatory compliance, engineering, financial and ancillary services, seamlessly, from its Southeastern Division office. The transaction will easily fold into Aqua's existing wastewater operations. Aqua is technically/managerially fit.⁶

2. Substantial Affirmative Public Benefits

The Court in *McCloskey* focused on two Commission findings as substantial evidence sufficient to support a conclusion that there is a public benefit to an Aqua Section 1329 transaction:

- i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and
- ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities.

² Aqua St. No. 1 at 10.

³ Aqua St. No. 1 at 10-11. Aqua PA is a Class A water utility and the largest water / wastewater subsidiary of Essential Utilities, Inc. In 2020, Aqua PA had operating income of approximately \$261 million, net income of \$187 million and cash flow from operations of \$231 million. Aqua PA has a Standard and Poor's Rating of A. Aqua St. No. 1 at 10.

⁴ Aqua PA has a \$100 million short term credit facility and access to equity capital. Aqua St. No. 1 at 11.

⁵ Aqua St. No. 1 at 11.

⁶ Aqua St. No. 2 at 15-19 and Aqua Exhibit No. 1, Application ¶48 and ¶49.

Substantial evidence supports these same findings in this proceeding and a conclusion that there are substantial affirmative public benefits to this transaction. No more needs to be determined to support Commission approval of the transaction. Substantial evidence, however, also supports many additional affirmative public benefits, which are identified below.

Overarching the foregoing, as set forth above and in further support of the existence of substantial affirmative public benefits, is the General Assembly's determination, through the enactment of Section 1329, that the public interest will be furthered by the purchase / sale of municipal systems at fair market value.

a. The Many Public Benefits

The Proposed Transaction will provide many public benefits to both existing Aqua customers and the acquired East Whiteland customers. The benefits from the Application⁷ and testimony in support of it⁸ which are incorporated herein are summarized below:

Aqua's Record of Acquiring and Improving Wastewater Systems

- Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to continue to operate, maintain and improve the East Whiteland System. Aqua St. No. 1 at 14 and Aqua Exhibit No. 1, Application ¶52.d.
- Aqua has acquired 16 wastewater systems over the past 10 years.⁹ Many of these systems required significant investment to correct service and environmental issues. The inherent diversification of systems and customers provides a foundation of stability in that, they are all not requiring major capital investments at the same time. Thus, spreading the financial impacts over the long-term operations of the acquiring utility as a whole. Aqua St. No. 1 at 14.
- If Aqua were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers' rates and service. Both types of systems, viable and non-viable, are consistent with the

⁷ Aqua Exhibit No. 1, Application, Section X.

⁸ Aqua Exhibit No. 1 at 13-19 and Aqua Statement No. 2 at 15-19

⁹ New Garden, East Norriton (2020); Cheltenham (2019); East Bradford, Limerick (2018); Tobyhanna, Avon Grove (2017); Emlenton, Honeycroft (2016); Bunker Hill (2015); Penn Township (2014); Treasure Lake (2013); and Sage Hill, Kidder Township, Beech Mountain, Village at Valley Forge (2012).

Commission's policy statements regarding acquisitions. The acquisition of the East Whiteland System will continue to address the Commission's supported policy of consolidation and regionalization. Aqua St. No. 1 at 14-15.

Consolidation/Regionalization

- The Commission has a long-standing record of support for consolidation/regionalization of water/wastewater systems. The Commission understands that in doing so, the utility industry will have a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits. The Commission has previously stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry.” Aqua St. No. 1 at 13 and Aqua Exhibit No. 1, Application ¶52.c.
- “Additionally, these types of acquisitions will also enhance the quality of ratepayers’ daily lives, promote community economic development, and provide environmental enhancements.”¹⁰ Ultimately, the benefits of consolidation/regionalization inure to customers both existing and acquired. The proposed transaction with East Whiteland is no exception to these principles. Aqua PA has successfully acquired numerous water/wastewater utilities over approximately 135 years of operation. Aqua St. No. 1 at 13-14 and Aqua Exhibit No. 1, Application ¶52.c.
- In *McCloskey*, the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are of the type that the Supreme Court in *Popowsky* held were sufficient to meet the public benefit standard and that, accordingly, they are “substantial evidence to support the notion that there is a public benefit” for the transaction. This same analysis is equally applicable in this proceeding and constitutes substantial evidence sufficient to support the public benefit of this transaction. Aqua St. No. 1 at 15 and Aqua Exhibit No. 1, Application ¶52.e.

Benefits to East Whiteland Customers

- The Township customers will become part of a larger scale, efficiently operated, wastewater utility. The Company is already the owner and operator of the East Whiteland water system. As such, the Company has key operations in nearby service areas and will be able to assume the operations of the East Whiteland System, fold them into a larger scale, efficiently operated wastewater utility, which over time will likely yield further operating efficiencies and improve long term viability as envisioned in the Commission policy statement. Aqua St. No. 1 at 15-16.

¹⁰ Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

- The operational overlap between water and wastewater utility operations will provide the opportunity for better coordination of capital activities throughout the East Whiteland service area. Utility activities that involve road openings and restoration can be better aligned to result in less disturbance to the Township as the Company executes capital improvements. Aqua St. No. 1 at 16.
- The Company is projecting less O&M costs under Company ownership that will likely be realized through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing and legal, among others. Specifically, referencing the East Whiteland 2020 Financial Statements, Sewer Fund Operating Expenses were approximately \$2.8 million, whereas the Company is projecting annual expenses of approximately \$2.0 million. Aqua St. No. 1 at 16.
- Aqua estimates that it will invest approximately \$16.92 million in the system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Customers will benefit greatly from the Company's technical experience and fitness in deploying resources towards capital improvements. Aqua St. No. 2 at 10-11 and Aqua St. No. 1 at 16.

Enhanced Customer Service for East Whiteland Township Customers

- Aqua provides customer service through a toll-free number from 8:00AM-5:00PM EST for regular business. The same toll-free number houses the Company's 24/7/365 emergency response. Aqua St. No. 1 at 17.
- East Whiteland customers will benefit from expanded bill payment options including Aqua's online payment and payment by text message, as well as the ability to sign up for notifications and alerts to be sent to their email address or phone, allowing them to stay informed of events impacting their service. East Whiteland customers will also have access to Aqua's customer assistance programs. Aqua St. No. 1 at 17-18.

Enhanced Customer Billing and Payment Protections

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

Benefits to Existing Aqua Customers

- The acquisition of the System will be an approximate 9% increase in Aqua's customer base. By virtue of the Company's larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers. Aqua St. No. 1 at 17 and Aqua Exhibit No. 1, Application ¶56.f.

- Based on Township records, East Whiteland serves approximately 7,658 EDUs,¹¹ which equates to approximately \$7,200 purchase price per EDU and is almost equal to the Company's existing rate base per EDU, projected at approximately \$7,000. Given the similarities in purchase price per connection to rate base per EDU, combined with meaningful lower operating cost, the East Whiteland system characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition. Aqua St. No. 1 at 17.

No Adverse Effect

- The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Aqua Exhibit No. 1, Application ¶56.a.
- The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of East Whiteland. Aqua Exhibit No. 1, Application ¶56.g.
- Consistent with Section 1329(d)(1)(v), Aqua will implement the existing Township base rates upon closing. Existing miscellaneous fees and charges in the Company's tariff, however, will be applied. Aqua St. No. 1 at 11-12.

East Whiteland Township Wants to Sell Its Wastewater System

- The Township has agreed to sell its system. The public interest will be served by allowing Aqua to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The East Whiteland system will benefit from the support of wastewater professionals throughout Aqua's organization. Aqua Exhibit No. 1, Application ¶56.b.

Significantly, together with the foregoing and as set forth above, Aqua's acquisition of the East Whiteland wastewater system is consistent with the General Assembly's clear support and encouragement of municipal wastewater acquisitions. The proposed transaction is supported by substantial affirmative public benefits consistent with *City of York*, *Popowsky* and *McCloskey*.

b. Potential Rate Impact – Hypothetical Rate Impact Is Outweighed by Affirmative Public benefit

The current average monthly bill of an East Whiteland residential customer is approximately \$33.33 per month at one EDU. Applying 100% of the revenue deficiency of

¹¹ The Township renders the majority of its sewer rents on a per EDU basis and its system is comprised of single-family homes, but also multi-unit structures. Aqua St. No. 1 at 17.

\$5,011,000 associated with the proposed rate base addition to the existing East Whiteland rates, the average East Whiteland bill would increase by approximately \$77.64 per month or an 132.93% increase.¹² The calculation and percentage increase is, however, a point in time estimate reflective of revenue deficiency upon year one ownership. While there is an expectation of increased rates going forward, Aqua is not proposing any change in rates to East Whiteland customers as part of this transaction. Proposed rate changes for East Whiteland customers will be presented in an Aqua post-Closing base rate proceeding. Hypothetical rate impact is addressed below.

Hypothetical Rate Impact Is Outweighed by Other Positive Benefits

- While there is an expectation of increased rates as a result of the transaction, this is not unexpected. The possibility of increased rates was noted in *McCloskey*. The positive factors from the transaction outweigh the possibility of increased rates. Aqua St. No. 1 at 19.
- While the rates of the East Whiteland system are reasonably expected to increase, either on their own, or whether acquired by the Company, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base. This benefits both existing and acquired customers alike. Aqua St. No. 1 at 19. Schedule – (WCP – R.1) to Mr. Packer’s rebuttal testimony demonstrates this reality looking over the past five years of capital investments on the Company’s wastewater systems. Aqua St. No. 1-R at 16.
- The East Whiteland system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition. Given this fact and the fact that there are meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time. Aqua St. No. 1 at 18-19.
- As stated above, the transaction furthers a recognized legislative objective and is consistent with the Commission’s consolidation/regionalization policy. There are demonstrated positive benefits, both tangible and intangible, identified above, that are likely realized as a result of the transaction, including capital improvements, expense efficiencies, and economies of scale – such benefits outweigh any potential increase in rates. Aqua St. No. 1 at 19.

¹² Aqua St. No. 1 at 18-19 and Appendix A.

In sum, the hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. In addition, the Township will receive the benefit of sale proceeds of \$54,930,000. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

c. Testimony of OCA Witness Eastman

OCA witness Eastman testified that neither Aqua nor East Whiteland has demonstrated affirmative public benefits that outweigh known harms.¹³ The specifics of Mr. Eastman's testimony are addressed below under separate subheadings. Preliminarily, however, Aqua emphasizes that the Township does not agree with Mr. Eastman and no one is in a better position than the Township to speak for the benefits afforded to its citizens and improvement of service levels.¹⁴

Utility infrastructure, specifically, and infrastructure, in general, nationally, are in need of upgrade. Aqua, like other investor-owned utilities, is part of that solution. The Company's model for deploying resources to that need is the ability to leverage its size, scale, and expertise to this task. Steady growth and diversification of systems across the Commonwealth has enabled Aqua to upgrade and remediate many systems and the Company does this with reasonable cost allocation to all of its customers. The same model that allows the Company to acquire and improve troubled systems allows it to acquire and integrate systems that do not have environmental or operational

¹³ OCA St. No 2 at 16.

¹⁴ Aqua St. No. 1-R at 19-20.

issues. This is the ultimate affirmative public benefit and one that Aqua believes the Commission supports.¹⁵

Not all of the Company's systems require the same level of capital investment, thus the diversification of how costs are deployed and spread over time is what avoids rate shock. In the case of East Whiteland, there are many positive factors to be recognized. The Company has overlapping service territories, thus presenting operational efficiencies between its water and wastewater operations. The capital needs of the East Whiteland system suggest a declining rate base and therefore declining cost of service meaning that the Company can operate the system for less operating and maintenance costs. While this Application is but a mere snapshot of what is ahead, the likelihood that this system will produce further long-term benefits is high.¹⁶

i. Township Fitness

In support of his opposition to the transaction, Mr. Eastman states that the Township is financially fit to complete system improvements and upgrades.¹⁷ The financial fitness of the seller is not a factor to consider in approving the sale. There are many factors that go into a municipality's decision to either continue to operate or exit utility service. Here, East Whiteland determined that exiting the provision of wastewater service is in the best interest of its constituents. Continued improvements and planned upgrades to infrastructure are an important part of providing safe and reliable service. Aqua is a proven alternative for the Township. It not only has the financial resources but the technical expertise, greater operational resources, and a larger customer base over which costs can be spread. Furthermore, this is all Aqua does – 365 days per year, 24 hours per day, Aqua provides safe, reliable, and dependable utility service.¹⁸

¹⁵ Aqua St. No. 1-R at 20.

¹⁶ Aqua St. No. 1-R at 20.

¹⁷ OCA St. No. 2 at 6.

¹⁸ Aqua St. No. 1-R at 13-14.

By comparison, municipal governments have a multitude of other services they need to allocate time and energy to in order to ensure they are addressing the needs of their citizens. Ownership being retained by an entity that no longer wants to provide wastewater service or has determined they are not as equipped to address service needs would likely result in deferred maintenance and costly urgent repairs. While it may be true that the Township can borrow or use cash on hand to make future infrastructure improvements, it is not known whether the Township will in the short term or long term. Aqua has consistently focused on prudently investing in infrastructure which is a substantial benefit of this transaction.¹⁹

ii. Deployment of Capital

Although Aqua estimates that it will invest approximately \$16.92 million in the East Whiteland system over the next ten years, Mr. Eastman claims that none of the anticipated improvements and upgrades are urgent but are, rather, normal improvements expected as a wastewater system ages. He states, further, that the Township would be equally likely to complete the improvements and concludes that the estimated improvements offer no affirmative public benefit for the transaction.²⁰

The planned capital improvement work includes safety related electrical Arc-Flash studies for protection of operations personnel. During Aqua's due diligence visit to the pump station locations, there was no obvious indication that Arc-Flash study work was conducted as would be otherwise indicated by the presence of appropriate Arc-Flash safety alert stickers on electrical control panels. Moving forward with this important safety work is a significant public benefit of Aqua ownership.²¹

¹⁹ Aqua St. No. 1-R at 14.

²⁰ Aqua St. No. 2-R at 2.

²¹ Aqua St. No. 2-R at 2.

Aqua also has capital targeted for addressing inflow and infiltration (“I&I”) within the East Whiteland system. In the Township’s 2019 Chapter 94 Report, 2015 Annual Average Flow (“AAF”) was 1.463 MGD and 2019 AAF was 1.730 MGD, a 267,000 gallon per day (“GPD”) difference. The 2018 AAF was 1.990 MGD, a 527,000 GPD increase in comparison to 2015. While the increase could be due to the addition of customer connections, AAF in the 2020 Chapter 94 Report is 1.331 MGD, i.e., less than the 2015 AAF, which would suggest that the difference is *not* purely from new customers.²²

It would appear, based on the foregoing, that there is I&I within the East Whiteland system. Aside from impacting the Township’s allocation for treatment within the Valley Forge Sewer Authority (“VFSA”) wastewater treatment plant, I&I also impacts Township treatment cost and the VFSA plant itself in terms of the plant’s available hydraulic capacity for the Township and member municipalities. I&I also impacts conveyance capacity and cost within the Valley Creek Trunk Sewer system for East Whiteland and member municipalities. The targeting of capital to investigate I&I and undertake remediation as appropriate is a significant benefit of Aqua ownership.²³

The East Whiteland system also has experienced Sanitary Sewer Overflows (“SSOs”). The 2019 Chapter 94 Report indicates that the system experienced capacity related by-passing, SSOs or surcharging during the 2019 Chapter 94 Report year. Certain system improvements that are targeted within Aqua’s ten-year capital estimate would mitigate the SSOs. Mitigation of SSOs is a further significant benefit of Aqua ownership.²⁴

²² Aqua St. No. 2-R at 2-3.

²³ Aqua St. No. 2-R at 3.

²⁴ Aqua St. No. 2-R at 3.

iii. Full Time Staffing, In-House Laboratory and Emergency Preparedness Plan

In further support of his opposition to the transaction, Mr. Eastman also states that the Township is currently providing safe and reliable service; that safe and reliable service will continue; and that Aqua's expertise and experience is not a public benefit.²⁵ The Township, however, does not presently have in-house dedicated engineering and compliance staff, a water quality laboratory or formal emergency preparedness plans. Aqua does and these in-house services are further benefits of the transaction.²⁶

More specifically, with Aqua ownership, the Township system will have the benefit of a full-time dedicated staff of water and wastewater professionals. Aqua has 27 wastewater operators who can assist in the operation of the system. Aqua facilities are operated by DEP Licensed Operators or are closely monitored by a designated operator under the direction of the Licensed Operator. Aqua's operational staff is supported by in-house engineers who assist with capital planning to improve system efficiencies who are immediately available for system troubleshooting, if required, and to ensure compliance with environmental regulations.²⁷

Aqua also has a staff of in-house environmental compliance experts who monitor changing regulatory requirements and work closely with engineering and operational staff to implement changes to system processes. The Company also has an in-house laboratory that can process samples obtained from the Township system to assist in quickly identifying potential substances that degrade the treatment process at the VFSA plant. The Company also has formal emergency preparedness plans for its systems and a business continuity plan.

²⁵ OCA St. No. 2 at 13-14.

²⁶ Aqua St. No. 2-R at 4.

²⁷ Aqua St. No. 2-R at 4.

iv. Economies of Scale

Referencing a textbook definition of Economies of Scale, Mr. Eastman claims that economies of scale are not supported by the evidence.²⁸ He disputes, as economies of scale, potential future reductions in rate base per EDU and the real, tangible example of reduced annual operating and maintenance cost of \$800,000 under Aqua ownership. Mr. Eastman's failure to recognize the overall benefits of the transaction may lead one to conclude there are no benefits. This is simply not the case.²⁹

Aqua is not in the business of producing cars or widgets. It is, rather, in the business of providing utility service. Regulatory concepts and principles of consolidation are central to the public benefit of this transaction. Simply said, through consolidation, Aqua provides more service (i.e., "output"), to more customers, for less overall incremental cost.³⁰

The very existence of public utilities depends on taking advantage of economies of scale and scope. Mr. Eastman's isolation of the East Whiteland system for individualized economic analysis, on the other hand, is inconsistent with the public interest and adverse to the basic utility model. Looking over the past five years of capital investments on the Company's acquired wastewater systems demonstrates this reality in the form of reduced average incremental investment of \$2,660 per connection with fair market value transactions.³¹

²⁸ OCA St. No. 2 at 7-9.

²⁹ Aqua St. No. 1-R at 14-15.

³⁰ Aqua St. No. 1-R at 15.

³¹ Aqua St. No. 1-R at 15-16.

<i>Schedule - (WCP - R.1)</i>			
<u>Aqua Pennsylvania Wastewater Inc.</u>	<u>Incremental Capital</u>		<u>UPIS Investments January</u>
<u>(Incremental Investments)</u>	<u>Investment per Connection</u>	<u>Connections</u>	<u>2017 - August 2021</u>
Base systems (Non-FMV)	\$6,301	16,302	\$102,711,340
FMV Systems	\$167	23,810	\$3,983,227
Total			
Average Incremental Investment without FMV Systems	\$6,301	16,302	\$102,711,340
Average Incremental Investment with FMV Systems	\$2,660	40,112	\$106,694,566

There is a significant difference between owning and operating a wastewater system and performing due diligence on a wastewater system. Due diligence typically consists of one on-site visit and a review of designated information on a historical basis. Once Aqua is managing the East Whiteland system, specific quantifiable public benefits will be more readily available. The Commission, as set forth above, is not required to secure legally binding commitments or to quantify benefits where that may be impracticable, burdensome or impossible.³²

v. Cost of Aqua Ownership

In further support of his opposition to the transaction, Mr. Eastman cites an overall increase in costs under Aqua ownership for three reasons: (1) Aqua pays taxes that East Whiteland does not, (2) the transaction is under Section 1329 where the purchase price can be incorporated into rate base without offsetting amounts for contributed property, and (3) Aqua will seek a fair return on rate base which increases the revenue requirement above the Township’s cost of debt.³³

While the factors cited by Mr. Eastman can create a higher cost of ownership, they are not a reason to deny the transaction. The differences in cost of capital and income taxes that regulated public utilities pay are known to the Commission and the General Assembly. The Commission

³² Aqua St. No. 1-R at 16.

³³ Aqua St. No. 1-R at 17.

has never concluded that those differences are significant enough to outweigh other public benefits nor has the Commission ignored the other regulatory tools and benefits afforded to regulated public utilities to share costs. The incorporation of the purchase price into rate base without offset for contributed property is part of Section 1329 and meant to encourage consolidation. It cannot be considered a detriment to the transaction.³⁴

vi. Customer Service and Emergency Response

Irrespective of Mr. Eastman's claim to the contrary, Aqua's customer service and emergency response is a benefit of the transaction. Currently, Township customers who are experiencing service problems can call the Township sewer department during regular business hours and the police department outside of regular business hours. Aqua, on the other hand, has a 24/7/365 staffed control room to direct emergency calls to field service personnel. Township police officers will not be involved with sewer issues and their time will be freed up for other Township purposes, which is a benefit of the transaction. Having dedicated staff and an established process to address sewer emergencies, as Aqua does, is a further benefit to customers.³⁵

vii. Bill Payment Options

The Township does *not* offer the same bill payment options as Aqua. Mr. Eastman states that the Township *hopes* to have online bill payment in the near future. Clearly, this is not the same as currently having an online bill payment option. Mr. Eastman also does not recognize that Aqua's payment options include payment by phone and by text message. The expanded bill payment options, which are in place today with Aqua and will be available to East Township customers, are a public benefit of the transaction.³⁶

³⁴ Aqua St. No. 1-R at 17.

³⁵ Aqua St. No. 1-R at 18.

³⁶ Aqua St. No. 1-R at 18.

viii. Low Income Programs

While Mr. Eastman seems to agree that Aqua’s low-income programs may be a benefit to some customers, he states that projected rate increases could increase the number of customers who would need assistance and that, if East Whiteland bills are increased then decreased through low-income programs, this is not a benefit.³⁷ This criticism misses the point. Low-income programs are not presently available in any form to East Whiteland customers but would be available under Aqua ownership. Aqua’s low-income programs are well established and have been reviewed by the Commission. The availability of low-income programs under Aqua ownership is a clear public benefit for low-income customers.³⁸

ix. Benefit of Regulated Service

Mr. Eastman also does not recognize the benefit of regulated service under Aqua ownership.³⁹ Chapter 14 of the Code provides added process and benefits that customers would be able to take advantage of under Aqua’s ownership. The benefits of Chapter 14 do not exist today for East Whiteland customers. In his recent Recommended Decision at A-2021-3024681, Judge Haas noted that “[c]omprehensive regulatory oversight of rates and quality of service ... to newly acquired ... customers, as well as the Commission’s complaint procedures, will provide them with significant assurances and protections relative to the service they will receive ...”⁴⁰

Regulated service under Aqua ownership is a benefit of the transaction.

x. Aqua Service Is a Benefit

Aqua’s expertise in providing utility service is a benefit to East Whiteland customers. The *McCloskey* Court held that Commission findings that Aqua, as the owner of numerous water and

³⁷ OCA St. No. 2 at 10.

³⁸ Aqua St. No. 1-R at 19.

³⁹ OCA St. No. 2 at 10-11.

⁴⁰ *Application of Pennsylvania-American Water Company*, Docket No. A-2021-3024681, Recommended Decision, dated February 28, 2022, mimeo at 46.

wastewater systems has sufficient operational expertise and ability to raise capital to support system operations are appropriately considered in meeting the public benefit standard.⁴¹

d. Testimony of Protestant Gage

Mr. Gage is a water customer of Aqua Pennsylvania at 120 Treaty Drive in Chesterbrook. He has complained several times about high pressure with his water service. Aqua Pennsylvania and Mr. Gage addressed Mr. Gage's high-pressure complaints in settlement agreements in 2008 and 2020.⁴² Mr. Gage testified in opposition to the transaction at the Public Input Hearing on March 22, 2022, and submitted a written statement at the evidentiary hearing on March 31, 2022.

Mr. Gage's concern with high water pressure at his residence is not a basis for denying the Application. While Mr. Gage may disagree, Aqua has attempted to resolve his concerns most recently through a negotiated settlement in 2020 as set forth above. Judge Long addressed Mr. Gage's high-pressure in her Recommended Decision in Aqua Pennsylvania's pending rate case concluding that operational changes to Aqua's distribution system were not required at this time and that Aqua should not be directed to reduce upstream water pressure or install additional pressure valves.⁴³

B. Section 1329

1. Introduction

Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities.⁴⁴

⁴¹ See Aqua St. No. 1-R at 15-16.

⁴² Aqua St. No. 1-SR at 2.

⁴³ Aqua St. No. 1-SR at 3.

⁴⁴ Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. In its Tentative Supplemental Implementation Order entered September 20, 2018, at Docket No. M-2016-2543193, page 6, the Commission explained that:

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

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

2. Legal Principles

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

(c) **Ratemaking rate base.** – The following apply:

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the *fair market value* of the selling utility.⁴⁵

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

The negotiated purchase price is \$54,930,000. The average of the Gannett and AUS fair

The development of water and wastewater service throughout the Commonwealth over the years has led to the creation of large numbers of geographically dispersed water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to a larger, well-capitalized and well-run regulated public utility or entity can be prudent because it can facilitate necessary infrastructure improvements and access to capital markets, and, ultimately, it can ensure the long-term provision of safe, reliable service to customers at reasonable rates.

The Commission further explained at page 7 of that Order how, prior to Section 1329, Section 1311(b) hampered long-term consolidation:

Prior to the enactment of Section 1329, however, the Public Utility Code worked to discourage the acquisition of these systems because Section 1311(b) requires, for rate setting purposes, that the Commission value acquired property at the original cost of construction less accumulated depreciation, in short, at depreciated original cost.

With the enactment of Section 1329, the acquisition of municipal systems is no longer discouraged but is, rather, encouraged in furtherance of the public interest.

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

market value appraisals – the “fair market value” – is \$56,724,729. The ratemaking rate base of the East Whiteland wastewater system, as determined in accordance with the clear and unambiguous statutory language, is, thus, \$54,930,000.

3. Aqua’s Application

Aqua and East Whiteland negotiated a purchase price of \$54,930,000 for the wastewater system. The price was the result of voluntary arm’s length negotiations. Aqua and East Whiteland are not affiliated with each other. They agreed to use the process presented in Section 1329 to determine the fair market value of the wastewater system and the ratemaking rate base.

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

Gannett’s fair market value appraisal is \$55,668,000. AUS’ fair market value appraisal is \$57,781,458. The average of the two is \$56,724,729. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$54,930,000, being the lesser of the negotiated purchase price of \$54,930,000 and the average of \$56,724,729.

The results of the Gannett analyses and calculations are as follows:⁴⁶

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$59,118,924	33.33%	\$19,704,337
Market Approach	\$46,741,589	33.34%	\$15,583,646
Income Approach	\$61,147,544	33.33%	\$20,380,476
		100%	\$55,668,459
Conclusion			\$55,668,000

⁴⁶ Aqua St. No. 4 at 13.

The results of the AUS analyses and calculations are as follows:⁴⁷

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$59,847,171	50%	\$29,923,586
Income Approach	\$55,600,045	40%	\$22,240,018
Market Approach	\$56,178,539	10%	\$5,617,854
Conclusion		100%	\$57,781,458

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

Section 1329 provides that if the Commission issues an order approving an application thereunder, the order “shall include the ratemaking rate base of the selling utility, as determined under subsection (c)(2).” The Commission’s Order approving Aqua’s acquisition of the East Whiteland wastewater system should include a determination that the ratemaking rate base is \$54,930,000.

4. Challenges to the UVE Appraisals

OCA witness Garrett proposed adjustments to the UVE appraisal approaches and a ratemaking rate base of \$46,500,000.⁴⁸ Mr. Garrett’s recommendation should not be adopted. Mr. Garrett did not perform an appraisal of the Township assets. His adjustments, all of which are downward or negative adjustments, do not meet a standard of value of fair market value and are

⁴⁷ Aqua St. No. 5 at 3.

⁴⁸ OCA St. No. 1 at 6.

in direct violation of Section 1329.⁴⁹ Mr. Garrett's specific adjustments to the three approaches are discussed below.

a. Cost Approach

OCA witness Garrett proposed adjustments to the Gannett Cost Approach analysis and to the AUS Cost Approach analysis.

i. The Gannett Cost Approach

In the Gannett appraisal, the Cost Approach to value is based on replacement cost new. Average service lives of depreciable assets to determine replacement cost new less depreciation were based on the materials used for construction and how long the depreciable assets are likely to meet service demands.⁵⁰

OCA witness Garrett adjusted the Gannett Cost Approach. He did not propose adjustments to Gannett's replacement cost estimates but, instead, proposed adjustments that impact accumulated depreciation using shorter service lives for certain plant accounts.⁵¹ Shorter service lives result in lower values under the Cost Approach. Mr. Garrett adjusted the Gannett Cost Approach result from \$59.1 million to \$56.3 million.⁵²

Shorter Service Lives

The estimation of the service lives is an important part of the valuation of depreciable plant assets under the Cost Approach. Mr. Garrett recommends shorter service lives for five plant accounts in the Gannett Cost Approach. Shorter service lives, as set forth above, result in lower values under the Cost Approach. His recommendation is not supported by statistical analysis and should not be adopted.⁵³

⁴⁹ Aqua St. No. 4-R at 2-3.

⁵⁰ Aqua St. No. 4 at 16-18.

⁵¹ OCA St. No. 1 at 18-20.

⁵² OCA St. No. 1 at 22.

⁵³ Aqua St. No. 4-R at 4.

The Commission has not accepted Mr. Garrett’s proposed service lives in prior Section 1329 proceedings. Rather, as explained by Mr. Walker and demonstrated in the following table, it is the service lives used by Gannett that are consistent with the service lives approved by the Commission in prior fully litigated 1329 proceedings concerning Limerick Township, Cheltenham Township and Lower Makefield Township.⁵⁴ Mr. Garrett’s shorter service lives are not reasonable and not suitable for the East Whiteland system assets.⁵⁵

<u>Accounts</u>	<u>East Whiteland Township</u>		<u>Other 1329 Proceedings</u>		
	<u>Gannett Fleming Appraisal</u>	<u>Mr. Garrett (OCA)</u>	<u>Limerick</u>	<u>Cheltenham</u>	<u>Lower Makefield</u>
354.30 Structures and Improvements - Pumping	60-R3	45-R3	60-R3	NA	65-R3
354.40 Structures and Improvements - Treatment	65-R2.5	55-R2.5	75-R3	NA	70-R2.5
360.10 Force Mains	70-R2.5	60-R2.5	70-R2.5	NA	70-R2.5
361.10 Gravity Mains	65-R2.5	60-R2.5	65-R2.5	75-R2.5	65-R2.5
363.20 Services To Customers	55-R2.5	45-R2.5	NA	60-R2.5	55-R2.5

Concerning specific accounts, Mr. Garrett’s recommended service lives for Structures and Improvements - Pumping (account 354.30) and Structures and Improvements - Treatment (account 354.40) are based on the AUS appraisal. He also claimed that his service lives for these two accounts are consistent with his “proposed Iowa curves for these accounts in prior Section 1329 proceedings.”⁵⁶

Mr. Garrett’s recommended service lives for Force Mains (account 360.10) and Gravity Mains (account 361.10) are based on a 2016 depreciation study in the state of Indiana (“Indiana

⁵⁴ Aqua St. No. 4-R at 6-7.

⁵⁵ Aqua St. No. 4-R at 6-7.

⁵⁶ Aqua St. No. 4-R at 4.

Study”). He claimed that his recommended service life for Services (account 363.20) is consistent with his proposal for this account in prior Section 1329 proceedings.⁵⁷

The Indiana Study included information for Citizens Energy Group – Citizens Wastewater (“CWW”), Citizens Energy Group – Westfield Wastewater (“WWW”) and numerous other larger Citizens Energy Group entities.⁵⁸ The data for CWW’s and WWW’s Force Mains account and Gravity Mains account is not statistically significant.⁵⁹ Along with this lack of statistical significance, Mr. Garrett provided no evidence that the CWW and WWW assets are comparable to the Township assets. Instead, there are reasons to doubt that they are comparable. For example, CWW’s system is a combined sewer system, whereas the Township’s is not.⁶⁰

Contrary to the service lives Mr. Garrett proposes here, in his most recent depreciation testimony concerning wastewater assets in a proceeding before the South Carolina Public Service Commission involving Blue Granite Water Company, Mr. Garrett recommended average service lives, which are between **8% and 58% longer** – 65 years for force mains, 95 years for gravity mains, and 53 years for customer services – than the service lives he is recommending in this proceeding.⁶¹

Similar discrepancies are noticed when one compares the service lives that Mr. Garrett proposes in this proceeding and those found in his Indiana Study. Mr. Garrett, for example, recommended an average service life of 45 years for Structures and Improvements - Pumping (account 354.30) in this proceeding but recommended 55 years in his Indiana Study. He

⁵⁷ Aqua St. No. 4-R at 4.

⁵⁸ Aqua St. No. 4-R at 4, citing Cause No. 45039 before the Indiana Utility Regulation Commission.

⁵⁹ Aqua St. No. 4-R at 4-5. The data for CWW’s Force Mains account included only seven years of accounting data, with no retirements and the data for WWW’s Force Mains account included only three years of accounting data, with a total of \$15,000 of retirements. The data for CWW’s Gravity Mains account included only seven years of accounting data, with a total of \$30,000 of retirements and the data for WWW’s Gravity Mains account included only four years of accounting data, with no retirements. Aqua St. No. 4-R at 4-5.

⁶⁰ Aqua St. No. 4-R at 5.

⁶¹ Aqua St. No. 4-R at 7.

recommended an average service life of 55 years for Structures and Improvements - Treatment (account 354.40) in this proceeding but recommended 65 years in his Indiana Study. He recommended an average service life of 45 years for Services (363.20) in this proceeding but recommended 55 years in his Indiana Study. In other words, without explanation or justification, Mr. Garrett is recommending service lives that are between **18% and 22%** shorter for these three accounts than those he recommended in his Indiana Study.⁶²

As summarized by Mr. Walker, it is clear from the foregoing that, in every instance, whether based on the Indiana Study, the AUS appraisal or the Gannett appraisal, Mr. Garrett chose the shortest service life for each of his adjusted five accounts. The use of shorter service lives reduces the appraised value under the Cost Approach.⁶³ Mr. Garrett's predisposed and slanted approach is neither reasonable nor appropriate and does not meet a standard of value of fair market value. His recommendations should not be adopted.

ii. The AUS Cost Approach

In the AUS appraisal, the Cost Approach is based on Cost of Replacement New less Depreciation (CORLD). Mr. Garrett accepted the AUS Cost of Replacement New but adjusted the appraisal depreciation by revising (reducing) the estimated service lives for several plant categories.⁶⁴ The impact of Mr. Garrett's adjustments reduces the AUS Cost Approach result from \$59.8 million to \$53.1 million.⁶⁵

⁶² Aqua St. No. 4-R at 8.

⁶³ Aqua St. No. 4-R at 9. The fact that the AUS appraisal and the Gannett appraisal may use different service lives for different accounts is not surprising since rarely do experts agree on every aspect of an appraisal. However, the fact that the AUS appraisal and Gannett appraisal produced independent appraised values using the Cost Approach that are within 1% of each other proves their conclusions are reasonable and should not be adjusted. Aqua St. No. 4-R at 9.

⁶⁴ Aqua St. No. 5-R at 8.

⁶⁵ OCA St. No. 1 at 23-24. Mr. Weinert explained that the use of a shortened service life not only understates the value determination of the Cost Approach but also reduces the Market Approach's value conclusion. Additionally, since the depreciation lives and the age at the appraisal date are used to determine the depreciation expenses and capital expenditures for plant renewal, the shortened service life increases expenses and capital expenditures, thus reducing the Income Approach's value determination. Aqua St. No. 5-R at 18-19.

Mr. Garrett provided no apparent basis for his recommended service lives for the AUS Appraisal. Rather, he simply indicated that he made the AUS lives the same as those he used for Gannett. While failing to provide any rationale for his service life selections, Mr. Garrett then, inconsistently, faulted AUS for, what he viewed, as its lack of support for the service lives selected by it.⁶⁶

Contrary to Mr. Garrett's criticisms, Mr. Weinert provided substantial support detailing how AUS determined the depreciation parameters and service lives used in its appraisal with specific reference to depreciation studies presented by Pennsylvania-American Water Company and Aqua in their recent general rate proceedings:

Q. How did you determine the depreciation parameters of survival/retirement characteristics and service lives for the utility property under the cost approach?

A. I determined those parameters based on our review of the depreciation studies filed by Pennsylvania-American Water Company ("PAWC") and Aqua Pennsylvania Wastewater, Inc. ("Aqua") in support of their depreciation parameters (Iowa-type Survival Characteristics and Service Lives) and the resultant depreciation expense and rate base (net book) in their recent General Rate Cases (R-2017-2595853, R-2020-3019371 and R-2018-3003561) and AUS Consultants' experience in preparing depreciation studies for the water and wastewater industry and our experience appraising water and wastewater properties.⁶⁷

The table presented at page 11 of Mr. Weinert's rebuttal testimony summarizes the depreciation studies in the referenced PAWC and Aqua general rate cases and demonstrates that a service life in the range of 75 to 80 years is supported by the PAWC and Aqua studies.⁶⁸ Mr. Weinert explained that the depreciation parameters determined in PAWC's and Aqua's studies were the result of analysis of the companies' historical survival and retirement experience over a

⁶⁶ Aqua St. No. 5-R at 10-11, referencing pages 15-16 of Mr. Garrett's direct testimony.

⁶⁷ Aqua St. No. 5-R at 11.

⁶⁸ Aqua St. No. 5-R at 11.

wide span of years, thus representing actual service life experience of wastewater plant. The table presented on page 12 of Mr. Weinert's rebuttal testimony details the accounting experience.⁶⁹

In the case of PAWC's 2020 depreciation study, the life analysis of Account 361.1 Collection Sewers – Gravity entailed plant placed in service over more than 100 years – from 1915 through 2019 including \$1,679,425,134 of plant exposures to survival and potential retirement. It also included plant retirements over the period 2001 through 2019 wherein \$3,846,092 of plant retirements were experienced.

The Aqua and PAWC depreciation studies used by Mr. Weinert show a service life in a range of 75-80 years for Gravity Collection Mains demonstrating that the 80-year service life used in the AUS Appraisal is reasonable. In contrast, Mr. Garrett's 60-year service life is not, as it clearly understates the actual service life for gravity mains constructed and serving Pennsylvania customers and it should not be adopted.⁷⁰

b. Market Approach

Mr. Garrett proposed adjustments to the Gannett Market Approach analysis and to the AUS Market Approach analysis.

i. The Gannett Market Approach

In the Gannett appraisal, the Market Approach to value is based on the market multiples method and the selected transaction method.⁷¹ Mr. Garrett did not propose any adjustment to the market multiples method but did propose adjustments to the selected transaction method. The total

⁶⁹ Aqua St. No. 5-R at 11-12.

⁷⁰ Aqua St. No. 5-R at 12-13. Mr. Weinert also explained that an additional reason why Mr. Garrett's 60-year service life is unwarranted is that the majority of the East Whiteland mains are plastic. A 2014 study conducted by the Utah State University Buried Structures Laboratory entitled PVC Longevity Report – Affordability & The 100+ Year Benchmark Standard (JCW 5-R Exhibit 1) states in its Executive Summary that the combination of pipe examination and testing data in conjunction with previous pipe break studies supports PVC as a sustainable pipe material, confirming a 100+ year benchmark as an industry standard. Aqua St. No. 5-R at 14.

⁷¹ Aqua St. No. 4 at 24.

adjustment is based primarily on a difference in the Section 1329 transactions selected for the analysis. The adjustment reduces the Gannett market approach to value from \$46.7 million to \$39.5 million.⁷²

Mr. Garrett's adjustments include using rate base value in lieu of purchase price, excluding some financial statement metrics, other un-documented, or unexplained, changes to metrics and the removal of selected transactions utilized by Gannett. Mr. Garrett's recommendations do not meet a standard of value of fair market value and are in direct violation of Section 1329.⁷³

Ex Ante and Ex Post Data

Gannett's selected transaction method uses both data from financial statements, or *ex-ante* data, and OCNLD data used in the respective 1329 proceeding, or *ex-post* data. Mr. Garrett, however, relied solely on *ex-post* data, excluding *ex-ante* data from his analysis. An identical approach of excluding *ex-ante* data (financial statements) was recommended by OCA and rejected by the Commission in the Cheltenham Township Section 1329 proceeding.⁷⁴

Mr. Garrett also substituted the purchase price paid with the fair market value rate base approved by the Commission. That approach also was recommended by the OCA and rejected by the Commission in the Cheltenham proceeding. As recognized by the Commission in Cheltenham, based on the purchase price and ratemaking rate base value in the Limerick Section 1329 proceeding, the correct purchase price for Limerick of \$75 million should be used in the selected transaction method in lieu of the Commission's determined ratemaking rate base value because \$75 million was the amount bid and paid by the buyer.⁷⁵

The purchase prices used by Mr. Garrett in his selected transactions method are based on

⁷² OCA St. No. 1 at 9-11.

⁷³ Aqua St. No. 4-R at 17-18.

⁷⁴ Aqua St. No. 4-R at 18-19. *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township ("Cheltenham")*, Docket No. A-2019-3008491, Opinion and Order entered November 5, 2019, mimeo at 73-74.

⁷⁵ Aqua St. No. 4-R at 19. *Cheltenham*, mimeo at 60-61.

the Commission directed ratemaking rate base value not the purchase price determined by buyer and seller. The valuation approach is the Market Approach based on market values, not the “PUC ratemaking rate base value approach.” There is no authoritative source which supports use of Commission directed ratemaking rate base value in the Market Approach.⁷⁶

Selected Transactions

Contrary to Gannett’s analysis that includes information for 13 selected transactions, Mr. Garrett included only six selected transactions in his analysis. Mr. Garrett did not explain why he excluded seven transactions.⁷⁷ Mr. Garrett also included only collection/distribution systems in his criticism of the Gannett Market Approach analysis but then, inconsistently, included both collection/distribution systems and integrated systems selected transactions in his adjusting of the AUS Market Approach.⁷⁸

Ultimately, Mr. Garrett’s adjustment to the Gannett analysis is based on only three transactions due to his excluding numerous selected transactions and relying solely on collection/distribution systems. This is an unreliably small sample size. He compounded his small sample size problem by excluding results or indications of value that he viewed as too high or too low.⁷⁹

Had Mr. Garrett not subjectively removed the indicated values which he determined were too high or too low from his analysis, his result would be \$38,072,212, or \$8,315,259 more than his \$29,756,954 recommendation, for the selected transactions, **a 28% difference.**⁸⁰

Additionally, using only *ex-post* data (the only data used by Mr. Garrett) for all the collection/distribution systems selected transactions used in the Gannett appraisal, Mr. Garrett’s

⁷⁶ Aqua St. No. 4-R at 20.

⁷⁷ Aqua St. No. 4-R at 20.

⁷⁸ Aqua St. No. 4-R at 21.

⁷⁹ Aqua St. No. 4-R at 22.

⁸⁰ Aqua St. No. 4-R at 22.

methodology would indicate a value of \$47,693,222, or \$17,936,268 more than his \$29,756,954 recommendation, for the selected transactions, **a 60% difference.**⁸¹

Mr. Walker emphasized further that Mr. Garrett's Selected Transactions Method result of \$29,756,954 is less than the system's OCNLD of \$32,955,596, which suggests a multiple of OCNLD of 0.90-times ($\$29,756,954 \div \$32,955,596$). The fair market value for \$32,955,596 OCNLD cannot be as low as 0.90-times. Under the Selected Transaction Method (Aqua Exhibit 1, Application Exhibit Q, Exhibit 18, page 3), the value of OCNLD ranges from a multiple of 0.91-times to 3.26-times and averages 1.80-times when only collection/distribution systems transactions are considered. Only one of the 13 selected transactions shown on page 3 of Exhibit 18 had a multiple of OCNLD below 1.0-times. Mr. Garrett presented no evidence that would support a multiple of OCNLD of 0.90-times.⁸²

Considering all the foregoing, Mr. Walker concluded that Mr. Garrett's recommended adjustment to the Gannett Selected Transactions Method is not appropriate and should not be used to determine the value of the East Whiteland system. The adjustment should be given no weight and should not be adopted.⁸³

ii. The AUS Market Approach

In the AUS appraisal, the Market Approach to value is based on comparable sales of water and wastewater properties in Pennsylvania subsequent to the passage of Section 1329 and financial market value ratios of publicly traded water and wastewater companies as reported in the January 8, 2021, issue of Value Line Investment Survey.⁸⁴

Mr. Garrett testified that he proposed three adjustments to the AUS Market Approach. He

⁸¹ Aqua St. No. 4-R at 22-23.

⁸² Aqua St. No. 4-R at 23-24.

⁸³ Aqua St. No. 4-R at 23 and 24.

⁸⁴ Aqua St. No. 5 at 14 and Aqua St. No. 5-R at 2.

substituted the Commission determined rate base for purchase price in the transactions that he analyzed. He challenged AUS' weighting of transactions and he included only collection/distribution systems in his analysis.⁸⁵ Mr. Weinert noted that, in addition to these three adjustments, Mr. Garrett also used different values of cost of replacement new less depreciation for the McKeesport and Limerick transactions and that Mr. Garrett did not include the DELCORA transaction in his analysis.⁸⁶ Mr. Garrett's proposed adjustments reduce the AUS market approach to value from \$56.2 million to \$40.9 million.⁸⁷

Substitution of Rate Base for Purchase Price

Mr. Weinert explained that the use of Commission determined rate base as opposed to the agreed upon purchase price is not an appraisal market comparable approach as it does not represent a market transaction.⁸⁸ The definition of Market Value requires:

Market Value: The most probable price, as of a specific date, in cash, or in terms equivalent to cash, or in other precisely revealed term, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress. (The Appraisal of Real Estate 14th Edition, page 58)⁸⁹

The conditions under which the resultant rate bases were derived in the various Section 1329 applications do not meet the above definition in terms of an agreed upon price between a buyer and seller neither being under duress. Also, the conditions of Section 1329 introduce several additional parties in the determination of rate base which were not present when the buyers and sellers agreed to a purchase price and formalized that price and the conditions of the sale in their

⁸⁵ OCA St. No. 1 at 11-12.

⁸⁶ Aqua St. No. 5-R at 2-3.

⁸⁷ OCA St. No. 1 at 11 and 13.

⁸⁸ Aqua St. No. 5-R at 5.

⁸⁹ Aqua St. No. 5-R at 5.

asset purchase agreement. It was the asset purchase agreements which AUS utilized in developing its market comparable analysis for the Market Approach in its appraisal.⁹⁰

Use of Only Collection Systems

While eliminating wastewater transactions that included treatment facilities, Mr. Garrett included three water distribution properties in his analysis of the market approach. If wastewater properties that include treatment facilities should be eliminated because of a lack of comparability then water distribution properties also should be eliminated. If this were done, Mr. Garrett's Market Approach increases by \$1,710,627 to \$42,616,932, or approximately 4%.⁹¹

Additionally, by eliminating wastewater transactions that include treatment facilities from the analysis, Mr. Garrett failed to include the value of purchased treatment capacity thus undervaluing the system. As explained by Mr. Weinert, East Whiteland has purchased treatment capacity outside of East Whiteland and at the Valley Forge Treatment Plant. Had Mr. Garrett included Section 1329 transactions of wastewater properties with collection and treatment assets to account for the value of purchased treatment capacity while excluding collection only systems, his Market Approach conclusion would have been \$44,901,310 instead of \$40,946,531.⁹²

Weighting

The market comparable statistic being measured in the market analysis is the ratio of purchase price to the CORLD, not the size of the transaction. The use of a transaction size weighted average produces a weighted average with superior statistics as is demonstrated by the mean and its standard deviation shown in the Table presented on page 7 of Mr. Weinert's rebuttal testimony.⁹³

⁹⁰ Aqua St. No. 5-R at 5.

⁹¹ Aqua St. No. 5-R at 5-6.

⁹² Aqua St. No. 5-R at 6.

⁹³ Aqua St. No. 5-R at 6-7.

Using Mr. Garrett's data and a weighted average of the purchase price to CORLD, the weighted mean is 0.8709 with a standard deviation of 0.0861 versus Mr. Garrett's use of a simple average of 0.77 with a standard deviation of 0.1665. The weighted average result produces a more reliable market indicator, as demonstrated by a standard deviation of 0.0861 (or nearly twice a closer fit to the data), thereby making the weighted average far superior to a simple mean.⁹⁴

Mr. Weinert concluded that Mr. Garrett's use of the Commission rate bases as a substitute for market agreed purchase price invalidate the analysis as a market comparable approach. Further, his reliance on the simple average as opposed to the more accurate purchase price weighted average produces a less reliable market comparable indicator. As such the Commission should not adopt Mr. Garrett's adjustment to the AUS Market Approach.⁹⁵

c. Income Approach

Mr. Garrett proposed adjustments to the Gannett Income Approach analysis and to the AUS Income Approach analysis.

i. The Gannett Income Approach

Gannett used the Market Multiple Discounted Cash Flow Method and the Capitalization Discounted Cash Flow Method, collectively known as the DCF method to determine the Income Approach result.⁹⁶ Gannett has applied the DCF method as its Income Approach to valuation in fourteen Section 1329 fair market value proceedings. The Commission has not adjusted Gannett's DCF recommendation in any one of those prior proceedings.⁹⁷

Mr. Garrett proposed adjustments to the Gannett Income Approach based on his use of a capitalization of earnings method and different cash flows to value. He also disagrees with the

⁹⁴ Aqua St. No. 5-R at 7-8.

⁹⁵ Aqua St. No. 5-R at 8.

⁹⁶ Aqua St. No. 4 at 18.

⁹⁷ Aqua St. No. 4-R at 12-13.

discount rates used by Gannett and presents what he believes is a more appropriate discount rate. Mr. Garrett's recommendations do not meet a standard of value of fair market value and are in direct violation of Section 1329.⁹⁸ The impact of Mr. Garrett's adjustments reduces the Gannett Income Approach result from \$61.1 million to \$41.3 million.

Different Model

Mr. Garrett used a capitalization of earning or cash flow method model in his Income Approach analysis. The capitalization of earning method converts a single base economic income number to a value by dividing it by a capitalization rate. Notably, the Commission has *never* accepted the capitalization of earnings method recommended by Mr. Garrett in a Section 1329 fair market value proceeding.⁹⁹

Conversely, the Income Approach to valuation used in Gannett's appraisal is based on the DCF method, which values the potential for profit in an investment and reflects future events. Gannett used the DCF method to be consistent with the required standard of value of fair market value.¹⁰⁰ The DCF method "is based on the principle of anticipation - i.e., value is created by the anticipation of future benefits. DCF analysis reflects investment criteria and requires the appraiser to make rational and supportable assumptions."¹⁰¹

Mr. Garrett's capitalization of earnings method uses the income or cash flow producing capabilities for a single year, reflecting current ownership and operations, by averaging the Township's 2018 to 2020 results. Although Mr. Garrett states that the single cash flow that he utilized is **from** the Gannett appraisal, he failed to disclose that Gannett did not **use** the single cash

⁹⁸ Aqua St. No. 4-R at 10.

⁹⁹ Aqua St. No. 4-R at 12-13.

¹⁰⁰ Aqua St. No. 4-R at 11, citing Pratt, Shannon P. "Defining Standards of Value." Valuation 34, no. 2, June 1989. <http://www.appraisers.org/docs/default-source/college-of-fellows-articles/defining-standards-of-value.pdf>.

¹⁰¹ Aqua St. No. 4-R at 11, citing Appraisal Standards Board, "First Exposure Draft of proposed new Advisory Opinions and Advisory Opinion Revisions in conjunction with the 2016-17 edition of the Uniform Standards of Professional Appraisal Practice" pg. 6.

flow in its Income Approach to valuation. Specifically, the Income Approach to valuation used in the Gannett appraisal is based on **projected** cash flows beginning in 2022 and thereafter. Gannett did not use the single year cash flow as recommended by Mr. Garrett.¹⁰²

The “free cash flow from operations” that Mr. Garrett used in his comparable earnings analysis is inappropriate and should not be adopted. Mr. Walker presented five specific concerns with Mr. Garrett’s use of “free cash flow from operations” at page 13 of his rebuttal testimony.¹⁰³ Significant of these concerns is Mr. Garrett’s use of depreciation expense based on original cost, rather than current value, of assets.¹⁰⁴ The Commission has previously rejected the use of original cost as the basis of fair market value.¹⁰⁵

Mr. Walker also explained that the 4.5% discount rate used by Mr. Garrett is not appropriate for fair market valuation purposes. At pages 15 through 17 of his rebuttal testimony, Mr. Walker listed five specific reasons why Mr. Garrett’s discount rate was not determined in accordance with accepted valuation practice. The rate was not determined based on a standard of value of fair market value. The discount rate should have been based on a municipality’s discount rate, not an investor-owned discount rate, so that cash flows and discount rates are coordinated. The rate is not reflective of market value capitalization ratios at the valuation date in accordance with accepted valuation practice. For a municipality, the appropriate debt cost rate is the current municipal revenue bond rate at the valuation date, not the embedded cost of debt. The equity cost rate was not determined at the valuation date in accordance with accepted valuation practice and

¹⁰² Aqua St. No. 4-R at 11-12.

¹⁰³ Aqua St. No. 4-R at 13.

¹⁰⁴ Aqua St. No. 4-R at 13.

¹⁰⁵ Aqua St. No. 4-R at 14, citing *Application of Aqua Pennsylvania Wastewater, Inc. – Limerick Township*, Docket No. A-2017-2605434, Opinion and Order entered November 8, 2017, mimeo at 30, and *Application of Aqua Pennsylvania Wastewater, Inc. – Lower Makefield Township*, Docket No. A-2021-3024267, Opinion and Order entered January 13, 2022, mimeo at 69.

used for market valuation purposes.¹⁰⁶

ii. The AUS Income Approach

AUS also used the DCF method to determine the Income Approach result.¹⁰⁷ Mr. Garrett, however, substituted his own Income Approach for the AUS Approach. Using the average of the Township's 2016 through 2018 financial information, he performed a direct capitalization of similar cashflows from operations to perpetuity.¹⁰⁸ The impact of Mr. Garrett's adjustment reduces the AUS Income Approach result from \$55.6 million to \$41.4 million.

Mr. Weinert rejected Mr. Garrett's adjusting of the AUS Income Approach. Mr. Weinert pointed out that Mr. Garrett assumes, erroneously, that revenues and expenses as reported in East Whiteland's financial information will be the operating results of the buyer. They will not be. Expenses and rate base will change as a result of the sale. Further, Mr. Garrett's estimated cost of equity at 6.0% is far below what the Commission regularly assumes is the cost of equity, which was 9.85% based on the Bureau of Technical Utility Services Report on Quarterly Earnings of Jurisdictional Utilities for the Year Ending December 31, 2020.¹⁰⁹

Mr. Weinert responded to Mr. Garrett and presented an adjusted OCA model in his rebuttal testimony. When adjusted for the transition of the Township wastewater operation to a rate regulated utility, the OCA model, as rerun by Mr. Weinert, produces an income approach indicator of \$62,117,860, which is significantly higher than the AUS income approach indicator of \$55,600,045. The AUS result of \$55,600,045 is conservative in comparison to the result of \$62,117,860 when the OCA model is properly adjusted as presented by Mr. Weinert. Mr. Weinert concluded that the Commission should reject the OCA adjustment to the AUS Income

¹⁰⁶ Aqua St. No. 4-R at 15-17.

¹⁰⁷ Aqua St. No. 5 at 19.

¹⁰⁸ Aqua St. No. 5-R at 20.

¹⁰⁹ Aqua St. No. 5-R at 21.

Approach.¹¹⁰

5. Conclusion – Section 1329 Fair Market Valuation

The ratemaking rate base of the East Whiteland wastewater system, determined pursuant to Section 1329(c)(2), is \$54,930,000, being the lesser of the negotiated purchase price of \$54,930,000 and the average of the UVE appraisals of \$56,724,729. The OCA’s criticisms of the appraisals should be rejected and given no weight.

C. Recommended Conditions

1. Missing Easements

I&E witness Keller recommends that, if the Commission approves the transaction, it should condition approval such that closing will not be permitted until the Township has:¹¹¹

- (1) Identified all missing easements including rights-of way and other property rights;
- (2) Taken any and all necessary actions to obtain the missing easements and other property rights so they may be conveyed to Aqua at closing; and
- (3) Borne all costs and expenses for obtaining and conveying the missing easements and other property rights so that Aqua’s ratepayers are not burdened with those costs and expenses.

Additionally, Mr. Keller recommends that, for situations beyond East Whiteland’s control where it is unable to transfer certain missing easements or other property rights at closing, Aqua and East Whiteland may, at their discretion, close the transaction provided that an escrow account is established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of remaining missing easements or other real property rights.¹¹²

¹¹⁰ Aqua St. No. 5-R at 24-25.

¹¹¹ I&E St. No. 1 at 5.

¹¹² I&E St. No. 1 at 5.

Mr. Keller’s recommendations are not necessary as they already contemplated in the Asset Purchase Agreement (“APA”). Notably, Section 6.05 (Easement) states that “Seller shall, at its sole cost and expense, cause an abstractor ... to perform a search of the public land records of Chester County ... to (i) identify and provide Buyer with title information on all recorded Easements, and (ii) together with Seller, identify all Missing Easements.”¹¹³

Section 6.05 further states that “[i]f during the process of Abstractor’s review and investigation of Chester County land records, Seller determines that there is a Missing Easement, Seller shall take any and all actions (including the use of its power of condemnation) to obtain any Missing Easements so the same may be sold, assigned, transferred and conveyed to Buyer at the Closing ... All costs and expenses incurred in connection with obtaining each Missing Easement ... shall be paid by Seller ...”¹¹⁴ Moreover, Section 6.05(e) of the APA sets forth a process by which the parties will establish an escrow account for obtaining missing easements post-closing.¹¹⁵

While Mr. Keller notes that Section 6.05 provides a process for identification and conveyance of easements and other property rights, Mr. Keller then states that, because Section 6.06 of the APA notes that East Whiteland may have interests in or have the legal right to use or occupy the real property and easements necessary to operate the system and that are not specifically identified in Schedule 4.09, it is important that the Commission adopt his recommended condition.¹¹⁶

Mr. Keller fails to acknowledge that the remainder of Section 6.06 goes on to state that, if a parcel of unscheduled real property is discovered, “Seller shall convey, assign or otherwise transfer any rights to each parcel of Unscheduled Real Property, without additional consideration

¹¹³ Aqua St. No. 1-R at 6 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(a).

¹¹⁴ Aqua St. No. 1-R at 6 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(c).

¹¹⁵ Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(c).

¹¹⁶ Aqua St. No. 1-R at 6.

payable by Buyer, in such a manner as to provide Buyer with reasonable assurances that Buyer will have the right to use or occupy the Unscheduled Real Property as it was used by the Seller as of the Effective Date.”¹¹⁷

As the APA specifically contemplates the rights and responsibilities of Aqua and East Whiteland in regard to property identified that may not have been listed on Schedule 4.09 and provides for the creation of an escrow account for obtaining missing easements post-closing, Aqua submits that Mr. Keller’s recommended condition is not necessary.¹¹⁸

2. Cost of Service Study (“COSS”)

I&E witness Cline recommends that Aqua, in its next rate case, provide a separate COSS for the East Whiteland wastewater system that separately identifies the plant in service costs at the time the East Whiteland system was purchased, the cost of any plant retirements and the cost of any plant investments.¹¹⁹ OCA witness Garrett recommends, similarly, that the Commission should only approve the acquisition if approval is conditioned upon Aqua providing a separate COSS in the first base rate case that includes the Township’s assets, in order to separately identify the cost of serving the Township wastewater system.¹²⁰

The Company agrees that, in its next base rate case filing that includes the EWT system, it will include a separate COSS for the EWT system using the same methodology it used for other systems acquired through Section 1329 proceedings in the base rate case at Docket Nos. R-2021-3027385 and R-2021-3027386.¹²¹ I&E accepts the Company’s response in satisfaction of its recommendation.¹²² The OCA did not address the matter further in surrebuttal testimony.

¹¹⁷ Aqua St. No. 1-R at 6-7 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.06.

¹¹⁸ Aqua St. No. 1-R at 4.

¹¹⁹ I&E St. No. 2 at 15 and I&E St. No. 2-SR at 6.

¹²⁰ OCA St. No. 1 at 46.

¹²¹ Aqua St. No. 1-R at 11.

¹²² I&E St. No. 2-SR at 6-7.

3. Rate Freeze and Rate Stabilization

OSBA witness Kalcic, I&E witness Cline and OCA witness Eastman challenge the three-year rate freeze in Section 7.03 of the APA

a. Testimony of OSBA Witness Kalcic

Mr. Kalcic recommends that, as a condition for approval, the Commission reject any rate freeze for East Whiteland customers that extends beyond the effective date of new rates in the Company's next base rate case. As an alternative, Mr. Kalcic recommends that the Commission direct Aqua to impute revenues to East Whiteland customers to make up the revenue shortfall associated with any rate increase otherwise applicable to East Whiteland in the first base rate case following Closing.¹²³

Mr. Kalcic's recommendation is unnecessary as demonstrated in the Company's most recently concluded base rate filing, whereby the Tobyhanna Sewer System acquired by the Company was reflected in proposed rates, despite the fact that a contractual rate freeze for the system rates extended beyond the effective date of the proposed rates. Aqua's proposed tariff treated the existing Tobyhanna rates in effect through the duration of the rate freeze period as a special charge. Once the expiration of the contractual rate freeze had elapsed, Tobyhanna customers immediately became subject to full 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 the East Whiteland system, the Company would make a similar proposal for East Whiteland customers.¹²⁴

¹²³ OSBA St. No. 1.

¹²⁴ Aqua St. No. 1-R at 3-4.

b. Testimony of I&E Witness Cline

I&E witness Cline recommends that, as a condition for approval of the Application, the Commission remove the three-year rate freeze.¹²⁵ Mr. Cline views the three-year rate freeze as an unreasonable provision in the APA and recommends that the Commission reject it. He states that the rate freeze is unnecessary and would constitute a rate stabilization plan, that it adds no value to the transaction, and that the rate freeze will cause 100% of the revenue deficiency to be recovered from other Aqua customers. He further states that the parties failed to acknowledge that the Commission makes a final determination on rates regardless of any rate freeze.¹²⁶ Mr. Cline's recommendation should be denied.

A rate freeze is not on, in and of itself, a rate stabilization plan. Section 1329(g) defines a "rate stabilization plan" as a "plan that will hold rates constant or phase rates in over a period of time after the next base rate case." Here, Aqua is proposing to implement the Township's current rates and there is no language in Aqua's proposed tariff proposing that rates be held constant or phased in over a period of time after the next rate case. There, also, is no language in the proposed tariff that would potentially bind the Commission from increasing or modifying tariff rates in future base rate cases. The three-year rate freeze, accordingly, does not constitute a rate stabilization plan.¹²⁷

Mr. Cline's position presumes, moreover, incorrectly, that it is a certainty that Aqua will file a base rate case including the East Whiteland system prior to the expiration of the rate freeze period. Aqua has a pending base rate case that will be concluded in May 2022. Over the past twenty years and with the utilization of a fully projected future test year, Aqua has a reasonably

¹²⁵ I&E St. No. 2 at 5.

¹²⁶ Aqua St. No. 1-R at 8.

¹²⁷ Aqua St. No. 1 at 11-12 and Aqua St. No. 1-R at 9.

predictable cadence of rate case filings. There, thus, is a likelihood that the East Whiteland system will not see a rate increase prior to the expiration of the rate freeze period in the APA.¹²⁸

If a rate increase were to occur prior to the expiration of the rate freeze period, it would merely be a matter of months and can be handled with a proposed effective date of new rates for East Whiteland customers being synchronized to the exact day and month of the expiration, with zero chance of any system funding by existing customers, as was done with rates for the Company's Tobyhanna system as addressed above in the discussion of Mr. Kalcic's testimony.¹²⁹

Finally, and to be clear, Aqua acknowledges that the Commission makes the ultimate determination regarding rate increases post-closing.¹³⁰

c. Testimony of OCA witness Eastman

Mr. Eastman recommends that, if the Commission approves the Application, it should reject any rate freeze that extends beyond the effective date of new rates in Aqua's next base rate case. He also concludes that the rate freeze is a rate stabilization plan. As an alternative to rejecting the rate freeze, Mr. Eastman proposes that the Commission recognize that it retains ultimate authority to set rates.¹³¹

As set forth above in the discussion of Mr. Cline's testimony, the three-year rate freeze is not a rate stabilization plan. Mr. Eastman's concern that the rate freeze might extend beyond the date of new rates in the Company's next base rate case can be adequately and reasonably addressed by the Company's proposal to delay the effective date of rates related to the East Whiteland system similar to how the Company's handled the implementation of rates for Tobyhanna customers as set forth above in the discussion of Mr. Kalcic's testimony and Mr. Cline's testimony.¹³²

¹²⁸ Aqua St. No. 1-R at 9.

¹²⁹ Aqua St. No. 1-R at 9.

¹³⁰ Aqua St. No. 1-R at 10.

¹³¹ Aqua St. No. 1-R at 12-13.

¹³² Aqua St. No. 1-R at 12-13.

In respect to Mr. Eastman’s alternative recommendation, Aqua recognizes that the Commission is the ultimate authority when setting rates. Aqua submits, again, that it expects that the expiration of the rate freeze period will align with the effective date of new rates from its next rate case filed on a three-year cycle. To the extent there is any overlap between the effective date of new rates and the end date of the rate freeze period the Company would address this issue as it has done in the past with a delayed effective date of new rates.¹³³

4. Notice of Potential Future Rate Impact

I&E witness Keller presented a reminder to all parties, including the Commission, of the potential rate impact of the transaction on East Whiteland and Aqua customer rates.¹³⁴ Mr. Keller’s testimony on this point has been admitted into the evidentiary record. He did not propose anything further and Aqua submits that his recommendation has been satisfied. I&E made it clear that Mr. Keller’s reminder was not a recommendation that the Commission deny the Application.

5. Long Term Infrastructure Improvement Plan (“LTIIIP”)

Aqua and Mr. Eastman agree that Aqua must file and receive approval of an amended LTIIIP that includes the East Whiteland system prior to charging the Distribution System Improvement Charge (“DSIC”) to EWT customers. Mr. Eastman’s further recommendation that any East Whiteland projects reflected in the amended LTIIIP should be in addition to, and not reprioritize existing capital projects is more problematic.¹³⁵

If Aqua proposes to modify its LTIIIP to include the East Whiteland system, the capital projects added for East Whiteland will be in addition to those that Aqua plans for existing systems as recommended by Mr. Eastman. Capital plans and prioritization, however, are not set in stone.

¹³³ Aqua St. No. 1-R at 13.

¹³⁴ I&E St. No. 2 at 6-12 and I&E St. No. 2-SR at 1-4.

¹³⁵ Aqua St. No. 1-R at 21.

Aqua must maintain the ability to prioritize and allocate projects based on system needs as they evolve during an LTIP period.¹³⁶

6. Allowance for Funds Used During Construction (“AFUDC”)

Mr. Eastman recommends that, if approved, the acquisition should be conditioned on a requirement that claims for AFUDC and deferred depreciation be made no later than Aqua’s next base rate case.¹³⁷ Mr. Packer agreed with Mr. Eastman’s recommendation with the clarification (accepted by Mr. Eastman) that, if claims are made for AFUDC and deferred depreciation, they should be made in Aqua’s first base rate case that includes the East Whiteland system, and not simply Aqua’s next base rate case.¹³⁸

D. Section 507 Approvals

The Application asks that the Commission approve, if necessary, its acquisition agreement with East Whiteland and the assignment of 22 contracts with municipalities under Section 507 of the Code.¹³⁹ The contracts are necessary for the operation of the system and no party opposed the issuance of the certificates. Aqua submits that the contracts, including assignments, are reasonable, legal and valid and that the certificates should issue.

E. Section 2102 Approval

Aqua will be taking assignment of East Whiteland’s rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities and included in the Application as Exhibit F17 – the November 2018 Agreement – for conveyance of wastewater through the Valley Creek Trunk Line. The charges under the Agreement and the Agreement itself were negotiated by Aqua Resources and non-affiliates of Aqua and, thus, are reflective of a

¹³⁶ Aqua St. No. 1-R at 21.

¹³⁷ OCA St. No. 2 at 15.

¹³⁸ Aqua St. No. 1-R at 22; also see OCA St. No. 2SR at 7-8.

¹³⁹ Aqua St. No. 1 at 6.

negotiated, market rate for the conveyance of wastewater. No changes in the negotiated, market rates will occur as a result of the assignment.¹⁴⁰ Aqua submits that the assignment should be approved.

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

Aqua asks that the Commission acknowledge, in its Opinion and Order, the issuance of all other approvals, certificates, registrations and relief, if any, under the Code as may be appropriate.

VI. CONCLUSION WITH REQUESTED RELIEF

For the reasons set forth above, Aqua Pennsylvania Wastewater, Inc. requests that the Public Utility Commission approve its Application and:

- a. Issue Certificates of Public Convenience under Section 1102:
 - (1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of East Whiteland Township; and
 - (2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory.
- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
 - (1) Include within its territory all the Requested Territory;
 - (2) Adopt and apply within the Requested Territory, East Whiteland's rates as Aqua's Base Rates; and
 - (3) Apply Aqua's *Rules and Regulations* within the Requested Territory.
- c. As part of its Order approving the Application include a determination that the ratemaking rate base of the East Whiteland system is \$54,930,000 pursuant to Section 1329(c)(2);
- d. As part of its Order approving the Application approve Contracts, including Assignments of Contracts, between Aqua and East Whiteland, pursuant to Section 507 of the Public Utility Code;

¹⁴⁰ Aqua St. No. 1 at 22-23.

- e. As part of its Order approving the Application approve the assignment of East Whiteland Township's Wastewater Conveyance Agreement with Aqua Resources, Inc., pursuant to Section 2102 of the Public Utility Code; and
- f. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code as may be appropriate.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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

Date: April 8, 2022

PROPOSED FINDINGS OF FACT

AQUA AND EAST WHITELAND

1. Aqua is a certificated provider of wastewater service, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua St. No. 1 at 8-9 and Aqua Exhibit No. 1, Application ¶ 7.

2. Aqua operates 39 wastewater treatment plants throughout the Commonwealth of Pennsylvania serving approximately 45,000 customers in Chester and several other Pennsylvania Counties. Aqua St. No. 2 at 4-5.

3. Aqua operates 24 wastewater systems in its Southeast Division that are in proximity to East Whiteland Township. Aqua St. No. 2 at 5.

4. Aqua is a subsidiary of Aqua Pennsylvania, Inc. (“Aqua PA”). Aqua PA is the second largest investor-owned water utility in the Commonwealth of Pennsylvania, providing service to 488,000 water and wastewater customers. Aqua PA is a subsidiary of Essential Utilities, Inc. (“Essential”). Aqua St. No. 1 at 7.

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

6. East Whiteland Township owns and operates a sanitary wastewater collection system which provides sanitary wastewater service to 3,895 customers in East Whiteland Township, Chester County. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 8.

ASSET PURCHASE AGREEMENT

7. Aqua and East Whiteland are parties to an Asset Purchase Agreement dated January 8, 2021. Aqua Exhibit 1, Application ¶ 5 and ¶ 21; *see also* Aqua Exhibit No. 1, Application Exhibit B.

8. The negotiated purchase price, which is based on arms’ length negotiation, is Fifty-

Four Million Nine Hundred Thirty Thousand Dollars (\$54,930,000). Aqua and East Whiteland are not affiliated with each other. Aqua Exhibit No. 1, Application ¶ 21 and ¶ 22 and Aqua St. No. 1 at 10.

9. Aqua will use short-term credit lines to fund the transaction. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. Aqua St. No. 1 at 11; *see also* Aqua Exhibit No. 1, Application ¶ 23.

ASSETS BEING TRANSFERRED

10. The wastewater system assets to be transferred are the “Acquired Assets” and have the meaning specified in Section 2.01 of the Agreement. The Acquired Assets include the assets, properties and rights of the Township used in the system and all pipes, pumping stations, generators, manholes and pipelines and billing and collections related assets necessary to run the system. Aqua Exhibit No. 1, Application ¶ 24.

11. Acquired Assets also include the twenty-two contracts listed in Paragraph 25 of the Application to which Township is a party (the “Assigned Contracts”).

12. Acquired Assets also include all Authorizations and Permits of or held by the Township (to the extent transferrable to Aqua under applicable Law), including all Authorizations and Permits which are environmental permits, other operating permits and those items listed or described on Schedule 4.12 of the Agreement. Aqua Exhibit No. 1, Application ¶ 26.

13. “Excluded Assets,” which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, spray irrigation system associated with the Malvern Hunt WWTP, contracts that are not Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Schedule 2.02(h) of the Agreement. Aqua Exhibit No. 1, Application ¶ 27.

14. “Assumed Liabilities” has the meaning specified in Section 2.04(a) of the

Agreement and include all liabilities and obligations arising out of or relating to Aqua's ownership or operation of the wastewater system and the Acquired Assets on or after Closing. Aqua Exhibit No. 1, Application ¶ 28.

RATES

15. East Whiteland has flat rates for residential customers which are billed on an EDU basis. High volume customers, which are customers that have more than 100,000 gallons of water usage in a quarter, are billed a quarterly usage charge of \$6.20 per 1,000 gallons. Aqua Exhibit No. 1, Application ¶ 34 and Exhibit H.

16. Aqua will implement the Township's wastewater rates in effect at closing and apply its then-existing miscellaneous fees and charges in its Tariff. The Township presently bills on an annual basis. Aqua will convert East Whiteland customers to monthly billing at Closing. A schedule of rates tariff page implementing monthly rates for Township customers post-closing is included as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 33 and Aqua Statement No. 1 at 11-12.

17. Based on the Township's current rate schedule, Aqua projects annual revenue of \$3,769,536 from East Whiteland customers with annual operating and maintenance expenses of \$1,965,601. Aqua Exhibit No. 1, Application ¶ 40 and ¶ 41.

18. Aqua will implement its Rules and Regulations to govern the provision of wastewater service. Aqua Exhibit No. 1, Application ¶ 35.

INTEGRATION WITH CURRENT OPERATIONS

19. Aqua will operate and manage the wastewater system as a standalone collection system, but within Aqua's footprint, from its Southeastern Division Office in Bryn Mawr. The East Whiteland system is approximately 11 miles from the Division Office. Aqua is not anticipating any physical, operational or managerial changes at its Southeastern Division Office as a result of the

acquisition. Aqua Exhibit No. 1, Application ¶ 42 and ¶ 49 and Aqua St. No. 2 at 15-16.

DEP COMPLIANCE

20. Aqua is in good standing with DEP. Aqua Exhibit No. 1, Application ¶ 45.

21. Aqua is not aware of any current environmental issues for the East Whiteland system. Aqua St. No. 2 at 13-14. The Township’s 2019 Chapter 94 Report indicates that the system, however, did experience capacity related by-passing, Sanitary Sewer Overflows (“SSOs” or surcharging during the 2019 reporting year. Aqua St. No. 2-R at 3. The Report also indicates that there is inflow and infiltration to be addressed within the system. Aqua St. No. 2-R at 3.

PLANNED CAPITAL PROJECTS

22. Aqua has planned capital improvement projects totaling \$16.92 million for the first ten years of operation. The capital improvement work includes safety related Arc-Flash studies for protection of operations personnel and capital targeted to address inflow and infiltration within the system. The planned improvements are also would mitigate the SSOs. Aqua St. No. 2 at 11 and Aqua St. No. 2-R at 2-3.

FITNESS

Legal Fitness

23. Aqua is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania. There are no pending legal proceedings challenging Aqua’s ability to provide safe and adequate service to customers. Aqua St. No. 1 at 10.

Financial Fitness

24. Aqua is a Class A, Pennsylvania wastewater utility with total net utility plant assets of \$350 million and annual revenues of \$32 million. Aqua St. No. 1 at 9. As a subsidiary of Aqua PA, Aqua has access to all of Aqua PA's financing capabilities. Aqua St. No. 1 at 10-11.

25. Aqua PA is a Class A water utility and the largest subsidiary of Essential, with total net utility plant assets of \$4.3 billion and annual revenues of \$509 million in 2020. In 2020, Aqua PA had operating income of approximately \$261 million and net income of \$187 million. Aqua PA's cash flows from operations were \$231 million in 2020. Aqua St. No. 1 at 10.

26. Aqua PA has a Standard and Poor's Rating of A and has approximately \$1.825 billion in outstanding long-term debt at a weighted average interest rate of approximately 4.03%. Aqua PA also has a \$100 million short-term credit facility and access to equity capital as a subsidiary of Essential. Aqua St. No. 1 at 10-11.

27. Aqua will finance the acquisition of the East Whiteland wastewater system using the existing short-term credit lines. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating. Aqua St. No. 1 at 11.

Technical and Managerial Fitness

28. Management, customer service, regulatory compliance, engineering, financial and ancillary services will be provided seamlessly from the Southeastern Division Office in Bryn Mawr. Aqua plans to hire 3 additional operators to address the day-to-day operations of the East Whiteland system; however, these operators may be used in other Aqua systems in the area. Aqua St. No. 2 at 15-16; *see also* Aqua Exhibit No. 1, Application ¶ 42 and ¶ 49.

29. Aqua has 27 wastewater operators, many holding dual water and wastewater certifications, which may be called upon to assist in the operation of the system. Aqua St. No. 2 at 16. Aqua and Aqua PA have acquired many wastewater and water systems in the last three decades. Aqua St. No. 2 at 17.

30. Aqua strives to ensure that its treatment, collection, conveyance and pumping systems provide continuous, safe and reliable service. It has worked with the Commission and

statutory advocates to acquire and improve troubled wastewater systems – the Washington Park Wastewater System, for example, Docket No. A-230550F2000. Aqua was appointed receiver for the North Heidelberg Sewer Company in March 2018 serving 274 customers. Aqua St. No. 2 at 17-18.

AFFIRMATIVE PUBLIC BENEFITS

Aqua’s Record of Acquiring and Improving Wastewater Systems

31. Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to continue to operate, maintain and improve the East Whiteland System. Aqua St. No. 1 at 14 and Aqua Exhibit No. 1, Application ¶52.d.

32. Aqua has acquired 16 wastewater systems over the past 10 years.¹⁴¹ Many of these systems required significant investment to correct service and environmental issues. The inherent diversification of systems and customers provides a foundation of stability in that, they are all not requiring major capital investments at the same time. Thus, spreading the financial impacts over the long-term operations of the acquiring utility as a whole. Aqua St. No. 1 at 14.

33. If Aqua were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers’ rates and service. Both types of systems, viable and non-viable, are consistent with the Commission’s policy statements regarding acquisitions. The acquisition of the East Whiteland System will continue to address the Commission’s supported policy of consolidation and regionalization. Aqua

¹⁴¹ New Garden, East Norriton (2020); Cheltenham (2019); East Bradford, Limerick (2018); Tobyhanna, Avon Grove (2017); Emlenton, Honeycroft (2016); Bunker Hill (2015); Penn Township (2014); Treasure Lake (2013); and Sage Hill, Kidder Township, Beech Mountain, Village at Valley Forge (2012).

St. No. 1 at 14-15.

Consolidation/Regionalization

34. The Commission has a long-standing record of support for consolidation/regionalization of water/wastewater systems. The Commission understands that in doing so, the utility industry will have a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits. The Commission has previously stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry.” Aqua St. No. 1 at 13 and Aqua Exhibit No. 1, Application ¶52.c.

35. “Additionally, these types of acquisitions will also enhance the quality of ratepayers’ daily lives, promote community economic development, and provide environmental enhancements.”¹⁴² Ultimately, the benefits of consolidation/regionalization inure to customers both existing and acquired. The proposed transaction with East Whiteland is no exception to these principles. Aqua PA has successfully acquired numerous water/wastewater utilities over approximately 135 years of operation. Aqua St. No. 1 at 13-14 and Aqua Exhibit No. 1, Application ¶52.c.

36. In *McCloskey*, the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are of the type that the Supreme Court in *Popowsky* held were sufficient to meet the public benefit standard and that,

¹⁴² Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

accordingly, they are “substantial evidence to support the notion that there is a public benefit” for the transaction. This same analysis is equally applicable in this proceeding and constitutes substantial evidence sufficient to support the public benefit of this transaction. Aqua St. No. 1 at 15 and Aqua Exhibit No. 1, Application ¶52.e.

Benefits to East Whiteland Customers

37. The Township customers will become part of a larger scale, efficiently operated, wastewater utility. The Company is already the owner and operator of the East Whiteland water system. As such, the Company has key operations in nearby service areas and will be able to assume the operations of the East Whiteland System, fold them into a larger scale, efficiently operated wastewater utility, which over time will likely yield further operating efficiencies and improve long term viability as envisioned in the Commission policy statement. Aqua St. No. 1 at 15-16.

38. The operational overlap between water and wastewater utility operations will provide the opportunity for better coordination of capital activities throughout the East Whiteland service area. Utility activities that involve road openings and restoration can be better aligned to result in less disturbance to the Township as the Company executes capital improvements. Aqua St. No. 1 at 16.

39. The Company is projecting less O&M costs under Company ownership that will likely be realized through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing and legal, among others. Specifically, referencing the East Whiteland 2020 Financial Statements, Sewer Fund Operating Expenses were approximately \$2.8 million, whereas the Company is projecting annual expenses of approximately \$2.0 million. Aqua St. No. 1 at 16.

40. Aqua estimates that it will invest approximately \$16.92 million in the system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Customers will benefit greatly from the Company's technical experience and fitness in deploying resources towards capital improvements. Aqua St. No. 2 at 10-11 and Aqua St. No. 1 at 16.

Enhanced Customer Service for East Whiteland Township Customers

41. Aqua provides customer service through a toll-free number from 8:00AM-5:00PM EST for regular business. The same toll-free number houses the Company's 24/7/365 emergency response. Aqua St. No. 1 at 17.

42. East Whiteland customers will benefit from expanded bill payment options including Aqua's online payment and payment by text message, as well as the ability to sign up for notifications and alerts to be sent to their email address or phone, allowing them to stay informed of events impacting their service. East Whiteland customers will also have access to Aqua's customer assistance programs. Aqua St. No. 1 at 17-18.

Enhanced Customer Billing and Payment Protections

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

Benefits to Existing Aqua Customers

44. The acquisition of the System will be an approximate 9% increase in Aqua's customer base. By virtue of the Company's larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers.

Aqua St. No. 1 at 17 and Aqua Exhibit No. 1, Application ¶56.f.

45. Based on Township records, East Whiteland serves approximately 7,658 EDUs,¹⁴³ which equates to approximately \$7,200 purchase price per EDU and is almost equal to the Company's existing rate base per EDU, projected at approximately \$7,000. Given the similarities in purchase price per connection to rate base per EDU, combined with meaningful lower operating cost, the East Whiteland system characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition. Aqua St. No. 1 at 17.

No Adverse Effect

46. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Aqua Exhibit No. 1, Application ¶56.a.

47. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of East Whiteland. Aqua Exhibit No. 1, Application ¶56.g.

48. Consistent with Section 1329(d)(1)(v), Aqua will implement the existing Township base rates upon closing. Existing miscellaneous fees and charges in the Company's tariff, however, will be applied. Aqua St. No. 1 at 11-12.

East Whiteland Township Wants to Sell Its Wastewater System

49. The Township has agreed to sell its system. The public interest will be served by allowing Aqua to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The East Whiteland system will benefit from the support of wastewater professionals throughout Aqua's organization. Aqua Exhibit No. 1, Application ¶56.b.

¹⁴³ The Township renders the majority of its sewer rents on a per EDU basis and its system is comprised of single-family homes, but also multi-unit structures. Aqua St. No. 1 at 17.

General Assembly Support and Encouragement of Municipal Acquisitions

50. Significantly, together with the foregoing, Aqua's acquisition of the East Whiteland wastewater system is consistent with the General Assembly's clear support and encouragement of municipal wastewater acquisitions. The proposed transaction is supported by substantial affirmative public benefits consistent with *City of York, Popowsky* and *McCloskey*.

The McCloskey Case and Rate Impact

Rate Impact

51. The current average monthly bill of an East Whiteland residential customer is approximately \$33.33 per month at one EDU. Applying 100% of the revenue deficiency of \$5,011,000 associated with the proposed rate base addition to the existing East Whiteland rates, the average East Whiteland bill would increase by approximately \$77.64 per month or an 132.93% increase. Aqua St. No. 1 at 18-19 and Appendix A.

52. The calculation and percentage increase is, however, a point in time estimate reflective of revenue deficiency upon year one ownership. While there is an expectation of increased rates going forward, Aqua is not proposing any change in rates to East Whiteland customers as part of this transaction. Proposed rate changes for East Whiteland customers will be presented in an Aqua post-Closing base rate proceeding.

Hypothetical Rate Impact Is Outweighed by Other Positive Benefits

53. While there is an expectation of increased rates as a result of the transaction, this is not unexpected. The possibility of increased rates was noted in *McCloskey*. The positive factors from the transaction outweigh the possibility of increased rates. Aqua St. No. 1 at 19.

54. While the rates of the East Whiteland system are reasonably expected to increase, either on their own, or whether acquired by the Company, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base. This benefits both

existing and acquired customers alike. Aqua St. No. 1 at 19. Schedule – (WCP – R.1) to Mr. Packer’s rebuttal testimony demonstrates this reality looking over the past five years of capital investments on the Company’s wastewater systems. Aqua St. No. 1-R at 16.

55. The East Whiteland system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition. Given this fact and the fact that there are meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time. Aqua St. No. 1 at 18-19.

56. The transaction, once again, furthers a recognized legislative objective and is consistent with the Commission’s consolidation/regionalization policy. There are demonstrated positive benefits, both tangible and intangible, identified above, that are likely realized as a result of the transaction, including capital improvements, expense efficiencies, and economies of scale – such benefits outweigh any potential increase in rates. Aqua St. No. 1 at 19.

57. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua’s ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. In addition, the Township will receive the benefit of sale proceeds of \$54,930,000.

SECTION 1329 CONSIDERATIONS

Ratemaking Rate Base

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

59. Aqua and East Whiteland agreed on a Licensed Engineer to complete the Assessment of Tangible Property and engaged Utility Valuation Experts (“UVE”) to perform Fair

Market Value analyses of the system in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), utilizing the cost, market, and income approaches. Aqua St. No. 1 at 20; *see also* Aqua Exhibit No. 1, Application ¶ 11 and Exhibit D.

60. Aqua engaged the services of Gannett. East Whiteland engaged the services of AUS. Both firms were pre-certified as authorized UVEs and are on the list of qualified appraisers maintained by the Commission. Aqua St. No. 1 at 20-21 and Aqua Exhibit No. 1, Application ¶ 59.

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

62. As required by Section 1329(d)(1)(ii), the purchase price agreed to by Aqua and East Whiteland was identified as \$54,930,000. Aqua Exhibit No. 1, Application ¶ 55.

63. As required by Section 1329(d)(1)(iii), the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$54,930,000, being the lesser of the negotiated purchase price of \$54,930,000 and the average of the fair market value appraisals which is \$56,724,729 – determined by \$55,668,000 presented in the Gannett appraisal and \$57,781,458 presented in the AUS appraisal. Aqua Exhibit No. 1, Application ¶ 56; *see also* Aqua St. No. 1 at 21.

64. As required by Section 1329(d)(1)(iv), transaction and closing costs were identified as approximately \$308,300, which will be included in rate base. Aqua Exhibit No. 1, Application ¶ 57. Exact closing costs will be determined at closing. Aqua St. No. 1 at 22.

65. As required by Section 1329(d)(1)(v), a tariff containing a rate equal to the existing East Whiteland rates at the time of acquisition was attached as Exhibit G to the Application. Aqua Exhibit No. 1, Application ¶ 58 and Exhibit G.

66. The UVEs were paid \$60,190.47 for the completed Fair Market Value Appraisal

Reports. Documentation of the fees paid to each UVE was included with the Application as Exhibit S1 and Exhibit S2, respectively. Aqua Exhibit No. 1, Application ¶ 60, Exhibit S1 and Exhibit S2 and Aqua St. No. 1 at 21.

67. The fees paid to the UVEs are reasonable based on the scope of work, the methods used as accepted industry practice, and that the UVEs' fees were less than 5% of the fair market value benchmark noted in the Final Implementation Order. Aqua St. No. 1 at 22.

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

69. Aqua's contract with Gannett to undertake its Fair Market Value Appraisal was included as Exhibit S1 to the Application. Aqua St. No. 1 at 22. East Whiteland's contract with AUS to undertake its Fair Market Value Appraisal was included as Exhibit S2 to Application. Aqua St. No. 1 at 22.

No Rate Stabilization Plan

70. Aqua is not proposing a rate stabilization plan for the East Whiteland system. There is no provision in the APA that could be interpreted as holding rates constant or phasing in rates over a period of time after the next base rate case. Aqua Statement No. 1 at 11-12.

SECTION 507

71. Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least

30 days prior to its effective date.

72. Aqua's Application asks that the Commission, if necessary, issue certificates of filing pursuant to Section 507, for its acquisition agreement with East Whiteland and the assignment of 22 contracts. Aqua Exhibit No. 1, Application ¶ 70.

SECTION 2102

73. Section 2102 of the Code provides, *inter alia*, that no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the Commission.

74. Aqua's Application asks that the Commission, pursuant to Section 2102, approve, if necessary, the assignment from East Whiteland to Aqua of the Wastewater Conveyance Agreement among Aqua Resources, Inc. and the Townships of Tredyffrin, East Whiteland, East Whiteland, Charlestown, Schuylkill, East Pikeland and Easttown; Easttown Township Municipal Authority; the Borough of Malvern; Tredyffrin Township Municipal Authority; and Valley Forge Sewer Authority, dated November 20, 2018. Aqua Exhibit No. 1, Application ¶ 73.

PROPOSED CONCLUSIONS OF LAW**Background and Burden of Proof**

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

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

3. The burden of proving entitlement to a certificate is upon the applicant as it is the applicant that is seeking a proposed rule or order. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990). The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery, supra*. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. *Id.*

4. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

5. A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

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

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

8. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky*, to support a conclusion that there is a public benefit to a transaction. The Court held, further, that the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition.

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

10. An existing provider of public utility service is presumed fit. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995). The burden of proof to rebut the presumption is on Protestants. *Re Byerly*, 270 A. 2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. P.U.C.*, 293 A.2d 895 (Pa. Cmwlth. 1972).

Aqua Is Fit to Acquire the East Whiteland Wastewater System and Provide Wastewater Service in Portions of East Whiteland Township

11. No party rebutted the presumption of fitness and Aqua established its technical, legal and financial fitness by a preponderance of the evidence and substantial evidence.

12. Aqua is fit to acquire the East Whiteland wastewater system assets and to provide wastewater service in portions of East Whiteland Township.

Public Interest and Affirmative Public Benefit

13. Aqua demonstrated through a preponderance of the evidence and substantial evidence that its acquisition of the East Whiteland wastewater system will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways. Hypothetical rate impact is offset by other positive benefits of the transaction.

14. Aqua's acquisition of the East Whiteland wastewater system and provision of wastewater service in portions of East Whiteland Township will further the public interest.

Section 1329 and Ratemaking Rate Base

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

investor-owned water and wastewater utilities or entities.

16. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts established and maintained by the Commission. The selected UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches. 66 Pa.C.S. § 1329(a).

17. Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. East Whiteland engaged the services of AUS for the same purpose. Both firms were pre-certified as authorized UVEs by the Commission and are on the list of qualified appraisers maintained by the Commission.

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

(c) Ratemaking rate base. – The following apply:

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

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

20. Gannett’s fair market value appraisal is \$55,668,000. AUS’ fair market value appraisal is \$57,781,458. The average of the two is \$56,724,729. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$54,930,000, being the lesser of the negotiated purchase price of \$54,930,000 and the average of \$56,724,729.

Section 507

21. Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

22. The following contracts are accepted as valid pursuant to Section 507:

- i. Asset Purchase Agreement, dated January 8, 2021, by and between East Whiteland Township and Aqua Pennsylvania Wastewater, Inc.
- ii. Valley Forge Treatment Plant Agreement, dated November 1, 1970, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; and Easttown Township Municipal Authority
- iii. Composite Amendment No. 1 to Valley Creek Trunk Sewer Agreement, East Whiteland Trunk Line Agreement, and Valley Forge Sewage Treatment Plant Agreement dated December 1, 1974, by and between Tredyffrin Township Municipal Authority, Township of Tredyffrin, Township of Schuylkill, Township of East Pikeland, Township of Charlestown, Township of East Whiteland, Township of Willistown, Township of Easttown, Borough of Malvern, Valley Forge Sewer Authority, Malvern Municipal Authority, East Whiteland Municipal Authority, and Easttown Municipal Authority
- iv. Amendment to Valley Forge Sewer Treatment Plant Agreement, dated January 1, 1983, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Easttown Municipal Authority; Tredyffrin Township Municipal Authority; and Willistown Township Municipal Authority
- v. Supplement to Valley Forge Sewage Treatment Plant Agreement For the Purpose of Complying with United States Environmental Protection Agency Regulations, dated December 2, 1985, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; Easttown Township Municipal Authority, and Willistown Township Municipal Authority

APPENDIX B

- vi. Addendum to Valley Forge Sewage Treatment Plant Agreement for the Purpose of Permitting and Administering the Sale of Reserved Capacity Among the Parties, dated May 26, 1994, by and between Valley Forge Sewer Authority, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; East Whiteland Township Municipal Authority; Easttown Municipal Authority; and Tredyffrin Township Municipal Authority
- vii. East Whiteland Trunk Line Agreement, dated February 1, 1971, by and between East Whiteland Municipal Authority, the Township of East Whiteland, Malvern Municipal Authority, the Borough of Malvern, and Valley Forge Sewer Authority
- viii. Amendment to East Whiteland Trunk Line Agreement, dated December 12, 1979, by and between East Whiteland Municipal Authority, the Township of East Whiteland, the Borough of Malvern, Malvern Municipal Authority, and Valley Forge Sewer Authority
- ix. Amendment to East Whiteland Trunkline Agreement, dated April 18, 2014, by and between East Whiteland Township, East Whiteland Municipal Authority, and Valley Forge Sewer Authority
- x. Sidley Road Trunk Line Repairs Agreement, dated December 27, 1978, by and between East Whiteland Municipal Authority and Valley Forge Sewer Authority
- xi. Sewage Treatment Agreement, dated November 17, 1987, by and between East Goshen Township, East Goshen Municipal Authority, East Whiteland Township, and East Whiteland Municipal Authority
- xii. Agreement, dated September 14, 1993, by and between Willistown Township, East Whiteland Township and East Whiteland Municipal Authority
- xiii. Agreement, dated July 10, 1995, by and between Malvern Borough, East Whiteland Township, and East Whiteland Municipal Authority
- xiv. Sewage Treatment Agreement, dated October 17, 2000, by and between East Goshen Township, East Goshen Municipal Authority, East Whiteland Township, and East Whiteland Municipal Authority
- xv. Sewage Capacity / Service Agreement, dated November 1, 2000, by and between East Whiteland Township, East Whiteland Township Municipal Authority, Tredyffrin Township, Tredyffrin Township Municipal Authority, and Trammell Crow Northeast Metro Development, Inc.
- xvi. Addendum to Sewage Capacity / Service Agreement, dated November 19, 2015, by and between East Whiteland Township and Tredyffrin Township with the jointers of RLD Atwater JV, LLC and The Haven At Atwater Village, LLC.

- xvii. Sewage Treatment Agreement, dated March 2, 2004, by and between East Whiteland Township, East Goshen Township, and Malvern Institute for Psychiatric & Alcoholic Studies
- xviii. Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority
- xix. Agreement with Public Utility or Municipality for Crossing Under Railroad Private Property, dated March 21, 1972, by and between Reading Company and East Whiteland Municipal Authority
- xx. License Agreement for Wire, Pipe and Cable Transverse Crossings and Longitudinal Occupations, dated July 11, 1975, by and between Penn Central Transportation Company and East Whiteland Municipal Authority
- xxi. License Agreement, dated November 18, 1993, by and between National Railroad Passenger Corporation and East Whiteland Township Municipal Authority¹⁴⁴
- xxii. Amendment to License Agreement, dated May 6, 2002, by and between National Railroad Passenger Corporation and East Whiteland Township Municipal Authority¹⁴⁵
- xxiii. License Agreement, dated September 10, 1999, by and between National Railroad Passenger Corporation and East Whiteland Township¹⁴⁶

Section 2102

23. Section 2102 of the Code provides, *inter alia*, that no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the Commission.

¹⁴⁴ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation) prior to closing.

¹⁴⁵ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation) prior to closing.

¹⁴⁶ The Company will enter into a new license agreement with Amtrak (formerly National Railroad Passenger Corporation) prior to closing.

24. The assignment from East Whiteland to Aqua of the Wastewater Conveyance Agreement among Aqua Resources, Inc. and the Townships of Tredyffrin, East Whiteland, East Whiteland, Charlestown, Schuylkill, East Pikeland and Easttown; Easttown Township Municipal Authority; the Borough of Malvern; Tredyffrin Township Municipal Authority; and Valley Forge Sewer Authority, dated November 20, 2018, is approved.

PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Application filed by Aqua Pennsylvania Wastewater, Inc. is approved.
2. That the Office of the Secretary issue Certificates of Public Convenience evidencing the right of Aqua Pennsylvania Wastewater, Inc., under Sections 1102(a)(1) and 1102(a)(3) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1) and 1102(a)(3), (a) to acquire, by purchase, the wastewater system assets of East Whiteland Township situated within East Whiteland Township, Chester County, Pennsylvania; and (b) to begin to offer, render, furnish or supply wastewater service to the public in portions of East Whiteland Township, Chester County, Pennsylvania.
3. That, pursuant to Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, the ratemaking rate base of the East Whiteland wastewater system assets is \$54,930,000.
4. That the Commission's Secretary issue Certificates of Filing under Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, for the Asset Purchase Agreement between the Township of East Whiteland (as Seller) and Aqua Pennsylvania Wastewater, Inc. (as Buyer) and the contracts, including assignment of contracts, identified on Schedule 4.13 of the APA and included with the Application as Exhibits F1 through F22.
5. That the assignment from East Whiteland to Aqua of the Wastewater Conveyance Agreement among Aqua Resources, Inc. and the Townships of Tredyffrin, East Whiteland, East Whiteland, Charlestown, Schuylkill, East Pikeland and Easttown; Easttown Township Municipal Authority; the Borough of Malvern; Tredyffrin Township Municipal Authority; and Valley Forge Sewer Authority, dated November 20, 2018, is approved.
6. That all such other approvals, certificates, registrations and relief as may be required under the Public Utility Code for Aqua to acquire the East Whiteland wastewater system assets are hereby issued.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

Application of Aqua Pennsylvania : Docket No. A-2021-3026132
Wastewater, Inc. Pursuant to Sections :
1102, 1329, 507 and 2102 of the Public :
Utility Code for Approval of its :
Acquisition of the Wastewater System :
Assets of East Whiteland Township :

CERTIFICATE OF SERVICE

I hereby certify that I have this 8th day of April 2022, served a true and correct copy of the foregoing Main Brief of Aqua Pennsylvania Wastewater, Inc. upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

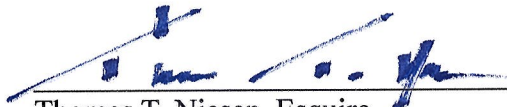
Carrie B. Wright, Prosecutor
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
carwright@pa.gov

Laura J. Antinucci
Assistant Consumer Advocate
Christine Maloni Hoover
Senior Assistant Consumer Advocate
Office of Consumer Advocate
OCAAquaEastWhiteland@paoca.org

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

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

Richard J. Gage
brittagage@aol.com



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