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April 15, 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 Reply Brief. Copies of the Reply 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 :

REPLY BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

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Aqua Pennsylvania Wastewater, Inc.*

DATED: April 15, 2022

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Popowsky v. Pa. P.U.C.,
937 A.2d 1040 (Pa. 2007) 4, 6

I. STATEMENT OF THE CASE

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), filed with the Public Utility Commission (“Commission”) on July 23, 2021, for approval of its acquisition of the wastewater system assets of East Whiteland Township (“Township” or “EWT”) pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code (“Code”).

In accordance with Prehearing Order #1, Aqua, the Township, the Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”) filed Main Briefs on April 8, 2022.¹ Following the filing of Main Briefs, Aqua, the Township, I&E, OCA, OSBA and Protestant Gage filed a Stipulation through which the Stipulating Parties present a negotiated resolution of several conditions, originally proposed by I&E, OCA and OSBA, for approval, if the Commission approves the Application.

Aqua submits this Reply Brief in accordance with the litigation schedule presented in Prehearing Order #1. Aqua’s Reply Brief supplements its Main Brief and is limited to those matters requiring additional discussion as a result of the Main Briefs filed by I&E, OCA and OSBA and in support of the Stipulation.

II. BURDEN OF PROOF

Aqua addressed Burden of Proof in Section II of its Main Brief. Aqua submits that it has met its burden of proof.

III. STATEMENT OF QUESTIONS INVOLVED

Aqua presented its Statement of Questions Involved in Section III of its Main Brief.

¹ Aqua presented a Procedural History and an Overview of the Proposed Transaction in Section I of its Main Brief.

IV. SUMMARY OF ARGUMENT

Sections 1102/1103 and Certificates of Public Convenience

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. The benefits of Aqua's ownership including its expertise and ability to raise and deploy capital, its record of acquiring and improving wastewater systems, the furtherance of consolidation/regionalization of wastewater services, the spreading of costs over a larger customer base and enhanced customer service, customer billing and payment protections outweigh the hypothetical impact on rates.

Section 1329 and Ratemaking Rate Base

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. Adjustments to the Appraisals proposed by the OCA should be denied as they do not meet a standard of value of fair market value and are in direct violation of Section 1329.

Conditions for Approval

The conditions for approval as presented in the Stipulation filed on April 14, 2022 by Aqua, the Township, I&E, OCA, OSBA and Protestant Gage should be approved.

V. ARGUMENT

A. Section 1102/1103

1. Introduction

Aqua provided an Introduction to Section 1102/1103 in Section V.A, pages 6 through 8 of its Main Brief.

2. Fitness

Aqua addressed Fitness in Section V.A.1 of its Main Brief. Aqua submits that it is fit to acquire the Township system and to provide the proposed service.

3. Substantial Affirmative Public Benefit

a. Reply to I&E

I&E contends that, absent adoption of I&E's proposed conditions, there is no assurance that alleged affirmative public benefits will materialize.² A negotiated resolution of I&E's proposed conditions is presented in the Stipulation as addressed in Section V.C of this Reply Brief.

b. Reply to OCA

OCA contends that Aqua has failed to demonstrate public benefits and asks the Commission to deny the Application.³ Aqua's reply to the OCA, which is presented below, is structured using the same subheadings as presented by the OCA in Section V.A.3 of the OCA's Main Brief.

i. Existing Aqua Water and Wastewater Customers

Regionalization / consolidation of wastewater service is an established Commission policy. Established legal precedent does not require that the benefits of regionalization / consolidation be quantified; nor is Aqua required to identify a date certain in the future when customers will receive a benefit from it. Regionalization / consolidation of wastewater service is a long-term, aspirational Commission objective and, through Section 1329, also the objective of the General Assembly for municipal systems. It is not a speculative benefit. Regionalization / consolidation is substantial

² I&E Main Brief, Section V.A.3, page 7.

³ OCA Main Brief, Section V.A.3, pages 10-21. Alternatively, if the Commission approves the transaction, OCA recommends that the Commission condition its approval on rejection of the rate freeze, the provision of a cost-of-service study, a direction against reprioritization of LTIP projects, the submission of certain AFUDC claims in the next Aqua base rate case and a ratemaking rate base of \$46,500,000. *See* OCA Main Brief, Section V.C, pages 45-46. With the exception of the OCA's proposed ratemaking rate base, the OCA's proposed conditions are resolved through the Stipulation as addressed in Section V.C of this Reply Brief.

evidence, consistent with *Popowsky*⁴ and *McCloskey*,⁵ to support a conclusion that there is a public benefit to a transaction.

The possible allocation of a portion of wastewater costs to Aqua's combined water and wastewater customer base is not a harm or risk as contended by the OCA. It is, rather, a public benefit. Allocation of costs is permitted by Section 1311(c). One cannot reasonably contend that the possible allocation of costs as allowed by a statutory section is harmful to the public interest. The possible allocation of costs pursuant to Section 1311(c) is not a basis for denying the proposed transaction.

A rate increase, moreover, is not "certain" as argued by the OCA; nor is it permanent. Cost of service is ever changing. If cost of service goes down, so do rates. To the extent changes in the Company's costs, size, and service territories served provide for further distribution of costs, rates could also go down as result.

The OCA's concern with the potential impact of the three-year rate freeze on existing Aqua customers and its further contention that the rate freeze is a "rate stabilization plan" is resolved through the Stipulation as addressed in Section V.C below. Notably, through the Stipulation, the Stipulating Parties acknowledge that the Commission retains ultimate authority to set rates. The Stipulation also addresses how rates for Township customers will be presented in the first base rate case that includes the Township system assets.

Aqua emphasizes, however, that, even in the absence of the Stipulation, existing Aqua customers would not have been exposed to a risk of covering revenue requirement as a result of the three-year rate freeze. If an Aqua rate filing were to have become effective prior to the running

⁴ *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007).

⁵ *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).

of the rate freeze, the Company would have treated the existing East Whiteland rates as a special charge. Upon expiration of the rate freeze, East Whiteland customers would immediately have become subject to full tariff rates. No existing Aqua customer would have been harmed or would have paid for the rate freeze as the Company's rate case proof of revenue would have been calculated at the full cost of service rate for East Whiteland customers, not the frozen existing rate.

ii. East Whiteland Customers

The rate deficiency for East Whiteland customers is a preliminary analysis of the potential rate impact on East Whiteland customers. It is a non-binding estimate of the incremental rate effect of the proposed fair market value rate base but, as explained in the notice to East Whiteland customers, the amount of a rate increase will be determined in an Aqua base rate case and will be dependent on how the Commission chooses to apportion an increase among Aqua's acquired and existing customers. The ability to allocate costs is a statutory benefit as set forth above. Significantly, and most importantly, the OCA's concern with the potential impact of the three-year rate freeze on East Whiteland customers is resolved through the Stipulation as addressed in Section V.C below.

The Township Board of Supervisors decided to sell the wastewater system after consulting with capable legal, financial, and engineering experts. In doing so, the Supervisors recognized the benefit of the transaction to East Whiteland customers and their decision is not outweighed or countermanded by opposition testimony at the public input hearing as suggested by the OCA. Aqua submits, moreover, that the Commission has no jurisdiction to second-guess the decision of the Supervisors. The decision of the Supervisors is also consistent with the General Assembly's encouragement of municipal system transactions through the enactment of Section 1329.

iii. Benefits Outweigh Detriments

Every Section 1329 proceeding raises the possibility of higher rates but, in every instance,

the Commission has concluded that the benefit of the 1329 acquisition outweighs the detriment of possibly higher rates.

Here, the current average monthly bill of an East Whiteland residential customer is approximately \$33.33 per month at one equivalent dwelling unit (“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 to approximately \$77.64 per month or an 132.93% increase.⁶ The Stipulation addresses how rates for Township customers will be presented in the first base rate case that includes Township assets.

The CMV case cited by the OCA⁷ was not a Section 1329 acquisition and, thus, is not reflective of a Section 1329 weighing of benefits and detriments. *McCloskey* recognizes Aqua’s expertise and the Commission’s policy favoring regionalization / consolidation as benefits outweighing the possibility of a Section 1329 rate increase.

Established legal precedent does not require a quantification of economies of scale, cost reductions or efficiencies. OCA contentions that a quantification of benefits is required were rejected in *Popowsky*.⁸ Aqua addressed the substantial affirmative public benefit of economies of scale in Section V.A.2.c.iv of its Main Brief. Aqua emphasizes here that it projects a reduction in annual Sewer Fund Operating Expenses of approximately \$800,000 as a result of Aqua ownership. These quantified savings are a further substantial affirmative public benefit of the acquisition.

Aqua acknowledges that it has a higher cost of capital than the Township and that, unlike the Township, it pays federal and state income taxes. These acknowledged cost differences are a part of every Section 1329 transaction and they are outweighed by the benefits of Aqua ownership,

⁶ Aqua St. No. 1 at 18-19 and Appendix A.

⁷ *Application of CMV Sewage Co., Inc.*, 2008 PaPUC LEXIS 950.

⁸ *Popowsky* at 1056.

including Aqua's expertise and ability to raise and deploy capital, its record of acquiring and improving wastewater systems, the furtherance of consolidation/regionalization of wastewater services consistent with the Commission's policy objectives, the spreading of costs over a larger customer base, enhanced customer service, customer billing and payment protections and the General Assembly's encouragement of the acquisition of municipal systems. The acknowledged cost differences have never been the bases for the Commission to deny a 1329 acquisition.

OCA's characterization of the East Whiteland system as "not a troubled system"⁹ is no basis for rejecting the transaction. Section 1329 encourages the acquisition of municipal systems, whether troubled or not. It certainly is not limited in its application to municipalities that have let their systems fall into disrepair nor would it want to encourage or incentivize those circumstances prior to entering into a sale. In fact, 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. Planned capital improvement work also includes safety related electrical Arc-Flash studies. Aqua also has capital targeted for addressing inflow and infiltration.

4. Conclusion

The benefits of Aqua's ownership as presented by Aqua in Section V.A.2 of its Main Brief, including its expertise and ability to raise and deploy capital, its record of acquiring and improving wastewater systems, the furtherance of consolidation/regionalization of wastewater services, the spreading of costs over a larger customer base and enhanced customer service, customer billing and payment protections, outweigh the hypothetical impact on rates. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329.

⁹ See OCA Main Brief, Section V.A.3.c, page 19.

Aqua's acquisition of the East Whiteland wastewater system is necessary or proper for the service, accommodation, convenience or safety of the public and will provide substantial affirmative public benefits. The Commission should approve the acquisition.

B. Section 1329

1. Introduction

Aqua provided an Introduction to its Section 1329 Analysis in Section V.B.1 of its Main Brief.

2. Legal Principles

Aqua addressed Section 1329 Legal Principles in Section V.B.2 of its Main Brief.

3. Aqua's Application

Aqua addressed its Section 1329 Application details in Section V.B.3 of its Main Brief.

4. Challenges to the UVE Appraisals

a. Reply to I&E

I&E does not challenge the UVE appraisals but contends that, absent Commission approval of its condition related to easements and real property, the appraisals are flawed and unreliable.¹⁰ A negotiated resolution of I&E's proposed condition related to easements and real property is presented in the Stipulation as addressed in Section V.C of this Reply.

b. Reply to OCA

OCA proposes a fair market value ratemaking rate base of \$46,500,000. OCA's proposed fair market value ratemaking rate base does not meet a standard of value of fair market value and is in direct violation of Section 1329.¹¹

¹⁰ I&E Main Brief, Section V.B.4, page 9.

¹¹ See Aqua Main Brief, Section V.B.4, pages 27-28.

i. Cost Approach

(a) Iowa Curves

The estimation of service lives is an important part of the valuation of depreciable plant assets under the Cost Approach. Shorter service lives result in lower values under the Cost Approach.

OCA witness Garrett chose the shortest lives from an Indiana Study, the Gannett Appraisal and the AUS Appraisal to adjust the Gannett Cost Approach. This was neither reasonable nor appropriate and does not meet a standard of value of fair market value. It is not a “conservative” approach as claimed by the OCA but is, rather, presented with the purpose of reducing the indicated value irrespective of appraisal standards. The service lives used by Gannett are consistent with the lives accepted by the Commission in prior fully litigated 1329 proceedings. Mr. Garrett’s lives are not.¹² OCA’s claim that Gannett relied on subjective factors, such as experience, without company-specific empirical support, is simply wrong. The survival/retirement characteristics and service lives for the utility property under the Gannett Cost Approach are based on the materials used for construction and how long the depreciable assets are likely to meet service demands.¹³

Although the OCA criticizes the AUS service lives as based on “subjective judgment,” the OCA acknowledges that Mr. Garrett’s service lives are also based on judgment.¹⁴ In contrast to Mr. Garrett’s “judgment,” the AUS depreciation parameters and service lives were determined from depreciation studies presented by Aqua and PAWC in recent rate proceedings. The lives and parameters determined in those studies represent actual service life experience of wastewater plant and *not subjective judgment*.¹⁵ OCA’s claim that AUS relied on subjective factors, such as

¹² See Aqua Main Brief, Section V.B.4.a.i, pages 28-31.

¹³ Aqua St. No. 4-R at 5-6.

¹⁴ OCA Main Brief, pages 31-32.

¹⁵ See Aqua Main Brief, Section V.B.4.a.ii, pages 31-33.

experience, without company-specific empirical support, is, also, simply wrong.

(b) The Gannett Cost Approach

Mr. Garrett did not use Mr. Walker's original cost method as part of his adjustment to Gannett's Cost Approach.¹⁶ Rather, as is clear from Mr. Garrett's testimony, Mr. Garrett based his adjustments on Mr. Walker's replacement cost estimates.¹⁷ In respect to service lives, the Gannett service lives are consistent with the lives approved by the Commission in prior litigated 1329 proceedings. The OCA service lives are not.¹⁸ Moreover, the Gannett service lives are consistent with the historical retirement experience and statistical data of other Commission regulated Pennsylvania wastewater utilities with similar assets.¹⁹

(c) The AUS Cost Approach

The AUS service lives are not based on subjective judgment. As discussed in substantial detail in Aqua's Main Brief, the AUS service lives are based on depreciation studies from PAWC and Aqua general rate cases, which were the result of analysis of those companies' historical survival and retirement experience over a 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. AUS service lives are not more correct because they result in a higher fair market value.²⁰ The AUS service lives are correct because they are based on actual service life experience of wastewater plant.²¹

¹⁶ See OCA Main Brief, pages 27-28.

¹⁷ OCA St. No. 1 at 19.

¹⁸ See Aqua Main Brief, Section V.B.4.a.i, pages 28-31.

¹⁹ Aqua St. No. 4-R at 5-6.

²⁰ See OCA Main Brief, Section V.B.4.a.iii, page 32.

²¹ See Aqua Main Brief, Section V.B.4.a.ii, pages 31-33.

ii. Market Approach

(a) The Gannett Market Approach

OCA witness Garrett acknowledged that, conceptually, he does not believe that it is unreasonable to include integrated wastewater transactions in a selected transaction analysis,²² but he then excluded *all* integrated transactions from his analysis.²³ He excluded other collection/distribution system transactions, as well, however, and, in the end, relied on just three transactions – East Bradford, Mahoning and Upper Pottsgrove,²⁴ a fact not acknowledged by the OCA in its Main Brief.

Three transactions are an unreliably small sample size for a selected transaction analysis and the Commission should not accept it as the basis for adjusting the Gannett Market Approach. Had Mr. Garrett *not* removed values which he viewed as too high or too low, his result would have been \$38,072,212, or \$8,315,259 more than his \$29,756,954 recommendation, for the selected transactions, **a 28% difference.**²⁵ If he had included all collection/distribution systems and used only *ex-post* data, his methodology would have produced a value of \$47,693,222, or \$17,936,268 more than his \$29,756,954 recommendation, for the selected transactions, **a 60% difference.**²⁶

(b) The AUS Market Approach

Commission approved rate base should not be substituted for purchase price as proposed by the OCA.²⁷ Commission-approved, fair market value rate base is not representative of a market transaction. It is not the price that a buyer and seller *must* accept to close the transaction as the OCA contends. There is no language in the Aqua / East Whiteland Asset Purchase Agreement

²² OCA St. No. 1 at 9.

²³ OCA St. No. 1 at 9 and Exhibit DJG-4.

²⁴ OCA St. No. 1, Exhibit DJG-4.

²⁵ Aqua St. No. 4-R at 22.

²⁶ Aqua St. No. 4-R at 22-23.

²⁷ See OCA Main Brief, Section V.B.4.b.ii, pages 36-38.

(“APA”) allowing Aqua or East Whiteland to back out of the transaction if they dislike the determination of the fair market value ratemaking rate base as suggested by the OCA.²⁸

Contrary to the OCA’s further contention, AUS’ 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. Reliance on a simple average as proposed by the OCA, as opposed to the more accurate purchase price weighted average, produces a less reliable market comparable indicator.²⁹

iii. Income Approach

The OCA contends that the “key differences” between the OCA positions and the UVE positions are (1) the OCA’s use of a constant growth DCF model based on cash flow or dividends from a Township current period and (2) the OCA’s discount rate.³⁰ Mr. Walker and Mr. Weinert disagreed with Mr. Garrett’s use of Township average financial information for 2016 through 2018 as the basis for his Income Approach analysis and Mr. Garrett’s discount rate.³¹

Mr. Walker presented five specific reasons why Mr. Garrett’s use of “free cash flow from operations” is not appropriate to determine the value of the East Whiteland system and should not be adopted by the Commission. Specifically, Mr. Garrett’s revenue and Earnings Before Interest and Taxes (EBIT) reflect current ownership, as opposed to the anticipated future benefits of a hypothetical buyer, and also do not include income taxes or a fair rate of return. Depreciation, moreover, is based on original cost, not current value. Subtraction of income taxes is not consistent with current ownership and, notably, the EBIT of \$1,116,178 used by Mr. Garrett is equivalent to a before income tax overall rate of return of only 1.9% to 2.0% on the value of net plant, based on

²⁸ See OCA Main Brief, Section V.B.4.b.ii, page 37.

²⁹ See Aqua Main Brief, Section V.B.4.b.ii, pages 38-39.

³⁰ See OCA Main Brief, Section V.B.4.c, page 40.

³¹ See Aqua Main Brief, Section V.B.4.c, pages 39-43.

Gannett Cost Approach (\$59,118,924) or the OCA Cost Approach (\$56,338,551), and is clearly below the zone of reasonable returns for public utility assets.³²

Mr. Walker also presented five specific reasons why Mr. Garrett's discount rate of 4.5% is not appropriate and is 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 used for market valuation purposes.³³

Mr. Weinert, similarly, disagreed with Mr. Garrett's approach in several respects. 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, 2020.³⁴

5. Conclusion – Section 1329 Fair Market Valuation

The OCA's criticisms of the Gannett and AUS Appraisals should be rejected and given no

³² Aqua St. No. 4-R at 13.

³³ Aqua St. No. 4-R at 15-17.

³⁴ Aqua St. No. 5-R at 21.

weight. 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.

C. Stipulation

Section 1103 of the Code provides that the Commission, in granting a certificate of public convenience, may impose such conditions as it may deem to be just and reasonable. I&E, OCA and OSBA recommended several conditions, if the Commission approves the transaction. Through the Stipulation, submitted on April 14, 2022, Aqua, the Township, I&E, OCA, OSBA and Protestant Gage negotiated a resolution of the conditions for approval recommended by I&E, OCA and OSBA with the exception of the reduced ratemaking rate base of \$46,500,000 recommended by OCA.

Aqua submits that the Stipulation is in the public interest and should be accepted and approved. While not resolving all contested issues, including the determination of affirmative public benefits or ratemaking rate base, the Stipulation, if accepted and approved, will remove several issues from litigation resulting in savings of time and resources on the part of not only the parties but also Judge Guhl and the Commission. The proposed resolution of issues is supported by the evidence of record as addressed further below on an issue-by-issue basis.

1. Tariff

Aqua included proposed schedule of rates tariff pages with its Application implementing the Township's wastewater rates in effect at closing and converting customers to monthly billing.

No party presented testimony in opposition to the proposed tariff pages.

Stipulated Resolution:

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

2. Missing Easements

I&E recommended that the Commission require Aqua and the Township to (1) identify all missing easements, including rights of way; (2) take any and all actions to obtain the missing easements and rights of way so that they may be conveyed to Aqua at closing; and (3) the Township should bear all costs and expenses for obtaining the missing easements and rights of way. I&E also recommended that for situations beyond the Township's control where it is unable to transfer certain missing easements or other property rights at closing, Aqua and the Township may proceed to closing provided that an escrow account is established of an appropriate portion of the purchase price to ensure the Township obtains any remaining missing easements or other property rights post-closing and delivers them to Aqua. Aqua opposed the I&E recommendation viewing it as unnecessary given the easement terms of the APA. Aqua accepts the following Stipulated Resolution as a reasonable compromise of the issue.

Stipulated Resolution

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

3. Cost of Service Study ("COSS")

I&E and OCA recommended that, in its next base rate case, Aqua provide a separate COSS for the Township system. The Company agreed that, in its next base rate case filing that includes the Township system, it will include a separate COSS for the Township 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. I&E accepted the Company's

response in satisfaction of its recommendation. The Stipulating Parties submit the following Stipulating Resolution addressing the I&E and OCA COSS recommendation, which Aqua submits is reasonable and supported by the evidence of record.

Stipulated Resolution

In its first base rate case filing that includes the EWT system assets, Aqua will:

- a. Include a COSS that removes all costs and revenues associated with the operation of the EWT system; and
- b. Include a separate COSS for the EWT system.

These studies are in addition to any form of COSS directed by the Commission's final order in the Company's base rate case filing at Docket Nos. R-2021-3027385 and R-2021-3027386.

4. Rate Freeze and Rate Stabilization

Section 7.03 of the APA provides that rates for East Whiteland customers shall not be increased until after the third anniversary of the Closing Date.

OSBA recommended 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, OSBA recommended 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.

I&E recommended that, as a condition for approval, the Commission remove the three-year rate freeze, which it also viewed as a rate stabilization plan.

OCA recommended 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. OCA also concluded that the rate freeze is a rate stabilization plan. As an alternative to rejecting the

rate freeze, OCA proposed that the Commission recognize that it retains ultimate authority to set rates.

Aqua, in testimony, proposed a way to address the rate freeze concerns of OSBA, I&E and OCA and viewed their recommendations as unnecessary. Aqua also disagreed, in testimony, with the conclusion of I&E and OCA that the rate freeze is a rate stabilization plan. Aqua accepts the following Stipulated Resolution as a reasonable compromise of the issue.

Stipulated Resolution

- a. The current average EWT residential rate is \$33.33 per month based on one equivalent dwelling unit (“EDU”). As set forth in the notice sent to EWT customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on EWT wastewater customers of 132.93%.
- b. The Stipulating Parties acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the EWT customers that are in excess of the restrictions contained in Section 7.03 of the Asset Purchase Agreement.
- c. Aqua and EWT agree that, at the time of Aqua’s first base rate case that includes the EWT system, Aqua may propose an effective date for new rates for EWT wastewater customers that is different from the effective date of new rates for other customers, consistent with the terms of Section 7.03 of the Asset Purchase Agreement. All parties reserve their rights to address Aqua’s proposal.
- d. If Aqua proposes to freeze EWT rates beyond the effective date of new rates in Aqua’s first base rate case that includes the EWT system assets, (1) Aqua shall propose a separate rate for EWT customers in its tariff that reflects the continuation of EWT’s existing rates through the end of the rate freeze period, and (2) Aqua’s compliance proof of revenue will be calculated using the new rate otherwise applicable to EWT customers at the conclusion of Aqua’s base rate case, not EWT’s frozen rate, such that existing ratepayers are not required to fund the revenue deficiency related to the rate freeze. Once the contractual rate freeze term expires, the customers acquired through the acquisition of the EWT system shall immediately become subject to the new rate applicable to EWT customers, as determined in Aqua’s first base rate case that includes the EWT system assets.

- e. In the first base rate proceeding filed by Aqua that includes EWT's wastewater system assets, Aqua shall propose to move the EWT system to its full cost of service, based on a separate cost of service study for EWT's system; provided, however, that Aqua will not be obligated to propose EWT wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Stipulating Parties acknowledge, however, that Aqua may agree to rates other than those proposed for EWT customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and EWT reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua agrees to provide written notice to EWT customers of the rate filing and the level of increase, if any, resulting from this provision.
- f. Aqua will send a welcome letter to EWT Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

5. Long Term Infrastructure Improvement Plan ("LTIIIP")

Aqua and OCA agreed that Aqua must file and receive approval of an amended LTIIIP that includes the Township system prior to charging the Distribution System Improvement Charge ("DSIC") to Township customers. OCA further recommended that any Township improvement projects reflected in the amended LTIIIP should be in addition to, and not reprioritize existing capital projects. Aqua agreed that capital projects added for East Whiteland will be in addition to those that Aqua plans for existing systems but that Aqua must maintain the ability to prioritize and allocate projects based on system needs as they evolve during an LTIIIP period. Aqua accepts the following Stipulated Resolution as a reasonable compromise of the issue.

Stipulated Resolution:

- a. If Aqua proposes to modify its LTIIIP to include the EWT wastewater system, the projects added for EWT will be in addition to those that Aqua plans for its existing systems.
- b. In LTIIIPs or Annual Asset Optimization Plans that include the EWT wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua's current practice and ability to allocate projects as needed for its capital program.

- c. Upon approval of the Commission of a modification to Aqua's LTIIP that includes the EWT wastewater system, Aqua shall be permitted to apply the DSIC to the EWT wastewater system prior to the first base rate case in which the EWT assets are incorporated into rate base.
- d. If Aqua is not already applying the DSIC to the EWT wastewater system, it will do so when rates for those customers are implemented in the first base rate proceeding that includes the EWT system assets.

6. Allowance for Funds Used During Construction ("AFUDC")

OCA recommended 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. Aqua agreed with OCA's recommendation with the clarification (accepted by OCA) 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.

Stipulated Resolution:

- a. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, will be addressed in Aqua's first base rate case which includes EWT wastewater system assets.
- b. Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, the Stipulating Parties reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties' assent to this agreement should not be construed to operate as its preapproval of Aqua's requests. The pro forma tariff submitted with the Application, including all rates, rules and regulations regarding conditions of Aqua's wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

7. Legal Fees

Aqua anticipated that transaction and closing costs will be approximately \$308,300 including the Company's UVE fees and proposed that the exact closing costs will be determined at closing. No party presented testimony in opposition to the anticipated claim. The Stipulating

Parties agreed that, in its next base rate case, Aqua would separately identify legal fees included in transaction and closing costs as follows:

Stipulated Resolution

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

8. Section 507 and 2102 Approvals

Aqua asked the Commission to approve, if necessary, its acquisition agreement with the Township and the assignment of 22 contracts with municipalities under Section 507 of the Code and also to approve, under Section 2101 of the Code, the assignment of the Township's rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities for conveyance of wastewater through the Valley Creek Trunk Line. No party opposed the requested Approvals and Aqua, the Township, I&E, OSBA and Protestant Gage agreed as follows:

Stipulated Resolution

The Stipulating Parties agree that the Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507 and Section 2102.³⁵

D. Recommended Conditions

Although Aqua believes that the Stipulation presents a reasonable resolution of the recommended conditions, Aqua would continue to support its litigation position, as presented in Section C of its Main Brief and as addressed under separate subheadings below, should the Commission decline to accept and approve the Stipulation.

³⁵ The OCA does not join in this paragraph but does not oppose it.

1. Missing Easements

As presented in Section V.C.1 of its Main Brief, the recommended conditions proposed by I&E for missing easements are not necessary as they are already contemplated in the APA.

Section 6.05 (Easement) of the APA 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.”³⁶

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 ...”³⁷ Section 6.05(e) sets forth a process by which the parties will establish an escrow account to ensure missing easements are obtained post-closing.³⁸

Addressing unscheduled real property, Section 6.06 states 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 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.”³⁹

As the APA specifically contemplates the rights and responsibilities of Aqua and East Whiteland in regard to missing easements and provides for the creation of an escrow account for

³⁶ Aqua St. No. 1-R at 6 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(a).

³⁷ Aqua St. No. 1-R at 6 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(c).

³⁸ Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(c).

³⁹ Aqua St. No. 1-R at 6-7 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.06.

obtaining missing easements post-closing, Aqua submits that I&E's recommended conditions are not necessary.⁴⁰

2. Cost of Service Study

Aqua believes that the recommended submission of a COSS as a condition for approval has been resolved irrespective of the Stipulation. The Company agreed, in testimony, that, in its next base rate case filing that includes the Township system, it will include a separate COSS for the Township 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-2021-3027386.⁴¹ I&E accepted the Company's response in satisfaction of its recommendation.⁴² The OCA did not address the matter further in surrebuttal testimony.

3. Rate Freeze and Rate Stabilization

As presented in Section V.C.3 of its Main Brief, the recommended conditions proposed by OSBA, I&E and OCA in respect to the three-year rate freeze are not necessary 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. If the same situation would occur for the East Whiteland system, the Company would make a similar proposal for East Whiteland customers.⁴³

The rate freeze, moreover, is not, in and of itself, a rate stabilization plan as characterized by I&E and OCA. Section 1329(g) of the Code 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,

⁴⁰ Aqua St. No. 1-R at 4.

⁴¹ Aqua St. No. 1-R at 11.

⁴² I&E St. No. 2-SR at 6-7.

⁴³ Aqua St. No. 1-R at 3-4.

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.⁴⁴

4. Long Term Infrastructure Improvement Plan

As presented in Section V.C.5 of its Main Brief, Aqua and OCA agreed, in testimony, that Aqua must file and receive approval of an amended LTIIIP that includes the East Whiteland system prior to charging the DSIC to Township customers. While Aqua also agreed that any East Whiteland projects reflected in the amended LTIIIP would be in addition to existing LTIIIP projects, Aqua did not agree that it would not reprioritize existing capital projects.⁴⁵ Aqua must maintain the ability to prioritize and allocate projects as system needs evolve during an LTIIIP period.⁴⁶

5. Allowance for Funds Used During Construction

As presented in Section V.C.6 of its Main Brief, Aqua and OCA agreed, in testimony, that, if Aqua makes claims 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.⁴⁷

E. Section 507 Approvals

No party opposed or presented testimony in opposition to Aqua's request for Section 507 approval of the APA and the assignment of 22 contracts. The contracts are necessary for the operation of the system. Aqua submits that the contracts, including assignments, are reasonable, legal and valid and that Section 507 certificates should issue.

⁴⁴ Aqua St. No. 1 at 11-12 and Aqua St. No. 1-R at 9.

⁴⁵ Aqua St. No. 1-R at 21.

⁴⁶ Aqua St. No. 1-R at 21.

⁴⁷ Aqua St. No. 1-R at 22; also see OCA St. No. 2SR at 7-8.

F. Section 2102 Approval

No party opposed or presented testimony in opposition to Aqua's request for Section 2102 approval of the assignment of the Township's rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities for conveyance of wastewater through the Valley Creek Trunk Line. There will be no change in the negotiated, market rate for the conveyance of wastewater reflected in the Agreement and Aqua submits that the assignment should be approved.

G. 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. No party opposed or presented testimony in opposition to the Company's request.

VI. CONCLUSION WITH REQUESTED RELIEF

For the reasons set forth in its Main Brief and 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;
- 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 

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Date: April 15, 2022

**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 15th day of April 2022, served a true and correct copy of the foregoing Reply Brief of Aqua Pennsylvania Wastewater, Inc. upon the persons and in the manner set forth below:

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