

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc., pursuant to Sections 1102 and 1329 of the Pennsylvania Public Utility Code for:	:	
	:	A-2021-3027268
	:	
(1) approval of the acquisition by Aqua of the wastewater system assets of Willistown Township situated within the Township Willistown, Chester County, Pennsylvania;	:	
	:	
(2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of Willistown Township, Chester County, Pennsylvania; and	:	
	:	
(3) an order approving the acquisition that Includes the ratemaking rate base of the Willistown Township wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code	:	
	:	
Request for Approval of Contracts, including Assignments of Contracts, between Aqua and Willistown Township, Pursuant to Section 507 of The Public Utility Code	:	
	:	
Request for Approval of a Contract between Affiliated Interests, Pursuant to Section 2102 of The Public Utility Code	:	
	:	

RECOMMENDED DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	HISTORY OF THE PROCEEDING	1
III.	FINDINGS OF FACT.....	13
IV.	PUBLIC INPUT HEARINGS	33
V.	DISCUSSION.....	38
	A. LEGAL STANDARD.....	38
	B. STATEMENT OF QUESTIONS INVOLVED.....	41
	C. ISSUES	42
VI.	RECOMMENDED CONDITIONS.....	182
	A. Aqua’s Position.....	182
	B. Willistown Township’s Position.....	187
	C. I&E’s Position	187
	D. OCA’s Position.....	192
	E. OSBA’s Position.....	192
	F. Henry Yordan’s Position	195
	G. Frissora/Swift Position	195
	H. Discussion.....	195
	I. Notice to Customers	201
	J. Section 507 Approvals.....	206
	K. Section 2102 Approval	208
	L. Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code...	210
	M. Conclusion	212
VII.	CONCLUSIONS OF LAW	213
VIII.	ORDER.....	218

I. INTRODUCTION

This Decision recommends that the Application of Aqua Pennsylvania Wastewater, Inc., initially filed on August 3, 2021, pursuant to Sections 507, 1102 and 1329 of the Public Utility Code, for approval of its acquisition of the wastewater system assets of Willistown Township, be denied as Aqua failed to establish that the sewer system under Aqua's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public and the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current Aqua water and wastewater customers or existing Willistown sewer customers.

By Secretarial Letter of January 14, 2022, Aqua was informed that its Application was accepted for filing.

The statutory deadline for the Commission to act in this proceeding is July 14, 2022.

II. HISTORY OF THE PROCEEDING

On August 3, 2021, Aqua Pennsylvania Wastewater, Inc. (APW, Aqua or Company) filed with the Pennsylvania Public Utility Commission (Commission) its Application pursuant to Sections 1102, 1329, and 507 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 507, 1102, 1329, for (1) approval of the acquisition by Aqua of the wastewater system assets of Willistown Township (Willistown or Township) situated within Chester County, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the areas served by the Willistown wastewater system; (3) an order approving the acquisition that includes the ratemaking rate base of the Willistown wastewater system assets pursuant to Section 1329(c)(2) of the Code and request for Approval of Contracts, 66 Pa.C.S. § 1329; and (4) approval of the Asset Purchase Agreement, between Aqua and Willistown Township, pursuant to Section 507 of the Code, 66 Pa.C.S. § 507.

A Petition to Intervene was filed by Attorney Robert A. Swift (Attorney Swift) on August 6, 2021.

Petitions to Intervene were filed by Henry Yordan and by Julie Frissora on August 21, 2021.

On August 26, 2021, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement. The Office of Consumer Advocate (OCA) filed a Protest and Public Statement on August 30, 2021. On November 5, 2021, the Commission's Bureau of Investigation and Enforcement (I&E) filed its Notice of Appearance in this case.

By Secretarial Letter dated November 5, 2021, the Commission indicated that the Application would be accepted for filing on a conditional basis. The Secretarial Letter, among other things, directed Aqua to ensure notice be provided to all current Aqua and Willistown Township wastewater customers. The Notice required APW and Aqua Pennsylvania Inc., upon receipt of the letter, to provide individualized notice of the proposed acquisition to all potentially affected APW and Aqua customers, consistent with the Commission's Final Supplemental Implementation Order entered on February 28, 2019, at Docket No. M-2016-2543193. APW was directed to inform the Commission when it began to provide such individualized notice. APW was also directed to ensure concurrent notice to all current Willistown Township Wastewater customers in similar fashion as the published notice as directed. APW was directed to file a verification letter indicating it satisfied the conditions established in the Secretarial Letter.

On January 3, 2022, Aqua served the Commission's Secretary with notice certifying that it fulfilled the conditions outlined in the Secretarial Letter of November 5, 2021; therefore, Aqua requested that its Application be accepted for filing. By Secretarial Letter of January 14, 2022, the Commission informed Aqua that its Application was accepted for filing. On January 29, 2022, the Commission published notice of Aqua's Application in the *Pennsylvania Bulletin*, and it established a protest deadline of February 14, 2022. 52 Pa.B. 814 (January 29, 2022). On January 13, 2022, Aqua's Application was assigned to the Office of

Administrative Law Judge for establishment of an evidentiary record culminating in a Recommended Decision for the Commission's consideration.

On January 13, 2022, a Prehearing Conference Order (Order) was issued scheduling a Prehearing Conference for February 15, 2022 and providing a proposed litigation schedule and an expedited discovery schedule for the Parties. The Order advised the Parties there is a six-month deadline for final Commission action in this proceeding; that main briefs would be due on March 14, 2022, Reply Briefs on March 21, 2022, that the Public Meeting of the Commission to take action on the Application would be held on June 16, 2022, and that these deadlines would likely not be negotiated. The Parties were directed to confer prior to the Prehearing Conference to discuss and attempt to agree upon a litigation schedule, otherwise the draft schedule set forth in the Order would be adopted. In addition, an expedited discovery schedule and deadlines were provided to the Parties.

On January 14, 2022, the undersigned presiding officer received correspondence from Attorney Swift requesting a ruling on the Petitions to Intervene filed by Robert A. Swift, Henry Yordan and Julie Frissora, stating the need to provide sufficient time for the individuals filing Petitions to Intervene to engage in discovery.

On January 18, 2022, the Commission issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference for 10:00 a.m. on February 15, 2022.

On January 19, 2022, an Interim Order was entered permitting responsive pleadings or Objections to the Petitions to Intervene filed by Robert A. Swift, Henry Yordan and Julie Frissora, to be filed and served not later than January 21, 2022. The Parties were further directed to be prepared to address the issues identified in the Order entered on January 13, 2022, and any outstanding objections to the petitions to intervene and Protests filed in this proceeding.

On January 25, 2022, an Interim Order was entered granting the Petitions to Intervene filed by Attorney Swift, Henry Yordan and Julie Frissora.

A telephonic Prehearing Conference was scheduled for February 15, 2022, at 10:00 a.m., in accordance with a Prehearing Conference Order entered on January 13, 2022, and a call-in telephone prehearing conference notice issued on January 18, 2022.

On January 26, 2022, a Protest was filed by Robert A. Swift.

On January 27, 2022, a Protest was filed by Henry Yordan.

On January 28, 2022, a Protest was filed by Julie Frissora.

On January 31, 2022, a Protest was filed by Michelle and Jeffrey Atchison.

On February 4, 2022, Aqua filed a Petition of for a protective order, pursuant to 52 Pa. Code § 5.365. Aqua averred, *inter alia*, that the issuance of a protective order adequate to cover all parties and establish procedures in accordance with 52 Pa. Code § 5.365 for the provision of information believed to be confidential or proprietary would serve administrative economy and efficiency by obviating the need for parties to address confidential/proprietary concerns on a piecemeal basis every time confidential/proprietary information is requested.

On February 4, 2022, Attorney Swift filed Intervenor Swift's Renewed Motion For Issuance of Deposition Subpoenas To Fact Witnesses, as it pertains to William Hagan, Sally Slook and William Shoemaker, which was re-filed on February 7, 2022.

On February 7, 2022, Attorney Swift filed Intervenor Swift's Opposition To Aqua Pennsylvania Wastewater's Petition For Protective Order (Swift Objection). Mr. Swift's objection averred, *inter alia*, that the protective order sought by Aqua is overly broad and prevents protestors from having a level playing field and would result in a denial of due process. (Swift Objection ¶ 5).

On February 7, 2022, Intervenor Henry Yordan filed Intervenor And Protestor Yordan's Opposition To Aqua's Petition.

On February 7, 2022, the undersigned presiding officer received an email from counsel for OCA requesting that a status conference be held on February 8, 2022 in order to discuss the scheduling of public input hearings. A copy of the email was provided to the Parties in this proceeding. The undersigned presiding officer responded by providing the Parties with an email scheduling a status conference for February 8, 2022, at 1:30 p.m. A status conference was convened at 1:30 p.m. on February 8, 2022. Aqua, OCA, OSBA, I&E, and Willistown Township participated and were represented by counsel. In addition, Attorney Swift, Henry Yordan and Julie Frissora also appeared and participated. A discussion was held, including a discussion concerning the scheduling of public input hearings. Upon conclusion of the status conference, Public Input Hearings were scheduled for February 24, 2022, at 1:00 p.m. and 6:00 p.m. During the status conference, the Parties were reminded of the six-month statutory deadline for Commission action in this proceeding and Attorney Swift requested a 30-day extension of the deadline to litigate this case. The extension request was not granted at the status conference and the Parties were encouraged to confer and agree upon a litigation schedule that would be addressed at the prehearing conference.

On February 8, 2022, a Petition to Intervene was filed by Willistown Township. The Petition was granted by Interim Order entered on February 15, 2022.

On February 8, 2022, an interim order was entered setting a deadline of February 14, 2022, for the filing of any responsive pleadings or Objections to the Protests filed by Attorney Swift, Henry Yordan and Julie Frissora; advising the Parties to be prepared to address the issues identified in the Order entered on January 13, 2022, and any outstanding objections to the Petition(s) to intervene and Protests filed in this proceeding; and setting a deadline of February 14, 2022, for the filing of any responsive pleadings or Objections to the Petition to Intervene filed by Willistown Township, to the Petition For Protective Order filed by Aqua and to Intervenor Swift's Renewed Motion For Issuance of Deposition Subpoenas to Fact Witnesses filed in this proceeding.

On February 14, 2022, Prehearing Memoranda were filed by the Parties. No Prehearing memorandum was filed by Michelle and Jeffrey Atchison. On February 14, 2022,

Attorney Swift filed a Prehearing Memorandum. The Prehearing Memorandum filed by Mr. Swift included the following statement:

1. Possible Conflicts of Interest
 - a. ALJ Watson should state on the record whether he has any financial interest in Aqua's parent company, which is publicly traded.
 - b. He should state whether he has ruled in favor of Aqua in any other proceedings and identify those proceedings.
 - c. He should state whether he has had any *ex parte* communications with Aqua personnel or its counsel regarding this proceeding.
 - d. If so, he should make full disclosure of those communications.

On February 14, 2022, Aqua also filed its Prehearing Memoranda. Attached to the Prehearing Memoranda was the formerly confidential and now public version of Exhibit A, containing documents regarding the proposed testimony of Aqua witness William C. Packer. Also attached to Aqua's Prehearing Memorandum was the Confidential and Proprietary Sewage Facilities Map, which Aqua indicated would be submitted as a publicly available document as part of Willistown Townships Chapter 94 Report. The Amended Confidential Facilities Map was also attached to Aqua's Prehearing Memorandum.

On February 14, 2022, Willistown Township filed Objections of Willistown Township to Intervenor Robert A. Swift's Motion For Issuance of Deposition Subpoenas To Fact Witnesses (Willistown Objections).

The prehearing conference was held as scheduled on February 15, 2022. Aqua, Willistown, I&E, OCA, and OSBA appeared and were represented by counsel. In addition, Intervenor Swift, Yordan and Frissora attended the conference. Upon introducing the Parties, the undersigned presiding officer read the statement regarding possible conflict of interest by the undersigned presiding officer that was included in the Prehearing Memorandum filed by Attorney Swift. The Parties were advised that the statement by Mr. Swift in the Prehearing

Memorandum would be considered as a Request for Disqualification of the Presiding Officer. The Parties were given an opportunity to address the statement by Mr. Swift and the request of disqualification. Mr. Swift raised concerns regarding the litigation schedule proposed by the undersigned presiding officer and the fact that there is a six-month deadline for final Commission Action in this proceeding and therefore a compressed timeline to conclude discovery and litigation in this proceeding. After providing all parties with an opportunity to address the issues raised by Attorney Swift, the Parties were advised that the Motion to disqualify the undersigned presiding officer would be denied.

In addition, a lengthy discussion was held by the Parties at the Prehearing Conference regarding Attorney Swift's Renewed Motion for Subpoenas and a proposed litigation schedule. The Parties were advised again of the statutory six-month deadline for final Commission action in this proceeding and that the tentative litigation schedule would be adopted if the Parties were unable to agree upon a viable alternative. No agreement to a litigation schedule was reached despite two opportunities for the Parties to attempt to reach an agreement. Following a lengthy prehearing conference, the Parties were advised of upcoming deadlines and that a litigation schedule would be set by the undersigned presiding officer.

At the prehearing conference on February 15, 2022, Intervenor Frissora also objected to the Petition For Protective Order filed by Aqua.

Based upon the arguments made by Aqua in the Petition For Protective Order, its Prehearing Memorandum and at the Prehearing Conference, consistent with the terms set forth in the proposed Protective Order, given the statutory deadline, the expedited discovery schedule, imposed in this case by Interim Order entered on January 13, 2022, the arguments by Aqua's legal counsel and upon the review of the terms of the proposed Protective Order, an interim order was entered granting the Petition filed by Aqua for a Protective Order on February 17, 2022.

At the prehearing conference, argument on the Renewed Motion was heard from the Township, Attorney Swift and the Parties. The Township represented that Sally Slook, one of the three deponents, and a party/employee of the township would provide written testimony in

this proceeding, and that William Shoemaker and William Hagan would not be providing written testimony.

Based upon the pleadings filed and the argument and representations of Attorney Swift and counsel for the Township, the Parties were advised that the Renewed Motion, as it pertains to William Shoemaker and William Hagan, would be denied; however, the Renewed Motion as it relates to Sally Slook would be granted and a discovery deposition of Sally Slook would be permitted. In addition, as the date set forth in the sample subpoenas had passed and as no date was agreed upon by the parties for the deposition, the Parties were advised that a subpoena could not be issued and served within the next several days but that the deposition would be conducted by Tuesday, February 22, 2022. Counsel for the Township agreed to produce Ms. Slook for her deposition no later than that date and the Parties were directed to agree upon a date and time.

On February 16, 2022, an interim order was entered denying Intervenor Swift's Renewed Motion For Issuance of Deposition Subpoenas To Fact Witnesses, as it pertained to William Hagan and William Shoemaker. Intervenor Swift's Renewed Motion For Issuance of Deposition Subpoenas To Fact Witnesses, as it pertained to Sally Slook, filed on February 4, 2022, and re-filed on February 7, 2022 was granted, with limitations.

On February 17, 2022, the Petition to Intervene filed by Willistown was granted.

On February 17, 2022, a Prehearing Order was entered which provided a litigation schedule for the Parties including setting an evidentiary hearing on March 2 and 3, 2022 beginning at 9:00 a.m. each day and reminding the Parties that the Commission would consider this proceeding at the Public Meeting on June 16, 2022. The Parties were further reminded that no written testimony would be admitted into evidence at the Evidentiary Hearings unless accompanied by a verification or affidavit of the witness and that oral testimony would be permitted at the Public Input Hearings consistent with the Public Utility Code and Commission regulations.

The Parties were again reminded, in the Prehearing Order, that this case was being litigated using preserved written testimony at the evidentiary hearing and oral testimony at the public input hearing, consistent with the Public Utility Code and Commission regulations.

On February 17, 2022, an interim order was entered setting a deadline for the Parties to file a responsive pleading or objections to the Protests filed by Robert A. Swift, Henry Yordan, Julie Frissora, and/or Michelle and Jeffrey Atchison, on or before February 22, 2022, at 12:00 p.m.

On February 17, 2022, an interim order was entered denying Intervenor Swift's request for disqualification of the undersigned presiding officer from this proceeding.

On February 22, 2022, an interim order was entered setting a deadline to file objections or responsive pleadings to Intervenor Swift's Motion for Issuance of Hearing Subpoenas to Fact Witnesses William Shoemaker and William Hagan, of February 24, 2022.

On February 22, 2022, an interim order was entered directing that the Parties promptly consult with each other and identify and exchange all written testimonies and exhibits they intend to introduce into evidence at the evidentiary hearing, as well as a list of such written testimonies, exhibits, and all such documents and materials, not later than February 25, 2022. The Parties were further directed to promptly consult with each other and prepare a witness matrix including the identification of witnesses for each Party, indicating which parties intend to cross-examine witnesses and the approximate amount of time for examination of each witness by each Party and cross-examination by each Party. The Parties were directed to provide the witness matrix to the undersigned presiding officer not later than February 25, 2022.

Finally, the Parties were requested to submit the parties' pre-marked proposed exhibits/testimonies and a list of such exhibits and testimonies and send that documentation to the undersigned presiding officer, not later than February 28, 2022, to include a master list of all the parties' proposed testimonies, evidence and exhibits.

On February 24, 2022, Willistown Township filed its objections to Attorney Swift's motion for hearing subpoenas of fact witnesses Shoemaker and Hagan.

On February 24, 2022, an interim order was entered granting the request by Attorney Swift, for the issuance of a hearing subpoena to fact witness, William Shoemaker and William Hagan. Legal Counsel for Willistown Township was directed to promptly communicate the contents of the Interim Order and provide a copy of the Interim Order to the proposed fact witnesses, William Shoemaker and William Hagan, and to produce the attendance of William Shoemaker and William Hagan at the evidentiary hearing beginning on Wednesday, March 2, 2022, promptly at 9:00 a.m. The Order provided that any objections to the testimony or any portions thereof would be timely made at the evidentiary hearing in this proceeding.

On February 24, 2022, the Public Input Hearings were convened as scheduled at 1:00 p.m. and 6:00 p.m., and an interim order was entered on February 28, 2022, admitting Frank Mayer III Exhibit 1, into the Public Input Hearing record. All of the Parties and legal counsel for the Parties participated and were given an opportunity to question the witnesses, with the exception of Attorney Swift and Protestant Jeffrey Atchison, who did not attend.

On February 28, 2022, an interim order was entered providing limitations for the evidentiary hearings scheduled for March 2 and 3, 2022.

On March 2, 2022, the evidentiary hearing was convened as scheduled. Aqua, Willistown Township, I&E, OCA, and OSBA, appeared and were represented by legal counsel. In addition, Attorney Swift, Henry Yordan, and Julie Frissora, Protestants and Intervenors appeared and participated, all of which were given an opportunity to present testimony and to examine witnesses. Protestants Michelle and Jeffrey Atchison did not appear. The evidentiary hearing concluded on March 3, 2022.

At the evidentiary hearing, the following evidence was admitted into the hearing record:

Aqua Statements:

- Aqua Statement No. 1 – Direct Testimony of William C. Packer, including Appendix A
- Aqua Statement No. 1-R – Rebuttal Testimony of William C. Packer
- Aqua Statement No. 2 – Direct Testimony of Mark J. Bubel, Sr.
- Aqua Statement No. 2-R – Rebuttal Testimony of Mark J. Bubel, Sr.
- Aqua Statement No. 4 – Direct Testimony of Harold Walker, III.
- Aqua Statement No. 4-R – Rebuttal Testimony of Harold Walker, III., including Exhibit HW-1

Aqua Exhibits:

- Aqua Exhibit 1
- Aqua Exhibit 2
- Aqua Exhibit 3
- Aqua Exhibit 4

Willistown Township Evidence:

- Aqua Statement No. 3 - Direct Testimony of Sally Slook
- Aqua Statement No. 3-R – Surrebuttal Testimony of Sally Slook
- Aqua Statement No. 5 – Direct Testimony of Jerry C. Weinert
- Aqua Statement No. 5-R – Rebuttal Testimony of Jerry C. Weinert, including JCW 5-R, Exhibit 1

I&E Statements of Testimony:

- I&E Statement No. 1 – Direct Testimony of Anthony Spadaccio
- I&E Statement No. 2 – Direct Testimony of Eryan A. Sakaya
- I&E Statement No. 1-SR – Surrebuttal Testimony of Anthony Spadaccio
- I&E Statement No. 2-SR – Surrebuttal Testimony of Eryan A. Sakaya

I&E Exhibits:

- I&E Exhibit No. 1 – Exhibit to accompany the Direct Testimony of Anthony Spadaccio
- I&E Exhibit No. 2 – Exhibit to accompany the Direct Testimony of Eryan A. Sakaya

OCA Statements and Exhibits:

- OCA Statement No. 1 – Direct Testimony of David J. Garrett and Appendix A, B, C, and D and OCA Exhibits DJG-1 through DJG-22
- OCA Statement 1-SR – Surrebuttal Testimony of David J. Garrett
- OCA Statement No. 2 – Direct Testimony of Morgan N. DeAngelo and Appendix A
- OCA Statement 2-SR – Surrebuttal Testimony of Morgan N. DeAngelo

OSBA Statements and Exhibits:

- OSBA Statement No. 1 and Exhibit BK-1 – Direct Testimony of Brian Kalcic, and verification
- OSBA Statement No. 1-S – Surrebuttal Testimony of Brian Kalcic and Mr. Kalcic’s signed verification

Robert A. Swift:

- Swift Statement No. 1 – Direct Testimony of Robert A. Swift
- Swift Statement No. 2 – Direct Testimony of Jerry Childress with exhibits
- Swift Statement No. 2-SR with exhibits

Henry Yordan Statements and Exhibits:

- Yordan Statement No. 1 - Direct Testimony with Exhibits A-O
- Yordan Statement No. 1-SR – Surrebuttal Testimony of Henry Yordan with Exhibits A and B

Julie Frissora Statements and Exhibits:

- Frissora Statement No. 1 – Direct Testimony of Julie Frissora with Exhibits A-M
- Frissora Statement No. 1-SR – Surrebuttal Testimony of Julie Frissora with Exhibits N, O, P and Q

ALJ Exhibits:

- ALJ Exhibit 1
- ALJ Exhibit 2
- ALJ Exhibit 3

Late Filed Exhibits:

In addition, the following Late Filed Exhibits were admitted, subject to the terms set for in the interim order entered on March 4, 2022.

- Aqua Exhibit 5
- OCA Late Filed Exhibit No. 1
- Yordan Late Filed Exhibit No. 2

On March 4, 2022, an interim order was entered granting the request of Attorney Swift to take judicial or official notice of the Implementation Order adopted February 28, 2019 filed at Docket No. M-2016-2543193 and of 25 Pa. Code §73.17.

On March 4, 2022, an interim order was entered admitting late filed exhibits.

Main Briefs were filed on March 11, 2022.

On March 24, 2022, Reply Briefs were filed by the Parties.

The record in this proceeding was closed on the Reply Brief deadline on March 24, 2022.

III. FINDINGS OF FACT

Aqua and Williston

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 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 3.

3. Aqua operates 24 wastewater systems in its Southeast Division that are in proximity to Willistown 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. Willistown 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. Willistown Township owns and operates a sanitary wastewater system which provides sanitary wastewater service to approximately 2,294 customers in Willistown Township, Chester County. Aqua Exhibit No. 1; Application ¶ 8 and Aqua St. No. 1 at 7.

Asset Purchase Agreement

7. Aqua and Willistown are parties to an Asset Purchase Agreement (APA or Agreement) dated January 20, 2021. Aqua Exhibit 1; Application ¶ 5 and ¶ 21; *see also* Aqua Exhibit No. 1; Application Exhibit B.

8. Aqua intends to use short-term credit lines to fund the transaction, which is the subject of this proceeding. It is anticipated that 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 9; *see also* Aqua Exhibit No. 1; Application ¶ 23.

9. The APA between Aqua and Willistown provides that rates shall not be increased until after the second anniversary of the closing date as set forth in the APA. Aqua Application, ¶ 10; APA Section 7.03.

Assets Being Transferred

10. The wastewater system assets to be transferred are the “Acquired Assets” set forth 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 treatment facilities, 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 nineteen contracts listed in Paragraph 25 of the Application to which Township is a party (the Assigned Contracts). Application ¶ 25.

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 as set forth in the APA. Aqua Exhibit No. 1; Application ¶ 26.

13. “Excluded Assets” which are those assets not being transferred to Aqua, are set forth in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, contracts that are not the Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Scheduled 2.02(h) of the Agreement. Aqua Exhibit No. 1; Application ¶ 27.

14. “Assumed Liabilities” are set forth 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 as set forth in the APA. Aqua Exhibit No. 1; Application ¶ 28.

The Willistown Township System

15. The Willistown system consists of six pump stations, two booster pump stations, approximately 26 miles of gravity sewer collections mains, and approximately 14 miles of force mains. The Township also owns the Penn’s Preserve wastewater treatment plant, which treats wastewater to a small community system. The Willistown Township system serves approximately 2,294 customers. Aqua St. No. 3 at 6-7.

Rates

16. Willistown bills Gravity Sewer Customers that send flows to the Valley Forge Sewer Authority (VFSA), a quarterly base fee of \$124.66 and a quarterly consumption charge of \$5.52 per 1,000 gallons based on water usage. Low Pressure Sewer Customers that send flows to the VFSA are billed a quarterly base fee of \$124.66 and a quarterly consumption

charge of \$5.52 per 1,000 gallons based on water usage. Customers in the Penn's Preserve System (PPS) are charged a flat quarterly fee of \$187.96. Willistown residents that send flows into the East Goshen Township sewer system are charged a flat quarterly fee of \$153.87. Aqua Exhibit No. 1; Application ¶ 34 and Exhibit H.

17. The Application provides Aqua will implement the Township's wastewater rates in effect at closing and apply its then-existing fees and charges in its Tariff. The Township presently bills on a quarterly basis. Aqua intends to convert Willistown customers to monthly billing after closing. A schedule of rates tariff page implementing monthly rates for Township customers post-closing is included as Revised Exhibit G to the Application. Aqua Exhibit No. 1; Application ¶ 33; Aqua Exhibit 4 and Aqua St. No. 1 at 10.

18. Based on the Township's current rate schedule, Aqua projects annual revenue of \$2,083,460 from Willistown customers with annual operating and maintenance expenses of \$1,750,444. Aqua Exhibit No. 1; Application ¶ 35.

19. Aqua intends to operate and manage the wastewater system as a standalone system, but within Aqua's footprint, from its Southeastern Division Office in Bryn Mawr, Pennsylvania. The Willistown system is approximately 9 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, plans to add 2 additional operators to address day-to-day operations of Willistown. Aqua Exhibit No. 1; Application ¶¶ 42, 49 and Aqua St. No. 2 at 15.

Existing Willistown Township System

20. The Township system's oldest portions are approximately 45 years old with the newest portions built in 2020. Aqua St. No. 2 at 11; Aqua Response to Swift RFA Set I No. 39; Aqua Response to Swift RFA Set I Nos. 39, 40; Frissora St. No. 1 at 17-18.

21. The condition of the Township system was assessed as “good.” *See* Aqua Exhibit D, Engineering Assessment; Frissora St. No. 1 at 18.

22. The Township system is primarily a collection system. Aqua St. No. 2-R, at 3; Frissora St. No. 1, at 7.

Department of Environmental Protection Compliance

23. Aqua is in good standing with the Department of Environmental Protection (DEP). Aqua Exhibit No. 1; Application ¶ 45.

24. Aqua is not aware of any outstanding environmental violations for the Willistown system. Aqua St. No. 2 at 13.

25. Aqua had PA DEP violations for systems Aqua already owns in the Township since the 1990’s. Aqua Response to Swift RFA No. 30; Frissora St. No. 1 at 7; Frissora St. No. 1-SR at 7.

System Issues and Planned Capital Projects

26. Aqua has estimated in the first 10 years that the Willistown systems will need \$3.3 million in capital investments, including upgrades to pump stations, force mains and gravity collection systems. As the Company operates the system, after closing, additional capital projects may be identified. Aqua St. No. 2 at 11 and Aqua St. No. 2-R at 7.

27. The Township system does not have urgently needed capital investment upgrades and improvements. Aqua St. No. 2 at 11; OCA St. No. 2 at 6.

28. If the Application would be approved, Aqua’s potential volume discounts would likely be offset by Aqua’s financing cost, nearly double that of the Townships, and payment of Pennsylvania sales tax and state and federal taxes on revenues. OCA St. No. 2 at 9.

Fitness

Legal Fitness

29. There are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service to customers. Aqua St. No. 1 at 8.

30. Aqua is financially, technically, and legally fit to own and operate the Willistown system. Aqua St. No. 2 at 17-19.

Financial Fitness

31. 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 9.

32. 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 8-9.

33. 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 9.

34. Aqua would finance the acquisition of the Willistown 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 9.

Technical and Managerial Fitness

35. Willistown wastewater currently has six employees. Aqua St. No. 2 at 11; *see also* Aqua Exhibit No. 1, Application ¶ 43 and ¶ 53.

36. 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.

Public Interest And Affirmative Public Benefits/Potential Detriments

37. Aqua has the technical, regulatory, financial and legal fitness to operate the assets of Willistown Township and to maintain the operations and make improvements to meet continuing customer needs. Aqua Exhibit No. 1, Application ¶ 52.a.

38. Only approximately one-half of the Township residents are Willistown sewer customers. Aqua Response to Swift RFA Set I No. 42; Frissora St. No. 1 at 28.

39. The proceeds from the sale will be deposited into the Township's General Fund and used to benefit all residents. Aqua Response to Swift RFA Set I No. 28; Frissora St. No. 1 at 28-30.

40. Aqua's financing cost approximately (7.12%) is approximately twice the Township's long-term financing cost of approximately (3-3.5%). The financing cost will likely affect the increase in rates for both Aqua and Willistown. Aqua St. No. 1, Appendix A; Aqua St. No. 4 at 20; OCA St. No. 2 at 9; Yordan St. No. 1 at 14; Frissora St. No. 1 at 18.

41. Aqua pays Pennsylvania sales tax and state and federal taxes on revenues. OCA St. No. 2 at 9; Frissora St. No. 1 at 15; Aqua St. No. 1-R at 34.

42. In Pennsylvania, a municipality like Willistown Township does not pay sales tax and state and federal taxes on revenues. Frissora St. No. 1 at 15-16.

43. Aqua's financing cost, payment of taxes, and the need to pay a dividend to shareholders are included in Aqua's rate. Frissora St. No. 1 at 16-18.

44. The Township has a lower financing cost than Aqua, as it does not pay taxes and does not have shareholders that require dividends. Frissora St. No. 1 at 18-19.

45. The Township provides clearing of property owner's lateral blockages/stoppages. Aqua does not provide this service to customers. Aqua Response to Swift RFA Nos. 52, 53; Frissora St. No. 1 at 9.

46. The Township negotiates pricing discounts, monitors service quality, acts as a payment intermediary, and coordinates small excavation activities with Pre-doc vendor for sewer customers with grinder pumps. Yordan St. No. 1 at 22.

47. The Township has comprehensive payment options and there is not a fee for any payment option. Aqua has similar payment options and charges additional fees for some payment options. OCA St. No. 2 at 11-12; Frissora St. 1 at 20-21; Frissora St. No. 1, Exhibit I.

48. Aqua is able to terminate water service to Aqua water and wastewater customers if the customer is unable to meet Aqua's payment terms. The Township cannot. Aqua Response to Swift Request for Admission Nos. 32, 45; OCA St. No. 2 at 14; Frissora St. No. 1 at 30-32.

49. Aqua ownership introduces the \$17,500,000 purchase price (or the amount the Commission approves for inclusion in the rate base) as a cost for which Aqua will be

approved a substantial return by the Commission. This \$17,500,000 cost (subject to Commission approval) does not, and will not, exist under Township ownership since the Township already owns the sewer assets. Frissora St. No. 1 at 16.

50. Approximately 30 individuals provided testimony at the public input hearings as to the harms that would occur should Aqua acquire Willistown's system. OCA St. 2SR at 11-16.

51. Three consumers noted that the Township's sewer system was already paid for by Township customers and that if the sale goes through, many will essentially be paying for the sewer system a second time. OCA St. 2SR at 16; Tr. 286, 293, 326.

52. Mr. Nikas testified that some Township customers with grinder pumps pay the Township to maintain the pumps and that Willistown customers have installed meters to measure outside usage with discharge being deducted from the quarterly sewer bill. OCA St. 2SR at 16; Tr. 294-95.

53. Aqua customers testified that Aqua's service to water customers had not been adequate. OCA St. 2SR at 15; Tr. 248-52, 318-21.

54. Ms. Hegarty testified that the Township maintains a pumping station behind her property that includes a shared driveway and expressed concern as to whether Aqua will continue to maintain the pumping station in the manner that the Township does currently. OCA St. 2SR at 13; Tr. 331.

55. Ms. Flynn, an owner of three lots on the Township's sewer system, expressed concern about the sale and noted that the Township has operated the system well over the 11 years that she has resided in Willistown. OCA St. 2SR at 13; Tr. 226.

56. Ms. Bowes testified that she has always experienced excellent service at reasonable cost by the Township. OCA St. 2SR at 12; Tr. 207-08.

57. Mr. Lordan praised the Willistown Township's excellent dependability and service, and testified that the sale would be detrimental to the Willistown sewer customers in the areas of service of cost. OCA St. 2SR at 11; Tr. 190-94.

58. Aqua has not provided any specific showing of cost reductions or efficiencies that will be produced by the acquisition of the Willistown customers. OCA St. 2 at 8.

59. Aqua admitted that the only benefit it attempted to quantify is a reduction in operating expenses. OCA St. 2 at 8.

60. Aqua witness Mr. Packer estimated that operating expenses for the System might be \$300,000 (17%) per year lower for Aqua than for the Township. Aqua St. 1R at 11-12.

61. There has been no showing that rates would become more affordable in the long-term due to economies of scale. OCA St. 2 at 14.

62. Potential opportunities for volume discounts and for sharing costs among customers outside of Willistown, will likely be offset by Aqua's much higher cost of capital. OCA St. 2 at 9.

63. The Township already has a 24-hour service company, PreDoc, for low pressure systems, in addition to the Police Department that is available to address sewer emergencies, should they arise. OCA St. 2 at 11.

64. Willistown customers already have an online bill payment option, as well as in-person or payment by mail. OCA St. 2 at 11-12.

65. Aqua's bill payment options do not include in-person and do not provide advantages over Willistown's current billing system besides the ability to make bill payments via text message. OCA St. 2 at 12.

66. The current service provided by the Township is safe and reliable. OCA St. 2 at 14.

67. Aqua acknowledges that under Willistown ownership, the Township has had no Pennsylvania Department of Environmental Protection (DEP) notices of violations in the last five years. OCA St. 2 at 15.

68. From 2019 to 2021, the Township had two DEP violations, and both were enforced and resolved within weeks by the Township. OCA St. 2 at 15.

69. In that same time frame, wastewater systems that Aqua already owns in Willistown had nine DEP violations, six of which were enforced. OCA St. 2 at 15.

70. Across the entire Commonwealth, Aqua had 119 DEP violations, 30 of which were major, with 101 enforcements. OCA St. 2 at 15.

71. Aqua acknowledged that the Township's system has the capacity to meet the demands of current and future customers, does not have any sanitary system overflows in 2020, and is not currently under a Corrective Action Plan or Connection Management Plan with DEP. OCA St. 2 at 15.

72. The Township is financially fit to complete any necessary improvements and upgrades given that the Township has cash and cash equivalents of nearly \$20 million. OCA St. 2 at 6-7.

73. The Township has approximately \$7 million more in cash than outstanding debt. OCA St. 2 at 7.

74. The Township could make any necessary improvements and upgrades to the system, on an as-needed basis, and it would not present an unreasonable financial burden for the Township. OCA St. 2 at 7.

Effects on Customer Service and Billing/Payment Options for Willistown Township Customers

75. Aqua provides customer service through a toll-free number from 8:00 a.m.-5:00 p.m. EST for regular business. The same toll-free number houses the Company's 24/7/365 emergency response. Aqua St. No. 1 at 16.

76. Willistown Township customers would be able to take advantage of Aqua's online bill payment option, including 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. Willistown customers would also have access to Aqua's customer assistance programs. Aqua St. No. 1 at 16.

77. 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 16.

78. The Township permits exterior water meters for outdoor water usage and allows customers to report their exterior usage to have it deducted from their sewer charge calculation for existing and future property owners who install deduct meters. Aqua updated its Rates Tariff Pages on November 4, 2021 to grandfather in existing deduct meters with qualifications, but no meters installed after the signing of the Asset Purchase Agreement on January 21, 2021 will be grandfathered. Frissora St. No. 1 at 12-13.

79. Valley Forge Sewer Authority (VFSA) is a regional authority treating sewage for 22,000 customers in eight municipalities, including Willistown. Aqua St. No. 1 at 21; Yordan St. No. 1 at 29.

80. The Township provides emergency service 24/7/365. Aqua's regular business hours are only one hour more Monday-Friday than the Township's regular business hours. OCA St. No. 2 at 11; Frissora St. No. 1 at 8-9, 19-20; Exhibits E, F.

81. The Township low pressure sewer customers have a 24-hour emergency number. Yordan St. No. 1 at 27.

82. The Township (Public Works Department and Administrative staff) provides very good to excellent service. Frissora St. No. 1 at 9, 19.

83. The acquisition of the System will be an approximated 5% 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 Aqua's customers. Aqua St. No. 1 at 15 and Aqua Exhibit No. 1, Application ¶56.

Economies of Scale As a Result of Lower Rate Base and Lower Rates

84. Some customers are charged for more than one equivalent dwelling unit (EDU). Based on Township records, Willistown has approximately 2,458 EDUs, which equates to approximately \$7,120 purchase price per EDU and is almost equal to the Company's existing rate base per EDU, projected at approximately \$7,000. Aqua St. No. 1 at 15.

85. Aqua's rates likely will not become more affordable in the long-term due to economies of scale. OCA St. No. 2 at 14.

86. Rates for the conveyance and treatment of the Township sewage will remain the same under Aqua as under Township ownership. Aqua Response to Swift RFA Set II No. 54; Frissora St. No. 1 at 15.

87. Aqua Resources, Inc. acquired the Valley Creek Trunk System in November 2018. Aqua Resources, Inc. froze rates for the first three years. Aqua Resources, Inc.

is increasing rates in 2022 by 55% and is scheduled to increase rates further in 2023 by 3%, in 2024 by 3% and in 2025 by 22%. In total that is a 100% compounded rate increase over a seven-year period. Aqua Response to Swift RFA No. 37; Aqua St. No. 1 at 21; Frissora St. No. 1 at 11.

88. Aqua's potential volume discounts will be offset by Aqua's more than double financing cost and payment of Pennsylvania sales tax and state and federal taxes on revenues. OCA St. No. 2 at 9.

Cost of Service Study

89. Without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing Aqua customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised. I&E St. No. 2 at 17.

90. The goal of a cost of service study is to determine a utility's revenue requirement to provide service to its different customer classes. I&E St. No. 2 at 16-17.

91. Through the litigation process, I&E and Aqua reached an agreement that satisfied I&E's cost of service study recommendation. Aqua St. No. 1-R at 5-6; I&E St. No. 2-SR at 2.

Rate Impact

92. The current average monthly bill of a Willistown residential customer is approximately \$63.63 per month. Applying 100% of the revenue deficiency to the existing rates, the average bill would increase by approximately \$54.64 per month or an 85.87% increase. Aqua St. No. 1 at 17.

93. Rates for Township customers could increase as much as 86%, under Aqua ownership, due to the revenue deficiency caused by the \$17.5 million purchase price. Aqua St. No. 1, Appendix A at 1; OCA St. No. 2 at 8, 14; Frissora St. No. 1 at 15.

94. Rates for Township customers could increase under Aqua ownership, as much as 43% if the Commission accepts Aqua's split of 70% COS to acquired customers and 30% COS to existing customers. Aqua St. No. 1, Appendix A at 1; Aqua St. No. 1-R at 4.

95. Aqua's estimated tax rate for the first rate case is 21% Federal and 9.99% State for a total of 30.99%. Aqua St. No. 1, Appendix A at 1.

Possible Adverse Effects/Lack of Adverse Effects

96. Aqua will implement Willistown's existing rates upon Commission approval of the acquisition. Aqua Exhibit No. 1, Application ¶ 33.

97. An Aqua rate case has not yet been completed that includes a 1329 acquisition. Frissora St. No. 1 at 10.

98. Aqua's 2022 rate case (R-2021-3027385) includes the following 1329 wastewater acquisitions totaling \$180.5 million: Limerick at \$75 million, East Bradford at \$5 million, Cheltenham at \$50 million, East Norriton at \$21 million and New Garden at \$29.5 million. Frissora St. No. 1 at 10.

Section 1329 Considerations

Ratemaking Rate Base

99. Aqua and Willistown 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.

100. Aqua and Willistown 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 17; *see also* Aqua Exhibit No. 1, Application ¶ 11 and Exhibit D.

101. Aqua selected Gannett Fleming Valuation and Rate Consultants, LLC to perform an appraisal of the Willistown system. Aqua's Application, Exhibit AA1.

102. Willistown selected AUS Consultants, Inc. to perform an appraisal of the Willistown system. Aqua's Application, Exhibit AA2.

103. Aqua's UVE, Harold Walker, III of Gannett Fleming Valuation and Rate Consultants, LLC valued the Willistown assets at \$25,613,000. Aqua's Application, Exhibit Q at 1 (Letter dated July 29, 2021).

104. Willistown's UVE, Jerome C. Weinert of AUS Consultants, Inc., valued the Willistown assets at \$19,113,140. Aqua's Application, Exhibit R at 1 (Letter dated July 24, 2021).

105. The average of the UVE appraisals of the Willistown system was \$22,363,070. Aqua's Application at 18.

106. Pursuant to the Asset Purchase Agreement, Willistown Township will receive \$17.5 million or 31% more than the net book value of the system. OCA St. 1 at 10.

107. Aqua calculates that the acquisition would create an annual revenue deficiency of approximately \$1.79 million. The deficiency will be recovered from Aqua's existing customers, if not recovered from the Willistown customers. Aqua St. 1, App. A.

108. The purchase price agreed to by Aqua and Willistown was identified as \$17,500,000. Aqua Exhibit No. 1, Application ¶ 55.

109. Pursuant to 66 Pa. C.S. § 1329(d)(1)(iv), transaction and closing costs were identified as approximately \$300,000, which would be included in rate base. Aqua Exhibit No. 1, Application ¶ 57. Exact closing costs would be determined at closing. Aqua St. No. 1 at 20.

110. 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 20.

111. The Township does not have original cost records for the sewer system. Yordan St. No. 1 at 37; Swift Direct Testimony at 5.

112. PFM Financial Advisors (PFM) utilized by the Township to assist in the proposed sale of the system, receives a contingent fee of 2%, if the sale closes. Yordan St. No. 1 at 12; Yordan St. No. 1, Exhibit B at 56.

113. PFM receives no compensation other than \$7,500, if the sale does not close. Yordan St. No. 1, Exhibit B at 56; Frissora St. No. 1 at 39.

Cost Approach

114. When utilities have records about asset placements and retirements by vintage year, depreciation experts can analyze the historic retirement patterns in each account to estimate depreciation rates. OCA St. 1 at 16.

115. In this case, the Township did not have the requisite records about asset placements and retirements by vintage year for the UVEs to use the subjective curve techniques involved in the retirement rate method. OCA St. 1 at 16.

116. The UVEs chose to use Iowa curves to estimate the average remaining life and accumulated depreciation of the Township's assets, and the UVEs relied on their subjective judgment to determine which Iowa curves were the best fit. OCA St. 1 at 16.

117. Mr. Walker and Mr. Weinert proposed different Iowa curves and service lives under their respective cost approaches. OCA St. 1SR at 9.

118. The OCA recommended using a service life of 45 years for the Township's pumping improvement account and 55 years for the Township's treatment improvement account. OCA St. 1SR at 9.

119. For the force and gravity collection mains accounts, the OCA proposed a 60-year average life, just as Gannett Fleming proposed for those accounts in a wastewater case in front of the Indiana Utility Commission. OCA St. 1SR at 9.

120. The OCA recommended using a 45-R3 curve for the Services to Customers account to estimate a reasonable range for that account. OCA St. 1 at 22.

121. Mr. Weinert of AUS Consultants used the replacement cost method to determine a FMV for the Willistown system under the cost approach valuation. OCA St. 1 at 24.

122. Both Mr. Weinert and OCA witness Garrett base their proposed service lives on data obtained from other cases. OCA St. 1SR at 11.

123. The Township does not maintain the requisite data for a utility-specific actuarial analysis. OCA St. 1SR at 11.

124. Both Mr. Weinert and Mr. Garrett used their own judgment to evaluate the appropriate service lives for various accounts in Willistown Township. OCA St. 1SR at 11.

Income Approach

125. Mr. Walker and Mr. Weinert estimate income approach valuations of \$24.3 million and \$18.2 million, respectively. OCA St. 1 at 25.

126. Mr. Garrett recommended several adjustments to the Income Approach analyses as discussed in OCA Statements 2 and 2SR. Mr. Garrett's adjustments to Mr. Weinert's and Mr. Walker's Income Approach analysis are \$9.1 million and \$15.2 million, respectively. OCA St. 1 at 25.

Willistown Township System

127. The Township provides safe and reliable service and is positioned to do so into the future. Aqua Response to Swift Request for Admission No. 29; Aqua St. No. 2 at 13-15; OCA St. No. 2 at 15-18; OCA St. No. 2 at 20-21; Frissora St. No. 1 at 16.

128. The Township system has had few Pennsylvania Department of Environmental Protection (PA DEP) violations. It is a standalone system. Its sewage is conveyed by the Valley Creek Trunk System (VCTS) and treated by the Valley Forge Sewer Authority (VFSA). It is primarily a collection system with one lagoon treatment system with spray irrigation disposal. Aqua St. No. 2 at 5; Aqua St. No. 2 at 15; Frissora St. No. 1 at 7; Frissora St. No. 1-SR at 7-8.

129. The Township has an excellent financial position, including \$20 million in cash and cash equivalents (2020 Annual Report); \$3.8 million in the Sewer Fund (2020 Annual Report); and a debt rating of Aa1 from Moody's. Aqua Response to RFA Set 1 Nos. 43, 44; OCA St. No. 2 at 6-7; Yordan St. No. 1 at 7-8; Frissora St. No. 1 at 30.

130. The Township has over a decade more experience operating wastewater systems than Aqua. Aqua St. No. 2, at 17; Frissora St. No. 1 at 7.

131. All expenses of the sewer system are paid exclusively from the Township's Sewer Fund. The Sewer Fund is funded solely by residential and commercial customers connected to the sewer. Tax revenues are not used for sewer expenses and do not fund the Sewer Fund. Aqua Response to Swift RFA Set II No. 49; Yordan St. No. 1 at 13; Yordan St. No, 1 at 61-62; Frissora St. No. 1 at 28.

132. Aqua has other Section 1329 acquisitions pending or approved since its last base rate case, including East Whiteland Township, Lower Makefield Township and DELCORA, for which it also projects revenue requirement deficiencies that would put upward pressure on rates for acquired or existing customers in the short term and push the timing for customers to realize any benefits from cost sharing further into the future. OCA St. 2SR at 4-5.

133. Aqua proposes a 2-year rate freeze for Willistown customers. APA, ¶7.03; OCA St. 2 at 4.

134. Aqua has stated that it is not known whether it will file a base rate case within two years of closing. OCA St. 2 at 4.

135. If Willistown customers bear only 50% of the revenue requirement related to the Aqua-proposed ratemaking rate base, Willistown customers would see rates increased by 30.11%. See Aqua Exhibit I2, Aqua St. 1 at App. A.

136. Since Willistown began exploring the potential sale of the system in January 2020, the Township has not increased its rates. OCA St. 2 at 14.

137. Prior to the exploration of the sale, rates were typically increased on an annual basis. Aqua St. 3 at 13.

138. To the extent that Willistown rates are not increased to cover their cost of service, then existing Aqua customers will make up the difference in their rates instead. OCA St. 2 at 14.

Commission Required Notice to Customers

139. On November 5, 2021, the language of the Commission-required notice to acquired customers was finalized. Aqua Response to Swift RFA Set I No. 18; Yordan St. No. 1 at 34.

140. Aqua began mailing Commission-required notice to existing customers on November 23, 2021. Yordan St. No. 1 at 34.

141. The Township did not begin mailing the Commission-required notice to acquired customers on the same date (November 23, 2021) as Aqua began notifying its existing customers. Aqua Response to Swift RFA Set I No. 19.

142. The Township mailed the Commission-required notice to acquired customers on December 30, 2021, not concurrently with Aqua's notice to existing customers. Aqua Response to Swift RFA Set I No. 21; Yordan St. No. 1 at 34.

143. The Commission-required notice to acquired customers was not mailed from a local post office. Aqua Response to Swift RFA Set I No. 20.

144. The Commission-required notice to acquired customers was mailed from Niagara Falls, NY. Aqua Response to Swift RFA Set I No. 22.

IV. PUBLIC INPUT HEARINGS

The first of two public input hearings was held on February 24, 2022, at 1:00 p.m. Eighteen Willistown Township residents testified at the first public input hearing and objected to the acquisition of the Township sewage system by Aqua.

William Rubert testified that he and his wife have been Township residents and public sewer system customers for 16 years. They are also water customers of Aqua. They

oppose the application because the Township sewage system, consisting of a conveyance system, has had no major problems over the years, is not an aged or decrepit system, is well-funded and has the assets, staff and administrative ability to continue to operate the system well.¹

The Ruberts use a fair amount of water outside of their home to service their pool and plantings, none of which is collected into the sewage system. The outdoor water usage is recorded at a second meter installed by Mr. Rubert, at his cost, which the Township uses to reduce its sewage bill to reflect the outdoor usage. According to Mr. Rubert, Aqua submitted a supplemental tariff that conditionally grandfathers existing, but not new customers with a second meter registering outdoor water usage, but Aqua would require eligible customers to apply for a credit and has not identified how the credit would be determined or the conditions under which it would grant a credit. He expressed concern that the Aqua process would result in a decrease in the value of his property.²

Mr. Rubert who is about to retire, raised concerns about the ability of retired and low income families to meet Aqua's increased rates if the Application would be approved. He stated that he proposed that Aqua create a fund or provide other relief to generate automatic rate relief for retired and low income families, which was rejected by Aqua.³

Jay Salyers testified that his parents have been residents of the Township for 62 years and are Township sewage customers with well water. They have no meters to measure their water use and only use a power meter that was put on their pump grinder unit to measure how long the pump grinder unit runs. Mr. Salyers testified he offered to install a water meter at his expense but received no response from Aqua and Aqua provided him with no answers as to how they were going to bill him or similar customers.⁴

¹ First Public Input Hearing Tr. at 175-176.

² *Id.* at 176-177.

³ *Id.* at 178-179.

⁴ *Id.* at 184-187.

William Lordan, a Township sewage customer, testified the proposed acquisition not only fails to provide a substantial affirmative benefit to sewage customers, but it would be a detriment to them. He testified the service by the Township has been exemplary and dependable. He further testified there were only two modest administrative DEP violations since 2010, which were quickly resolved.

Mr. Lordan also testified the system had only ten stoppages in Township lines in the past four years, which were quickly resolved and that the Township also helped resolve clogged customer lateral lines.⁵ He further noted the Township has very attractive, low borrowing rates, about one-half of what Aqua would pay; that as a for-profit company, costs to customers would be increased; that the purchase price of the system would be captured in future rate increases; and that the service record and financial status of the system provides no room for improvement in those areas.⁶

Finally, Mr. Lordan testified that, as approximately one-half of the Township residents use Township sewage and the other half use private septic systems, those residents using septic systems have been exempt from costs associated with the Township sewage system which have been funded through sewer rates paid by sewage customers, yet the sale proceeds from the assets would go into the Township's general fund.⁷

Retiree and sewage customer, Russell Godley, agreed with the concerns raised by the other witnesses and testified that Aqua owns the Valley Forge Trunk System and the Valley Forge Treatment Facility, that transports and treats Township Sewage Water. Mr. Godley further noted that the Township can borrow at low interest rates, at approximately 3.5% and does not pay state and federal taxes on the rates that Aqua will have to pay, along with higher interest rates and a return to their investors.⁸

⁵ *Id.* at 190-192.

⁶ *Id.* at 192.

⁷ *Id.* at 193-194.

⁸ *Id.* at 197-200.

Constance Bowes, a Township resident and sewage customer, testified the Township has always provided excellent service and raised her concern that the acquisition transaction leaves too many open issues and issues that have not been resolved. She also raised her concern that other systems, after being acquired, have seen their rates sky-rocket.⁹

Lani Frank, a retiree and Township sewer and Aqua water customer, testified that the Township has a large number of residents who are retirees who have downsized from large properties to a manageable financial housing situation and are on fixed incomes, and as such are concerned about increasing rates and how much they will increase.¹⁰

A number of residents and Township customers testified that they are retired, on fixed incomes and were very concerned about increasing rates; expressed that the system is operated well, with excellent customer service and with adequate financial means to continue to provide quality service, and maintenance repairs; that the acquisition would impose an onerous financial burden on ratepayers to repay the purchase price, a cost that will be borne by 50% of the residents using public sewage; and the financial and service benefits to the public of having a Township operated system as opposed to a for-profit company under the circumstances presented in this case.

A second public input hearing was convened at 6:00 p.m. on February 24, 2022. Twelve individuals provided testimony at the second public input hearing. All of the witnesses opposed the sale of the wastewater system.

Vera Robinson testified that under Township ownership the sewer rates will be lower than under Aqua ownership and that Aqua has purchased a number of systems in Pennsylvania and the rates charged to customers were substantially increased. She continued

⁹ *Id.* at 206-207.

¹⁰ *Id.* at 228-231.

that the Township is financially healthy and the Township has excess cash and the ability to borrow funds to operate the system.¹¹

Kevin Rice testified that the proposed sale would require Township sewage customers paying for the system a second time in order for Aqua to recoup their investment as well as the taxes and return on investment that the Township would not have to pay.¹² Mr. Rice urged the Commission to deny the Application based upon the lack of a public benefit and the financial harm and inequity being placed on the current and future Township sewer users.

The witnesses also testified regarding the inequity of expecting 50% of the Township residents to pay for the original system and the sale price; further rate increases as have occurred after other Aqua acquisitions; the lack of any evidence that the quality of service will improve; the inequity of an increase in Aqua's rate base line for the purchase price to pay the Township where there is no added capacity or service value to the system; the lack of or inadequacy of notice of the sale to residents from the Township; Aqua's poor customer service and billing issues.¹³

In addition, Alexander Nikas, a Township sewage customer, testified that all of the homes in his development use sewer grinder pumps which are maintained by a Third Party vendor secured by the Township, that provides good service at a very reasonable fee. He testified that Aqua will not continue this benefit and customers will be required to identify and contract with vendors without the leverage of the Township to negotiate and secure such services. He also testified that he had an outside meter installed on his external water faucets used to operate his sprinkler system and pool. He reports the metered usage for outside discharge is deducted from his sewer bill. According to Mr. Nikas, this benefit will be lost if Aqua takes over the system.¹⁴

¹¹ *Id.* at 281-282.

¹² *Id.* at 287-288.

¹³ *Id.* at 319-321.

¹⁴ *Id.* at 294-295.

Eileen Hegarty, a Township sewage customer, testified that her property abuts against a pumping station which is well maintained by the Township. She stated that the Township also maintains a portion of a shared driveway used by the Township and Ms. Hegarty. She expressed her concern about issues that may occur by Aqua trucks accessing the pumping station and whether and to what extent Aqua will maintain the driveway. Ms. Hegarty also expressed her concerns that the increased rates will have on senior citizens and those on fixed incomes and whether they will be able to afford the increased rates.¹⁵

V. DISCUSSION

A. LEGAL STANDARD

Section 1102(a) of the Public Utility Code, 66 Pa.C.S. § 1102(a), permits a public utility to undertake certain actions only upon Commission approval evidenced by a certificate of public convenience. Among the activities that require Commission approval is the following:

[f]or any public utility or an affiliated interest of a public utility . . . to acquire from, or to transfer to, any person or corporation . . . by any method or device whatsoever, including the sale or transfer of stock and including a consolidation, merger, sale or lease, the title to, or the possession or use of, any tangible or intangible property used or useful in the public service. . . .^[16]

The acquisition proposed by the Applicant falls under Section 1102(a)(3).

When a certificate of public convenience is required under Section 1102, pursuant to Section 1103(a) of the Public Utility Code, 66 Pa.C.S. § 1103(a), the Commission may issue the certificate only upon a finding or determination that the granting of such certificate is “necessary or proper for the service, accommodation, convenience, or safety of the public.”

¹⁵ *Id.* at 331-332.

¹⁶ 66 Pa.C.S. § 1102(a)(3).

Since Aqua is the party that filed the Application at issue in this proceeding, Aqua has the burden of proof to satisfy this particular legal standard.

According to the Pennsylvania Supreme Court, satisfying this standard requires the Commission to find that a proposed transaction would “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way”¹⁷ (when addressing the issue of affirmative public benefits “the appropriate legal framework requires a reviewing court to determine whether substantial evidence supports the Commission's finding that a merger will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way”). Further, Section 1103(a) allows the Commission to impose upon its issuance of a certificate of public convenience “such conditions as it may deem to be just and reasonable.”¹⁸

Additionally, pursuant to Section 1103 of the Code, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from the Township.¹⁹ As a certificated public utility, there is a rebuttable presumption that Aqua possesses the requisite fitness.²⁰

With regard to the recently enacted Section 1329 of the Public Utility Code, this section sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation.²¹ Section 1329 of the Code addresses the valuation of the assets of municipally-owned or authority-owned water and wastewater systems that are acquired by

¹⁷ *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*); *see also*, *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1057 (Pa. 2007).

¹⁸ 66 Pa.C.S. § 1103(a).

¹⁹ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa.Super. 1958); 66 Pa.C.S. § 1103.

²⁰ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992); *See also*, 66 Pa.C.S. § 1329.

²¹ 66 Pa.C.S. § 1329.

investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge. Section 1329 also enables a public utility or other acquiring entity's post-acquisition improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an "acquiring public utility" and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable.²² For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.²³

Aqua also seeks approval of other connected agreements pursuant to Section 507 of the Public Utility Code.²⁴ Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be

²² 66 Pa.C.S. § 1329(d)(1).

²³ *Id.*

²⁴ 66 Pa.C.S. § 507.

filed with the Commission at least 30 days before the effective date of the contract.²⁵ The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract.²⁶ Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval.²⁷

B. STATEMENT OF QUESTIONS INVOLVED

Question No. 1

Was constitutional due process provided?

Question No. 2

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

Question No. 3

Pursuant to Section 1329 of the Code, what is the ratemaking rate base of the Wastewater System of Willistown Township?

Question No. 4

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

Question No. 5

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

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

C. ISSUES

Question No. 1

Was constitutional due process provided?

Aqua's Position

Aqua explains that constitutional due process requires notice and an opportunity to be heard. *Conestoga Nat'l Bank v. Patterson*, 275 A.2d 6 (Pa. 1971); 2 Pa.C.S. § 504.²⁸

Aqua notes that Attorney Swift, Mr. Yordan and Ms. Frissora, who filed their petitions to intervene in August 2021, have been aware of this Application proceeding since its filing on August 3, 2021. In addition, they received personal notice of the proceeding from the Township and Aqua customers were provided with personal notice from Aqua. Intervenors also filed protests in January 2022.²⁹

Aqua further explains that the Commission served Intervenors with a notice, dated January 18, 2022, of a prehearing conference scheduled for February 15, 2022, and a Prehearing Conference Order, dated January 13, 2022, which set forth a litigation schedule, including due dates for submission of testimony and dates for evidentiary hearings. Intervenors further participated in the litigation by providing testimony and appearing at the evidentiary hearing with the opportunity to cross examine witnesses and filed briefs in this proceeding.³⁰

As the Commission provided Intervenors with notice of this proceeding and an opportunity to be heard in respect to it, Aqua asserts that constitutional due process requirements were satisfied. Aqua submits further that, in regard to the public's interest in the proceeding, no party with the statutory authority to represent the interests of customers of either Aqua or

²⁸ Aqua Main Brief at 7.

²⁹ *Id.*

³⁰ *Id.* at 7-8.

Willistown has challenged the notice provided by the Commission or the opportunity to be heard.³¹ In its Reply Brief, Aqua asserts there is ample time within the six-month review period established by the General Assembly in Section 1329 for the Commission to provide the required constitutional safeguards. Aqua explains the Commission served Mr. Swift and Ms. Frissora with a copy of the final acceptance letter dated January 14, 2022, and the Prehearing Conference Order, dated January 13, 2022. That Order advised interested parties of the litigation schedule, including proposed due dates for submission of direct testimony and dates for evidentiary hearings.³²

Aqua notes Ms. Frissora timely served 95 pages of direct testimony, including 43 pages of text and Exhibits A through M, on February 16, 2022; Mr. Swift also timely served his testimony, including six pages of text, and the testimony of his witness Jerry W. Childers that included 18 pages of text and several appendices; Mr. Swift subpoenaed Township representatives Shoemaker and Hagan whom he questioned at the evidentiary hearing; Mr. Swift and Ms. Frissora propounded discovery and were served with copies of answers to discovery propounded by other parties. They served surrebuttal testimony and actively participated in the evidentiary hearings and they filed a joint main brief.

Aqua further notes that Mr. Swift and Ms. Frissora were aware of the Commission proceeding and the public interest issue upon the filing of the Application in mid-August 2021, five months before the Commission served the final acceptance letter and the prehearing order in mid-January 2022; they filed petitions to intervene on August 6, 2021, and August 21, 2021, respectively; which recognize a central issue in the proceeding contending, in identical fashion, that the acquisition is neither necessary nor proper for the service, accommodation, convenience, or safety of the public.³³

³¹ *Id.* at 8.

³² Aqua Reply Brief at 2-3.

³³ *Id.*

Aqua explains the issue of whether a party received due process must be examined in relation to the particular circumstances of each case,³⁴ and that the particular circumstances of this case warrant a conclusion that the Commission provided Mr. Swift and Ms. Frissora with notice and an opportunity to be heard.³⁵

With regard to OCA's assertion that the Township unreasonably delayed service of notice to its wastewater customers,³⁶ Aqua notes that the Township provided notice to its customers prior to the Commission's final acceptance of the Application.³⁷

Willistown Township's Position

The Township argues that this proceeding has not resulted in a violation of any party's due process rights. The Township explains it circulated a notice to its customers informing them of the Proposed Transaction and potential rate base addition (Notice or Commission-required Notice) in December 2021,³⁸ which provided instructions on actions individuals could take including: (1) sending a letter directly to the Commission either supporting or objecting the Proposed Transaction, (2) attending or presenting testimony at the Public Input Hearings, or (3) filing a protest or a petition to intervene in the proceeding.³⁹ Additionally, two Telephonic Public Input Hearings were scheduled on Thursday, February 24, 2022, one at 1:00 p.m. and another at 6:00 p.m., to ensure all members of the public wishing to testify would have ample opportunity to be heard. The Township notes it posted the Notice for the Telephonic Public Input Hearings on its website and social media pages, which included express instructions on how the public could participate, resulting in approximately forty members of the public signing up to provide testimony. The Township notes that no members of

³⁴ *Soc'y Hill Civic Ass'n v. Phila. Zoning Bd. of Adjustment*, 42 A.3d 1178 (Pa. Cmwlth. 2012).

³⁵ Aqua Reply Brief at 3-4.

³⁶ OCA Main Brief, Section V.A, at 8-9.

³⁷ Aqua Reply Brief at 4.

³⁸ *See* Aqua's Application, Exhibit I2.

³⁹ *Id.*

the public were precluded from testifying in this proceeding and several of the Township residents testifying at the Public Input Hearings indicated that they prepared a letter to the Commission.

Similarly, all parties who participated in this proceeding had every opportunity to do so. Specifically, the Township explains that protestants, and most notably, Attorney Swift, requested, and were granted, discovery and testimony that was above and beyond that which is typical in these application proceedings. In addition to the protestants availing themselves of the discovery process at every opportunity, the Township explains that Attorney Swift obtained testimony from each and every witness from which he sought it. The Township stresses there is no information, either documentary or via testimony, that any of the protestants sought but were unable to obtain in this proceeding.⁴⁰

In its Reply Brief, Willistown Township asserts that the crux of the Residential Intervenors' due process argument would render every single 1329 application approved since its passage invalid and unconstitutional, as well. To the extent that this condensed timeline constitutes a violation of due process, the Township asserts section 1329 to the Public Utility Code must itself first be deemed unconstitutional (which it is not).⁴¹

The Township argues that the Protestant's allegations are wholly unsupported by the record. Further, the Township notes several of the individuals testifying at the Public Input Hearings specifically stated that they prepared a letter to the Commission in accordance with the Commission required notice received from the Township, implying their timely receipt of the Commission required notice. Thus, while the OCA refers to the Township's decision to mail the notice as a separate mailing rather than a bill insert as "unreasonable," the Township argues this decision clearly had no material effect on public participation in this proceeding and certainly does not constitute any sort of violation of due process.

⁴⁰ Township Main Brief at 8.

⁴¹ Township Reply Brief at 3-4.

OCA's Position

OCA explains in an Application proceeding under Section 1329 which includes a determination of rate base that affects customer rates, individual notice must be given to all customers affected by the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding. 195 A.3d 1055 (Pa. Cmwlth. 2018) (*New Garden*).⁴²

OCA notes that customers raised concerns that the Township's residents were not given timely notice about the estimated rate impacts of the sale of the Willistown sewer assets to Aqua.⁴³ Aqua's Application was conditionally accepted by the Commission on November 5, 2021, and Aqua began notifying its existing customers about the proposed Acquisition on November 23, 2021.⁴⁴ Aqua concluded that process by December 27, 2021.⁴⁵ The Township concedes that "[m]uch of the text of the PUC-required notice was provided with Aqua's application filed on August 3, 2021 and that the PUC-required notice was finalized in November 2021, however, the Township mailed notice to its customers on December 30, 2021.⁴⁶ For some customers, notice did not arrive until January 8, 2022, meaning that notice for those customers arrived as much as 45 days after Aqua had begun notifying its customers of the acquisition."⁴⁷ As a result, OCA submits that Township customers had less time to review the filing, file Protests or Petitions to Intervene before the deadline on February 14, 2022, conduct discovery, prepare written testimony by February 16, 2022, or provide testimony at the Public Input Hearing on February 24, 2022.⁴⁸

⁴² OCA Main Brief at 8.

⁴³ Frissora St. 1 at 39-40; Yordan St. 1 at 34-36; Willistown St. 3R at 9-10; OCA Main Brief at 8.

⁴⁴ Frissora St. 1 at 39; Yordan St. 1 at 34; OCA Main Brief at 8.

⁴⁵ *Id.*

⁴⁶ Willistown St. 3R at 10; Yordan St. 1 at 34; Frissora St. 1 at 40; Yordan Exh. H; OCA Main Brief at 8.

⁴⁷ Frissora St. 1 at 40; OCA Main Brief at 8.

⁴⁸ OCA Main Brief at 8.

The directive of the *New Garden* Court is to provide customers a meaningful opportunity to be heard and to present evidence that may be taken into account by the Commission. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order (Feb. 28, 2019) (*FSIO*);⁴⁹ OCA argues the Township did not reasonably comply with that directive by delaying service of notice. Unlike Aqua, the Township elected the option of direct mailing rather than bill insert. *FSIO* at 34 (citing 52 Pa. Code § 53.45). OCA asserts the Township controlled the timing of that notice but chose not to provide it in the earlier part of the notice period; waiting from November 5 until December 30 to provide the group of customers most directly impacted by the acquisition, and at risk for the largest rate increases, with the least amount of time to develop a full evidentiary record in support of their challenge.⁵⁰ Given the extraordinarily accelerated schedule for Section 1329 proceedings, OCA submits the Township's actions were not reasonable.

In its Reply Brief, OCA asserts that Aqua and the Township failed to address reasonableness of the Township's delayed service of the Commission-required notice to other customers.⁵¹

I&E, OSBA and Protestant/Intervenor Yordan did not specifically address this issue.

Protestant Frissora and Swift's Position

Protestants Frissora and Swift contend the 180-day period to resolve Section 1329 applications is facially violative of due process and violates due process as applied by the Commission, pursuant to the Fourteenth Amendment to the United States Constitution prohibition of states depriving any person of "life, liberty, or property, without due process of

⁴⁹ See *Barasch v. Pa. Pub. Util. Comm'n*, 546 A.2d 1296 (Pa. Cmwlth. 1988) (*Milesburg*); *Barasch v. Pa. Pub. Util. Comm'n*, 568 A.2d 276 (Pa. Cmwlth. 1989) (*Rivercrest*).

⁵⁰ OCA Main Brief at 8-9.

⁵¹ OCA Reply Brief at 5.

law.”⁵² The requirement of procedural due process imposes constraints on governmental actions which deprive individuals of protected liberty and property interests within the meaning of the Fourteenth Amendment. Frissora and Swift argue that *pro se* intervenors have a property interest at stake since they own residences connected to the sewer system; paid to connect their underground pipes to the sewer system; and pay fees to use the system. They further assert that the time period to contest transactions accorded to *pro se* Protestants is inadequate to obtain fact and expert evidence to oppose multimillion dollar transactions which will affect thousands of ratepayers.⁵³

Protestants Frissora and Swift accuse the Commission’s Secretary, either individually or in collusion with Aqua’s counsel, of contriving a date for acceptance of Aqua’s Application to allow just 154 days, not 180 days, arguing that had acceptance been one business day later, the period would be 179 days.⁵⁴ They further assert that, out of the 154 days, 85 days were reserved for preparation of decisions by the undersigned presiding officer and the Commission.⁵⁵

Frissora and Swift argue that an inadequate period of time was provided to the Protestants to engage in discovery and file written testimony, from the time the Protestants were granted intervenor status on January 25, 2022, alleging only fifteen days were permitted to engage in discovery, and the denial of Attorney Swift’s Motion to subpoena two Willistown witnesses for depositions meant Attorney Swift had no ability to anticipate their answers to questions when they appeared as adverse witnesses at the evidentiary hearing.⁵⁶

Frissora and Swift further argue the proponents of the Application have well compensated legal counsel who regularly opposed discovery or extensions requested by *pro se*

⁵² Frissora/Swift Main Brief at 8.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 8-9.

intervenors, as compared to Protestants, who are uncompensated and have no ready access to or funding for expert witnesses, are inexperienced in Section 1329 proceedings and the Regulations governing Commission proceedings, and who have jobs and families which demand their attention.⁵⁷

Frissora and Swift assert the 180-day statutory deadline for Commission action is facially invalid because there is no mechanism for extension when circumstances warrant and there are no compelling reasons to bar extensions where the date of the Commission ruling will have no effect on continuation of sewer service in the standalone sewer system.⁵⁸ Frissora and Swift argue the 154-day time period violated the procedural due process rights of the *pro se* intervenors both facially and as implemented.⁵⁹

In her Reply Brief, Ms. Frissora explains that the Township-provided notice to its respective customers informing its customers of the Proposed Transaction and potential rate base addition, was postmarked on December 30, 2021 and did not arrive until January 7 and 8, 2022.⁶⁰ Frissora argued some of the notices provided by the Township included irrelevant information and that residents testifying at the Public Input Hearings that indicated they prepared a letter to the Commission in accordance with the PUC-required Notice” is inaccurate.⁶¹

In his Reply Brief, Attorney Swift submits, in their Prehearing Memorandum, Intervenors complained of a lack of a level playing field and objected to the proposed deadlines and requested a 30-day overall extension, which was denied.⁶² Attorney Swift further submits that Intervenors proposed that the deadlines for submission of the main and reply briefs be extended by

⁵⁷ *Id.* at 9.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Frissora Statement No.1, p. 40 lines 10-13.

⁶¹ Frissora Reply Brief at 2-3.

⁶² Swift Reply Brief, Attorney Swift did not number the pages of his Reply Brief but the upper right hand corner states “Kohn, Swift& Graf, P.C. Continuation Sheet No. 7.

reducing the time allocated for the ALJ and the Commission to render their decisions, which was denied and that the undersigned presiding officer reduced the time for submission of a main brief.⁶³

Attorney Swift argues the Commission's Final Supplemental Implementation Order of February 28, 2019, pages 39-40, detail the process for setting an Application Filing Date which controls the 180-day period, and requires the Secretary to communicate with the Applicant's legal counsel to agree on an Application Filing Date which assures a total of 170 to 180 days. Attorney Swift submits that had the Application Filing Date been extended by just one business day, the total number of days would have been 179, ending with a Public Hearing on July 14, 2022. Attorney Swift repeated his assertion that the scheduling in this case allowed only 17 business days for discovery and submission of direct testimony by Intervenors.⁶⁴

Attorney Swift further submits that Willistown Township attacked the expert qualifications of Mr. Childers and sought to bar consideration of the testimony of Mr. Childers because he is not a financial analyst in the public utility industry. Attorney Swift asserts Intervenors had only a few days to procure expert testimony at their personal expense.⁶⁵

Attorney Swift asserts that Willistown construes too narrowly the necessary qualifications to render credible financial projections, concluding Mr. Childers satisfies the requirements required for expert testimony in Pennsylvania since (1) the average layperson does not have his skill to prepare detailed financial projections, (2) his specialized knowledge will assist the trier of fact to understand and determine comparable projected rates for sewer usage, and (3) he used generally accepted methodology. *See* 225 Pa.Code § 702.⁶⁶

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Swift Reply Brief, Continuation Sheet No. 7-9.

⁶⁶ *Id.*

Due Process Discussion

Aqua correctly notes that constitutional due process requires notice and an opportunity to be heard. In addition, in the *New Garden* case, the Commonwealth Court explained, whether individualized notice is required depends on whether the outcome of the proceeding binds the Commission to increase rates. Moreover, if rates could increase, notice in the *Pennsylvania Bulletin* is not adequate notice to ratepayers.⁶⁷

The Commonwealth Court explained that, from a rate perspective, Section 1329 determines the rate base against which the rate of return and rates are calculated, and because a rate base determination is fundamental to a determination of rates, individualized notice has to be given to all ratepayers of the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding.⁶⁸

OCA correctly notes that the Commonwealth Court in the *New Garden* case, concluded that, in a proceeding under Section 1329 which includes a determination of rate base that affects customer rates, individual notice must be given to all customers affected by the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding. The Commission caused notice of the proceeding to be published in the *Pennsylvania Bulletin*. In addition, by letter dated November 5, 2021, Aqua and the Township were provided instruction regarding providing individualized notice to their customers.

The Application was conditionally accepted by the Commission on November 5, 2021, and Aqua began notifying its existing customers about the proposed Acquisition on November 23, 2021.⁶⁹ Aqua concluded that process by December 27, 2021.⁷⁰ The Township

⁶⁷ *New Garden* at 1069.

⁶⁸ *Id.*

⁶⁹ Frissora St. 1 at 39; Yordan St. 1 at 34.

⁷⁰ *Id.*

acknowledged that the Commission-required notice was finalized in November 2021,⁷¹ however, the Township mailed notice to its customers on December 30, 2021.⁷² The filing deadline for filing Protests or Petitions to Intervene, as also provided in the publication in the Pennsylvania Bulletin, was February 14, 2022.⁷³ In addition, the tentative deadline set forth in the Prehearing Order entered on January 13, 2022, was available on the Commission website. The *Pennsylvania Bulletin* publication included the date of the prehearing conference and instructions regarding how to participate at the prehearing conference.

A total of three individuals and Township customers filed Protests, and five individuals filed Petitions to Intervene, all of which were granted. In addition, approximately 40 individuals pre-registered to testify at the Public Input Hearings on February 24, 2022, and although several individuals complained about the lack of notice and transparency by the Township throughout the sale process, none specifically testified that insufficient notice of this proceeding caused them any prejudice or prevented them from participating in this proceeding. Furthermore, each Protestant and Intervenor, even with similar interests were permitted to engage in discovery, cross-examine witnesses, present evidence and participate in this proceeding at the same level as all other parties.

No credible evidence was presented to establish that customers of Aqua or the Township were deprived of Notice or a meaningful opportunity to be heard and to present evidence in this proceeding despite the delay in providing notice by the Township. In addition, the cause or purpose of the delay by the Township was never adequately explained by the Township. No evidence was presented to establish that the delay by the Township in providing notice, or the specific content of the notice to its customers was reasonable. Although it is disturbing that there was no reasonable explanation by the Township for the delay in providing notice to its customers, and attention should be given to requiring the Applicant to ensure that such delays do not occur in future 1329 proceedings, there was no showing that the Township's

⁷¹ Yordan St. 1 at 34.

⁷² Frissora St. 1 at 40; Yordan Exh. H.

⁷³ 52 Pa.B. 814 (January 29, 2022).

delay caused or contributed to any individual being precluded from participating in this proceeding. Additionally, there were no late filed Protests or Petitions to Intervene or any specific request to extend the Protests filing deadline at the Prehearing Conference on February 15, 2022, or any time thereafter. In addition, there was no adequate showing from the Township regarding why the form and content of the Township-notice was utilized in this proceeding. However, it was not established that any prejudice resulted from the form or content of the Township-notice.

Accordingly, the challenges that the actions by the Commission and/or the Township deprived the parties of their due process rights was not established in this proceeding.

Ms. Frissora and Attorney Swift also allege further due process violations. The factual basis for Protestants Frissora and Attorney Swift's contention that the 180-day period to resolve Section 1329 applications is facially violative of due process and violates due process as applied by the Commission, as set forth in their main brief is inaccurate, as set forth below.

Frissora and Swift argue that an inadequate period of time was provided to the Protestants to engage in discovery and file written testimony, from the time the Protestants were granted intervenor status on January 25, 2022, alleging only fifteen days were permitted to engage in discovery. They also argue the denial of Attorney Swift's Motion to subpoena two Willistown witnesses for depositions meant Attorney Swift had no ability to anticipate their answers to questions when they appeared as adverse witnesses at the evidentiary hearing. Again, these averments are inaccurate.

This proceeding concerns the Application of Aqua, filed on August 3, 2021. On August 6, 2021, a Petition to Intervene identifying his opposition to the Application was filed by Attorney Swift. Petitions to Intervene were filed by Henry Yordan and Julie Frissora on August 21, 2021, among other things, objecting to the Application and proposed acquisition. Attorney Swift, Ms. Frissora and Mr. Yordan could have filed Protests at the time of the filing of their Petitions to Intervene, but did not file their Protests until January 26, 27, & 28, 2022, respectively. Attorney Swift, Ms. Frissora and Mr. Yordan could have filed Protests at any time

in this proceeding up to the February 14, 2022 deadline. The Intervenors could have engaged in discovery upon the filing of an adverse pleading. 52 Pa Code § 5.331(b) provides that a party shall initiate discovery as early in the proceedings as reasonably possible. In a proceeding, the right to discovery commences when a complaint, protest or other adverse pleading is filed or when the Commission institutes an investigation or on the record proceeding, whichever is earlier. Although Attorney Swift and Intervenor/Protestant Frissora allege they had only 15 days to engage in discovery, discovery could have been conducted from August 6, 2021, 3 days after the filing of the application, through the start of the evidentiary hearing on March 2, 2022, a period of approximately seven months.

Attorney Swift and Ms. Frissora further argue that the denial of a Motion for issuance of two deposition subpoenas also delayed discovery in this case. The delay in the issuance of discovery subpoenas was not caused by the Commission or the undersigned presiding officer.

On February 1, 2022, Attorney Swift filed his original Motion For Issuance Of Deposition Subpoenas To Fact Witnesses (Original Motion), requesting the issuance of subpoenas upon William Shoemaker, Sally Slook, and William Hagan. 52 Pa. Code § 5.421 (b)(3), requires that the written subpoena application contain a notice that a response or objection to the application shall be filed with presiding officer within 10 days of service of the application, and that the subpoena request and notice be served by the petitioner upon the individuals to be subpoenaed. Attorney Swift's motion did not contain the required notice and was not served on the individuals to be deposed. The undersigned presiding officer promptly denied the subpoena request and provided the regulation to Attorney Swift in the Order. Subsequently, Attorney Swift filed a Renewed Motion for Issuance of Deposition Subpoenas to Fact Witness (Renewed Motion) on February 4, 2022. The Renewed Motion included Exhibit 2, proposed subpoena forms, as well as a notice pursuant to 52 Pa. Code § 5.421 (b)(3). The subpoena forms advised the three proposed deponents that they were ordered to appear at Attorney Swift's office on February 10, 2022 at designated times to testify. Unfortunately, the notice attached to Attorney Swift's Renewed Motion dated February 4, 2022, advised the Parties and the three proposed deponents that they may oppose the Renewed Motion within 10 days of

service, or until February 14, 2022, by submitting their written opposition and the grounds for their opposition to the Renewed Motion.. In the event the Renewed Motion was served on February 4, 2022, the Parties and three proposed deponents were given notice by Attorney Swift that they had through February 14, 2022 to object to the depositions which were scheduled on the form subpoenas for February 10, 2022.

During this time period, forms of discovery, other than depositions, were available to the Parties.

A prehearing conference was convened on February 15, 2022 and despite the fact that the date for the proposed depositions had passed, Attorney Swift was permitted to present his positions on the Renewed Motion, and the parties were advised that the request for a discovery deposition for one of the witnesses would be granted and the parties were directed to confer regarding a suitable date for the deposition. The remaining request for two additional discovery depositions was denied. Any delay in conducting discovery in this matter, was not caused by the Commission or the undersigned presiding officer.

With regard to the argument by Ms. Frissora and Attorney Swift that an inadequate period of time was provided to the Protestants to file written testimony, again the Protestants had access to the filed Application, accompanying exhibits and testimony since the initial filing on August 3, 2021. Furthermore, the undersigned was advised of the assignment to this proceeding on January 13, 2022, and on January 13, 2022, a prehearing conference order was entered, and electronically served on the parties, which advised the parties of the statutory six-month deadline for final Commission action in this proceeding and of the tentative litigation schedule that would be adopted if the parties were unable to agree upon a viable alternative. The tentative schedule provided to the parties on January 13, 2022, included a February 17, 2022 deadline for written direct testimony, a February 22, 2022 deadline for written rebuttal testimony and a deadline of February 25, 2022 for surrebuttal testimony. In addition, the evidentiary hearing was tentatively scheduled for February 28-March 1, 2022. The parties were encouraged to confer and to agree upon a litigation schedule for this proceeding. At the time of the prehearing conference order entered on January 13, 2022, the Intervenors and Protestants had

access to the Company's written testimony and Application filed in this proceeding for a period of almost six months, and the parties had notice approximately five weeks in advance of the tentative deadlines for submitting written testimony.

A lengthy discussion was held at the prehearing conference on February 15, 2022. No agreement to a litigation schedule was reached despite two opportunities for the parties to attempt to reach an agreement. Following a lengthy prehearing conference, the parties were advised that a litigation schedule would be set by the undersigned presiding officer. The parties were informed that, given the statutory requirement for Commission action in this proceeding, the latest reasonable Public Meeting to consider this case by the Commission would occur on June 16, 2022.⁷⁴ Accordingly, the parties were directed to comply with the prehearing order subsequently entered on February 17, 2022 and to comply with the litigation schedule which was substantially similar to the proposal made by I&E, OCA, Aqua and the Township, and the tentative schedule provided in the January 13, 2022 prehearing conference order. In addition, accommodations were made when setting the schedule to address Attorney Swifts work schedule.

In his Reply Brief, Attorney Swift asserted that he objected to the proposed litigation schedule deadlines, his 30-day overall extension was denied and that the undersigned decreased the time proposed for submission of Main Briefs. Actually, the undersigned, in the prehearing conference order, proposed a Main Brief deadline of March 21, 2022. Prior to the prehearing conference, the parties, with the exception of the Protestants, reached a consensus of a Main Brief deadline of March 21, 2022. Subsequently, during the prehearing conference, Attorney Swift advised that he would be out of the country from March 12 through March 19 and based upon the proposed schedule, he would not be able to file materials when he needed to file them.⁷⁵ Counsel for Aqua suggested a Main Brief deadline of March 11 and a Reply Brief deadline of March 24 to accommodate Attorney Swift's schedule. The parties were given a number of opportunities to confer and attempt to agree upon a schedule. As Attorney Swift was

⁷⁴ Prehearing Conference Tr. at 69-72.

⁷⁵ Prehearing Conference Tr. at 69-70, 117, 120-123.

unavailable from March 12 to March 19, the Main Brief deadline was set for March 11 and the Reply Brief deadline was extended from March 21 to March 24 to accommodate Attorney Swift's schedule,⁷⁶ and to provide additional time to the parties. The parties were also advised at the prehearing conference of the direct testimony deadline of February 16, 2022 and the rebuttal testimony deadline of February 23, 2022.⁷⁷

Furthermore, on January 17, 2022, the undersigned presiding officer received Attorney Swift's Motion For Issuance Of Hearing Subpoenas To Fact Witnesses (Motion For Hearing Subpoenas) by electronic mail. The Motion included a Notice advising the parties that any opposition to the Motion must be submitted to the Commission Secretary, the parties and the undersigned presiding officer on or before February 28, 2022, two days before the hearing on March 2, 2022, and Attorney Swift requested an expedited objection deadline.

The deadline for objections did not permit sufficient time for the issuance of subpoenas, delivery to Attorney Swift and service by Attorney Swift, if issued pursuant to Commission regulations. Accordingly, an Interim Order was entered on February 22, 2022, setting an expedited deadline of February 24, 2022, to file and serve any responsive pleading or objection to the Motion For Hearing Subpoenas. The Motion was granted on February 24, 2022, and the Commission provided Attorney Swift with the requested subpoenas by overnight mail on February 24, 2022, in order to permit the subpoenas to be timely served by Attorney Swift upon the witnesses. Attorney Swift was permitted to call the two fact witnesses, as requested, to present live testimony at the evidentiary hearing.

The Commission, at every stage of the proceeding, provided the requisite notice to the parties, and took affirmative steps to ensure that all parties were heard on all issues raised and the due process rights of all the parties were protected. Finally, as explained to the parties at a conference and in orders issued in this proceeding, the last public meeting scheduled in which the Commission could reasonably consider the Application filed in this

⁷⁶ Hearing Tr. at 742-745; *see also* Tr. at 695, 697, 705-707, 711, 721, 722-723, 730-742.

⁷⁷ *Id.* at 120-123; 130-132.

proceeding was scheduled for June 16, 2022. Despite averments to the contrary, it was not possible for the Commission to take all necessary action in this matter, consider a recommended decision, exceptions, and replies to exceptions at the Public Meeting on July 14, 2022, and to complete Commission action on or before July 14, 2022, given the Statutory Deadline. Accordingly, the parties were regularly reminded of the compressed time schedule in this proceeding and all possible accommodations were made for the benefit of all of the parties, given the statutory deadline and circumstances in this case.

Finally, the assertion by Attorney Swift and Intervenor/Protestant Frissora in their Main Brief that the Commission Secretary, either individually or in collusion with Aqua's counsel, contrived a date for acceptance of Aqua's Application to allow just 154 days, not 180 days, was not raised during the proceeding, but instead was set forth in the Frissora/Swift Main and the Swift Reply Brief.

Constitutional due process requires notice and an opportunity to be heard. The parties were provided with due process, by the Commission in this proceeding, despite the statutory deadline of six months for Commission action.

Finally, Attorney Swift in his Reply Brief, argued that the Township attacked the expert qualifications of Swift witness Mr. Childers and sought to bar consideration of the testimony of Mr. Childers because he is not a financial analyst in the public utility industry, narrowly considering the qualifications to render credible financial projections. Attorney Swift further asserted that Intervenors had only a few days to procure expert testimony at their personal expense.

The opportunity for individuals and the Protestants/Intervenors to become involved in this proceeding and to file Petitions to Intervene and Protests since early August of 2021 is fully discussed above.

With regard to the Township's objection to the qualifications of Mr. Childers, an architect, counsel for the Township objected to the admission of Swift Statement No. 2 – Direct

Testimony of Jerry W. Childers with attachments and to Swift Statement No. 2-SR – Surrebuttal
Testimony of Jerry W. Childers with attachments. Counsel explained that the Township was asking that the evidence be given its appropriate weight and that the issue would be addressed in briefs. Accordingly, the evidence was admitted without objection and the undersigned advised the parties the evidence would be given the appropriate weight, if any.⁷⁸ The evidence was considered and the basis for any findings in this Recommended Decision are set forth in the Decision.

Question No. 2

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

Aqua’s Position

Section 1102/1103 Analysis

In its Main Brief, Aqua submits the Commonwealth Court in *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018) (*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.⁷⁹

Aqua continues that under *McCloskey* the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition. The Court recognized that rate impact is not dispositive in the Commission’s

⁷⁸ Hearing Tr. at 742-745; also see Hearing Tr. at 695, 697, 705-707, 711, 721, 722-723, 730-742.

⁷⁹ Aqua Main Brief at 8-9.

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.”⁸⁰

The Public Interest

Aqua explains 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. Aqua contends its acquisition of the Willistown system is consistent with the legislative objective embodied in Section 1329 and will further the public interest.⁸¹

Fitness

Aqua notes as a certificated provider of utility service, Aqua’s fitness is presumed.⁸²

As to legal fitness, Aqua asserts it must demonstrate that it has obeyed the Code and Commission regulations.⁸³ Aqua notes it is a public utility operating under Commission granted certificates of public convenience and there are no pending legal proceedings challenging Aqua’s ability to provide safe and adequate service. Accordingly, Aqua concludes it is legally fit.⁸⁴

Aqua also concludes it is financially fit. Aqua explains it must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman*. Aqua is a Class A

⁸⁰ Aqua Main Brief at 9-10.

⁸¹ Aqua Main Brief at 10.

⁸² *Id.* at 11.

⁸³ *Re Perry Hassman*, 55 PA PUC 661 (1982).

⁸⁴ *Id.*

wastewater utility with total assets of \$350 million and annual revenues of \$32 million. As a direct subsidiary of Aqua PA, Aqua explains it has access to Aqua PA's financing capabilities.⁸⁵

Aqua also asserts it will use existing short-term credit lines to fund the acquisition.⁸⁶ The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing, and according to Aqua, the transaction is not expected to have any effect on Aqua PA's corporate credit rating.⁸⁷

As to technical/managerial fitness, Aqua asserts it must have sufficient staff, facilities and operating skills to provide the proposed service. Aqua explains it has an existing operational presence in Willistown Township where it serves customers through its Willistown Woods, Deerfield Knoll and Plumsock wastewater systems. Aqua concludes that the transaction will easily fold into Aqua's existing wastewater operations and that Aqua is technically/managerially fit.⁸⁸

Substantial Affirmative Public Benefits

Aqua asserts 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.

Aqua contends substantial evidence supports the conclusion that there are substantial affirmative public benefits to this transaction. According to Aqua, no more needs to be determined to support Commission approval of the transaction, than the factors set forth in *McCloskey* above, although many additional affirmative public benefits were identified in this proceeding.⁸⁹

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 11.

⁸⁸ *Id.* at 11-12.

⁸⁹ *Id.* at 12.

Aqua argues the benefits from the Application and testimony in support of it, claimed by Aqua, include that Aqua provides utility service to approximately 45,000 wastewater customers; has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner; has the managerial, technical, and financial resources to continue to operate, maintain and improve the Willistown System; has acquired 16 wastewater systems over the past 10 years; many of these systems required significant investment to correct service and environmental issues; 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; and that the acquisition of the Willistown System will continue to address the Commission's supported policy of consolidation and regionalization.⁹⁰

Aqua further argues 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.⁹¹ Aqua further states that these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development, and provide environmental enhancements."⁹²

Aqua argues the acquisition will provide benefits to Willistown Township Customers, including that the Township customers will become part of a larger scale, efficiently operated, wastewater utility; the operational overlap between water and wastewater utility operations will provide the opportunity for better coordination of capital activities throughout the Willistown service area; the Company is projecting less operation and maintenance (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 Willistown 2020 Budget,

⁹⁰ Aqua Main Brief at 12-13; Aqua St. No.1 at 12-13.

⁹¹ Aqua Main Brief at 13.

⁹² *Id.*

Township costs were projected at \$2,053,168 whereas the Company is projecting annual expenses of approximately \$1,750,444 or approximately 17% less; and that Aqua estimates that it will invest approximately \$3.3 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; resulting in benefits to Township Customers.⁹³

Aqua further asserts the acquisition will provide enhanced customer service for Willistown Township customers by providing customer service through a toll-free number from 8:00AM-5:00PM EST for regular business and 24/7/365 emergency response; and that Willistown customers will be able to take advantage of Aqua's online bill payment option, including payment by text message, 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, as well as having access to Aqua's customer assistance programs.⁹⁴

Aqua explains the acquisition will provide enhanced customer billing and payment protections 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 further has customer care teams available to help resolve service and billing issues and has an established process/procedure for addressing formal and informal complaints.⁹⁵

With regard to benefits to existing Aqua customers, Aqua asserts the acquisition of the System will be an approximate 5% increase in Aqua's customer base. By virtue of the Company's larger customer base, Aqua submits future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers; and that, based on Township records, Willistown has approximately 2,458 customer connections, which equates to approximately \$7,120 purchase price per connection and is almost equal to the

⁹³ Aqua Main Brief at 14; Aqua St. No.1-R at 12-13; Aqua St. No. 2 at 11 and Aqua St. No. 1 at 15.

⁹⁴ Aqua Main Brief at 14-15.

⁹⁵ Aqua Main Brief at 15.

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 lower operating cost, Aqua asserts the Willistown system characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition.⁹⁶

Aqua argues the acquisition will not have an adverse effect on the service provided to existing customers of Aqua; that the acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of Willistown; and that Aqua will implement the existing Township base rates upon closing. Existing miscellaneous fees and charges in the Company's tariff, however, will be applied.⁹⁷

Aqua further submits that the hypothetical rate impact is outweighed by affirmative public benefit. Aqua asserts the current average monthly bill of a Willistown residential customer is approximately \$63.63 per month. Applying 100% of the revenue deficiency of \$1,789,000 associated with the proposed rate base addition to the existing Willistown rates, Aqua submits the average Willistown bill would increase by approximately \$54.64 per month or an 85.87% increase. Aqua asserts the calculation and percentage increase is, however, a point in time estimate reflective of revenue deficiency upon year one ownership, and while there is an expectation of increased rates going forward, Aqua asserts it is not proposing any change in rates to Willistown customers as part of this transaction. Aqua submits, proposed rate changes for Willistown customers will be presented in an Aqua post-Closing base rate proceeding.⁹⁸

Aqua argues the hypothetical rate impact is outweighed by other positive benefits explaining that, while there is an expectation of increased rates as a result of the transaction, this is not unexpected, the positive factors from the transaction outweigh the possibility of increased rates; while the rates of the Willistown system are reasonably expected to increase, either on

⁹⁶ *Id.*

⁹⁷ Aqua Main Brief at 14.

⁹⁸ Aqua Main Brief at 15-16.

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; the Willistown system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition; and that the transaction furthers a recognized legislative objective and is consistent with the Commission's consolidation/regionalization policy.⁹⁹

(a) Economies of Scale

Aqua asserts that OCA Witness DeAngelo, Mr. Yordan and Ms. Frissora attack the concept of economies of scale but fail to recognize that regulated systems are just that, systems. Aqua contends that wastewater systems vary from areas of high customer densities to areas of low customer densities, complex to simple treatment processes, new to aging and deteriorating infrastructure, but only in very rare circumstances is one particular system isolated for detailed economic analysis.¹⁰⁰ According to Aqua, wastewater systems, rather, are generally analyzed and reviewed based on the complete makeup of the entire system and the very existence of public utilities depends on taking advantage of economies of scale and scope. Aqua contends, the attempt to single out the Willistown system for individualized economic analyses is inconsistent with the public interest and adverse to the basic public utility model.¹⁰¹

(b) Volume Discounts and Sharing Costs

Aqua asserts the differences in cost of capital and income taxes between private companies and municipalities are well-known but the Commission has never concluded that those differences are significant enough to outweigh other public benefits.¹⁰²

⁹⁹ *Id.* at 16-17.

¹⁰⁰ *Id.* at 18; Aqua St. No. 1.

¹⁰¹ *Id.* at 18; Aqua St. No.1-R at 10.

¹⁰² Aqua Main Brief at 20.

(c) Regionalization

Aqua contends that regionalization is a benefit of this transaction, although Ms. DeAngelo, Mr. Yordan, Ms. Frissora, Mr. Swift and Mr. Childers suggest otherwise. Aqua notes Willistown is a small system (less than 3,300 customers) and not unlike many of the wastewater systems that Aqua has acquired over the past 30 years. Aqua argues this is the exact type of system which the Commonwealth was focusing on when encouraging acquisitions of smaller systems. Aqua already owns and operates wastewater systems in Willistown with its nearest operations being approximately three miles away and the General Assembly, through Section 1329, and the Commission encourage regionalization of municipal systems.¹⁰³

(d) Benefit of Regulated Service

Aqua also asserts that with Aqua ownership, Willistown customers will have the benefit of the provisions of Chapter 14 of the Code.

(e) Aqua Service Is a Benefit

Aqua's further submits that its expertise in providing utility service is a benefit to Willistown customers, and submits the *McCloskey* Court held that Commission findings that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations are appropriately considered in meeting the public benefit standard.¹⁰⁴

(f) Impact on Township Residents

Aqua submits Ms. DeAngelo's concern about the sale of the system, the proceeds going to the entire township and the impact of the proposed transaction on roughly half of

¹⁰³ Aqua Main Brief at 19-20.

¹⁰⁴ *Id.*; Aqua St. No. 1-R at 15-16.

Township residents, is not a regulatory concern. The Commission does not have jurisdictional authority to review the Township's decision to sell the system or how the municipality will use the sale proceeds.¹⁰⁵

(g) Further Response to OCA Witness DeAngelo

Aqua further asserts that Ms. DeAngelo did not acknowledge the benefit derived from the increase of Aqua's customer base by approximately 5%. However Aqua contends this increased customer base will allow future investments to be shared at a lower incremental cost per customer for all Aqua's customers.

(h) Response to Mr. Yordan

In response to Intervenor Yordan, Aqua contends the very existence of public utilities depends on taking advantage of economies of scale and scope and that Mr. Yordan's attempt to isolate the Willistown system for individualized economic analyses is inconsistent with the public interest and contrary to the public utility model.¹⁰⁶

Aqua argues Mr. Yordan's criticism of the revenue requirement deficiency is a similar, inappropriate attempt to view the transaction in isolation and ignores longstanding public utility goals and regulation as well as longstanding and established ratemaking policies. According to Aqua, Mr. Yordan is correct that revenue requirement deficiency is unchanged in total, despite to whom it is being allocated. However, Aqua asserts allocation of costs, is not a regulatory burden and it does not disqualify a transaction from public interest determination. Allocation of infrastructure costs is fundamental in ratemaking. Aqua concludes that Mr. Yordan is challenging the basic tenets of public utility regulation and his criticism should be

¹⁰⁵ *Id. See Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491, mimeo at 48 (Opinion and Order entered October 24, 2019) (Our jurisdiction in implementing Section 1329 starts and stops at determining the acquiring utility's ratemaking rate base value for the acquired system in accordance with the applicable statutory provisions. Section 1329 does not permit the Commission to undertake review of the selling utility's use of the sale proceeds).

¹⁰⁶ Aqua Main Brief at 21; Aqua St. No. 1-R at 19.

denied. Aqua also explains that Mr. Yordan is also correct, as a general principle, that a municipality can have a lower cost of debt capital than a private corporation. Aqua concludes however, the General Assembly, through Section 1329, and the Commission support consolidation in the wastewater industry irrespective of the accepted difference in debt capital cost.

Aqua explains that depreciation is a component of cost of service and revenue requirement, but it is not an “additional” cost as claimed by Mr. Yordan. Furthermore, contrary to Mr. Yordan’s understanding, Aqua submits there is no income tax burden associated with depreciation expense.¹⁰⁷ Aqua further submits that the ability to spread costs among Aqua’s larger customer base is a public benefit.¹⁰⁸

Aqua argues Mr. Yordan’s concern that Willistown customers will not benefit from cost sharing is, in effect, a challenge to single tariff pricing. Aqua submits that single tariff pricing has been utilized in Pennsylvania for decades and is a recognized benefit for acquired systems. Through single tariff pricing, Aqua asserts, Willistown and all Aqua water and wastewater customers will benefit from the sharing of financial and infrastructure risks *over time*. Aqua concludes that Willistown will need future infrastructure improvements and similarly will share financial and infrastructure risks with other customers within a larger customer base.¹⁰⁹

Aqua does not dispute Mr. Yordan’s claim that a regulated utility has a higher cost of capital than the typical municipal system. However, Aqua asserts its size and ability to design rates to share cost over many systems and utilize gradualism are advantages to utility ownership. Aqua contends that adding the Willistown system to Aqua’s portfolio of systems will not change the total cost of corporate management services but it will reduce the cost per customer. Aqua asserts that other cost savings may be realized upon reduction of possibly high

¹⁰⁷ *Id.* at 22-23.

¹⁰⁸ *Id.* at 23, Aqua St. No.1-R at 23-24.

¹⁰⁹ Aqua Main Brief at 23-24; Aqua St. No. 1-R at 24-25.

Inflow and Infiltration (I&I) as discussed below.¹¹⁰ Aqua also submits that its ability to deal with complex environmental regulations is a public benefit.¹¹¹

Aqua notes the Township has negotiated group service rates with Pre-Doc on behalf of property owners, and Aqua submits that the Township's decision regarding Pre-Doc grinder pump maintenance post-closing is outside the Commission's jurisdiction. Aqua explains it would study the issue of rates being calculated based on grinder pump run time and, if it is a frequent occurrence, review possible solutions. Aqua further explains that if an emergency situation were identified, a customer could contact Aqua's emergency line, and speak to Aqua's control room staff (instead of leaving a message) who would then contact Aqua's on-call field service staff.¹¹²

(i) Response to Ms. Frissora

In response to Ms. Frissora, Aqua asserts its rates are set by the Commission based on cost of service, whereas Willistown's are not. Ms. Frissora's opinion that past Aqua rate increases are not reasonable, according to Aqua, fails to appreciate the significant future capital investment per customer of \$3,369 that Aqua projected in its pending rate case across all of its systems. By comparison, Aqua asserts the value of the Willistown system increased by only \$444 per customer from 2016 to 2019. Aqua explains it makes pro-active investments in utility infrastructure over many systems in comparison to a single municipal system that has different operating characteristics.¹¹³

Aqua explains it will continue to allow deduct meters for those customers that had deduct meters as set forth in Aqua's proposed tariff supplement. Aqua submits that customers

¹¹⁰ Aqua Main Brief at 24; Aqua St. No. 1-R at 25-27.

¹¹¹ Aqua Main Brief at 25; Aqua St. No. 2-R at 11-12.

¹¹² Aqua Main Brief at 25; Aqua St. No. 2-R at 12-14.

¹¹³ Aqua Main Brief at 26-27; Aqua St. No. 1-R at 29.

that have deduct meters will pay less creating more costs for other customers and that deduct meters are an additional cost to do business.¹¹⁴

Aqua submits through Section 1311(c), the General Assembly determined that the public interest would be furthered by the allocation of wastewater costs to water customers. Ms. Frissora's opposition to cost sharing, which is a recognized benefit, according to Aqua, is contrary to Section 1311(c) and the goal of single tariff pricing. Aqua asserts it is not proposing a rate change or a sharing of costs in this proceeding.¹¹⁵

Aqua submits that other potential cost savings may be possible through I&I reduction; that reduction in I&I over time would reduce flow sent to the VFSA thereby reducing the charge for treatment; that further savings in O&M costs are also possible with reference to Mr. Packer's rebuttal testimony and a possible 17% reduction in itemized savings in O&M costs in comparison to the Township's 2020 budgeted expenses; and while, in the short term, during the first seven years of pre-determined rate increases, there would be no monetary savings in VCTS costs, there is opportunity, in the long term, to re-examine the rates and flows coming from each system such that any reduction of flows would reduce future cost.¹¹⁶

Aqua notes that it does not clear pipe blockages in that portion of the customer service lateral for which the customer is responsible and asserts that in Willistown, the customer's portion of the lateral is the responsibility of the customer, so nothing would change in regard to responsibility. Although in some instances, the Township, clears blockages on the customer's property as a benefit, Aqua submits there are drawbacks to this as it could give the impression that customers need not be diligent in what they flush.

Aqua also contends that Ms. Frissora did not provide a basis for her claim that capital improvements over the next 20 years will most likely be modest and submits that Aqua

¹¹⁴ Aqua Main Brief at 27; Aqua St. No. 1-R at 29-30.

¹¹⁵ Aqua Main Brief at 27-28; Aqua St. No. 1-R at 30-31.

¹¹⁶ Aqua Main Brief at 28; Aqua St. No. 1-R at 32-34.

has estimated in the first 10 years that the system will need \$3.3 million in capital improvements, although as the Company operates the system, after closing, additional capital projects may be identified.¹¹⁷ Aqua notes that, Mr. Hagan testified that “there is quite a lot of I&I in our system.”¹¹⁸ Aqua explains reductions in I&I can reduce conveyance and treatment costs.¹¹⁹

While the township is able to continue to use consulting services to remain compliant with changing DEP regulations, Aqua explains it has a dedicated compliance department, and asserts it is important to have an internal team dedicated to current and emerging environmental regulations rather than relying solely on outside consultants.¹²⁰

(j) Response to Mr. Childers

Jerry W. Childers presented testimony on behalf of Intervenor Swift, including a financial analysis that challenges estimates of future rates and disagrees with Mr. Packer’s revenue deficiency analysis.

Aqua explains it agrees with Mr. Childers that it is possible for a township operated system to have lower costs than an investor-owned utility, depending on the condition of the system and whether there is a sustained commitment of resources to maintain the infrastructure. Aqua submits it has the power of size to absorb the costs of purchasing and operating systems such as Willistown while at the same time utilizing fundamental utility principles of “single tariff pricing” and “gradualism” to ameliorate rate increases over time.¹²¹

Aqua further argues a rate increase as a result of the transaction is neither certain nor permanent. Aqua submits, to the extent changes in the Company’s costs, size, and service

¹¹⁷ Aqua Main Brief at 30; Aqua St. No. 2-R at 7.

¹¹⁸ Aqua Main Brief at 31; Tr. 383 and 384-385.

¹¹⁹ Aqua Main Brief at 31; Aqua St. No. 2-R at 7-9.

¹²⁰ Aqua Main Brief at 31; Aqua St. No. 2-R at 10-11.

¹²¹ Aqua Main Brief at 31-32; Aqua St. No. 1-R at 39-40.

territories served provide for further distribution of costs, rates could also go down as result, as in the Company's current 2021 base rate case, where its Sage Hill system, acquired with existing rates of \$180 per month prior to Aqua ownership, were proposed to be reduced by approximately 25%.¹²²

Aqua submits the 85.87% increase noted in Appendix A of Mr. Packer's testimony quantifies the cost differential between a municipal cost of service at its own book values as compared to Aqua's regulated cost of service assuming the cost of the sale. This, however, according to Aqua, is not a definitive outcome of the transaction. Aqua further contends the 43% increase in rates cited by Mr. Childers was estimated by Aqua in response to the Township's Request for Bids (RFB) which was provided in Application Exhibit Z, Standard Data Request No. 13, based upon the information as set forth in Aqua's RFB response which provided a 10-year projection of rates as required by the Township's RFB. According to Aqua, the reasonable assumptions included in those indicative rates were assuming 30% cost allocation, a DSIC surcharge, and base rate cases filed and having an effective date of new rates every three years beginning in 2025 and 2028.¹²³

Aqua also argues Mr. Childers comparison of revenue requirement over the 10-year and 20-year periods in his Appendix B.1 and Appendix B.2 are incorrect because they do not account for the depreciation of future investments over the period; meaning, his analysis over the period is only additive and does not address the impact of accumulated depreciation of investments as a reduction to rate base, which Aqua submits, is a major component in the calculation of revenue requirement. Because of this omission, Aqua submits, the comparison prepared by Mr. Childers is incorrect and overstated, as the revenue requirement he calculates for each \$100,000 of capital investment is not reduced by cumulative depreciation over the 20-year period.¹²⁴

¹²² Aqua Main Brief at 32; Aqua St. No. 1-R at 40-41.

¹²³ Aqua Main Brief at 32-33; Aqua St. No. 1-R at 41-42.

¹²⁴ Aqua Main Brief at 32-33; Aqua St. No. 1-R at 46-48.

In its Reply Brief, Aqua asserts that the OCA’s analysis of the public interest standard is incomplete. Citing *City of York*,¹²⁵ the OCA contends that it is the standard by which all acquisitions of Pennsylvania utility companies must be judged.¹²⁶ Aqua argues the Supreme Court addressed *City of York* in *Popowsky*¹²⁷ clarifying 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.

The Court in *Popowsky* explained further 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.”

Substantial Affirmative Public Benefits – Response to OCA

OCA contends that Aqua has failed to demonstrate substantial, affirmative public benefits and asks the Commission to deny the Application.¹²⁸ In response, Aqua offered the following.

Existing Aqua Water and Wastewater Customers

Aqua argues 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. According to Aqua the possible allocation

¹²⁵ *City of York v. Pa. Pub. Util. Comm’n.*, 295 A.2d 825 (Pa. 1972) (*City of York*).

¹²⁶ OCA Main Brief, Section V.B.1 at 10.

¹²⁷ *Popowsky v. Pa. Pub. Util. Comm’n.*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*).

¹²⁸ OCA Main Brief, Section V.B.3, pages 11-22. Alternatively, if the Commission approves the transaction, OCA recommends that the Commission condition its approval on rejection of the rate freeze, the provision of cost of service studies and a ratemaking rate base of \$13,500,000. *See* OCA Main Brief, Section V.D, at 45-46. The OCA’s proposed conditions are addressed under separate subheadings below.

of a portion of wastewater costs to Aqua's combined water and wastewater customer base is not a harm as contended by the OCA, it is, rather, a public benefit. Aqua further argues a rate increase, is not "certain" as argued by the OCA; nor is it permanent. Aqua explains 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.¹²⁹

Aqua submits existing Aqua customers would not be exposed to a risk of covering revenue requirement as a result of the two-year rate freeze. Aqua argues, in the unexpected event of an Aqua rate filing becoming effective prior to the running of the two-year freeze, the Company submits it would treat the existing Willistown rates as a special charge. Upon expiration of the rate freeze, Willistown customers would immediately become subject to existing zone rates

Willistown Customers

Aqua asserts the rate deficiency of \$54.64 per month for Willistown customers is a preliminary analysis of the potential rate impact on Willistown customers, a non-binding estimate of the incremental rate effect of the proposed fair market value rate base but, as explained in the notice to Willistown 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. Aqua asserts the ability to allocate costs is a statutory benefit.¹³⁰

¹²⁹ Aqua Reply Brief at 7.

¹³⁰ *Id.* at 8.

Benefits Outweigh Detriments

Aqua submits the CMV case cited by OCA¹³¹ was not a Section 1329 acquisition and, thus, is not reflective of a Section 1329 weighing of benefits and detriments.¹³² According to Aqua, established legal precedent does not require a quantification of economies of scale, cost reductions or efficiencies, and OCA contentions that a quantification of benefits is required were rejected in *Popowsky*.¹³³ Aqua submits Mr. Packer provided a table at page 13 of his rebuttal testimony comparing the Township's 2020 budget expenses (\$2,053,168) with Aqua's expense projections based on Aqua ownership (\$1,750,444), which shows a 17% decrease in expenses with Aqua ownership, which quantified savings are a substantial affirmative public benefit of the acquisition.¹³⁴

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. Aqua asserts these acknowledged cost differences are a part of every Section 1329 transaction, and according to Aqua they are outweighed by long term benefits, including, the long-term benefit of regionalization/consolidation consistent with the Commission's policy objectives and the General Assembly's encouragement of the acquisition of municipal systems.¹³⁵

Reply to Yordan - Rate Increases

Mr. Yordan contends that there will be financial harm created by rate increases. Aqua asserts every Section 1329 proceeding raises the possibility of higher rates but, that the benefit of the 1329 acquisition outweighs the detriment of possibly higher rates.¹³⁶

¹³¹ *Application of CMV Sewage Co., Inc.*, Docket No. A-230056F2002 (Opinion and Order entered December 18, 2008) (*CMV*).

¹³² Aqua Reply Brief at 8-9.

¹³³ *Popowsky* at 1056.

¹³⁴ Aqua Reply Brief at 9.

¹³⁵ *Id.*

¹³⁶ In Section V-B, page 5 of his Main Brief, Mr. Yordan presents a summary of his testimony. Aqua addressed Mr. Yordan's testimony in Section V.B.3.c.ii of its Main Brief.

Aqua further submits Mr. Yordan's assessment that the revenue deficiency will survive for decades to come is incorrect, as revenue requirements are always in fluctuation, and to the extent that costs decrease, revenue requirement, likewise, would be reduced.¹³⁷ The existence alone of a revenue requirement deficiency, according to Aqua, is not a basis for denying the transaction and Aqua's cost of capital is also not a basis for denying the transaction.¹³⁸

In response to Mr. Yordan's analysis of the revenue deficiency,¹³⁹ Aqua, explains it presently estimates that it will invest approximately \$3.3 million in the system over the next ten years.¹⁴⁰ If actual investment is ultimately \$3.3 million (or less) then system rate base will decline over the next ten years according to Aqua.¹⁴¹ However, if capital infrastructure requirements for the continued provision of reasonable and adequate service are \$5 million as estimated by Mr. Hagen,¹⁴² Aqua submits it will invest in those needed system upgrades.¹⁴³ Aqua concludes the existence alone of a revenue requirement deficiency is not a basis for denying the transaction. Aqua submits its commitment to make necessary improvements beyond the presently estimated \$3.3 million, however, is a demonstrated affirmative public benefit.¹⁴⁴

Aqua argues the existence of I&I is not speculative,¹⁴⁵ and will need to be addressed.¹⁴⁶

¹³⁷ See Aqua Main Brief, Section V.B.3.c.ii, at 22-23.

¹³⁸ Aqua Reply Brief at 11.

¹³⁹ See Yordan Main Brief, Section V-B, at 6 and 7.

¹⁴⁰ Aqua St. No. 2-R at 9-10.

¹⁴¹ Aqua St. No. 1-R at 21 and 31-32.

¹⁴² Tr. at 403.

¹⁴³ Aqua St. No. 2-R at 10.

¹⁴⁴ Aqua Reply Brief at 11-12.

¹⁴⁵ See Yordan Main Brief, Section V-B, at 7-8.

¹⁴⁶ Aqua Reply Brief at 12.

Reply to Swift/Frissora

Aqua notes Mr. Swift and Ms. Frissora contend that the Application does not meet the standard of affirmative substantial public benefit.¹⁴⁷ Their further contention that the “principal issue” is whether the proposed sewer service, operations and rates will be a substantial improvement over the service, operations and rates currently provided by the Township¹⁴⁸ is, however, according to Aqua, an inaccurate statement of the requirements for approval of a certification of public convenience.¹⁴⁹

Rates Under Aqua Ownership

Aqua submits the sharing of costs to maintain and upgrade older systems cited by Swift/Frissora¹⁵⁰ is a recognized benefit of single tariff pricing. Through single tariff pricing, Aqua asserts, Willistown and all Aqua water and wastewater customers will benefit from the sharing of financial and infrastructure risks over time.

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, but Aqua argues these acknowledged cost differences are outweighed by long term benefits, including, significantly, the long-term benefit of regionalization/consolidation consistent with the Commission’s policy objectives and the General Assembly’s encouragement of the acquisition of municipal systems.¹⁵¹

¹⁴⁷ See Swift/Frissora Main Brief, Section V.D, at 12.

¹⁴⁸ See Swift/Frissora Main Brief, Section V.D, at 12.

¹⁴⁹ Aqua Reply Brief at 13.

¹⁵⁰ See Swift/Frissora Main Brief, Section V.D.1, at 13.

¹⁵¹ Reply Brief at 14.

Willistown Customers

Aqua asserts that *McCloskey* recognizes Aqua's expertise and the Commission's policy favoring regionalization/consolidation as benefits outweighing the possibility of a Section 1329 rate increase. Aqua further submits although mathematically correct, Mr. Yordan's net present value calculation, cited by Mr. Swift and Ms. Frissora, is incorrect as it assumes that the revenue requirement calculation is "permanent."¹⁵²

Customer Convenience or Safety

Aqua submits it follows Chapter 14 of the Code and the Commission's payment and service termination regulations, and that customers will have the added due process afforded at the Commission including having access to the Bureau of Consumer Services.¹⁵³ Aqua further submits that it provides emergency service but police would not be involved except in extreme circumstances. In an emergency situation, a customer could contact Aqua's emergency line, and speak to Aqua's control room staff (instead of leaving a message) who would then contact Aqua's on-call field service staff.¹⁵⁴ Aqua argues that its experience in operating complex systems and deep bench of qualified operations, engineering and management employees dedicated to wastewater operations is a substantial benefit.¹⁵⁵

Willistown's Position

The Public Interest

The Township submits that Aqua has demonstrated through a preponderance of the evidence that its acquisition of the System and its initiation of wastewater treatment services

¹⁵² See Aqua Main Brief, Section V.B.3.c.ii, at 22-23 and Aqua St. No. 1-R at 21.

¹⁵³ See Aqua Main Brief, Section V.B.3.c.i.(c), at 20.

¹⁵⁴ See Aqua Main Brief, Section V.B.3.c.ii, at 25 and Aqua St. No. 2-R at 13-14.

¹⁵⁵ See Aqua Main Brief, Section V.B.3.c.iii, at 30 and Aqua St. No. 2-R at 2-3.

to the acquired Township customers will affirmatively promote the service, accommodation, convenience, or safety of the public. More specifically, the Township asserts the Proposed Transaction will promote the public interest, and the Commission goal, to regionalize and consolidate wastewater operations within the Commonwealth.¹⁵⁶

Fitness

The Township submits that Aqua has the requisite technical, financial and legal fitness to own and operate the System. The Township asserts that Aqua is a Class A water utility in the Commonwealth with total net utility plant assets of \$350 million and annual revenues of \$37 million in 2020,¹⁵⁷ and as a subsidiary of Aqua Pennsylvania, Inc., has access to Aqua PA's low-cost long-term debt financing instruments through the Pennsylvania Infrastructure Investment Authority, Aqua PA's short-term credit facility of \$100 million, and Aqua PA's equity capital.¹⁵⁸ Regarding a showing of technical/managerial fitness, the Township submits that Aqua has a certificate to operate throughout the Commonwealth and has in-depth expertise in operating wastewater collection and conveyance systems. The Township submits that Aqua is technically fit to own and operate the System, and has the requisite technical, legal, and financial fitness to own and operate the System and serve the acquired Township customers.¹⁵⁹

Substantial Affirmative Public Benefits

In support of its conclusion that Aqua presented substantial evidence in support of the affirmative public benefits of the Proposed Transaction to the Township customers and residents, the Township asserts that its customers will benefit from the expertise and experience

¹⁵⁶ Willistown Township Main Brief at 9.

¹⁵⁷ Willistown Township Main Brief at 10; Aqua Statement No. 1, at 9.

¹⁵⁸ *Id.* at 10.

¹⁵⁹ *Id.* at 10-11..

of a regulated public utility like Aqua; and the up-front proceeds from the Proposed Transaction will allow for various redevelopment opportunities in Willistown.¹⁶⁰

The Township admits that it currently provides adequate service to its residents, but asserts there are identifiable areas for operational improvement that the acquired Township customers will experience under Aqua ownership. The Township submits that the acquired Township customers will benefit from enhanced customer service by Aqua’s licensed wastewater operators, and that the Township’s Public Works Department does not currently have any licensed wastewater operators on its team.¹⁶¹ Under Aqua ownership, the Township contends, the acquired Township residents will benefit from the expertise of licensed wastewater operators as an operator’s license is a condition of employment for all management and operations wastewater staff at Aqua.¹⁶²

Further, the Township submits that the current procedure for after-hours sewer emergencies unnecessarily utilizes police resources, requiring the customer to call the emergency number which is transferred to the Police Department.¹⁶³ The police, then, report to a “man on call” from the Public Works Department, who ultimately assesses the emergency and determines what equipment and manpower are needed to resolve the issue. The Township asserts that, under Aqua ownership, the Township will no longer use valuable police resources to address after-hours sewer issues and Township customers will benefit from assessments of their emergencies by licensed wastewater operators.¹⁶⁴

In its Reply Brief, Willistown Township requests that the Commission afford no weight to the testimony of Attorney Swift’s purported expert witness, Jerry W. Childers, due to his lack of qualifications. Further, to the extent that any party refers to Mr. Yordan as an

¹⁶⁰ *Id.* at 11-12; Aqua St. No.3. at 8.

¹⁶¹ Willistown Township Main Brief at 12; Tr. at 401-402.

¹⁶² *Id.* at 12-13; Tr. at 401-402.

¹⁶³ *Id.* at 12-13; Tr. at 401–402.

¹⁶⁴ *Id.* at 12-13; Tr. at 401–402.

“expert” in this proceeding, the Township requests that the Commission only consider his testimony as that of a lay witness.¹⁶⁵

The Township submits that Mr. Childers and Mr. Yordan are biased and lack the requisite specialized knowledge to be considered “experts” in this proceeding. The Township notes, at the Evidentiary Hearing, Mr. Childers admitted that (1) he does not have any experience, education, or training with public utilities (*i.e.*, the relevant field); (2) he is not a registered UVE; (3) he is *not* familiar with the USPAP other than that those standards exist, and (4) he has never testified before the Commission or in a rate case proceeding.¹⁶⁶ The Township argues that he is unqualified to provide expert testimony as he lacks *any* “specialized knowledge” with respect to the operation, the financing, and/or ratemaking for public utilities. Additionally, Mr. Childers admitted that he has a personal stake in the outcome of the proceeding.¹⁶⁷

The Township asserts that Mr. Yordan also cannot be considered an expert in this proceeding for these very same reasons. While Mr. Yordan has education and training in mathematics and finance, the Township asserts this training does not constitute the requisite “specialized knowledge” to provide expert testimony regarding the financing or operation of public utilities. Furthermore, as an active intervenor and protestant in this proceeding, the Township submits Mr. Yordan has a personal interest in the outcome of this proceeding.¹⁶⁸

¹⁶⁵ Willistown Township Reply Brief at 5.

¹⁶⁶ *See* Transcript of Evidentiary Hearing of March 3, 2022, at 722:6–723:8.

¹⁶⁷ *See Id.*, at 705:16–13 (“Q: You have a personal stake in the outcome of this proceeding. Correct? A: That is undeniable, yes.”); *see also* Swift Statement No. 2-SR, at 6:18–21; Willistown Township Reply Brief at 5-6.

¹⁶⁸ Willistown Township Reply Brief at 6.

I&E's Position

Section 1102/1103 Standards

In addition to assessing fitness, I&E asserts the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”¹⁶⁹ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹⁷⁰ I&E submits that Aqua’s Application will only be in the public interest if the Commission conditions its approval on the conditions that I&E recommends, as more fully detailed below.¹⁷¹

Fitness

I&E does not challenge that Aqua is technically, legally, and financially fit to own and operate any of the assets that Willistown may have the authority to convey.

Substantial Affirmative Public Benefit

In order to ensure that the benefits will materialize as alleged, I&E submits that any approval of Aqua’s Application be subject to the conditions I&E addressed under *Recommended Conditions*, set forth below. Absent adoption of I&E’s conditions, I&E submits there is no assurance that the alleged affirmative public benefits will materialize.¹⁷²

¹⁶⁹ *Id.*; *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 7.

¹⁷² *Id.*

OCA's Position

The Public Interest

OCA concludes, based on a weighing of the known harms and claimed future benefits, that Aqua has failed to establish that the proposed transaction is in the public interest.

OCA asserts the Application fails to meet the appropriate legal standard, whether calculated at the associated \$17.5 million rate base proposed by Aqua or the \$13.5 million rate base calculated by OCA, because it would harm existing and acquired ratepayers and would not provide substantial affirmative public benefit. OCA submits the benefits identified by Aqua are mere generalizations that do not address the corresponding harm to existing Aqua wastewater and water customers, and to the Willistown customers after acquisition. For this reason and to serve the public interest, OCA asserts the Commission should deny the application.¹⁷³

Fitness

The OCA did not present any evidence regarding Aqua's fitness.

Harm to Existing Aqua Wastewater and Water Customers

As Aqua has structured the transaction, OCA argues Aqua's existing water customers are at risk for supporting the costs of acquiring the Willistown customers. The Company will seek approval under 66 Pa.C.S. § 1311(c) to allocate a portion of its wastewater revenue requirement to the combined water and wastewater customer base. OCA notes that every other Aqua water customer already must pay for wastewater disposal either to another provider, Aqua, or with their individual wastewater system.¹⁷⁴

¹⁷³ OCA Main Brief at 11-12.

¹⁷⁴ OCA Main Brief at 13; OCA St. No. 2-SR at 13, 15.

OCA also submits that a rate increase to existing Aqua customers is a certainty, and this proposed transaction is not occurring in a vacuum. OCA notes that Aqua has other Section 1329 acquisitions pending or approved since its last base rate case, like East Whiteland Township, Lower Makefield Township and DELCORA, for which it also projects revenue requirement deficiencies that would put upward pressure on rates for acquired or existing customers in the short term and push the timing for customers to realize any benefits from cost sharing further into the future.¹⁷⁵

OCA asserts that, exacerbating this inequity for existing customers, Aqua proposes a 2-year rate freeze for Willistown customers.¹⁷⁶ Aqua has stated that it is not known whether or not it will file a base rate case within two years of closing. The result, according to OCA, is that Aqua’s customers are at risk to cover the revenue requirement required to keep Willistown rates lower than cost for the first two years post-acquisition.¹⁷⁷

Aqua claims in testimony that the rate freeze proposed in the APA does not constitute a rate stabilization plan.¹⁷⁸ OCA explains, under Section 1329, however, a rate stabilization plan is defined as “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa.C.S. § 1329. OCA submits that Aqua’s proposal to freeze rates for the Willistown customers for two years after closing is a rate stabilization plan because it has the potential to hold rates constant or phase rates in over a period of time after its next base rate case.¹⁷⁹

Further, the Commission has required that “if a rate stabilization is proposed, the applicant will be required to provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue

¹⁷⁵ *Id.*; OCA St. No. 2-SR at 4-5.

¹⁷⁶ APA, ¶7.03; OCA St. 2 at 4.

¹⁷⁷ OCA Main Brief at 13.

¹⁷⁸ OCA St. 2 at 5; Aqua St. 1 at 10-11.

¹⁷⁹ OCA Main Brief at 14.

requirement that would be shifted to them under the plan.¹⁸⁰ OCA witness Morgan noted during litigation of this proceeding that it would have been helpful to the Commission and the parties in evaluating the benefits and harms of the proposed transaction, if Aqua provided this information.¹⁸¹ The OCA notes that Aqua has provided this type of information in a previous Section 1329 application where a rate freeze was proposed.¹⁸² Whether or not the Commission finds that the rate freeze is a rate stabilization plan, however, OCA argues the Commission should reject any rate freeze for Willistown customers that extends beyond the effective date of new rates in Aqua's next base rate case to protect existing Aqua customers from covering the revenue deficiency.¹⁸³

Harm to Willistown Customers

OCA notes that there has been significant public opposition to the acquisition in this proceeding, as evidenced by the testimony of approximately 30 individuals who testified at the public input hearings as to the harms that would occur should Aqua acquire Willistown's system.¹⁸⁴ OCA points out that three consumers noted that the Township's sewer system was already paid for by Township customers and that if the sale goes through, many will essentially be paying for the sewer system a second time.¹⁸⁵ OCA notes Aqua presented no evidence to the contrary. OCA asserted that multiple Aqua customers testified that Aqua's service to water customers had not been adequate.¹⁸⁶ Ms. Hegarty testified that the Township maintains a pumping station behind her property that includes a shared driveway and expressed concern as to whether Aqua will continue to maintain the pumping station in the manner that the Township

¹⁸⁰ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Implementation Order at 27 (Oct. 27, 2016).

¹⁸¹ OCA Main Brief at 14; OCA St. No.2 at 6.

¹⁸² *Id.*

¹⁸³ OCA Main Brief at 14; OCA St. No. 2-SR at 9; OSBA St. No.1 at 8.

¹⁸⁴ OCA Main Brief at 15-16; OCA St. No. 2-SR at 11-16.

¹⁸⁵ *Id.*; OCA St. No. 2-SR at 16; Tr. 286, 293, 326.

¹⁸⁶ *Id.*; OCA St. 2SR at 15; Tr. 248-52, 318-21.

does currently.¹⁸⁷ Similarly, Ms. Flynn, an owner of three lots on the Township' sewer system, expressed concern about the sale and noted that the Township has operated the system well over the 11 years that she has resided in Willistown.¹⁸⁸ Ms. Bowes testified that she has always experienced excellent service at reasonable cost by the Township.¹⁸⁹ Mr. Lordan also praised Willistown's excellent dependability and service, and testified that the sale would be detrimental to the Willistown sewer customers in the areas of service of cost.¹⁹⁰

The Adverse Impacts on Aqua's Existing Customers and the Willistown Customers Outweigh the Benefits of the Proposed Transaction.

OCA notes, in the *CMV* case discussed above, the Commission concluded that the adverse impacts of the proposed transaction for the existing customers outweighed the benefits.¹⁹¹ The customers proposed to be acquired were receiving service from a system that was in compliance with applicable environmental laws and regulations. While the *CMV* system might have required upgrades to comply with stricter environmental requirements at an unknown future date, OCA submits, there was no certain evidence on that point. The Commission stated:

The advantages alleged by NCTSA do not outweigh the certain, immediate adverse impacts of this transaction. The proposed transaction will result in an immediate \$1,800 cost for Colonial Crossings customers, which is in addition to an average rate increase of approximately \$70 per quarter, or 54% compared to existing rates. We find that the ALJ correctly weighed the evidence before him, and concluded that the costs of the proposed transaction for the Colonial Crossings customers outweigh the benefits for those customers.^[192]

¹⁸⁷ OCA Main Brief at 16; OCA St. No. 2-SR at 13; Tr. 331.

¹⁸⁸ *Id.*; OCA St. No. 2-SR at 13; Tr. 226.

¹⁸⁹ *Id.*; OCA St. No. 2-SR at 12; Tr. 207-08.

¹⁹⁰ *Id.*; OCA St. No. 2-SR at 11; Tr. 190-94.

¹⁹¹ *Id.* at 16-17; 2008 PaPUC LEXIS 950 at * 32.

¹⁹² *Id.* at * 32.; OCA Main Brief at 17.

As in *CMV*, OCA asserts the alleged benefits of acquiring the Willistown system are disputed and the adverse impacts of the proposed acquisition outweigh any claimed benefits.¹⁹³

OCA argues that although Aqua references economies of scale, the Company has not provided any showing of cost reductions or efficiencies that will be produced by the acquisition of the Willistown customers.¹⁹⁴ Aqua admitted that the only benefit it attempted to quantify is a reduction in operating expenses.¹⁹⁵ Mr. Packer estimated that operating expenses for the System might be \$300,000 (17%) per year lower for Aqua than for the Township.¹⁹⁶ OCA contends, even if there is a \$300,000 decrease in operating expenses, Mr. Packer calculates that the overall increase to costs under Aqua's ownership will produce an annual revenue deficiency of \$1.79 million that will increase rates for the acquired Willistown or existing Aqua customers. OCA asserts that, applying that deficiency to the acquired customers could increase rates by 86%.¹⁹⁷ OCA continues, if 50% of the revenue deficiency is applied to the existing Aqua customers, the estimated incremental rate effect is a 1.67% monthly increase for wastewater customers and 0.18% monthly increase for water customers. OCA submits having more customers does not create economies of scale.¹⁹⁸

According to OCA, generally for utilities, acquisitions produce economies of scale because fixed costs can be spread to more customers. However, since Willistown customers will not even be covering their full cost of ownership at the proposed \$17.5 million rate base, OCA submits they will not share the costs of infrastructure improvements for other

¹⁹³ In *CMV*, the Commission was not persuaded that potential economies of scale provided a benefit that outweighed the known adverse impacts of the transaction. As OCA pointed out in *CMV*, there is no guarantee that savings resulting from any economies of scale will be reflected in the rates charged to customers. *Id.* at *29-30.

¹⁹⁴ OCA Main Brief at 17; OCA St. 2 at 8.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*; Aqua St. 1R at 11-12.

¹⁹⁷ OCA Main Brief at 17; OCA St. No. 2 at 8.

¹⁹⁸ OCA Main Brief at 17-18.

parts of Aqua’s service territory. Additionally, there has been no showing that rates would become more affordable in the long-term due to economies of scale.¹⁹⁹

Despite Mr. Packer’s assertion regarding Aqua’s size having the “potential” to create opportunities for volume discounts and for sharing costs among customers outside of Willistown, OCA argues any such discounts will be offset by Aqua’s much higher cost of capital.²⁰⁰ As Ms. DeAngelo explained in testimony:

Consider that Aqua witness Packer used a cost of capital of 7.19% for Aqua in calculating the revenue deficiency and overall impact on customers of the proposed transaction. The actual, current cost of capital for the Township is closer to 3.00%. As proposed by Aqua, its 7.19% cost of capital will be applied to a ratemaking rate base of \$17.5 million, which incorporates the amount paid above the Willistown system’s net book value. Further, Aqua has to pay Pennsylvania sales tax and state and federal revenue taxes. The Township does not have these expenses. The cost of capital and taxes will add to customer bills and outweigh any purported benefit that Aqua claims will come from economies of scale.^[201]

Thus, OCA submits, Aqua has not demonstrated there will be any efficiencies in costs to run the system through Aqua’s acquisition.

Aqua claims that Willistown customers will benefit from Aqua’s 24/7/365 customer service, emergency contact number, and bill payment options, however OCA contends this is not supported by record evidence. OCA notes the Township already has a 24-hour service company, PreDoc, for low pressure systems. In addition, the Police Department is available to

¹⁹⁹ OCA Main Brief at 18; OCA St. No. 2 at 14.

²⁰⁰ *Id.*; OCA St. No. 2 at 9.

²⁰¹ *Id.*; OCA St. No. 2 at 9.

address sewer emergencies, should they arise.²⁰² As such, OCA submits, the Township already has the ability to address emergencies.²⁰³

OCA notes Willistown customers already have an online bill payment option, and payments are also accepted in-person or by mail.²⁰⁴ Aqua's bill payment options do not include in-person and do not provide any advantages over Willistown's current billing system besides the ability to make bill payments via text message;²⁰⁵ and there is no record evidence showing that customers have any issues with their current billing and payments to the Township, want an option to pay their utility bill via text message, or that having this option would be a benefit to Willistown's customers that would outweigh the increase to their rates. If there are any advantages to be had when comparing Willistown's use of Xpress Bill Pay over Aqua's billing system, OCA asserts they are outweighed by the significant costs that ratepayers will bear based on the proposed ratemaking rate base. Also, while Mr. Packer promoted Aqua's bill payment process as a benefit under Aqua ownership, Mr. Packer admitted in his testimony that he is not versed in the Township's bill payment process.²⁰⁶

Aqua also argues that Chapter 14 of the Public Utility Code is an affirmative public benefit of the transaction.²⁰⁷ While OCA acknowledges that protections provided by the Public Utility Code are a benefit, standing alone, OCA argues, they are not sufficient to outweigh the harms. If the existence of Chapter 14 of the Public Utility Code were enough to satisfy the *City of York* standard for affirmative public benefits, OCA contends, any acquisition by an entity regulated by the Public Utility Commission would meet the standard.²⁰⁸

²⁰² OCA Main Brief at 19; OCA St. No. 2 at 11.

²⁰³ OCA Main Brief at 19.

²⁰⁴ *Id.*; OCA St. No. 2 at 11-12

²⁰⁵ *Id.*

²⁰⁶ *Id.*; OCA St. No. 2-SR at 8.

²⁰⁷ *Id.*

²⁰⁸ OCA Main Brief at 19-20.

OCA submits the alleged benefits that are claimed by Township manager Slook, exiting the sewer business, obtaining Aqua’s expertise as a regulated utility and using the sale proceeds merely for other Township projects,²⁰⁹ would occur under any sale of any system by a municipality to Aqua. The proposed transaction, however, must affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way and must reflect benefits to the ratepayers of Pennsylvania that are substantial, and the various risks and harms that could result from the acquisition must be mitigated.²¹⁰

OCA argues there is no evidence that the sale would provide an affirmative public benefit by ensuring that Willistown customers have safe and reliable service any more so than they have under the current Willistown Township ownership. Willistown is not a troubled system and, based on the information provided by Aqua and the Township, the current service provided by the Township is safe and reliable.²¹¹ OCA explains that Aqua acknowledges that under Willistown ownership, the Township has had zero DEP notices of violations in the last five years.²¹² From 2019 to 2021, the Township had two DEP violations, and both were enforced and resolved within weeks by the Township.²¹³ In that same time frame, wastewater systems that Aqua already owns in Willistown had nine DEP violations, six of which were enforced.²¹⁴ Across the entire Commonwealth, Aqua had 119 DEP violations, 30 of which were major, with 101 enforcements.²¹⁵

OCA further notes that Aqua acknowledged that the Township’s system has the capacity to meet the demands of current and future customers, did not have any sanitary system

²⁰⁹ OCA Main Brief at p. 20; OCA St. No.1 at 13. Also, OCA notes that Ms. Slook admitted that her direct testimony was drafted by Willistown Township’s legal counsel. Tr. at 478.

²¹⁰ OCA Main Brief at 20.

²¹¹ OCA Main Brief at 20; OCA St. No. 2 at 14.

²¹² *Id.*; OCA St. No.2 at 15.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ OCA Main Brief at 21; OCA St. No. 2 at 15.

overflows in 2020, and is not currently under a Corrective Action Plan or Connection Management Plan with DEP.²¹⁶ All of these facts, according to OCA, indicate that the Township is already providing service that is at least as safe and reliable as the service that Aqua provides, and the continuation of safe and reliable service is not an affirmative public benefit.²¹⁷

OCA points out that another concern specific to the Willistown system is the fact that approximately 50% of the Township residents are not customers of the system being acquired. Only those residents who are customers have contributed toward the cost of the system assets, but the proceeds of the sale will go to the Township as a whole²¹⁸. OCA asserts, only those residents who become Aqua wastewater customers, however, will pay the higher rates anticipated for service under Aqua ownership.

OCA argues the record does not bear out Aqua's contention that Willistown customers will receive a benefit that outweighs the detriment of dramatically increased rates. The evidence shows that the Township is financially fit to complete any necessary improvements and upgrades given that the Township has cash and cash equivalents of nearly \$20 million.²¹⁹ Additionally, the Township has approximately \$7 million more in cash than outstanding debt.²²⁰ While Aqua currently estimates that it will invest approximately \$3.3 million in capital improvements over the next 10 years, based on the evidence on record, the Township could make any necessary improvements and upgrades to the system, on an as-needed basis, and it would not present an unreasonable financial burden for the Township.²²¹

OCA explains the Commission supports regionalization because the acquisition of smaller systems by larger systems may improve the long-term viability of the water and

²¹⁶ *Id.*

²¹⁷ OCA Main Brief at 21.

²¹⁸ OCA Main Brief at 21; OCA St. No.2 at 16.

²¹⁹ *Id.* at 21-22; OCA St. No. 2 at 6-7.

²²⁰ *Id.*

²²¹ *Id.*

wastewater industry, or otherwise enhance ratepayers' daily lives and communities.²²² However, OCA asserts, the proposed acquisition detrimentally impacts wastewater customers in Willistown Township due to increased rates and provides no enhancement to customers' daily lives, and only serves to transfer a viable system to a different provider at higher cost.²²³ The proposed acquisition also increases costs for Aqua's current customers until and unless the Willistown customers' rates increase to cover the \$1.79 million revenue deficiency.

In its Reply Brief, OCA submits that Aqua is essentially implying that, whenever Aqua seeks to acquire a system, it is *de facto* in the public interest and satisfies any challenge to the claim of affirmative public benefits. Aqua acknowledges that "there is an expectation of increased rates going forward" but calls that increase "hypothetical" and emphasizes that rates for Willistown or existing Aqua customers will not change in this proceeding.²²⁴ In the *New Garden* case, however, the Commonwealth Court reversed the Commission for failing to consider rate impact in its determination, stating:

Simply, by approving the sale and then putting off the consideration of the impact on rates to a later rate base proceeding, the Commission cannot do the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit. It is in this proceeding that the Commission is charged with deciding whether the impact on rates based on the OCA's undisputed evidence was outweighed by the other positive factors that the acquisition served a substantial public benefit. Because it did not do so, this matter is remanded to the Commission to make that determination, including the propriety of the rate restriction on New Garden ratepayers set forth in the APA.^[225]

²²² OCA Main Brief at 22; *See* Aqua St. No.1 at 1-12.

²²³ *Id.*; OCA St. No. 2 at 10.

²²⁴ Aqua Main Brief. at 16.

²²⁵ *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055, 1067 (Pa. Cmwlth. 2018) (*New Garden*).

Economies of Scale

OCA argues Aqua’s claim that OCA witness DeAngelo “attack[s] the concept of economies of scale” is simply false.²²⁶ Rather, OCA submits she showed that Aqua is misusing the term “economies of scale” because adding customers does not create economies of scale unless it also decreases the utility’s overall costs for providing service²²⁷.

Aqua also alleges that OCA witness DeAngelo attempts to “single out the Willistown system for individualized economic analysis” and claims that this is “inconsistent with the public interest and adverse to the basic public utility model.”²²⁸ OCA asserts individualized analysis of every system proposed to be acquired under Section 1329 is not only in the public interest, but also necessary to ensure that each acquisition complies with the Public Utility Code, particularly Section 1102.²²⁹ OCA submits just because Aqua can acquire systems, it has technical, managerial and financial ability, does not mean that every acquisition will further the public interest. For each transaction, Aqua must show that benefits will substantially outweigh the harms. OCA asserts, it has not done so with regard to Willistown.²³⁰

Volume Discounts and Sharing Costs

Aqua critiques OCA witness DeAngelo’s testimony which discussed how Aqua’s higher cost of capital offsets the volume discounts and cost sharing.²³¹ While Aqua’s size creates the potential for volume discounts and cost sharing, for Willistown, OCA submits its higher cost of capital will offset those savings. Because investor-owned utilities are likely to have higher

²²⁶ See Aqua Main Brief. at 18.

²²⁷ OCA St. 2 at 7; OCA St. 2SR at 5-8; OCA Reply Brief at 7.

²²⁸ Aqua Main Brief at 18.

²²⁹ *New Garden* at 1067.

²³⁰ OCA Reply Brief at 7-8.

²³¹ Aqua Main Brief at 19.

cost of capital and income taxes compared to a municipally owned system, OCA asserts the specific transaction must provide benefits that outweigh those additional costs.²³²

Here, Aqua claimed that operating expenses for the System might be \$300,000 (17%) per year lower for Aqua than for the Township.²³³ OCA submits, even if there is a \$300,000 savings in operating expenses, Aqua calculated that the overall increase to costs under its ownership will produce an annual revenue deficiency of \$1.79 million that will increase rates for the acquired Willistown or existing Aqua customers.²³⁴

Regionalization

In regard to regionalization as an affirmative public benefit, OCA agrees that as a matter of policy, the Commission supports regionalization because the acquisition of smaller systems by larger systems may improve the long-term viability of the water and wastewater industry, or otherwise enhance ratepayers' daily lives and communities.²³⁵ OCA asserts that has not been shown for the Willistown transaction. Aqua calculates that acquisition of Willistown, would be at a higher rate base per customer than for its existing customers.²³⁶ Further, Willistown is providing safe and reliable service (both from the perspective of DEP and its customers), and is financially sound.²³⁷ As such, OCA submits, acquisition of Willistown would only serve to transfer a viable system to a different provider at higher cost and would not meaningfully enhance the service provided.²³⁸

²³² OCA St. 2SR at 7-8; OCA Reply Brief at 8.

²³³ See Aqua Main Brief at 13, 19; OCA Reply Brief at 9.

²³⁴ OCA St. 2SR at 7; OCA Reply Brief at 9.

²³⁵ See Aqua Main Brief at 13.

²³⁶ Aqua St. 1 at 15.

²³⁷ OCA St. 1 at 10, 14-15; OCA St. 2SR at 4; Tr. 190-94, 207-08, 226, 331.

²³⁸ OCA Reply Brief at 8-9.

While Aqua characterizes the rate impact as “hypothetical,”²³⁹ OCA explains the proposed ratemaking rate base and planned system investment in conjunction with the level of Willistown rates means the system will not generate revenue sufficient to cover its cost of service under Aqua ownership and that annual revenue deficiency of \$1.79 million will be subsidized by Aqua’s other customers.²⁴⁰ Until that subsidy is eliminated, OCA submits, existing customers will experience no benefit from the larger customer base,²⁴¹ concluding any benefit gained from regionalization and consolidation in regard to this transaction is diminished. OCA does not dispute that Aqua has expertise in providing wastewater service and its service and rates are subject to Commission regulation and oversight.²⁴² OCA explains however, the proposed transaction, must affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way, reflecting benefits that are substantial, and the various risks and harms that could result from the acquisition must be mitigated so that, all factors considered, there is an affirmative net benefit.²⁴³

OCA further submits, there is no evidence that the sale would provide an affirmative public benefit by ensuring that Willistown customers have safe and reliable service any more so than they have under the current Willistown Township ownership.²⁴⁴ Willistown is not a troubled or non-viable system, and there is no evidence that the Township’s service is less safe or adequate than Aqua’s service. To the contrary, OCA explains the evidence from Pennsylvania Department of Environmental Protection compliance and customer testimony shows that Willistown customers are already receiving service in compliance with regulatory

²³⁹ Aqua Main Brief at 14.

²⁴⁰ OCA St. 2SR at 3.

²⁴¹ OCA St. 2SR at 3.

²⁴² *See, e.g.*, Aqua Main Brief at 20.

²⁴³ OCA Reply Brief ext. at. 9-10.

²⁴⁴ OCA M.B. at 15-22; Swift/Frissora Main Brief at 12-13, 16-19; Yordan Main Brief at. 10-11.

requirements and that, in some respects, the change in ownership could diminish benefits currently received.²⁴⁵

OCA further notes the Township has offered no assurance that after exiting the sewer business, it will continue to negotiate discounted grinder pump service rates and replacements with a third-party on behalf of Township residents, nor has Aqua offered to do so.²⁴⁶ Aqua recognizes that there are Willistown customers whose usage is currently measured based on grinder pump run time and indicates that it will “study the issue” and “review possible solutions.”²⁴⁷ OCA notes Aqua does not commit that it will redress faulty high readings as the Township did, or even commit whether it will measure usage for these customers in the same manner that the Township did.²⁴⁸ Aqua’s proposed tariff states that quarterly consumption will be based on water usage or sewage flows “determined at the Company’s discretion”. Also, although Aqua claims that the ability to pay Aqua bills via text message is a benefit,²⁴⁹ OCA asserts Aqua has fewer bill payment options than the Township, and some incur an additional fee.²⁵⁰ Additionally, the Township provides customer service related to the customer-owned portion of the service lateral and Aqua does not.²⁵¹

Aqua argues that OCA witness DeAngelo’s “concern about the impact of the proposed transaction on roughly half of Township residents is not a regulatory concern.”²⁵² OCA notes that witness DeAngelo did not address how the proceeds should be utilized, witness

²⁴⁵ OCA Reply Brief at 10.

²⁴⁶ Tr. at 392; Aqua Main Brief at 25.

²⁴⁷ Aqua Main Brief at 25.

²⁴⁸ *Id.*; Aqua St. 2R at 12-13; Aqua Exh. G at 8.14.1.

²⁴⁹ Aqua Main Brief at 29.

²⁵⁰ Frissora St. 1 at 20-21; Frissora Exh. I.

²⁵¹ Frissora St. 1 at 9; Frissora Exh. M.

²⁵² Aqua Main Brief at 20.

DeAngelo noted that half of the Township residents paid into the system,²⁵³ and that benefits that might accrue to Township residents as a whole are offset for the residents who paid into the system becoming Aqua customers who will need to pay the higher rates anticipated for service under Aqua ownership.²⁵⁴

OCA submits Ms. DeAngelo agreed that improvements and upgrades to infrastructure are an important part of providing safe and adequate service and avoiding “costly urgent repairs” mentioned by Aqua witness Packer. OCA explains there is no evidence showing the Township has not historically done so or is incapable of doing so in the future.²⁵⁵ Witness DeAngelo reiterated that “the service provided by the Township has been consistently safe and reliable, in addition the Township has the cash on hand, or the ability to borrow, if needed for improvements and upgrades.”²⁵⁶

OCA further notes that although Willistown claims that Township customers will benefit from Aqua’s licensed wastewater operators being in-house,²⁵⁷ Willistown Township acknowledges, that the Township currently provides adequate service to its residents without its operators being in-house.²⁵⁸ No Willistown customer raised any issues with Willistown’s response to emergency situations or with the service provided by its contracted operators. OCA submits that Willistown’s position that in-house operators will provide a detectible difference in the level of service provided to customers is not supported by record evidence and does not outweigh the harms of the proposed transactions.²⁵⁹

²⁵³ Under Section 1329, the book value of the system does not reflect an offset for contributed plant or capital as is done in ratemaking. 66 Pa.C.S. § 1329(d)(5). In this respect, the Willistown customers’ contributions toward the acquired assets will not be reflected for ratemaking purposes when the ratemaking rate base is determined.

²⁵⁴ OCA St. 2SR at 8-9.

²⁵⁵ OCA St. 2SR at 3-4.

²⁵⁶ OCA Reply Brief at 11-12.

²⁵⁷ Willistown Main Brief at 12.

²⁵⁸ Tr. 405.

²⁵⁹ OCA Reply Brief at 12.

Economies of Scale

OCA submits Aqua has not shown that acquisitions of the Willistown customers will produce net cost reductions or efficiencies.²⁶⁰

Volume Discounts and Sharing Costs

Aqua critiques OCA witness DeAngelo's testimony which discussed how Aqua's higher cost of capital offsets the volume discounts and cost sharing.²⁶¹ OCA argues while Aqua's size creates the potential for volume discounts and cost sharing, for Willistown, its higher cost of capital will offset those savings. Because investor-owned utilities are likely to have higher cost of capital and income taxes compared to a municipally-owned system, OCA asserts the specific transaction must provide benefits that outweigh those additional costs.²⁶²

Here, Aqua claimed that operating expenses for the system might be \$300,000 (17%) per year lower for Aqua than for the Township.²⁶³ Even if there is a \$300,000 savings in operating expenses, however, OCA explains Aqua calculated that the overall increase to costs under its ownership will produce an annual revenue deficiency of \$1.79 million that will increase rates for the acquired Willistown or existing Aqua customers.²⁶⁴

In conclusion, OCA argues many of the benefits claimed by Aqua will not be realized in the short term and are being claimed without any supporting evidence. In contrast, what is certain is the detrimental rate impacts resulting from the ratemaking rate base approved in this case will be realized in the short term, in the next rate case when the Willistown system is included in Aqua's rate base. The Company estimates that the rates of a typical residential

²⁶⁰ OCA St. 2 at 8; OCA St. 2-SR at 6-7.

²⁶¹ Aqua Main Brief at 19.

²⁶² OCA St. 2-SR at 7-8.

²⁶³ See Aqua Main Brief at 19.

²⁶⁴ OCA St. 2-SR at 7. *See also* Swift/Frissora Main Brief at 13.

ratepayer in the Township could increase nearly 86% because of Aqua ownership including the revenue requirement for the proposed ratemaking rate base.²⁶⁵ If Willistown customers pay less, other Aqua customers will subsidize this transaction. This is not occurring in a vacuum. Aqua has other Section 1329 acquisitions pending or approved since its last rate base case, like East Whiteland Township, Lower Makefield Township and DELCORA, for which it also projects revenue requirement deficiencies that would put upward pressure on rates for acquired or existing customers in the short term and push the timing for customers to realize benefits from cost sharing further into the future.²⁶⁶

OSBA's Position

Section 1102/1103 Analysis

OSBA explains that an applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets.²⁶⁷ In addition, an applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.”²⁶⁸

²⁶⁵ OCA St. 2-SR at 4.

²⁶⁶ OCA Reply Brief at 12-13.

²⁶⁷ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

²⁶⁸ *City of York v. Pa. Pub. Util. Comm'n*, 295A.2d 825, 828 (Pa. 1972).

Response to Aqua’s Claim that OSBA Rate Freeze Concerns are Speculative

In its Reply Brief, OSBA notes that the Company and Willistown argued²⁶⁹ that some of the concerns raised by Mr. Kalcic were based on a speculative scenario, whereas the two-year rate freeze would instead likely expire before Aqua’s next base rate case filing.²⁷⁰ The Company asserted that Mr. Kalcic’s recommendations are based on the timing of a rate case that is dependent on many factors “which is very unlikely to occur.”²⁷¹ As explained below, OSBA argues to the extent that Aqua argues Mr. Kalcic’s concerns are based on speculative scenario, Aqua’s dismissal of these concerns is based on equally speculative scenarios.

In support of its argument, the Company stated that due to Aqua’s “current three-year filing cadence, new rates would become effective approximately May of 2025.”²⁷² However, OSBA explains “Aqua has not committed to maintaining a three-year period between rate case filings and is not subject to a stay-out commitment at this time.”²⁷³ I&E also noted that Aqua never guaranteed that it would not file a base rate case until after the rate freeze period had ended.²⁷⁴ Without an affirmative commitment as to when Aqua will file its next base rate case, OSBA asserts all scenarios are equally possible, valid and subject to consideration by the ALJ and the Commission. Nothing at this point in time requires Aqua to wait until 2024 to file its next base rate case, as the Company alludes is its intention. An intention or aim is not a binding commitment; Aqua can file its next base rate case in 2023, or even earlier, which would culminate in the realization of the concerns raised by Mr. Kalcic, i.e., the rate freeze would

²⁶⁹ Willistown endorses, adopts, and incorporates by reference the arguments pertaining to recommended conditions made by Aqua in its Main Brief (Willistown M.B. at 16).

²⁷⁰ Aqua Main Brief at 54.

²⁷¹ Aqua Main Brief at 54.

²⁷² Aqua Main Brief at 54.

²⁷³ OSBA Main Brief at 18.

²⁷⁴ I&E Main Brief at 12.

increase the annual subsidy received by the Township customers at the conclusion of that rate proceeding, and exacerbate the rate differential between Aqua's existing wastewater customers and those customers Aqua acquires from the proposed transaction with the Township.²⁷⁵ By adopting Mr. Kalcic's recommendation to reject the rate freeze, or alternatively, to impute revenues to Willistown customers, Aqua's current wastewater customers would be protected from unwarranted rate increases.²⁷⁶

Response to Aqua's Comparison to the Tobyhanna Sewer System

Aqua also argued that "the scenario raised by the opposition to the rate freeze has been addressed in the past."²⁷⁷ Aqua points to its 2018 base rate case, in which the Tobyhanna Sewer System acquired by Aqua was included in Rate Zone 4, despite the asset purchase agreement in that transaction having a rate freeze commitment.²⁷⁸ Aqua's proposed tariff treated the existing rates in effect during the rate freeze period as a special charge and once the rate freeze term expired, Tobyhanna customers became subject to Rate Zone 4 tariff rates.²⁷⁹ No existing customer was harmed or paid for the rate freeze as the Company's proof of revenue was calculated at the full cost of service rate, not the frozen existing rate.²⁸⁰ OSBA explains, as noted by Mr. Kalcic in his surrebuttal, "I offered this exact remedy for resolving the OSBA's rate freeze concerns as an alternative recommendation...Aqua need only commit to address Willistown's rate freeze in the same manner used for the acquired Tobyhanna Sewer System in the Company's first base rate proceeding following the Close of the proposed transaction."²⁸¹ However, OSBA submits Aqua has not committed to treating Willistown's rate freeze in the same manner as it treated the Tobyhanna rate freeze. OSBA explains Aqua merely stated "the

²⁷⁵ OSBA Main Brief at 18.

²⁷⁶ OSBA Main Brief at 19.

²⁷⁷ Aqua Main Brief at 55.

²⁷⁸ Aqua Main Brief at 55.

²⁷⁹ Aqua Main Brief at 55.

²⁸⁰ Aqua Main Brief at 55.

²⁸¹ OSBA St. 1-S, at 2-3.

Company would likely make a similar proposal for the Willistown system.”²⁸² There is no commitment by Aqua to treat Willistown’s rate freeze as it did the Tobyhanna rate freeze, which is why the OSBA requests that the Commission order Aqua to impute revenues to Willistown customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to Willistown in Aqua’s first base rate case after the Close of the proposed transaction, if a rate freeze is not rejected outright.²⁸³

Henry Yordan’s Position

Financial Harm Created by Rate Increases

Mr. Yordan contends that Applicant’s own direct testimony established the following:²⁸⁴

- a) The acquisition of the sewer will nearly double the cost of providing wastewater service to Willistown residents and businesses,
- b) If the price paid for the system is added to Aqua’s rate base, as requested in the Application, the rate of return granted Aqua for the \$17.5 million purchase price will create an estimated \$1.8 million annual revenue deficiency during Aqua’s first rate case after the closing,
- c) The deficiency will be subject to rate relief by the PUC and will result in increased rates to cover that amount, and
- d) Aqua’s estimated cost of capital is 7.19% after taxes. After adjusting for income taxes, this cost of capital is higher than 10%, three times Willistown’s financing costs.^[285]

²⁸² Aqua Main Brief at 55.

²⁸³ OSBA Reply Brief at 7-8.

²⁸⁴ Mr. Yordan did not utilize the common brief outline agreed upon by the Parties and did not provide citations to the record to support his arguments, as was ordered in this proceeding. A brief summary of his arguments is provided herein.

²⁸⁵ Yordan Main Brief at 4-6.

Mr. Yordan further summarized Section V, pages 13-23, of his Direct Testimony.²⁸⁶

Mr. Yordan submits that one of the benefits claimed by Aqua in its Application, is Aqua's ability and willingness to make needed infrastructure investments in the future. Mr. Yordan questioned whether Aqua will invest a sufficient amount for infrastructure during the first ten years of ownership to cover depreciation, based upon the testimony of Mr. Packer. Mr. Yordan further submits that, while Aqua plans only \$3.3 million in capital expenditures in the first 10 years, Mr. Hagan testified during the Evidentiary Hearing that his list of capital projects for the next ten years totals \$5 million, approximately 50% higher than Aqua's number.²⁸⁷

Mr. Yordan further argued that

[if] Aqua's rate base declined because of underinvestment in the infrastructure relative to depreciation, the rate base and revenue deficiency would decline, reducing the added cost to ratepayers . . . The reduction in revenue deficiency, however, would be modest (less than \$100,000 in the 10-year period) . . . Importantly, it would come at the expense of having a deteriorated sewer system in Willistown, because the wear and tear of depreciation would not have been fully replaced with new infrastructure investment. . . Aqua has two choices: (a) invest in the system at a rate at least equal to the annual wear and tear (i.e. depreciation), and, in that instance, the revenue deficiency of \$1.8 million does not change from year to year, or (b) invest in the system at a rate below the wear and tear on the system, and in that instance the revenue deficiency would decline modestly but Willistown residents would only be left with a less reliable and less valuable sewer system . . . [Mr. Yordan submits] [o]ne cannot have it both ways.^[288]

²⁸⁶ *Id.*

²⁸⁷ Yordan Main Brief at 6.

²⁸⁸ Yordan Main Brief at 6-7.

No Affirmative Benefits to Offset Increased Rates

Mr. Yordan submits the direct testimony of various residents successfully challenged most of what he characterized as unsubstantiated boilerplate assertions of public benefit in the Company testimony that accompanied the Application. Mr. Yordan explained that he testified previously that Willistown is capable of performing necessary repairs for controlling storm water infiltration and it can do so at a financing cost one-third Aqua's financing cost.²⁸⁹

Mr. Yordan disputes Mr. Packer's testimony regarding economies of scale. Mr. Yordan asserts that various administrative, support and professional costs cannot be spread over a larger number of users to create economies of scale. Mr. Yordan further asserts that Mr. Packer's claims that these administrative functions can be performed for 2,300 new customers without cost would constitute financial alchemy.²⁹⁰

Mr. Yordan points to pages 9-11 of his Surrebuttal Testimony and argues that the phenomenon Mr. Packer describes is not an economy of scale. Mr. Yordan asserts that acquiring the Willistown sewer system will not "spread fixed costs over a greater number of customers and thus bring down the price of the service for everyone." According to Mr. Yordan, some Aqua customers who belong to systems in need of very substantial infrastructure investment will be subsidized by Willistown sewer users because the Willistown sewer does not need the same amount of investment. Mr. Yordan concludes that Willistown sewer users will not benefit, but sewer users will suffer dramatically higher costs than if Willistown continued to own the system.²⁹¹

Mr. Yordan also argues that all 1329 transactions would qualify as a public benefit using Packer's argument of "economies of scale" that are not economies of scale, just plain subsidies. He asserts Aqua got its start in the wastewater business by buying distressed

²⁸⁹ Yordan Main Brief at 7.

²⁹⁰ Yordan Main Brief at 7-8.

²⁹¹ Yordan Main Brief at 9.

systems that require significant capital investment. Consequently, any system that Aqua would be interested in acquiring under 1329 would almost certainly reduce the Aqua average per customer capital expenditures in the future. Mr. Yordan argues that accepting Mr. Packer's argument that reducing average capital expenditures constituted a substantial public benefit would render 1329 Application approvals automatic.²⁹²

Fitness

Mr. Yordan asserts that Aqua has made it clear that their capital investment plans are not guaranteed either and argues that Township testimony corroborates that Willistown's planned expenditures for the next 10 years exceed Aqua's planned expenditures by 50% (\$5 million vs. \$3.3 million). Mr. Yordan concludes that Aqua might be fit to operate the system, but at a higher cost than Willistown.²⁹³

Frissora and Swift's Position

Public Interest

According to Frissora and Swift,²⁹⁴ the term "public" in this proceeding is limited to the current sewer users in Willistown, because the sewer system is a standalone system which will remain so whether or not Aqua acquires it. The one exception is with regard to regionalization, to the extent that can be accomplished. Here, they argue, regionalization has already been accomplished through the Valley Forge Sewer Authority (VFSA) and Valley Creek Trunk System (VCTS), and that will not change. The ratepayers whose waste is conveyed to the

²⁹² Yordan Main Brief at 9-10.

²⁹³ Yordan Main Brief at 10-11.

²⁹⁴ Ms. Frissora and Mr. Swift did not provide citations to the record to support their arguments, as was ordered in this proceeding. A summary of their arguments is provided herein.

VFSA directly, or through the VCTS and processed by the VFSA, is the “public” which benefits from the existing regionalization.²⁹⁵

Fitness

Frissora and Swift argue that both the Township and Aqua are qualified and experienced operators of sewer systems.²⁹⁶

Affirmative Public Benefits

Frissora and Swift assert that this Application does not meet the standard of affirmative substantial public benefit. They argue the principal issue in this proceeding is whether the proposed sewer service, operation and rates by Aqua will be a substantial improvement over the service, operation and rates currently provided by the Township. Frissora and Swift assert the Township provides quality service, favorable sewer benefits, and environmental stewardship, and that the Township can finance any improvements to the sewer system at less than half the rate of Aqua. They argue there is no evidence that service to the public, the Township sewer users, will improve if the sale to Aqua is approved.²⁹⁷

Rates Under Aqua Ownership Will Be Significantly Higher Than Under Township Ownership

Frissora and Swift argue Aqua’s future rates for sewer service to Township customers is a material consideration in the substantial public benefit analysis. “Because City of York [sic] requires the impact on rates to be considered, they argue, the Commission must address that impact when deciding whether there is substantial public benefit.”²⁹⁸

²⁹⁵ Frissora/Swift Main Brief at 10-11.

²⁹⁶ *Id.* at 11.

²⁹⁷ *Id.* at 12-13.

²⁹⁸ Frissora/ Swift Main Brief at 13; *McCloskey*, 195 A.3d at 1066.

Frissora and Swift submit that under Aqua ownership, rates to customers will be higher than under Township ownership. They argue the revenue deficiency caused by the high fair market value purchase price of \$17.5 million, if allocated 100% to the Willistown customers, will cause Willistown rates to increase 86%, and if not allocated regionally, the Willistown ratepayers will share, along with other Aqua customers, in covering 65% of the Aqua revenue deficiencies created when Aqua buys other systems. Frissora and Swift further argue that Willistown sewer users will be allocated costs to maintain and upgrade older systems without receiving any cost-sharing benefits because the Willistown system will not require the same level of investment in the intermediate future. Under Willistown ownership, Frissora and Swift argue, the Township would not have to raise rates for an equity return on a \$17.5 million purchase price because the Township already owns the sewer system. They assert for the first year of Aqua ownership, Aqua's additional required income exceeds the entire budget for Operations and Management meaning that even if Aqua could operate the sewer system at zero cost, it still would not offset the increased rates needed to pay Aqua for the \$17.5 million initial investment.²⁹⁹

Frissora and Swift further argue that capital improvements will always cost more under Aqua ownership due to Aqua's weighted average cost of capital which, while not static, will be stable over time. They also assert that Aqua does not bring economies of scale and that a rate increase under Township ownership would be substantially less than under Aqua ownership.³⁰⁰

Next, Frissora and Swift argue that the Township sets its own sewer rates which do not include dividends for shareholders, depreciation expense, Pennsylvania sales tax, or Pennsylvania or Federal taxes on revenues. They conclude the Township's financing cost is approximately 2-3 times lower than Aqua's financing cost and that Aqua's higher user rates are a detriment and harmful to users, not a public benefit.³⁰¹

²⁹⁹ Frissora/Swift Main Brief at 13.

³⁰⁰ *Id.* at 14.

³⁰¹ Frissora/Swift Main Brief at 14-15.

Aqua Ownership Will Not Substantially Improve Customer Convenience or Safety

Frissora and Swift argue Aqua has not made a credible case that it can improve on the Township's quality of service, operations, convenience or safety. They further assert that Aqua ownership introduces a fundamental public harm, as the Township cannot terminate water service for customers that are not able to stay current with wastewater service payment terms, but Aqua is able to shutoff water service for combined water and wastewater customers that are not able to meet Aqua's payment terms.³⁰²

Frissora and Swift assert that the Township provides a greater variety of bill payment options for the convenience of their customers, all of which are free of charge and that Aqua's payment options are fewer, not as convenient, and some incur an additional fee. They further contend that Aqua's provision of customer service will result in service quality reduction compared to the Township, as the Township provides customer service related to the clearing of blockages and stoppages in the customer's lateral line, a service that Aqua does not provide.³⁰³

Frissora and Swift assert the Township provides emergency service 24/7/365 and provides business hours similar to Aqua's and that the Township bills quarterly but allows monthly payments if that is preferred by the customer.³⁰⁴

Frissora and Swift also argue that Aqua's operation of the sewer system will be no safer than the Township's operation of the sewer system. They submit there is no material difference between Aqua or the Township's ability to bring skilled experienced resources to the operation of the Township's sewer system. Frissora and Swift assert the township contracts for sewer maintenance, upgrades and capital improvements with quality service providers.³⁰⁵

³⁰² *Id.* at 16.

³⁰³ Frissora/Swift Motion Brief at 16.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

Frissora and Swift contend the Township allows sewer customers to install deduct water meters to measure exterior water usage (e.g. lawn and garden irrigation; washing cars) which never enters the wastewater system and have it deducted from their sewer bill calculation. They submit that Aqua has yet to determine how their conditions will be implemented.³⁰⁶

Frissora and Swift also argue that Willistown sewer customers connected to the low-pressure portion of the system will lose the services provided by the Township for grinder pumps provided by a third-party (Pre-doc). They assert Pre-Doc bills the Township and the Township bills the resident. Aqua does not provide this service. In addition, they argue these customers have their sewer usage calculated by measuring how long the grinder pump runs during the billing period. Under Township ownership, Frissora and Swift argue, when clearly erroneous readings occur, the Township will adjust the amount to a value historically consistent with the property. Aqua has not addressed how this will occur.³⁰⁷

Inadequate Notice to Sewer Users

Frissora and Swift also raised their concerns regarding the process used by the Township related to its intention to sell the sewer system.³⁰⁸

The Public Interest

In her Reply Brief, Protestant Frissora asserts Aqua has failed to demonstrate that there is any evidence, as opposed to boilerplate assertions, that the sewer system under Aqua's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public. With regards to the Commission's goal of regionalization, the conveyance and treatment

³⁰⁶ *Id.* at 17

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 19.

of the sewage is already regionalized, and the collection portion of the system will remain standalone under Aqua ownership.³⁰⁹

Protestant Frissora submits potential rate increases are significant factors in determining substantial affirmative public benefit. She asserts while it may be reasonable for Aqua to raise rates due to projected capital investment and Aqua's high guaranteed return with after tax income, these higher rates will not offset the diminishment and in some cases elimination of customer service benefits under Aqua ownership for Willistown sewer customers. Further, she submits under Township ownership there is no revenue deficiency created by the \$17.5 million purchase price and Township financing cost is substantially lower, and that Aqua has not committed to its projected \$3.3 million in capital improvements for the Willistown system in the coming 10 years.³¹⁰

Ms. Frissora further submits that a system that is primarily a standalone collection system does not obtain substantial benefit from using licensed wastewater operators to investigate every issue reported by customers with the sewer collection system. She further asserts Aqua's continued clinging to "hypothetical rate increases"³¹¹ is contrary to the notification required by the PUC to both Aqua's existing customers and acquired customers. Ms. Frissora asserts rates will increase for the Willistown sewer users and to make any other statement is to provide misinformation.

In his Reply Brief, Attorney Swift asserts the sale to Aqua produces no substantial affirmative benefits to Willistown sewer users. In response to Aqua's Main Brief, Attorney Swift asserts Aqua ownership does not produce economies of scale; the cost of capital (i.e. financing costs) is relevant since it affects the rates charged to sewer users. Aqua's financing cost (7.12%) is more than twice the Township's long-term financing cost (3-3.5%); regionalization already exists for the Township's sewage conveyance and treatment, as Valley Forge Sewer

³⁰⁹ Aqua Statement No. 2 at 15: 14-16 and Yordan Statement No.1 at 29: 5-11.

³¹⁰ Frissora Reply Brief at 4-5.

³¹¹ Aqua's Main Brief 16.

Authority is a regional authority treating sewage for 22,000 customers in 8 municipalities, including Willistown; there is no benefit per se from PUC regulation of Aqua's service. Service in Willistown is excellent, and sewer users receive benefits not offered by Aqua as well as cheaper rates, as the Willistown sewer system is nonprofit and the Township can change its rates quickly and efficiently; Willistown is a fit operator of its sewer system as demonstrated by its 45 years of experience and lack of DEP violations, and when greater operational expertise is necessary, Willistown engages quality consulting services; the Willistown sewer system does not have urgently needed capital investment upgrades and improvements; the extent of any water infiltration in the sewer system and the cost to remedy it is speculative since Aqua has not conducted an investigation; Aqua's criticism of Childer's financial analysis is disingenuous, the Childers' Surrebuttal Testimony included six different financial models using different assumptions for interest and depreciation, where the user rates for Aqua are higher than if Willistown operates the system.³¹²

Section 1102/1103 Discussion

Section 1102/1103 Analysis - Introduction

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. A Certificate of Public Convenience shall be granted "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." These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

³¹² Swift Reply Brief at Continuation Sheet Nos. 10-11.

In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.

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

In *City of York in Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*), the Supreme Court 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.

The Pennsylvania Supreme Court addressed the Commission’s review under Section 1103 in *City of York*, where it considered a proposed merger of three telephone

companies. The Court specifically cited Section 203, the predecessor statute to Section 1103, and set forth the standard as follows:

Section [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the “service, accommodation, convenience, or safety of the public” in some substantial way.³¹³

OCA explains that, to approve the application, the Commission must determine that there are affirmative public benefits. As an integral part of that review the Commission must fully consider the harms of this acquisition on three specific groups with respect to the traditional City of York affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers, who may potentially bear costs of the Willistown system, if the Commission permits costs to be shifted under 66 Pa. C.S. § 1311(c), and (3) the existing Willistown Township customers who will be transferred to Aqua.³¹⁴

This standard was addressed by the Commonwealth Court in *Middletown Township v. Pa. Pub. Util. Comm’n*, 482 A.2d 674 (Pa. Cmwlth. 1984) (*Middletown*). In *Middletown*, to acquire part of the facilities of the Newtown Artesian Water Company, Middletown Township filed an application for a Certificate of Public Convenience. The Commission concluded that the acquisition would be a benefit to some customers but would have an adverse impact on other customers and, thus, it denied the application. The Township appealed and, in hearing the appeal, the Commonwealth Court considered the City of York standard applicable through Section 1102 and Section 1103. The Court affirmed the Commission’s decision rejecting the application stating, inter alia, that “when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely on one particular group or

³¹³ 295 A.2d at 828 (quoted in *Application of Pa.-Am. Water Co.*, Docket No. A-2016-2537209, Order at 11 (Oct. 19, 2016)).

³¹⁴ OCA Main Brief at 11-12.

geographic subdivision as might have occurred in this case.³¹⁵” The Court added that “the primary objective of the law in this area is to serve the interests of the public.³¹⁶”

An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction³¹⁷. To determine whether benefits meet this standard, the Commission may consider: “(1) the legal and technical fitness of the purchasing entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence.³¹⁸”

The Public Interest

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:

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:

³¹⁵ 482 A.2d at 682.

³¹⁶ *Id.*; see also *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).

³¹⁷ Application of CMV Sewage Co., Inc., 2008 PaPUC LEXIS 950, *30 (CMV).

³¹⁸ Application of North Heidelberg Water Co., 2010 PaPUC LEXIS 919, *20.

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.

To approve the application, the Commission must determine that there are affirmative public benefits. As an integral part of that review the Commission must fully consider the harms of this acquisition on three specific groups with respect to the traditional City of York affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers, who may potentially bear costs of the Willistown system, if the Commission permits costs to be shifted under 66 Pa. C.S. § 1311(c), and (3) the existing Willistown Township customers who will be transferred to Aqua.

Fitness

As a certificated provider of utility service, Aqua's fitness is presumed. The Commission addressed the fitness criteria in *Re Perry Hassman*,³¹⁹ As to legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission regulations.³²⁰ As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service.³²¹ As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service.

No substantial challenge was presented to the fitness of Aqua to provide the proposed service. In its Main Brief, Aqua outlined in detail the evidence to support its claim that Aqua has demonstrated that it possesses the legal, financial, technical, and managerial fitness to provide the service proposed in its Application.

³¹⁹ 55 PA PUC 661 (1982).

³²⁰ *Hassman*.

³²¹ *Hassman*.

Substantial Affirmative Public Benefits

As discussed by the Parties, many of the benefits identified by Aqua are generalizations associated with acquisitions and do not address the corresponding harm or potential harm to existing Aqua wastewater and water customers, and to the Willistown customers after acquisition.

The General Assembly has recognized that the sale of certain systems to larger, well-capitalized and well-run regulated public utilities can be prudent as it can ensure the long-term provision of safe, reliable service to customers at the reasonable rates.

To approve the application the Commission must determine that the proposed transaction benefits the public by affirmatively promoting the service, accommodation, convenience or safety of the public in some substantial way, after considering the harms of the acquisition on existing Aqua wastewater customers, the existing Aqua water customers who may potentially bear costs of the acquired system and the existing Township customers who would be transferred to Aqua.

Affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. The primary objective is to serve the interests of the public.

An acquisition provides an affirmative benefit if the benefits of the transaction, outweigh the adverse impacts of that transaction, considering the technical and legal fitness of the purchasing entity to provide service, the public need for service; the inadequacy of the existing service; and any other relevant evidence. Aqua asserts, as discussed above, that the proposed transaction will benefit both existing Aqua customers and the acquired Willistown customers. Aqua submits, among other things, that it has a record of acquiring and improving wastewater systems and the general benefit of consolidation and regionalization.

Aqua asserts benefits to Willistown customers include being a part of a larger scale, efficiently operated wastewater utility; benefits from the overlap between water and

wastewater utility operations; projected decrease in O&M costs under Company ownership; the potential estimated investment of approximately \$3.3 million in upgrades to the system over the next ten years; enhanced customer service through toll-free telephone number from 8am to 5 p.m., for regular business and a 24/7 toll-free emergency response; online bill payment options including payment by text messages and the ability to receive alerts of events impacting customer service; access to Aqua's customer assistance programs; and procedures in place under Chapter 14 of the Code to address payment, termination, reconnecting, payment arrangement and complain procedures.

Aqua asserts that existing Aqua customers will benefit as acquisition of the system will constitute an approximate 5% increase in Aqua's customer base and that there are economies of scale that can be achieved as a result of the acquisitions.

Aqua submits that the acquisition will not have an adverse effect on the service provided to existing Aqua customers and will not have any immediate impact on the rates of existing customers of Aqua or Willistown.

In order to determine if the proposed transaction provides a substantial affirmative benefit, it is necessary to consider the fitness of the purchasing entity to provide the service, the adequacy of the existing service and any other relevant evidence. The evidence in this proceeding clearly establishes the public need for the service and Aqua's fitness to provide the proposed service. In addition, the record evidence clearly establishes the adequacy of the existing service provided by the Township.

Accordingly, it is necessary, in determining the existence of affirmative public benefit, to consider the harms of the acquisition on existing Aqua water and wastewater customers as well as the existing Willistown sewage customers who would be transferred to Aqua.

Harm to Existing Aqua Wastewater and Water Customers

At least in the short term, Aqua's existing water customers are at risk for supporting the costs of acquiring the Willistown customers in this transaction. Currently, all Aqua water customer already must pay for wastewater disposal either to another provider, to Aqua, or with their individual wastewater system.

Although Aqua characterizes the anticipated rate increase as hypothetical, a rate increase to existing Aqua customers, at least in the short term, is a certainty. Aqua has other Section 1329 acquisitions pending or approved since its last base rate case, such as East Whiteland Township, Lower Makefield Township and DELCORA, for which it also projects revenue requirement deficiencies that would likely result in increased rates for acquired or existing customers in the short term and delay any potential benefits to customers from cost sharing further into the future. This is particularly so, as Aqua has proposed a 2-year rate freeze for Willistown customers. As Aqua has confirmed that it is uncertain whether or not it will file a base rate case within two years of closing, the result is that Aqua customers are at risk to cover the revenue requirement required to keep Willistown rates lower than cost for the first two years following the closing of this transaction.

Harm to Willistown Customers

There was significant public opposition to the acquisition presented at the public input hearings in this proceeding, as approximately 30 Aqua or Willistown customers testified regarding the harms that would occur should Aqua acquire Willistown's system. Existing Willistown customers testified that the Township's sewer system was already paid for by Township customers and that if the sale goes through, they will essentially be paying for the sewer system a second time. Aqua customers also testified that Aqua's service to water customers had not been adequate. One Township resident testified that the Township maintains a pumping station behind her property that includes a shared driveway and expressed concern as to whether Aqua will continue to provide similar maintenance to the pumping station. A number of Willistown customers testified they have always received excellent service at reasonable cost

from the Township, and expressed concerns about increased rates as many Willistown customers are retired and on fixed incomes.

The Adverse Impacts on Aqua’s Existing Customers and the Willistown Customers Outweigh the Benefits of the Proposed Transaction.

The current average monthly bill of a Willistown residential customer is approximately \$63.63 per month. Applying 100% of the revenue deficiency of \$1,789,000 associated with the proposed rate base addition to the existing Willistown rates, Aqua submits the average Willistown bill would increase by approximately \$54.64 per month or an 85.87% increase. Aqua asserts the calculation and percentage increase is, however, a point in time estimate reflective of revenue deficiency upon year one ownership, and while there is an expectation of increased rates going forward, Aqua asserts it is not proposing any change in rates to Willistown customers as part of this transaction.

Aqua argues the potential rate impact is outweighed by other positive benefits explaining that, while there is an expectation of increased rates as a result of the transaction, the positive factors from the transaction outweigh the possibility of increased rates; while the rates of the Willistown 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; the Willistown system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition; and that the transaction furthers a recognized legislative objective and is consistent with the Commission’s consolidation/regionalization policy.

The evidence in this case, however, does not establish that the purported benefits of acquiring the Willistown system outweigh the adverse impacts of the proposed acquisition. Although Aqua references economies of scale, the Company has not established the existence of net cost reductions or efficiencies that will be produced by the acquisition of the Willistown customers. Aqua admitted that the only benefit it attempted to quantify is a reduction in operating expenses, and Aqua estimated that operating expenses for the System might be \$300,000 (17%) per year lower for Aqua than for the Township. However, even if there is a

\$300,000 decrease in operating expenses, Aqua estimated that the overall increase to costs under Aqua's ownership will produce an annual revenue deficiency of \$1.79 million that will increase rates for the acquired Willistown or existing Aqua customers. As OCA argued, applying that deficiency to the acquired customers could increase rates by 86%. OCA further established that, if 50% of the revenue deficiency is applied to the existing Aqua customers, the estimated incremental rate effect is a 1.67% monthly increase for wastewater customers and 0.18% monthly increase for water customers. The record evidence in this case fails to establish that the acquisition would create economies of scale. OCA established that Willistown customers will not even be covering their full cost of ownership at the proposed \$17.5 million rate base, and accordingly, will not share the costs of infrastructure improvements for other parts of Aqua's service territory. Additionally, there was no showing in this case that rates would become more affordable in the long-term due to economies of scale.³²²

Although Aqua argued that its size has the potential to create opportunities for volume discounts and for sharing costs among customers outside of Willistown, Aqua did not establish that any such discounts will be offset by Aqua's much higher cost of capital. Aqua did not establish that there would be net efficiencies in costs to run the system through Aqua's acquisition.

In addition, although Aqua's provides 24/7/365 customer service, emergency contact number, and bill payment options, the Township already has a 24-hour service company, PreDoc, for low pressure systems. In addition, the Township already has the ability to address emergencies. Furthermore, although Aqua has similar bill payment services to Willistown, and Aqua provides alerts to customers and permits payment by text messaging, Willistown customers already have an online bill payment option and the Township accepts payments in-person or by mail. Aqua's bill payment options do not include in-person payment and do not provide any advantages over Willistown's current billing system besides the ability to make bill payments via text message. In addition, no evidence was presented to establish that Township customers have any issues with their current billing and payments to the Township. Here, any advantages

³²² OCA Main Brief at 18; OCA St. No. 2 at 14.

realized by Aqua's billing system and Chapter 14 services and protections are outweighed by the costs that ratepayers will bear based on the proposed ratemaking rate base.

The record evidence does not establish that the sale would provide an affirmative public benefit by ensuring that Willistown customers have safe and reliable service any more than they have under the current Willistown Township ownership. Willistown is not a troubled system and based on the information provided by Aqua and the Township, the current service provided by the Township is safe and reliable. Aqua acknowledged that under Willistown's ownership, the Township has had no DEP notices of violations in the last five years., and from 2019 to 2021, the Township had two DEP violations, and both were enforced and resolved within weeks by the Township. In that same time frame, wastewater systems that Aqua already owns in Willistown had nine DEP violations, six of which were enforced.

The evidence further established that the Township's system has the capacity to meet the demands of current and future customers, did not have any sanitary system overflows in 2020, and is not currently under a Corrective Action Plan or Connection Management Plan with DEP. As OCA asserted, the Township is already providing service that is at least as safe and reliable as the service that Aqua provides, and the continuing safe and reliable service does not establish the existence of an affirmative public benefit.

The evidence does not establish that the transaction will enable Willistown customers to receive a benefit that outweighs the detriment of the estimated increased rates. The evidence established that the Township is financially fit to complete any necessary improvements and upgrades given that the Township has cash and cash equivalents of nearly \$20 million, and that the Township has approximately \$7 million more in cash than outstanding debt. Although Aqua estimated that it will invest approximately \$3.3 million in capital improvements over the next 10 years, based on the evidence on record, the Township could make any necessary improvements and upgrades to the system, which would not present an unreasonable financial burden for the Township.

The Commission supports regionalization because, in many cases, the acquisition of smaller systems by larger systems may improve the long-term viability of the water and wastewater industry, or otherwise enhance ratepayers' daily lives and communities. However, in this particular instance, when evaluating the Willistown system and circumstances, the proposed acquisition detrimentally impacts wastewater customers in Willistown Township due to increased rates without providing any substantial or necessary benefit to the Township customers. Here, the proposed acquisition also increases costs for Aqua's current customers until and unless the Willistown customers' rates increase to cover the \$1.79 million revenue deficiency estimated by Aqua.

Economies of Scale

In addition to the discussion set forth above, OCA correctly argued that individualized analysis of every system proposed to be acquired under Section 1329 is not only in the public interest, but also necessary to ensure that each acquisition complies with the Public Utility Code, particularly Section 1102. Although Aqua established that it has the technical, managerial and financial ability, to acquire and operate the Township system, that alone does not establish that the acquisition will further the public interest. For each transaction, the acquiring entity must show that benefits will substantially outweigh the harms, which was not established with respect to the circumstances presented regarding the Willistown system and circumstances.

Volume Discounts and Sharing Costs

Although Aqua's size creates the potential for volume discounts and cost sharing, in this case, it was not established that Aqua's higher cost of capital would not offset those savings. Aqua estimated that operating expenses for the System might be \$300,000 (17%) per year lower for Aqua than for the Township, however, even if there is a \$300,000 savings in operating expenses, Aqua calculated that the overall increase to costs under its ownership will produce an annual revenue deficiency of \$1.79 million that will increase rates for the acquired Willistown or existing Aqua customers.

Many of the benefits claimed by Aqua are general benefits anticipated by an acquisition like the one proposed of the Willistown system and were not supported by any specific evidence. In contrast, the detrimental rate impacts resulting from the ultimate ratemaking rate base approved in this case will be realized in the short term, in the next rate case when the Willistown system is included in Aqua's rate base. Aqua estimates that the rates of a typical residential ratepayer in the Township could increase nearly 86% because of Aqua ownership including the revenue requirement for the proposed ratemaking rate base. If Willistown customers pay less, other Aqua customers will subsidize this transaction. Under Willistown ownership, the Township has the ability to make any necessary improvements to the system at a much more attractive financing cost than Aqua could obtain and the Township would not have to raise rates for an equity return on a \$17.5 million purchase price because the Township already owns the sewer system. Moreover, Township rates do not include dividends for shareholders, depreciation expense, Pennsylvania sales tax, or Pennsylvania or Federal taxes on revenues. The Township's financing cost is approximately 2-3 times lower than Aqua's financing cost. Aqua's higher user rates are a detriment and harmful to users, not a public benefit.

In addition, Aqua has not established that it can improve on the Township's quality of service, operations, convenience or safety. Aqua can also terminate water service for customers that are not able to stay current with wastewater service payment terms, subject to Commission regulations and protections, a result that cannot occur under Township ownership of the wastewater system. Customer service would likely be diminished in some areas under Aqua service as the Township provides customer service related to the clearing of blockages and stoppages in the customer's lateral line, and provides credits for all customers who meter outside water usage, a service and rate that Aqua will not allow customers to select unless they elected to receive that service and rate before January 20, 2021. The evidence also failed to establish that Aqua's operation of the sewer system will be safer than the Township's operations as no real difference was demonstrated regarding Aqua or the Township's ability to bring skilled experienced resources to the operation of the Township's sewer system.

In addition, the evidence established that Willistown sewer customers connected to the low-pressure portion of the system may lose the benefits currently provided by the Township for grinder pumps provided by a third-party, Pre-doc, which negotiates for services and rates with the Township and bills the Township, which then, in turns, bills the customers.

Based upon the record evidence, Aqua has failed to establish that the sewer system under Aqua's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public. In addition, the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current Aqua water and wastewater customers or existing Willistown sewer customers.

Question No. 3

Pursuant to Section 1329 of the Code, what is the ratemaking rate base of the Wastewater System assets of Willistown Township?

Section 1329 Analysis

Aqua's Position

Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. For ratemaking purposes, the valuation is the lesser of the fair market value (*i.e.*, the average of the buyer's and seller's independently conducted appraisals) or the negotiated purchase price. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts maintained by the Commission. The UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches.

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 \$17,500,000. The average of the Gannett and AUS fair market value appraisals, the “fair market value”, is \$22,363,070. Aqua concludes, the ratemaking rate base of the Willistown wastewater system, as determined in accordance with the clear and unambiguous statutory language, is, thus, \$17,500,000.

OCA proposed adjustments to the UVE appraisals resulting in a ratemaking base of \$13,500,000.

Aqua’s Application

Aqua engaged the services of Gannett Fleming to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. Willistown engaged the services of AUS for the same purpose.³²³

Gannett’s fair market value appraisal is \$25,613,000. AUS’ fair market value appraisal is \$19,113,140. The average of the two is \$22,363,070. Aqua concludes, the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$17,500,000, being the lesser of the negotiated purchase price of \$17,500,00 and the average of \$22,363,070.³²⁴

The results of the Gannett analyses and calculations are as follows:³²⁵

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$31,128,594	33.33%	\$10,375,160
Market Approach	\$21,330,105	33.34%	\$7,111,457
Income Approach	\$24,381,001	33.33%	\$8,126,188
		100%	\$25,612,805
Conclusion			\$25,613,000

³²³ *Id.*

³²⁴ *Id.* at 36.

³²⁵ Aqua St. No. 4 at 13.

The results of the AUS analyses and calculations are as follows:³²⁶

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$18,498,555	50%	\$9,249,278
Income Approach	\$18,235,751	40%	\$7,294,300
Market Approach	\$25,695,620	10%	\$2,569,562
		100%	\$19,113,140
Conclusion			\$19,113,140

Challenges to the UVE Appraisals

OCA witness Garrett proposed adjustments to the UVE appraisal approaches and a ratemaking rate base of \$13,500,000.³²⁷ Aqua argues that Mr. Garrett is, in effect, recommending a fair market value of the system that is equal to depreciated original cost. The depreciated original cost value of the system is \$13,367,274.³²⁸ Aqua submits in its recent decision in the Lower Makefield Township Section 1329 proceeding, the Commission explained that original cost is *not* the measure of fair market value in a Section 1329 proceeding:³²⁹

Aqua argues that, Mr. Garrett’s recommendation should not be adopted, as it does not meet a standard of value of fair market value and is in direct violation of Section 1329.³³⁰ Mr. Garrett’s specific adjustments to the three approaches are discussed below.

OCA submits Mr. Garrett’s recommendations are consistent with the OCA’s recommendations in prior Section 1329 proceedings and they properly reflect reasonable adjustments to the UVE appraisals under Section 1329.³³¹

³²⁶ Aqua St. No. 5 at 3.

³²⁷ OCA St. No. 1 at 6.

³²⁸ *See* OCA St. No 1 at 9-10.

³²⁹ Aqua Reply Brief. at 6 (citing McCloskey, 195 A.3d at 1055).

³³⁰ Aqua St. No. 4-R at 2.; Aqua Main Brief at 37-38.

³³¹ OCA M.B. at 26; OCA St. 1 at 6; OCA Exh. DJG-2; 66 Pa. C.S. § 1329.

Cost Approach

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

Aqua’s Gannett Cost Approach – Mr. Walker

In the Gannett appraisal, Aqua explains the Cost Approach to value is based on replacement cost new. Aqua submits 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.³³²

OCA witness Garrett adjusted the Gannett Cost Approach, using the original cost method instead of the replacement cost method.³³³ Mr. Garrett also used shorter service lives for certain plant accounts,³³⁴ resulting in lower values under the Cost Approach. Mr. Garrett adjusted the Gannett Cost Approach result from \$31,128,594 to \$12,400,050.³³⁵

Aqua argues that OCA witness Garrett’s use of the original cost approach to adjust Gannett Fleming’s appraisal is contrary to fair market valuation under Section 1329 and prior Commission decisions.³³⁶ OCA explains Aqua takes issue with the fact that Mr. Garrett “relied solely” on the original cost method without considering the replacement cost method, and Aqua argues that Mr. Garrett’s use of shorter service lives for five plant accounts in the Gannett Cost approach is wrong because it is not supported by statistical analysis. OCA submits Mr. Garrett’s use of the original cost method is both acceptable under Section 1329 and prior

³³² Aqua St. No. 4 at 16-18.; Aqua Main Brief at 38.

³³³ OCA St. No. 1 at 20.; Aqua Main Brief at 38.

³³⁴ Aqua St. No. 4-R at 4.; Aqua Main Brief at 38.

³³⁵ OCA St. No. 1 at 23.; Aqua Main Brief at 38.

³³⁶ Aqua Main Brief at 38.

Commission decisions and it is also a more accurate reflection of the FMV of the Willistown assets than Gannett Fleming's estimate using the replacement cost method.³³⁷

In this case, OCA submits the original cost method provided a more accurate indication of FMV than the replacement cost method, as evidenced by the fact that the Gannett Fleming's estimated FMV based on the original cost method was \$13.4 million, and its FMV based on the replacement cost method was nearly \$20 million higher at \$31.1 million.³³⁸ As Mr. Walker himself notes, the original cost method is useful for evaluating the reasonableness of other valuation methods, and here the \$31.1 million FMV found by Gannett Fleming is notably higher than the results produced by all other appraisals and almost twice the agreed to purchase price.³³⁹ In contrast, the \$13.4 million FMV determined by the original cost method is substantially closer to the average of all approaches, which is \$13.5 million.³⁴⁰ Thus, according to OCA the original cost method is useful for informing fair market value analysis in this case, and OCA witness Garrett appropriately used original cost as a basis for adjusting Mr. Walker's replacement cost method to find a FMV of \$12.4 million using the cost approach.³⁴¹

Aqua asserts that the Commission explained, in its recent Lower Makefield Township decision, cited above, that original cost is not applicable in a Section 1329 proceeding. Aqua submits that Mr. Garrett does *not* recommend using original cost as the basis for adjusting the AUS Cost Approach result.³⁴² Aqua argues if original cost were the appropriate method to value assets in a Section 1329 proceeding then an original cost analysis would be the only method needed. However, Aqua asserts, the value of the investment in plant and equipment for

³³⁷ OCA Main Brief at 29-30; OCA St. 1 at 20.

³³⁸ OCA Main Brief at 29-30.

³³⁹ OCA Main Brief at 30; OCA St. 1 at 19-20; Aqua Exh. Q at 24.

³⁴⁰ OCA Main Brief at 30; OCA St. 1 at 20-21.

³⁴¹ *Id.*

³⁴² Aqua St. No. 4-R at 4.; Aqua Main Brief at 39.

the Township's wastewater system assets is being determined in these proceedings based upon a standard of value of fair market value, not a standard of value of original cost.³⁴³

According to OCA, Aqua's argument that OCA witness Garrett's adjustments to the Gannett Fleming cost approach "relied solely" on the original cost method and thus are contrary to fair market valuation under Section 1329 is flawed because the Commission allows consideration of the original cost method to determine FMV.³⁴⁴ OCA submits that Aqua witness Mr. Walker relied solely on the replacement cost method to determine his FMV appraisal, even though historically the Company's UVEs have considered the original cost method in conjunction with other methods to determine FMV. See *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2016-2580061, Order at 24 (June 29, 2017) (*New Garden 2017*).³⁴⁵

Aqua cites to the Commission's decision in the Lower Makefield Township Section 1329 proceeding as support for its claim that original cost does not equate to fair market value in a Section 1329 proceeding. OCA argues the Commission did not find in *Lower Makefield* that original cost is never applicable in a Section 1329 proceeding, as Aqua claims, and in fact the Commission has already denied Aqua's argument that fair market valuation has no ties to an asset's original cost of construction minus accumulated depreciation.³⁴⁶ OCA explains that Aqua implies that the Commission's statements in *Lower Makefield* indicate that original cost may never be considered when assessing FMV under Section 1329, which is not the case. In fact, OCA submits in *Lower Makefield* Aqua itself (through Gannett Fleming) considered the original cost method along with other methods to assess FMV under the market

³⁴³ Aqua St. No. 4-R at 5 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> ; Aqua Main Brief at 39.

³⁴⁴ Aqua Main Brief at 38.

³⁴⁵ OCA Reply Brief at 14-15.

³⁴⁶ Aqua M.B. at 38 *Application of Aqua Pa. Wastewater, Inc.*, Docket No. A-2017-2605434, Order at 44 (Nov. 8, 2017) (*Limerick*).

approach.³⁴⁷ According to OCA the quote that Aqua excerpted from the *Lower Makefield* Order to argue that OCA witness Garrett’s consideration of original cost is not appropriate only indicates that the Commission does not wish to see original cost substituted for fair market value in Section 1329 proceedings; it does not indicate that original cost may never be considered when determining what fair market value should be.³⁴⁸

Shorter Service Lives

Aqua explains the estimation of the service lives is an important part of the valuation of depreciable plant assets under the Cost Approach, resulting in lower values under the Cost Approach. Mr. Garrett recommends shorter service lives for five plant accounts in the Gannett Cost Approach; however Aqua argues his recommendation is not supported by statistical analysis and should not be adopted.³⁴⁹

Aqua explains the Commission has not accepted Mr. Garrett’s proposed service lives in prior Section 1329 proceedings, but the service lives used by Gannett are consistent with the service lives approved by the Commission in prior fully litigated 1329 proceedings.³⁵⁰

Aqua submits 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, which Mr. Garrett asserts are consistent with his “proposed Iowa curves for these accounts in prior Section 1329 proceedings.”³⁵¹

Aqua submits 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

³⁴⁷ *Lower Makefield* at 32.

³⁴⁸ *Id.* at 69.

³⁴⁹ Aqua St. No. 4-R at 6.; Aqua Main Brief at 39.

³⁵⁰ Aqua St. No. 4-R at 8.; Aqua Main Brief at 39.

³⁵¹ Aqua St. No. 4-R at 6.; Aqua Main Brief at 40.

of Indiana (Indiana Study), and that Mr. Garrett asserts his recommended service life for Services (account 363.20) is consistent with his proposal for this account in prior Section 1329 proceedings.³⁵²

According to Aqua, 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.³⁵³ Aqua asserts the data for CWW's and WWW's Force Mains account and Gravity Mains account is not statistically significant.³⁵⁴ Aqua asserts Mr. Garrett provided no evidence that the CWW and WWW assets are comparable to the Township assets. Instead, Aqua argues 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.³⁵⁵

Contrary to the service lives he proposes here, Aqua submits 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, in his recent depreciation testimony in the Blue Granite Water Company rate case.³⁵⁶

Aqua notes, in the Indiana Study, Mr. Garrett 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, and an average service life of 55 years for Structures and Improvements, Treatment (account 354.40) in this proceeding but recommended

³⁵² Aqua St. No. 4-R at 7.; Aqua Main Brief at 40.

³⁵³ Aqua St. No. 4-R at 7, *citing* Cause No. 45039 before the Indiana Utility Regulation Commission.; Aqua Main Brief at 40-41.

³⁵⁴ Aqua St. No. 4-R at 7. 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 7.; Aqua Main Brief at 41.

³⁵⁵ Aqua St. No. 4-R at 7.; Aqua Main Brief at 40-41.

³⁵⁶ Aqua St. No. 4-R at 9.; Aqua Main Brief at 41.

65 years in his Indiana Study.³⁵⁷ He recommended an average service life of 45 years for Services (363.20) in this proceeding but recommended 55 years in his Indiana Study.³⁵⁸ Aqua states that Mr. Garrett has provided no evidence that the assets which were the subjects of the Indiana study are comparable to the Willistown assets and that it was neither reasonable nor appropriate for Mr. Garrett to choose shorter service lives in his cost approach.³⁵⁹

OCA asserts it was entirely reasonable for Mr. Garrett to use the Indiana study to inform his service life recommendations in the present case, and the shorter service lives (as compared to Gannett Fleming's service lives) that Mr. Garrett recommends are both reasonable and appropriate³⁶⁰. Aqua takes issue with the lack of "statistical analysis" behind Mr. Garrett's service life calculations, but OCA argues neither Gannett Fleming nor AUS Consultants appear to have performed this statistical analysis either.³⁶¹ OCA asserts the Township did not maintain the requisite records about asset placements and retirements, so the UVEs used their subjective judgment to calculate service lives. Mr. Garrett's service life recommendation is appropriately conservative, given the need to rely on comparative analyses in lieu of utility-specific data.³⁶²

OCA further submits Mr. Garrett's recommended service lives for the Township's pumping account and treatment account were calculated using the same Iowa curves that Mr. Weinert of AUS Consultants used.³⁶³ The OCA's proposed service lives for the force and gravity mains accounts are the same as what Gannett Fleming proposed for those accounts in an

³⁵⁷ Aqua St. No. 4-R at 9-10.; Aqua Main Brief at 41.

³⁵⁸ Aqua St. No. 4-R at 9-10. The service lives in Mr. Garrett's Indiana Study are between 18% to 22% longer than those that he recommends for the Township for the same accounts.; Aqua Main Brief at 41.

³⁵⁹ OCA Reply Brief at 17.

³⁶⁰ OCA Main Brief at 31-32; OCA St. 1SR at 9.

³⁶¹ OCA St. 1SR at 10.

³⁶² OCA Main Brief at 28-29; OCA St. 1SR at 10.

³⁶³ A more detailed discussion of Iowa curves may be found in the OCA's Main Brief at 28-29, and in OCA Statement 1, App. A.

Indiana Utility Commission proceeding.³⁶⁴ Gannett Fleming has failed to justify why its longer proposed service lives are reasonable in this proceeding, and thus the OCA's shorter proposed service lives are most appropriate.³⁶⁵

Cost Approach Iowa Curves

Aqua explains the disagreement with the OCA's Cost Approach analysis is more than a disagreement over Iowa curves. Aqua asserts OCA's use of original cost to adjust the Gannett Cost Approach is contrary to fair market valuation under Section 1329 and prior Commission decisions, including the recent decision in the Lower Makefield Township 1329 proceeding where, Aqua submits, the Commission stated that original cost is not applicable in a Section 1329 proceeding.³⁶⁶

In respect to service lives, OCA witness Garrett chose the shortest lives from an Indiana Study, the Gannett Appraisal and the AUS Appraisal to adjust the Gannett Cost Approach. Aqua asserts this was neither reasonable nor appropriate and does not meet a standard of value of fair market value. Aqua submits the service lives used by Gannett are consistent with the lives accepted by the Commission in prior fully litigated 1329 proceedings.³⁶⁷

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 Depreciation by reducing the estimated service lives for several plant categories.³⁶⁸ The

³⁶⁴ *Id.*

³⁶⁵ OCA Main Brief at 30; OCA St. 1SR at 9.

³⁶⁶ *See* Aqua Main Brief, Section V.C.4.a.i at 38-39.

³⁶⁷ *See* Aqua Main Brief, Section V.C.4.a.i at 39-41.

³⁶⁸ Aqua St. No. 5-R at 6.; Aqua Main Brief at 42.

impact of Mr. Garrett's adjustments reduces the AUS Cost Approach result from \$18,498,555 to \$16,178,137.³⁶⁹

Aqua submits Mr. Garrett simply indicated that he made the AUS service lives the same as those he used for Gannett.³⁷⁰

Aqua submits the table present 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.³⁷¹ 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 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.³⁷²

Aqua asserts the Aqua and PAWC depreciation studies show a service life in a range of 75-80 years for Gravity Collection Mains demonstrating, according to Aqua, that the 80-year service life used in the AUS Appraisal is reasonable.

In contrast, Aqua asserts Mr. Garrett's 60-year service life understates the actual service life for gravity mains constructed and serving Pennsylvania customers and it should not

³⁶⁹ 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 15.; Aqua Main Brief at 42.

³⁷⁰ Aqua St. No. 5-R at 7-8, referencing page 19 and 16-17 of Mr. Garrett's direct testimony.; Aqua Main Brief at 42.

³⁷¹ Aqua St. No. 5-R at 10-11.; Aqua Main Brief at 43.

³⁷² Aqua St. No. 11-12.; Aqua Main Brief at 43.

be adopted.³⁷³ In its Reply Brief, Aqua contends the AUS service lives are correct because they are based on actual service life experience of wastewater plant.³⁷⁴

Aqua claims that Mr. Garrett provided no basis for his recommended service lives, and used the same ones that he used to adjust the Gannett Fleming cost approach.³⁷⁵ OCA submits both Mr. Garrett and Mr. Weinert from AUS Consultants based their service life claims on data from other cases.³⁷⁶ OCA argues Aqua’s “specific reference to depreciation studies presented by [PAWC]” does not make its service life estimates inherently more reliable than Mr. Garrett’s own reference to other Section 1329 proceedings to calculate his proposed service lives.³⁷⁷ OCA notes there is no utility-specific actuarial data available for the Willistown Township system assets, so it is most reasonable to be conservative when calculating the appropriate service lives for various accounts.³⁷⁸

Without more information OCA asserts, Mr. Garrett’s proposed shorter service lives are most reasonable and result in a Renewed Cost New Less Depreciation (RCNLD) of approximately \$26.336 million as opposed to AUS Consultants calculated RCNLD of \$30.113 million.³⁷⁹ Using this lower RCNLD, the OCA recommends a cost approach valuation of \$16.1 million for the Willistown System.³⁸⁰

³⁷³ 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 Willistown mains are plastic. In 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.; Aqua Main Brief at 43.

³⁷⁴ See Aqua Main Brief, Section V. C. 4. A. ii, pages 42-43; Aqua Reply Brief at 19.

³⁷⁵ Aqua Main Brief at 42.

³⁷⁶ OCA Main Brief at 33; OCA St. 1SR at 11.

³⁷⁷ Aqua Main Brief at 42; OCA Main Brief at 33; OCA St. 1SR at 11.

³⁷⁸ OCA Main Brief at 34; OCA St. 1SR at 11-12, OCA Reply Brief at 18.

³⁷⁹ OCA Main Brief at 34; OCA St. 1 at 25.

³⁸⁰ *Id.*; OCA Exh. DJG-12; OCA Reply Brief at 18-19.

Market Approach

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

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.³⁸¹ Mr. Garrett did not propose any adjustment to the market multiples method but did propose adjustments to the selected transaction method. Aqua submits the total 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 \$21,330,105 to \$18,127,961.³⁸²

Aqua submits Mr. Garrett's adjustments include using rate base value in lieu of purchase price, excluding some financial statement metrics, changes to metrics and the removal of selected transactions utilized by Gannett. Aqua asserts Mr. Garrett's recommendations do not meet a standard of value of fair market value and are in direct violation of Section 1329.³⁸³

Ex Ante and Ex Post Data

Aqua explains that 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. Aqua asserts, Mr. Garrett, however, relied solely on *ex-post* data, excluding *ex-ante* data from his analysis. Aqua asserts an identical approach of excluding *ex-ante* data

³⁸¹ Aqua St. No. 4 at 24.; Aqua Main Brief at 44.

³⁸² OCA St. No. 1 at 9 and 11.; Aqua Main Brief at 44.

³⁸³ Aqua St. No. 4-R at 17-18.; Aqua Main Brief at 44.

(financial statements) was recommended by OCA and rejected by the Commission in the Cheltenham Township Section 1329 proceeding.³⁸⁴

Aqua asserts Mr. Garrett also substituted the purchase price paid with the fair market value rate base approved by the Commission. Aqua asserts that approach also was recommended by the OCA and rejected by the Commission in the Cheltenham proceeding.³⁸⁵

In its Reply Brief, Aqua argues that OCA witness Garrett's adjustments to the Gannett Fleming market approach are contrary to Commission precedent.³⁸⁶ Aqua argues that Mr. Garrett wrongfully substituted purchase price paid with the fair market value rate base approved by the Commission in his analysis, and that Mr. Garrett wrongfully excluded *ex-ante* data from his analysis.³⁸⁷ Aqua relies on the *Cheltenham* case to support each of these assertions.³⁸⁸

OCA argues Mr. Garrett's reliance on *ex-post* data in this proceeding is consistent with the OCA's recommendations in prior Section 1329 proceedings and does not have a material impact on the market approach valuation.³⁸⁹ Further, by excluding *ex-ante* data OCA explains Mr. Garrett arrived at a higher valuation than Gannett Fleming, indicating that he is not selectively choosing parts of his appraisals to reach particular results, as Aqua has claimed.³⁹⁰

OCA asserts Mr. Garrett's use of Commission-approved rate base to make a valuation under the market approach is also acceptable since Commission-approved rate base

³⁸⁴ Aqua St. No. 4-R at 18-19.; Aqua Main Brief at 44-45.

³⁸⁵ Aqua St. No. 4-R at 19.; Aqua Main Brief at 44-45.

³⁸⁶ Aqua Main Brief at 44-45; Aqua St. 4R at 19.

³⁸⁷ *Id.*

³⁸⁸ *Id.*; *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2019-3008491 (Oct. 24, 2019) (*Cheltenham*). OCA Reply Brief at 19.

³⁸⁹ OCA St. 1SR at 4.

³⁹⁰ Aqua Main Brief at 46.

represents a market transaction.³⁹¹ Further, OCA submits that using Commission-approved rate base here helps address the concerns that the Commission expressed in *Cheltenham* about allowing UVEs to use purchase prices that are higher than the Commission-determined ratemaking value when assessing an asset’s FMV.³⁹² The Commission expressed concern that using purchase price to determine FMV has the potential to create a circular pattern that rewards utilities for paying excessive purchase prices.³⁹³ The Commission acknowledged that this outcome would be contrary to the public interest and would “likely result in unjust and unreasonable rates.”³⁹⁴ OCA asserts using Commission-approved rate base to determine FMV under the market approach helps to avoid this concern.³⁹⁵

OCA further argues the only reason that the Commission ultimately accepted the UVE’s use of purchase price instead of Commission-determined rate base in the *Cheltenham* case was because the Commission was concerned that Commission-determined rate base represented a hypothetical assumption of market value rather than an actual indication of market value.³⁹⁶ However, the OCA explains once the Commission determines a rate base both parties still have the freedom to choose not to move forward with the proposed transaction.³⁹⁷ Thus, OCA submits the Commission-determined rate base does represent a market sale that must be agreed to by both buyer and seller. It is not a hypothetical value, and its use is acceptable to determine a valuation of Willistown Township’s assets under the market approach.³⁹⁸

³⁹¹ OCA Main Brief at 38; OCA St. 1SR at 6.

³⁹² *Cheltenham* at 57.

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ OCA Reply Brief at 20.

³⁹⁶ *Id.* at 58; OCA Reply Brief at 20.

³⁹⁷ OCA Main Brief at 38; OCA St 1SR at 6.

³⁹⁸ *Id.* OCA Reply Brief at 20.

Selected Transactions

Aqua submits Gannett's analysis includes information for 16 selected transactions, but Mr. Garrett included only six selected transactions in his analysis. Aqua submits that Mr. Garrett did not explain why he excluded ten transactions.³⁹⁹ Aqua submits 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.⁴⁰⁰

Aqua argues that Mr. Garrett's adjustment to the Gannett analysis is based on an unreliably small sample size of only three transactions due to his excluding numerous selected transactions and relying solely on collection/distribution systems. Aqua argues Mr. Garrett compounded his small sample size problem by excluding transactions that he viewed as too high or too low.⁴⁰¹

In its Reply Brief, Aqua asserts OCA witness Garrett acknowledged that, conceptually, he does not believe that it is unreasonable to include integrated wastewater transactions in a selected transaction analysis,⁴⁰² but he excluded *all* integrated transactions from his analysis.⁴⁰³ He excluded other collection/distribution system transactions, and, in the end, relied on just three transactions – East Bradford, Mahoning and Upper Pottsgrove,⁴⁰⁴ Aqua argues 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

³⁹⁹ Aqua St. No. 4-R at 20.

⁴⁰⁰ Aqua St. No. 4-R at 21.; Aqua Main Brief at 45.

⁴⁰¹ Aqua St. No. 4-R at 21-22.; Aqua Main Brief at 45-46.

⁴⁰² OCA St. No. 1 at 9.

⁴⁰³ OCA St. No. 1, Exhibit DJG-4.

⁴⁰⁴ OCA St. No. 1, Exhibit DJG-4.

have been \$16,573,350. If he had included all collection/distribution systems and used only *ex-post* data, his methodology would have produced a value of \$19,602,362.⁴⁰⁵

Aqua also argues that Mr. Garrett's selected transactions under the market approach are an unreliably small sample size, and that Mr. Garrett did not explain his choices to include or exclude certain transactions.⁴⁰⁶ OCA explains Mr. Garrett explained his decision to include only transactions involving collection/distribution systems in his market approach analysis in his testimony.⁴⁰⁷ Willistown Township owns only one small wastewater treatment plant which is why it may be properly characterized as a collection-only system.⁴⁰⁸ OCA asserts it is not reasonable to include integrated systems in the market approach analysis, as Mr. Walker of Gannett Fleming does, when those systems are incomparable to the Willistown system.⁴⁰⁹

OCA submits the integrated systems that Mr. Walker includes in his analysis have substantially higher FMVs than both the negotiated purchase price for the Willistown system and all other FMV appraisals of the Willistown system, except for the FMV determined by Gannett Fleming under the cost approach.⁴¹⁰ Mr. Walker himself did not give as much weight to the integrated systems that he included as he did to the collection/distribution assets, indicating that he too knew that the integrated systems are not comparable to the Willistown System.⁴¹¹ Apart from excluding integrated systems from his analysis, OCA notes that Witness Garrett excluded transactions from his proposed Gannett Fleming adjustments only when the transactions did not contain the data necessary to make the relevant calculations under the selected transactions

⁴⁰⁵ See Aqua Main Brief, Section V.C.4.b.i at 46.

⁴⁰⁶ Aqua Main Brief at 45-46.

⁴⁰⁷ OCA's Main Brief. OCA M.B. at 36; OCA St. 1 at 10; OCA St. 1SR at 5.

⁴⁰⁸ OCA Main Brief at 36; OCA St. 1 at 9.

⁴⁰⁹ OCA Main Brief at 36; OCA St. 1 at 10.

⁴¹⁰ OCA Reply Brief at 21.

⁴¹¹ OCA Main Brief. at 37; OCA St. 1 at 10; Aqua Exh. Q at 41.

approach.⁴¹² After excluding these transactions from his market approach valuation, Mr. Garrett found an FMV of \$18,127,961, which OCA argues is more reasonable than the \$21,330,105 FMV determined by Gannett Fleming.⁴¹³

AUS Market Approach

Aqua explains, the AUS 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.⁴¹⁴

Mr. Garrett testified that he proposed two adjustments to the AUS Market Approach. He substituted the Commission determined rate base for purchase price in the transactions that he analyzed and he challenged AUS' weighting of transactions.⁴¹⁵ Mr. Weinert submits, in addition to these two 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 and Lower Makefield transactions in his analysis.⁴¹⁶ Mr. Garrett's proposed adjustments reduce the AUS market approach to value from \$25,696,620 to \$20,483,109.⁴¹⁷

Substitution of Rate Base for Purchase Price

Mr. Weinert of AUS 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

⁴¹² OCA Main Brief at 36; OCA St. 1SR at 5.

⁴¹³ OCA Main Brief at 37; OCA St. 1 at 11. OCA Reply Brief at 21.

⁴¹⁴ Aqua Main Brief at 46.

⁴¹⁵ OCA St. No. 1 at 14.; Aqua Main Brief at 46.

⁴¹⁶ Aqua St. No. 5-R at 2.

⁴¹⁷ Aqua Main Brief at 46-47.

it does not represent a market transaction. (See *The Appraisal of Real Estate* 14th Edition, page 58).⁴¹⁸

Aqua asserts the conditions under which the resultant rate bases were derived in the various Section 1329 applications do not meet the definition of market value. Also, Aqua submits 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 asset purchase agreement. Aqua submits it was the asset purchase agreements which AUS utilized in developing its market comparable analysis for the Market Approach in its appraisal.⁴¹⁹

Using Rate Base to Perform a Market Approach Valuation

Aqua argues that Mr. Garrett wrongfully substituted Commission-determined rate base for purchase price in his adjustments to the AUS market approach.⁴²⁰ Aqua also argues that buyer and seller are under “duress” when they agree to Commission-approved rate base.⁴²¹ .

OCA contends this argument is flawed because Section 1329 transactions are not comparable to purely market-driven transactions, such as real-estate transactions.⁴²² OCA submits the incentives that are present in competitive marketplace transactions to maximize profit are not present in Section 1329 transactions, which is in part why the Section 1329 regulations exist at all.⁴²³ OCA asserts the Commission establishes a ratemaking rate base that is lower than the purchase price of any given transaction, the Commission is finding that the

⁴¹⁸ Aqua Main Brief at 47.

⁴¹⁹ Aqua Main Brief at 47.

⁴²⁰ Aqua Main Brief at 46.

⁴²¹ *Id.* OCA Reply Brief at 21-22.

⁴²² OCA Main Brief at 39; OCA St. 1 at 7.

⁴²³ *Id.*; 66 Pa. C.S. § 1329.

purchase price does not comport with the fair market value for that transaction.⁴²⁴ Mr. Garrett explained:

For example, the purchase price in the Limerick transaction was \$75.1 million; however, the ratemaking rate base based on fair market value, as determined by the Commission, was \$64.4 million. Suppose the winning bid had been even higher at \$90 million – even further divergent from the fair market value. Yet this is still the figure Mr. Walker [and Mr. Weinert] would have presumably relied on in his selected transaction analysis, despite the fact that it would be grossly excessive relative to the Commission’s ultimate determination. We are using the selected transactions method (and all other models in the case) for the sole purpose of helping the Commission determine the fair market value in this proceeding.^{425]}

Further, OCA asserts once the Commission establishes the appropriate FMV, both parties have the freedom to not go forward with the transaction, or to still go forward with a higher agreed-upon purchase price if they wish do so. OCA submits that Commission determined rate-base only establishes the amount of the transaction that is fair to recover from ratepayers. Parties do not agree to Commission determined FMV under “duress.”⁴²⁶ However, OCA submits that most frequently both buyer and seller do agree to move forward with the Commission-determined rate base in a transaction, and thus that is the best indication of FMV for the purpose of performing a valuation under the market approach.⁴²⁷

Weighting

Aqua argues 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. Aqua further asserts the use of a transaction size weighted average produces a weighted average with

⁴²⁴ OCA St. 1SR at 3.

⁴²⁵ *Id.* at 3-4.

⁴²⁶ Aqua Main Brief at 47.

⁴²⁷ OCA Reply at 22.

superior statistics as is demonstrated by the mean and its standard deviation shown in the Table presented on page 5 of Mr. Weinert's rebuttal testimony.⁴²⁸

Using Mr. Garrett's data and a weighted average of the purchase price to CORLD, Aqua submits the weighted mean is 0.8573 with a standard deviation of 0.0879 versus Mr. Garrett's use of a simple average of 0.7778 with a standard deviation of 0.1584. Aqua asserts the weighted average result produces a more reliable market indicator, as demonstrated by a standard deviation of 0.0879 (or nearly twice a closer fit to the data), thereby making the weighted average far superior to a simple mean.⁴²⁹

Aqua argues that Mr. Garrett's use of a simple average in his market analysis is a "less reliable market comparable indicator" than Mr. Weinert of AUS Consultant's use of a weighted average.⁴³⁰ However, OCA argues it is Mr. Weinert's weightings that produce an unreasonable result in this case as Mr. Weinert's weightings allow transactions with higher purchase prices to have more influence than lower-priced transactions.⁴³¹ For Mr. Weinert's weightings to be acceptable, OCA asserts he would have to demonstrate that it is appropriate in this case for larger transactions to influence his market approach under Section 1329 more than smaller transactions.⁴³² OCA argues Mr. Weinert has not put forth any evidence in this proceeding to support his use of the weighted average other than his own unexplained assertion that it is "more reliable."⁴³³ OCA asserts it has put forth evidence demonstrating that the use of the weighted average would cause large transactions such as the \$159 million McKeesport transaction to have the greatest statistical weighting in this proceeding, when the McKeesport

⁴²⁸ Aqua Main Brief at 47.

⁴²⁹ Aqua St. No. 5-R at 6.; Aqua Main Brief at 47-48.

⁴³⁰ Aqua Main Brief at 47-48.

⁴³¹ OCA Main Brief at 39; OCA St. 1 at 8.

⁴³² *Cheltenham* at 69.

⁴³³ Aqua Main Brief at 48; Aqua St. 5R at 6.

transaction cannot reasonably be compared to the Willistown assets.⁴³⁴ Mr. Garrett's calculations give equal weight to the transactions that he appropriately selected to adjust the AUS market approach FMV of the Willistown system to be approximately \$20.5 million.⁴³⁵

Aqua further asserts that 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 5 of Mr. Weinert's rebuttal testimony. Reliance on a simple average, according to Aqua, as proposed by the OCA, as opposed to the more accurate purchase price weighted average, produces a less reliable market comparable indicator.⁴³⁶

Income Approach

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

The Gannett Income Approach

Aqua explains 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.⁴³⁷ Aqua submits Gannett has applied the DCF method as its Income Approach to valuation in fourteen Section 1329 fair market value proceedings. Aqua notes, the Commission has not adjusted Gannett's DCF recommendation in any one of those prior proceedings.⁴³⁸

⁴³⁴ OCA Main Brief at 39; OCA St. 1 at 8.

⁴³⁵ OCA Main Brief at 40; OCA St. 1 at 14.

⁴³⁶ *See* Aqua Main Brief, Section V.C.4.b.ii at 47-48.

⁴³⁷ Aqua St. No. 4 at 18.; Aqua Main Brief at 48.

⁴³⁸ Aqua St. No. 4-R at 13-14.; Aqua Main Brief at 48.

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. Mr. Garrett also disagrees with the discount rates used by Gannett and presents a different discount rate. Aqua asserts Mr. Garrett's recommendations do not meet a standard of value of fair market value and are in direct violation of Section 1329.⁴³⁹ The impact of Mr. Garrett's adjustments reduces the Gannett Income Approach result from \$24,381,001 to \$9,165,146.

Different Model

Aqua submits Mr. Garrett used a capitalization of earning or cash flow method model in his Income Approach analysis. Aqua explains the capitalization of earning method converts a single base economic income number to a value by dividing it by a capitalization rate, however, according to Aqua, the Commission has *never* accepted the capitalization of earnings method recommended by Mr. Garrett in a Section 1329 fair market value proceeding.⁴⁴⁰

Aqua submits 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. Aqua submits that Gannett used the DCF method to be consistent with the required standard of value of fair market value.⁴⁴¹ The DCF method "is based on the principle of anticipation, i.e., value is created by the anticipation of future benefits. Aqua asserts DCF analysis reflects investment criteria and requires the appraiser to make rational and supportable assumptions."⁴⁴²

⁴³⁹ Aqua St. No. 4-R at 11.; Aqua Main Brief at 48-49.

⁴⁴⁰ Aqua St. No. 4-R at 13-14.; Aqua Main Brief at 49.

⁴⁴¹ 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>.; Aqua Main Brief at 49.

⁴⁴² 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" at 6.; Aqua Main Brief at 49.

Aqua asserts Mr. Garrett's recommendation is comprised of a single cash flow, under current ownership and operations from the year 2018. Although Mr. Garrett states that the single 2018 cash flow that he utilized is from the Gannett appraisal, Aqua argues he failed to disclose that the single cash flow was not used in the Income Approach to valuation used in Gannett's appraisal. Specifically, the Income Approach to valuation used in the Gannett appraisal is based on projected cash flows beginning in 2022 and thereafter. Aqua explains, Gannett did not use the single year 2018 cash flow utilized by Mr. Garrett.⁴⁴³

Aqua asserts the "free cash flow from operations" that Mr. Garrett used in his comparable earnings analysis is inappropriate, arguing that the 4.4% discount rate used by Mr. Garrett is not appropriate for fair market valuation purposes.

Aqua witness Mr. Walker asserts revenue and Earnings Before Interest and Taxes (EBIT) are from a single year that does not include income taxes or a fair rate of return. Depreciation is based on original cost, not current value. Subtraction of income taxes is not consistent with current ownership and, notably, the EBIT of \$82,637 used by Mr. Garrett is equivalent to a before income tax overall rate of return of only 0.27% to 0.67% on the value of net plant, based on Gannett Cost Approach (\$31,128,594) or the OCA Cost Approach (\$12,400,050), and is clearly below the zone of reasonable returns for public utility assets.⁴⁴⁴

Mr. Walker also testified why Mr. Garrett's discount rate of 4.4% is not appropriate and is not determined in accordance with accepted valuation practice.⁴⁴⁵ According to Mr. Walker 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

⁴⁴³ Aqua Main Brief at 49.

⁴⁴⁴ Aqua St. No. 4-R at 14.

⁴⁴⁵ Aqua St. No. 4-R at 15-17.

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.⁴⁴⁶ Further, Mr. Garrett did not recommend a terminal value adjustment in this proceeding; he utilized a constant growth rate model.⁴⁴⁷

Aqua critiques the “free cash flow from operations” that OCA witness Garrett utilized in his comparable earnings analysis and concludes that a 4.6% discount rate “was not determined in accordance with accepted valuation practice.”⁴⁴⁸ Each witness, including the UVEs, arrived at different valuations as a result of the inputs that were utilized. OCA asserts the difference between OCA witness Garrett’s and the UVE’s income approaches was that OCA witness Garrett based his FMV analysis on current ownership and cash flow metrics, rather than future ownership.⁴⁴⁹ OCA submits that Aqua, however, is essentially arguing that any adjustment to the DCF of any UVE, even when the DCFs utilized by the UVEs are not the same, is not in accordance with accepted valuation practices.⁴⁵⁰

OCA witness Garrett selected the 2018 cash flow data as the basis of his cash flow analysis because, unlike future periods of time, the data are known.⁴⁵¹ Moreover, using the data from any of the following five years (actual or projected) would have resulted in a *negative* indicated FMV.⁴⁵² OCA witness Garrett testified as follows:

⁴⁴⁶ Aqua Reply Brief at 21-22.

⁴⁴⁷ OCA St. 1SR at 12; OCA Reply Brief at 23-24.

⁴⁴⁸ The OCA notes that Aqua generally refers to testimony but did not brief the reasons for their disagreement with OCA witness Garrett’s use of “free cash flow from operations.” Additionally, it should be noted that the process of discounting projected cash flows is synonymous with utilizing free cash flow from operations. *See* OCA St. 1SR at 14.

⁴⁴⁹ OCA St. 1SR at 16.

⁴⁵⁰ OCA Reply Brief at 24.

⁴⁵¹ OCA St. 1SR at 14.

⁴⁵² The data presented by Gannett Fleming indicates the following operating income by year: 2018: \$82,637; 2019: -\$142,437; 2020 (budgeted): -\$428,579; 2021 (budgeted): -\$8,933; 2022 (budgeted): -\$55,943; 2023 (budgeted): -\$104,577. *See* Aqua Exh. Q at Exh. 13, 1 of 6.

In my view, the value of an asset is primarily based on its present value. I am not suggesting that projecting future cash flows should entirely ignore future ownership, however, the various and numerous assumptions Mr. Walker has made in his discounted cash flow model indicate a much different (and higher) value than if the analysis is based on a reasonable projected growth (and discount) of know cash flow metrics under current ownership. If, for example, a real estate investor were looking to buy a house to rehab and rent, the investor would still use present cash flow metrics when estimating the FMV, rather than the higher cash flow she might project once the rehab is complete. Future ownership can impact value, but the FMV of an asset is primarily driven by present value. In my opinion, the Commission should place a greater weight on the data we know about cash flow, rather than Mr. Walker's projected data.⁴⁵³

Similar to Aqua's criticism of OCA witness Garrett's use of 2018 financial statements, Aqua also states that Mr. Weinert disagreed with OCA witness Garrett's use of 2018 financial statements.⁴⁵⁴ Aqua notes that "[e]xpenses and rate base will change as a result of the sale."⁴⁵⁵ The OCA agrees that expenses and rate base will change as a result of the sale. The fair market value of the Township's assets, however, is what the value is today, not what the value could speculatively be someday, if and when a buyer adds value to the system. As discussed by OCA witness Garrett, it is more appropriate to base an income approach FMV analysis under Section 1329 on current ownership and cash flow metrics, rather than future ownership.⁴⁵⁶ The importance of basing the Income Approach on present ownership under Section 1329 has been recently discussed by the Commission in the Aqua/Lower Makefield Section 1329 proceeding as follows:

As previously indicated, the Income Approach is based on the premise that the value of a property is the *present* value of the future net benefits of owning the property.⁴⁵⁷

⁴⁵³ OCA St. 1SR at 14-15.

⁴⁵⁴ Aqua Main Brief at 50.

⁴⁵⁵ Aqua Main Brief at 50.

⁴⁵⁶ OCA St. 1SR at 16.

⁴⁵⁷ *Lower Makefield* at 69 (emphasis added).

The AUS Income Approach

AUS also used the DCF method to determine the Income Approach result.⁴⁵⁸ Aqua asserts Mr. Garrett, however, substituted his own Income Approach for the AUS Approach. Using the Township's 2018 financial information, he performed a direct capitalization of similar cashflows from operations to perpetuity. The impact of Mr. Garrett's adjustment according to Aqua reduces the AUS Income Approach result from \$18,235,751 to \$9,165,146.⁴⁵⁹

Mr. Weinert rejected Mr. Garrett's adjusting of the AUS Income Approach, arguing that Mr. Garrett assumes, erroneously, that revenues and expenses as reported in Willistown's 2018 financial information will be the operating results of the buyer.⁴⁶⁰ Aqua submits expenses and rate base will change as a result of the sale, and that 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, 2020.⁴⁶¹

Mr. Weinert responded to Mr. Garrett and presented an adjusted OCA model in his rebuttal testimony. Aqua submits, when adjusted for the transition of the Township wastewater operation to a rate regulated utility, the OCA model produces an income approach indicator of \$18,626,047 which is nearly the same as the AUS income approach indicator of \$18,235,751.⁴⁶²

Aqua further states that OCA witness Garrett's estimated cost of equity of 6.0% is "far below what the Commission regularly assumes is the cost of equity, which was 9.85% based

⁴⁵⁸ Aqua St. No. 5 at 17.; Aqua Main Brief at 50.

⁴⁵⁹ Aqua Main Brief at 50.

⁴⁶⁰ Aqua Main Brief at 50.

⁴⁶¹ Aqua St. No. 5-R at 17 and 19.; Aqua Main Brief at 50.

⁴⁶² Aqua Main Brief at 50-51.

on the Bureau of Technical Utility Services Report on Quarterly Earnings of Jurisdictional Utilities for the Year Ending December 31, 2020.”⁴⁶³ An increase to the cost of equity, however, results in a decrease in valuation under both OCA witness Garrett’s model and the UVEs’ models (as they are the same formulas with different inputs).⁴⁶⁴ In other words, the higher the cost of equity percentage utilized, the lower the resulting valuation. Indeed, the UVEs did not utilize a cost of equity as high as 9.85%. Mr. Walker estimates a range for the cost of capital of 6.36% – 7.59%. OCA St. 1 at 29. Mr. Weinert estimates a cost of capital of 7.57%.⁴⁶⁵ The differences in the cost of capital estimates stem from the differences between the various components of the cost of capital – primarily the cost of equity and capital structure. OCA witness Garrett’s adjustments to the UVEs’ Income Approach are reasonable and appropriate.

Willistown Township’s Position

Willistown Township provided a summary of the process in obtaining UVEs by Aqua and the Township and summarized the Fair Market Value Appraisal Reports of Aqua and the Township, consistent with the argument provided by Aqua.

I&E’s Position

I&E notes that Aqua’s ability to obtain all easements, public rights-of-way, and real property rights prior to or at closing is important because if Aqua fails to obtain such, the UVEs’ appraisals may be based on incorrect assumptions.⁴⁶⁶ I&E notes Section 1329 of the Public Utility Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. I&E explains a Commission Order approving a

⁴⁶³ Aqua Main Brief at 50.

⁴⁶⁴ See OCA St. 1 at Exh. 14.

⁴⁶⁵ *Id.*

⁴⁶⁶ I&E Main Brief at 8.

transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”⁴⁶⁷ I&E’s recommended conditions are set forth in the Recommended Conditions section below.

OCA’s Position

Aqua’s Application

The Company and the Township commissioned FMV appraisals from Gannett Fleming and AUS Consultants. Harold Walker, III of Gannett Fleming estimated an FMV of \$25.6 million for the Willistown Sewer system assets and Jerome C. Weinert of AUS Consultants estimated an FMV of \$19.1 million.

Aqua/Gannett Fleming’s appraisals are summarized as follows:

Approach	Base Value	Weight	Weighted Value
Market	\$ 21,330,105	33.3%	\$ 7,111,457
Cost	31,128,594	33.3%	10,375,160
Income	24,381,001	33.3%	8,126,188
Total			\$ 25,612,805

⁴⁶⁸

Willistown/AUS Consultants appraisals are summarized as follows:

⁴⁶⁷ 66 Pa. C.S. § 1329(d)(3)(ii); Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township (“Aqua/New Garden Section 1329 Case”), Docket No. A-2016-2580061, 69 (Order entered June 29, 2017); I&E Main Brief at 8-9.

⁴⁶⁸ OCA St. 1 at 3.

Approach	Base Value	Weight	Weighted Value
Market	\$ 25,695,620	10.0%	\$ 2,569,562
Cost	18,498,555	50.0%	9,249,278
Income	18,235,751	40.0%	7,294,300
Total			\$ 19,113,140

OCA argues these estimates are influenced by several unreasonable assumptions. As the above tables show, Gannett Fleming and AUS Consultants apply different weightings to each approach, indicating that judgment plays a role in the UVEs determinations about the FMV of the Township’s assets.⁴⁷⁰ Both UVEs used the same three approaches to calculate FMV, and both came up with different results overall and under each individual approach.⁴⁷¹ As such, OCA submits that the Commission should carefully consider the assumptions informing each UVE’s appraisal results, the flaws in those assumptions that are identified in the OCA’s testimony, and the Commission should accept the adjustments proposed by the OCA to more properly reflect financial and ratemaking principles.⁴⁷²

OCA witness Garrett calculated that, with the appropriate adjustments discussed below, the adjusted Gannett Fleming appraisal result would be \$13,231,052 and the adjusted AUS Consultants appraisal would be \$13,803,438.⁴⁷³ The average of these two appraisal results is \$13,500,000, which is the amount that Mr. Garrett recommends be used by the Commission for establishing rate base under Section 1329 rather than the \$17,500,000 proposed by Aqua.⁴⁷⁴ These recommendations by OCA are summarized in the following chart:

⁴⁶⁹ *Id.*

⁴⁷⁰ OCA St. 1 at 8-9.; OCA Main Brief at 25.

⁴⁷¹ *Id.*

⁴⁷² OCA St. 1 at 9.; OCA Main Brief at 25-26.

⁴⁷³ OCA St. 1 at 6; OCA Exh. DJG-2.

⁴⁷⁴ *Id.*

OCA's Recommended Rate Base:

	Appraiser Results	OCA Adjusted
Gannett Fleming	\$ 25,612,805	\$ 13,231,052
AUS Consultants	19,113,140	13,803,438
Average	\$ 22,362,972	\$ 13,500,000
Purchase Price	\$ 17,500,000	\$ 17,500,000
Proposed Ratebase	\$ 17,500,000	\$ 13,500,000

475

Challenges to UVE Appraisals

Cost Approach

OSA explains that, Gannett Fleming's appraisal under the cost approach relied on the reproduction cost method, and AUS Consultant's appraisal relied on the replacement cost method.⁴⁷⁶ Both UVEs estimated accumulated depreciation as a reduction to their respective cost estimates, also known as depreciation "reserve."⁴⁷⁷ To arrive at their respective depreciation reserve estimates, both Mr. Walker for Gannett Fleming and Mr. Weinert for AUS Consultants relied in part on Iowa curves to estimate the remaining lives of the Township's depreciable accounts.⁴⁷⁸ While OCA did not propose adjustments to either UVE's estimates for replacement or reproduction cost, OCA explains it does propose several adjustments to the depreciation parameters assumed by the UVEs.⁴⁷⁹

⁴⁷⁵ OC St. No.1 at 6.; OCA Main Brief at 26.

⁴⁷⁶ Aqua Exh. X at 16; Aqua Exh. Y at 6.

⁴⁷⁷ *Id.*; OCA St. No.1 at 15.; OCA Main Brief at 26.

⁴⁷⁸ OCA St. No. 1 at 15.; OCA Main Brief at 27.

⁴⁷⁹ *Id.*

Iowa Curves

OCA explains when utilities have records about asset placements and retirements by vintage year, depreciation experts can analyze the historic retirement patterns in each account to estimate depreciation rates.⁴⁸⁰ OCA submits that depreciation experts most commonly use the retirement rate method to conduct this analysis,⁴⁸¹ which method involves displaying historical retirement patterns graphically in the form of original survival curves, and depreciation experts then use visual and mathematical curve fitting techniques and their own personal judgement to select an Iowa curve that best fits the original survival curve.⁴⁸² The Iowa curve that the expert ultimately selects, according to OCA, is then used to calculate the average remaining life and depreciation rate for each account.⁴⁸³

In this case, OCA submits the Township did not have the requisite records about asset placements and retirements by vintage year for the UVEs to use the subjective curve techniques involved in the retirement rate method.⁴⁸⁴ Even without this data OCA asserts the UVEs still chose to use Iowa curves to estimate the average remaining life and accumulated depreciation of the Township's assets, and the UVEs relied on their subjective judgment to determine which Iowa curves were the best fit.⁴⁸⁵ For example, OCA submits, Mr. Weinert selected a best-fitting Iowa curve based on AUS Consultant's "experience in preparing depreciation studies for the water and wastewater industry...."⁴⁸⁶ Mr. Walker similarly selected a best-fitting Iowa curve "based on [Gannett Fleming's] experience...."⁴⁸⁷ Without objective,

⁴⁸⁰ OCA St. No.1 at 16.

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ *Id.*; OCA St. 1, App. A.

⁴⁸⁴ OCA St. No.1 at 16.

⁴⁸⁵ *Id.*

⁴⁸⁶ Aqua Exh. Y at 8.

⁴⁸⁷ Aqua Exh. X at 18.

empirical data about asset placements and retirements by vintage year, OCA asserts, these UVE’s “experience” is not sufficient to show that their Iowa curves represent the true best fit for the Township’s assets. Thus, the OCA proposed adjustments to the Iowa curves used by Gannett Fleming and AUS Consultants in the following accounts: Account 354 (Structures and Improvements), Account 355 (Power Generation), Account 360 (Collection Sewers - Force Mains), Account 361 (Collection Sewers - Gravity Mains), and Account 363 (Services).⁴⁸⁸

Gannett Cost Approach

OCA submits, to reach his conclusion about the valuation of the Township’s assets under the cost approach valuation, Mr. Walker used the replacement cost method which involved estimating accrued depreciation using his subjectively selected Iowa curves, and then subtracting that depreciation from estimated reproduction cost to reach an FMV appraisal of \$31.3 million.⁴⁸⁹ OCA submits Mr. Walker also conducted a FMV analysis using the original cost method. OCA explains the original cost method estimates the cost of the assets in question when those assets were “new” or first constructed, based on information contained in the Engineering Assessment.⁴⁹⁰ Mr. Walker’s analysis under the original cost method produced an indicated value of \$13.4 million.⁴⁹¹ OCA continues that Mr. Walker inexplicably excluded his analysis under the original cost method from his recommended FMV under the cost approach, and instead only proposed the \$31.1 million valuation from the replacement cost method.⁴⁹² Mr. Walker notes, and the OCA agrees, that the original cost method can “provide meaningful metric to evaluate the reasonableness of other indications of value produced by other valuation

⁴⁸⁸ OCA Main Brief at 29.

⁴⁸⁹ OCA St. No.1 at 19; OCA Exh. DJG-6.

⁴⁹⁰ Aqua Exh. X at 14.

⁴⁹¹ OCA St. No. 1 at 20; Aqua Exh. Q at 24.

⁴⁹² OCA St. No.1 at 20.

methods.⁴⁹³ For that reason, OCA explains it used Mr. Walker’s original cost method as part of its adjustment to Mr. Walker’s FMV proposal under the cost approach.⁴⁹⁴

OCA Adjustments to Gannett ‘s Cost Approach

OCA asserts it is more reasonable to rely on the original cost method than to rely on the replacement cost method in this case, given that FMV result of the original cost method is more comparable to the FMV results of the various other approaches being used to estimate the value of the Willistown system.⁴⁹⁵ That is, all other things being equal, OCA asserts it is a more accurate reflection of value to reject the outliers. OCA submits the \$31.1 million FMV that Mr. Walker determined by using the replacement cost method is notably higher than the results produced under all other approaches from both Gannett Fleming and AUS Consultants, and it is almost double the agreed-to purchase price for the Willistown system.⁴⁹⁶ As such, OCA recommends certain adjustments to the Mr. Walker’s replacement cost method which would result in a FMV of \$12.4 million.⁴⁹⁷ This number, according to OCA, is much more reflective of the results found in other FMV approaches and is substantially close to the average of all approaches, which is \$13.5 million.⁴⁹⁸

Mr. Walker noted in his rebuttal testimony that OCA did not use the original cost method as the basis for its adjustments to AUS Consultant’s cost approach.⁴⁹⁹ OCA asserts that is because the FMV estimate that AUS Consultants calculated under its cost approach (\$18.1 million) was significantly closer to the FMV indications produced by other approaches than the

⁴⁹³ Aqua Exh. Q at 24; OCA St. 1 at 20.

⁴⁹⁴ OCA St. No.1 at 20.

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ OCA St. No.1 at 20-21.

⁴⁹⁸ OCA Main Brief at 30.

⁴⁹⁹ Aqua St. 4R at 4.

\$31.1 million FMV proposed by Mr. Walker.⁵⁰⁰ Further, OCA points out that Mr. Walker and Mr. Weinert proposed different Iowa curves and service lives under their respective cost approaches, highlighting that it is common for different experts to have different opinions regarding the appropriate service lives for calculating FMV under Section 1329.⁵⁰¹

The OCA’s adjustments to Mr. Walker’s Iowa Curve calculations are outlined in the following table and summarized below:

Proposed Iowa Curve and Accrued Depreciation Adjustments:⁵⁰²

Account	Description	Gannett Fleming Position		OCA Adjustments	
		Iowa Curve	Accrued Depreciation	Iowa Curve	Accrued Depreciation
354.30	STRUCTURES AND IMPROVEMENTS - PUMPING	60-R3	2,139,421	45-R4	874,390
354.40	STRUCTURES AND IMPROVEMENTS - TREATMENT	65-R2.5	1,047,063	55-R4	609,160
360.10	COLLECTION SEWERS - FORCE - MAINS	70-R2.5	5,179,674	60-R2.5	2,244,268
361.10	COLLECTION SEWERS - GRAVITY - MAINS	65-R2.5	8,878,516	60-R2.5	2,001,959
363.20	SERVICES TO CUSTOMERS	55-R2.5	1,324,407	45-R3	410,025

OCA recommends using a service life of 45 years for the Township’s pumping improvement account and 55 years for the Township’s treatment improvement account.⁵⁰³ OCA submits the curves proposed by OCA witness Garrett for these accounts are the same as those proposed by Mr. Weinert of AUS Consultants, and they are consistent with Mr. Garrett’s proposed Iowa curves for these accounts in prior Section 1329 proceedings.⁵⁰⁴ For the force and gravity collection mains accounts, the OCA proposes a 60-year average life, just as Gannett Fleming proposed for those accounts in a wastewater case in front of the Indiana Utility

⁵⁰⁰ OCA St. 1SR at 9.

⁵⁰¹ *Id.*

⁵⁰² OCA St. No.1 at 21.

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

Commission.⁵⁰⁵ Finally, the OCA recommends using a 45-R3 curve for the Services to Customers account to estimate a reasonable range for that account.⁵⁰⁶

AUS Cost Approach

OCA explains that Mr. Weinert of AUS Consultants used the replacement cost method to determine FMV for the Willistown system under the valuation.⁵⁰⁷ Mr. Weinert also estimated accrued depreciation in order to calculate “replacement cost less depreciation” values for each account.⁵⁰⁸ OCA explains it’s recommended adjustments to AUS Consultant’s proposals are based on using the same average service lives that the OCA recommended in its adjustments to the Gannett Fleming cost approach.⁵⁰⁹ These adjustments are summarized as follows:

Proposed Iowa Curve Adjustments to AUS Consultants:⁵¹⁰

Account	Description	AUS Iowa Curve	OCA Iowa Curve
355.30	POWER GENERATION - PUMPING	35-R3	30-R3
360.21	COLLECTION SEWERS - FORCE - MAINS	75-R3	60-R3
361.21	COLLECTION SEWERS - GRAVITY - MAINS	80-R2.5	60-R2.5
361.22	COLLECTION SEWERS - GRAVITY MAINS - REPAIRS	60-R2.5	50-R2.5
361.23	COLLECTION SEWERS - GRAVITY - MANHOLES	80-R2.5	60-R2.5

⁵⁰⁵ *Id.*; See OUCC Prefiled Testimony of David J. Garrett – Public’s Exhibit No. 1, filed June 22, 2018 in Cause No. 45039 before the Indiana Utility Regulation Commission, at <http://www.resolveuc.com/representative-engagements>.

⁵⁰⁶ OCA St. No. 1 at 22.

⁵⁰⁷ OCA St. No.1 at 24.

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

Mr. Weinert disagrees with many of the OCA's proposed service lives.⁵¹¹ Mr. Weinert relies on the Gannett Fleming depreciation studies, which OCA submits is problematic for several reasons.⁵¹² First, these depreciation studies were not conducted on the assets at issue in this proceeding.⁵¹³ Second, OCA submits Mr. Weinert notes that his service life proposals in this case are similar to those proposed by Gannett Fleming in *other cases*, but Mr. Weinert does not explain the discrepancy between his and Gannett Fleming's proposed service lives in *this case*.⁵¹⁴

Mr. Weinert claims that OCA witness Garrett failed to support his claims for the service lives that he proposed in this proceeding, but OCA asserts both Mr. Weinert and OCA witness Garrett base their proposed service lives on data obtained from other cases.⁵¹⁵ Since the Township does not maintain the requisite data for a utility-specific actuarial analysis, OCA submits, a comparative analysis is the only way to calculate these proposed service lives, and so that is what both Mr. Garrett and Mr. Weinert did.⁵¹⁶ Mr. Weinert claims that his comparative analysis is more credible than Mr. Garrett's because it relies on the most recent depreciation studies conducted by Aqua and Pennsylvania American Water Company (PAWC), but OCA submits this argument only highlights that similar data was not available about the Township's assets in this case.⁵¹⁷ OCA asserts both Mr. Weinert and Mr. Garrett used their own judgment to evaluate the appropriate service lives for various accounts in Willistown Township.⁵¹⁸ The only major difference between the two analyses according to OCA is that Mr. Garrett's average

⁵¹¹ Aqua St. No. 5-R at 6-10.

⁵¹² OCA St. No. 1-SR at 11.

⁵¹³ *Id.*

⁵¹⁴ *Id.*

⁵¹⁵ OCA St. No.1-SR at 11.

⁵¹⁶ *Id.*

⁵¹⁷ Aqua St. No.5-R at 11; OCA St. No.1-SR at 11.

⁵¹⁸ OCA St. No.1-SR at 11.

estimates assumed shorter lives than those proposed by AUS Consultants, and consequently Mr. Garrett estimated a lower FMV under the cost approach than AUS Consultants.⁵¹⁹

Based on the above adjustments, the OCA's calculation for Renewed Cost New Less Depreciation (RCNLD) came to approximately \$26.336 million, as opposed to Mr. Weinert's calculated value of \$30.113 million for RCNLD.⁵²⁰ Using this lower RCNLD, the OCA calculated a cost approach valuation of \$16.1 million for the Willistown system, which is about \$2.3 million lower than the AUS Consultant's proposed cost approach valuation.⁵²¹

Market Approach

OCA explains the Market Approach is "a general way of determining a value indication...by using one or more methods that compare the subject to similar businesses [or assets] that have been sold."⁵²² (The American Society of Appraisers, *ASA Business Valuation Standards* at 12.) According to OCA, to evaluate whether a reasonable basis for comparison exists, the American Society of Appraisers recommends considering whether the assets in question have similar qualitative and quantitative characteristics and whether there is a comparable amount of data known about each asset.⁵²³ OCA asserts both Gannett Fleming and AUS Consultants used incomparable transactions to the proposed acquisition in this case to calculate the FMV of the Willistown System under the Market Approach, causing both UVEs to arrive at unreasonably high values.⁵²⁴

⁵¹⁹ OCA St. No.1-SR at 11-12.

⁵²⁰ OCA St. No.1 at 25.

⁵²¹ *Id.*; OCA Exh. DJG-12.

⁵²² https://www.appraisers.org/docs/default-source/5---standards/bv-standards-feb-2022.pdf?sfvrsn=5c9e5ac0_3 (last accessed Mar. 9, 2022).

⁵²³ *Id.*

⁵²⁴ OCA Main Brief at 33-34.

Gannett Market Approach

Gannett estimated a market approach valuation of \$21.3 million for the Willistown system assets and AUS Consultants estimated a market approach valuation of \$25.7 million.⁵²⁵ Aqua witness Walker used the Market Multiples Method and the Selected Transactions method in his market approach valuation.⁵²⁶ Mr. Walker's Selected Transactions method estimated the value of the Township's system using financial and demographic statistics from other acquired systems.⁵²⁷ OCA explains Mr. Walker used investor capital statistics, gross property statistics, and plant and equipment (PP&E) statistics from other acquired systems to calculate appropriate corresponding values for the Willistown system.⁵²⁸

OCA proposes adjustments to Mr. Walker's selected transactions method, specifically, excluding integrated wastewater transactions to assess the FMV of the Willistown system.⁵²⁹

OCA's Adjustment's to Gannett Market Approach

Willistown Township owns only one wastewater treatment plant.⁵³⁰ Wastewater treatment in the Township is mainly provided by another entity. Accordingly, OCA explains Willistown's system may be properly characterized as a collection-only system.⁵³¹ Thus, OCA explains it's market analysis only includes transactions involving collection/distribution systems. Mr. Walker's analysis included integrated systems, which according to OCA, produced FMV results that are unreasonably high, especially when using demographic statistics such as

⁵²⁵ Aqua Exh. X at 13; Aqua Exh. Y at 3.

⁵²⁶ Aqua Exh. X at 13.

⁵²⁷ *Id.*

⁵²⁸ OCA St. No.1 at 8.

⁵²⁹ OCA St. No.1 at 9; OCA Main Brief at 35.

⁵³⁰ *Id.*

⁵³¹ *Id.*

population and number of customers to indicate fair market value.⁵³² For example, when using population as a relative adjustment to purchase price, the New Garden, Limerick, and Kane 1329 transactions would indicate FMVs of \$27 million, \$38 million, and \$42 million, respectively.⁵³³ OCA asserts the \$42 million value of the Kane transaction is more than twice the negotiated purchase price in this case, indicating how including Section 1329 transactions with integrated systems in demographic and capital statistic calculations can produce unreasonably high results.⁵³⁴

OCA submits that Mr. Walker appears to recognize that using integrated systems in his calculations produced unreasonably high results, explaining Mr. Walker stated in his appraisal report that he gave “additional weight to the collection/distribution assets selected transactions multiples.⁵³⁵” Mr. Walker also noted in one instance that one of the assets that he referenced, Connecticut Water, was a fully integrated system and thus “may overstate the value of the Willistown Wastewater System.⁵³⁶” OCA asserts that witness Garrett’s adjustments to exclude Section 1329 transactions involving integrated systems from Mr. Walker’s Selected Transactions method of determining FMV yielded an FMV estimate of \$18.1 million for the Willistown System. OCA argues this number is far more reasonable than Gannett Fleming’s proposed FMV. This calculation is summarized below.⁵³⁷

⁵³² *Id.*

⁵³³ OCA St. No.1 at 10; OCA Exh. DJG-4.

⁵³⁴ OCA St. No.1 at 10.

⁵³⁵ OCA St. No.1 at 10; Aqua Exh. Q at 41; OCA Main Brief at 37.

⁵³⁶ OCA St. No.1 at 10-11; Aqua Exh. Q at 41; *Id.*

⁵³⁷ OCA St. No.1 at 11; OCA Main Brief at 37.

	Gannett Fleming Market Approach Results			OCA Adjusted Market Approach Results		
	Amount	Weight	Result	Amount	Weight	Result
Market Multiples	\$ 21,516,886	50%	\$ 10,758,443	\$ 21,516,886	50%	\$ 10,758,443
Selected Transactions	21,143,324	50%	<u>10,571,662</u>	14,739,037	50%	<u>7,369,518</u>
Total			\$ 21,330,105			\$ 18,127,961

AUS Market Approach

To determine his estimate of FMV of the Willistown system, Mr. Weinert considered the purchase price and RCNLD data from comparable acquisitions in Pennsylvania.⁵³⁸ Mr. Weinert reviewed the price-to-RCNLD ratios for each of these comparable acquisitions and then applied his ratio to the RCNLD amount estimated for the Township, in order to find the implied market valuation for the Township.⁵³⁹ Using this approach, Mr. Weinert estimated the market value of the Willistown system to be \$25.7 million.⁵⁴⁰

OCA Adjustments to AUS Market Approach

OCA proposes two adjustments to Mr. Weinert's market approach valuation. OCA proposes that instead of using the purchase price for each transaction selected by Mr. Weinert, it would be more accurate to use the Commission's approved ratemaking rate base, since that is the statutorily determined fair market value as defined by Section 1329.⁵⁴¹ OCA asserts the entire point of the appraisal process is to determine a fair market value for the Township under Section 1329, and in some prior acquisitions, the negotiated purchase price and the Commission-approved ratemaking rate base have been different.⁵⁴² Thus, to determine fair

⁵³⁸ OCA St. 1 at 12.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*; OCA Exh. DJG-2.

⁵⁴¹ OCA St. No.1 at 12; 66 Pa. C.S. § 1329.

⁵⁴² OCA St. No.1 at 12.

market value under the market approach, OCA asserts it makes the most sense to consider actual Commission-approved rate base amounts.⁵⁴³

OCA submits that Mr. Weinert’s argument that “purchase price” is the best indicator of FMV in Section 1329 cases fails to consider that Section 1329 transactions are not comparable to purely market-driven transactions.⁵⁴⁴ In competitive marketplace transactions, both parties have an incentive to maximize their value, with the buyer seeking the lowest price and the seller seeking the highest price.⁵⁴⁵ OCA asserts these incentives are not present in Section 1329 transactions, as indicated by the very existence of the Section 1329 regulation.⁵⁴⁶ OCA submits the ultimate FMV of a Section 1329 transaction as determined by the Commission and as agreed to by both buyer and seller provides the best indicator of what FMVs for other Section 1329 transactions should be, and thus, the Commission approved ratemaking rate base should be used in the market approach valuation to estimate the FMV of Willistown Township.⁵⁴⁷

OCA also recommends against using the weightings that Mr. Weinert applied to his FMV/RCNLD ratios.⁵⁴⁸ Mr. Weinert’s weightings, according to OCA, caused the ratios resulting from higher purchase price/FMV transactions to have more influence than lower-priced transactions, because Mr. Weinert divided the sum of all purchase price amounts by the sum of all RCNLD amounts.⁵⁴⁹ This is unreasonable in this case, according to OCA, where a

⁵⁴³ OCA St. No.1 at 13.

⁵⁴⁴ OCA St. No.1 at 7; OCA Main Brief at 39.

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ OCA St. No.1 at 7; OCA Main Brief at 39.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.*; OCA St. No.1-SR at 7.

transaction such as McKeesport (with a purchase price of \$159 million) cannot be reasonably compared to a transaction with a purchase price of only \$17.5 million.⁵⁵⁰

OCA submits Mr. Weinert's weightings give the McKeesport transaction the greatest statistical weighting, when that transaction is the least comparable to the proposed sale of the Willistown system.⁵⁵¹ OCA recommends giving equal weight to each transaction, unless there is a compelling reason not to do so for a particular transaction.⁵⁵² Further, OCA submits the Commission has rejected the use of a weighted average when, as is the case here, its use would allow larger acquisitions to influence the resulting FMV more than the smaller, more comparable transactions.⁵⁵³ OCA argues that is certainly the case here, where the inclusion of a transaction such as McKeesport would drive the purchase price up so drastically.⁵⁵⁴ After using the Commission's approved ratemaking rate bases instead of purchase price to determine fair market value, and after using more reasonable weightings than those proposed by Mr. Weinert, the OCA finds the adjusted AUS market approach fair market value of the Willistown system to be approximately \$20.5 million.⁵⁵⁵

Income Approach

Mr. Walker and Mr. Weinert estimate income approach valuations of \$24.3 million and \$18.2 million, respectively.⁵⁵⁶ Mr. Garrett recommended adjustments to modify the Income Approach analyses as discussed in OCA Statements 2 and 2SR, resulting in adjustments

⁵⁵⁰ *Id.*

⁵⁵¹ OCA St. No.1 at 8.

⁵⁵² OCA St. No.1-SR at 7-8.

⁵⁵³ *Cheltenham* at 69; OCA Main Brief at 39-40.

⁵⁵⁴ OCA St. No.1 at 8; OCA Main Brief at 40.

⁵⁵⁵ OCA St. No.1 at 14.

⁵⁵⁶ OCA St. No.1 at 25; OCA Main Brief at 40.

to Mr. Weinert's and Mr. Walker's Income Approach analysis of \$9.1 million and \$15.2 million, respectively.⁵⁵⁷

OCA witness Garrett's income approach adjustment recognizes that assets that are expected to generate cash flows over time can be valued with various discounted cash flow models.⁵⁵⁸ OCA asserts this basic premise also underlies the approach taken by the UVEs in their income approach valuations.⁵⁵⁹

OCA asserts the key differences between the OCA and UVE positions are the OCA's use of a constant growth rate DCF model based on cash flow or dividends from the current period and use of a more reasonable estimated long-term growth rate and discount rate (cost of capital).⁵⁶⁰

First, OCA explains witness Garrett adjusted the Township's free cash flows from operations.⁵⁶¹ OCA witness Garrett utilized the 2018 operating revenues, earnings before interest and taxes (EBIT), and depreciation amounts presented by Mr. Walker to use as the basis for discounted cash flow analysis. OCA explains witness Garrett selected 2018 figures because the five subsequent years (both actual and projected) resulted in negative operating income balances and would have ultimately resulted in a negative valuation result.⁵⁶² Additionally, OCA witness Garrett utilized the same depreciation and capital expenditure inputs from 2018. Based on this analysis, Mr. Garrett's adjusted free cash flow from operations is \$51,064 for the Township.⁵⁶³

⁵⁵⁷ OCA St. No.1 at 25; *Id.*

⁵⁵⁸ OCA St. No.1 at 26.

⁵⁵⁹ *Id.*

⁵⁶⁰ OCA Main Brief at 41.

⁵⁶¹ OCA St. No.1 at 27.

⁵⁶² *Id.*

⁵⁶³ OCA St. No.1 at 27.

OCA submits the capital composition and rates contemplated in the Township’s calculation produce a cost of capital estimate of 4.38%.⁵⁶⁴ By comparison, Mr. Walker of Gannett utilized a capital structure of 23.5% debt and 76.5% equity, a market cost of debt of 3.10% and a range of market cost of equity of 7.63% to 9.23%.⁵⁶⁵ Mr. Weinert of AUS utilized a capital structure of 29% debt and 71% equity, and a market cost of debt of 2.79% with an after-tax rate of 0.58%.⁵⁶⁶ OCA asserts, Mr. Walker and Mr. Weinert’s capital structures and cost of capital are not reasonable for use in their Income Approach analyses.⁵⁶⁷

The weighted cost of capital essentially involves several key components, including the cost of debt, the cost of equity, and the capital structure. In terms of estimation, OSA submits the most critical of these components is the cost of equity.⁵⁶⁸ OCA witness Garrett considered a proxy group of water utilities substantially similar to the proxy group considered by the UVEs.⁵⁶⁹

In estimating the Township’s cost of equity, OCA explains witness Garrett utilized the Discounted Cash Flow Model (DCF) and the Capital Asset Pricing Model (CAPM).⁵⁷⁰ OCA submits Mr. Garrett utilized these models because, unlike the known, contractual, and embedded cost of debt, there is not any explicitly quantifiable “cost” of equity. Instead, the cost of equity must be estimated through various financial models, such as the DCF and CAPM.⁵⁷¹

⁵⁶⁴ *Id.*

⁵⁶⁵ Aqua Exh. Q at 29.

⁵⁶⁶ Aqua Exh. R at 37.

⁵⁶⁷ OCA Main Brief at 42.

⁵⁶⁸ OCA St. No.1 at 27; *Id.*

⁵⁶⁹ *Id.*

⁵⁷⁰ OCA St. No.1 at 29; OCA Main Brief at 43.

⁵⁷¹ OCA St. No.1 at 29; *Id.*

OCA witness Garrett’s DCF model, which is based on the average DCF result for each company in the proxy group, results in a 5.5% cost of equity estimate for the Township.⁵⁷² According to OCA the most critical input in the DCF Model is the growth rate. Unlike the stock price and dividend inputs in the DCF, the growth rate input must be estimated.⁵⁷³ Before future cash flows are discounted by the cost of equity, however, OCA submits they must be “grown” into the future by a long-term growth rate.⁵⁷⁴ According to OCA, one of the inherent assumptions of the DCF is that these cash flows in the form of dividends grow at a constant rate forever. Thus, OCA submits the growth rate term in the constant growth DCF model is often called the “constant” or “stable” growth rate.⁵⁷⁵

For the long-term growth rate, OCA explains witness Garrett selected the maximum, reasonable long-term growth rate of 3.8%.⁵⁷⁶

As OCA witness Garrett utilized the utility proxy group to estimate the cost of equity, he used the same proxy group to estimate the cost of debt and capital structure.⁵⁷⁷ To estimate cost of debt, OCA witness Garrett considered the interest expense and long-term debt reported for each of the proxy companies. To estimate the capital structure, OCA witness Garrett considered the long-term debt ratios for each proxy company.⁵⁷⁸ As such, OCA submits witness Garrett considered substantially the same proxy group of companies as both UVEs as well as their consideration of Value Line as a source for some of the pertinent financial data used in their analyses, including the debt ratios.⁵⁷⁹

⁵⁷² OCA St. No.1 at 36; *Id.*

⁵⁷³ OCA St. No.1 at 32; *Id.*

⁵⁷⁴ *Id.*

⁵⁷⁵ OCA St. No.1 at 32; OCA Main Brief at 43.

⁵⁷⁶ OCA St. No.1 at 35; *Id.*

⁵⁷⁷ OCA St. No.1 at 44; OCA Main Brief at 44.

⁵⁷⁸ *Id.*

⁵⁷⁹ OCA Main Brief at 44.

OCA witness Garrett's average, adjusted cost of debt (pre-tax) and debt ratio for the proxy group is 3.9% and 50%, respectively.⁵⁸⁰ In comparison, Mr. Walker utilized a debt ratio of only 23.5% and Mr. Weinert utilized a debt ratio of only 29%.⁵⁸¹ OCA submits these debt ratios are significantly lower than the average reported debt ratio of the proxy group (50%), which is what OCA witness Garrett based his capital structure adjustment on.⁵⁸²

Based on the cost of equity and cost of capital components discussed above, OCA witness Garrett's adjustments to the UVEs' appraisals resulted in an Income Approach valuation of \$9.1 million.⁵⁸³ The OCA's adjustment resulted in an Income Approach valuation that is \$15.2 million less than Gannett Fleming's valuation of \$24.4 million, and it is \$9.1 million less than AUS Consultants' valuation of \$18.2 million.⁵⁸⁴

Mr. Garrett's recommended adjustments to Aqua witness Walker's Cost, Income and Market approaches modify the Gannett Fleming appraisal result from \$25,612,805 to \$13,231,052.⁵⁸⁵ Mr. Garrett's recommended adjustments to Mr. Weinert's Cost, Income and Market approaches modify the AUS appraisal result from \$19,113,140 to \$13,803,438.⁵⁸⁶ The OCA averaged the two OCA adjusted appraisal results, which resulted in an average of \$13,500,000.⁵⁸⁷ Because this amount is less than the \$17,500,000 purchase price, OCA submits that the amount approved for ratemaking rate base pursuant to Section 1329 must be no more than \$13,500,000, rather than \$17,500,000 as proposed by Aqua.⁵⁸⁸

⁵⁸⁰ OCA St. No.1 at 44; OCA Main Brief at 44.

⁵⁸¹ *Id.* at 45; OCA Main Brief at 44-45.

⁵⁸² OCA St. No.1 at 45; *Id.*

⁵⁸³ OCA St. No.1 at 44; *Id.*

⁵⁸⁴ OCA St. No.1 at 44; *Id.*

⁵⁸⁵ OCA St. No.1 at 3-4.

⁵⁸⁶ *Id.* at 3-5.

⁵⁸⁷ OCA St. No.1 at 5-6.

⁵⁸⁸ OCA Main Brief at 45.

Other Parties Positions

OSBA and Henry Yordan did not assert specific challenges to the UVE appraisals.

Ms. Frissora and Mr. Swift assert that the purchase price was excessive under Section 1329 and- joined in OCA’s arguments that the purchase price of \$17.5 million was excessive.

Section 1329 Discussion

Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. For ratemaking purposes, the valuation is the lesser of the fair market value (*i.e.*, the average of the buyer’s and seller’s independently conducted appraisals) or the negotiated purchase price. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts maintained by the Commission. The UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches.

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.⁵⁸⁹

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

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

Aqua engaged Harold Walker III of Gannett Fleming as its UVE, who arrived at a fair market appraisal of \$25,613,000 for the System. The Township engaged Jerome C. Weinert from AUS, who reached \$19,113,140 as the fair market appraisal for the System. The average of the AUS appraisal and the Gannett Fleming appraisal was \$22,363,070. Thus, pursuant to section 1329(c)(2), the Aqua and the Township submit the ratemaking rate base for the acquired Township customers, upon Commission approval of the Proposed Transaction, is the \$17,500,000 purchase price, being the lesser of the negotiated purchase price and the average of the UVE appraisals. The Fair Market Value Appraisal Reports of Gannett Fleming and AUS were attached as Exhibit Q and Exhibit R, respectively, to Aqua’s Application.

Gannett Fleming’s appraisals are summarized as follows:

Approach	Base Value	Weight	Weighted Value
Market	\$ 21,330,105	33.3%	\$ 7,111,457
Cost	31,128,594	33.3%	10,375,160
Income	24,381,001	33.3%	8,126,188
Total			\$ 25,612,805

⁵⁹⁰

AUS Consultants appraisals are summarized as follows:

Approach	Base Value	Weight	Weighted Value
Market	\$ 25,695,620	10.0%	\$ 2,569,562
Cost	18,498,555	50.0%	9,249,278
Income	18,235,751	40.0%	7,294,300
Total			\$ 19,113,140

⁵⁹¹

⁵⁹⁰ OCA St. 1 at 3.

⁵⁹¹ *Id.*

OCA argues these estimates are influenced by several unreasonable assumptions. As the above tables show, Gannett Fleming and AUS Consultants apply different weightings to each approach, indicating that judgment plays a role in the UVEs determinations about the FMV of the Township’s assets.⁵⁹² Both UVEs used the same three approaches to calculate FMV, and both came up with different results overall and under each individual approach.⁵⁹³ As such, the OCA submits that the Commission should carefully consider the assumptions informing each UVE’s appraisal results, the flaws in those assumptions that are identified in the OCA’s testimony, and the Commission should accept the adjustments proposed by the OCA to more properly reflect financial and ratemaking principles.⁵⁹⁴

OCA witness Garrett calculated that with the appropriate adjustments discussed below, the adjusted Gannett Fleming appraisal result would be \$13,231,052 and the adjusted AUS Consultants appraisal would be \$13,803,438.⁵⁹⁵ The average of these two appraisal results is \$13,500,000, which is the amount that Mr. Garrett recommends be used by the Commission for establishing rate base under Section 1329 rather than the \$17,500,000 proposed by Aqua.⁵⁹⁶ These recommendations are summarized in the following chart:

OCA’s Recommended Rate Base:

	Appraiser Results	OCA Adjusted
Gannett Fleming	\$ 25,612,805	\$ 13,231,052
AUS Consultants	19,113,140	13,803,438
Average	\$ 22,362,972	\$ 13,500,000
Purchase Price	\$ 17,500,000	\$ 17,500,000
Proposed Ratebase	\$ 17,500,000	\$ 13,500,000

⁵⁹² OCA St. 1 at 8-9.; OCA Main Brief at 25.

⁵⁹³ *Id.*

⁵⁹⁴ OCA St. 1 at 9.; OCA Main Brief at 25-26.

⁵⁹⁵ OCA St. 1 at 6; OCA Exh. DJG-2.

⁵⁹⁶ *Id.*

⁵⁹⁷ OC St. No.1 at 6.; OCA Main Brief at 26.

GF Cost Approach

OCA witness Garrett adjusted the Gannett Cost Approach, using the original cost method instead of the replacement cost method. Gannett explains cost approach based on replacement cost new. Aqua submits average service lives of the depreciable assets to determine replacement cost now less depreciation, based on the materials used for construction and how long the depreciable assets are likely to meet service demands.

OCA submits Mr. Garrett's use the original cost method is acceptable under section 1329 and prior Commission decisions and is a more accurate reflection of the FMV of the Willistown assets than Gannett's estimate using the replacement cost method. OCA notes that Gannett's estimated FMV based on the original cost method was \$13.4 million and its FMV based on replacement cost method was nearly \$20 million higher at \$31.1 million. In addition, Mr. Walker of Gannett notes the original cost method is useful for evaluating the reasonableness of other valuation methods.

Under the circumstances, it is reasonable to accept OCA's adjustments of Gannett's cost approach to use the original cost method instead of the replacement cost method which produced a valuation notably higher than the values produced by its other valuation methods.

In this proceeding, it is more appropriate to use original cost for the cost approach. Section 1311(b) of the Code sets the value of property for Commission-regulated utilities at original cost. While the value of the acquired assets will ultimately be the fair market value, as defined by section 1329, rather than original costs, this does not restrict the Commission from determining that the reasonable method of valuing acquired assets, for cost approach purposes, under the circumstances, is the depreciated original cost of the acquired assets, plus the depreciated cost of contributed property that would otherwise normally be excluded from rate base, consistent with section 1329 (d) (5). Aqua did not meet its burden of proof to establish that the appropriate cost approach in the proceeding is the exclusion of the original cost method approach for both UVEs.

Accordingly, the Gannett Cost Approach, using the original cost method instead of the replacement cost method would be decreased from \$31,128,594 to \$13,367,274.

Mr. Garrett also used shorter service lives for the following plant accounts, adjusting the Gannett Cost approach result from \$13,367,274 to \$12,400,050. The plant accounts are as follows:

- Force Mains (account 360.10)
- Gravity Mains (account 361.10)
- Services (account 363.20)
- Structures & Improvements, Pumping (account 354. 30)
- Structures & Improvements, Treatment (account 354.40)

OCA suggested changing the Iowa curves that Gannett relied on to calculate depreciation for several plant accounts. OCA averred that both UVE's indicate they relied on their experience in selecting the appropriate Iowa curves without any empirical support. However, OCA appears to also rely on its witness's experience to suggest alternative Iowa curves depicted in Figure 10 at page 21 of Statement No. 1.

Although sufficient evidence was not submitted supporting OCA's overall changes to the Iowa curves used to calculate the depreciation of all of the identified plant accounts, the service lives suggested by the Iowa Curves selected by Gannett for account no. 354.30 and 354.40 are higher than the service lives proposed for these accounts in previous 1329 transaction.

The service lives suggested by the Iowa curves that Gannett selected for account nos. 354.30 and 354.40 shown in Figure 10 are substantially higher than the service lives proposed for these accounts in previous 1329 transactions referenced in the record. Accordingly, OCA's adjustments to account nos. 354.30 and 354.40 will be accepted. Sufficient evidence was not presented to support OCA's suggested changes to the Iowa curves used to calculate depreciation of the remaining identified accounts. However, the adjustments to these accounts do not result in a change to the ratemaking rate base. Aqua did not meet its burden of proof to establish its proposed service lives for account nos. 354.30 and 354.40. The service lives

proposed by OCA for these two accounts are reasonably consistent with the service lives used in previous Section 1329 valuations and will be adopted.

Based on the aforesaid, the Gannett cost adjustment for account nos. 354.30 and 354.40 will result in a reduction of the Gannett cost value, using the original cost method described above, from \$13,367,274 to \$12,979,721.

The total Gannett cost approach result is an indicated value of \$31,128,594. After adjustments for the use of the original cost method and reasonable service lives of \$17,761,320.53 and \$387,553.00. Based upon the above, there is a reduction in the Gannett cost approach result of \$18,148,873.53 resulting in an adjusted Gannett cost approach result of \$12,979,720.47.

Accordingly, the adjusted Gannett calculations would be as follows:

<u>Valuation Approach</u>	<u>Adjusted Value</u>	<u>Adjusted Weight</u>	<u>Weighted Value</u>
Market	\$21,330,105	33.33%	\$7,111,457
Cost	\$12,979,720	33.33%	\$4,327,439
Income	\$24,381,001	33.33%	\$8,126,188

With a total appraisal conclusion of \$19,567,522.

AUS Cost Approach

The AUS cost approach is based on cost of replacement new less depreciation (CORLD). OCA witness Garrett accepted this method but adjusted depreciation by reducing the estimated service lives for several plant categories. The effect of Mr. Garrett's adjustments reduces the

AUS cost approach result from \$18,498,555 to \$16,178,137.

AUS shows an 80-year service life. In contrast Mr. Garrett uses a 60-year service life for gravity mains.

Mr. Garrett used the same service lives to adjust the Gannett and AUS appraisals.

OCA proposed adjustments to several plant accounts averring that AUS reliance on Iowa curves chosen by “experience” is not adequate justification for choosing a specific curve. However, OCA witness Garrett and Mr. Weinert appear to rely on their own experiences, and other evidence, as more fully detailed in the briefs of the parties, to proposed alternative Iowa curves.

Based upon a review of the record and the arguments of the parties it appears that AUS assigned service lives for account No. 361-21 collection sewers gravity-mains, of 80 years, has been determined to be excessive in recent 1329 proceedings.

For example, see Aqua/Cheltenham at Docket No. A-2019-3008491 (75-year service life) and PAWC/McKeesport at Docket No. A 2017-2606103 (65-year service life) and Aqua East Bradford Township at Docket No. A- 2018- 3001582 (45-year service life).

Aqua did not meet its burden of proof to establish that the proposed services lives under the AUS cost approach for account Nos. 361.21 collection sewers – gravity - mains (80 years) and account No. 361.23 collection sewers – gravity - manholes (80 years) are appropriate. The service lives of 60 years, proposed by Mr. Garrett are more appropriate under the circumstances, and will be adopted in this proceeding.

Based upon the aforesaid, the AUS Cost adjustments for account Nos. 361.21 and 361.23 will result in a reduction of the AUS cost value from \$18,498,555 to \$16,871,504.

Market Approach

Gannett Market Analysis

In the Gannett appraisal, the Market Approach to value is based on the market multiples method and the selected transaction method. OCA witness Garrett did not propose any

adjustment to the market multiples method but did proposed adjustments to the selected transaction method. Aqua argues the total adjustment is based primarily on a difference in the Section 1329 transaction for the analysis. OCA's proposed adjustment reduces the Gannett market approach to value from \$21,330,105 to \$18,127,971. Aqua also argues Mr. Garrett's adjustments include using rate base value in lieu of purchase price, changes to metrics and the removal of selected transactions used by Gannett and do not meet the standard of fair market value or Section 1329 requirements.

Aqua notes Gannett analysis includes information for 16 selected transactions, but Mr. Garrett only used 6 selected transactions in his analysis. Aqua further submits that OCA witness Garrett included only collection/distribution systems in his criticism of the Gannett analysis but inconsistently used both collection/distribution systems and integrated selected transactions in his adjustments of the AUS market approach.

OCA wishes to exclude integrated system Section 1329 transactions or systems that include both collection and treatment facilities, from market analysis and include only Section 1329 acquisitions of wastewater collection only systems. Additionally, OCA asserts that demographic statistics must be considered of including integrated systems produces unreasonable results.

In Cheltenham, the UVE's performed appraisals of a non-integrated system. One UVE attempted to exclude two non-integrated systems from its analysis which included both integrated and non-integrated systems, claiming those acquisitions were outliers. The Commission found that excluding those two non-integrated systems was not reasonable. (See Cheltenham at 66,68-69). Accordingly, it is reasonable to conclude that it may be reasonable to integrated and an appraisal involving a non-integrated system, provided that the blend of integrated and non-integrated system data produces a reasonable result. Aqua met its burden of proof with regard to this issue and it does not appear that OCA has shown that the Gannett blend of integrated and non-integrated system data is unreasonable.

Including integrated systems in a valuation, that utilizes systems with similar assets and demographic statistics, such as numbers of customers, is not categorically inappropriate.

Under the circumstances, no adjustments to the Gannett Market Approach are being recommended in this decision.

Market Approach

AUS Market Analysis

Aqua explains, the AUS 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.

OCA witness Garrett proposed two adjustments to the AUS Market Approach. He substituted the Commission determined rate base for purchase price in the transitions that he analyzed and challenged the AUS' weighting of transactions. Township witness Weinert also submits that Mr. Garrett used different values of cost replacement new less depreciation for the McKeesport and Limerick transactions and did not include the DELCORA and Lower Makefield transactions in his analysis. Mr. Garrett proposed adjustments to reduce the AUS market Approach value from \$25,696,620 to \$20,484,109.

Aqua further argues that market comparable statistic being measured in the market analysis is the ratio of purchase price to the CORLD, not the size of the transaction. Aqua further asserts the weighted average result produces a more reliable market indicator as opposed to the use of a simple average or mean. OCA submits that AUS' weightings produce an unreasonable result in this case as Township witness Weinert's weightings allow transactions with higher purchase prices to have more influence than lower priced transactions. For example, OCA asserts, use of weighted average would cause large transactions like the \$159 million

McKeesport transaction to have the greatest statistical weighting in this transaction, when the McKeesport transaction cannot reasonably be compared to the Willistown assets.

The use of negotiated purchase prices has been permitted by the Commission in previous transactions. OCA has not established that it is appropriate to use Commission approved ratemaking rate base in lieu of negotiated purchase prices for selected transactions in the market approach under the circumstances in this proceeding.

In Cheltenham, the Commission found that purchase prices are the proper input for the market approach. (Cheltenham at 61).

In addition, large transactions should not be given greater weight when attempting to value a smaller system. In, Cheltenham, the Commission identified various factors to consider when using a weighted average compared with a simple average. (Cheltenham at 69). Here, Aqua has not established that it is appropriate for larger transactions to influence the market approach under Section 1329 more than smaller transactions.

Under the circumstances, the following adjustments are recommended to the AUS Market Approach. AUS' calculated reconstruction cost new less depreciation (RCNLD) for the Willistown Township plant in service will be adjusted from \$30,113,231 to \$27,958,049, reflecting the adjusted service lives of account nos. 361.21 and 361.23 as described in the AUS cost approach discussion. Additionally, the undersigned rejects OCA's suggestion of using Commission determined rate base in lieu of negotiated purchase price when calculating the ratio of purchase price to RCNLD. Finally, the undersigned rejects the use of a weighted average in favor of using the simple average of selected transactions to determine the appropriate adjustment factor of purchase price/RCNLD to be applied to the Willistown Township RCNLD, this is intended to reduce the influence of large transactions on the valuation of smaller transactions. OCA witness Mr. Garrett proposed adjustments to reduce the AUS Market Approach value from \$25,696,620 to \$20,484,109. Based upon the record evidence and the arguments of the parties it is recommended that the AUS Market approach be adjusted to \$23,084,961.

Income Approach

Gannett Appraisal

Aqua explains that Gannett used the MMDCF method and the CDCF method, collectively known as the DCF method to determine the Income Approach result, which Gannett has used in fourteen Section 1329 fair market value proceedings. Aqua submits the Commission has not adjusted Gannett's DCF recommendation in any one of those prior proceedings.

OCA witness Garrett proposed adjustments to the Gannett Income Approach based on his use of a capitalization of earnings method and different cash flows to value. Mr. Garrett also disagreed with the discount rates used by Gannett and presented a different discount rate. The impact of OCA witness Garrett's adjustments reduces the Gannett Income Approach result from \$24,381,001 to \$9,165,146.

OCA did not establish that its proposed adjustments to the Gannett Income approach result are appropriate, under the circumstances in this case. Accordingly, no adjustment to the Gannett Income Approach result is being recommended in this decision.

AUS Income Approach

AUS also used the DCF method to determine the Income Approach result. Aqua argues that Mr. Garrett substituted his own Income Approach, using the Township 2018 financial information, he performed a direct capitalization of similar cashflows from operation to perpetuity. The impact of Mr. Garrett's adjustment, according to Aqua reduces the AUS Income Approach result from \$18,235,751 to \$9,165,146.

Aqua submits, when adjusted for the transaction of the Township wastewater operation for a rate regulated utility, the OCA model produces an income approach indicator of \$18,626,047, which is close to the AUS income approach indicator of \$18,235,751. Aqua further submits that OCA witness Garrett's estimated cost of equity of 6.0% is far below what

the Commission currently assumes currently at 9.85%. Aqua note Aqua witness Walker estimated a range for the cost of capital of 6.36% to 7.59% and that Mr. Weinert from AUS estimates a cost of capital of 7.57%.

OCA did not establish that its proposed adjustments to the AUS Income Approach results are appropriate, in this proceeding. Under the circumstances, no adjustment to the AUS Income result is being recommended in this decision.

VI. RECOMMENDED CONDITIONS

A. Aqua's Position

Missing Easements

I&E witness Mr. Spadaccio recommends that, if the Commission approves the transaction, it should condition approval such that closing will not be permitted until the Township has:⁵⁹⁸

- (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) Assumed 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. Spadaccio recommends that, where Willistown is unable to transfer certain missing easements or other property rights at closing, Aqua and Willistown may, at their discretion, close the transaction provided that an escrow account is established amount

⁵⁹⁸ I&E St. No. 1 at 6.

from the purchase price to be used to obtain any post-closing transfers of remaining missing easements or other real property rights.⁵⁹⁹

Aqua submits Mr. Spadaccio's recommendations are not necessary as of the APA, 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."⁶⁰⁰ 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 that 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 ..." Aqua also submits 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.⁶⁰¹

Aqua asserts that Mr. Spadaccio fails to acknowledge that Section 6.06 also 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."⁶⁰² As the APA provides for the creation of an

⁵⁹⁹ Aqua Main Brief at 51-52.

⁶⁰⁰ Aqua St. No. 1-R at 3-4 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(a); Aqua Main Brief at 52.

⁶⁰¹ Aqua St. No. 1-R at 4 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.05(c).

⁶⁰² Aqua St. No. 1-R at 4 and Aqua Exhibit No. 1, Application Exhibit B, Section 6.06.; Aqua Main Brief at 53.

escrow account for obtaining missing easements post-closing, Aqua submits that Mr. Spadaccio's recommended condition is not necessary.⁶⁰³

Cost of Service Study

Aqua accepts the proposed condition presented by I&E witness Sakaya. In its next base rate case filing, Aqua acknowledges it will include a separate COSS for the Willistown wastewater 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-2021-3027386.⁶⁰⁴

Customer Notice

Although not challenging the customer notice process, I&E witness Sakaya points out that the revenue requirement increase in Aqua's next base rate case could justify larger increases than what Willistown customers have been noticed for and that information should be included in the record.⁶⁰⁵ Aqua submits Mr. Sakaya did not propose anything further and Aqua submits that his recommendation has been satisfied.⁶⁰⁶

⁶⁰³ Aqua St. No. 1-R at 4.; Aqua Main Brief at 53.

⁶⁰⁴ Aqua St. No. 1-R at 5-6.; Aqua Main Brief at 53.

⁶⁰⁵ I&E St. No. 2 at 16.; Aqua Main Brief at 53-54.

⁶⁰⁶ Aqua Main Brief at 53-54.

Rate Freeze

Aqua notes that OSBA witness Kalcic,⁶⁰⁷ I&E witness Sakaya⁶⁰⁸ and OCA witness DeAngelo⁶⁰⁹ challenge the two-year rate freeze in Section 7.03 of the APA. Mr. Kalcic and Mr. Sakaya recommend that, as a condition for approval, the Commission reject any rate freeze for Willistown 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 Willistown customers to make up the revenue shortfall associated with any rate increase otherwise applicable to Willistown in the first base rate case following Closing.⁶¹⁰

According to Aqua, the opposition to the rate freeze, as addressed by Mr. Kalcic, assumes a hypothetical where Aqua and Willistown close the proposed transaction on June 30, 2022, and the two-year rate freeze would then run until June 30, 2024. Mr. Kalcic then states that "[i]f Aqua were to file its next base rate case on or before September 30, 2023, the Township's rate freeze would extend beyond the effective date of new rates in Aqua's next rate proceeding."⁶¹¹ Aqua notes Mr. Sakaya's raises a similar objection.⁶¹²

Aqua submits the opposition timeline is based on a speculative scenario where the two-year rate freeze would likely expire *before* Aqua's next base rate case filing. Aqua asserts, based on the Company's current three-year filing cadence, new rates, according to Aqua, would become effective approximately May of 2025, almost a year following the expiration of the two-year freeze. Aqua submits the recommended condition is based upon the timing of a rate case

⁶⁰⁷ OSBA St. No. 1.

⁶⁰⁸ I&E St. No. 2 at 8-10.

⁶⁰⁹ OCA St. No. 2 at 4-6.

⁶¹⁰ Aqua Main Brief at 54.

⁶¹¹ OSBA St. No. 1 at 6.

⁶¹² I&E St. No. 2 at 8-10.; Aqua Main Brief at 54.

filing that is dependent on many different factors, which is very unlikely to occur and that the Company will not be filing a stand-alone rate case for Willistown outside of its consolidated existing water and wastewater systems.⁶¹³

Aqua asserts this scenario was raised in the Company's 2018 base rate case. There, the Tobyhanna Sewer System, which had been acquired by the Company, was included in Rate Zone 4, although the asset purchase agreement had a rate freeze. According to Aqua, the Company's proposed tariff treated the existing rates in effect through the duration of the rate freeze period as a special charge. Aqua explains once the expiration of the rate freeze by contract had elapsed, Tobyhanna customers immediately became subject to Rate Zone 4 tariff rates. Aqua submits no existing customer was harmed or paid for the rate freeze as the Company's proof of revenue was calculated at the full cost of service rate, not the frozen existing rate. Aqua asserts if in the same situation, the Company would likely make a similar proposal for the Willistown system.⁶¹⁴

In its Reply Brief, Aqua explains that OSBA, I&E and OCA recommend that, as a condition for approval, the Commission reject any rate freeze for Willistown customers that extends beyond the effective date of new rates in the Company's next base rate case. As an alternative, OSBA recommends that the Commission direct Aqua to impute revenues to Willistown customers to make up the revenue shortfall associated with any rate increase otherwise applicable to Willistown in the first base rate case following Closing.

Aqua asserts the recommendation of OSBA, I&E and OCA is based on the assumption that Aqua and Willistown close the transaction on June 30, 2022, and the two-year rate freeze then runs until June 30, 2024, but Aqua files a base rate case on or before September 30, 2023. Aqua submits it cannot guarantee or commit to the filing date for its next base rate case but it is not expected to occur until 2024 with an effective date of approximately May 2025, almost a year following the expiration of the two-year freeze. If the next Aqua rate case were to

⁶¹³ Aqua St. No. 1-R at 6-7.; Aqua Main Brief at 55.

⁶¹⁴ Aqua St. No. 1-R at 7.; Aqua Main Brief at 55.

occur prior to the above timeline, Aqua asserts, rate impact could be addressed as it was for the Tobyhanna Sewer System.⁶¹⁵

B. Willistown Township's Position

The Township endorses the position set forth by Aqua.

C. I&E's Position

I&E initially recommended that it only be approved subject to the following three conditions:

- (1) Aqua should provide a separate cost of service study for the Willistown system.⁶¹⁶
- (2) Aqua and Willistown's proposal for a two-year rate freeze should be rejected.⁶¹⁷
- (3) Aqua should provide proof that it has identified all missing easements including public rights-of-way and other property rights, taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing, and assumed all costs and expenses for obtaining and conveying the missing easements and other property rights. However, if the above cannot occur, in order to close the transaction without the missing easements or other property rights, Aqua and Willistown must establish an escrow account of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.⁶¹⁸

Through testimony, I&E notes it was able to reach a resolution of its first condition proposed regarding cost of service study.

⁶¹⁵ Aqua Reply Brief at 23.

⁶¹⁶ I&E St. No. 2at 16-17.

⁶¹⁷ I&E St. No. 2 at 9.

⁶¹⁸ I&E St. No. 1 at 5-6.

Cost of Service

As I&E witness Sakaya explained, the recommended cost of service study was necessary because it would be beneficial in the following ways: (1) determining the cost to operate the Willistown wastewater system separately; (2) calculating the costs of the Aqua's different services; (3) separating the costs between Aqua's different customer classes and service areas; (4) attributing costs to Aqua's different customer classes and service areas (5) determining how costs will be recovered from the Aqua's different customer classes and service areas; and (6) establishing the existence and extent of subsidization (inter and intra-class) and assist in determining the appropriate amount of revenue requirement to be shifted from wastewater customers to water customers, which Aqua has utilized in past base rate cases.⁶¹⁹

Aqua witness Packer accepted I&E's recommendation to provide separate cost of service studies for the Willistown 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-2021-3027386.⁶²⁰ I&E witness Sakaya acknowledged that Aqua agreed to file the cost of service study Mr. Packer identified and therefore satisfied his recommendation.⁶²¹

In Surrebuttal testimony, Protestant Henry Yordan disagreed with I&E's recommendation for a cost of service study. Mr. Yordan stated, "A cost of service study is simply a fig leaf provided to Aqua, allowing the company to claim that Aqua customers will be protected from having to absorb excessive costs from the acquisition of Willistown."⁶²² However, I&E asserts the Commission has determined that providing a separate cost of service

⁶¹⁹ I&E St. No. 1 at 17.; I&E Main Brief at 10-11.

⁶²⁰ Aqua St. No. 1-R at 5-6.

⁶²¹ I&E St. No. 2-SR at 2.; I&E Main Brief at 11.

⁶²² Surrebuttal Testimony of Henry Yordan at 11.

study in the first base rate case which includes an acquired system's assets necessary to meet the affirmative public benefit standard.⁶²³

I&E submits that the cost of service study term is in the public interest because, as witness Sakaya explained, the cost of service study is necessary to protect ratepayers because without it, the cost to operate the Willistown wastewater system will not be known, and therefore the appropriate ratemaking recommendations for those costs cannot be proposed or implemented when Aqua files its next base rate case.⁶²⁴

Rate Freeze

I&E recommended that the two-year rate freeze as proposed by Aqua and Willistown in the APA be denied.⁶²⁵ I&E believes that a two-year rate freeze is unreasonable and misleading as the Commission maintains the ultimate rate setting authority. Also, as discussed by I&E witness Sakaya, Aqua is not prohibited from filing a base rate case before the expiration of the two-year period, and, in that event, the Commission could determine that Willistown rates need to be increased before the two-year agreement expires.⁶²⁶

Although Aqua states that its base rate case is based upon many different factors it still does not guarantee that it will not file a base rate case until after the expiration of its two-year rate freeze provision. Without such a guarantee, I&E asserts, the rate freeze provision is an empty promise as the Commission has the ultimate rate setting authority, not Aqua. I&E also submits Aqua's reliance on the Tobyhanna Sewer System is misplaced as the acquisition of Tobyhanna was prior to Section 1329 being enacted in 2016. was enacted. Since then, I&E asserts almost every Aqua acquisition using Section 1329 has included a rate freeze provision.

⁶²³ Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329 and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Township, Docket No. A-2019-3008491, 86 (Order entered November 5, 2019); I&E Main Brief at 11.

⁶²⁴ I&E Main Brief at 11-12.

⁶²⁵ I&E St. No. 2 at 9.

⁶²⁶ I&E St. No. 2 at 9.; I&E Main Brief at 12.

While Tobyhanna’s rate freeze provision was a special circumstance in the 2018 base rate case, here I&E asserts, Aqua similarly promised a rate freeze to Willistown customers but it also has to be mindful of the previous rate freezes it had promised to previous acquired customers through the Section 1329 acquisition process. I&E argues these provisions can muddy the waters during the next Aqua base rate case when each newly acquired customer base will be subjected to probable rate changes without regard to the rate freeze provisions made in each APA.⁶²⁷

I&E recommends the rejection of the two-year rate freeze provision because as the Commission makes the ultimate determination on any rate increase, I&E asserts Aqua and Willistown’s rate freeze amounts to nothing more than political theater in order to make the pending acquisition more palatable to current Willistown customers.⁶²⁸

Easements

I&E recommends that the closing of the transaction not be permitted to occur unless and until Willistown provides proof that it has (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing; and (3) assumed 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 associated expenses.⁶²⁹

Further, I&E recommends that the Commission condition the approval of Aqua’s Application, that for circumstances beyond Willistown’s control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, Aqua and Willistown may at their discretion close the transaction

⁶²⁷ I&E Reply Brief at 7-8.

⁶²⁸ I&E Reply Brief at 7-8.

⁶²⁹ I&E Main Brief at 13.

without the transfer of missing easements and other property rights, provided that an escrow account be established. I&E recommends that the escrow account include an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.⁶³⁰

I&E notes that, in discovery, Aqua explained that at the time of the response there was no expected date of completion for the abstractor's report or listing of missing property rights. Aqua was also unaware of any needed leases, easements, or access to public rights-of-way that will not be transferred at closing.⁶³¹ I&E witness Spadaccio explained, in the absence of the abstractor/title company's final title search report that will identify the missing easements and other property rights, the UVEs' presumptive valuation of Willistown's wastewater system being conveyed with all easements and other property rights necessary to operate the system, is potentially flawed or inaccurate.⁶³²

I&E submits that although Sections 6.05 and 6.06 of the APA obligate Willistown to transfer all missing easements and property rights at a later time, Aqua and Willistown could mutually decide to waive the applicable sections of the APA that bind it to deliver good and marketable title to all property necessary to use and access the acquired assets. Additionally, Mr. Spadaccio submits that it is important to ensure that ratepayers are protected from post-transaction uncertainty and the costs involved in acquiring and transferring the missing easements and other property rights necessary for Aqua's operation of Willistown's wastewater system. Aqua concludes the public interest would be harmed if Aqua paid a purchase price that assumed all rights necessary to operate Willistown would be transferred, and at Willistown's cost, and such action did not occur.⁶³³

⁶³⁰ I&E Main Brief at 13.

⁶³¹ I&E Exhibit No. 1, Schedule 1; I&E Main Brief at 14.

⁶³² I&E St. No. 1 at 5; I&E Main Brief at 14.

⁶³³ I&E Main Brief at 15.

D. OCA's Position

In its Main Brief, OCA recommends that the Commission deny the relief requested in the Application. However, if the Commission would approve the proposed acquisition, OCA recommends the following conditions:

- (1) The rate freeze provision should be rejected. The Commission retains the ultimate authority to set rates, including but not limited to, the authority to allocate revenues, if appropriate, to the Willistown Township customers that are inconsistent with the restrictions contained in Section 7.03 of the Asset Purchase Agreement.⁶³⁴
- (2) In the first base rate case which includes the Township's assets, Aqua should provide (1) a cost of service study that removes all costs and revenues associated with the operations of the Willistown wastewater system and (2) a separate cost of service study for the Willistown system.⁶³⁵
- (3) The Commission should adopt the OCA's proposed adjustments to the appraisals, resulting in an overall ratemaking rate base of \$13,500,000 (prior to closing and transaction costs).⁶³⁶

E. OSBA's Position

OSBA also raised concerns regarding the rate freeze commitment contained in Section 7.03 of the *Asset Purchase Agreement*. OSBA notes Aqua anticipates Closing on the proposed Transaction to occur "soon after the final Commission decision" in this matter, which is expected to be issued on June 16, 2022.⁶³⁷ OSBA submits that Aqua also currently has a base rate case pending before the Commission, with the Commission's final decision expected in May 2022.⁶³⁸ According to OSBA, depending on the timing of Aqua's next rate case, the two-year

⁶³⁴ *New Garden 2017*, Order at 41; OCA St. 2-SR at 9.

⁶³⁵ OCA St. No.1 at 45-46.

⁶³⁶ OCA St. No.1 at 6; OCA Exh. DJG-2.; OCA Main Brief at 45-46.; OCA Reply Brief at 27.

⁶³⁷ OSBA St. No.1 at 3, quoting Aqua's response to OSBA-I-2.; OSBA Main Brief at 17.

⁶³⁸ OSBA St. No.1 at 4; OSBA Main Brief at p.17.

rate freeze commitment in Section 7.03 of the *Asset Purchase Agreement* could extend beyond the effective date of new rates that results from Aqua’s first base rate case following the Closing of the proposed Transaction.⁶³⁹

OSBA argues it would be inappropriate to freeze the Township’s rates for any period of time beyond the effective date of new rates in Aqua’s first base rate proceeding following the Close of the Transaction. OSBA asserts the Township’s customers already pay less than the system average rate for wastewater service and allowing Aqua to freeze the Township’s rates in its next rate case would increase the annual subsidy received by Township customers at the conclusion of that rate proceeding.⁶⁴⁰

OSBA further notes Aqua has not committed to maintaining a three-year period between rate case filings and is not subject to a stay-out commitment at this time.⁶⁴¹ Therefore, OSBA asserts there is currently nothing that would prohibit Aqua from filing a base rate case in 2023, which would exacerbate the rate differential between Aqua’s existing wastewater customers and those customers Aqua acquires from the proposed Transaction with the Township, if a rate freeze were permitted.⁶⁴²

OSBA submits that all of Aqua’s base wastewater rates should be evaluated in each of the Company’s base rate proceedings, and all rate areas should exhibit movement toward the system average wastewater rate (or cost of service) in each rate case, consistent with the Commission’s long-standing policy of implementing single tariff pricing.⁶⁴³ As a condition for

⁶³⁹ Mr. Kalcic provided the following example: “assuming the Closing date of the proposed transaction were to be June 30, 2022, the proposed base rate freeze for Willistown customers would remain in place until June 30, 2024. If Aqua were to file its next base rate case on or before September 30, 2023, the Township’s rate freeze would extend beyond the effective date of new rates in Aqua’s next rate proceeding.” (*OSBA St. 1*, p.6); OSBA Main Brief at 17-18.

⁶⁴⁰ OSBA St. No.1 at7; OSBA Main Brief at p.18.

⁶⁴¹ OSBA St. No.1 at 2; OSBA Main Brief at p.18.

⁶⁴² OSBA Main Brief at p.18.

⁶⁴³ OSBA St. 1 at 7; OSBA Main Brief at p.18.

the approval of the proposed Transaction, OSBA asserts the Commission should, in accordance with 66 Pa. C.S. § 1103 (a), reject the rate freeze commitment found in Section 7.03 of the *Asset Purchase Agreement*.⁶⁴⁴ The OSBA alternatively proposes that the Commission direct Aqua to impute revenues to Willistown customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to Willistown in Aqua’s first base rate case after the Close of the proposed Transaction.⁶⁴⁵ OSBA submits either of these alternatives would (1) be just and reasonable, (2) protect Aqua’s current wastewater customers from unwarranted rate increases, and (3) comply with the Commission’s policy of implementing single tariff pricing.⁶⁴⁶

OSBA argues, by adopting Mr. Kalcic’s recommendation to reject the rate freeze, or alternatively, to impute revenues to Willistown customers, Aqua’s current wastewater customers would be protected from unwarranted rate increases.⁶⁴⁷

Aqua also argued that “the scenario raised by the opposition to the rate freeze has been addressed in the past.”⁶⁴⁸ Aqua points to its 2018 base rate case, in which the Tobyhanna Sewer System acquired by Aqua was included in Rate Zone 4, despite the asset purchase agreement in that transaction having a rate freeze commitment.⁶⁴⁹ Aqua’s proposed tariff treated the existing rates in effect during the rate freeze period as a special charge and once the rate freeze term expired, Tobyhanna customers became subject to Rate Zone 4 tariff rates.⁶⁵⁰ As noted by OSBA witness Mr. Kalcic in his surrebuttal, “I offered this exact remedy for resolving the OSBA’s rate freeze concerns as an alternative recommendation... Aqua need only *commit* to

⁶⁴⁴ OSBA St. No.1 at8; OSBA Main Brief at 18.

⁶⁴⁵ OSBA St. No.1 at 8; OSBA Main Brief at 18-19.

⁶⁴⁶ OSBA Main Brief at 19.

⁶⁴⁷ OSBA Main Brief at 19.

⁶⁴⁸ Aqua Main Brief at55.

⁶⁴⁹ *Id.*

⁶⁵⁰ *Id.*

address Willistown’s rate freeze in the same manner used for the acquired Tobyhanna Sewer System in the Company’s first base rate proceeding following the Close of the proposed transaction.”⁶⁵¹ However, Aqua has not committed to treating Willistown’s rate freeze in the same manner as it treated the Tobyhanna rate freeze. Aqua merely stated “the Company would likely make a similar proposal for the Willistown system.”⁶⁵² OSBA notes there is no commitment by Aqua to treat Willistown’s rate freeze as it did the Tobyhanna rate freeze, which is why the OSBA requests that the Commission order Aqua to impute revenues to Willistown customers, as necessary, to make up for the revenue shortfall associated with any rate increase otherwise applicable to Willistown in Aqua’s first base rate case after the close of the proposed Transaction, if a rate freeze is not rejected outright.⁶⁵³

F. Henry Yordan’s Position

Mr. Yordan did not specifically address these issues in his Main Brief or Reply Brief.

G. Frissora/Swift Position

Ms. Frissora and Mr. Swift did not specifically address these issues in their Main Brief or their Reply Brief.

H. Recommended Conditions Discussion

Recommended Conditions

It is well settled that in order to ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may

⁶⁵¹ OSBA St. 1-S at 2-3.

⁶⁵² Aqua Main Brief at 55.

⁶⁵³ OSBA St. 1 at a 8.

deem to be just and reasonable.⁶⁵⁴ The Commission is granted great latitude when determining conditions imposed on award of certificate of public convenience.⁶⁵⁵ In the event that the Commission would approve the Application, the following conditions are recommended for consideration by the Commission.

Missing Easements

I&E recommends that the closing of the transaction not be permitted to occur unless and until Willistown provides proof that it has (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing; and (3) assumed 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 associated expenses.⁶⁵⁶

Further, I&E recommends that the Commission condition the approval of Aqua's Application, that for circumstances beyond Willistown's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, Aqua and Willistown may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established. I&E recommends that the escrow account include an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.⁶⁵⁷

I&E explained that, in discovery, Aqua explained that at the time of the response there was no expected date of completion for the abstractor's report or listing of missing property

⁶⁵⁴ 66 Pa.C.S. § 1103 (a).

⁶⁵⁵ *Rheems Water Co. v. Pa. Pub. Util. Comm'n* 620 A.2d 609 (Pa. Cmwlth. 1993).

⁶⁵⁶ I&E Main Brief at 13.

⁶⁵⁷ I&E Main Brief at 13.

rights. Aqua was also unaware of any needed leases, easements, or access to public rights-of-way that will not be transferred at closing.⁶⁵⁸ I&E witness Spadaccio explained, in the absence of the abstractor/title company's final title search report that will identify the missing easements and other property rights, the UVEs' presumptive valuation of Willistown's wastewater system being conveyed with all easements and other property rights necessary to operate the system, is potentially flawed or inaccurate.⁶⁵⁹

In rebuttal testimony, Aqua witness Packer disagreed with I&E's recommendation. Mr. Packer asserted that I&E's recommendations were already contemplated in the APA entered between Aqua and Willistown on January 20, 2021, and therefore, I&E's recommendation is unnecessary. Mr. Packer references Section 6.05 of the APA in which Willistown is required to take any and all actions to obtain any missing easements to the same may be sold, assigned, transferred, and conveyed to Aqua at the closing at its cost and expense.⁶⁶⁰ Next, Mr. Packer references Section 6.06 of the APA that states if a parcel of unscheduled real property is discovered subsequently, then Willistown shall convey, assign, or otherwise transfer any rights to each parcel of unscheduled real property, with no adjustment to the purchase price, in such a manner as to provide Aqua with reasonable assurances that Aqua will have the right to use or occupy the unscheduled real property as it was used by Willistown as of the effective date.⁶⁶¹

I&E argued that, as Sections 6.05 and 6.06 of the APA obligate Willistown to transfer all missing easements and property rights at a later time, Aqua and Willistown could mutually decide to waive the applicable sections of the APA that bind it to deliver good and marketable title to all property necessary to use and access the acquired assets.

⁶⁵⁸ I&E Exhibit No. 1, Schedule 1; I&E Main Brief at 14.

⁶⁵⁹ I&E St. No. 1, 5; I&E Main Brief at 14.

⁶⁶⁰ Aqua St. No. 1-R, 2-4.

⁶⁶¹ Aqua St. No. 1-R, 5.; I&E Main Brief at 14.

The Commission acknowledged I&E's concern about the missing easements and other property rights in Pennsylvania American Water Company's Section 1329 Application for the acquisition of Upper Pottsgrove Township's wastewater system assets,⁶⁶² and in Aqua's Section 1329 Application for the acquisition of Lower Makefield Township's wastewater system assets.⁶⁶³ In both of these acquisitions, the Commission directed each company and acquired utility to continue working to achieve the transfer of real property rights and permitted each company, at its discretion, to close the transaction without the transfer of all real property rights, provided that an escrow account was established from the purchase price to obtain any post-closing transfers of real property rights.⁶⁶⁴

Under the circumstances, in the event that the Commission approves the Application, it is recommended that consistent with the Commission's prior decisions that such approval be conditioned upon I&E's recommendations regarding missing easements as set forth above. I&E's proposed conditions are reasonable and are in the public interest.

Cost of Service Study

I&E recommended as a condition for approval of the Application, that a separate cost of service study (COSS) be included by Aqua in its next base rate case filing. Aqua agreed to I&E's proposal, using the same methodology Aqua used for other systems acquired through Section 1329 proceedings in the base rate case filed at Docket Nos. R-2021-3027385 and R-2021- 3027386.

As I&E explained, the cost of service study condition is in the public interest and provides protection to ratepayers. Without a separate COSS, the cost to operate the Willistown

⁶⁶² Application of Pennsylvania American Water Co. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Upper Pottsgrove Township, Docket No. A-2020-3021460, 3 (Order entered September 15, 2021); I&E Main Brief at 15.

⁶⁶³ Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Lower Makefield Township, Docket No. A-2021-3024267, 92 (Order entered January 13, 2022); I&E Main Brief at 15-16.

⁶⁶⁴ I&E Main Brief at 15.

system will not be known, and accordingly, the appropriate ratemaking recommendations for those costs cannot be proposed or implemented when Aqua files its next base rate case.

OCA recommended that Aqua provide in the first base rate case which includes the Township assets, a COSS that removes all costs and revenues associated with the Willistown wastewater system and a separate COSS for the Willistown System.⁶⁶⁵

Accordingly, in the event that the Commission approves the Application, it is recommended that such approval be conditioned upon I&E's recommendation that Aqua include a separate cost of service study in its next base rate case filing using the same methodology Aqua used in the base rate case filed at Docket Nos. R-2021-3027385 and R-2021-3027386 and as discussed above.

Customer Notice

In its Main Brief, Aqua notes that I&E did not challenge the customer notice process, however, I&E witness Sakaya pointed out that the revenue requirement increase in Aqua's next base rate case could justify larger increases than what Willistown customers have been notified for. Aqua did not disagree with this and noted that Mr. Sakaya's testimony to that point has been included in the record.⁶⁶⁶

Rate Freeze

I&E, OCA and OSBA challenge the two-year rate freeze in Section 7.03 of the APA. I&E recommended that the rate freeze proposed by Aqua be denied as unreasonable and misleading, as Aqua did not agree to a two-year stay out and therefore is not prohibited from filing a base rate case before the expiration of the two-year period.

⁶⁶⁵ OCA St. No. 1 at 45-46; OCA Reply Brief at 27.

⁶⁶⁶ See Aqua Main Brief at 53-54.

OCA recommends that the Application be denied, however, if approved, OCA recommends that the rate freeze provision be rejected. OCA explains that the Commission retains the ultimate authority to set rates and that Section 7.03 of the APA does not include a commitment that rates will not be increased during the two-year period.

OSBA argues it would be inappropriate to freeze the Township's rates for any period of time beyond the effective date of new rates in Aqua's first base rate proceeding following the closing of the transaction, which could occur in this case.

OSBA submits the Township customers already pay less than the system average rate for wastewater service and allowing Aqua to freeze the Township's rates in its next rate case would increase the annual subsidy by Township customers at the conclusion of that rate proceeding.

OSBA also explains that Aqua has not committed to maintaining a three-year period between rate case filings, as its history suggests, and Aqua is not subject to a stay-out commitment at this time.

As, OCA, I&E and OSBA assert, there is currently no authority that would prohibit Aqua from filing a base rate case in 2023, which as OSBA explains, would exacerbate the rate differential between Aqua's existing wastewater customers and those customers Aqua acquires from the proposed transaction with the Township, if a rate freeze were permitted.

Aqua asserts that the opposition to the rate freeze assumes a hypothetical where Aqua and Willistown close the proposed transaction on June 30, 2022, and the two-year rate freeze would then run until June 30, 2024. Aqua explains, for example, if Aqua were to file its next base rate case on or before September 30, 2023, the Township rate freeze would extend beyond the effective date of new rates in Aqua's next rate proceeding. Aqua asserts, based on its current three-year filing cadence, new rates would become effective approximately May 2025, almost a year following the expiration of the two-year rate freeze. Aqua further asserts the

recommended condition is based upon the timing of a rate case filing that is dependent on many factors, which is very unlikely to occur.

Under the circumstances, in the event that the Commission approves the Application, it is recommended that such approval be conditioned upon the rate freeze provision being rejected.

I. Notice to Customers

Aqua's Position

Aqua explains that it and the Township provided individualized notice to their customers in compliance with *McCloskey*. Aqua submits that no party with the statutory authority to represent the interests of customers of either Aqua or Willistown has challenged the notice that was provided.

Aqua further asserts that intervenors in their respective statements of testimony opposed the public notification provided by the Township before the Board of Supervisors decided to sell the system. Aqua submits that the Commission has no jurisdiction to address this criticism, or to review or consider the steps taken by the Township to notify the public of the sale process.⁶⁶⁷

Mr. Yordan contends that Aqua included disputed O&M savings in the rate increase calculation presented in its notice to customers thereby manipulating the notice.⁶⁶⁸ In its Reply Brief, Aqua asserts the O&M savings included in Mr. Packer's revenue deficiency calculation are not subject to any reasonable dispute and there was no known dispute at the time of the distribution of the notice. If anything, Aqua asserts, the O&M savings as originally

⁶⁶⁷ Aqua Main Brief at 55.

⁶⁶⁸ See Yordan Main Brief, Section V-D, at 11-12.

estimated are understated adding the table provided by Mr. Packer in his rebuttal testimony shows a 17% decrease in expenses with Aqua ownership.⁶⁶⁹

Willistown's Position

The Township submits it circulated the Commission-required Notice in December 2021, which provided instructions to its recipients on actions the Township customers individuals could take for participation in this proceeding, including: (1) sending a letter directly to the Commission either supporting or objecting the Proposed Transaction, (2) attending or presenting testimony at the Public Input Hearings, or (3) filing a protest or a petition to intervene in the proceeding.⁶⁷⁰

The Township also notes that Intervenors filed their respective petitions to intervene the same month that Aqua filed its Application, and that Mr. Yordan and Ms. Frissora both testified that they received the Commission-required Notice.⁶⁷¹

I&E's Position

I&E pointed out that the rate impact for acquired Willistown customers, could potentially be higher than what was noticed to Willistown customers. In its notice to Willistown customers, Aqua indicated, that if no costs were shared with other existing Aqua customers, the average residential and commercial customer's wastewater bill would increase by 85.87%.⁶⁷² I&E asserts that the noticed 85.87% increase is potentially understated.⁶⁷³

⁶⁶⁹ Aqua Reply Brief at 24.

⁶⁷⁰ See Aqua's Application, Exhibit I2.; Willistown Township Main Brief at 17.

⁶⁷¹ See Transcript of Evidentiary Hearing of March 3, 2022, at 664:5-15, 680:7-14.; Willistown Township Main Brief at 17-18.

⁶⁷² Aqua Exhibit I2.; I&E Main Brief at 16.

⁶⁷³ I&E Main Brief at 16.

In its Reply Brief, I&E explained its concern over the possibility that Willistown customers could potentially see higher rates than what was noticed to them. As I&E's concerns and witness Sakaya's testimony has been admitted into evidence, I&E explains this issue has been satisfied.⁶⁷⁴

OCA's Position

The OCA addressed the timeliness of the Township's provision of customer notice above.

OSBA's Position

The OSBA did not specifically address these issues.

Henry Yordan's Position

Mr. Yordan suggests that his Direct and Surrebuttal testimony establish that Aqua and Willistown manipulated the Commission-required notice to acquired customers. Mr. Yordan submits Aqua built O&M savings into their calculations of cost of service; even though the Commission-required notice to acquired customers was finalized on the conditional acceptance date of the Application (November 5, 2021), Willistown and PFM Financial Advisors (PFM) deliberately chose to mail the notice more than a month after Aqua began to notify existing customers in late November; that when Willistown decided to mail the notice, three days after Aqua had *finished* its own notification process, the Township directed its Pottstown, PA-based vendor to mail the notice remotely from Niagara Falls, NY; and that the Willistown Board of Supervisors included a cover letter with delivery of the Commission-required notice, containing an erroneous and deceptive graph on page 2 of the cover letter that claimed *incorrectly* that

⁶⁷⁴ I&E Reply Brief at 10.

sewer rates under Willistown ownership for 2022 were higher than the Aqua rate would be at Closing.⁶⁷⁵

Mr. Yordan concludes the public received information that was inaccurate, that questioned the validity of regulatory notice requirements and that was intentionally delayed.⁶⁷⁶

In his Reply Brief, Mr. Yordan took exception with the conclusion that Aqua and the Township provided individualized notice to their customers in compliance with *McCloskey*. Mr. Yordan asserts the estimated rate increases in the notices are potentially understated considering that O&M savings claimed by Aqua are *disputed by more than one expert witness*, and that disputed future savings should not have been included in the calculation of increased rates.⁶⁷⁷

Mr. Yordan notes that on November 24, 2021, Aqua stated in a letter to the Secretary: “Aqua is providing the Notice with its water/wastewater bills during a billing cycle beginning November 23, 2021, and running through approximately December 27, 2021. In further compliance with the Conditional Acceptance Letter, Willistown Township will *concurrently* provide individualized notice of the proposed acquisition to its wastewater customers.” [emphasis added].⁶⁷⁸ Mr. Yordan submits the second sentence in Aqua’s letter was incorrect, asserting the notice to acquired customers was mailed on December 30, 2021, or *37 days after Aqua started* notifying existing customers and *3 days after Aqua finished* notifying existing customers.⁶⁷⁹

⁶⁷⁵ Yordan Main Brief at 11.

⁶⁷⁶ Henry Yordan Main Brief at 2.

⁶⁷⁷ Henry Yordan Reply Brief at 13-14.

⁶⁷⁸ Henry Yordan Reply Brief at 13.

⁶⁷⁹ Henry Yordan Reply Brief at 13-14.

Mr. Yordan further submits that the Township mailed the notice from a remote location, creating an additional delay in delivery of the notice, and that a misleading and inaccurate cover letter accompanied the notice⁶⁸⁰

Frissora/Swift Position

Ms. Frissora and Mr. Swift submit the Commission requires the Township to send a notice to affected customers regarding the sale and that submission of this notice is the only one that includes the potential rate increases. Since not all of the residents on the sewer are current Aqua water customers, Frissora and Swift contend this notice is the first Commission communication they received about the sale of the sewer including instructions on how to get involved in the Commission proceedings. Ms. Frissora and Mr. Swift contend the Township notice was mailed to acquired customers on December 30, 2021, not concurrently with Aqua's notice to existing customers which began on November 23, 2021. They contend the Township cover letter accompanying the required notice to acquired customers was not required by the Commission and contained false information including that (1) sewer rates in 2022 were higher under Township ownership even though the Township did not raise sewer rates in 2022 and (2) Township rates would always be higher than Aqua's for the next eight years.⁶⁸¹

In her Reply Brief, Ms. Frissora addressed the process used the Township regarding the sale of the system.

Additionally, Ms. Frissora submits the Township notice was not mailed until December 30, 2021 and did not arrive until January 7 and 8, 2022. Concluding that the Township notice was insufficient, especially when the Township cover letter included inaccurate information and undermined the validity of the Commission-required notice.⁶⁸²

⁶⁸⁰ Yordan Main Brief, 11-12, Yordan St. No.1 at 34-36, Yordan St. No.1-SR at 15-16.; Henry Yordan Reply Brief at 13-14.

⁶⁸¹ Frissora/Swift Main Brief at 19-20.

⁶⁸² Frissora Reply Brief at 8-9.

Ms. Frissora further asserts that the Township's assertion in their Main Brief that because the Resident Intervenors filed petitions to intervene in August, that meant that they received notice of the exploration of the sale, the approval of the Proposed Transaction, and this Application proceeding before the Commission, is an inaccurate statement. Ms. Frissora submits that neither the Resident Intervenors, nor other sewer customers, obtained transparent communications from the Township.⁶⁸³

Notice Discussion

The issue of notice of the filing of the Application in this proceeding to customers of Aqua and the Township is addressed in the Constitutional Due Process section of this Recommended Decision.

Question No. 4

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

J. Section 507 Approvals

Aqua's Position

In its Reply Brief Aqua explains that no evidence was presented in opposition to Aqua's request to approve its acquisition agreement with Willistown and the assignment of 19 contracts with municipalities and submits that its acquisition agreement with Willistown and the assignment of 19 contracts with municipalities, are reasonable, legal and valid and that certificates of filing under Section 507 of the Code should issue.⁶⁸⁴

⁶⁸³ *Id.*

⁶⁸⁴ Aqua Reply Brief at 24.

Willistown Township's Position

The Township indicated that it endorses the section of Aqua's Main Brief relating to section 507 approvals.

I&E's Position

I&E provided a thorough summary of Section 507 of the Code and its application to this proceeding. I&E did not raise any objection to the Section 507 approvals raised by Aqua.

OCA's Position

The OCA did not present any evidence regarding the Section 507 Approval aspects of the proposed transaction.

OSBA's Position

The OSBA did not specifically address this issue.

Henry Yordan's Position

Mr. Yordan did not specifically address this issue in this proceeding.

Frissora/Swift Position

Ms. Frissora and Mr. Swift did not specifically address this issue in this proceeding.

Section 507 Discussion

As I&E explained, under Section 507 of the Code, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality or any other matter affecting the validity of the contract. If the Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval. In the event the Commission would approve this Application, no objections were raised to Aqua's request for approval of the 19 contracts with municipalities under Section 507.

Question No. 5

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

K. Section 2102 Approval

Aqua's Position

If approved, Aqua will be taking assignment of Willistown's rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities and included in the Application as Exhibit F19, the November 2018 Agreement, for conveyance of wastewater through the Valley Creek Trunk Line. Aqua concludes 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 negotiated, market rate for the conveyance of wastewater and that no changes in the charges under Section 9 and Schedule 9.1 will occur as a result of the assignment.⁶⁸⁵

⁶⁸⁵ Aqua Main Brief at 56.

Aqua requests that the Commission approve the assignment to Aqua of Application Exhibit F19, the November 2018 Agreement, for conveyance of wastewater through the Valley Creek Trunk Line.⁶⁸⁶

Willistown Township's Position

The Township endorses the section of Aqua's Main Brief relating to its requested Section 2102 approvals of affiliated interests.

I&E's Position

I&E explains that Aqua's request to assume enumerated municipal contracts currently held by Willistown is subject to review under Section 2102 of the Code.

OCA's Position

The OCA did not present any evidence regarding the Section 2102 Approval aspects of the proposed transaction.

OSBA's Position

The OSBA did not specifically address this issue.

Henry Yordan's Position

Mr. Yordan did not specifically address this issue in his Main Brief.

Frissora/Swift Position

Ms. Frissora and Mr. Swift did not specifically address this issue their Main Brief.

⁶⁸⁶ Aqua Reply Brief at 25.

Section 2102 Discussion

I&E explained that under Section 2102, no contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract for or arrangement for the purchase sales, lease or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those listed, made between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement as received the written approval of the Commission. It is the duty of every public utility to file with the Commission a verified copy of any such contract and the Commission shall approve such contract only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest.

In the event the Commission would approve the Application, no objection was raised to the requested Section 2102 approval.

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

Aqua's Position

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.⁶⁸⁷

Aqua submits that there was no evidence presented in opposition to Aqua's request.⁶⁸⁸

⁶⁸⁷ Aqua Main Brief at 56.

⁶⁸⁸ Aqua Main Brief at 56.

Willistown Township's Position

The Township endorses the section of Aqua's Main Brief relating to other approvals, certificates, registrations and relief under the Code.

I&E's Position

I&E did not specifically address this issue.

OCA's Position

The OCA did not present any evidence regarding other approvals, certificates, registrations, and relief under the Pennsylvania Public Utility Code concerning the proposed transaction.

OSBA's Position

The OSBA did not specifically address this issue.

Henry Yordan's Position

Mr. Yordan did not specifically address this issue.

Frissora/Swift Position

Ms. Frissora and Mr. Swift did not specifically address this issue.

Other Approvals Discussion

No objection was raised by any party regarding Aqua's request that the Commission acknowledge the issuance of all other approvals, certificates, registrations and

relief, if any, under the Code, as may be appropriate. In the event the Commission would approve the Application, there is no basis in the record to reject this request by Aqua.

M. Conclusion

Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought and relief requested in the Application.⁶⁸⁹ Aqua must establish this burden, by a preponderance of evidence which is substantial and legally credible.⁶⁹⁰ In order to meet its burden of proof, Aqua must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”⁶⁹¹ To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved.⁶⁹²

It is well-settled that in order to ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.⁶⁹³

As stated in detail above, Aqua has established that it has the financial, legal and technical fitness to own and operate the system under the circumstances. However, Aqua failed to establish that the approval of the proposed acquisition and ownership and operation of the Willistown Township sewer system under Aqua’s ownership will affirmatively promote the service, accommodation, convenience, or safety of the public. Furthermore, the evidence in this proceeding did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current Aqua water and wastewater customers or existing Willistown sewer customers.

⁶⁸⁹ 66 Pa.C.S. § 332(a).

⁶⁹⁰ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

⁶⁹¹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁶⁹² *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

⁶⁹³ 66 Pa.C.S. § 1103(a).

Given the foregoing, the proposed acquisition of the Willistown Township system by Aqua should be denied by the Commission, because approval of the Application filed by Aqua, under the particular circumstances presented in this proceeding, is not in the public interest.

VII. CONCLUSIONS OF LAW

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. Aqua Pennsylvania Wastewater, Inc. is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa.C.S. § 102.

4. Aqua Pennsylvania Wastewater, Inc. has the burden of proof to show that its proposed acquisition of the Willistown system is adequate, efficient, safe, and reasonable under Section 315(c). 66 Pa.C.S. § 315(c).

5. Aqua Pennsylvania Wastewater, Inc. has the burden of proof to show that its proposed purchase of the Willistown wastewater system would provide substantial affirmative benefits under Section 1102 of the Public Utility Code. 66 Pa.C.S. § 1102.

6. Aqua Pennsylvania Wastewater, Inc. has not established that the proposed transaction would provide the required substantial affirmative benefits to existing Aqua customers or to the acquired Willistown customers under Section 1102. 66 Pa.C.S. § 1102.

7. The Commission has the authority to grant a certificate of public convenience to a utility only when doing so is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

8. Aqua Pennsylvania Wastewater, Inc. has not established that the proposed transaction is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

9. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

10. If the proposed transaction is approved, the Company may ask for ratemaking treatment of the Willistown system's assets using fair market value. 66 Pa.C.S. § 1329.

11. If the proposed transaction is approved, the correct ratemaking rate base amount is \$13.5 million for the Township's system.

12. 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. Pub. Util. Comm'n*, 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*. 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.*

13. Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application. 66 Pa. C.S. § 332(a).

14. To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

15. Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102, 1329 of the Code.

16. 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. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 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 & W. 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., Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

17. 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).

18. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. § 1102.

19. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. Under these Sections, a Certificate of Public Convenience shall be granted “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. §§ 1102-1103.

20. To establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972).

21. Under Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Willistown. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762, 764 (Pa. Cmwlt. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240, 243 (Pa. Super. 1958).

22. In assessing Aqua's Application, the Commission should consider the benefits and detriments of the transaction "with respect to the impact on all affected parties" including existing customers. *Middletown Twp. v. Pa. Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa. Cmwlt. 1984).

23. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa.C.S. § 1103(a).

24. In *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007), the Pennsylvania Supreme Court addressed *City of York* decision 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.

25. An existing provider of public utility service is presumed fit. *See Re Pa.-Am. Water Co.*, 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. Pub. Util. Comm'n*, 293 A.2d 895 (Pa. Cmwlt. 1972).

26. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. 66 Pa. C.S. § 1329.

27. Section 1329's fair market valuation approach dictates that once the buyer and the seller agree to its use, they must engage the services of a licensed engineer to assess the tangible assets of the seller. The licensed engineer assessment is then presented to two UVEs, one to represent the buyer and one to represent the seller, to conduct independent analyses based on the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. 66 Pa. C.S. § 1329.

28. 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).

29. 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.

66 Pa.C.S. § 1329(c)(2).

30. Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).” 66 Pa.C.S. § 1329(g).

31. 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. 66 Pa.C.S. § 507.

32. 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. 66 Pa.C.S. § 2102.

VIII. ORDER

THEREFORE,

IT IS RECOMMENDED THAT:

1. The Application filed by Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329, 507, and 2102 of the Pennsylvania Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Willistown Township, filed at Docket No. A-2021-3027268, is denied.

2. The Docket at No. A-2021-3027268 is hereby marked closed.

Date: April 21, 2022

/s/
Jeffrey A. Watson
Administrative Law Judge