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May 20, 2022

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

We are counsel to Aqua Pennsylvania Wastewater, Inc. in the above matter and are submitting, via electronic filing with this letter, the Company's Exceptions to the Recommended Decision of Administrative Law Judge Marta Guhl. Copies of the Exceptions are being served upon the persons and in the manner set forth on the certificate of service attached to them.

Very truly yours,

THOMAS, NIESEN & THOMAS, LLC

By 

Thomas T. Niesen

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

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

EXCEPTIONS OF AQUA PENNSYLVANIA
WASTEWATER, INC. TO THE RECOMMENDED
DECISION OF ADMINISTRATIVE LAW JUDGE MARTA GUHL

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DATED: May 20, 2022

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I. INTRODUCTION

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

The Application asks the Commission to approve Aqua’s acquisition of the wastewater system assets of East Whiteland Township (“East Whiteland” or “Township”) and allow Aqua to begin to provide wastewater service in portions of the Township.

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

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

Administrative Law Judge Marta Guhl was assigned to preside over the proceeding. By Recommended Decision dated May 10, 2022 (“Recommended Decision”), Judge Guhl concludes that Aqua did not meet its burden of establishing that there is an affirmative public benefit to its acquisition of East Whiteland’s wastewater assets and recommends that the Commission deny the Application.

Aqua submits the following Exceptions to the Recommended Decision.¹

¹ Pursuant to 52 Pa. Code Section 5.533, Aqua incorporates into its Exceptions, by reference and citation, relevant sections and pages of its previously filed Main and Reply Briefs.

II. EXCEPTIONS

A. Section 1102 / 1103

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

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

The Supreme Court explained *City of York* in *Popowsky*³ holding 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 Commonwealth Court, in *McCloskey*,⁴ considered and applied *City of York* and *Popowsky* concluding, in the context of an Aqua Section 1329 proceeding, 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

² *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“City of York”).

³ *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) (“Popowsky”).

⁴ *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019) (“McCloskey”).

benefit to a transaction.⁵

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

The Recommended Decision appropriately recognizes that Section 1329 reflects a determination that fair market value acquisitions of municipal wastewater systems further the public interest⁶ but then recommends, irrespective of this legislative determination, that the Commission deny the Application. In doing so, the Recommended Decision demands a quantification of public benefits that is not required by *Popowsky*. It, also, contrary to *McCloskey*, gives dispositive effect to potential detriment of *short-term* rate impact. Any short-term impact is not a basis of determining the public benefit considering the long-lived nature of utility assets and the benefits realized of operating these assets over the long term. As each Section 1329 transaction includes a revenue deficiency, this standard, focusing only on the short-term impact, would prevent practically all acquisitions – whether they are small troubled systems, Section 529 proceedings, systems being sold under an original cost methodology, or under Section 1329. The Recommended Decision essentially sets a precedent that would stop any transaction or attempt at consolidation in the water and wastewater sector and undermines years of policy and law promoting such consolidation.

Aqua excepts to the conclusion that it did not meet its burden of establishing that there is

⁵ As noted in *McCloskey*, “[a]s per [*Popowsky*] these aspirational statements are substantial evidence to support the notion that there is a public benefit for the merger.” 195 A. 3d at 1065.

⁶ Rec. Dec. at 50.

an affirmative public benefit to its acquisition of the Township’s wastewater assets. Aqua submits, rather, that its proposed acquisition of the East Whiteland wastewater system pursuant to Section 1329 will further the public interest and is supported by affirmative public benefits consistent with *Popowsky*.

Aqua further submits that, considering the totality of the evidence, the benefits of the transaction outweigh potential harms consistent with *McCloskey*. The potential detriment of *short-term* rate impact is not dispositive in the determination of affirmative public benefit.

In evaluating the proposed transaction, it must be recognized that “the primary objective of the law in this area is to serve the interests of the public.”⁷ Fair market value acquisitions benefit from an assumption that they further 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.”⁸

Aqua’s acquisition of the East Whiteland wastewater system should be approved.

EXCEPTION NO. 1 - SUBSTANTIAL AFFIRMATIVE PUBLIC BENEFITS

Aqua excepts to the conclusion that it did not meet its burden of establishing that there is an affirmative public benefit to the acquisition of East Whiteland Township’s wastewater assets. Recommended Decision, Section VII.B, Pages 47-59, and Conclusions of Law 6, 8 and 14. Aqua’s acquisition of the East Whiteland wastewater system is supported by substantial affirmative public benefits. Aqua Main Brief, Section V.A.2 and Reply Brief, Section V.A.3.

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

- i) 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) The Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of

⁷ Rec. Dec. at 49, citing *Middletown Township v. Pa. P.U.C.*, 482 A. 2d 674 (Pa. Cmwlth. 1984).

⁸ Rec. Dec. at 50.

public sewer and water facilities.

Substantial evidence supports these same findings in this proceeding and a conclusion that there are substantial affirmative public benefits to this transaction. No more needs to be determined to support Commission approval of this Section 1329 acquisition. Substantial evidence, however, supports many affirmative public benefits including those cited by the Commonwealth Court in *McCloskey*.

Aqua excepts to the conclusion that it did not meet its burden of establishing that there is an affirmative public benefit to the acquisition of East Whiteland Township's wastewater assets.

1. Substantial Affirmative Public Benefits

The substantial affirmative public benefits to both existing Aqua customers and East Whiteland customers are summarized below:

Aqua's Record of Acquiring and Improving Wastewater Systems

- Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to continue to operate, maintain and improve the East Whiteland System. Aqua St. No. 1 at 14 and Aqua Exhibit No. 1, Application ¶52.d.
- Aqua has acquired 16 wastewater systems over the past 10 years.⁹ Many of these systems required significant investment to correct service and environmental issues. The inherent diversification of systems and customers provides a foundation of stability in that, they are all not requiring major capital investments at the same time. Thus, spreading the financial impacts over the long-term operations of the acquiring utility as a whole. Aqua St. No. 1 at 14.
- If Aqua were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers' rates and service. Both types of systems, viable and non-viable, are consistent with the Commission's policy statements regarding acquisitions. The acquisition of the East Whiteland System will continue to address the Commission's supported policy of consolidation and regionalization. Aqua St. No. 1 at 14-15.

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

Consolidation/Regionalization

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

Benefits to East Whiteland Customers

- The Township customers will become part of a larger scale, efficiently operated, wastewater utility. The Company is already the owner and operator of the East Whiteland water system. As such, the Company has key operations in nearby service areas and will be able to assume the operations of the East Whiteland System, fold them into a larger scale, efficiently operated wastewater utility, which over time will likely yield further operating efficiencies and improve long term viability as envisioned in the Commission policy statement. Aqua St. No. 1 at 15-16.
- The operational overlap between water and wastewater utility operations will provide the opportunity for better coordination of capital activities throughout the East Whiteland service area. Utility activities that involve road openings and restoration can be better aligned to result in less disturbance to the Township as the Company executes capital improvements. Aqua St. No. 1 at 16.

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

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

Enhanced Customer Service for East Whiteland Township Customers

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

Enhanced Customer Billing and Payment Protections

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

Benefits to Existing Aqua Customers

- The acquisition of the System will be an approximate 9% increase in Aqua's customer base. By virtue of the Company's larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers. Aqua St. No. 1 at 17 and Aqua Exhibit No. 1, Application ¶56.f.
- Based on Township records, East Whiteland serves approximately 7,658 EDUs,¹¹ which equates to approximately \$7,200 purchase price per EDU and is almost equal to the Company's existing rate base per EDU, projected at approximately \$7,000. Given the similarities in purchase price per connection to rate base per EDU, combined with meaningful lower operating cost, the East Whiteland system characteristics demonstrate

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

that there are economies of scale that can be achieved as a result of this acquisition. Aqua St. No. 1 at 17.

No Adverse Effect

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

East Whiteland Township Wants to Sell Its Wastewater System

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

Overarching the foregoing and in further support of the existence of substantial affirmative public benefits is the General Assembly's determination, through the enactment of Section 1329, that fair market value acquisitions of municipal water and wastewater systems further the public interest. When evaluated under the *Popowsky* standard as addressed next, these benefits support Commission approval of the transaction.

2. Application of the *Popowsky* Preponderance of Evidence Standard

Popowsky explains that, in certification matters, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) and that the Commission is *not* required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible. The Recommended Decision fails to properly apply the *Popowsky* standard and, instead, demands a quantification of benefits that is not required by *Popowsky*.

i. Consolidation / Regionalization

The Commission's support for consolidation / regionalization and its policy conclusion that the utility industry, through consolidation / regionalization, will have a better chance of realizing economies of scale¹² is based on its informed and expert judgment. No quantification of economies of scale is required to support this aspirational, regulatory objective. The Commission's long-standing support for consolidation / regionalization is substantial evidence in support of this acquisition.

The Commission's further conclusion that, through consolidation / regionalization, the utility industry will have a better chance of realizing greater customer / environmental / economic benefits¹³ is, likewise, based on its informed and expert judgment. This aspirational regulatory objective occurs irrespective of whether the acquired system is viable or non-viable / troubled. The Commission's long-standing support for consolidation / regionalization is further substantial evidence in support of this acquisition.

ii. Specific and Tangible Examples

Aqua witness Packer provided specific, tangible examples of *short-term* economies of scale and benefits comparing the Township's 2020 Sewer Fund Operating Expenses (\$2.8 million) with Aqua's expense projections based on Aqua ownership (\$2.0 million), an approximate 29% decrease in expenses with Aqua ownership.¹⁴ Significant to a predictive, factually based determination informed by expert judgment, Mr. Packer also testified that the East Whiteland system characteristics demonstrate that there are economies of scale that can be achieved as a result of the acquisition.¹⁵ Mr. Packer's testimony provides still further support for the acquisition consistent with the *Popowsky* standard.

¹² *Acquisitions of Viable Water and Wastewater System – Statement of Policy*, 52 Pa. Code § 69.721(a).

¹³ *Acquisitions of Viable Water and Wastewater System – Statement of Policy*, 52 Pa. Code § 69.721(a).

¹⁴ Aqua St. No. 1 at 16.

¹⁵ Aqua St. No. 1 at 17.

iii. Capital Commitments and Deployment

The Recommended Decision fails to appropriately weight the significance of Aqua’s projected capital commitments. Aqua estimates that it will invest \$16.92 million in the system over the next ten years. The planned capital improvement work includes safety related electrical Arc-Flash studies for protection of operations personnel. During Aqua’s due diligence visit to the pump station locations, there was no obvious indication that Arc-Flash study work was conducted as would be otherwise indicated by the presence of appropriate Arc-Flash safety alert stickers on electrical control panels. Moving forward with this important safety work is a significant public benefit of Aqua ownership.¹⁶

Aqua’s capital projection also includes monies targeted for addressing Inflow and Infiltration (“I&I”). Aside from impacting the Township’s allocation for treatment within the Valley Forge Sewer Authority (“VFSA”) wastewater treatment plant, I&I also impacts Township treatment cost and the VFSA plant itself in terms of the plant’s available hydraulic capacity for the Township and member municipalities. I&I also impacts conveyance capacity and cost within the Valley Creek Trunk Sewer system for East Whiteland and member municipalities. The targeting of capital to investigate I&I and undertake remediation as appropriate is a significant benefit of Aqua ownership.¹⁷

The East Whiteland system also has experienced Sanitary Sewer Overflows (“SSOs”). The 2019 Chapter 94 Report indicates that the system experienced capacity related by-passing, SSOs or surcharging during the 2019 Chapter 94 Report year. Certain system improvements that are targeted within Aqua’s ten-year capital estimate would mitigate the SSOs. Mitigation of SSOs is a still further significant benefit of Aqua ownership.¹⁸

¹⁶ Aqua St. No. 2-R at 2.

¹⁷ Aqua St. No. 2-R at 2-3.

¹⁸ Aqua St. No. 2-R at 3.

Mr. Bubel testified that replacement and upgrade of facilities will continue beyond Aqua's 10-year capital plan based on facility age and expected facility life span.¹⁹ Aqua's commitment to continue the replacement and upgrading of facilities is a further demonstrated affirmative public benefit consistent with the *Popowsky* standard.

The Recommended Decision discounts Aqua's commitment to capital improvements and deployment stating that the Township could make necessary system improvements and upgrades without unreasonable financial burden.²⁰ The financial fitness of the seller is, however, not a factor to consider in approving the sale. There are many factors that go into a municipality's decision to either continue to operate or exit utility service. Here, East Whiteland determined that exiting the provision of wastewater service is in the best interest of its constituents. While it may be true that the Township can borrow or use cash on hand to make future infrastructure improvements, it is not known whether the Township will in the short term or long term. Aqua, on the other hand, has consistently focused on prudently investing in infrastructure which is a substantial benefit of this transaction.²¹

iv. Operational Expertise and Ability to Raise Capital

Aqua provided still further evidence, consistent with the *Popowsky* standard as recognized in *McCloskey*, that it continues to have sufficient operational expertise and ability to raise capital to support the East Whiteland system operations now and in the future. Aqua has acquired 16 wastewater systems over the past 10 years.²² Aqua is a Class A wastewater utility with total assets of \$350 million and annual revenues of \$32 million. As a direct subsidiary of Aqua PA, Aqua has access to Aqua PA's financing capabilities.²³

¹⁹ Aqua St. No. 2 at 11.

²⁰ Rec. Dec. at 57.

²¹ Aqua St. No. 1-R at 14.

²² Aqua St. No. 1 at 14.

²³ Aqua St. No. 1 at 10-11. Aqua PA is a Class A water utility and the largest water / wastewater subsidiary of Essential Utilities, Inc. In 2020, Aqua PA had operating income of approximately \$261 million, net income of \$187

v. Testimony of Township Manager

The testimony of Township Manager Nagel also supports a predictive determination of public benefit consistent with *Popowsky*. Mr. Nagel testified that the acquisition would ensure safe, reliable, and professional sanitary sewer service at affordable rates for its residents, ensure regulatory oversight, require approval of all rate increases and provide significant consumer protections. Receipt of sale proceeds also will permit the Township to allocate these funds to various projects in the Township.²⁴

vi. Benefit of Regulated Service

With Aqua ownership, East Whiteland customers also will have the certain benefit of the provisions of Chapter 14 of the Code including access to the Commission’s Bureau of Consumer Services. In his recent Recommended Decision at A-2021-3024681, Judge Haas noted that “[c]omprehensive regulatory oversight of rates and quality of service ... to newly acquired ... customers, as well as the Commission’s complaint procedures, will provide them with significant assurances and protections relative to the service they will receive ...”²⁵

vii. Township’s Desire to Exit the Wastewater Business

Perhaps foremost from the Township’s perspective, the Township wants to exit the sanitary sewer business and instead focus its resources on other core government functions. The Township is aware that the system’s aging infrastructure will require additional investment over time, which it projects will cause increases in rates if the Wastewater System remains with it. The Township will also be able to address other Township purposes with the sale proceeds.²⁶

million and cash flow from operations of \$231 million. Aqua PA has a Standard and Poor’s Rating of A. Aqua St. No. 1 at 10-11.

²⁴ Aqua St. No. 3 at 5.

²⁵ *Application of Pennsylvania-American Water Company*, Docket No. A-2021-3024681, Recommended Decision, dated February 28, 2022, mimeo at 46.

²⁶ Aqua St. No. 3 at 8.

viii. Conclusion

In evaluating the proposed transaction, the Commission should apply a preponderance of the evidence standard as directed by *City of York* and explained in *Popowsky*, recognizing its authority to make factually-based determinations (including predictive ones informed by expert judgment). Quantification of public benefits or legally binding commitments are not required. The benefits as presented above are substantial evidence in support of the acquisition. The Commission should reject the Recommended Decision and approve the transaction.

3. The Recommended Decision's Consideration of Harm to Three Groups

As part of its public benefit evaluation, the Recommended Decision presents an analysis of harms concluding that, in determining the existence of affirmative public benefits, the Commission must consider the harms of the transaction on three specific groups: (1) existing Aqua wastewater customers, (2) existing Aqua water customers, and (3) East Whiteland customers who will be transferred to Aqua. Aqua submits that neither existing Aqua customers nor East Whiteland customers will be harmed by the acquisition. Any perceived harm to customers is offset by benefits resulting from the transaction as addressed in Exception No. 2 below.

a. Existing Aqua Wastewater and Water Customers

As harm to existing Aqua customers, the Recommended Decision concludes that a rate increase to existing Aqua customers is a certainty, at least in the *short-term*, as a result of the proposed transaction and other pending or approved Section 1329 acquisitions.²⁷ Aqua, however, is not proposing to increase the rates of its existing wastewater or water customers. Aqua's proposed rate schedule pages do not propose a change in rates for existing Aqua customers.²⁸

²⁷ Rec. Dec. at 53-54.

²⁸ See Aqua Exhibit No. 1, Application Exhibit G.

The Recommended Decision’s concern with the potential impact of the three-year rate freeze on existing Aqua customers is recognized and would be resolved through the Stipulation of Active Parties.²⁹ Notably, through the Stipulation, the Stipulating Parties acknowledge that the Commission retains ultimate authority to set rates. The Stipulation also addresses how rates for Township customers will be presented in the first base rate case that includes the Township system assets.³⁰

It is, moreover, inaccurate to characterize the potential sharing of East Whiteland costs with existing Aqua wastewater customers as a “risk.” Single tariff pricing, which, ultimately, in the long term, would equalize the rates for Aqua wastewater customers, is an established rate design principle in Pennsylvania regulatory law. The Commonwealth Court recognized the many public benefits of single tariff pricing in *Pittsburgh v. Pa. P.U.C.*, 126 Pa. Commw. 667, 675, 560

A. 2d 889, 1989 Pa. Commw. LEXIS 425:

1. A larger rate and revenue base ameliorates the impact of major capital additions needed from time to time in every service area;
2. A larger revenue base promotes flexibility in timing and financing major capital additions;
3. The impact of instability resulting from changes in sales volumes is mitigated when the effect of such volumetric factors is spread over a larger economic base; and
4. The reduction of the number of accounting units and the number of individual rate filings results in administrative efficiency with a potential to reduce costs to ratepayers.

²⁹ Aqua’s disagreement with the Recommended Decision’s failure to substantively address the Stipulation is addressed in Exception No. 4.

³⁰ Aqua emphasizes, however, that, even in the absence of the Stipulation, existing Aqua customers would not have been exposed to a risk of covering revenue requirement as a result of the three-year rate freeze. If an Aqua rate filing were to have become effective prior to the running of the rate freeze, the Company would have treated the existing East Whiteland rates as a special charge. Upon expiration of the rate freeze, East Whiteland customers would immediately have become subject to full tariff rates. No existing Aqua customer would have been harmed or would have paid for the rate freeze as the Company’s rate case proof of revenue would have been calculated at the full cost of service rate for East Whiteland customers, not the frozen existing rate. Aqua St. No. 1-R at 3-4.

Aqua’s disagreement with the Recommended Decision’s failure to substantively address the Stipulation is addressed in Exception No. 4.

It is, additionally, inaccurate to characterize the potential sharing of East Whiteland costs with existing Aqua water customers as a “risk.” The possible allocation of a portion of wastewater costs to Aqua’s combined water and wastewater customer base is not a “risk” but is, rather, a public benefit. Allocation of costs is permitted by Section 1311(c) of the Code “if in the public interest.” It cannot be reasonably contended that the possible allocation of wastewater costs to the combined water and wastewater customer base, as allowed by the General Assembly through Section 1311(c), is something to be viewed as a “harm” or detriment to the proposed transaction.

Aqua submits, further, that the Recommended Decision’s limitation of its analysis to the potential “harm” of a potential *short-term* rate increase is inappropriate. *Long-term* benefits must also be considered. Significant in the analysis is the *long-term* benefit of regionalization / consolidation of water and wastewater systems, which is a *long-term*, aspirational Commission objective, as set forth above, and, through Section 1329, also the objective of the General Assembly for municipal systems.

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. Both non-viable systems and viable systems are appropriate candidates for regionalization. Regionalization / consolidation is substantial evidence and, as set forth in Exception No. 2 below, a substantial benefit that outweighs the potential detriment of a potential rate increase to existing Aqua wastewater and water customers.

b. Existing East Whiteland Customers

As harm to existing East Whiteland customers, the Recommended Decision cites testimony at the public input hearing. Benefits to existing East Whiteland customers were addressed above. Aqua emphasizes here that, as a result of the transaction, existing East Whiteland customers will become part of Aqua – a larger scale, efficiently operated, wastewater

utility and one that has been recognized as having sufficient operational expertise and ability to raise capital to support system operations. No one is in a better position than the Township to speak for the benefits afforded to its citizens and improvement of service levels³¹ and the Township supports the acquisition.

Aqua, moreover, is already the owner and operator of the East Whiteland water system. The Company has key operations in nearby areas and will be able to easily fold the East Whiteland system into its existing operations, which *over time* will likely yield further operating efficiencies and improve *long-term* viability as envisioned in the Commission policy statement. Regionalization / consolidation of water and wastewater systems is a *long-term*, aspirational Commission objective, as set forth above, and, through Section 1329, also the objective of the General Assembly for municipal systems.

As also set forth above, 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. Both non-viable systems and viable systems are appropriate candidates for regionalization.

4. Conclusion

Aqua's acquisition of the East Whiteland wastewater system is supported by substantial affirmative public benefit consistent with *City of York* as explained in *Popowsky* as presented above and in Aqua's Main and Reply Briefs. The Commission should reject the Recommended Decision and approve the acquisition.

Aqua's Exception No. 1 should be granted.

³¹ Aqua St. No. 1-R at 19-20.

EXCEPTION NO. 2 - WEIGHING OF ALL FACTORS, INCLUDING THE IMPACT ON RATES

Aqua excepts to the conclusion that adverse impacts on Aqua’s existing customers and the East Whiteland customers outweigh the benefits of the proposed transaction. Recommended Decision, Section VII.B, pages 54-59. A weighing of all factors, including the impact on rates, supports the acquisition. Aqua Main Brief, Section V.A.2.b, and Reply Brief, Section V.A.3.b.(iii).

In its Cheltenham Section 1329 decision, the Commission, citing *McCloskey* and *Popowsky*, stated the following:³²

Our obligation in performing “the balancing test required by Section 1102 of the Code [is] to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.” *McCloskey*, 195 A.3d at 1066 (applying *City of York*). We are also “charged with deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.” *Id.* at 1067. As the Pennsylvania Supreme Court articulated in *Popowsky*, “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.” *Popowsky*, 937 A.2d at 1061, n.21.

The Recommended Decision departs from the recognized balancing test. Rather than a weighing of all factors for and against a transaction, including the impact on rates, the Recommended Decision gives dispositive effect to potential *short-term* rate impact. It accepts that the transaction will result in a revenue deficiency of \$5.011 million and then looks for counterbalancing dollar benefits in either economies of scale or volume discounts / sharing costs, requiring, in effect, a dollars-and-cents, cost-benefit type analysis.³³

Aqua excepts to the conclusion that the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current Aqua and East

³² *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491, Opinion and Order entered October 24, 2012, mimeo at 84.

³³ The Recommended Decision, for example, states the following: Aqua has not established the existence of net cost reductions or efficiencies (Rec. Dec. at 55); the record evidence in this case fails to establish that the acquisition would create economies of scale (Rec. Dec. at 56); Aqua did not establish that volume discounts and cost sharing would offset Aqua’s much higher cost of capital (Rec. Dec. at 56); Aqua did not establish that there would be net efficiencies in costs to run the system through its acquisition (Rec. Dec. at 56); it was not established that Aqua’s higher cost of capital would not offset potential volume discounts and cost sharing (Rec. Dec. at 58).

Whiteland customers and the dispositive effect given to potential *short-term* rate impact. As stated previously, each Section 1329 transaction includes a revenue deficiency. This standard, focusing only on the short-term impact, would prevent practically all acquisitions – whether they are small troubled systems, Section 529 proceedings, systems being sold under an original cost methodology, or under Section 1329. The Recommended Decision essentially sets a precedent that would stop any transaction or attempt at consolidation in the water and wastewater sector and undermines years of policy and law promoting such consolidation.

1. Economies of Scale

The Recommended Decision accepts an OCA argument that individualized analysis of every system is in the public interest and required by Section 1102. It then concludes that, “[f]or 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 East Whiteland system.”³⁴

The isolation of the East Whiteland system for analysis is inconsistent with the basic public utility model. Aqua provides a regulated, public utility wastewater service. By increasing its customer base, Aqua provides more service to more customers for less overall incremental cost. This is a recognized public benefit consistent with the Commission’s policy supporting regionalization / consolidation and single tariff pricing. The very existence of public utilities depends on taking advantage of economies of scale and scope. The singling out of the East Whiteland system for individualized economic analysis is inconsistent with the public interest and adverse to the basic public utility model.³⁵

³⁴ Rec. Dec. at 57-58.

³⁵ Aqua St. No. 1-R at 15. Utility infrastructure, specifically, and infrastructure, in general, nationally, is in need of upgrade. Aqua, like other investor-owned utilities, is part of that solution. The Company’s model for deploying resources to that need is the ability to leverage its size, scale, and expertise to this task. Steady growth and diversification of systems across the Commonwealth has enabled Aqua to upgrade and remediate many systems and the Company does this with reasonable cost allocation to all of its customers. The same model that allows the

2. Volume Discounts and Sharing Costs

Under a heading of “Volume Discounts and Sharing Costs,” the Recommended Decision states that, “[a]lthough 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.”³⁶ Established legal precedent does not require a dollar-for-dollar comparison of costs and benefits. *Popowsky* does not require the Commission to quantify benefits where this may be impractical, burdensome or impossible. The long-term cost benefits of the acquisition cannot be presently quantified. The long-term benefit of regionalization / consolidation is, however, established Commission policy.

The testimony of Mr. Packer cited by the Recommended Decision was addressed above. Mr. Packer provided specific, tangible examples of *short-term* economies of scale and benefits comparing the Township’s 2020 Sewer Fund Operating Expenses (\$2.8 million) with Aqua’s expense projections based on Aqua ownership (\$2.0 million). The comparison shows a 29% decrease in expenses with Aqua ownership.³⁷ Significant to a predictive, factually based determination informed by expert judgment, Mr. Packer also testified that the East Whiteland system characteristics demonstrate that there are economies of scale that can be achieved as a result of the acquisition.³⁸ Mr. Packer’s testimony provides support for the acquisition consistent with the *Popowsky* standard.

3. Weighing of All Factors, Including the Impact on Rates

The Recommended Decision’s focus on rate impact is clear. Its discussion of the weighing of benefits notes, at the start, that, if the entire revenue deficiency of \$5.011 million

Company to acquire and improve troubled systems allows it to acquire and integrate systems that do not have environmental or operational issues. This is the ultimate affirmative public benefit and one that Aqua believes the Commission supports. Aqua St. No. 1-R at 20.

³⁶ Rec. Dec. at 58.

³⁷ Aqua St. No. 1 at 16.

³⁸ Aqua St. No. 1 at 17.

associated with the proposed rate base addition is applied to East Whiteland rates, those rates are projected to increase by \$77.64 per month, or by 132.93%.³⁹ Having determined a rate deficiency, the Recommended Decision then concludes that “[t]he evidence does not establish that the transaction will enable East Whiteland customers to receive a benefit that outweighs the detriment of the estimated increased rates.”⁴⁰

The rate deficiency of \$77.64 per month is a preliminary analysis of the potential rate impact on East Whiteland customers. It is a non-binding estimate of the incremental rate effect of the proposed fair market value rate base but, as explained in the notice to East Whiteland customers, the amount of a rate increase will be determined in an Aqua base rate case and will be dependent on how the Commission chooses to apportion an increase among Aqua’s acquired and existing customers. The Commission recognized this when discussing the notice to be provided to customers when it stated “the Section 1329 valuation could have a highly unlikely rate effect of \$0. Equally unlikely is a full allocation of all costs — acquisition and perhaps others — to a rate division consisting of only the customers of the acquired municipal system. The more likely *outcome* is indeterminate; it will be found somewhere between possible extremes.”⁴¹ The ability to allocate costs is a statutory benefit as set forth above.

Notably, while there is an expectation of increased rates as a result of the transaction, this is not unexpected. The possibility of increased rates was noted in *McCloskey*. While the rates of the East Whiteland system are reasonably expected to increase, either on their own, or whether acquired by the Company, the fact is that, with the acquisition, there is more flexibility and opportunity to deal with rate impact as a result of the much larger Aqua customer base. This

³⁹ Rec. Dec. at 54-55; *see also* Rec. Dec., Findings of Fact 31, 37 and 38.

⁴⁰ Rec. Dec. at 57.

⁴¹ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order at 32 (Feb. 28, 2019).

benefits both existing and acquired customers alike.⁴² Schedule – (WCP – R.1) to Mr. Packer’s rebuttal testimony demonstrates this reality looking over the past five years of capital investments on the Company’s wastewater systems.⁴³

Focusing on perceived rate impact, the Recommended Decision, contrary to *Popowsky*, minimizes or fails to account for the aspirational and other public benefits presented in Exception No. 1. Especially significant are the policy objectives recognized in *McCloskey*. Through regionalization / consolidation, the utility industry has a better chance of realizing economies of scale and a better chance of realizing greater customer / environmental / economic benefits. These regulatory objectives are based on the Commission’s informed and expert judgment. The transaction, moreover, furthers a recognized legislative objective.

The Recommended Decision states that Aqua did not establish that volume discounts or cost sharing would offset its higher cost of capital.⁴⁴ Aqua has acknowledged that it has a higher cost of capital than the Township and that, unlike the Township, it pays federal and state income taxes. These acknowledged cost differences are, however, a part of every Section 1329 transaction. They are outweighed by the *long-term* benefits of regionalization / consolidation and the General Assembly’s encouragement of the acquisition of municipal systems and have never been the bases for the Commission to deny a 1329 acquisition.

In similar fashion, the Recommended Decision states that record evidence fails in this case to establish that the acquisition would create economies of scale and that there was no showing in this case that rates would become more affordable in the *long-term* due to economies of scale.⁴⁵ Economies of scale, however, are supported by the Commission’s regionalization / consolidation policy and the testimony of Mr. Packer. A quantification of economies of scale in

⁴² Aqua St. No. 1 at 19.

⁴³ Aqua St. No. 1-R at 15.

⁴⁴ Rec. Dec. at 58.

⁴⁵ Rec. Dec. at 56; see also Findings of Fact 42 and 43.

the form of a dollars-and-cents, cost-benefit type analysis, is not required to approve the acquisition.

The Recommended Decision compares the benefits claimed by Aqua, which it describes as “general” and “not supported by specific evidence,” with the “short term” detrimental impact of the increase in ratemaking rate base.⁴⁶ This analysis is incorrect in two respects. First, benefits need not be quantified or supported by specific, dollars-and-cents evidence. Second, “short term” rate impact is not dispositive in the determination of the public benefit issue. The balancing test required by Section 1102 of the Code is to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.

The Recommended Decision concludes further that East Whiteland is not a troubled system and that Aqua has not established that it can improve on the Township’s quality of service, operations, convenience and safety.⁴⁷ Aqua acknowledges that East Whiteland is not experiencing compliance issues today, however, it does appear to have I&I issues, which Aqua will address. Reductions in I&I can reduce conveyance and treatment costs.⁴⁸

Section 1329, additionally, is not limited to “troubled” systems. Section 1329 encourages the acquisition of municipal systems, whether troubled or not. It certainly is not meant to apply only to municipal systems that have fallen into disrepair. The General Assembly would not want to have encouraged such circumstances. The present viability of the East Whiteland system is no basis for denying the acquisition. Capital improvements, however, over the next ten are presently estimated to be \$16.92 million.

⁴⁶ Rec. Dec. at 58.

⁴⁷ Rec. Dec. at 56 and 59.

⁴⁸ Aqua St. No. 2-R at 2-3.

4. Conclusion

As presented above and in Aqua's Main and Reply Briefs, the hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise and deploy capital for projected system improvements and upgrades; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. In addition, the Township, which has made the decision to exit the wastewater business, will receive the benefit of sale proceeds of \$54,930,000. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits. The Commission should reject the Recommended Decision and approve the acquisition.

Aqua's Exception No. 2 should be granted.

B. Fair Market Value Ratemaking Rate Base

Aqua and East Whiteland agreed to use the process presented in Section 1329 to determine the fair market value of the wastewater system and the ratemaking rate base. Aqua excepts to the failure of the Recommended Decision to address the fair market value of the wastewater system and submits that, pursuant to Section 1329(c)(2), the fair market value ratemaking rate base is \$54,930,000.

EXCEPTION NO. 3 - FAIR MARKET VALUE RATEMAKING RATE BASE IS \$54,930,000

Aqua excepts to the failure of the Recommended Decision to address fair market value and ratemaking rate base. Pursuant to Section 1329(c)(2), the fair market value ratemaking rate base is \$54,930,000. Aqua Main Brief, Section V.B and Reply Brief, Section V.B.

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.⁴⁹ Section 1329(c)(2) provides that the ratemaking rate base of the selling utility shall be the lesser of the negotiated purchase price or the fair market value of the selling utility. Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).”

Aqua and East Whiteland negotiated a purchase price of \$54,930,000 for the wastewater system and agreed to use the process presented in Section 1329 to determine the fair market value of the system and ratemaking rate base. Aqua engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett”) to provide a fair market value appraisal in accordance with the Uniform Standard of Professional Appraisal Practices (“USPAP”), utilizing the cost, market and income approaches. East Whiteland engaged the services of AUS Consultants, Inc. (“AUS”) for the same purpose.

Gannett’s fair market value appraisal is \$55,668,000.⁵⁰ AUS’ fair market value appraisal is \$57,781,458.⁵¹ The average of the two is \$56,724,729. The ratemaking rate base determined

⁴⁹ 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:

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

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

⁵⁰ The Gannett Appraisal results using the Cost, Market and Income Approaches are presented at page 26 of the Aqua Main Brief.

⁵¹ The AUS Appraisal results using the Cost, Market and Income Approaches are presented at page 27 of the Aqua Main Brief.

pursuant to Section 1329(c)(2) is \$54,930,000, being the lesser of the negotiated purchase price of \$54,930,000 and the average of \$56,724,729.

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

1. Challenges to the UVE Appraisals

OCA proposed adjustments to the UVE appraisal approaches and a ratemaking rate base of \$46,500,000.⁵² The OCA adjustments should not be adopted as set forth in Aqua’s Main and Reply Briefs. Aqua’s opposition to the adjustments is summarized below.

a. Cost Approach

i. The Gannett Cost Approach

OCA witness Garrett recommended shorter service lives for five plant accounts in the Gannett Cost Approach.⁵³ Shorter service lives result in lower values under the Cost Approach. Mr. Garrett’s recommendation, which reduced the Gannett Cost Approach result from \$59.1 million to \$56.3 million,⁵⁴ is not supported by statistical analysis and should not be adopted.⁵⁵

The Commission has not accepted Mr. Garrett’s proposed service lives in prior Section 1329 proceedings. Rather, as demonstrated in the table presented at page 29 of the Aqua Main Brief, it is the Gannett service lives that are consistent with the service lives approved by the Commission in prior fully litigated 1329 proceedings concerning Limerick Township,

⁵² OCA St. No. 1 at 6.

⁵³ Account 354.30 – Structures and Improvements – Pumping; Account 354.40 – Structures and Improvements – Treatment; Account 360.10 – Force Mains; Account 361.10 – Gravity Mains; and Account 363.20 – Services to Customers.

⁵⁴ OCA St. No. 1 at 22.

⁵⁵ Aqua St. No. 4-R at 4.

Cheltenham Township and Lower Makefield Township.⁵⁶ Mr. Garrett's shorter service lives are not reasonable and not suitable for the East Whiteland system assets.⁵⁷

Concerning specific accounts, Mr. Garrett's recommended service lives for Structures and Improvements - Pumping (Account 354.30) and Structures and Improvements - Treatment (Account 354.40) are based on the AUS appraisal. He also claimed that his service lives for these two accounts are consistent with his "proposed Iowa curves for these accounts in prior Section 1329 proceedings."⁵⁸

Mr. Garrett's recommended service lives for Force Mains (Account 360.10) and Gravity Mains (Account 361.10) are based on a 2016 depreciation study in the state of Indiana ("Indiana Study"). He claimed that his recommended service life for Services (Account 363.20) is consistent with his proposal for this account in prior Section 1329 proceedings.⁵⁹

Mr. Garrett's Indiana Study included information for Citizens Energy Group – Citizens Wastewater ("CWW") and Citizens Energy Group – Westfield Wastewater ("WWW"),⁶⁰ which is not statistically significant.⁶¹ Along with this lack of statistical significance, Mr. Garrett provided no evidence that the assets of CWW and WWW are comparable to the Township assets. Instead, there are reasons to doubt that they are comparable. For example, CWW's system is a combined sewer system, whereas the Township's is not.⁶²

In a recent proceeding in South Carolina involving Blue Granite Water Company, Mr. Garrett recommended average service lives, which are between **8% and 58% longer** – 65 years

⁵⁶ Aqua St. No. 4-R at 6-7.

⁵⁷ Aqua St. No. 4-R at 6-7.

⁵⁸ Aqua St. No. 4-R at 4.

⁵⁹ Aqua St. No. 4-R at 4.

⁶⁰ Aqua St. No. 4-R at 4, citing Cause No. 45039 before the Indiana Utility Regulation Commission.

⁶¹ Aqua St. No. 4-R at 4-5. The data for CWW's Force Mains account included only seven years of accounting data, with no retirements and the data for WWW's Force Mains account included only three years of accounting data, with a total of \$15,000 of retirements. The data for CWW's Gravity Mains account included only seven years of accounting data, with a total of \$30,000 of retirements and the data for WWW's Gravity Mains account included only four years of accounting data, with no retirements. Aqua St. No. 4-R at 4-5.

⁶² Aqua St. No. 4-R at 5; *see also* Aqua Main Brief at 29-30.

for force mains, 95 years for gravity mains, and 53 years for customer services – than the service lives he is recommending in this proceeding.⁶³ Similar discrepancies are noticed when one compares the service lives that Mr. Garrett proposed in this proceeding and those found in his Indiana Study. In his Indiana Study, Mr. Garrett recommended service lives that are between **18% and 22%** shorter for Accounts 354.30, 354.40 and 363.20 than those he recommended in his Indiana Study.⁶⁴

In every instance, whether based on the Indiana Study, the AUS appraisal or the Gannett appraisal, Mr. Garrett chose the shortest service life for each of his adjusted five accounts. The use of shorter service lives reduces the appraised value under the Cost Approach.⁶⁵ Mr. Garrett's predisposed and slanted approach is neither reasonable nor appropriate and does not meet a standard of value of fair market value. His recommendations should not be adopted.

ii. The AUS Cost Approach

OCA witness Garrett adjusted the AUS appraisal depreciation by revising (reducing) the estimated service lives for several plant categories.⁶⁶ The impact of Mr. Garrett's adjustments reduces the AUS Cost Approach result from \$59.8 million to \$53.1 million.⁶⁷

Mr. Garrett provided no apparent basis for his recommended service lives for the AUS Appraisal. Rather, he simply indicated that he made the AUS lives the same as those he used for

⁶³ Aqua St. No. 4-R at 7; *see also* Aqua Main Brief at 30.

⁶⁴ Aqua St. No. 4-R at 8; *see also* Aqua Main Brief at 30-31.

⁶⁵ Aqua St. No. 4-R at 9. The fact that the AUS appraisal and the Gannett appraisal may use different service lives for different accounts is not surprising since rarely do experts agree on every aspect of an appraisal. However, the fact that the AUS appraisal and Gannett appraisal produced independent appraised values using the Cost Approach that are within 1% of each other proves their conclusions are reasonable and should not be adjusted. Aqua St. No. 4-R at 9.

⁶⁶ Account 360.21 – Collection Sewers – Force Mains; Account 361.21 – Collection Sewers – Gravity Mains; Account 361.23 – Collection Sewers – Gravity Manholes.

⁶⁷ OCA St. No. 1 at 23-24. Mr. Weinert explained that the use of a shortened service life not only understates the value determination of the Cost Approach but also reduces the Market Approach's value conclusion. Additionally, since the depreciation lives and the age at the appraisal date are used to determine the depreciation expenses and capital expenditures for plant renewal, the shortened service life increases expenses and capital expenditures, thus reducing the Income Approach's value determination. Aqua St. No. 5-R at 18-19.

Gannett. While failing to provide any rationale for his service life selections, Mr. Garrett then, inconsistently, faulted AUS for, what he viewed, as its lack of support for the service lives selected by it.⁶⁸

Contrary to Mr. Garrett's criticisms, Mr. Weinert provided substantial support detailing how AUS determined the depreciation parameters and service lives used in its appraisal with specific reference to depreciation studies presented by Pennsylvania-American Water Company and Aqua in their recent general rate proceedings.⁶⁹

The table presented at page 11 of Mr. Weinert's rebuttal testimony summarizes the depreciation studies in the referenced PAWC and Aqua general rate cases and demonstrates that a service life in the range of 75 to 80 years is supported by the PAWC and Aqua studies.⁷⁰ 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 14 of Mr. Weinert's rebuttal testimony details the accounting experience.⁷¹

The Aqua and PAWC depreciation studies used by Mr. Weinert show a service life in a range of 75-80 years for Gravity Collection Mains demonstrating that the 80-year service life used in the AUS Appraisal is reasonable. In contrast, Mr. Garrett's 60-year service life is not, as it clearly understates the actual service life for gravity mains constructed and serving Pennsylvania customers and it should not be adopted.⁷²

⁶⁸ Aqua St. No. 5-R at 10-11, referencing pages 15-16 of Mr. Garrett's direct testimony.

⁶⁹ Aqua St. No. 5-R at 11; *see also* Aqua Main Brief at 27.

⁷⁰ Aqua St. No. 5-R at 13.

⁷¹ Aqua St. No. 5-R at 14.

⁷² Aqua St. No. 5-R at 12-16. Mr. Weinert also explained that an additional reason why Mr. Garrett's 60-year service life is unwarranted is that the majority of the East Whiteland mains are plastic. A 2014 study conducted by the Utah State University Buried Structures Laboratory entitled PVC Longevity Report – Affordability & The 100+ Year Benchmark Standard (JCW 5-R Exhibit 1) states in its Executive Summary that the combination of pipe examination and testing data in conjunction with previous pipe break studies supports PVC as a sustainable pipe material, confirming a 100+ year benchmark as an industry standard. Aqua St. No. 5-R at 16-18.

b. Market Approach

i. The Gannett Market Approach

In the Gannett appraisal, the Market Approach to value is based on the market multiples method and the selected transaction method.⁷³ Mr. Garrett proposed adjustments to the selected transaction method based primarily on a difference in the Section 1329 transactions selected for the analysis. The adjustment reduces the Gannett market approach to value from \$46.7 million to \$39.5 million.⁷⁴ Mr. Garrett's recommendations do not meet a standard of value of fair market value and are in direct violation of Section 1329.⁷⁵

Ex Ante and Ex Post Data

Gannett's selected transaction method uses both data from financial statements, or *ex-ante* data, and OCNLD data used in the respective 1329 proceeding, or *ex-post* data. Mr. Garrett, however, relied solely on *ex-post* data, excluding *ex-ante* data from his analysis. An identical approach of excluding *ex-ante* data (financial statements) was recommended by OCA and rejected by the Commission in the Cheltenham Township Section 1329 proceeding.⁷⁶

Mr. Garrett also substituted the purchase price paid with the fair market value rate base approved by the Commission. That approach also was recommended by the OCA and rejected by the Commission in the Cheltenham proceeding. Referencing the Limerick Section 1329 proceeding, the Commission noted that the correct purchase price for Limerick of \$75 million should be used in the selected transaction method in lieu of the Commission's determined ratemaking rate base value because \$75 million was the amount bid and paid by the buyer.⁷⁷ Mr. Walker emphasized that there is no authoritative source, nor Commission precedent, which

⁷³ Aqua St. No. 4 at 24.

⁷⁴ OCA St. No. 1 at 9-11.

⁷⁵ Aqua St. No. 4-R at 17-18.

⁷⁶ Aqua St. No. 4-R at 18-19. *Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township (“Cheltenham”)*, Docket No. A-2019-3008491, Opinion and Order entered November 5, 2019, mimeo at 73-74.

⁷⁷ Aqua St. No. 4-R at 19. *Cheltenham*, mimeo at 60-61.

supports use of Commission directed ratemaking rate base value in the Market Approach.⁷⁸

Selected Transactions

Contrary to Gannett's analysis that includes information for 13 selected transactions, Mr. Garrett's adjustment to the Gannett analysis was based on only three transactions due to his excluding numerous selected transactions and relying solely on collection/distribution systems. This is an unreliably small sample size. He compounded his small sample size problem by excluding results or indications of value that he viewed as too high or too low.⁷⁹

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

Additionally, using only *ex-post* data (the only data used by Mr. Garrett) for all the collection/distribution systems selected transactions used in the Gannett appraisal, Mr. Garrett's methodology would indicate a value of \$47,693,222, or \$17,936,268 more than his \$29,756,954 recommendation, for the selected transactions, **a 60% difference.**⁸¹

Mr. Walker emphasized further that Mr. Garrett's Selected Transactions Method result of \$29,756,954 is less than the system's OCNLD of \$32,955,596, which suggests a multiple of OCNLD of 0.90-times ($\$29,756,954 \div \$32,955,596$). The fair market value for \$32,955,596 OCNLD cannot be as low as 0.90-times. Mr. Garrett presented no evidence that would support a multiple of OCNLD of 0.90-times.⁸²

Mr. Garrett's recommended adjustment to the Gannett Selected Transactions Method is not appropriate and should not be used to determine the value of the East Whiteland system.⁸³

⁷⁸ Aqua St. No. 4-R at 20.

⁷⁹ Aqua St. No. 4-R at 22; *see also* Aqua Main Brief at 35.

⁸⁰ Aqua St. No. 4-R at 22.

⁸¹ Aqua St. No. 4-R at 22-23.

⁸² Aqua St. No. 4-R at 23-24; *see also* Aqua Main Brief at 36.

⁸³ Aqua St. No. 4-R at 23 and 24.

ii. The AUS Market Approach

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

Mr. Garrett proposed three adjustments to the AUS Market Approach. He substituted the Commission determined rate base for purchase price. He challenged AUS' weighting of transactions and he included only collection/distribution systems in his analysis.⁸⁵ Mr. Garrett's proposed adjustments reduce the AUS market approach to value from \$56.2 million to \$40.9 million.⁸⁶ None of the adjustments are appropriate and none should be adopted.

Substitution of Rate Base for Purchase Price

Mr. Weinert explained that the use of Commission determined rate base as opposed to the agreed upon purchase price is not an appraisal market comparable approach as it does not represent a market transaction.⁸⁷ The Commission's determination of ratemaking rate base under Section 1329 applications does not meet the definition of Market Value in terms of an agreed upon price between a buyer and seller neither being under duress.⁸⁸

Use of Only Collection Systems

While eliminating wastewater transactions that included treatment facilities, Mr. Garrett included three water distribution properties in his analysis of the market approach. If wastewater properties that include treatment facilities should be eliminated because of a lack of comparability

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

⁸⁵ OCA St. No. 1 at 11-12. Mr. Weinert noted further that, in addition to these three adjustments, Mr. Garrett also used different values of cost of replacement new less depreciation for the McKeesport and Limerick transactions and that Mr. Garrett did not include the DELCORA transaction in his analysis. Aqua St. No. 5-R at 2-3.

⁸⁶ OCA St. No. 1 at 11 and 13.

⁸⁷ Aqua St. No. 5-R at 5.

⁸⁸ Aqua St. No. 5-R at 5; *see also* Aqua Main Brief at 37.

then water distribution properties also should be eliminated. If this were done, Mr. Garrett's Market Approach increases by \$1,710,627 to \$42,616,932, or approximately 4%.⁸⁹

Additionally, by eliminating wastewater transactions that include treatment facilities from the analysis, Mr. Garrett failed to include the value of purchased treatment capacity at the Valley Forge Treatment Plant thus undervaluing the system. Had Mr. Garrett included Section 1329 transactions of wastewater properties with collection and treatment assets to account for the value of purchased treatment capacity while excluding collection only systems, his Market Approach conclusion would have been \$44,901,310 instead of \$40,946,531.⁹⁰

Weighting

The market comparable statistic being measured in the market analysis is the ratio of purchase price to the CORLD, not the size of the transaction. The use of a transaction size weighted average produces a weighted average with statistics far superior to a simple mean as is demonstrated by the mean and its standard deviation shown in the Table presented on page 7 of Mr. Weinert's rebuttal testimony.⁹¹ Mr. Garrett's reliance on the simple average as opposed to the more accurate purchase price weighted average produces a less reliable market comparable indicator.⁹²

c. Income Approach

i. The Gannett Income Approach

Gannett used the Market Multiple Discounted Cash Flow Method and the Capitalization Discounted Cash Flow Method, collectively known as the DCF method to determine the Income Approach result.⁹³ Gannett has applied the DCF method as its Income Approach to valuation in

⁸⁹ Aqua St. No. 5-R at 5-6.

⁹⁰ Aqua St. No. 5-R at 6.

⁹¹ Aqua St. No. 5-R at 6-7.

⁹² Aqua St. No. 5-R at 8.

⁹³ Aqua St. No. 4 at 18.

fourteen Section 1329 fair market value proceedings. The Commission has not adjusted Gannett's DCF recommendation in any one of those prior proceedings⁹⁴ and it should not be adjusted here.

Mr. Garrett proposed adjustments to the Gannett Income Approach based on his use of a capitalization of earnings method and different cash flows to value. He also disagreed with the discount rates used by Gannett and presented what he believes is a more appropriate discount rate. Mr. Garrett's recommendations do not meet a standard of value of fair market value and are in direct violation of Section 1329.⁹⁵ The impact of Mr. Garrett's adjustments reduces the Gannett Income Approach result from \$61.1 million to \$41.3 million.

Mr. Garrett's capitalization of earnings or cash flow method converts a single base economic income number to a value by dividing it by a capitalization rate. The Commission has *never* accepted the capitalization of earnings method recommended by Mr. Garrett in a Section 1329 proceeding.⁹⁶

Conversely, the Income Approach to valuation used in Gannett's appraisal is based on the DCF method, which values the potential for profit in an investment and reflects future events. Gannett used the DCF method to be consistent with the required standard of value of fair market value.⁹⁷ The DCF method "is based on the principle of anticipation - i.e., value is created by the anticipation of future benefits. DCF analysis reflects investment criteria and requires the appraiser to make rational and supportable assumptions."⁹⁸

Mr. Garrett's capitalization of earnings method uses the income or cash flow producing capabilities for a single year, reflecting current ownership and operations, by averaging the

⁹⁴ Aqua St. No. 4-R at 12-13.

⁹⁵ Aqua St. No. 4-R at 10.

⁹⁶ Aqua St. No. 4-R at 12-13.

⁹⁷ Aqua St. No. 4-R at 11, citing Pratt, Shannon P. "Defining Standards of Value." *Valuation* 34, no. 2, June 1989. <http://www.appraisers.org/docs/default-source/college-of-fellows-articles/defining-standards-of-value.pdf>.

⁹⁸ Aqua St. No. 4-R at 11, citing Appraisal Standards Board, "First Exposure Draft of proposed new Advisory Opinions and Advisory Opinion Revisions in conjunction with the 2016-17 edition of the Uniform Standards of Professional Appraisal Practice" pg. 6.

Township’s 2018 to 2020 results. Although Mr. Garrett states that his single cash flow is **from** the Gannett appraisal, he failed to disclose that Gannett did not **use** the single cash flow in its Income Approach. Specifically, the Gannett Approach is based on **projected** cash flows beginning in 2022 and thereafter.⁹⁹

At page 13 of his rebuttal testimony, Mr. Walker presented five specific concerns with Mr. Garrett’s use of “free cash flow from operations”¹⁰⁰ Significant of these concerns is Mr. Garrett’s use of depreciation expense based on original cost, rather than current value, of assets.¹⁰¹ The Commission has previously rejected the use of original cost as the basis of fair market value.¹⁰² Further, the EBIT amount used by Mr. Garrett is equivalent to a before income tax overall rate of return of only 1.9% to 2.0% on the value of net plant, based on Gannett’s Cost Approach or Mr. Garrett’s Cost Approach, and is clearly below the zone of reasonable returns for public utility assets.¹⁰³ The “free cash flow from operations” that Mr. Garrett used in his comparable earnings analysis is inappropriate and should not be adopted.

Mr. Walker also explained that the 4.5% discount rate used by Mr. Garrett is not appropriate for fair market valuation purposes. At pages 15 through 17 of his rebuttal testimony, Mr. Walker listed five specific reasons why Mr. Garrett’s discount rate was not determined in accordance with accepted valuation practice.¹⁰⁴

ii. The AUS Income Approach

AUS also used the DCF method to determine the Income Approach result.¹⁰⁵ Mr. Garrett,

⁹⁹ Aqua St. No. 4-R at 11-12.

¹⁰⁰ Aqua St. No. 4-R at 13.

¹⁰¹ Aqua St. No. 4-R at 13.

¹⁰² Aqua St. No. 4-R at 14, citing *Application of Aqua Pennsylvania Wastewater, Inc. – Limerick Township*, Docket No. A-2017-2605434, Opinion and Order entered November 8, 2017, mimeo at 30, and *Application of Aqua Pennsylvania Wastewater, Inc. – Lower Makefield Township*, Docket No. A-2021-3024267, Opinion and Order entered January 13, 2022, mimeo at 69.

¹⁰³ Aqua St. No. 4-R at 13.

¹⁰⁴ Aqua St. No. 4-R at 15-17; *see also* Aqua Main Brief at 32-33.

¹⁰⁵ Aqua St. No. 5 at 19.

however, substituted his own Income Approach for the AUS Approach. Using the average of the Township's 2016 through 2018 financial information, he performed a direct capitalization of similar cash flows from operations to perpetuity.¹⁰⁶ The impact of Mr. Garrett's adjustment reduces the AUS Income Approach result from \$55.6 million to \$41.4 million.

Mr. Weinert rejected Mr. Garrett's adjusting of the AUS Income Approach. Mr. Weinert pointed out that Mr. Garrett assumes, erroneously, that revenues and expenses as reported in East Whiteland's financial information will be the operating results of the buyer. They will not be. Expenses and rate base will change as a result of the sale. Further, Mr. Garrett's estimated cost of equity at 6.0% is far below what the Commission regularly assumes is the cost of equity, which was 9.85% based on the Bureau of Technical Utility Services Report on Quarterly Earnings of Jurisdictional Utilities for the Year Ending December 31, 2020.¹⁰⁷

Mr. Weinert presented an adjusted OCA model in his rebuttal testimony. When adjusted for the transition of the Township wastewater operation to a rate regulated utility, the OCA model, as rerun by Mr. Weinert, produces an income approach indicator of \$62,117,860, which is significantly higher than the AUS income approach indicator of \$55,600,045 and demonstrates that the AUS indicated value is conservative in comparison.¹⁰⁸

2. Conclusion – Section 1329 Fair Market Valuation

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

Aqua's Exception No. 3 should be granted.

¹⁰⁶ Aqua St. No. 5-R at 20.

¹⁰⁷ Aqua St. No. 5-R at 21.

¹⁰⁸ Aqua St. No. 5-R at 24-25; *see also* Aqua Main Brief at 34.

EXCEPTION NO. 4 - THE STIPULATION OF ACTIVE PARTIES SHOULD BE APPROVED

Aqua excepts to the failure of the Recommended Decision to substantively address the Stipulation of Active Parties. Recommended Decision, Section V, Pages 16-21. The Stipulation is in the public interest and should be accepted and approved. Aqua Reply Brief, Section V.C.

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

Aqua submits that the Stipulation is in the public interest and should be accepted and approved. While not resolving all contested issues, including the determination of affirmative public benefits or ratemaking rate base, the Stipulation, if accepted and approved, removes several issues from litigation. The proposed resolution of issues is supported by the evidence of record as addressed on an issue-by-issue basis in Section V.C of Aqua's Reply Brief.¹⁰⁹

Aqua's Exception No. 4 should be granted.

¹⁰⁹ Although Aqua believes that the Stipulation presents a reasonable resolution of the conditions for approval recommended by I&E, OSBA and OCA as set forth above and in its Reply Brief, Aqua would continue to support its litigation position, as presented in Section V.C of its Main Brief and Section V.D of its Reply Brief, should the Commission decline to accept and approve the Stipulation.

EXCEPTION NO. 5 - SECTION 507 APPROVALS

Aqua excepts to the failure of the Recommended Decision to recommend Section 507 approvals, if necessary, for contracts, including assignment of contracts, between Aqua and the Township. See Recommended Decision, Ordering Paragraph No. 14. The contracts are necessary for the operation of the system and no party opposed the issuance of the certificates. The Commission should issue the requested certificates of filing. Aqua Main Brief, Section V.D, Aqua Reply Brief, Section V.E, and Stipulation of Active Parties

The Application asks that the Commission approve, if necessary, Aqua's acquisition agreement with East Whiteland and the assignment of 22 contracts with municipalities under Section 507 of the Code.¹¹⁰ The contracts are necessary for the operation of the system and no party opposed the issuance of the certificates. In their Stipulation, the active parties agreed, moreover, that the Commission shall issue any necessary approvals or certificates for the transaction pursuant to Section 507.¹¹¹ The contracts, including assignments, are reasonable, legal and valid and the certificates should issue.

Aqua's Exception No. 5 should be granted.

EXCEPTION NO. 6 - SECTION 2102 APPROVAL

Aqua excepts to the failure of the Recommended Decision to recommend Section 2102 approval of the assignment of an Agreement between Aqua Resources and various municipalities. See Recommended Decision, Ordering Paragraph No. 14. The charges under the Agreement are reflective of a negotiated, market rate for conveyance of wastewater. No party opposed the assignment. The Commission should approve the assignment of the Agreement. Aqua Main Brief, Section V.E, Aqua Reply Brief, Section V.F, and Stipulation of Active Parties

Aqua will be taking assignment of East Whiteland's rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities and included in the Application as Exhibit F17 – the November 2018 Agreement – for conveyance of

¹¹⁰ Aqua St. No. 1 at 6.

¹¹¹ The OCA did not join in this stipulation term but did not oppose it.

wastewater through the Valley Creek Trunk Line. The charges under the Agreement and the Agreement itself were negotiated by Aqua Resources and non-affiliates of Aqua and, thus, are reflective of a negotiated, market rate for the conveyance of wastewater.¹¹² No party opposed the assignment of the Agreement. In their Stipulation, the active parties agreed, moreover, that the Commission shall issue any necessary approvals or certificates for the transaction pursuant to Section 2102.¹¹³ The Commission should approve the assignment of the Agreement.

Aqua's Exception No. 6 should be granted.

III. CONCLUSION

The Public Utility Commission should grant Aqua's Exceptions to the Recommended Decision and approve Aqua's Application filed pursuant to Section 1102, 1329, 507 and 2102 of the Public Utility Code, and:

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

¹¹² Aqua St. No. 1 at 22-23.

¹¹³ The OCA did not join in this stipulation term but did not oppose it.

Assignments of Contracts, between Aqua and East Whiteland, pursuant to Section 507 of the Public Utility Code;

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

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 

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Date: May 20, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Honorable Marta Guhl, Presiding

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

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of May 2022, served a true and correct copy of the foregoing Exceptions of Aqua Pennsylvania Wastewater, Inc. upon the persons and in the manner set forth below:

VIA ELECTRONIC MAIL

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