

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Application of Aqua Pennsylvania Wastewater, Inc., pursuant to 66 Pa. C.S. §§ 1102 and 1329 for: (1) approval of the acquisition by Aqua Pennsylvania Wastewater, Inc. of the wastewater assets of Willistown Township situated within the Township of Willistown, Chester County, Pennsylvania; (2) approval of the right of Aqua Pennsylvania Wastewater, Inc. 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

A-2021-3027268

Request for Approval of Contracts, including Assignments of Contracts, between Aqua Pennsylvania Wastewater, Inc. 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.

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, issued on April 21, 2022, in the above-captioned proceeding, which were filed by the following Parties on May 2, 2022: Aqua Pennsylvania Wastewater, Inc. (Aqua, the Company, or the Applicant); Willistown Township (Willistown or the Township); the Office of Consumer Advocate (OCA); Robert Swift; and Henry Yordan and Julie Frissora. On May 9, 2022, Aqua, Willistown, the Commission's Bureau of Investigation and Enforcement (I&E), the OCA, the Office of Small Business Advocate (OSBA), Mr. Swift, and Mr. Yordan and Ms. Frissora filed Replies to Exceptions.¹ For the reasons stated, *infra*, we shall: (1) grant, in part, and deny, in part, the Exceptions of Aqua, the Township, the OCA, Mr. Swift, and Yordan-Frissora; (2) adopt the Recommended Decision, as modified; and (3) approve the Application, as modified; all consistent with this Opinion and Order.

I. Procedural History

On August 3, 2021, Aqua filed an Application under Sections 1102, 1329, and 507 of the Public Utility Code (Code), 66 Pa. C.S. §§ 1102, 1329, 507, seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of Willistown; (2) the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in the requested territory; and (3) an order approving the acquisition that includes the ratemaking rate base of the Township's wastewater system assets pursuant to

¹ Mr. Yordan and Ms. Frissora filed combined Exceptions and Replies to Exceptions and, thus, when referring to their arguments therein we shall cite to these Parties and their pleadings as Yordan-Frissora.

Section 1329(c)(2) of the Code, 66 Pa. C.S. § 1329(c)(2).² Application at ¶ 3. Aqua also requested approval of the Asset Purchase Agreement (APA) dated January 20, 2021, as well as other municipal agreements and contracts, pursuant to Sections 507 and 2102 of the Code, 66 Pa. C.S. §§ 507, 2102, and requested that the Commission issue an order and Certificate of Public Convenience (Certificate) approving and addressing the items requested in its Application. Application at ¶¶ 5, 69-72.

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 wastewater customers. The Notice required Aqua and Aqua Pennsylvania, Inc., upon receipt of the letter, to provide individualized notice of the proposed acquisition to all potentially affected Aqua and Aqua Pennsylvania, Inc. customers, consistent with the Commission's Final Supplemental Implementation Order. *Implementation of Section 1329 of the Public Utility Code – Final Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered February 28, 2019) (*FSIO*). Aqua was directed to inform the Commission when it began to provide such individualized notice. Aqua was also directed to ensure concurrent notice to all current Willistown wastewater customers in similar fashion as the published notice as directed. Thereafter, Aqua was directed to file a verification letter indicating it satisfied the conditions established in the Secretarial Letter.

² Under 66 Pa. C.S. § 1329, *inter alia*, Aqua sought to establish a ratemaking rate base of \$17,500,000 for Willistown's wastewater system assets based on the negotiated purchase price, as the negotiated purchase price of \$17,500,000 is less than the average of the fair market value appraisals, which is \$22,363,070 (determined by \$25,613,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) and \$19,113,140 presented in the appraisal of AUS Consultants, Inc. (AUS)). Application at 18.

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

On January 26, 2022, Mr. Swift filed a Protest.

On January 27, 2022, Mr. Yordan filed a Protest.

On January 28, 2022, Ms. Frissora filed a Protest.

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

On February 4, 2022, Aqua filed a Petition for a Protective Order, pursuant to 52 Pa. Code § 5.365 (Protective Order Petition). 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, Mr. Swift filed a Renewed Motion For Issuance of Deposition Subpoenas To Fact Witnesses, as it pertained to William Hagan, Sally Slook and William Shoemaker (Deposition Motion), which was re-filed on February 7, 2022.

On February 7, 2022, Mr. Swift filed objections to the Protective Order Petition (Swift Objection). Mr. Swift's objection averred, *inter alia*, that the protective order sought by Aqua was overly broad, prevented protestors from having a level playing field, and would result in a denial of due process. Swift Objection ¶ 5.

On February 7, 2022, Mr. Yordan filed objections to Aqua's Petition.

On February 8, 2022, Willistown filed a Petition to Intervene, which was granted by Interim Order dated February 15, 2022.

On February 14, 2022, Prehearing Memoranda were filed by the Parties. No Prehearing Memorandum was filed by Michelle and Jeffrey Atchison. Mr. Swift included the following statement in his Prehearing Memorandum:

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, Willistown filed objections to Mr. Swift's Deposition (Willistown Objections).

The prehearing conference was held as scheduled on February 15, 2022. Aqua, Willistown, I&E, the OCA, and the OSBA appeared and were represented by counsel. In addition, Mr. Swift, Mr. Yordan and Ms. Frissora attended the conference. 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 (Disqualification Motion). 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 Mr. Swift, ALJ Watson denied the Disqualification Motion.

In addition, a lengthy discussion was held by the Parties at the Prehearing Conference regarding Mr. Swift's Deposition Motion and a proposed litigation schedule. ALJ Watson advised the Parties 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 ALJ. *See* R.D. at 7.

At the prehearing conference on February 15, 2022, Ms. Frissora also objected to Aqua's Protective Order Petition. Regarding the Deposition Motion, the Township also 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.

During the Prehearing Conference, the ALJ advised that the Deposition Motion as it pertains to William Shoemaker and William Hagan, would be denied; however, the Deposition Motion as it relates to Sally Slook would be granted and a discovery deposition of Sally Slook would be permitted. In addition, the ALJ noted that as the date set forth in the sample subpoenas had passed and as no date was agreed upon, 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. *See R.D. at 9.*

On February 16, 2022, the ALJ issued an Interim Order denying the Deposition Motion as it pertained to William Hagan and William Shoemaker and granting it as it pertained to Sally Slook, with limitations.

On February 17, 2022, the Petition to Intervene filed by Willistown was granted. Also, on February 17, 2022, ALJ Watson issued an Interim Order granting the Protective Order Petition and an Order denying the Disqualification Motion.

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

On February 24, 2022, the ALJ issued an Interim Order granting the request by Mr. Swift, for the issuance of a hearing subpoena to fact witness, William Shoemaker and William Hagan.

On February 24, 2022, the Public Input Hearings were convened as scheduled at 1 p.m. and 6 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 Mr. Swift and Protestant Jeffrey Atchison, who did not attend.

On March 2, 2022, the evidentiary hearing was convened as scheduled. Aqua, Willistown, I&E, the OCA, and the OSBA, appeared and were represented by legal counsel.³ In addition, Mr. Swift, Mr. Yordan, and Ms. Frissora, appeared and participated, and 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.

On March 4, 2022, an Interim Order was issued 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.

In the Recommended Decision issued on April 21, 2022, ALJ Watson found that Aqua had not established that the proposed purchase of the Willistown system

³ Aqua included the direct testimony of William C. Packer, Mark J. Bubel, Sr., Sally Slook, Harold Walker, III, and Jerome C. Weinert as Application Exhibits U, V, W, X, and Y, respectively to its Application filed August 3, 2021.

would provide substantial affirmative benefits under Section 1102 of the Code. The ALJ also found that the proposed transaction was not necessary or proper for the service, accommodation, convenience, or safety of the public under 66 Pa. C.S. § 1103. Thus, ALJ Watson recommended that the proposed transaction be denied. R.D. at 1, 124, 212-213. The ALJ went on to provide conditional recommendations on the remaining issues in this proceeding if the Commission does not agree with his primary recommendation. In this regard, ALJ Watson recommended adoption of the OCA's proposed adjustments to the fair market value (FMV) appraisals of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) and AUS Consultants (AUS).⁴ R.D. at 171-182. The ALJ also addressed four recommended conditions in the event the Commission approves the Application. R.D. at 195-201.

As noted above, Aqua, Willistown, the OCA, Mr. Swift and Yordan-Frissora filed Exceptions on May 2, 2022. On May 9, 2022, Aqua, Willistown, I&E, the OCA, the OSBA, Mr. Swift and Yordan-Frissora filed Replies to Exceptions.

II. Transaction Overview

Aqua is a certificated provider of wastewater service, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua provides wastewater service to approximately 45,000 customer accounts in various counties throughout Pennsylvania including parts of Chester County and within the Township itself and currently operates thirty-nine wastewater treatment plants. Application at ¶ 7; Aqua St. 1 at 7.

⁴ The Recommended Decision adopted the OCA's proposed adjustments to the Gannett Fleming Cost Approach reducing the Gannett Fleming appraisal result to \$19,567,522. It also adopts the OCA's proposed adjustment to the AUS Cost and Market Approaches that reduce the AUS appraisal result to \$18,038,548.

Willistown is a Pennsylvania Second Class township, which owns the sanitary wastewater collection and treatment system (the System) providing sanitary wastewater service to approximately 2,294 customers in Willistown. Application at ¶ 8. Although Willistown owns one wastewater treatment plant (WWTP), Penn's Preserve, which treats wastewater to a small community system, wastewater treatment is mainly provided by the Valley Forge Sewer Authority (VFSA).⁵ Application at ¶ 15.

On January 20, 2021, Aqua and Willistown entered into an APA for the sale of the assets, properties, and rights related to the Township's wastewater system at an agreed-upon price of \$17,500,000. Thereafter, Aqua and the Township agreed to use the process presented in Section 1329 of the Code to determine the FMV of the wastewater system assets and the ratemaking rate base. As required by Section 1329, Aqua and Willistown jointly retained the services of Pennoni Associates, Inc. (Pennoni) to complete the engineering assessment and original cost estimate of the System (Engineering Assessment). Aqua St. 1 at 19; Application at ¶ 11. Aqua selected Gannett Fleming, and the Township selected AUS, as their respective Utility Valuation Engineers (UVEs) to prepare FMV appraisals of the System. Application at ¶ 53. Gannett Fleming's FMV report concluded that the value of the System was \$25,612,805; AUS' FMV was \$19,113,140. Application Exhs. Q and R, respectively.^{6,7} Both appraisals were prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards. Application at ¶ 61; Application Exhs. T1 and T2.

⁵ Willistown accepts flows into the System from users on the borders of Willistown, including from neighboring municipalities: Borough of Malvern (Malvern), East Goshen Township (East Goshen), and East Whiteland Township (EWT). While most flows from these users flow to the VFSA WWTP for treatment, some flows sent to East Goshen are treated at the East Goshen Municipal Authority (EGMA) Ridley Creek WWTP or the West Goshen Sewer Authority (WGSA) WWTP. Aqua St. 2 at 5-6.

⁶ Application Exhibit Q, Gannett Fleming Fair Market Value Appraisal Report (hereinafter "Application Exh. Q" or "Gannett Fleming FMV Appraisal").

⁷ Aqua Application, Exhibit R, AUS Fair Market Value Appraisal Report (hereinafter "Application Exh. R" or "AUS FMV Appraisal").

In its Application, Aqua proposed a ratemaking rate base of \$17,500,000 based on the agreed-to purchase price of \$17,500,000. This amount is less than the average of the two UVE appraisals for the wastewater system ($(\$25,612,805 + \$19,113,140)/2 = \$22,362,972$). OCA M.B. at 23; Application at ¶ 56; *See* 66 Pa. C.S. § 1329(c)(2).

In addition, Aqua is seeking approval of the APA with Willistown. Application Exh. B. The APA requires Aqua to implement the Township's existing rates for the acquired customers upon closing, and for at least two years thereafter. The APA also provides that Aqua's tariff rules and regulations will apply following closing, and Willistown customers will be converted from quarterly to monthly billing. Application Exh. B at Section 7.03. Moreover, in accordance with Section 1102 of the Code, Aqua is requesting a Certificate in order to provide wastewater services to the Township customers. Application at ¶ 5. In addition, Aqua is seeking approval for several other municipal agreements pursuant to Section 507 of the Code. Application at ¶¶ 69, 70. Aqua is also requesting that if the Willistown acquisition is completed, the Commission also approve the subsequent assignment of the Wastewater Conveyance Agreement from Willistown to Aqua under Section 2102 of the Code. Application at ¶¶ 71, 72. Separate customer notices were sent to the Township customers and current Aqua customers informing them of the proposed transaction and the potential rate impact.

III. Public Input Hearings

Two public input hearings were conducted to give the public an opportunity to be heard regarding the acquisition of the Township sewage system by Aqua. The first public input hearing was held on February 24, 2022, at 1 p.m., at which eighteen Township residents testified in opposition to the acquisition. R.D. at 33. On February 24, 2022, at 6 p.m., a second public input hearing was convened, at which twelve individuals testified against the sale of the wastewater system. *Id.* at 36. We refer

to the Recommended Decision for a detailed summary describing the positions of the witnesses who testified at both public input hearings, and which is incorporated herein. *See Id.* at 33-38.

IV. Legal Standards

A. Burden of Proof, 66 Pa. C.S. § 332(a)

As the proponent of a rule or order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Applicant's evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

B. Certificate of Public Convenience, 66 Pa. C.S. §§ 1102, 1103

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa. C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a Certificate from the Commission prior to a utility or an affiliated interest of a utility to acquire or

transfer, to any person or corporation by any method, property used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a Certificate required under Section 1102:

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*. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa. C.S. § 1103(a) (emphasis added); *see also Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 763, 764-65 (Pa. Cmwlth. 1985).

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will affirmatively benefit the public.” *Id.* (overruling in part, *Northern Pennsylvania Power Co. v. Pa. PUC*, 333 Pa. 265, 267, 5 A.2d 133, 134).

The Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based

determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky v. Pa. PUC, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (*Popowsky*).

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction.

Id. at 617-618, 937 A.2d at 1061. 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.” *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa. C.S. § 1103(a).

One of the factors that the Supreme Court identified in the *City of York* for the Commission to consider, in determining whether there is an affirmative public benefit is:

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.

City of York, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court recently held that the Commission must perform “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.” *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). While *McCloskey* held that rate impact must be addressed, it recognized 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.” 195 A.3d at 1067.

The Commission and the courts have held that granting a certificate need not be “absolutely necessary” in order to be in the public interest. *See Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014). The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.” *Id.* In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “*all affected parties*, and not merely one particular group or geographic subdivision.” *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (*Middletown*) (emphasis in original); *see also, Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967), *aff’d*, 252 A.2d 589 (1969) (where public benefit included companies and customers other than the proponent utility).

To obtain a Certificate, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service. *McCloskey*, 195 A.3d at 1058. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). It is the protestant’s burden to rebut that presumption. *Lehigh Valley Transp.* Where an Applicant is both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

C. Ratemaking Rate Base Value, 66 Pa. C.S. § 1329

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. 66 Pa. C.S. § 1329.⁸ Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility's rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the "fair market value" of the selling utility's system. 66 Pa. C.S. § 1329(c)(2).

The FMV process under Section 1329 where the acquiring utility and the seller must elect and agree to have the FMV of the seller's assets established through separate, independent appraisals conducted by UVEs is voluntary. 66 Pa. C.S. § 1329(a). The Commission maintains a list of qualified UVEs from which the acquiring utility and the seller must choose their respective appraisers. 66 Pa. C.S. §§ 1329(a)(1), (2).

The UVEs must prepare an appraisal of the seller's system assets in compliance with the USPAP, employing the Cost, Market and Income Approaches. 66 Pa. C.S. § 1329(a)(3). The FMV of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3). 66 Pa. C.S. § 1329(g).

The Applicant must provide to the Commission copies of the appraisals; the purchase price; the ratemaking rate base; the closing costs; and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1).

⁸ Governor Wolf signed into law Act 12 of 2016 (Act 12) on April 14, 2016. This Act amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2016. 66 Pa. C.S. § 1329.

D. Utility-Municipal Contracts, 66 Pa. C.S. § 507

Section 507 of the Code provides as follows regarding a utility's contract with a municipal corporation:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof.

66 Pa. C.S. § 507. Thus, pursuant to Section 507, the Commission has discretionary power to institute proceedings to determine the reasonableness, legality and validity of the contracts between a municipality and a public utility. *Id.*; *see also County of Allegheny v. Pa. PUC*, 159 A.2d 227, 233 (Pa. Super. 1960).

E. Affiliated Interest Agreements, 66 Pa. C.S. § 2102

Regarding a utility's contract with an affiliated interest, as defined in 66 Pa. C.S. § 2101, Section 2102 of the Code states, in pertinent part, as follows:

(a) . . . 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 . . . made or entered into after the effective date of this section 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

(b) . . . The commission shall approve such contract or arrangement made or entered into after the effective date of this section only upon investigation that it is reasonable and consistent with the public interest. . . .

66 Pa. C.S. § 2102. Therefore, pursuant to Section 2102, the Commission shall review contracts between a utility and an affiliated interest to determine whether it is legal, reasonable and consistent with the public interest.

F. General Standards

In the Recommended Decision, ALJ Watson made 144 Findings of Fact and reached thirty-two Conclusions of Law. *See* R.D. at 13-33, 213-218. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

V. Discussion

A. Constitutional Due Process

The bases of the right to procedural due process are found in Section 1 of the Fourteenth Amendment to the United States Constitution, U.S. Const. art I, §§ 1, 9, Section 11 of the Pennsylvania Constitution, Pa. Const. art. I, § 11, and Section 504 of the Administrative Agency Law of Pennsylvania, 2 Pa. C.S. § 504. *Evans v. Pa. PUC*, 264 A.3d 833, 2021 Pa. Commw. Unpub. LEXIS 519 (Pa. Cmwlth. 2021). The Commission is bound by the due process provisions of constitutional law and by fundamental principles of fairness. *Id.*, citing *Popowsky v. Pa. PUC*, 805 A.2d 637 at 642 (Pa. Cmwlth. 2002). Constitutional due process requires notice and an opportunity to be heard. *Conestoga Nat'l Bank v. Patterson*, 442 Pa. 289, 275 A.2d 6 (1971) (*Conestoga*); 2 Pa. C.S. § 504.

Regarding application proceedings under 66 Pa. C.S. § 1329, which include a determination of rate base that affects customer rates, the Commonwealth Court of Pennsylvania determined that 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. Notice must be provided to all affected customers in accordance with 52 Pa. Code § 53.45. *McCloskey* 195 A.3d at 1069. The directive of the *McCloskey* case is to provide customers with a meaningful opportunity to be heard and to present evidence that may be taken into account by the Commission. *FSIO* at 30; *see also Barasch v. Pa. PUC*, 546 A.2d 1296 (Pa. Cmwlth. 1988).

1. Positions of the Parties

Aqua argued that constitutional due process requirements were satisfied in this proceeding because the Commission provided the Parties, including Mr. Swift, Mr.

Yordan and Ms. Frissora,⁹ with notice of the proceeding and an opportunity to be heard with respect to it. Aqua M.B. at 8. Aqua averred that the Opposing Intervenors were aware of the filing of the Application in August 2021, which was five months before the Commission served the final acceptance letter and prehearing order in mid-January 2022, and that they filed petitions to intervene in August 2021. *Id.* at 7; Aqua R.B. at 2-3. Aqua also contends that the Opposing Intervenors received personal notice of the proceeding from the Township, and that Aqua customers were provided with personal notice from Aqua. Aqua M.B. at 7.

Aqua stated that, on January 18, 2022, the Commission served the Parties with a notice of a prehearing conference scheduled for February 15, 2022; a Prehearing Conference Order, dated January 13, 2022, which set forth the litigation schedule; and a copy of the final acceptance letter dated January 14, 2022. Aqua M.B. at 7-8; Aqua R.B. at 2-3. Aqua further noted that the Opposing Intervenors filed protests to the Application in January 2022. Aqua M.B. at 7. In addition, Aqua noted that the Opposing Intervenors actively participated in the litigation in this proceeding by providing testimony, subpoenaing representatives of the Township, propounding discovery, participating in the evidentiary hearings with the opportunity to cross examine witnesses, and filing briefs. Aqua R.B. at 2-3.

Aqua argued that there was ample time within the six-month review period, pursuant to 66 Pa. C.S. § 1329, for the Commission to provide the required constitutional due process safeguards. *Id.* As a result, Aqua contended that the particular circumstances of this case support a conclusion that the Commission provided the Opposing Intervenors with notice and an opportunity to be heard. *Id.* at 3-4.

⁹ Mr. Swift, Mr. Yordan, and Ms. Frissora provide many overlapping arguments in opposition to the Application; where relevant we shall refer to them as the Opposing Intervenors.

Willistown argued that this proceeding has not resulted in a violation of any party's due process rights, and that all persons with a vested interest in the proceeding before the Commission had advance notice of it. The Township averred that it circulated a notice to its customers informing them of the proposed transaction and potential rate base addition in December 2021, which provided instructions on actions individuals could take. Willistown also stated that two Public Input Hearings were held to ensure an opportunity to be heard for members of the public interested in testifying. Willistown M.B. at 7.

Furthermore, Willistown averred that the protestants to the Application were provided and availed themselves of the opportunity to participate in the discovery and testimony processes, and that there was "no information, either documentary or via testimony, that any of the protestants sought but were unable to obtain in this proceeding." *Id.* at 8. Finally, the Township contended that the crux of Mr. Swift's due process argument would render every Section 1329 application approved since its enactment invalid and unconstitutional, and argued that 66 Pa. C.S. § 1329 must itself first be deemed unconstitutional, which the Township asserted it is not, in order to determine that the timeline in this proceeding constitutes a violation of due process. Willistown R.B. at 3-4.

The OCA argued that the Township acted unreasonably and did not comply with the due process directive in *McCloskey* by delaying service of notice. The OCA averred that Willistown chose not to provide notice about the estimated rate impacts of the sale of the Township's wastewater assets to Aqua in the earlier part of the notice period, but rather waited until later to give impacted customers notice with the least amount of time to develop a full evidentiary record in support of their positions. The OCA contended that, for some customers, the notice from the Township arrived up to forty-five days after Aqua began notifying its customers, and that Township customers

had less time to review the filing and prepare to participate in this proceeding.
OCA M.B. at 8-9.

Mr. Swift and Ms. Frissora argued that the 180-day period to resolve Section 1329 applications is facially violative of due process and violates due process as applied to the Commission. Mr. Swift and Ms. Frissora averred that the time period provided to *pro se* protestants to contest transactions is inadequate to obtain fact and expert evidence and to oppose high-valued transactions which may affect many customers. In addition, Mr. Swift and Ms. Frissora argued that the Commission's Secretary, individually or in collusion with Aqua's counsel, contrived a date for acceptance of the Application to provide for 154 days, rather than 180 days, to resolve this proceeding, of which fifty-five percent of that time was reserved for preparation of decisions by the ALJ and the Commission, and this violated their procedural due process rights. Mr. Swift and Ms. Frissora also contended that an inadequate amount of time was provided to them to engage in discovery and file written testimony. Furthermore, Mr. Swift and Ms. Frissora averred that, unlike them, the proponents of the Application have well-compensated legal counsel with access to funding for expert witnesses and experience in Section 1329 proceedings. Swift/Frissora M.B. at 8-9.

Similarly, Mr. Yordan argued that Aqua and Willistown manipulated the Commission-required notice process, which is sufficient grounds to deny the Application. Mr. Yordan contended that the notice should be protected from manipulation or any interference with its intended purpose. Mr. Yordan also averred that the public received inaccurate information and that the notice was intentionally delayed. Mr. Yordan asserted that Aqua and the Township cannot be allowed to behave in such a manner if the integrity of the regulatory framework is to survive. Yordan M.B. at 11-12.

2. Recommended Decision

The ALJ found that 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. The ALJ concluded that the challenges that the actions by the Commission and/or the Township deprived the Parties of their due process rights were not established in this proceeding. R.D. at 52-53. Therefore, the ALJ found that 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. Additionally, the ALJ determined that the Parties were regularly reminded of the compressed time schedule in this proceeding and all possible accommodations were made for the benefit of all Parties, given the statutory deadline and circumstances in this case. Despite the statutory deadline of six months for Commission action, the ALJ concluded that the Parties were provided with due process by the Commission in this proceeding. *Id.* at 57-58.

In addition, the ALJ found that the alleged due process violations raised by the Opposing Intervenors were inaccurate and without merit. The ALJ concluded that following Aqua's filing of its Application on August 3, 2021, Petitions to Intervene were subsequently filed by the Opposing Intervenors in August 2021; however, they did not file their Protests until January 2022, even though they could have filed them at any time following their interventions. Furthermore, the ALJ noted that the Opposing Intervenors could have engaged in discovery from August 6, 2021, three days after the filing of the Application, through the start of the evidentiary hearing on March 2, 2022, a period of approximately seven months. *Id.* at 53-54. Moreover, the ALJ found that any delay in the issuance of discovery subpoenas was not caused by the Commission or the presiding officer. *Id.* at 54. Accordingly, the ALJ found that individuals and protestants, including

the Opposing Intervenors, had the opportunity to become involved and participate in this proceeding since early August 2021. *Id.* at 58.

Finally, the ALJ concluded that the cause or purpose of the delay in providing notice by the Township was never adequately explained by the Township, and that no evidence was presented to establish that the delay was reasonable. While the ALJ noted that the lack of reasonable explanation by the Township for the delay in providing notice to its customers was disturbing, he found that there was no showing that the Township's delay caused or contributed to any individual being precluded from participating in this proceeding. The ALJ also found that there was no adequate showing by the Township regarding why the form and content of the Township's notice was utilized in this proceeding; however, the ALJ concluded that it was not established that any prejudice resulted from the form or content of the Township's notice. The ALJ encouraged Aqua to give attention to ensure that such delays do not occur in future Section 1329 proceedings. *Id.* at 52-53.

3. Swift Exception Nos. 2, 3 and 4, Replies and Disposition

Mr. Swift, in his Exception No. 2, argues that the ALJ erred, at page 57 of the Recommended Decision, in stating that the Commission, throughout the proceeding, provided the requisite notice to the Parties, ensured that the Parties were heard on all issues, and protected the Parties' due process rights. Swift Exc. at 1.

Next, Mr. Swift, in his Exception No. 3, argues that the ALJ erred, at page 58 of the Recommended Decision, in stating that it was not possible for the Commission to take all necessary action in this matter, including the issuance of a Recommended Decision, and addressing Exceptions and Replies to Exceptions, by July 14, 2022. *Id.* at 2.

Mr. Swift, in his Exception No. 4, argues that the ALJ, at page 58 of the Recommended Decision, “disassembled the facts” in stating that the assertion by Mr. Swift and Ms. Frissora that the Commission Secretary, individually or in collusion with Aqua’s counsel, contrived a date for acceptance of the Application to allow for 154 days, rather than 180 days, was raised at the briefing stage and not during the proceeding. Mr. Swift contends that if the Application would have been accepted one day later, the period for the Commission to review the filing would have instead been 179 days. Furthermore, Mr. Swift argues that, of the 154 days, 113 days or sixty-three percent, were reserved for preparation of the ALJ’s Recommended Decision and the Commission’s final Order to meet the statutory deadline of July 14, 2022. Of the time left, Mr. Swift avers that fifteen days for discovery was unreasonable, and that the ALJ’s denial of his Motion to subpoena two witnesses for deposition gave him no ability to anticipate their answers to his cross-examination questions at the evidentiary hearing. Mr. Swift argues that the proponents of the Application are advantaged because they have well-compensated counsel experienced in Section 1329 proceedings that use taxpayer or corporate funds to procure witnesses, as compared to the Opposing Intervenors, who are unrepresented, uncompensated and have no ready access to funding for expert witnesses. *Id.* at 2, 5-7.

Moreover, Mr. Swift argues that the 180-day period to resolve Section 1329 applications is facially violative of due process as applied by the Commission because there is no mechanism for extension when circumstances warrant. Mr. Swift avers that this amount of time is inadequate for *pro se* intervenors to assemble fact and expert evidence to oppose a multimillion-dollar transaction which will affect thousands of customers. Further, Mr. Swift contends that no litigation of this magnitude could reasonably be conducted within twenty-eight days from being granted intervention during a national pandemic. He asserts that the Commission’s Secretary and Aqua’s counsel abridged the due process rights of the Opposing Intervenors to obtain and present fact and expert testimony and deny a level playing field to contest the Application. *Id.* at 4, 7-8.

In reply, Aqua contends that Mr. Swift was aware of the Application upon its filing in August 2021, as he filed a Petition for Intervention on August 6, 2021. Aqua also states that the Commission served Mr. Swift with a copy of the final acceptance letter dated January 14, 2022. Aqua further argues that Mr. Swift prepared and served direct and surrebuttal testimony, subpoenaed, deposed and cross-examined Township representatives, propounded multiple sets of discovery, received copies of answers to discovery propounded by other parties, and actively participated in the evidentiary hearings. Aqua avers that the ALJ provided an extensive review of the circumstances in this case and concluded that the Parties were provided due process despite the 180-day statutory deadline. Aqua asserts that the circumstances of this case do not support Mr. Swift's assertion that Section 1329 is facially violative of due process or violative of due process as applied by the Commission. Aqua R. Exc. at 12-13.

Regarding Mr. Swift's Exception Nos. 2 and 3, Aqua argues that the ALJ's conclusion that due process rights were protected is supported by his extended discussion at pages 42-59 of the Recommended Decision, particularly regarding the discussion on the advance notice and final determination of the litigation schedule. *Id.* at 13-14. With respect to Mr. Swift's Exception No. 4, Aqua avers that the ALJ's disposition of Mr. Swift's claim that the Commission's Secretary, with or without Aqua's counsel, contrived the date of acceptance of the Application to only allow 154 days for the proceeding was appropriate because the issue was not raised during the proceeding and was only set forth in Main and Reply Briefs. *Id.* at 14-15.

With respect to the Opposing Intervenors' due process concerns, we find that throughout this proceeding, the Parties' due process rights were protected. As discussed *supra*, due process requires notice and an opportunity to be heard. *Conestoga*, 275 A.2d at 9; 2 Pa. C.S. § 504. In addition, for application proceedings under 66 Pa. C.S. § 1329, which include a determination of rate base that affects customer rates, the Commonwealth Court of Pennsylvania has determined that 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. *McCloskey*. Upon our review of the record, we conclude that in all stages of this proceeding, the Commission provided the required notice to the Parties and ensured that all parties were given an opportunity to be heard on all issues, despite the statutory deadline of six months for Commission action.

Interested individuals or parties had an opportunity to become involved in this proceeding since the Application was filed on August 3, 2021. Aqua notified its customers about the proposed transaction between November 23 and December 27, 2021, and the Township mailed notice to its customers on December 30, 2021. R.D. at 51-52. In addition, publication in the *Pennsylvania Bulletin* provided a due date for Petitions to Intervene and the date of the prehearing conference, along with instructions on how to participate at the prehearing conference. *Id.* at 52; 52 *Pa. B.* 814 (January 29, 2022). A Prehearing Order entered on January 13, 2022, was also available on the Commission website. Following the notice, several individuals and Township customers filed Protests and Petitions to Intervene. Approximately forty individuals pre-registered to testify at the Public Input Hearings on February 24, 2022, but none specifically testified that insufficient notice of this proceeding caused them any prejudice or prevented them from participating in this proceeding. Moreover, all of the Parties 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 or to present evidence in this proceeding. Therefore, the Opposing Intervenors' challenges that they were deprived of their due process rights were not established in this proceeding. *Id.* at 52.

Furthermore, we find that the Parties, including the Opposing Intervenors, had an adequate amount of time to reasonably participate in this proceeding, recognizing the six-month statutory deadline for Section 1329 application proceedings. The

Opposing Intervenors were aware of the filing of the Application on August 3, 2021, as indicated by their Petitions to Intervene filed in August 2021, and their Protests filed in January 2022, in opposition to it. *Id.* at 53. As a result, for five months prior to the acceptance of the Application on January 13, 2022, which commenced the six-month period to adjudicate this proceeding, the Parties, including the Opposing Intervenors, had access to Aqua's written testimony and Application filed in this proceeding.

Additionally, the Parties had notice approximately five weeks in advance of the tentative deadlines for submitting written testimony. Even under the six-month timeframe, the Opposing Intervenors were able to actively participate in the proceeding by preparing and serving numerous pages of direct and surrebuttal testimony, subpoenaing, deposing and cross-examining Township representatives, propounding multiple sets of discovery, receiving service of copies of answers to discovery propounded by other parties, and participating in the evidentiary hearings.

Moreover, we find that Mr. Swift's arguments that the six-month period to resolve Section 1329 applications is facially violative of due process as applied by the Commission to be without merit. As discussed in detail above, the circumstances of this case do not support Mr. Swift's assertion that Section 1329 is facially violative of due process or violative of due process as applied by the Commission. The record evidence demonstrates that all persons with a vested interest had advanced notice of this proceeding and an adequate opportunity to participate in it and be heard.

Finally, we agree with the ALJ that the assertion by Mr. Swift and Ms. Frissora 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, rather than six months, was not raised during the proceeding, but instead was first offered in Main and Reply Briefs. The Commonwealth Court and this Commission have determined that permitting new claims at a late stage in a proceeding raises significant due process concerns because opposing parties would not have an adequate opportunity

to respond to adverse positions. *See Hess v. Pa. PUC*, 107 A.3d 246, 265-266 (Pa. Cmwlth. 2014). Therefore, we will deem this argument to be waived and not address it here. However, with respect to the compressed schedule utilized in this proceeding to satisfy the six-month statutory requirement in 66 Pa. C.S. § 1329, we will reiterate here that, based on the discussion above, we find that the Parties had ample time to reasonably participate in this proceeding.

For the reasons set forth above, and despite the statutory deadline of six months for Commission action, we conclude that the Parties in this proceeding were provided the required notice of the proposed transaction and were given an opportunity to be heard on all issues. Accordingly, we shall deny Mr. Swift's Exception Nos. 2, 3, and 4.

4. OCA Exception No. 6, Swift Exception No. 5, Yordan-Frissora Exception No. 3, Replies and Disposition

In its Exception No. 6, the OCA excepts to the ALJ's statement that discovery could have been conducted from August 6, 2021, until the start of the evidentiary hearing on March 2, 2022, a period of approximately seven months. The OCA argues that the ALJ failed to recognize that, in Section 1329 proceedings, the Commission treats the docket as "inactive" until the application is accepted for filing, and, therefore, the docket did not become active until January 14, 2022. The OCA avers that, in other cases, Aqua has not responded to discovery by parties before the application is accepted for filing. As an example, the OCA points to the OSBA's discovery request in this proceeding that was served on November 24, 2021, but which was responded to by Aqua on January 19, 2022. The OCA contends that there is no basis to find that Aqua would have answered any discovery from the Opposing Intervenors before January 25, 2022, even if they had filed Protests earlier than they did in this case. Finally, the OCA requests that the Commission reject the ALJ's finding that the

Opposing Intervenors could have conducted discovery prior to January 25, 2022, and notes that the Parties had roughly five weeks before the close of the record on March 2, 2022, to conduct discovery. OCA Exc. at 21-23.

Similar to the OCA, Mr. Swift, in his Exception No. 5, argues that the ALJ was incorrect in finding that the Opposing Intervenors could have taken discovery any time after Aqua filed the Application. Mr. Swift contends that until Aqua's Application was approved by the Commission's Secretary on January 13, 2022, there was no viable proceeding. Further, Mr. Swift avers that there was no judicial officer to rule on any objections to discovery or requests for depositions and subpoenas until the ALJ was appointed. Swift Exc. at 2, 6.

Mr. Yordan and Ms. Frissora argue, in their Exception No. 3, that the ALJ erred in finding that they could have filed Protests and served discovery earlier than January 2022. Mr. Yordan and Ms. Frissora aver that regardless of when the statutory parties served their discovery on Aqua, Aqua waited to respond until after the Application was accepted by the Commission on January 13, 2022. Moreover, Mr. Yordan and Ms. Frissora contend that based upon Aqua's handling of the OSBA discovery request discussed above, there is no reasonable expectation that Aqua would have responded to discovery requests from the Opposing Intervenors any earlier than the filing acceptance date or even until after the Petitions to Intervene were approved. Yordan-Frissora Exc. at 5-6.

In reply, Aqua states that if the Opposing Intervenors had pursued discovery prior to final acceptance of the Application, that Aqua would likely have taken the position that the discovery was premature, because a Section 1329 docket is inactive until the Commission accepts the application for filing. Aqua, however, disagrees with the OCA's statement that there is no basis to find that Aqua would have answered discovery before January 25, 2022, and Aqua avers that it answered other parties'

discovery on January 19, 2022, in this proceeding. Aqua argues that this question of discovery prior to acceptance of the Application occurs in the context of a broader discussion regarding due process, and that the ALJ concluded correctly that the Commission, throughout this proceeding, provided the requisite notice, protected the due process rights of all Parties, and ensured that all Parties were heard on all issues. Furthermore, Aqua avers that the Parties had roughly six weeks, from the acceptance of the Application until the close of the record, to conduct discovery. Aqua R. Exc. at 11.

In addition, Aqua disagrees with Mr. Swift's claim that the ALJ's statement that discovery could have been conducted from August 6, 2021, through the start of the evidentiary hearing on March 2, 2022, reflects a denial of due process. Aqua argues that Mr. Swift actively participated in discovery, and that he was served with copies of answers to discovery propounded by other parties. Aqua contends that Mr. Swift was afforded a reasonable opportunity to conduct discovery in this proceeding. *Id.* at 15-16.

Furthermore, in reply to Exception No. 3 of Mr. Yordan and Ms. Frissora, Aqua argues that the Opposing Intervenors could have filed protests and propounded discovery following the final acceptance of the Application rather than waiting for actions on their Petitions to Intervene. Aqua further avers that their discovery was also not propounded immediately after the filing of their Protests. Finally, Aqua disagrees with the contention of Mr. Yordan and Ms. Frissora that there is no reasonable expectation that Aqua would have responded to discovery until after their Petitions to Intervene were granted because Aqua was answering discovery on January 19, 2022.

Upon review, we agree that a Section 1329 proceeding is treated by the Commission as "inactive" until the application is accepted for filing, at which time the docket becomes "active," and the matter is assigned to the Commission's Office of Administrative Law Judge. *See e.g., Application of Aqua Pennsylvania Wastewater, Inc., Docket No. A-2019-3015173 (Order entered March 30, 2021); Application of*

Pennsylvania-American Water Co., Docket No. A-2018-3004933 (Order entered October 3, 2019). Additionally, Aqua admits that it would likely have taken the position that discovery was premature if the Opposing Intervenors would have pursued discovery prior to the final acceptance of the Application. Aqua R. Exc. at 19. Therefore, we conclude that any request for discovery prior to January 13, 2022, would likely have been futile because the docket was “inactive” prior to that date. While the Opposing Intervenors could have sought discovery earlier in the proceeding than they did, we will not adopt the ALJ’s finding that the Opposing Intervenors could have conducted discovery starting August 6, 2021, for a period of approximately seven months. Accordingly, we shall grant the OCA’s Exception No. 6, Mr. Swift’s Exception No. 5, and Mr. Yordan’s and Ms. Frissora’s Exception No. 3.

Although we are not adopting the ALJ’s finding that discovery could have been conducted as of August 6, 2021, we note that this does not impact our ultimate conclusion here that due process requirements were satisfied in this proceeding and the due process rights of all parties were protected. Specifically, as it pertains to the discovery aspect of the proceeding, the Parties had approximately six weeks, from January 14, 2022, to the close of the record on March 2, 2022, to conduct discovery. In fact, during that period, the Opposing Intervenors actively participated in discovery by propounding multiple sets of discovery and receiving copies of answers to discovery propounded by other parties. *See* R.D. at 42; Aqua R. Exc. at 15, 17. As a result, we conclude that the six weeks in this case was an adequate amount of time for the Parties to reasonably participate in the discovery process.

5. Yordan-Frissora Exception No. 2, Replies and Disposition

Mr. Yordan and Ms. Frissora, in their Exception No. 2, argue that the ALJ erred in concluding that the interventions of the Opposing Intervenors and forty citizen testimonies at the Public Input Hearings constitute evidence that the Township’s delay in

providing notice to customers did not cause or contribute to any individual being precluded from participating in this proceeding. Mr. Yordan and Ms. Frissora contend that over 200 households were informed about developments of the proceeding by the Opposing Intervenors, and not the Township. However, Mr. Yordan and Ms. Frissora argue that there are 2,000 customers that were not contacted by them and were prejudiced because they might have participated in the proceeding if the Township would have provided more timely notice to customers. Furthermore, Mr. Yordan and Ms. Frissora aver that the Township acted with malicious intent and unreasonable delay in providing notice to customers. As a result, Mr. Yordan and Ms. Frissora argue that the Application should be denied, because these tactics are inconsistent with Commission procedures that are designed to give affected parties a reasonable amount of time to participate in such proceedings. Yordan-Frissora Exc. at 4-5.

In reply, Aqua asserts that it is only Mr. Yordan's and Ms. Frissora's speculation as to what other customers might have done under the circumstances, and that such speculation is inappropriate and provides no basis to challenge the notice provided by the Township to its customers. Aqua R. Exc. at 16.

The Township, in reply to Mr. Yordan's and Ms. Frissora's Exception No. 2, contends that their argument is without merit and should be dismissed because it is purely speculative and a distraction from the merits of this proceeding. The Township avers that customers were provided ample notice of the opportunities to participate in the proceeding, including numerous Township Board of Supervisors meetings to discuss and take public comment on the sale of the wastewater system, Commission-required notice with instructions on actions Township customers could take with regard to the Application and Commission-held Public Input Hearings advertised by the Township which were well-attended by the public. Although the Township recognizes that there is a dispute regarding the timeliness of its Commission-required notice to customers, it

contends that there is no dispute that the notice was sent with ample time for Township customers to participate in this proceeding. Willistown R. Exc. at 2-3.

Upon review, we agree with Aqua and the Township that what other customers might have done under the circumstances is speculative and provides no basis to challenge the notice mailed by the Township to its customers in December 2021. There is no evidence in the record to substantiate the claims of Mr. Yordan and Ms. Frissora that 2,000 customers were not aware of the filing of the Application and, as a result, were prejudiced because they might have participated in the proceeding if the Township would have provided more timely notice to its customers.

In addition, while we recognize the concerns of the Parties and the ALJ regarding the Township's delay in providing notice of the proposed transaction to its customers and the lack of reasonable explanation for the delay, we agree with the ALJ that there was no showing that the Township's delay caused or contributed to any individual being precluded from participating in this proceeding. As discussed above, all persons with a vested interest in this proceeding had advance notice of it. Township customers received the Commission-required notice, albeit delayed, with instructions on actions they could take with regard to the Application, including sending a letter to the Commission supporting or opposing the proposed transaction, attending or testifying at Public Input Hearings, or filing a Protest or Petition to Intervene in the proceeding. Application, Exh. 12. Also, the Commission held two Public Input Hearings, which were publicly advertised in advance, at which Township customers and interested parties could testify about concerns with the proposed transaction. Many of the forty members of the public that pre-registered to provide testimony at the Public Input Hearings provided public testimony on the record regarding the proposed transaction, and no members of the public were precluded from testifying. Finally, all affected persons had an opportunity to participate in the proceeding and litigate their protests to the Application, just as the Opposing Intervenors did, which included submitting testimony, propounding discovery,

deposing and cross-examining witnesses, and participating in the evidentiary hearing. While there was a dispute regarding the timeliness of the Township's required notice to customers, we conclude that any delay did not preclude Township customers from participating in this proceeding. Accordingly, we shall deny Mr. Yordan's and Ms. Frissora's Exception No. 2.

Finally, while we have determined that it was not established that any prejudice resulted from the timing and form of the Township's notice in this case, we encourage Aqua to take appropriate steps going forward to pay close and careful attention to ensure that such delays do not occur in future Section 1329 proceedings. Given the statutory deadlines assigned to Section 1329 proceedings, and the resulting compressed litigation schedules necessary to adjudicate them, providing affected customers and interested parties with an opportunity to be heard with as much advance notice as possible is in the public interest.

B. Section 1102/1103 Analysis

1. Substantial Affirmative Public Benefits

a. Positions of the Parties

Aqua argued that the proposed transaction will provide substantial affirmative public benefits to both existing Aqua customers and the acquired Willistown customers. In support, the Company asserted that it: 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; and has acquired sixteen wastewater systems over the

past ten years, many of which required significant investment to correct service and environmental issues. Aqua M.B. at 12-13.

Aqua also cited the Commission's long-standing record of support for consolidation and regionalization of water and wastewater systems. The Company submitted that the Commission understands that in doing so, the utility industry will realize the benefits of better management practices, economies of scale, and greater customer, environmental, and economic benefits. According to Aqua, these types of acquisitions will enhance the quality of ratepayers' daily lives, promote community economic development, and provide environmental enhancements. *Id.* at 13.

Regarding the benefits to the Township, Aqua argued that Willistown's customers will become part of a larger scale, efficiently-operated, wastewater utility and the overlap between water and wastewater utility operations will provide the opportunity for better coordination of capital improvements throughout the Willistown service area. The Company projected lower operation and maintenance (O&M) costs under Aqua's 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, Aqua noted that the Township costs were projected at \$2,053,168, whereas the Company is projecting annual expenses of approximately \$1,750,444, or approximately 17% less. In addition, Aqua estimated 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. Aqua claims this will produce benefits to Township customers. Aqua M.B. at 14 (citations omitted).

Aqua further asserted that the acquisition will provide enhanced customer service for Willistown customers by providing customer service through a toll-free

number from 8 a.m. to 5 p.m. EST for regular business and 24/7/365 emergency response. The Company proffered 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. Aqua M.B. at 14-15.

Aqua contended that 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. The Company also noted that its customer care team would be available to help resolve service and billing issues and has an established procedure for addressing formal and informal complaints. *Id.* at 15.

Regarding benefits to existing Aqua customers, the Company argued that the acquisition of the System will provide an approximate 5% increase in Aqua's customer base. By virtue of the Company's larger customer base, Aqua submitted that future infrastructure investments across the Commonwealth 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 an approximate \$7,120 purchase price per connection and is almost equal to the Company's existing rate base per equivalent dwelling unit (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 proffered that the Willistown system will provide economies of scale that can be achieved as a result of this acquisition. *Id.*

Aqua contended that the acquisition will not have an adverse effect on the service provided to existing customers of Aqua; and that the acquisition will not have any

immediate impact on the rates of either the existing customers of Aqua or Willistown. The Company also noted that it will implement the existing Township base rates upon closing, but will apply existing miscellaneous fees and charges in the Company's tariff. *Id.*

Aqua further submitted that any hypothetical rate impact is outweighed by affirmative public benefit. The Company stated that 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 asserted that the average Willistown bill would increase by approximately \$54.64 per month or an 85.87% increase. However, Aqua argued that the calculation and percentage increase is a point in time estimate reflective of revenue deficiency upon year one ownership, and although there is an expectation of increased rates going forward, Aqua asserted it is not proposing any change in rates to Willistown customers as part of this transaction. Aqua proffered that the proposed rate changes for Willistown customers will be presented in an Aqua base rate proceeding subsequent to the closing of the acquisition. *Id.* at 15-16.

Aqua argued that the hypothetical rate impact is outweighed by other positive benefits. The Company submitted that, although the rates of the Willistown System are reasonably expected to increase, either on their own, or after acquisition by the Company, the proposed transaction provides more flexibility and opportunity to deal with those impacts over a much larger customer base. In further support, Aqua submitted that 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 policy in favor of consolidation and regionalization. *Id.* at 16-17.¹⁰

Willistown supported the arguments of Aqua and asserted that the Township's customers will benefit from the expertise and experience of a regulated public utility such as Aqua. The Township added that the up-front proceeds from the proposed transaction will permit various municipal redevelopment opportunities to be accomplished. Willistown M.B. at 11-12.

Although the Township acknowledged that it currently provides adequate service to its residents, Willistown asserted that there are identifiable areas for operational improvement that the acquired Township customers will experience under Aqua ownership. In support, Willistown noted that the Township's Public Works Department does not currently have any licensed wastewater operators on its team. However, Willistown contended that under Aqua ownership, the acquired Township residents will benefit from the expertise of licensed wastewater operators, because an operator's license is a condition of employment for all management and operations wastewater staff at Aqua. *Id.* at 12-13.

Further, the Township submitted 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. The police, then, report to a person 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 asserted that, under Aqua ownership, the Township will no longer use valuable police resources to address after-hours sewer issues and Township

¹⁰ For a summary of Aqua's further arguments regarding affirmative public benefits in response to the positions of the Parties, see pages 65-78 of the Recommended Decision.

customers will benefit from assessments of their emergencies by licensed wastewater operators. *Id.*

I&E argued that, in order to ensure that the Company's asserted benefits will materialize, the Commission should approve Aqua's Application subject to I&E's recommended conditions. I&E M.B. at 7-8.¹¹

The OCA asserted that the Application fails to meet the appropriate legal standard, because it would harm existing and acquired ratepayers and would not provide substantial affirmative public benefits. The OCA submitted that 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. OCA M.B. at 11.

Specifically, the OCA noted that the Township's balance sheet will benefit from the proposed transaction and that the Township will receive 31% more than the net book value of the system. Further, the OCA acknowledged Aqua's anticipated spending of \$3.3 million for capital improvements to the Willistown System during the next ten years. However, the OCA argued that there is no support for concluding that existing Aqua wastewater and water customers will receive any net benefit or that the Willistown customers will see a net benefit after their rate freeze ends. Accordingly, the OCA contended that Aqua failed to demonstrate the necessary public benefits required for approval of the Application. OCA M.B. at 11-12.¹²

¹¹ As discussed *infra*, I&E proposed several conditions pertaining to a separate cost of service study for the Willistown System, rejection of the two-year rate freeze proposal, and identification of missing easements and other transaction requirements related to such easements. I&E M.B. at 10.

¹² For a summary of the OCA's briefing arguments in opposition to the Company's position on substantial affirmative public benefits, *See* pages 83-99 of the Recommended Decision.

In its Main Brief, the OSBA took no position on the issue of substantial affirmative public benefits. OSBA M.B. at 14.

Mr. Yordan argued in part that the proposed transaction would result in financial harm created by rate increases. In support, Mr. Yordan cited to an estimated \$1.8 million annual revenue deficiency during Aqua's next rate case filing and noted an expected increase in rates granted by the Commission to cover that amount. Mr. Yordan also questioned Aqua's ability and willingness to make needed future infrastructure investments noting the Company's plan to invest \$3.3 million in capital expenditures but contrasting the list of needed capital projects over the next ten years as being 50% higher than Aqua's estimate. Yordan M.B. at 4-7.

In addition, Mr. Yordan contended that the direct testimony of various residents showed that Aqua's claims of public benefits were unsubstantiated boilerplate assertions. Mr. Yordan argued that there are no affirmative benefits to offset the increased rates and that forcing wastewater users in Willistown to subsidize Aqua's higher-cost customers does not constitute economies of scale, as asserted by the Company, but rather results in a forced subsidy situation. Yordan M.B. at 8-10.

Mr. Swift and Ms. Frissora argued that the term "public" in this proceeding should be limited to the current wastewater users in Willistown because the wastewater system will remain as a standalone system even after Aqua's proposed acquisition. In addition, Mr. Swift and Ms. Frissora asserted that the Application failed to meet the affirmative substantial public benefit standard. Noting that the Township already provides quality service, favorable sewer benefits, and environmental stewardship, and that it can finance improvements at less than half the Aqua rate, they argued that there is no evidence that service to the Township customers will improve if the Application were approved. Swift and Frissora M.B. 10-13.

Mr. Swift and Ms. Frissora also contended that rates under Aqua ownership will be significantly higher than under Township ownership. Finally, they submitted that customer convenience or safety will not substantially improve under Aqua ownership. *Id.* at 13-17.¹³

b. Recommended Decision

The ALJ found a lack of evidence to establish that the sewer system under Aqua's ownership would affirmatively promote the service, accommodation, convenience, or safety of the public. In addition, the ALJ determined that 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 wastewater customers. Accordingly, the ALJ recommended that the Application be denied. R.D. at 124.

As an initial matter, the ALJ noted that in order to determine if the proposed transaction provides affirmative public benefits, 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. According to the ALJ, the evidence clearly established the public need for the service and Aqua's fitness to provide the proposed service. The ALJ explained that no Party presented a substantial challenge to Aqua's fitness, and the Company outlined in detail the evidence to support its claim that it possesses the legal, financial, technical, and managerial fitness to provide the service proposed in its Application. In addition, the ALJ highlighted the adequacy of the existing service provided by the Township. R.D. at 115, 117.

¹³ Mr. Swift and Ms. Frissora filed separate Reply Briefs in which they argued that the proposed sale is not in the public interest and asserted various arguments that Aqua failed to establish any substantial affirmative benefits to Willistown's customers. *See* R.D. at 109-111 (citing Swift R.B. at 10-11 and Frissora R.B. at 4-5).

Regarding affirmative public benefits, the ALJ addressed the following five areas of consideration: (1) harm to existing Aqua wastewater and water customers; (2) harm to Willistown customers; (3) whether the adverse impacts to the existing customers of Aqua and Willistown outweigh the benefits of the transaction; (4) economies of scale; and (5) volume discounts and cost sharing. R.D. at 118-124.

Under the first consideration, the ALJ determined that Aqua's existing water customers are at risk in the short term of being required to support the costs of acquiring the Willistown customers in this transaction. The ALJ noted that all Aqua water customers are already required to pay for wastewater disposal either to another provider, to Aqua, or with their individual wastewater system. In addition, the ALJ rejected Aqua's characterization of an anticipated rate increase as hypothetical. According to the ALJ, a rate increase to existing Aqua customers, at least in the short term, is a certainty. R.D. at 118.

In support of the recommended Application denial, the ALJ noted other Section 1329 acquisitions pending or approved since Aqua's last base rate case.¹⁴ The ALJ considered these other Section 1329 acquisitions, for which the Company projects revenue requirement deficiencies, as likely resulting in increased rates for acquired or existing customers in the short term and delaying any potential benefits to customers from cost sharing further into the future. The ALJ added that Aqua's proposed two-year rate freeze for Willistown customers would compound the expected harm to the Company's customers. Acknowledging Aqua's uncertainty whether it will file a base

¹⁴ Here, the ALJ relied on the OCA testimony of Morgan N. DeAngelo referring generally to the acquisitions of East Whiteland Township, Lower Makefield Township and the Delaware County Regional Water Quality Authority (DELCORA). See OCA St. 2SR at 4-5; and *see generally*, *Application of Aqua Pennsylvania Wastewater, Inc. (Lower Makefield Township)*, Docket No. A-2021-3024267 (Order entered January 13, 2022); *Application of Aqua Pennsylvania Wastewater, Inc. (DELCORA)*, Docket No. A-2019-3015173; and *Application of Aqua Pennsylvania Wastewater, Inc. (East Whiteland Township)*, Docket No. A-2021-3026132.

rate case within two years of closing, the ALJ determined that Aqua's customers would be 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. *Id.*

Regarding the second consideration of affirmative public benefits, the ALJ emphasized that approximately thirty Aqua or Willistown customers testified at the public input hearing regarding anticipated harms resulting from the proposed acquisition. The ALJ reasoned that existing Willistown customers testified that the Township's System was already paid for by Township customers and that if the sale goes through, they will essentially be paying for the System a second time. Also, the ALJ highlighted one Township resident's testimony that the Township maintains a pumping station behind her property that includes a shared driveway and she expressed concern whether Aqua will continue to provide similar maintenance to the pumping station. The ALJ stated that several Willistown customers testified about having always received excellent service at a reasonable cost from the Township and their concerns of increased rates for Willistown customers who are retired and on fixed incomes. In addition, the ALJ noted that some Aqua customers testified that the Company's service to water customers had not been adequate. R.D. at 118-119.

Regarding the third consideration, the ALJ found that the purported benefits of acquiring the Township's System did not outweigh the adverse impacts of the proposed transaction. Rather, the ALJ concluded that the proposed acquisition would detrimentally impact wastewater customers in Willistown due to anticipated increased rates without providing any substantial or necessary benefits to Township customers. The ALJ also determined that the proposed increased costs for Aqua's customers to cover an estimated \$1.79 million revenue deficiency outweighs any purported benefits. R.D. at 122.

In support, the ALJ cited the current average monthly bill of a Willistown residential customer as 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, the ALJ emphasized that the average Willistown bill would increase by approximately \$54.64 per month or an 85.87% increase. According to the ALJ, the potential rate impact outweighs the various positive benefits asserted by Aqua. R.D. at 119.

The ALJ concluded that the only benefit Aqua attempted to quantify is a reduction in operating expenses for the Company to run the Township's System – estimated at \$300,000 (17%) per year lower for Aqua to operate the System. However, the ALJ discounted this argument in comparison to the proposed annual revenue deficiency of \$1.79 million and the increased rates of nearly 86% for the acquired customers. The ALJ also reasoned that if 50% of the revenue deficiency were to be applied to existing Aqua customers, the estimated incremental rate effect would be a 1.67% monthly increase for wastewater customers and 0.18% monthly increase for water customers. Further, the ALJ stated that Willistown customers would not even be covering their full cost of ownership at the proposed \$17.5 million rate base, and would not share the costs of infrastructure improvements for other parts of Aqua's service territory. Additionally, the ALJ found no evidence that rates would become more affordable in the long-term due to economies of scale. R.D. at 119-120 (citing in part OCA St. 2 at 14).

Furthermore, the ALJ found that any advantages realized by Aqua's billing systems and services and protections under Chapter 14 of the Code are outweighed by the costs ratepayers would bear based on the transaction. The ALJ rejected the argument that Willistown customers would have safer and more reliable service under Aqua's ownership. Here, the ALJ stated that Willistown is not a troubled system and the Township's current service is safe and reliable. The ALJ also asserted that from 2019

to 2021, the Township had only two Pennsylvania Department of Environmental Protection (DEP) violations, both of which were enforced and resolved within weeks by the Township.¹⁵ During that same time frame, the ALJ noted that the wastewater systems already owned by Aqua in Willistown had nine DEP violations, six of which were enforced. R.D. at 121.

The ALJ noted 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. Additionally, the ALJ credited the financial fitness of the Township and its ability to complete any necessary improvements or upgrades, noting that Willistown has nearly \$20 million in cash and cash equivalents and approximately \$7 million more in cash than outstanding debt. *Id.*

Regarding the fourth consideration pertaining to economies of scale, the ALJ reasoned that an individualized analysis of every system is necessary to ensure that each acquisition complies with the Code, particularly Section 1102. According to the ALJ, a showing of only technical, managerial, financial and legal ability to acquire and operate a system is insufficient to support a finding furthering the public interest. The ALJ reiterated that it is necessary to show that the benefits substantially outweigh the harms and that Aqua did not establish such a showing. *Id.* at 122.

In the fifth consideration, the ALJ examined volume discounts and sharing of costs. The ALJ concluded that many of the arguments of the Company were anticipated general benefits unsupported by the record. Although the ALJ acknowledged

¹⁵ As asserted in Yordan-Frissora Exception No. 1, the reference to 2019 is a typographical error and the correct period during which the Township had DEP notices of violation should be 2010 to 2021. Aqua agrees that the reference to "2019" was an error and the correct date should be 2010. Accordingly, we shall grant Yordan-Frissora Exception No. 1.

that Aqua's size creates the potential for volume discounts and cost sharing, the ALJ highlighted the Company's higher cost of capital. The ALJ reasoned that the Township has the ability to make any necessary improvements to the System at a more attractive financing cost than Aqua could obtain and that 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 System. In addition, the ALJ stated that the Township rates do not include dividends for shareholders, depreciation expense, Pennsylvania sales tax, or Pennsylvania or Federal taxes on revenues and that the Township's financing cost would be approximately two to three times lower than Aqua's financing cost. R.D. at 122-123.

Finally, the ALJ reasoned that Aqua failed to establish that it can improve on the Township's quality of service, operations, convenience, and safety. The ALJ cited the Company's ability to terminate service subject to the Commission's Regulations and protections and noted that such a result could not occur under Township ownership. The ALJ also found that customer service would likely diminish under Aqua ownership because the Township currently clears blockages and stoppages in the customer lateral lines and provides credits for all customers who meter outside water usage. Additionally, the ALJ noted that Willistown wastewater 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. *Id.* at 123-124.

c. Exceptions and Replies

In its Exception No. 1, Aqua excepts to the conclusion that it failed to establish that its ownership of the Willistown System will affirmatively promote the service, accommodation, convenience, or safety of the public. Aqua argues its acquisition of the Willistown wastewater System is supported by substantial affirmative

public benefits. Aqua objects to the conclusion that it has failed to establish a record upon which the Commission can make a determination that the transaction promotes the service, accommodation, convenience, and safety of the public in some substantial way. The Company states substantial evidence supports many affirmative public benefits including those cited by the Commonwealth Court in *McCloskey*. To support this position, Aqua maintains *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:

- 1) Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and
- 2) 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.

Aqua claims substantial evidence supports these same findings in this proceeding and a conclusion that there are substantial affirmative public benefits to this transaction. Aqua Exc. at 4-5.

Aqua claims the Recommended Decision failed to properly apply the *Popowsky* standard by requiring a quantification of public benefits that is not required by *Popowsky*. The Company avers:

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.

Aqua Exc. at 8.

Aqua states the Commission should apply a preponderance of the evidence standard as explained in *Popowsky*, recognizing its authority to make factually based determinations (including predictive ones informed by expert judgment). The Company asserts quantification of public benefits or legally binding commitments are not required. Aqua claims the benefits presented in the record are substantial evidence in support of the transaction. Therefore, Aqua proclaims the Commission should reject the Recommended Decision and approve the transaction. Aqua Exc. at 11.

Finally, Aqua addressed the ALJ's analysis of harms of the transaction on three specific groups: (1) existing Aqua wastewater customers, (2) existing Aqua water customers, and (3) Willistown customers who will be transferred to Aqua. The Company claims that neither existing Aqua customers nor Willistown customers will be harmed by the acquisition. Aqua states any perceived harm to customers is offset by benefits resulting from the transaction and is fully addressed in its Exception No. 2. Aqua Exc. at 11-12.

In its Exception No. 2, Aqua excepts to the conclusion that adverse impacts on its existing customers and the Willistown customers outweigh the benefits of the proposed transaction. The Company argues that the ALJ departs from the balancing test recognized in *Cheltenham*, citing *McCloskey* and *Popowsky*. Aqua states, rather than a weighing of all factors for and against a transaction, including the impact on rates, the ALJ concentrates on short-term rate impact. Aqua states the ALJ's decision:

...accepts that the transaction will result in a revenue deficiency of \$1,789,000 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.

Aqua Exc. at 15-16.

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 Willistown customers and the dispositive effect given to potential short-term rate impact.

The Company claims the ALJ erred by accepting the OCA's argument that individualized analysis of every system is in the public interest and required by Section 1102. Aqua claims by increasing its customer base, it provides more service to more customers for less incremental cost. The Company states this is a recognized public benefit consistent with the Commission's policy supporting regionalization / consolidation and single tariff pricing. Contrary to the ALJ, Aqua states an individualized economic analysis of the Willistown System is inconsistent with the public interest and adverse to the basic public utility model. Aqua Exc. at 16.

Next, Aqua claims that the ALJ erred by determining Aqua's higher cost of capital would not offset savings realized through volume discounts and cost sharing. The Company notes *Popowsky* does not require the Commission to quantify benefits where this may be impractical, burdensome, or impossible. In this case, Aqua asserts that the long-term cost benefits of the acquisition cannot currently be quantified. The Company notes it provided specific, tangible examples of short-term economies of scale and benefits, showing a 17% decrease in expenses with Aqua ownership. Aqua Exc. at 17.

Finally, the Company believes the ALJ erred, after determining a rate deficiency, that Willistown customers will receive a benefit that outweighs the estimated

rate increase. Aqua notes 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. However, contrary to *Popowsky*, Aqua argues the ALJ's focus on rate impacts minimizes or fails to account for the aspirational and other public benefits of the transaction. Further, the Company notes that "[w]hile *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits." Aqua Exc. at 21.

Therefore, Aqua states the Commission should reject the ALJ's decision and approve the transaction. Aqua Exc. at 17-21.

In its Replies to Aqua Exception No. 1, the OCA claims the ALJ properly determined that Aqua has failed to demonstrate the necessary public benefits required for approval of a Section 1329 transaction. Based on the *City of York*, the OCA states Aqua must show that benefits will substantially outweigh the harms for each transaction. The OCA argues Aqua cannot use *McCloskey* to claim that only two Commission findings, Aqua's expertise and the Commission's policy of consolidation/regionalization, are needed to support a conclusion that there is a public benefit to its Section 1329 transaction. In *McCloskey*, the OCA points out the Commonwealth Court reversed the Commission for failing to consider rate impact in its determination. OCA R. Exc. at 1-2.

The OCA contends the ALJ correctly applied the *Popowsky* standard and Aqua incorrectly surmises the ALJ demanded a quantification of benefits. Consistent with *Popowsky*, the OCA asserts the ALJ considered and reached a determination based

on the record evidence about the benefits claimed by Aqua in both the short and long term. OCA R. Exc. at 3-4.

In its Replies to Aqua Exception No. 2, the OCA rejects Aqua's claim the ALJ gave too much weight to the short-term rate impact of the transaction. The OCA states the ALJ correctly followed the precedent in *McCloskey* by considering rate impact along with all of the record evidence provided by Aqua regarding claimed benefits of the transaction, including economies of scale, volume discounts, quality of service, billing and payment options and Willistown's interest in selling its system for \$17.5 million. OCA R. Exc. at 6-7.

In their Replies to Aqua Exception No. 1, Yordan-Frissora argue the ALJ properly found there were no substantial affirmative benefits from the proposed transaction. Furthermore, Yordan-Frissora claim Aqua failed to show how its expertise and experience would provide a benefit to the Willistown customers that is not already being provided. Yordan-Frissora also note Aqua's Exceptions only cited Aqua's testimony and ignored the testimony of other parties. Yordan-Frissora R. Exc. at 6.

In their Replies to Aqua Exception No. 2, Yordan-Frissora assert the ALJ did not give Aqua's claimed economies of scale any weight in determining long term benefits not because they were unquantified, but because they are not true economies of scale. Additionally, Yordan-Frissora cite *Middletown* where an acquisition that was beneficial to some customers but detrimental to other customers could be denied because the impacts cancel each other out, as the ALJ decided in this case. Yordan-Frissora R. Exc. at 10-11.

In his Replies to Aqua Exception No. 1 and No. 2, Swift avers the ALJ's decision was based on facts, testimony, and documentary evidence attesting to the lack of any substantial benefits to the sale of the Willistown System. Swift proffers Aqua's

reliance on the determinations from *McCloskey* is misguided. With regard to rate impact, Swift states the *City of York* requires that the Commission must take into consideration the effect of rates if the sale is approved. Swift R. Exc. at 2-3.

In its Exception No. 1, Willistown excepts to the ALJ's conclusion that the Application should be denied because Aqua failed to establish that the transaction will affirmatively promote the service, accommodation, convenience, or safety of the public and the evidence did not establish any benefit to be realized from the transaction would outweigh the harms to current Aqua water and wastewater customers or existing Willistown wastewater customers. The Township considers the only identified harm of the transaction is a potential rate increase. However, Willistown disagrees that the record evidence does not illustrate that the potential rate impacts are outweighed by the various benefits of the transaction. In support of benefits to its customers, the Township provided numerous examples of benefits that would be realized under Aqua ownership. Therefore, Willistown believes when considering both qualitative and quantitative benefits of the transaction, Aqua has satisfied its burden under Section 1102 of the Code. Willistown Exc. at 2-5.

In its Exception No. 2, Willistown argues the ALJ created a precedent that municipal systems must be in dire circumstances in order to be sold under the Code. Willistown reiterates its assertion that Aqua has satisfied its burden to prove that the transaction as a whole will affirmatively promote the service, accommodation, convenience or safety of the public. Even though the Township is financially sound and provides reliable customer service, it notes the Code does not require a system to be distressed or residents to suffer from poor operational management before a municipality is permitted to sell its system. Consequently, Willistown disagrees with the ALJ's

recommended denial of the transaction based on the Township's financially sound position and excellent service. Willistown Exc. at 5-6.

The OCA's Replies to Willistown Exception No. 1 are unified and incorporated in its Replies to Aqua Exception No. 2. OCA R. Exc. at 6.

In its Replies to Willistown Exception No. 2, the OCA claims Willistown misinterprets the ALJ's decision. Based on the record evidence, the OCA states the ALJ determined that Willistown is not a troubled system. Therefore, to meet the *City of York* standard, the OCA argues Aqua needed to establish that other benefits would result from the transaction and that those benefits are substantial enough to outweigh the harms. The OCA concurs with the ALJ's decision that Aqua did not meet this burden and does not create a new precedent requiring a municipal system to be in dire circumstances in order to sell its system. OCA R. Exc. at 13-15.

In its Replies to Willistown Exception No. 2, Yordan-Frissora aver the ALJ properly determined that the benefits presented by Aqua and the Township did not outweigh the harms presented in the record evidence and a precedent would not be created. Based on the record evidence, Yordan-Frissora state Willistown inaccurately claims that Aqua is in a better position than the Township to operate the Willistown System, offer better customer service, and complete the necessary capital improvements. Yordan-Frissora R. Exc. at 14-15.

In his Exception No. 1, Swift contends the ALJ erred by including existing Aqua customers, in addition to Willistown customers, as part of the "public." Swift Exc. at 2-3.

In its Replies to Swift Exception No. 1, Aqua states the term “public” refers to the interest of the public at large and not just the interest of Township users. Thus, Aqua maintains that Swift Exception No. 1 should be denied. Aqua R. Exc. at 11.

In its Replies to Swift Exception No. 1, the OCA asserts *McCloskey* recognized that the “public” includes the rate impact of that revenue requirement on the buyer’s existing customers. Therefore, the OCA insists Swift Exception No. 1 should be denied. Aqua R. Exc. at 16.

d. Disposition

Upon review of the evidentiary record and after application of the balancing test required under Section 1102 of the Code, we find that Aqua has proven that it is technically, legally, and financially fit to acquire the Township’s System, and has demonstrated that the acquisition has substantial affirmative public benefits that outweigh the purported harms asserted by the Parties.

As set forth in the Commonwealth Court’s decision in *McCloskey*, our obligation in performing “the balancing test under 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 further “charged with deciding whether the impact of rates ... is outweighed by ... other positive factors that ... served [as] a substantial public benefit.” *Id.* at 1067. Moreover, the Pennsylvania Supreme Court has explained that “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 Commission has consistently applied this balancing test for evaluating whether to issue Certificates in Section 1329 proceedings. *See, e.g., Cheltenham, Application of Pennsylvania-American Water Company – Valley Township*, Docket Nos.

A-2020-3019859 and A-2020-3020178 (Order entered October 28, 2021), and *Application of Aqua Pennsylvania Wastewater, Inc. – Lower Makefield Township*, Docket No. A-2021-3024267 (Order entered January 13, 2022).

As summarized above, the ALJ recommended rejection of the Application due to the Company's failure to show that its ownership would affirmatively promote the service, accommodation, convenience, or safety of the public. The ALJ concluded that no benefits to the proposed transaction would outweigh the harms to current Aqua water and wastewater customers or existing Willistown customers. In addition to focusing on the anticipated harm to Aqua water and wastewater customers and existing Township customers, the ALJ addressed the following categories of benefits: (1) economies of scale; (2) volume discounts and sharing of costs; and (3) the weighing of all factors, including the impact on rates. R.D. at 118-124.

In their respective Exception Nos. 1 and 2, Aqua and the Township each object to the ALJ's conclusions and argue that the proposed transaction is supported by substantial affirmative public benefits. In support, Aqua proffers that it has presented evidence similar to the public benefits recognized by the Commission and the Commonwealth Court in *McCloskey*. That is, the Company asserts that: (1) Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (2) 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. In addition to the public interest benefits recognized in *McCloskey*, Aqua cites to testimony pertaining to the following: benefits to existing Aqua customers; benefits to Willistown customers; enhanced customer service for Willistown customers; enhanced customer billing and payment protections; no adverse effect to the transaction; and Willistown's desire to sell its System. Aqua Exc. 4-20.

In its Replies to Exceptions, the OCA objects that the Company's Application merely relies on the Commission's promotion of regionalization and consolidation and circumvents the Commission's review process. Moreover, as summarized above, the OCA, as well as Yordan-Frissora and Mr. Swift, rely heavily on the anticipated rate impact on Aqua's and the Township's customers which they contend outweighs any purported benefits to the transaction. For example, the OCA emphasizes the ALJ's rationale that the proposed transaction could increase rates as much as 86% for Willistown customers, 1.7% for existing Aqua wastewater customers, and 0.2% for existing Aqua water customers depending on how the \$1.79 million revenue shortfall is apportioned between customers. OCA R. Exc. at 3 (citing R.D. at 119-120).

Overall, the OCA and the Opposing Intervenors support the weighing of evidence conducted by the ALJ regarding the harms and benefits specific to the Willistown acquisition and the conclusion that it would not serve the public interest. In particular, the OCA and the Opposing Intervenors argue that the existing Willistown customers would receive no detectable improvement in their service and, in many cases, lose existing benefits. They reference, in part, the ALJ's rationale as follows:

- Aqua has not established that it can improve on the Township's quality of service, operations, convenience or safety;
- Aqua can terminate water service for non-payment of wastewater service subject to Commission Regulations, whereas the Township cannot;
- Township customer service sometimes includes clearing of blockages and stoppages in the customer lateral lines, whereas the Company does not do so;
- The Township provides credits for customers who meter outside water usage and Aqua will not allow such credits

unless the customers elected that service and rate before January 20, 2021;

- Willistown sewer customers connected to the low-pressure portion of the system may lose benefits currently provided by the Township for grinder pumps through a third-party, Pre-Doc;
- The Township already has a 24-hour service company for the low-pressure systems via Pre-Doc;
- The Township accepts in-person bill payments and Aqua does not allow it;
- Aqua has fewer payment options than the Township and the Company charges additional fees for some options; and
- The Township is financially fit with nearly \$20 million in cash and cash equivalents and approximately \$7 million more in cash than outstanding debt, and thus it could make the anticipated capital improvements over the next ten years without an unreasonable financial burden for the Township.

See OCA R. Exc. at 10-11 (citing R.D. at 120-121, 123-124) and Yordan-Frissora R. Exc. at 8-9.

As a preliminary matter, we shall address the ALJ's application of the legal standard. In the Recommended Decision, the ALJ discussed the standard for system acquisitions under Section 1329 of the Code, stating "[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 Willistown system and circumstances." R.D. at 122 (emphasis added). The emphasized language is inaccurate. Although the Applicant in a Section 1329 proceeding must establish that

there are substantial public benefits pursuant to the Section 1102 balancing test, the Applicant is not required to establish that the benefits *substantially* outweigh the harms. Rather, the burden of proof requires the Applicant to establish its case by a preponderance of the evidence, *see* 66 Pa. C.S. § 332(a) and *Lansberry*; that is, the evidence in this and in all Commission-related proceedings requires the evidence to be more convincing, by even the smallest amount, than that presented by the other Parties, *see Se-Ling Hosiery*. Our consideration, therefore, is whether the evidence demonstrates that the proposed transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way. *City of York*, 295 A.2d at 828. This does not require us to determine whether the benefits substantially outweigh the harms, nor could such a requirement be practically measured in light of the directive that the Applicant is not required to quantify benefits if impracticable, burdensome, or impossible. *Popowsky*, 937 A.2d at 1057. Accordingly, we shall modify this discussion of the legal standards in the Recommended Decision.

In the seminal Section 1329 case in *McCloskey*, the Commonwealth Court considered the Commission’s findings that Aqua, as the Applicant in that proceeding and as owner of numerous water and wastewater systems, had sufficient expertise and ability to raise capital to support system operations. The Court also acknowledged the finding that the Commission has a policy in support of consolidation and regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities. In its rationale, the Court stated that these Commission findings were of the type that the Pennsylvania Supreme Court in *Popowsky* held were sufficient to meet the Section 1103 public benefit standard. “As per [*Popowsky*], these *aspirational statements are substantial evidence* to support the notion that there is a public benefit for the merger.” *McCloskey*, 195 A.3d at 1065 (emphasis added).

Regarding its ownership of wastewater systems and operational expertise, Aqua cited its record of acquiring and improving wastewater systems by establishing that:

- The Company 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. Additionally, Aqua has the managerial, technical, and financial resources to continue to operate, maintain and improve the Willistown System. Aqua St. 1 at 12 and Aqua Exh. 1, Application ¶ 52.d.
- Aqua has acquired sixteen wastewater systems over the past ten years with many of these systems requiring significant investment to correct service and environmental issues.¹⁶ The Company testified that 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, and thereby, spreading the financial impacts over the long-term operations of the acquiring utility as a whole. Aqua St. 1 at 12.

Moreover, no Parties credibly disputed Aqua's fitness to become a certificated provider of the Township's System. Indeed, as an existing certificated utility, Aqua's fitness is presumed. Nonetheless, Aqua provided evidence to support findings pertaining to its existing operational expertise in the Township and its ability to raise capital to support system operations, as discussed above. *See* Aqua St. 2 at 15. Regarding financial fitness specifically, Aqua established that it is a Class A wastewater utility with total assets of \$350 million, annual revenues of \$32 million, and, as

¹⁶ Aqua referenced the following systems which it has acquired: 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). Aqua M.B. at 13.

subsidiary of the Aqua Pennsylvania Water, Inc. (Aqua Water), has access to Aqua Water's financing capabilities. Aqua St. 1 at 8-9. Accordingly, Aqua has provided substantial evidence pertaining to its ability to raise capital to support system operations.

As to the Commission policy of consolidation and regionalization of wastewater system assets, Aqua testified that if it were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, such a directive would have a significant impact on its existing customers' rates and service. According to the Company, both types of systems, viable and non-viable, are consistent with the Commission's policy statements regarding acquisitions. Aqua proffered that the acquisition of the Willistown System will continue to address the Commission's supported policy of consolidation and regionalization. Aqua St. 1 at 12-13.

In support, Aqua cited to the Commission's long-standing record of support for consolidation and regionalization of water and wastewater systems. Aqua St. 1 at 11-12 (citing, *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 (Order entered August 17, 2006) (*2006 Final Policy Statement*)). There, we stated:

[A]cquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development and provide environmental enhancements. We strongly believe that these types of acquisitions generally serve public policy goals....

2006 Final Policy Statement at 18.

More recently, and after enactment of Section 1329, we emphasized similar public policy goals. We explained that Section 1329 reflects a determination by the

General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. *See, generally, Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered July 21, 2016) (*TIO*); and *TSIO*. Specifically, we noted there are a number of water and wastewater systems owned by municipal corporations or authorities throughout the Commonwealth where sale to an investor-owned public utility can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates. *TIO* at 2. Additionally, we explained that:

[t]he 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.

TSIO at 4.

Aqua argued that the proposed transaction with Willistown is no exception to these principles and that the analysis in *McCloskey* is equally applicable in this proceeding and constitutes substantial evidence sufficient to support the public benefit of the transaction. Aqua St. 1 at 13-14. We agree. However, we shall further evaluate whether Aqua has established if there are additional affirmative benefits to support the acquisition. Our evaluation will consider whether Aqua has satisfied the preponderance of the evidence standard with the understanding that it is not required to secure legally binding commitments nor quantify benefits if impracticable, burdensome, or impossible. *Popowsky*, 937 A.2d at 1057.

In addition to the public interest benefits recognized in *McCloskey*, Aqua provided testimony pertaining to the following: benefits to existing Aqua customers; benefits to Willistown customers; enhanced customer service for Willistown customers; enhanced customer billing and payment protections; no adverse effect to the transaction; and Willistown's desire to sell its System.

Regarding benefits to existing Aqua customers, we recognize that the transaction would result in an approximate five percent increase in the Company's customer base. We agree with Aqua's testimony that, as a result of the Company's larger customer base, future infrastructure investments across the Commonwealth will be shared at a lower incremental cost per customer for all of Aqua's customers. *See* Aqua St. 1 at 15. In support, Aqua cites to a Commonwealth Court decision recognizing the many benefits of single tariff pricing as follows:

- (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.

Aqua Exc. at 12 (citing *Pittsburgh v. Pa. PUC*, 560 A.2d 889, 893 (Pa. Cmwlth. 1989)). We agree that through single tariff pricing Willistown and all of Aqua's water and wastewater customers will benefit from the sharing of financial and infrastructure risks over time. As discussed below, Willistown will likely need future infrastructure improvements and through the proposed transaction will be able to share financial and

infrastructure risks with other customers within a larger customer base. *See* Aqua St. 1-R at 24-25.

Additionally, the Township's 2,458 customer connections equate to a \$7,120 purchase price per connection which is approximately equal to Aqua's existing base rate per EDU projected at \$7,000. These similarities combined with Aqua's lower operating cost demonstrate that economies of scale can be achieved through the proposed acquisition. *Id.* Moreover, the ability to share costs among a large customer base is a recognized benefit and a basic tenet of ratemaking. *See* Aqua St. 1-R at 22-23.

As to the benefits for Willistown's customers, we note that the Company is already the owner and operator of water systems serving portions of the Township and has key operations in nearby service areas. This proximity will facilitate the assumption of the operation and incorporation of Willistown's System within Aqua's system which will likely result in further long-term operating efficiencies. For example, operational overlap between water and wastewater utility operations provides opportunities for coordinating capital activities involving road openings and restorations thereby minimizing disturbances within the Township. Aqua St. 1 at 14.

Significantly, Willistown customers will also benefit from a 17% reduction in operating expenses under Aqua's ownership when comparing the Township's 2020 budget expenses of approximately \$2.05 million with Aqua's expense projection of \$1.75 million. Aqua St. 1-R at 12-13. This comparison indicates a tangible, quantifiable savings as a result of the acquisition.

Further, Aqua will invest approximately \$3.3 million in the acquired system over ten years which will include upgrades to pump stations, force mains and gravity collection systems due to observed conditions, facility ages, and safety. Required capital expenditures to Willistown's System could further rise to \$5 million over ten years and

Aqua has committed to making the necessary improvements beyond the presently estimated \$3.3 million. Tr. at 403. The Company admitted that as it operates the System, after closing of the transaction, additional capital projects may be identified and Aqua will invest in those needed system upgrades. Aqua St. 2-R at 7, 10; *see also* Aqua R.B. at 12.

The level of Inflow and Infiltration (I&I) in the Township's System is an example of such conditions that may require capital expenditures in coming years.¹⁷ Willistown witness William Hagan explained that there is high I&I currently being experienced within the Township's system. Tr. at 383-385. Aqua witness Mr. Bubel testified that I&I has been present in the Willistown System possibly as far back as 1999; he calculated an average annual flow of 576 gallons per day (gpd) per EDU indicating a high level and continued presence of I&I. In Mr. Bubel's opinion, a more expected and typical average annual wastewater flow would be 250 gpd per EDU and reductions in I&I can reduce conveyance and treatment costs. Aqua St. 2-R at 10-11.¹⁸

The Opposing Intervenors argue that Aqua has a higher cost of capital when compared with a municipality which can have a lower cost of debt capital than a private corporation. *See e.g.*, OCA St. 2 at 9. We are aware of no decisions, nor did the Parties cite to any precedent, in which we concluded that the differences between the cost of capital and income taxes between private companies and municipalities are significant enough to outweigh other public benefits. Additionally, the General Assembly's intent in

¹⁷ I&I occurs due to elevated groundwater table and pipe defects. Aqua explained that, as defects are fixed, the groundwater table rises, and infiltration presents itself in pipe and manhole defects further upstream at a higher elevation. Aqua testified that it uses both service contractors and its own closed-circuit television and jetting and vacuum trucks to locate and address I&I. Aqua St. 2-R at 14.

¹⁸ For example, a reduction in high I&I within Willistown's system would reduce flow sent to VFSA for which the Township is charged for treatment. Aqua St. 1-R at 32.

enacting Section 1329 appears to support consolidation regardless of the known differences in debt capital costs. *See* Aqua St. 1-R at 20-21.

In further support of the benefits to Willistown's customers, Aqua testified to its ability to deal with complex environmental regulations. The Company asserted that such regulatory requirements have become increasingly more complex. In response, Aqua has an environmental compliance group which monitors and responds to upcoming changes in the regulatory processes of the DEP, the Delaware River Basin Commission (DRBC), and the U.S. Environmental Protection Agency (EPA). Aqua St. 2-R at 11-12.

Aqua acknowledged that the Township could continue to use consulting services to address compliance with changing environmental regulations. However, the Company highlighted that its internal compliance department is dedicated to ensuring compliance with current and emerging environmental regulations rather than relying on outside consultants. "One of the team's focuses is keeping in touch with DEP as well as DRBC and EPA to learn of upcoming changes in environmental regulations. These regulations would include discharge to groundwater which is the ultimate point of disposal for the Township's Penn's Preserve wastewater treatment facility." Aqua St. 2-R at 10. According to Aqua, the Company's in-house laboratory in Bryn Mawr is an important environmental benefit allowing for immediate analysis and identification of

any biological upset suspected in the influent waste stream without experiencing the normal one or two day delays if sent to an outside laboratory. *Id.* at 9-10.¹⁹

Willistown's customers will also benefit from a variety of customer service and customer billing and payment protection enhancements. These include Aqua's:

- Expanded business hours and the availability of emergency response personnel located in its Control Room with uninterrupted staffing around the clock and throughout the year to receive calls and to direct licensed service personnel to address wastewater emergencies;
- Online bill payment options including a pay-by-text feature and email and email and phone notifications for service impact events;
- Compliance with Chapter 14 of the Code with the added oversight of the billing process;
- Access to customer assistance programs such as the Helping Hands program to benefit low income customers.

See Aqua St. 1 at 16 and Aqua St. 1-R at 35-36.

¹⁹ In Findings of Fact Nos. 68 to 70, the ALJ compares the number of DEP violations by the Township and Aqua. As noted above, we have granted Yordan-Frissora Exception No. 1 and have corrected the referenced time period in Finding of Fact No. 68 to be 2010 to 2019. During this time period, the Township had two DEP-enforced violations while Aqua had nine DEP violations – six of which were enforced – for the systems the Company already owns in Willistown. R.D. at 23, Findings of Fact Nos. 68-69. Across the Commonwealth, Aqua had 119 DEP violations, thirty of which were major, with 101 enforcements. R.D. at 23, Finding of Fact No. 70. We agree with Aqua, however, that the DEP compliance records between Aqua and the Township are not comparable. Aqua testified that it has acquired and improved aging systems over many years, some of which required longer compliance periods. Moreover, some of the systems were unable to maintain proper service and DEP and the Commission requested Aqua to assume operations of the systems to help bring them into compliance. Aqua St. 2-R at 2-3.

We further note that the Township's Public Works Department has a team of nine employees that are responsible for all public works issues including roads, stormwater, parks, and sewer services with approximately 30% of their time spent on wastewater. Moreover, the Township does not employ any licensed wastewater operators. *See Aqua St. 2-R at 3-5.* Also, the Township utilizes police resources for after-hours sewer emergencies, *e.g.*, such calls are routed to the police department which reports the incident to an employee on call at the Public Works Department who in turn must assess the emergency and determine what equipment and manpower are needed to resolve the issue. *Tr. at 401-402.* Under the proposed transaction, the Township will no longer need to use police resources to address after-hours sewer issues and such emergencies would be timely assessed by a licensed wastewater operator, a tangible enhancement in customer service.

Regarding customer billing and payment protections, Aqua has procedures and processes in place to comply with the Chapter 14 provisions for billing, payment, collection, termination and reconnection of services, payment arrangements, medical certifications, and informal and formal complaint procedures. The Company also has customer care teams available to help resolve such service and billing issues. *Aqua St. 1 at 16.*²⁰

Aqua submits that the transaction will have no adverse effect on its customers and contends that there will be no immediate impact on the rates of either the Company's customers or existing customers of Willistown. The Company asserts that, consistent with Section 1329(d)(1)(v) of the Code, Aqua will implement the existing

²⁰ The Commission recently acknowledged in another Section 1329 proceeding, the public benefits of the Commission's comprehensive regulatory oversight of rates and quality of service for newly-acquired customers and their access to the Commission's complaint procedures. *See Application of Pennsylvania-American Water Company – York City Sewer Authority*, Docket No. A-2021-3024681 (Recommended Decision issued February 28, 2022; Final Order entered April 14, 2022).

Township base rates upon closing. However, existing miscellaneous fees and charges in the Company's tariff will be applied. Aqua Exh. 1, Application at ¶ 52.g, and Aqua St. 1 at 10.

As a final area of public benefit, Aqua emphasizes that the Township wants to sell its System. According to the Company, 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. Aqua submits that the Township will benefit from the support of wastewater professionals throughout the Company's organization. Aqua Exh. 1, Application at ¶ 52.b.

The Township also credits the following affirmative benefits of the transaction for its customers and residents generally:

- (1) the Township can exit the sanitary sewer business and instead focus its resources on other core government functions while ensuring safe, reliable service at affordable rates for its residents;
- (2) the Township's customers will benefit from the expertise and experience of a regulated public utility like Aqua; and
- (3) the up-front proceeds from the Proposed Transaction will allow for various redevelopment opportunities in Willistown.

Willistown Exc. at 3 (citing Aqua St. 3 at 8).

The Opposing Intervenors object to the assertion that the Township wants to sell its System referencing the objections raised during the public input hearing and arguing the following:

- Only approximately one-half of the Township residents are sewer customers. The Township ensured that only

those connected to the Township wastewater system paid for all aspects of the system since its inception. The Sewer Fund is not funded by [Township] tax revenues.

- The proceeds from the sale will be deposited into the Township's General Fund and used to benefit all residents even those who have not paid anything to create, maintain and expand the Township sewer asset.
- The sale will result in inequitable financial treatment (harm) to the residents and businesses connected to the Township sewer.
- The Net Present Value cost of the annual revenue deficiency for the next 30 years is calculated at \$42.5 million and will be borne by only half the residents of Willistown (those connected to the sewer). The financial harm will be concentrated on these residents alone and therefore the increase in costs will have a greater individual impact than if the entire Township were sharing in the costs.

Yordan-Frissora Exc. at 9-10 (internal citations omitted).

In response to the concerns raised by the Opposing Intervenors about the utilization of the sale proceeds, we emphasize that 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. *See Application of Aqua Pennsylvania Wastewater Inc. – Cheltenham Township*, Docket No. A-2019-3008491 (Order entered October 24, 2019) at 48 ("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.”).²¹

When weighing all the factors, including the impact on rates, the ALJ focused on the harms resulting if Aqua were to apply 100% of the revenue deficiency of \$1,789,000 associated with the proposed rate base addition to the existing Township rates. Under that scenario, the average Township customer bill would increase by approximately \$54.64 per month or an 85.87% increase above the current rate of \$63.63 per month. R.D. at 119.

However, the rate deficiency emphasized by the ALJ is only a preliminary analysis of the potential rate impact on the Township’s customers. This figure is a non-binding estimate of the incremental rate effect of the proposed rate base increase and is used as part of the notice procedure to customers in Section 1329 proceedings. *See FSIO, supra*. As we previously explained “the Section 1329 valuation could have a highly unlikely rate effect of \$0. Equally unlikely is the 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.” *FSIO* at 32 (emphasis in original).

All of the Parties acknowledge that some level of a rate increase is expected as a result of the transaction. Indeed, there is a reasonable expectation that rates for the Township’s customers will increase even if the Commission were to reject the Application given the anticipated level of capital expenditures for the Township’s System over the next ten years. However, we agree with Aqua and the Township that, if the

²¹ Our Order entered on October 24, 2019, involving Aqua’s acquisition of Cheltenham Township’s assets pertained to Exceptions to an Initial Decision denying a petition to intervene and was distinct from our Order in *Cheltenham* entered on November 5, 2019.

transaction is approved, there will be more flexibility to address rate impact and to allocate costs over a much larger customer base. *See, e.g.*, Aqua St. 1-R at 8-9 (examining five years of capital investments on the Company’s acquired wastewater systems).

When considering all the factors, including the impact on rates, we find that the benefits of Aqua’s ownership outweigh the purported harms outlined by the OCA and the Opposing Intervenors. Aqua’s expertise and ability to raise and deploy capital and to spread costs over a larger customer base, the Township’s decision to exit the wastewater business, and the transaction’s furtherance of the policy objectives of the General Assembly in enacting Section 1329, as well as the additional factors discussed above, are all substantial affirmative benefits weighing in favor of granting the Application. Accordingly, we shall grant Aqua Exception Nos. 1 and 2 and Willistown Exception No. 1.²²

In Swift Exception No. 1, Mr. Swift argues that the ALJ erred by concluding the term “public” for purposes of Sections 1102 and 1103 includes Willistown’s existing customers and Aqua’s existing water and wastewater customers. According to Mr. Swift, where the acquisition of a standalone sewer system is at issue the scope of “public” is limited to the users of the system because there is no merger with other systems. Swift Exc. at 2-3.

Under Section 1329(c)(1) and (d)(5) of the Code, 66 Pa. Code §§ 1329(c)(1) and (d)(5), the fair market value of the assets being acquired by Aqua will

²² In Willistown Exception No. 2, the Township argues that the Recommended Decision creates a precedent that a municipality cannot sell its assets under the Code unless or until dire circumstances warrant the sale. Willistown Exc. at 5. Because we are granting Aqua Exception Nos. 1 and 2 and Willistown Exception No. 1, the arguments in Willistown Exception No. 2 are deemed moot and we shall decline to address them.

be added to the Company's rate base and revenue requirement in its next base rate case. This will occur regardless of whether the acquired assets will become physically interconnected to other Aqua systems. For purposes of determining whether an acquisition provides a substantial public benefit under Sections 1102 and 1329 of the Code, it is clear that "public" includes the buyer's existing customers who may experience a rate impact. *See, McCloskey*, 195 A.3d at 1067. Accordingly, we shall deny Swift Exception No. 1.

We also shall deny Yordan-Frissora Exception Nos. 4 and 5. Yordan-Frissora Exception No. 4 objects to the ALJ's summary of Aqua's argument pertaining to depreciation; whereas Yordan-Frissora Exception No. 5 objects to the ALJ's reference to the Township's argument pertaining to Mr. Yordan as an expert witness. Upon review, we find no error in the ALJ's actions. The ALJ was simply summarizing the Positions of the Parties and some of the arguments of Aqua and Township. There is no indication that the ALJ relied on these assertions in the Recommended Decision.

C. Section 1329 Analysis

As the Commission has previously made the determination in other Aqua Section 1329 acquisitions, such as *New Garden*,²³ *Limerick*,²⁴ *Cheltenham*,²⁵ and *Lower Makefield*,²⁶ that challenges to UVE appraisals are permissible, we continue with our discussion and consideration of the Parties' Exceptions, regarding the ALJ's recommendation and his acceptance or rejection of the OCA's proposed adjustments to several of the UVE appraisal approaches.

1. Aqua's Application

As previously indicated, UVEs, Gannett Fleming and AUS, found appraised values of approximately \$25.613 million and \$19.113 million, respectively, for an average appraised value of approximately \$22.363 million. The purchase price of \$17.5 million is below the average appraised value; consequently, Aqua proposed the

²³ *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 and the New Garden Township Sewer Authority*, Docket No. A-2016-2580061 (Order entered June 29, 2017) (*New Garden*).

²⁴ *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 Limerick Township*, Docket No. A-2017-2605434 (Order entered November 29, 2017) (*Limerick*).

²⁵ *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329 & 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Twp. & Contracts between Aqua Pennsylvania Wastewater, Inc. & Cheltenham Twp.*, Docket No. A-2019-3008491 (Order entered November 5, 2019) at 39 (*Cheltenham*).

²⁶ *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 (Order entered January 13, 2022) (*Lower Makefield*).

\$17.5 million purchase price amount be included in rate base, if the transaction is approved. Application at ¶ 56; 66 Pa. C.S. § 1329(c)(2).

The two appraisals provided by Gannett Fleming and AUS were prepared in accordance with the USPAP, employing the Cost, Income, and Market Approaches to arrive at the FMV of the System. Both firms were pre-certified as authorized UVEs. Aqua M.B. at 7. In arriving at its estimate, Gannett Fleming considered all three approaches, assigning an equal weight to the result of each approach. AUS primarily relied on the Cost Approach, with the Income and Market Approaches being utilized to confirm the overall value of the System’s operation.²⁷ The results of each are summarized as follows:

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

See Aqua St. 4 at 13. In summary, the results from the original cost method form the basis for Gannett Fleming’s replacement cost method, and both methods form the basis for its Cost Approach. Its Income Approach utilized the capitalization of earnings (cash flow) method and considers the results of two types of discounted cash flow (DCF)

²⁷ In preparation of their FMV estimates, specifically in the Cost Approach, Gannett Fleming and AUS utilized the Engineering Assessment provided by Pennoni. Aqua St. 4 at 16; Application Exh. R, Narrative Report at 2.

analyses, the EBIT and EBITDA terminal value model (Market Multiple DCF) and the capitalization of terminal value model (Capitalization DCF) (collectively referred to as the DCF methods).²⁸ Gannett Fleming’s Market Approach is supported by the market multiples method and selected transaction method. Aqua St. 4 at 14-15.

Summary of Results Prepared by AUS			
	<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
Total		100%	\$19,113,140
Conclusion			\$19,113,140

See Aqua St. 5 at 3. In summary, AUS’ Cost Approach is supported by the results from the replacement cost method less accrued depreciation. The results from the DCF method formed the basis for AUS’ Income Approach. AUS’ Market Approach is supported by the comparable sales method. Aqua St. 5 at 6-13, 17.

As can be seen by the results of each consultant’s analyses, as summarized above, it is clear that judgment is involved in the inputs used, the weighting given to each approach, and the FMV determinations. That is why two UVEs have reached different FMV results for the Township’s system. As discussed below, OCA witness David J.

²⁸ EBIT is earnings before interest and taxes and EBITDA is earnings before interest, tax, depreciation, and amortization.

Garrett proposed adjustments under all three valuation approaches in this proceeding.²⁹ The tables below outline the OCA's adjustments to Gannett Fleming's and AUS' appraisals under all three approaches:

Summary of OCA Adjustments to Gannett Fleming's Appraisal					
Approach	Gannett Fleming Indicated Value	OCA Adjustment	OCA Adjusted Value	OCA Weight	OCA Weighted Value
Cost	\$31,128,594	(\$18,728,544)	\$12,400,050	33.3%	\$4,133,350
Income	\$24,381,001	(\$15,215,855)	\$9,165,146	33.3%	\$3,055,049
Market	\$21,330,105	(\$3,202,144)	\$18,127,961	33.3%	\$6,042,654
Total				100%	\$13,231,052

Summary of OCA Adjustments to AUS' Appraisal					
Approach	AUS Indicated Value	OCA Adjustment	OCA Adjusted Value	OCA Weight	OCA Weighted Value
Cost	\$18,498,555	(\$2,320,418)	\$16,178,137	50%	\$8,089,069
Income	\$18,235,751	(\$9,070,605)	\$9,165,146	40%	\$3,666,058
Market	\$25,695,620	(\$5,212,511)	\$20,483,109	10%	\$2,048,311
Total				100%	\$13,803,438

See OCA Exh. DJG-2.

²⁹ I&E has not challenged the UVE's appraisals in this proceeding; however, as explained below in the Recommended Conditions section of this Opinion and Order, I&E contended that the UVE's reliance on the fact that all easements and real property rights will be transferred to Aqua by Willistown prior to closing may invalidate the accuracy of their appraisals. I&E M.B. at 9. Mr. Swift and Ms. Frissora joined in the OCA's arguments that the purchase price of \$17.5 million was excessive under Section 1329 of the Code. Swift-Frissora M.B. at 21. The OSBA and Mr. Yordan did not assert specific challenges to the UVE appraisals.

In summary, the culmination of the OCA’s proposed adjustments results in a \$4 million reduction to Aqua’s requested rate base of \$17.5 million, as illustrated below.³⁰

Summary of OCA's Recommended Rate Base		
	UVE Results	OCA Adjusted
Gannett Fleming	\$25,612,805	\$13,231,052
AUS	\$19,113,140	\$13,803,438
Average	\$22,362,972	\$13,500,000
Purchase Price	\$17,500,000	\$17,500,000
Proposed Rate Base	\$17,500,000	\$13,500,000

See OCA Exh. DJG-2.

2. Cost Approach

Cost approach is defined as, “[a] procedure to estimate the current costs to reproduce or create a property with another of comparable use and marketability.” OCA St. 1 at 15 (citing *Approaches to Value*. American Society of Appraisers accessed December 28, 2019, <http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value>).

³⁰ The OCA calculated that the adjusted Gannett Fleming appraisal result would be \$13,231,052, and the adjusted AUS appraisal result would be \$13,803,438, in order to properly reflect financial and ratemaking principles. OCA Exh. DJG-2. The recalculated average of the two appraisal results is approximately \$13,500,000, which is the amount the OCA recommended be used by the Commission for establishing ratemaking rate base under Section 1329 because this amount is less than the \$17,500,000 purchase price. OCA M.B at 45.

a. Gannett Fleming

As discussed, *infra*, the OCA's witness, Mr. Garrett, adjusted the Gannett Fleming Cost Approach in two ways: (1) by using the original cost method rather than the replacement cost method used by Gannett Fleming, and (2) by using shorter service lives for certain plant accounts. Aqua M.B. at 38. As a result of his proposed adjustments, Mr. Garrett adjusted the Gannett Fleming Cost Approach result from \$31,128,594 to \$12,400,050. OCA St. 1 at 23.

(1) Original Cost Method

(a) Positions of the Parties

As previously indicated, the Cost Approach to value in the Gannett Fleming appraisal was based on the replacement cost method³¹ which involved estimating accrued depreciation and then subtracting that depreciation from the estimated reproduction cost to reach a Cost Approach result of approximately \$31.3 million. 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. Aqua St. 4 at 16-18.

The OCA's witness, Mr. Garrett, adjusted the Gannett Fleming Cost Approach, in part, by accepting Mr. Walker's original cost method³² as part of its adjustment to Mr. Walker's FMV proposal under the Cost Approach. OCA St. 1 at 20.

³¹ Mr. Walker explained that the results from his original cost method form the basis for his replacement cost method, and both methods form the basis for his Cost Approach. Aqua St. 4 at 14.

³² Mr. Walker's analysis under the original cost method produced an indicated value of \$13.4 million. Application Exh. Q at 24.

The OCA asserted that it is more reasonable to rely on the original cost method than to rely on the replacement cost method in this case, given that 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. OCA M.B. at 29-30.

Aqua countered that Mr. Garrett's use of the original cost method as the basis for his Cost Approach recommendation is inconsistent with other statements within his testimony. Specifically, Aqua noted that on page 15 of OCA Statement 1, Mr. Garrett defines the Cost Approach as "[a] procedure to estimate the current costs to reproduce or create a property with another or comparable use and marketability" based on a citation from The American Society of Appraisers. Aqua argued that, given the price level changes of constructing utility plant which have occurred over the past 40 to 50 years, the Township's original cost of plant understates the current costs to reproduce or create a property with another of comparable use by 289%. Aqua St. 4-R at 4.

Aqua pointed out that, contrary to his recommended adjustment to Gannett Fleming's Cost Approach, Mr. Garrett did not recommend using original cost as the basis for adjusting the AUS Cost Approach result; however, Mr. Garrett argued that this is because AUS' Cost Approach estimate (\$18.4 million) was relatively more reflective of FMV indications produced by other approaches than the \$31.1 million result of Gannett Fleming's Cost Approach. OCA St. 1SR at 9.

Furthermore, Aqua contended that Mr. Garrett's use of the original cost method, rather than the replacement cost method, as the basis for his Cost Approach is entirely inconsistent with his own testimony and recommended use of replacement cost in

*East Norriton*³³ and *Royersford Borough*³⁴, in which Mr. Garrett did not recommend using original cost as the basis for adjusting the AUS Cost Approach result. Aqua M.B. at 39 (citing Aqua St. 4-R at 4).

Aqua posited that if original cost were the appropriate/correct method to value assets in a Section 1329 proceeding then an original cost analysis would be the only method needed. However, the value of the investment in plant and equipment for 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. Aqua M.B. at 39 (citing Aqua St. 4-R at 5).

(b) Recommended Decision

The ALJ's Recommended Decision adopts the OCA's recommendation to use the original cost method instead of the replacement cost method to estimate the FMV under Gannett Fleming's Cost Approach analysis. R.D. at 174-175. ALJ Watson reasoned that the OCA's proposal is appropriate under the circumstances, given that Gannett Fleming's replacement cost method produced a valuation notably higher than the values produced by its other valuation methods. R.D. at 174.

³³ *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Norriton Township*, Docket No. A-2019-3009052 (Final Order entered March 3, 2019) (*East Norriton*).

³⁴ *Application of Pennsylvania-American Water Company – Wastewater Division Under Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, for the Acquisition of Royersford Borough's Wastewater System Assets*, Docket No. A-2020-3019634 (Order entered May 7, 2021) (*Royersford Borough*).

The ALJ explained that:

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).

R.D. at 174. The result of this portion of the OCA's recommendation, adopted by the ALJ, is a downward adjustment of \$17,761,320 (\$31,128,594 - \$13,367,274) to the Gannett Fleming Cost Approach to value. R.D. at 175.

(c) Aqua Exception No. 3 and Replies

In its Exception No. 3, Aqua maintains that Mr. 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.³⁵

³⁵ Aqua asserts that the Commission has previously rejected the use of original cost as the basis of FMV in prior decisions:

We note that the original cost study, which is reviewed to determine the reasonableness of a utility's acquisition adjustment claim in a future base rate proceeding, consistent with Section 1327(a) of the Code, 66 Pa. C.S. § 1327(a), and the Commission's policy statement at 52 Pa. Code § 69.721, regarding acquisitions of viable water and wastewater systems, is not applicable in a Section 1329 proceeding.

Aqua submits that original cost is, simply, not a measure of FMV, explaining that through Section 1329, the General Assembly created a legislative framework for valuing municipal system assets at FMV, not original cost, and did so separate and apart from Section 1311(b). Aqua Exc. at 24 (citing Aqua St. 4-R at 5).

Aqua maintains that historic price increases cannot be ignored and must be reflected in a FMV analysis contrary to the use of original cost as the basis for the Gannett Fleming Cost Approach. Aqua explains that:

The Recommended Decision suggests that a wastewater system constructed over the past 45-years has a depreciated fair market value that is no greater than original cost. Increases in the cost of materials and infrastructure construction over the past 45-years are, however, undeniable

Aqua Exc. at 23-24 (citing *Limerick* at 30); See Aqua M.B. at 37

Historically, regulated utilities under the Commission’s jurisdiction have predominantly followed a standard and practice of using depreciated original cost value (with various adjustments) as the rate base in which they may recover their capital investment and earn a rate of return on the unrecouped asset value or rate base. However, Section 1329 establishes fair market value, not original cost, as the ratemaking rate base for municipal transactions. Under Section 1329, it is fair value, ratemaking rate base that, ultimately, will be used for ratemaking purposes, rather than being constrained by depreciated original cost value. As indicated by Aqua, “[t]he OCA’s proposed adjustments to the Income Approach are also contrary to the language in *McCloskey* where the Commonwealth Court clearly stated that ‘Section 1329 allows a private utility to acquire a government utility’s assets at its fair market value rather than at the original cost of assets minus the accumulated depreciation and then add that amount to rate base.’” Aqua R.B. at 6 (citing *McCloskey*, 195 A.3d at 1055).

Aqua Exc. at 23 (citing *Lower Makefield* at 69). See Aqua M.B. at 37.

– the price of goods and services is higher today than it was 45-years ago.

Aqua Exc. at 24-25.

In its Replies to Aqua’s Exception No. 3, the OCA counters that the Commission does have the discretion to use the original cost method to estimate FMV using the Cost Approach under Section 1329, and Aqua “misconstrues” the *Lower Makefield* decision. OCA R. Exc. at 17 (citing Aqua Exc. at 23). According to the OCA the quote that Aqua excerpted from the *Lower Makefield* Order to argue that Mr. Garrett’s consideration of original cost is not appropriate only indicates that the Commission does not wish to see original cost substituted for FMV in Section 1329 proceedings; it does not indicate that original cost may never be considered when determining what FMV should be. OCA R. Exc. at 17. In support of its assertion, the OCA references the Commission’s *Tentative Supplemental Implementation Order*,³⁶ which provides the following:

1. Cost approach may measure value by:
 - a. determining investment required to replace or reproduce future service capability
 - b. developing total cost less accrued depreciation for Selling Utility assets
 - c. determining the original cost of the system

OCA R. Exc. at 17-18; *See TSIO*, Appendix C at 2.

³⁶ *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered September 20, 2018) (*TSIO*) at 20.

Further the OCA maintains that the original cost method provides a more accurate indication of FMV under the Cost Approach than the replacement cost method used by Gannett Fleming, given that the FMV resulting from the use of original cost method is more comparable to the FMV results of the various other approaches being used to estimate the value of the System. OCA R. Exc. at 18.

Additionally, according to the OCA, Aqua's difference of opinion stems from its perceived inability to recognize that there is a difference between original cost as it is generally used for ratemaking purposes and the version of original cost for Section 1329 purposes. OCA R. Exc. at 18-19. Specifically, original cost under Section 1329 does not reflect an offset for contributed plant or capital as is done in ratemaking. *See* 66 Pa. C.S. § 1329(d)(5). This may create an original cost under Section 1329 that is higher than would be under general ratemaking. As such, the OCA argues that its recommended FMV under Gannett Fleming's adjusted Cost Approach is approximately equal to the depreciated original cost for Section 1329 purposes, which is higher than the actual depreciated original cost of the system. OCA R. Exc. at 19.

(d) Disposition

Upon review of the record, the Recommended Decision, and the Parties' Exceptions and Replies thereto, we shall grant Aqua's Exception No. 3.

In our view, Mr. Garrett's proposed use of the original cost method as the basis for his Cost Approach recommendation is not consistent with his definition of the Cost Approach, which he defined as "[a] procedure to estimate the current costs to reproduce or create a property with another of comparable use and marketability" based on a citation from The American Society of Appraisers. *See* OCA St. 1 at 15.

We find persuasive Aqua's argument that the use of the depreciated original cost of plant understates the current costs to reproduce or create a property with another of comparable use by approximately 289%³⁷ by ignoring the price level changes of constructing utility plant which have occurred over the past 40 to 50 years. *See* Aqua St. 4-R at 4.

Historically, regulated utilities under the Commission's jurisdiction have predominantly followed a standard and practice of using depreciated original cost value (with various adjustments) as the rate base in which they may recover their capital investment and earn a rate of return on the unrecouped asset value or rate base. However, Section 1329 establishes fair market value, not original cost, as the ratemaking rate base for municipal transactions. Under Section 1329, it is fair value, ratemaking rate base that, ultimately, will be used for ratemaking purposes, rather than being constrained by depreciated original cost value. We are of the opinion that Aqua's valuation expert, Mr. Walker, is well aware that the original cost under Section 1329 does not reflect an offset for contributed plant or capital as is done in traditional ratemaking, and that this variance may produce a slightly higher depreciated original cost for Section 1329 purposes. *See* 66 Pa. C.S. § 1329(d)(5). Regardless of this variance, as the OCA agrees, Commission precedent dictates that depreciated original cost should not be substituted for FMV in Section 1329 proceedings.

The Commission previously verified that the original cost is but one value to be used and is not the only value to establish the FMV under the Cost Approach. *See FSIO* at 81-85. As Mr. Walker testified, "[t]he results from the original cost method form the basis for our replacement cost method, and both methods form the basis for our Cost Approach." *See* Aqua St. 4 at 14.

³⁷ Based on a comparison of the gross original cost of depreciable plant accounts, shown on Exhibit 7, and their replacement cost, shown on Exhibit 9 of Application Exhibit Q.

As indicated previously Mr. Walker relied on the Engineering Assessment in performing the Cost Approach analysis. Using the Engineering Assessment developed by Pennoni, Gannett Fleming showed the original cost of Willistown’s System to be \$19,641,520 with calculated accrued depreciation of \$6,274,246, for a net depreciated original cost of Willistown’s wastewater assets of \$13,367,274.

SUMMARY OF ORIGINAL COST AND ACCRUED DEPRECIATION OF WASTEWATER SYSTEM AS OF JUNE 28, 2021			
ACCOUNT (1)	DESCRIPTION (2)	ORIGINAL COST (3)	ACCRUED DEPRECIATION (4)
353.20	LAND AND LAND RIGHTS - COLLECTION	216.00	
353.30	LAND AND LAND RIGHTS - PUMPING	21,606.00	
353.40	LAND AND LAND RIGHTS - TREATMENT	1,500,007.00	
354.30	STRUCTURES AND IMPROVEMENTS - PUMPING	2,146,252.29	632,926
354.40	STRUCTURES AND IMPROVEMENTS - TREATMENT	1,448,500.00	463,071
355.00	POWER GENERATION EQUIPMENT	344,586.01	122,328
360.10	FORCE MAINS	6,823,585.74	1,903,481
361.10	GRAVITY MAINS	4,763,458.78	1,843,179
361.12	GRAVITY MAINS MANHOLES	1,562,320.53	796,143
363.20	SERVICES TO CUSTOMERS	698,453.72	329,922
364.30	METERS	23,240.21	17,061
390.70	COMPUTERS	36,843.75	36,844
391.70	TRANSPORTATION EQUIPMENT	272,449.71	129,291
	TOTAL COMPANY	19,641,519.74	6,274,246

Application Exh. Q, Exh. 7 at 1. The reproduction costs were then calculated by indexing the original cost plant values to translate original costs into present-day costs. *See Aqua St. 4 at 14*

Accordingly, we find no support for the conclusion in the Recommended Decision that the OCA’s proposal to use Gannett Fleming’s original cost method as part of its adjustment to Mr. Walker’s FMV proposal under the Cost Approach is both acceptable under Section 1329 and prior Commission decisions. Also, we reject the

determination that the OCA's approach is a more accurate reflection of the FMV of the Willistown assets than Gannett Fleming's estimate using the replacement cost method. Therefore, we shall grant Aqua's Exception No. 3, and reverse the ALJ's Recommended Decision, in part, consistent with the discussion in this Opinion and Order.

(2) Service Lives

(a) Positions of the Parties

Aqua provided that the estimation of service lives is an important part of the valuation of depreciable plant assets under the Cost Approach. Aqua explained that shorter service lives, as recommended by the OCA witness Mr. Garrett, result in lower values under the Cost Approach. Aqua explained further that Mr. Garrett recommended shorter service lives for five plant accounts in the Gannett Fleming Cost Approach. Aqua argued that Mr. Garrett's recommendations are not supported by statistical analysis and should not be adopted. Aqua M.B. at 39 (citing Aqua St. 4-R at 6).

Gannett Fleming explained the general concept of service lives and the use of Iowa curves as follows:

Depreciation represents the loss in property value from: physical deterioration; functional obsolescence; and external obsolescence. The accrued depreciation represents the sum of the annual depreciation amounts that would have been charged for depreciation at a point in time. Accrued depreciation is a calculated amount that would be in the book reserve account at a point in time using the current depreciation parameters (i.e., average service life).

The average service lives of depreciable assets are based on the materials used for construction and how long the depreciable assets are likely to meet service demands. The range of survivor characteristics usually experienced by

utility and industrial properties is encompassed by a system of generalized “survivor curves” known as the Iowa type curves.

The accrued depreciation ratio from a survivor curve is a concept that is used to estimate the consumed service capacity of plant at a point in time. The survivor curve is used to find the applicable accrued depreciation factors of the assets to result in the total accumulated depreciation.

Application Exh. Q at 22-23.

The OCA argued that the Township did not have asset placement and retirement records by vintage year for the UVEs to use to select Iowa curves to calculate the average remaining life and estimate depreciation. According to the OCA, both of the UVEs used their “experience” in selecting a best-fitting Iowa curve. The OCA averred that without the asset placement and retirement records, the UVE’s “experience” is not sufficient to show that their selected Iowa curves are the best match for the Township’s assets. The OCA proposed adjustments to the Iowa curves used by the UVEs. OCA M.B. at 28-29 (citing Application Exh. X at 18; Application Exh. Y at 8).

The OCA made adjustments to Gannett Fleming’s Iowa curve calculations as follows:

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 M.B. at 31 (citing OCA St. 1 at 21).

The OCA provided that it used the same values to adjust the Gannett Fleming Cost Approach as those proposed by Mr. Weinert of AUS for Accounts 354.30 and 354.40. For Accounts 360.10 and 361.10, the OCA proposed a 60-year average life, arguing that Gannett Fleming used the 60-year life for these accounts in a wastewater case in front of the Indiana Utility Commission.³⁸ The OCA recommended a 45-year life for Services to Customers Account to estimate a reasonable range for that account. OCA M.B. at 31 (citing OCA St. 1 at 22).

The Township endorsed, adopted, and incorporated by reference the section of Aqua's Main Brief relating to the challenges to UVE appraisals. Willistown M.B. at 16.

I&E did not challenge the UVEs appraisals with the exception of the issue regarding easements and real property rights as discussed *infra* in Section D.2.a. I&E M.B. at 9.

The OSBA took no position on this issue. OSBA M.B. at 16.

(b) Recommended Decision

The ALJ found that although sufficient evidence was not submitted supporting the OCA's overall changes to the Iowa curves used to calculate the depreciation of all five of the identified plant accounts, the service lives suggested by the Iowa curves selected by Gannett Fleming for Account Nos. 354.30 and 354.40 are higher than the service lives proposed for these accounts in previous 1329 transactions

³⁸ 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>. OCA M.B. at 31, n. 13.

referenced in the record. The ALJ recommended that the OCA's adjustments for these two accounts be accepted – 354.30 and 354.40. The ALJ found that Aqua did not meet its burden of proof to establish its proposed service lives for these accounts and the OCA's proposed adjustments for these two accounts are “reasonably consistent with the service lives used in previous Section 1329 valuations.” R.D. at 175-176.

(c) Aqua Exception No. 4 and Replies

In its Exception No. 4, Aqua excepts to the use by the ALJ of the OCA's proposed service lives for Accounts 354.30 and 354.40, which further reduces the Gannett Fleming Cost Approach value from \$13,367,274 to a less than depreciated original cost value of \$12,979,721. Aqua notes that the Recommended Decision states, incorrectly, that the service lives suggested by the Iowa curves that Gannett Fleming selected for these accounts are substantially higher than the service lives proposed for these accounts in previous 1329 transactions referenced in the record. Aqua Exc. at 25-26 (citing R.D. at 175-176; Aqua M.B., Section V.C.4.a.i; Aqua R.B., Section V.C.4.b.1.(a)).

Aqua avers that the Table below from page 8 of Mr. Walker's rebuttal testimony, shows that the service lives used by Gannett Fleming for Accounts 354.30 and 354.40 are not only equal to, or less than, the lives proposed by Gannett Fleming in *Limerick* and *Lower Makefield* where those Accounts were at issue but are also equal to, or less than the Commission approved lives in the litigation in those other proceedings. Aqua Exc. at 26 (citing Aqua St. 4-R at 8).

<u>Accounts</u>	<u>Willistown Township</u>		<u>Other 1329 Proceedings</u>		
	Gannett		<u>Limerick</u>	<u>Cheeldenham</u>	Lower <u>Makefield</u>
	<u>Fleming</u> <u>Appraisal</u>	<u>Mr. Garrett</u> <u>(OCA)</u>			
354.30 Structures and Improvements - Pumping	60-R3	45-R4	60-R3	NA	65-R3
354.40 Structures and Improvements - Treatment	65-R2.5	55-R4	75-R3	NA	70-R2.5
360.10 Force Mains	70-R2.5	60-R2.5	70-R2.5	NA	70-R2.5
361.10 Gravity Mains	65-R2.5	60-R2.5	65-R2.5	75-R2.5	65-R2.5
363.20 Services To Customers	55-R2.5	45-R3	NA	60-R2.5	55-R2.5

Aqua notes that the recommended service lives for Accounts 354.30 and 354.40 produce an adjusted Cost Approach Value of \$12,979,721, when combined with the recommended use of original cost as the basis for the Gannett Fleming Cost Approach. Aqua provides that the fully adjusted value as presented in the Recommended Decisions is less than the depreciated original cost of \$13,367,274. Aqua contends that a Cost Approach result which is less than the depreciated original cost is contrary to Section 1329 and an error of law. Aqua argues that it is not a measure of FMV. Aqua Exc. at 26 (citing Aqua St. 4-R at 5; 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-values.pdf>). According to Aqua, the Gannett Fleming Cost Approach result of \$31,128,594 should be accepted without adjustment. Aqua Exc. at 27.

In its Reply to Aqua Exception No. 4, the OCA provides that contrary to Aqua’s argument, in *Limerick* and *Lower Makefield*, the structures and improvements (S&I) pumping and S&I treatment accounts were not contested issues. The OCA notes that the only account at issue in the *Lower Makefield* case was the Gravity Mains account. OCA R. Exc. at 20 (citing *Lower Makefield* at 43-45; *Limerick* at 19-21).

The OCA contends that although there was no challenge to the longer service lives for the S&I pumping and treatment accounts in *Limerick* and *Lower Makefield*, that does not mean that the same service lives should be accepted in this case, where they are contested. The OCA provides that it showed that without the appropriate historical data to support longer service lives, it is more conservative and more reasonable to use shorter service lives for the S&I pumping and treatment accounts to estimate FMV using the Cost Approach in this case. OCA R. Exc. at 20 (citing OCA M.B. at 32; OCA R.B. at 17).

(d) Disposition

We will first address the ALJ's recommendation to use the OCA's proposed adjustment to the service lives for Accounts 354.30 (Structures and Improvements – Pumping) and 354.40 (Structures and Improvements – Treatment). The ALJ stated “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[s].” R.D. at 175. As Aqua avers, Gannett Fleming's recommended service lives for Willistown for these accounts are equal to or less than the values it selected for these accounts in *Limerick*, *Cheltenham* and *Lower Makefield*.

Mr. Walker provided that he viewed or observed the Township's facilities on July 27, 2021. He stated that he also relied on the engineering assessment of the facilities report, “Willistown Township Sewerage Facilities Engineering Assessment and Original Cost” prepared by Pennoni Associates Inc., the Township system's Chapter 94 reports, the system's 537 Plan, and the APA, to confirm the condition of the Township's property and equipment. Aqua St. 4-R at 3.

Account 354.30 (Structures & Improvements – Pumping) includes the initial pump stations 1-5, booster pumps, building improvements and pump upgrades. Pump Station #4 was built in 2006 and the pumps for Stations 1,2,3, and 5 have been upgraded in 2014-2019. Gannett Fleming’s estimate for this Account does not seem unreasonable based on the conditions of these assets and recent upgrades to the pumps. *See Application Exh. D.*

Similarly, for Account 354.4 (Structures and Improvements – Treatment Plant), the Engineering Assessment and Chapter 94 Report do not indicate poor conditions or poor maintenance at the Treatment Plant. The Chapter 94 Report for the Penn’s Preserve Treatment Plant states “Routine maintenance is performed on all equipment according to the manufacturer’s recommended guidelines.” Application Exh. D, Application Exh. E1 at 3. Based on the available information for this asset, Gannett Fleming’s estimate for this Account does not seem unreasonable.

We note that the OCA provided that it used the same values for these two accounts to adjust the Gannett Fleming Cost Approach as those proposed by Mr. Weinert of AUS for Accounts 354.30 and 354.40. We disagree with the OCA’s substitution of values derived by AUS for values determined by Gannett Fleming. In his proposed modifications to the Gannett Fleming Cost Approach, Mr. Garrett recommended the use of the AUS service lives for two of the accounts. We note that UVEs have differing values for accounts in previous 1329 proceedings. This is not error. The UVEs are expected to develop the FMV from their experience, their judgment, and the state of the system at issue. It can be expected that the values may differ. Mr. Garrett acknowledges that “different experts are likely to have different opinions regarding service life estimates.” OCA St. 1SR at 9.

We found Aqua’s assertion that Gannett Fleming used equal to or less than values for Account No. 354.30 (Structures and Improvements – Pumping) and Account

No. 354.40 (Structures and Improvements – Treatment) in *Limerick, Cheltenham* and *Lower Makefield* to be persuasive. We disagree with the ALJ’s finding that Aqua did not meet its burden of proof to establish its proposed service lives for these two accounts, and that the OCA presented sufficient evidence to support its proposed changes. R.D. at 175. We note that the Gannett Fleming values for these two accounts were equal to or less than those proposed by Gannett Fleming in previous 1329 proceedings and Mr. Walker used his experience and specific information about the Willistown system to develop the values for these accounts. Upon review of the record including the testimony of the Parties, the Engineering Assessment, and the Chapter 94 Report, we find that Gannett Fleming’s values for the two accounts in question are reasonable. Therefore, we shall grant Aqua’s Exception No. 4, and modify the ALJ’s Recommended Decision, in part, consistent with the discussion in this Opinion and Order.

(e) OCA Exception No. 2 and Replies

In its Exception No. 2, the OCA argues that the ALJ erred by not adopting the OCA’s adjustments to Gannett Fleming’s proposed service lives in its Cost Approach for its Account No. 360.10 (Force Mains), Account No. 361.10 (Gravity Mains), and Account No. 363.20 (Services). The OCA had proposed adjusting Gannett Fleming’s Cost Approach by substituting the original cost method for the replacement cost method and by using shorter service lives for five accounts. OCA Exc. at 7 (citing OCA M.B. at 30; OCA St. 1 at 20-22). According to the OCA, the ALJ accepted the OCA’s adjustment to use the original cost method, but the ALJ erred by only accepting two of the five adjustments to service lives. OCA Exc. at 7 (citing R.D. at 175-176).

The OCA provides that the ALJ accepted the OCA’s adjustment to Account Nos. 354.30 and 354.40 because he found that Aqua did not meet its burden of proof to establish its proposed service lives for these accounts, and that the OCA presented sufficient evidence to support its proposed changes. *Id.* (citing R.D. at 175).

The OCA argues that the ALJ erred by not accepting the OCA’s adjustments to three accounts as detailed in the following table:

Account	Gannett Fleming Service Lives - years	OCA Service Lives - years
360.10 (Collection sewers – force mains)	70	60
361.10 (Collection sewers – gravity mains)	65	60
363.20 (Services)	55	45

OCA Exc. at 8 (citing OCA M.B. at 31; OCA St. 1 at 21).

The OCA provides that the proposed 60-year service lives for Account Nos. 360.10 and 361.10 are the same as the service lives proposed by Gannett Fleming for those accounts in an Indiana wastewater case. OCA Exc. at 9 (citing OCA M.B. at 31). According to the OCA, Mr. Walker of Gannett Fleming provided no evidence justifying longer service lives for the same accounts in this case. *Id.* (citing OCA R.B. at 18). The OCA provides that its witness, Mr. Garrett has explained that shorter service lives are a better, more conservative option when there is little or no available historical retirement data on a system’s assets, as is the case here. *Id.* (citing OCA M.B. at 32; OCA St. 1SR at 9). The OCA argues that this conservative approach also justifies Mr. Garrett’s proposed 45-year service life for Account No. 363.20. *Id.* (citing OCA R.B. at 17-18). The OCA contends that Gannett Fleming has failed to explain why its longer service lives are appropriate at all. *Id.* (citing OCA M.B. at 31-32; OCA R.B. at 17-18; OCA St. 1SR at 9).

In its Reply to the OCA’s Exception No. 2, Aqua notes that the ALJ distinguished the OCA’s proposed service lives noting that the lives proposed by the OCA for Account 354.30 and Account 354.40 have been accepted by the Commission in

previous Section 1329 valuations. However, according to Aqua, the lives proposed by the OCA for Accounts 360.10, 361.10 and 363.20 have not. Aqua R. Exc. at 3.

Aqua provides that the ALJ noted that the OCA service lives are based on its witness' experience, which is not sufficient to change the overall service lives suggested by the Iowa curves selected by Gannett Fleming. Aqua contends that the Gannett Fleming service lives recommended for all five accounts are consistent with the service lives approved by the Commission in prior fully litigated Section 1329 proceedings. *Id.* (citing Aqua St. 4-R at 8). While the OCA contends that its proposed service lives are "conservative," Aqua avers that this result-oriented support for the OCA's argument should be rejected as unreasonable and inappropriate. Aqua R. Exc. at 3.

(f) Disposition

The OCA contends that absent extensive retirement data for the Township's assets, the use of the UVEs' "experience" is not enough in this case for the UVEs to rely on to select appropriate Iowa curves. As the ALJ noted, Mr. Garrett, like the UVEs, also used personal judgment to select the service lives for the Township facilities. R.D. at 175. We note that the UVEs relied on more than their experience in estimating service lives for the Township's assets. The UVEs used additional data in determining service lives rather than relying only on personal judgment.

A municipality, unlike an investor-owned-utility that is regulated by the Commission, is not required to maintain records of asset retirements. It can be expected that Willistown would not have records of such retirements. The OCA has not shown that a small system like Willistown would have enough retirement data to use to produce the retirement curves analysis it contends is necessary to select the appropriate Iowa curves. In this case, the UVEs used what was available to them – the Engineer's

Assessment, in-person observation of the assets in Gannett Fleming's case, experience with numerous similar Pennsylvania-based systems, and the retirement data available for Pennsylvania-based systems.

In contrast, we note that Mr. Garrett did not observe the Township's assets, has not observed or reviewed the assets of any wastewater system and has not valued a utilities property. Aqua St. 4-R at 3, Aqua Exh. HW-1.

We disagree with the OCA's argument that without historical retirement data for Willistown's assets, it is more conservative and more reasonable to use shorter service lives for these accounts. We do not find reasonable the OCA's use of data from other cases regarding other wastewater systems in other jurisdictions without study and acknowledgment of the materials of construction or conditions of the system at Willistown. Accordingly, we shall deny the OCA's Exception No. 2.

b. AUS

(1) Positions of the Parties

Aqua provided that in the AUS appraisal, the Cost Approach is based on Cost of Replacement New less Depreciation (CORLD). Aqua noted that Mr. Garrett accepted the AUS Cost of Replacement but adjusted depreciation by reducing the estimated service lives for several plant categories. The impact of Mr. Garrett's adjustments reduced the AUS Cost Approach result from \$18,498,555 to \$16,178,137. Aqua M.B. at 42 (citing Aqua St. 5-R at 6). Aqua submitted that Mr. Garrett provided no support for his recommended service lives for the AUS Appraisal. According to Aqua, Mr. Garrett simply stated that he made the AUS service lives the same as those he used for Gannett Fleming's Cost Approach. Aqua noted that Mr. Garrett maintained that AUS

did not provide support for the service lives it selected. Aqua M.B. at 42 (citing Aqua St. 5-R at 7-8, referencing pages 16-17 and 19 of Mr. Garrett’s direct testimony).

Aqua disagrees with Mr. Garrett’s assertion that AUS did not provide support for its service lives determinations. According to Aqua, Mr. Weinert of AUS detailed how AUS determined service lives and depreciation with specific reference to depreciation studies presented by Pennsylvania-American Water Company (PAWC) and Aqua in general rate proceedings. Aqua averred that the PAWC and Aqua depreciation studies 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. Mr. Garrett’s 60-year service life is not reasonable, as Aqua argues, as it clearly understates the actual service life for gravity mains constructed and serving Pennsylvania customers and it should not be adopted. Aqua M.B. at 43 (citing Aqua St. 5-R at 12-13).

The OCA recommended adjustments to the AUS Cost Approach using the same average service lives that it recommended in its adjustments to the Gannett Fleming Cost Approach.

Proposed Iowa Curve Adjustments to AUS Consultants:

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

The OCA noted that Mr. Weinert disagreed with the OCA’s proposed service lives. Mr. Weinert relied on the Gannett Fleming depreciation studies. The OCA

offered that these studies were not conducted on the assets at issue in this proceeding. While Mr. Weinert noted that his service life proposals in this case are similar to those proposed by Gannett Fleming in other cases, according to the OCA, he does not explain the differences between his and Gannett Fleming's proposed service lives here. OCA M.B. at 32-33 (citing OCA St. 1SR at 11).

The OCA claimed that since the Township does not maintain the requisite data for a utility-specific actuarial analysis, a comparative analysis is the only way to calculate these proposed service lives, and that is what both Mr. Garrett and Mr. Weinert did. *Id.* While Mr. Weinert claimed that his comparative analysis is more credible than Mr. Garrett's because it relied on the most recent depreciation studies conducted by Aqua and PAWC, the OCA averred that this argument only highlights that similar data was not available about the Township's assets in this case. OCA M.B. at 33 (citing Aqua St. 5-R at 11; OCA St. 1SR at 11). The OCA reasoned that both Mr. Weinert and Mr. Garrett used their own judgement to evaluate the appropriate service lives for various accounts in Willistown Township. OCA M.B. at 34 (citing OCA St. 1SR at 11).

I&E, Willistown, and the OSBA had the same position for the AUS Cost Approach as presented *supra* in the Gannett Fleming Cost Approach section.

(2) Recommended Decision

The ALJ found that based upon a review of the record and the arguments of the Parties, it appears that the AUS 80-year service life for Account No. 361.21 (Collection sewers - gravity mains), has been determined to be excessive in recent 1329 proceedings. The ALJ concluded that Aqua did not meet its burden of proof to establish that the proposed 80-year service lives under the AUS Cost Approach for Account No. 361.21 and Account No. 361.23 (Collection sewers - gravity manholes) are

appropriate. The ALJ recommended the use of a 60-year service life, as proposed by Mr. Garrett, for these two accounts, as more appropriate. R.D. at 177.

(3) Aqua Exception No. 5 and Replies

In its Exception No. 5, Aqua excepts to the use of the OCA's proposed service lives for Account Nos. 361.21 and 361.23, which reduces the AUS result under the Cost Approach from \$18,498,555 to \$16,871,504. Aqua notes that the Recommended Decision states that Aqua did not meet its burden of proof to establish that the AUS service lives are appropriate. Aqua Exc. at 27 (citing R.D. at 176-177; Aqua M.B., Sect. V.C.4.a.ii; Aqua R.B. Sect. V.C.4.b.i.(a)).

Aqua provides that the AUS service lives were determined from depreciation studies presented by Aqua and PAWC in recent rate proceedings. Aqua avers that the lives determined in those studies represent actual service life experience of wastewater plant. Aqua explains that 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 75-80 years is supported by the PAWC and Aqua studies. Aqua Exc. at 27 (citing Aqua St. 5-R at 10-11). Additionally, Mr. Weinert explained that the majority of the Willistown mains are plastic, warranting a much longer life than the 60-year life recommended by the OCA. Aqua Exc. at 28 (citing Aqua St. 5-R at 14-15).

In its Replies to Aqua Exception No. 5, the OCA contends that the shorter service lives proposed by the OCA witness Mr. Garrett and accepted by the ALJ are also supported by depreciation studies presented in other proceedings based on "actual service life experience of a wastewater plant." OCA R. Exc. at 20-21 (citing OCA M.B. at 33-34; OCA St. 1SR at 11-12).

The OCA explains that the 2020 PAWC study referenced by AUS to justify an 80-year service life for collection sewers – gravity may not be appropriate for Willistown. The PAWC study was based on a system with 100-year old collection sewers, while Willistown is much newer. Some parts of the system were built in 2020 and its oldest parts are just 45 years old. The OCA contends that the lack of specific information about the Willistown system shows the need to be conservative when estimating service lives. The OCA argues that its proposed services lives are more conservative and more reasonable. OCA R. Exc. at 21 (citing OCA St. 1SR at 10; OCA R.B. at 18).

The OCA provides that the ALJ noted that the Commission found that 80-year service lives for collection sewers gravity – mains have been determined to be excessive in recent 1329 proceedings. OCA R. Exc. at 21 (citing R.D. at 177). The OCA argues that AUS’ reliance on depreciation studies done on assets in other proceedings does not justify 80-year service lives for the accounts in this proceeding, where no comparable data is present. OCA R. Exc. at 21 (citing OCA M.B. at 34; OCA R.B. at 18).

(4) Disposition

We will first address the ALJ’s recommendation to use the OCA’s proposed adjustment to the service lives for Accounts 361.21 (Collection Sewers – Gravity Mains) and 361.23 (Collection Sewers – gravity manholes). The ALJ found that “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.” R.D. at 177. The ALJ recommended the use of the OCA’s 60-year service lives for these two accounts.

The 80-year service life for gravity sewer mains was found excessive for the sewer gravity mains in *Lower Makefield* because of the materials involved. In that case, a longer 80-year service life as recommended for lined vitreous concrete pipe (VCP) was not appropriate as the system was mostly unlined VCP and only a small portion of the system was lined. In *Lower Makefield* a value of 65-years was recommended. *Lower Makefield* at 44-45. While AUS avers that the gravity mains in Willistown are mostly plastic with an expected service life of 80 years, the Engineering Assessment indicates that only approximately 13% of the gravity mains are plastic. Willistown's gravity mains consist of asbestos cement pipe (28%), VCP (45%), and other materials (14%) in older sections and polyvinylchloride (PVC) plastic (13%) in more recent sections. See Application Exh. D.

Next, we will address the issue of a proposed 80-year service life for Account No. 361.23 (Collection sewers – gravity manholes). We note that an 80-year service life for this account appears to be greater than what was proposed for this account in the depreciation studies AUS relied on for Account No. 361.23. The depreciation studies used a 50-year service life for this account. Application Exh. R at 30. It is unclear why Mr. Weinert selected an 80-year service life for the Account No. 361.20 Manholes when the depreciation studies used a 50-year service life. AUS has not provided a justification for using a service life that is thirty years longer than what was proposed by the depreciation studies.

We find that the 80-year service lives proposed by AUS for Account Nos. 361.21 and 361.23 are not reasonable. We agree with the ALJ's recommendation to accept the 60-year service lives as proposed by the OCA for these two accounts. Accordingly, Aqua's Exception No. 5 is denied.

(5) OCA Exception No. 1 and Replies

In its Exception No. 1, the OCA contends that the ALJ erred by accepting only two of the five changes the OCA recommended to the AUS Cost Approach analysis. The OCA argues that the ALJ erroneously found that the OCA failed to justify its proposed service lives for three of the five accounts. The OCA argues that for the same reasons that applied to the two accounts the ALJ should have accepted the recommended changes for all five accounts. OCA Exc. at 5 (citing OCA M.B. at 31; OCA St. 1 at 21; R.D. at 177).

The OCA provides that the ALJ agreed with the OCA that AUS’ proposed 80-year service lives for Account Nos. 361.21 and 361.23 were excessive, and that the 60-year service lives proposed by OCA witness Garrett were more appropriate for those accounts. OCA Exc. at 5 (citing R.D. at 177). The OCA recommended the following additional adjustments to AUS’ service lives:

Account	AUS Service Lives - years	OCA Service Lives - years
355.30 (Power generation – pumping)	35	30
360.21 (Collection sewers – force mains)	75	60
361.22 (Collection sewers – gravity mains – repairs)	60	50

OCA Exc. at 6 (citing OCA M.B. at 33; OCA St. 1 at 23).

The OCA contends that it provided better support for its proposed shorter service lives than was provided for AUS’ longer service lives. OCA Exc. at 6 (citing OCA R.B. at 18). The OCA provides that the only support for the AUS proposed service lives were Gannett Fleming depreciation studies, which were not conducted on the assets

at issue in this proceeding (they related to Aqua and PAWC assets). OCA Exc. at 6 (citing OCA M.B. at 33). The OCA notes that Township witness Mr. Weinert also said that the longer proposed service lives were appropriate because they are similar to those proposed by Gannett Fleming in other cases, but Mr. Weinert did not explain why his proposed service lives are so much longer than those proposed by Gannett Fleming in this case. *Id.*

The OCA reasons that the Company did not have the necessary evidence about the Willistown system to prove that the AUS-proposed service lives are reasonable in this proceeding. The OCA concludes that its proposed service lives are more reasonable, Aqua has not met its burden of proof to justify longer service lives, and the Commission should adopt all five of the OCA's recommendations regarding service lives for the AUS Cost Approach. The OCA recommends an adjusted AUS Cost Approach valuation of \$16,178,137. OCA Exc. at 7 (citing OCA M.B. at 34; OCA R.B. at 19; OCA Exh. DJG-12).

In its Reply to the OCA's Exception No. 1, Aqua argues that the OCA did not provide "better support" for its proposed service lives than AUS. Aqua avers that the AUS service lives are based on actual service life experience of wastewater plant in Pennsylvania. Aqua R. Exc. at 2 (citing Aqua M.B. at 42-43). Aqua contends that the OCA witness Mr. Garrett failed to provide any rationale for the OCA's proposed service lives. Aqua R. Exc. at 2 (citing Aqua St. 5-R at 7-8, referencing pages 16-17 and 19 of Mr. Garrett's direct testimony).

(6) Disposition

The OCA claims that Mr. Garrett's service lives and depreciation calculations are more appropriate because they are more conservative. The OCA argues that Gannett Fleming and AUS used expertise and experience to determine service lives.

Mr. Garrett also used his expertise and experience to determine service lives. For some of his recommended service lives, including these three accounts at issue, Mr. Garrett utilized less site-specific information than the UVEs. Gannett Fleming used the Engineering Assessment, the Chapter 94 reports and the Act 537 Plan. AUS used depreciation studies of actual water and wastewater plant used in recent rate cases. The OCA's more conservative service lives may not be appropriate here if they are not based on the site-specific conditions and the available information pertaining to the Willistown system.

Mr. Weinert testified that he determined the service lives for the Willistown assets using depreciation studies filed by PAWC and Aqua Pennsylvania Wastewater, Inc. in their General Rate Cases (R-2017-2595853, R-2020-3019371, and R-2018-3003561) and AUS' experience in preparing depreciation studies and appraisal experience for the water and wastewater industries. Aqua St. 5 at 8. Mr. Weinert's summary of the depreciation studies provided service life values for Accounts 335.30 and 360.21. AUS used a 60-year service life for Account 361.22 (collection sewers – gravity mains – repairs) while the OCA recommended a 50-year service life for this account. Aqua St. 5 at 9. We note that Gannett Fleming used a 65-year life for gravity mains and gravity mains repairs. Application Exh. Q, Exh. 7 at 3. The OCA has not provided a justification for its 50-year life for gravity mains repairs only that a more conservative approach is appropriate here.

The ALJ did not recommend the use of the OCA proposed values for these three accounts. We find that the use of the depreciation studies values for Account Nos. 335.30 and 360.21 are reasonable, as they are based on data available from actual Pennsylvania wastewater facilities. For similar reasons, we also find the value AUS proposed for Account No. 361.22 to be reasonable. Accordingly, the OCA's Exception No. 1 is denied.

3. Income Approach

The theory behind Income Approach valuation is that the value of a business is the future economic benefit that ownership will provide. The Income Approach is a procedure to value a business based on the anticipated value the business creates over time. OCA M.B. at 40 (citing *ASA Business Valuation Standards* at 10-11. American Society of Appraisers accessed March 9, 2022, https://www.appraisers.org/docs/default-source/5---standards/bv-standards-feb-2022.pdf?sfvrsn=5c9e5ac0_3).

Gannett Fleming's DCF methods use two different assumptions for the Willistown system operations over the next twenty years: (1) a municipal-owned (MUNI) scenario;³⁹ and (2) an investor-owned utility (IOU) scenario.⁴⁰

Under the MUNI ownership scenario, the results of the Capitalization DCF show a range of values for the Township's system of \$26.5 million to \$27.7 million, and the results of the Market Multiple DCF show a value of \$23.9 million. Application Exh. Q, Exh. 15 at 5.

Under the IOU scenario, the results of the Capitalization DCF show a range of values for the Township's system of \$17.8 million to \$22.0 million, and the results of the Market Multiple DCF show a range of values of \$24.0 million to \$28.3 million. Application Exh. Q, Gannett Fleming Fair Market Value Appraisal Report, Exh. 16 at 5.

As shown in the following table, the results of Gannett Fleming's DCF methods based on the MUNI ownership scenario indicated a value of approximately

³⁹ Application Exh. Q, Exh. 15.

⁴⁰ Application Exh. Q, Exh. 16.

\$25.8 million for the Township’s system. The results of its DCF methods based on the IOU scenario indicated a value of approximately \$23.0 million for the Township’s wastewater system. Collectively, Gannett Fleming’s DCF methods indicate a value of approximately \$24.4 million based on the Income Approach.

<u>MUNI Ownership Scenario</u>	
Ref.: Application Exh. Q, Exh. 15 at 5.	
DCF with Capitalization of Terminal Value Model @ 2.80%	\$27,661,994
DCF with EBIT & EBITDA Terminal Value Model	\$23,899,375
Median	<u>\$25,780,685</u>
<u>IOU Scenario</u>	
Ref: Application Exh. Q, Exh. 16 at 5.	
DCF with Capitalization of Terminal Value Model @ 6.16%	\$21,982,770
DCF with Captitalization of Terminal Value Model @ 7.39%	\$17,957,069
DCF with EBIT & EBITDA Terminal Value Model - Discount Rate of 6.36%	\$28,267,055
DCF with EBIT & EBITDA Terminal Value Model - Discount Rate of 7.59%	\$23,979,865
Median	<u>\$22,981,318</u>
<u>Conclusion</u>	
MUNI DCF	\$25,780,685
IOU DCF	<u>\$22,981,318</u>
Median	<u>\$24,381,001</u>

The Income Approach analysis presented by the Township’s witness, Mr. Weinert from AUS, also utilized the DCF technique, indicating a value of approximately \$18.2 million. Application Exh. R, Narrative Report at 9.

In summary, Gannett Fleming's Income Approach using the DCF methods resulted in an estimated fair market value of \$24,381,001 for the System.⁴¹ The AUS Income approach indicated a value of \$18,235,751 for the System. OCA St. 1 at 25.

a. Positions of the Parties

The OCA's witness, Mr. Garrett substituted his own Income Approach for both UVEs' appraisals, resulting in several recommended adjustments to the Income Approach analyses as discussed in OCA Statements 2 and 2SR. Mr. Garrett's proposed adjustments are 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 Fleming and presented what he believed to be a more appropriate discount rate. The Income Approach utilized by Mr. Garrett was based on Willistown's 2018 financials as follows:⁴²

⁴¹ Mr. Walker of Gannett Fleming allocated 33.33% to the Income Approach which gave it a weighted value of \$8,126,188. AUS allocated 40% weight to the Income Approach which gave it a weighted value of \$7,294,300.

⁴² Mr. Garrett explained that he selected the 2018 cash flow data as the basis of his cash flow analysis because it is more appropriate to base an income approach FMV analysis on current ownership and cash flow metrics, rather than future ownership. OCA St. 1SR at 16. Mr. Garrett further testified as follows:

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 known 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

Willistown Proprietary Fund Financials	
	2018
Revenues	2,011,578
Operating Expenses	
Sewage Treatment	622,865
Operating & Maintenance	693,045
General & Administrative	107,398
Depreciation & Amortization	505,633
Expenses	1,928,941
EBIT	82,637

See Application Exh. J1 at 21. Based on the above financial information, Mr. Garrett performed a direct capitalization of similar cash flows from operations to perpetuity as follows:⁴³

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.

OCA St. 1SR at 14-15.

⁴³ The capitalization of earning method converts a single base economic income number to a value by dividing it by a capitalization rate.

Operating Revenues	2,011,578	
EBIT	82,637	
Tax (28.89%)	23,874	
EBIT 8 (1-t)	58,763	
Depreciation	505,633	
Capital Expenditures	513,332	
Cash Flow	51,064	[1]
Cash Flow		
Constant Growth Rate	0.038	[2]
Discount Rate	0.044	[3]
Multiplier	179.4835109	Calc
Value	9,165,146	
See Gannett Fleming FMV Appraisal, Exh. 14 -2018 figures		
Multiplier - (1+[2])/([3]-[2])		
Value = [1] * Multiplier		

See OCA Exhs. DJG-14, 15. Based on Mr. Garrett's Income Approach valuation of \$9,165,146, his recommended reductions to Gannett Fleming's and AUS' Income Approach analyses were \$15,215,855 (\$24,381,001 - \$9,165,146) and \$9,070,605 (\$18,235,751 - \$9,165,146), respectively. OCA St. 1 at 25.

Mr. Walker of Gannett Fleming, and Mr. Weinert of AUS disagreed with Mr. Garrett's use of the Township's 2018 financial information as the basis for his Income Approach analysis and his discount rate. Aqua M.B. at 48-51. Mr. Walker specifically noted that Gannett Fleming has applied the DCF method as its Income Approach to valuation in fourteen Section 1329 proceedings and submitted that the Commission has not adjusted Gannett Fleming's DCF recommendation in any one of those prior proceedings. Aqua St. 4-R at 13-14. Aqua argued that Mr. Garrett's recommendations do not meet a standard of value of FMV and are in direct violation of Section 1329. Aqua St. 4-R at 11.

Mr. Walker presented five specific reasons why Mr. Garrett's use of "free cash flow from operations" of \$51,064 is not appropriate to determine the value of the Willistown System: (1) the revenues (\$2,011,578) and the EBIT (\$82,637) amounts are from a single year 2018, reflecting current ownership, current rates, and current operations, which do not reflect the anticipation of future benefits of ownership; (2) a single year 2018, reflecting current ownership, current rates, and current operations, does not include income taxes nor a fair rate of return; (3) the depreciation expense (\$505,633) is based on the original cost of the assets, not a current value of the assets; (4) the subtraction of income taxes (\$23,874) is not consistent with the current ownership as the Township is a non-income tax paying entity (*i.e.*, municipality); (5) the EBIT (\$82,637) amount 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 Fleming's Cost Approach (\$31,128,594) or Mr. Garrett's Cost Approach (\$12,400,050), and is clearly below the zone of reasonable returns for public utility assets. Aqua St. 4-R at 14.

Mr. Walker also presented five specific reasons why Mr. Garrett's discount rate of 4.4% shown on OCA Exhibit DJG-14 and developed on OCA Exhibit DJG-16 is not appropriate: (1) the rate was not determined based on a standard of value of FMV, as is appropriate when used in the Income Approach to valuation, but rather on methods used by witnesses who provide testimony before the Commission concerning fair rate of return on original cost rate base; (2) since Mr. Garrett's capitalization of earnings method reflects current ownership, current rates, and current operations as a municipality, 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; (3) since Mr. Garrett used book capitalization ratios, commonly used in base rate proceedings, the rate is not reflective of market value capitalization ratios at the valuation date in accordance with accepted valuation practice; (4) for a municipality, the appropriate debt cost rate is the current municipal revenue bond rate at the valuation date, not the embedded cost of debt, as used by Mr. Garrett; and (5) Mr. Garrett's equity cost rate was not determined at

the valuation date (*i.e.*, June 28, 2021) in accordance with accepted valuation practices and used for market valuation purposes. Aqua St. 4-R at 15-17.

Similarly, AUS consultant, Mr. Weinert disagreed with Mr. Garrett's use of 2018 financial statements, contending that Mr. Garrett erroneously assumes that revenues and expenses as reported in Willistown's 2018 financial information will be the operating results of the buyer. Aqua M.B. at 50. Aqua submitted that 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. Aqua M.B. at 50.

In response to Mr. Garrett's proposed adjustments, Mr. Weinert 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. Aqua M.B. at 50-51.

b. Recommended Decision

The ALJ found that the OCA did not establish that its proposed adjustments to the Income Approach results presented by Gannett Fleming and AUS are appropriate, under the circumstances in this proceeding. Accordingly, the ALJ's Recommended Decision rejected the OCA's proposed Income Approach adjustments. R.D. at 181-182.

c. OCA Exception No. 5 and Replies

In its Exception No. 5, the OCA contends that ALJ Watson erred by not adopting the OCA's adjustments to the Gannett Fleming and AUS Income Approaches.

OCA Exc. at 14-20. The OCA argues that Mr. Walker, Mr. Weinert, and the OCA's witness, Mr. Garrett, all utilized a process which involves discounting projected cash flows called the DCF model to arrive at their respective Income Approach valuations; however, the difference between Mr. Garrett's and the UVEs' valuation using the Income Approach is that Mr. Garrett based his FMV analysis on current ownership and cash flow metrics, rather than future ownership. Mr. Garrett also proposed adjustments to the UVEs' long-term growth rate and discount rate, which are both key inputs to the DCF model. OCA Exc. at 15.

The OCA reiterates its position and arguments previously presented in its testimony and briefs, maintaining that Mr. Garrett's use of a direct capitalization of similar cash flows from operation to perpetuity is appropriate in this proceeding. The OCA maintains that Mr. Garrett's adjustments are based on his use of reliable inputs for discounting cash flows that are supported by record evidence. OCA Exc. at 14-20.

In its Replies to the OCA's Exception No. 5, Aqua likewise reiterates several of its positions and arguments previously presented in its testimony and briefs and additionally explains that the Income Approach to valuation used in Gannett Fleming's appraisal is based on the DCF method, which values the potential for profit in an investment and reflects future events. Aqua R. Exc. at 7-8 (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 argues that Gannett Fleming used the DCF method to be consistent with the required standard of value of FMV. 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." Aqua R. Exc. at 8 (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 at 6).

Aqua further argues that, although Mr. Garrett stated that the single 2018 cash flow that he utilized is from the Gannett Fleming appraisal, he failed to disclose that the single cash flow was not used in the Income Approach to valuation used in Gannett Fleming's appraisal. Specifically, the Income Approach to valuation used in the Gannett Fleming appraisal is based on projected cash flows beginning in 2022 and thereafter. Aqua notes that Gannett Fleming did not use the single year 2018 cash flow utilized by Mr. Garrett. Aqua R. Exc. at 8. Therefore, Aqua asserts that the OCA has presented no reason for the Commission to second-guess the Recommended Decision. Aqua R. Exc. at 10.

d. Disposition

We agree with the ALJ's recommendation to deny the OCA's proposed adjustments to the Gannett Fleming and AUS Income Approaches based on Mr. Garrett's use of the Township's 2018 financial information. We agree with Aqua's reasoning, adopted by the ALJ, that the OCA's formulation of the income from operations and the resultant value erroneously assumes that revenues and expenses as reported in Willistown's financials will be the operating results of the buyer. As the ownership and operation migrates to the buyer, Aqua in this case, several changes will occur; namely there will be a new rate base determined by the Commission based on their findings in this Application and the buyer, Aqua, will be allowed to earn a Commission authorized return on rate base. Operating expense, including taxes, will be incorporated along with the allowed return on rate base in determining the ongoing Willistown revenue requirement. Mr. Garrett's model does not factor in these changes to Willistown's operations as a rate regulated wastewater utility. To be consistent with the standard of value of FMV, the UVEs used the DCF method, which is based on the principle of

anticipation, *i.e.*, value is created by the anticipation of future benefits. For these reasons, the OCA's Exception No. 5 is denied.

4. Market Approach

a. Gannett Fleming

(1) Positions of the Parties

Mr. Walker, the UVE selected by Aqua to perform the FMV of appraisal of the Township's wastewater system assets,⁴⁴ explained the Market Approach he used as follows:

Market Approach. The market approach was developed based on the market multiples method and the selected transaction method. The market multiples method was based on the market price data of publicly traded corporations engaged in the same or a similar line of business as the Wastewater System. The market price data of these comparable publicly traded corporations was used to calculate the market multiples for the comparable publicly traded corporations at the appraisal date. The selected transactions method used certain public information relating to the purchase or sale of businesses involved in the same or a similar business line as the Wastewater System to calculate market multiples at the time of transaction (sale/purchase). The calculated market multiples determined by the market multiples method and the selected transaction method were then multiplied by the corresponding Wastewater System financial and operating statistic to produce an indicated value for the Wastewater System.

Aqua St. 4 at 15.

⁴⁴ See Application Exh. Q.

The Gannett Fleming Market Approach resulted in an indicated market value of \$21,330,105, based on the Market Multiples⁴⁵ Method and the Selected Transaction Method.⁴⁶ The \$21,330,105 market value was determined based on an equal 50% weighting of the results of: (1) the Market Multiples Method (Application Exh. Q, Exh. 17) which has an indicated value of \$21.5 million, and (2) the results of the Selected Transactions Method (Application Exh. Q, Exh. 18) which has an indicated collective value of \$21.1 million, after giving additional weight to the collection/distribution assets selected transactions multiples. Application Exh. Q at 41, 42.

Aqua and Willistown supported Gannett Fleming's Market Approach appraisal prepared by Mr. Walker. Willistown averred that it "endorses, adopts and incorporates, by reference, the section of Aqua's main brief relating to the challenges to UVE appraisals and all arguments made in Aqua's Reply Brief." Willistown M.B. at 16; Willistown R.B. at 6. I&E did not challenge the UVE appraisals; but it contended that, "absent Commission approval of its condition related to easement and real property, the appraisals are flawed and unreliable." I&E M.B. at 9. Thus, the OCA was the only Party to specifically object to Gannett Fleming's Market Approach.

Although the OCA did not propose any adjustments to the Market Multiples Method, it did propose adjustments to the Selected Transaction Method based primarily on a difference in the Section 1329 transactions selected by Gannett Fleming for the analysis. Aqua M.B. at 44; OCA M.B. at 34-35. The OCA recommended reducing Gannett Fleming's selected transactions by \$6,404,287 to \$14,739,037. The OCA's selected transactions adjustments reduces Gannett Fleming's market appraisal amount of \$21,33,105 by \$3,202,1144, which results in an indicated market value of \$18,127,961, as summarized below. OCA M.B. at 37.

⁴⁵ Application Exh. Q at 34-37.

⁴⁶ Application Exh. Q at 38-42.

	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%	10,571,662	14,739,037	50%	7,369,518
Total			\$ 21,330,105			\$ 18,127,961

OCA M.B. at 37; OCA St. 1 at 11.

With regard to the adjustments to the selected transactions used in its appraisal, Gannett Fleming explained that:

[t]he selected transactions method entails analyzing certain public information relating to selected transactions involving the purchase or sales of businesses involved in the same or similar business line. The number of selected transactions available for review is limited because most acquisitions in the water and wastewater industry involve small acquisitions for which no public information exists. Additionally, not all transactions are comparable since some purchase prices may only involve the acquisition of the common stock, purchase prices may be net of cash and others may only involve assets. In any of these instances, the derived multiples (e.g., purchase price as a multiple of: Revenues; EBITDA; EBIT; etc.) would understate (overstate) the multiples involving a purchase price for an entire business enterprise (common stock) or business assets.

Application Exh. Q at 38. Gannett Fleming noted that “because of the rapid rise in valuation multiples since early 2016, it limited its search for selected transactions to those that: (1) occurred in 2016 or later; (2) are purchases of water or sewer systems; (3) have assets being purchased; and (4) did not discount “cost free” capital/customer

contributions in the valuation.⁴⁷ Application Exh. Q at 39. In addition, Gannett Fleming stated that the Selected Transaction Method “relies on and reflects information that was known, *ex-ante*, at the time the winning purchase bid (price) was offered, and the metrics used are time period sensitive.” *Id.* at 40. As noted, Aqua’s witness, Mr. Walker, proposed an indicated value resulting from the selected transactions method in Aqua’s UVE study of \$21.1 million.

The OCA argued that Gannett Fleming used incomparable transactions to the proposed acquisition in this case to calculate the fair market value of the Willistown System under the Market Approach that resulted in an unreasonably high value. OCA M.B. at 34-35. The OCA views the Willistown wastewater system as a “collection-only system” because wastewater treatment in the Township is mainly provided by another entity. As such, the OCA proposed excluding integrated wastewater transactions in assessing the FMV of the Willistown system. OCA M.B. at 35; OCA R.B. at 20-21; OCA St. 1 at 9.

Aqua argued that the OCA is inconsistent because it is excluding integrated systems in its adjustments to Gannett Fleming’s Market Approach but not in its adjustments to AUS Consultant’s Market Approach.⁴⁸ Aqua St. 4-R at 20-21. Aqua further asserted that the OCA essentially ends up relying only on three transactions (East Bradford, Mahoning and Upper Pottsgrove), which are an unreliably small sample size for a selected transaction analysis that should not be accepted by the Commission. Aqua St. 4-R at 21.

⁴⁷ The selected transactions that met the stated selection criteria are shown in Application Exhibit Q, Exhibit 18 at 2 and 3.

⁴⁸ Aqua noted that Mr. Garrett included all the selected transactions that he excluded from OCA Exhibit DJG-4 in his adjustments to the AUS Consultants appraisal’s selected transaction shown on OCA Exhibit DJG-5. Aqua St. 4-R at 21.

The OCA contended that the AUS Market Approach relies on different data than does the Gannett Fleming Market Approach. The OCA submitted that its witness, Mr. Garrett, excluded transactions from his proposed adjustments only when the transactions did not contain the data necessary to make the relevant calculations under the selected transactions approach, or when the transactions involved integrated systems. OCA M.B. at 36 (citing OCA St. 1SR at 5). The OCA also stated that including the integrated systems in the AUS Market Approach adjustment did not produce the same clearly unreasonable results as it did in the Gannett Fleming appraisal. *Id.*

Aqua noted that it calculated its selected transaction value by using both *ex-ante* data (*i.e.*, data from financial statements) and *ex-post* data (*i.e.*, Original Cost New Less Depreciation or OCNLD data) whereas the OCA adjusted the Selected Transaction Method by relying solely on *ex-post* data. According to Aqua, this reduced the Gannett Fleming Market Approach value from \$21,330,105 to \$18,127,961. Aqua asserted that the Commission rejected the OCA's reliance solely on *ex post* data in *Cheltenham*. Aqua M.B. at 45. Aqua further argued that Mr. Garrett substituted the purchase price paid with the FMV rate base approved by the Commission. Aqua noted that an identical approach was recommended by the OCA in *Cheltenham*, and it was also rejected by the Commission. Aqua St. 4-R at 19.

The OCA submitted that Mr. Garrett's reliance on *ex-post* data in this proceeding is consistent with the OCA's recommendation in prior Section 1329 proceedings and does not have a material impact on the market approach valuation. OCA R.B. at 19. The OCA contended that the fact that a higher valuation is arrived at when excluding *ex-ante* data indicates that Mr. Garrett is not selectively choosing parts of his appraisals to reach particular results. OCA R.B. at 19. Furthermore, the OCA submitted that Mr. Garrett's use of a Commission-approved rate base to make a valuation under the market approach is also acceptable since the Commission-approved rate base represents a market transaction and 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. OCA R.B. at 19 (citing *Cheltenham* at 57).

(2) Recommended Decision

The ALJ found that in *Cheltenham*, the UVE's performed appraisals of a non-integrated system. R.D. at 178. The ALJ noted that 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. *Id.* (See *Cheltenham* at 66, 68-69). Accordingly, the ALJ concluded that it is reasonable to consider an appraisal involving a non-integrated system, provided that the blend of integrated and non-integrated system data produces a reasonable result. *Id.* The ALJ found that Aqua met its burden of proof with regard to this issue. At the same time, the ALJ also found that the OCA did not show that the Gannett Fleming blend of integrated and non-integrated system data is unreasonable. *Id.*

The ALJ concluded that including integrated systems in a valuation that utilizes systems with similar assets and demographic statistics, such as numbers of customers, is not categorically inappropriate. Accordingly, the ALJ recommended that no adjustments be made to Gannett Fleming's Market Approach. R.D. at 179.

(3) OCA Exception No. 3 and Replies

In its Exception No. 3, the OCA submits that the ALJ erred by not adopting its adjustments to exclude integrated systems from Gannett Fleming's Selected Transaction Market Method. OCA Exc. at 10 (citing R.D. at 177-179; OCA M.B. at 35-37; OCA R.B. at 19-21).

The OCA contends that Gannett Fleming’s analysis included integrated systems with incomparable demographic statistics to the Willistown System that should be excluded because they could not reasonably be compared to the smaller Willistown System. OCA Exc. at 10. The OCA disagrees with the ALJ’s conclusion that the record does not contain sufficient evidence to determine that the Gannett Fleming blend of integrated and non-integrated system data was unreasonable. *Id.*

The OCA asserts that it argued: (1) that the integrated systems that Gannett Fleming included in its analysis did not have similar assets to the Willistown System, and particularly when considering demographic statistics such as population and number of customers, when the New Garden, Limerick and Kane Section 1329 transactions are included, the purchase price values are significantly higher than any of the appraisals for the Willistown System, OCA Exc. at 11; (2) the integrated systems that Gannett Fleming chose to include have substantially higher fair market values than the negotiated purchase price for the Willistown System as well as a much higher value than almost all other FMV appraisals of the Willistown System, further demonstrating that they are not “similar assets,” OCA Exc. at 11 (citing OCA R.B. at 21); (3) the Willistown System contains only one small wastewater treatment plant, and its fair market value cannot reasonably be compared to the larger systems which have substantially higher FMVs with multiple plants and numerous additional customers, OCA Exc. at 11 (citing OCA R.B. at 20); and (4) the facts in *Cheltenham* are notably different than in this case because the inclusion of the New Garden, Limerick and Kane Section 1329 transactions in this proceeding are not characteristically similar to Willistown, because they involve much larger wastewater systems than Willistown, and unlike Willistown, are properly categorized as integrated systems. Thus, the OCA contends that these systems in Gannett Fleming’s Market Approach analysis should be removed because they are not

comparable to the inclusion of the “outlier” systems⁴⁹ in *Cheltenham* which involved wastewater conveyance systems but did not include treatment plants. OCA Exc. at 12 (citing OCA M.B. at 36-37; OCA R.B. at 20-21; OCA St. 1 at 10).

For all of the reasons above, the OCA requests that the Commission decrease the Gannett Fleming Market Approach valuation of the Willistown System from \$21,330,105 to \$18,127,971. R.D. at 11.

Aqua replies that the OCA’s efforts to now distinguish *Cheltenham* from this proceeding are not convincing. Aqua asserts that the Gannett Fleming analysis included sixteen statistically significant selected transactions comprised of a mix of collection/distribution systems and integrated systems.⁵⁰ Because the Willistown System is primarily a collection/distribution system, Aqua explains that Gannett Fleming gave greater weight – 75% weight – to collection/distribution systems and lesser weight – 25% weight – to integrated systems. Aqua St. 4-R at 21, n.16.

Aqua further submits that the three transactions that the OCA used to propose adjustments to Gannett Fleming’s Market Approach represent an unreliably small sample size that should not be accepted. Accordingly, Aqua requests that the OCA’s Exception on this matter be denied.

⁴⁹ The “outlier” systems cited by the OCA in *Cheltenham* are East Bradford, Mahoning Township Water, and Mahoning Township Sewer systems because their comparability ratios were much lower than other sales in that proceeding. OCA Exc. at 11.

⁵⁰ See Aqua St. 4 at 25-26 and Application Exhibit Q, Exhibit 18 for a complete list of the Selected Transactions.

(4) Disposition

Based on our review of the record, we shall deny the OCA Exception No. 3 and adopt the ALJ's recommendation that accepted the Gannett Fleming Market Approach without modification. Furthermore, we agree with Aqua that the OCA's adjustment to Gannett Fleming's Selected Transactions Method relies on an insufficient sample size for purposes of determining the market appraisal of Willistown's assets. In our opinion, the 25% weighting factor that Gannett Fleming applied to the selected integrated systems is reasonable and adequately accounts for the fact that Willistown is not an integrated system.

b. AUS

(1) Positions of the Parties

Mr. Weinert, the UVE selected by Willistown to perform the FMV appraisal of the Township's wastewater system assets,⁵¹ explained the Market Approach he used as follows:

The market or comparable sales approach to value looks to market sales of comparable properties in order to arrive at value. In this appraisal, the market approach was addressed from a comparable sales approach of Pennsylvania water and wastewater systems and market value to book value ratios based on investor-owned water utilities' financial performance as reported in Value Line Investment Survey (January 8, 2021).

AUS FMV Appraisal at 10. Under the Comparable Sales analysis, AUS considered the sales of eighteen Pennsylvania municipal water and wastewater systems to investor-

⁵¹ See Aqua Application, Exh. R.

owned water/wastewater utilities to insure comparability.⁵² AUS FMV Appraisal at 10. The system sales were analyzed in relationship of the purchase price to the properties' depreciated original cost (also referred to as original cost less depreciation or OCLD), depreciated replacement cost (also referred to as cost of replacement less depreciation or CORLD), customers, and cashflows. *Id.* at 11.

Under the Financial Market Ratio analysis, Mr. Weinert compared the companies' stock (market) and debt (book value) per share as a ratio to the book investment value per share using market data of nine companies in the water/wastewater industry as reported in the January 8, 2021, *Value Line Investment Surveys*.

Based on the Comparable Sales Analysis and the Financial Market Ratio Analysis, the AUS FMV resulted in a value of \$25,695,620 for the Willistown System under the Market Approach. *Id.* at 13.

Aqua and Willistown supported AUS' Market Approach appraisal prepared by Mr. Weinert. Willistown averred that it "endorses, adopts and incorporates, by reference, the section of Aqua's main brief relating to the challenges to UVE appraisals and all of Aqua's arguments in Aqua's Reply Brief." Willistown M.B. at 16; Willistown R.B. at 6. I&E did not challenge either of the UVE appraisals; but it contended that, "absent Commission approval of its condition related to easement and real property, the appraisals are flawed and unreliable." I&E M.B. at 9. Thus, the OCA was the only Party that specifically objected to AUS' Market Approach.

The OCA's witness, Mr. Garrett, objected to AUS' Market Approach analysis because AUS used prior Section 1329 transactions to calculate the FMV of the Willistown System that resulted in unreasonably high values. OCA M.B. at 33-34. Thus,

⁵² The eighteen sales that were considered are listed on page 11 of the AUS Fair Market Appraisal.

Mr. Garrett, proposed two adjustments to the AUS Market Approach: (1) revise the AUS transaction weightings by giving equal weight to each transaction instead of AUS' proposed weighted average to the FMV/RCNLD ratios (OCA M.B. at 39-40);⁵³ and (2) use the Commission's approved ratemaking rate bases (*i.e.*, Commission-approved purchase prices of prior Section 1329 proceedings) for each of the Section 1329 transactions analyzed by AUS in its FMV Appraisal in lieu of the negotiated purchase prices determined by the buyer and the seller as used by AUS (OCA M.B. at 38-39).⁵⁴ Mr. Garrett's adjustments reduced the AUS Market Approach amount of \$25,695,620 to approximately \$20.5 million. OCA M.B. at 40; OCA St. 1 at 14.

With regard to the OCA's proposed transaction weighting adjustment, Aqua stated that Mr. Garrett utilized different CORLDs than those detailed in AUS' appraisal for the PAWC/McKeesport (CORLD \$156,524,909) and AQUA/Limerick (CORLD \$73,068,377) transactions. In addition, Aqua averred that Mr. Garrett did not include two transactions that AUS included in its analysis – Delaware County Regional Water Quality Authority (purchase price \$276.5 million with a CORLD of \$399,664,111) and Lower Makefield (purchase price \$53.0 million with a CORLD of \$51,414,555). Aqua further stated that the market comparable statistic being measured under the Market Approach analysis is the ratio of purchase price to the CORLD – not the size of the transaction. Aqua St. No. 5-R at 6.; Aqua M.B. at 47-48. Mr. Weinert asserted the AUS weighted average result produces a far superior and more reliable market indicator, as demonstrated by a standard deviation of 0.0879, which is nearly twice a closer fit to the data when compared to the standard deviation of 0.1584 using Mr. Garrett's simple average approach. *Id.*

⁵³ For additional details on the OCA's position on this matter, see also OCA St. 1 at 7-8; OCA St. 1SR at 7-8.

⁵⁴ For additional details on the OCA's position on this matter, see also OCA St. 1 at 7, 12;

The OCA recommended against using the weightings that Mr. Weinert applied to his fair market value/RCNLD ratios. OCA M.B. at 39; OCA St. 1 at 7. According to the OCA, because Mr. Weinert divided the sum of all purchase price amounts by the sum of all RCNLD amounts, his weightings caused the ratios resulting from higher purchase prices per fair market value transactions to have more influence than lower-priced transactions. *Id.*; OCA St. 1SR at 7. The OCA averred that the weightings used by Mr. Weinert are unreasonable because a transaction such as McKeesport (with a purchase price of \$159 million) cannot reasonably be compared to the transaction in this case with a purchase price of only \$17.5 million. *Id.*

With regard to the OCA's second proposed adjustment in which its witness Mr. Garrett substituted the Commission-determined rate base for purchase price in the transactions that he analyzed, Mr. Weinert asserted that using the Commission-determined rate base instead of the agreed-upon purchase price is not an appraisal market comparable approach as it does not represent a market transaction as is required by the definition of "Market Value."⁵⁵ Aqua M.B. at 47; Aqua St. 5-R at 4.

The OCA submitted that the Commission-approved rate base does represent a market transaction because once the Commission determines a fair market value under Section 1329, both the buyer and seller still have the option not to proceed with the transaction. OCA M.B. at 38.

⁵⁵ The definition of "Market Value" as cited by Aqua is: "The most probable price, as of a specific date, in cash, or in terms equivalent to cash, or in other precisely revealed term, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress." Aqua M.B. at 47 (citing *The Appraisal of Real Estate* 14th Edition at 58).

(2) Transaction Weightings – Simple Average (OCA) v. Weighted Average (Aqua)

(a) Recommended Decision

The ALJ recommended that Aqua did not establish that it is appropriate for larger transactions to influence the market approach under Section 1329 more than smaller transactions. R.D. at 180. Thus, the ALJ recommended using the OCA's proposal that gives equal weight to each transaction instead of AUS' proposed weighted average. The ALJ cited to *Cheltenham* in which the Commission identified various factors to consider when using a weighted average compared with a simple average. R.D. at 180 (citing *Cheltenham* at 69). Consistent with *Cheltenham*, the ALJ determined that large transactions should not be given greater weight when attempting to value a smaller system. *Id.* Accordingly, the ALJ rejected Mr. Weinert's use of a weighted average and recommended that Mr. Garrett's proposal that uses a simple average of the selected transactions be used to determine the appropriate adjustment factor of the purchase price to RCNLD for the Willistown System. *Id.*

(b) Aqua Exception No. 7 and Replies

In its Exception No. 7, Aqua disagrees with the ALJ's recommendation to use the OCA's simple average of selected transactions in AUS' Market Approach. Aqua Exc. at 29 (citing R.D. at 179-180; *also see* Aqua M.B. at 46-48; Aqua R.B. at 20). Aqua avers that the market comparable statistic being measured in the market analysis is not the size of the transaction, but the ratio of the purchase price to the cost of replacement less depreciation or CORLD. Aqua states that its weighted average produces a more reliable market indicator than OCA's proposal because the standard deviation associated with its weighted average is 0.0879, which is almost twice a closer fit than the OCA

simple average which has a standard deviation of 0.1584. Aqua Exc. at 29 (citing Aqua St. 5-R at 4-6).

The OCA rejoins that Aqua's argument, that AUS' use of the weighted average should be accepted because it produces "superior statistics" and results in a more reliable market indicator, fails to justify the unreasonable result produced by the use of a weighted average in this case. OCA R. Exc. at 22.

The OCA maintains that AUS's weightings allow transactions with higher purchase prices to have more influence than lower-priced transactions. OCA R. Exc. at 22 (citing OCA M.B. at 39; OCA St. 1 at 8). The OCA submits that 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. OCA R. Exc. (citing *Cheltenham* at 69). Thus, the OCA submits that, consistent with that precedent, for the AUS weightings to be found acceptable, AUS would have to demonstrate that it is appropriate in this case for larger transactions to influence the market approach under Section 1329 more than smaller transactions. *Id.* The OCA asserts that Aqua failed to make that showing (R.D. at 180; OCA R.B, at 23; *Cheltenham* at 69), and AUS did not put forth any evidence to support its use of the weighted average other than Township witness Weinert's unexplained assertion that the use of its weighted average is "more reliable." OCA R. Exc. at 23 (citing Aqua M.B. at 48; Aqua St. 5-R at 6).

On the other hand, the OCA states that it provided 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 transaction cannot reasonably be compared to the Willistown assets. OCA R. Exc. at 22 (citing OCA St. 1 at 7; OCA St. 1SR at 7).

(c) Disposition

Upon review of the record, the Recommended Decision, Exceptions and Reply Exceptions, we shall deny Aqua's Exception No. 7 and adopt the ALJ's recommended adjustment on this issue. In our opinion, the ALJ properly found that equal weight should be given to each transaction under AUS' Market Approach based on the evidence presented in this proceeding. We also agree with the ALJ that Mr. Weinert did not demonstrate that his use of a weighted average of the proxy group is appropriate because he did not demonstrate that it is appropriate for larger transactions to influence the Market Approach under Section 1329 more than smaller transactions. The OCA's witness Garrett's use of a simple average, on the other hand, gives equal weight to the transactions used to adjust the AUS fair market value under the Market Approach of the Willistown System. Therefore, we shall deny Aqua's Exceptions and adopt the ALJ's recommendation on this issue.

(3) Use of Commission-Approved Ratemaking Rate Base in Place of Purchase Prices for Market Valuation Purposes

(a) Recommended Decision

The ALJ agreed with AUS witness Weinert's use of purchase prices for market valuation purposes because the OCA did not establish, under the circumstances in this proceeding, that it is appropriate to use Commission-approved ratemaking rate base in lieu of the negotiated purchase prices for selected transactions in the Market Approach. R.D. at 180. Thus, the ALJ rejected the OCA's suggestion to use Commission-determined rate base in lieu of negotiated purchase price when calculating the ratio of purchase price to RCNLD. *Id.* The ALJ noted that the use of negotiated purchase prices had been permitted by the Commission in previous transactions and concluded that,

consistent with the Commission’s decision in *Cheltenham*, the negotiated purchase prices are the proper inputs for the Market Approach. *Id.* (citing *Cheltenham* at 61).

(b) OCA Exception No. 4 and Replies

In its Exception No. 4, the OCA submits that the ALJ erroneously rejected the proposal of its witness, Mr. Garrett, to use the Commission-determined ratemaking rate base in lieu of the negotiated purchase price for the selected transactions method in the Market Approach under the circumstances in this proceeding. OCA Exc. at 13.

The OCA avers that the ALJ correctly noted that the Commission has permitted the use of negotiated purchase prices as fair market values in previous transactions; however, this does not mean that negotiated purchase prices must always be used, or that negotiated purchase prices are better indicators to determine the fair market value than what the Commission determines in a given case. *Id.* The OCA argues that the “market” for Section 1329 transactions is not comparable to a completely free market because incentives that are typically present in competitive marketplaces to maximize profit are not present in Section 1329 transactions. OCA Exc. at 13 (citing R.B. at 22; OCA St. 1 at 7; OCA St. 1SR at 6). The OCA contends this is the reason that Section 1329 was enacted. The OCA also avers when the Commission approves a ratemaking rate base that is different than the agreed-upon purchase price between the buyer and seller, “it is because the Commission found that the agreed-upon price did *not* comport with fair market value.” OCA Exc. at 13 (emphasis by the OCA). Thus, the OCA submits it is incorrect to say that a price, which the Commission found to be unfair in many cases, is the best indicator of FMV for estimating the value of a wastewater system under the Market Approach. OCA Exc. at 13.

With regard to the ALJ’s reliance on *Cheltenham*, where the Commission recognized that the fair market value should be “what willing buyers will ultimately pay

in a market,” the OCA avers that once the Commission establishes a ratemaking rate base, both buyer and seller must still agree to move forward with the sale because the buyer is still a “willing” buyer. OCA Exc. at 14 (citing *Cheltenham* at 61; OCA R.B. at 22). However, if the buyer or seller does not agree with the price set by the Commission in a Section 1329 proceeding, they do not need to move forward with the sale or they may establish an alternative higher price for the sale. OCA Exc. at 14 (citing OCA R.B. at 22). The OCA maintains its position that the Commission-determined rate base is the best indicator of FMV for the purpose of performing a valuation under the Market Approach because both buyer and seller most often have agreed to the price set by the Commission. *Id.*

In its Reply Exceptions, Aqua submits that the ALJ correctly relied on *Cheltenham* in rejecting the OCA’s proposal to use Commission-determined rate base in the AUS Market Approach, and the OCA’s efforts in its Exceptions to distinguish *Cheltenham* from this proceeding are not convincing. Aqua R. Exc. at 5.

Aqua maintains its position that, based on the definition of Market Value, *supra*, the OCA’s Exceptions should be denied because the use of Commission-determined rate base is not representative of a market transaction. Aqua R. Exc. at 5 (citing Aqua St. 5-R at 4). Aqua notes that the conditions under which the resultant rate bases were derived in the various Section 1329 applications do not meet the above definition because they do not represent an agreed-upon price between a buyer and seller neither being under duress. In addition, Aqua submits that the conditions of Section 1329 introduced additional parties in the determination of rate base that were not present when the buyers and sellers agreed to formalize the purchase price and conditions of the sale in their APA. Aqua R. Exc. at 6.

Finally, the Company avers there is no support for the OCA’s contention that the buyer and seller do not need to move forward with the sale if they do not agree

with the Commission's rate base determination since, as determined by Mr. Weinert of AUS, there is no language in the Aqua/Willistown APA that would permit Aqua or Willistown to withdraw from the transaction if they disagree with the fair market value ratemaking rate base determined in this proceeding.⁵⁶ Aqua R. Exc. at 6.

(c) Disposition

We agree with the ALJ's recommendation to reject the OCA's request to use Commission-determined rate bases from prior cases as comparables in lieu of the negotiated purchase prices to determining the FMV under the Market Approach. In reaching this determination, we note that the OCA's arguments here (*i.e.*, the use of a Commission-determined rate base is the best indicator of FMV for the purpose of performing a valuation under the Market Approach because using negotiated purchase prices that are higher than the FMV as defined by Section 1329 will overstate the FMV of this acquisition) is the same argument it made in *Cheltenham* and which we rejected. *Cheltenham* at 61.

In *Cheltenham*, as in the instant proceeding, AUS proposed to use negotiated purchase prices for market comparables. *Cheltenham* at 57. In that proceeding, AUS argued, and the presiding officer, ALJ Angela Jones agreed, that using Commission-determined ratemaking rate base values as market comparables would represent hypothetical assumptions that would be contrary to the USPAP. *Cheltenham* R.D. at 38. In that proceeding, we adopted the rationale of ALJ Jones in her Recommended Decision where she determined that AUS' use of negotiated purchase prices cannot be found to be unreasonable "because the purchase price is the price paid in

⁵⁶ We note, however, that Article XIV of the APA does permit that the Agreement be terminated either "[b]y the mutual consent of Seller and Buyer" as well as "[b]y either Seller or Buyer, upon notice, if" other events or conditions occur. See APA, Article XIV (Termination) at 41-42.

the market, not the ratemaking rate base determination of the Commission.” *Cheltenham* at 58; *Cheltenham* R.D. at 38.

In *Cheltenham*, the Company’s and Cheltenham Township’s UVE’s, Gannett Fleming and AUS, respectively, used negotiated purchase prices for market comparables and/or selected transactions under the Market Approach. *Cheltenham* at 57. In that proceeding, Aqua argued, and the presiding officer, ALJ Jones agreed, that using Commission-determined ratemaking rate base values as market comparables would represent hypothetical assumptions that would be contrary to USPAP. *Cheltenham* at 58. We adopted the rationale of ALJ Jones in her Recommended Decision where she determined that AUS’ use of negotiated purchase prices cannot be found to be unreasonable “because the purchase price is the price paid in the market, not the ratemaking rate base determination of the Commission.” *Cheltenham* at 58; *Cheltenham* R.D. at 38.

It is noted however, that in *Cheltenham*, ALJ Jones shared some concern with the OCA that “accepting the use of higher [negotiated] purchase prices would result in greater ratemaking rate base values, which would appear to create a circular pattern that would reward utilities for paying excessive purchase prices.” *Id.* Accordingly, although ALJ Jones rejected the OCA’s position to use Commission-determined ratemaking rate base values, she did recommend “that the Commission consider issuing a jurisdictional exception in a future Section 1329 supplemental implementation order to require UVEs to use ratemaking rate base values in place of purchase prices for market approach valuation purposes.” *Id.*

In *Cheltenham*, we disagreed with ALJ Jones’ jurisdictional exception recommendation. *Cheltenham* at 61. However, we did agree with the ALJ’s recommendation that rejected the use of the Commission-determined rate bases because using Commission-determined ratemaking rate base values as market comparables would

represent hypothetical assumptions that would be contrary to USPAP. *Cheltenham* at 60-61. Since a Commission-determined ratemaking rate base value is not a reflection of what willing buyers will ultimately pay in a market and does not change the price bid and paid by a buyer, we maintain our policy position in this proceeding. We continue to find that the proper transaction inputs under the Market Approach valuation should be based on the purchase price of those transactions that were determined by the buyers and sellers prior to the valuation dates rather than the Commission-determined fair market values of the ratemaking rate bases.

In view of the discussion above, the OCA has not offered any new arguments in this proceeding that would convince us to reverse our policy established in *Cheltenham*. Accordingly, OCA Exception No. 4 is denied.

(4) Service Life Adjustments for Account Nos. 361.21 and 361.23 in the AUS Cost Approach

(a) Recommended Decision

The ALJ recommended an adjustment to the AUS Market Approach to reflect his adoption of the OCA's recommended adjustment to the service lives for Account Nos. 361.21 and 361.23 discussed in the AUS Cost Approach section above. The ALJ explained that reducing the AUS service lives in the AUS Cost Approach, for Account No. 361.21 and 361.23 also reduces the results of the AUS Market Approach by reducing AUS' calculated RCNLD for the plant in service from \$30,113,231 to \$27,958,049. R.D. at 180.

(b) Aqua Exception No. 6 and Replies

In its Exception No. 6, Aqua excepts to reductions to the AUS Market Approach estimate due to the service lives changes in the AUS Cost Approach analysis as provided in Aqua Exception No. 5. Aqua Exc. at 28-29.

In its Reply to Aqua Exception No. 6, the OCA argues that the Recommended Decision correctly reduces the AUS proposed services lives in the AUS Cost Approach for Account No. 361.21 (Collection sewers – mains) and Account No. 361.23 (Collection sewers – gravity – manholes) for the reasons set forth in the OCA’s Reply to Aqua Exception No. 5, *supra*. OCA R. Exc. at 22.

(c) Disposition

As provided *supra* in the disposition of Aqua Exception No. 5, we found the AUS proposed service lives for Account Nos. 361.21 and 361.23 to be too high. We agree with the ALJ’s recommendation to accept the OCA’s proposed values for these two accounts. Accordingly, Aqua’s Exception No. 6 is denied.

5. Conclusion – Section 1329 Fair Market Valuation

a. Positions of the Parties

Aqua submitted that the ratemaking rate base of the Willistown System, determined pursuant to Section 1329(c)(2), is \$17,500,000, the lesser of the negotiated purchase price of \$17,500,000 and the average of the UVE appraisals of \$22,363,070. Aqua averred that the OCA’s criticisms of the appraisals should be rejected and given no weight. Aqua M.B. at 51.

The OCA provided that the OCA witness, Mr. Garrett, calculated that with the appropriate adjustments, discussed above, the adjusted Gannett Fleming appraisal result would be \$13,231,052 and the adjusted AUS appraisal result would be \$13,803,438. The average of these two appraisals results is \$13,500,000, which is the amount that Mr. Garrett recommends be used by the Commission for establishing ratemaking rate base under Section 1329 rather than the \$17,500,000 proposed by Aqua. OCA M.B. at 26 (citing OCA Exh. DJG-2).

b. Recommended Decision

The ALJ adopted the OCA's recommended use of the original cost method as well as the OCA's adjustment to the service lives for Account Nos. 354.30 and 354.40 in the Gannett Fleming Cost Approach. The ALJ also adopted the OCA's recommendation to use the 60-year service life for Account Nos. 361.21 and 361.23 in the AUS Cost Approach.⁵⁷ Lastly, the ALJ adopted the OCA's recommendation to reject the use of a weighted average in favor of using the simple average of selected transactions to adjust the AUS Market Approach.

The Recommended Decision concluded that the "correct ratemaking rate base amount is \$13.5 million." R.D. at 214, Conclusion of Law No. 11.

c. Aqua Exception No. 8 and Replies

In its Exception No. 8, Aqua contends that the correct ratemaking rate base amount is \$17.5 million even with the adjustments to the Gannett Fleming and AUS appraisals adopted by the ALJ. Aqua Exc. at 30. Aqua explains that the average of the adjusted Gannett Fleming and AUS appraisal values as presented in the Recommended

⁵⁷ The ALJ's adjustment to the service lives of Account Nos. 361.21 and 361.23 is reflected in his recommended adjustment to AUS' Market Approach result.

Decision is \$18,803,035, which is greater than the negotiated purchase price of \$17,500,000. Accordingly, the ratemaking rate base pursuant to Section 1329(c)(2), even as adjusted by the Recommended Decision, is \$17,500,000. *Id.*

No Party has filed Replies to Aqua’s Exception No. 8.

d. Disposition

As discussed *supra*, the ALJ recommended adjustments to the Gannett Fleming and AUS Cost Approaches, as well as to the AUS Market Approach. The culmination of these adjustments is summarized in the following tables:

Summary of ALJ Adjustments to Gannett Fleming's Appraisal					
Approach	Gannett Fleming Indicated Value	ALJ Adjustment	ALJ Adjusted Value	ALJ Weight	ALJ Weighted Value
Cost	\$31,128,594	(\$18,148,874)	\$12,979,720	33.3%	\$4,326,141
Income	\$24,381,001	\$0	\$24,381,001	33.3%	\$8,126,188
Market	\$21,330,105	\$0	\$21,330,105	33.3%	\$7,111,457
Total				100%	\$19,563,786

Summary of ALJ Adjustments to AUS' Appraisal					
Approach	AUS Indicated Value	ALJ Adjustment	ALJ Adjusted Value	ALJ Weight	ALJ Weighted Value
Cost	\$18,498,555	(\$1,627,051)	\$16,871,504	50%	\$8,435,752
Income	\$18,235,751	\$0	\$18,235,751	40%	\$7,294,300
Market	\$25,695,620	(\$2,610,659)	\$23,084,961	10%	\$2,308,496
Total				100%	\$18,038,548

The resulting average of the two appraisal results, adjusted for the ALJ’s recommendations, is \$18,801,167. As such, according to the ALJ’s recommendations,

the ratemaking rate base of the Willistown System should be \$17,500,000, the lesser of the negotiated purchase price of \$17,500,000 and the average of the UVE appraisals of \$18,801,167. Accordingly, we shall grant Aqua's Exception No. 8 with respect to its objection to the ALJ's Conclusion of Law No. 11.

As discussed *supra*, we disagree with the OCA's proposed adjustments to Gannett Fleming's Cost, Income, and Market Approaches. We also disagree with the OCA's proposed adjustments to Account Nos. 335.30, 360.21, and 361.22 under AUS' Cost Approach, as well as the OCA's proposed adjustments to AUS' Income Approach, and its proposal to use Commission-determined rate base in the AUS Market Approach. However, we agree with the ALJ that the OCA's proposed adjustment to the service lives of Account Nos. 361.21 and 361.23 under AUS' Cost Approach are reasonable and appropriate and should be reflected through a corresponding adjustment to AUS' Market Approach result. We also agree with the ALJ's recommendation to use the OCA's simple average of selected transactions in AUS' Market Approach. Accordingly, we have adopted the ALJ's recommendations to adjust AUS' Cost and Market Approaches and rejected the ALJ's recommendation to adjust Gannett Fleming's Cost Approach and modified the ALJ's recommendation to the UVE appraisal values.

As such, the Gannett Fleming appraisal is unchanged at \$25,613,000 from that proposed by Gannett Fleming. The AUS appraisal is modified by reducing the Cost Approach by \$1,627,051 from \$18,498,555 to \$16,871,504 and the Market Approach by \$2,610,659 from \$25,695,620 to \$23,084,961. The recalculated AUS appraisal result is \$18,038,549. The recalculated average of the Gannett Fleming appraisal result and the adjusted AUS appraisal result is \$21,825,774, as follows:

Gannett Fleming Appraisal (Unchanged)			
Conclusion			\$25,613,000
Summary of Results Prepared by AUS (As Modified)			
	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$16,871,504	50%	\$8,435,752
Income Approach	\$18,235,751	40%	\$7,294,300
Market Approach	\$23,084,961	10%	\$2,308,496
		100%	\$18,038,549
Conclusion			\$18,038,549
	Average		\$21,825,774

The FMV is the lesser of the purchase price and the average of the appraisal results, or \$17,500,000.

D. Recommended Conditions

1. Mr. Yordan's Recommended Condition Regarding Sewage Volume Measurements for Properties with Well Water⁵⁸

a. Yordan-Frissora Exception No. 6 and Aqua Reply

In their Exception No. 6, Yordan-Frissora aver that the ALJ erred by not adding a condition that Aqua address how it will measure sewage volume for properties with well water and how it will address false high readings when they occur. Yordan-Frissora Exc. at 7. In his Reply Brief, Mr. Yordan requested the following:

As a condition to closing, [Aqua] should either (a) come up with a fixed sewer rate proposal (with no volume charge) for properties on a well, including a mechanism for those customers to be able to have input into the proposed charge, or (b) install meters, at Aqua's expense, that measure the water intake from the well, after bypassing exterior usage, and use the water volume to charge for sewage.

Yordan R.B. at 11. Yordan-Frissora state that Mr. Yordan requested this condition in his Reply Brief and the ALJ did not rule on this issue. *Id.* (citing Yordan R.B. at 9-11).

Yordan-Frissora submit that Mr. Yordan explained in his Reply Brief the importance of measuring sewage volume for properties on a well and of having a mechanism to resolve disputed measurements. Yordan-Frissora ask that this condition be added to the acquisition if the Commission approves the Application. Yordan-Frissora Exc. at 7.

⁵⁸ As Mr. Yordan addressed this condition only in his Reply Brief, and a summary of the discussion in his Reply Brief is included in the Exceptions, we have not included herein a Positions of the Parties section for this issue. Similarly, because the ALJ did not include a discussion of this condition in the Recommended Decision, we have not included herein a Recommended Decision section for this issue.

In its Replies to Exceptions, Aqua states that the Commission should not consider this proposed condition because Mr. Yordan raised this condition for the first time in his Reply Brief. Aqua R. Exc. at 18.

b. Disposition

Upon review, we agree with Aqua, and we will not consider this proposed condition because Mr. Yordan raised this condition for the first time in his Reply Brief. Mr. Yordan generally addressed in his direct testimony his concerns that Aqua and the Township have not devised a reliable method for calculating usage for low-pressure sewer users whose water comes from private wells or how faulty readings will be resolved after Aqua acquires the system. Yordan St. 1 at 22-23. However, Mr. Yordan did not make any specific proposed conditions at that time. Mr. Yordan's specific conditions, enumerated above, were set forth for the first time in his Reply Brief.

As Mr. Yordan failed to mention any conditions regarding Aqua's methods for measuring sewage volume for properties with well water or for addressing false high readings when they occur in his Main Brief or testimony, Mr. Yordan has deprived Aqua and the other Parties of the opportunity to address Mr. Yordan's proposed condition. The Commonwealth Court and this Commission have determined that permitting new claims or proposals at a late stage in a proceeding raises significant due process concerns because opposing parties would not have an adequate opportunity to respond to adverse positions. *See Hess*, 107 A.3d at 265-266 (in order to ensure due process protections, the Commission properly disregarded evidence and arguments presented for the first time in Replies to Exceptions); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, 2015 Pa. PUC LEXIS 349, *55-56 (disregarding proposals raised for the first time in rebuttal testimony and reply brief); *Application of PPL Electric Utilities Corp.*, 2009 Pa. PUC LEXIS 2323, *225-227 (rejecting a claim raised for the first time in reply brief). Accordingly, we will

not consider Mr. Yordan's proposed condition, and we will deny Mr. Yordan's Exception on this issue.

2. I&E's Recommended Conditions

a. Missing Easements

(1) Positions of the Parties

I&E recommended that the closing of the transaction should 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. I&E also recommended that if for circumstances beyond Willistown's control it is unable to transfer all missing easements 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 they satisfy the condition that an escrow account be established. I&E proposed 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. I&E M.B. at 13.

I&E was concerned that in response to a discovery request, Aqua stated that there was no expected date of completion for the abstractor's report or for the listing of missing property rights and Aqua was also unaware of any necessary leases, easements, or access to public rights-of-way that would not be transferred at closing. I&E M.B. at 14 (citing I&E Exh. 1, Sch. 1). I&E witness Anthony Spadaccio explained that

without 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 may be flawed or inaccurate. I&E M.B. at 14 (citing I&E St. 1 at 5).

Aqua averred that Mr. Spadaccio's recommendations were unnecessary because such recommendations are already included in the APA. Aqua referenced Section 6.05 (Easement), which 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." Aqua M.B. at 52 (citing Aqua St. 1-R at 3-4; Aqua Exh. 1, Application Exh. B, Section 6.05(a)). Aqua continued that Section 6.05 also states the following:

[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 M.B. at 52 (citing Aqua St. 1-R at 3-4; Aqua Exh. 1, Application Exh. B, Section 6.05(a)). Aqua also referenced Section 6.05(e) of the APA, which provides a process by which the Parties will establish an escrow account for obtaining missing easements post-closing and Section 6.06 of the APA, which contemplates the rights and responsibilities of Aqua and Willistown regarding property identified that may not have been listed on Schedule 4.09 (pertaining to unscheduled real property). Aqua M.B. at

52 (citing Aqua St. 1-R at 4; Aqua Exh. 1, Application Exh. B, Sections 6.05(c) and 6.06).

(2) Recommended Decision

The ALJ concluded that if the Commission decides to approve the Application, such approval should be conditioned on I&E's recommendations regarding missing easements, consistent with the Commission's prior decisions in *Application of Pennsylvania American Water Company*, Docket No. A-2020-3021460 (Order entered September 15, 2021) (*PAWC Application*) at 3; *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3024267 (Order entered January 13, 2022) (*Aqua Application*) at 92. The ALJ noted that the Commission acknowledged I&E's concern about the missing easements and other property rights in those cases and directed each company and acquired utility to continue working to achieve the transfer of real property rights. The Commission also 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. The ALJ found that I&E's proposed conditions are reasonable and in the public interest. R.D. at 198.

(3) Aqua Exception No. 9 and I&E Reply

In its Exception No. 9, Aqua argues that the ALJ's recommended conditions are unnecessary because they are already included in the APA. Aqua states that the APA specifically considers the rights and responsibilities of Aqua and Willistown regarding property identified that may not have been included on Schedule 4.09 of the APA and provides for the creation of an escrow account for obtaining missing easements post-closing. Aqua R. Exc. at 31 (citing Aqua M.B. at 51-53; Aqua St. 1-R at 4).

In its Replies to Exceptions, I&E disagrees with Aqua’s argument that the conditions are unnecessary because they are already contemplated in the APA. I&E asserts that the Company’s argument fails to take into account that 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. I&E asserts that because Aqua and Willistown can mutually agree to waive provisions of the APA, it is necessary to ensure that the public is insulated from post-transaction uncertainty and the costs associated with acquiring and transferring the missing easements and other property rights necessary for Aqua’s operation of Willistown’s wastewater system. I&E R. Exc. at 5. I&E avers that as it stated in its Main Brief, 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. *Id.* (citing I&E M.B. at 15). I&E further argues that the ALJ’s adoption of this condition is reasonable and in the public interest because the Commission agreed with I&E’s recommendation in previous Section 1329 proceedings. I&E R. Exc. at 5-6 (citing *PAWC Application* at 3; *Aqua Application* at 92).

(4) Disposition

Upon review, we conclude that our approval of the Application will be conditioned on I&E’s recommendations regarding missing easements, as we agree with the ALJ that such conditions are reasonable and in the public interest.⁵⁹ I&E has identified a significant concern that 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. I&E’s proposed conditions are designed to protect Aqua’s ratepayers, so they are not burdened with the costs and associated expenses of obtaining and conveying missing easements and other

⁵⁹ A Commission Order approving the transaction is permitted to include “[a]dditional conditions of approval.” 66 Pa. C.S. § 1329(d)(3)(ii).

property rights. While the APA includes similar protections, I&E's conditions, particularly the escrow account provision, provide an additional layer of protection and accountability if Aqua and Willistown would mutually decide to waive the provisions of the APA that obligate Willistown to deliver good and marketable title to all real property necessary for the operation of the acquired system.⁶⁰ For these reasons, we shall deny Aqua's Exception on this issue and approve the Application subject to I&E's proposed conditions, as enumerated in Ordering Paragraph Nos. 7(a) and 7(b), in this Opinion and Order.

b. 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 the Company 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. Aqua St. 1-R at 5-6.

According to I&E, the COSS condition is in the public interest and provides protection to ratepayers. Without a separate COSS, I&E argued that the cost to operate the Willistown system will not be known and the appropriate ratemaking

⁶⁰ Section 15.07 of the APA, which governs amendments and waivers, provides the following:

The Parties may amend this Agreement only by the Parties' written agreement that identifies itself as an amendment to this Agreement. Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the Party giving it, and only in the specific instance and for the specific purpose for which it has been given.

Aqua Exh. 1, Application Exh. B, Section 15.07.

recommendations for those costs cannot be proposed or implemented when Aqua files its next base rate case. I&E M.B. at 11-12.

The 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. OCA St. 1 at 45-46.

Mr. Yordan disagreed with the COSS recommendation arguing that it will only allow the Company to claim that Aqua customers will be protected from having to absorb costs from the Willistown acquisition. Yordan St. SR-1 at 11.

The ALJ recommended that, in the event that the Commission approves the Application, such approval should be conditioned upon I&E's recommendation that Aqua include a separate COSS 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. R.D. at 199.

No Party filed Exceptions to the ALJ's recommendation of conditioning the approval of the Application upon the inclusion of a separate COSS in Aqua's next base rate case as outlined above. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment.

3. Rate Freeze

In Section 7.3(a) of the APA, Aqua and Willistown agreed to the following provision:

Buyer shall implement the Seller's sanitary wastewater base rates then in effect at Closing, as set forth on Schedule 7.03(a) (the "Base Rate") as Buyer's effective sanitary wastewater base rates, provided that the rates set forth on Schedule 7.03(a) (at Closing) shall not be lower than those in effect on the Effective Date. Buyer shall not propose to increase Base Rates until after the second anniversary of the Closing Date. Buyer intends to bill customers on a monthly basis instead of annual billing, which Buyer will prorate accordingly. At and after the Closing, Buyer shall charge and collect its then-existing miscellaneous fees and charges and apply its then-existing rules and regulations for wastewater service in the Buyer's tariff (or rules and regulations), as amended from time to time, within the Service Area.

APA at 27. Therefore, Aqua proposed a two-year rate freeze for the Township's customers. I&E, the OCA, and the OSBA (Opposing Parties) opposed this rate freeze, and each submitted that if the Commission approves Aqua's Application, then it should do so on the condition that the rate freeze is rejected.

a. Positions of the Parties

Aqua explained that its proposed rate freeze would be in effect until approximately June 30, 2024. According to Aqua, the recommendation of I&E, the OCA and the OSBA that approval of the Application should be contingent upon the rejection of the rate freeze is based on a speculative scenario where the Company files for its next rate case before the expiration of the two-year rate freeze. Aqua stated that although it cannot guarantee or commit to the filing date for its next base rate case, the speculation of I&E, the OCA, and the OSBA is inapposite. In this regard, Aqua noted that based on its current frequency of filing a rate case every three years, the new rates resulting from its next base rate case would not become effective until approximately May of 2025, or almost a year after the expiration of the two-year rate freeze. The Company insisted that it will not be filing a stand-alone rate case for Willistown outside of its consolidated

existing water and wastewater systems. Accordingly, Aqua submitted that the recommended condition that the proposed rate freeze be rejected is not necessary, as it is based upon the timing of a rate case filing that is dependent on many different factors, which are very unlikely to occur. Aqua M.B. at 54-55; Aqua R.B. at 23.

The Township adopted and incorporated the position of Aqua with regard to the proposed rate freeze. Willistown M.B. at 16.

I&E opined that the two-year rate freeze is unreasonable and misleading. I&E noted that the Commission maintains the ultimate rate setting authority. More specifically, I&E pointed out that nothing prevents the Company from filing a base rate case before the expiration of the two-year rate freeze. I&E reasoned that, in that event, the Commission could determine that the Township's rates need to be increased before the two-year rate freeze expires. I&E noted that in characterizing opposition to the rate freeze as speculative, the Company never guaranteed that it would not file a base rate case prior to the expiration of the rate freeze. Therefore, I&E submitted that while the Commission makes the ultimate determination on any rate increase, the proposed rate freeze amounts to nothing more than grandstanding on the part of the Company for the purpose of attempting to make the pending acquisition more appealing to the Township's customers. For these reasons, I&E argued that the Commission should reject the proposed rate freeze. I&E M.B. at 12-13; I&E R.B. at 6-8.

The OCA emphasized that its primary position was that the Application should be denied in its entirety. However, the OCA argued that in the event the Application is approved, the proposed rate freeze should be denied. The OCA echoed the position of I&E that the Commission retains the ultimate authority to set rates. The OCA stressed that this includes, but is not limited to, the authority to allocate revenues, if appropriate, to the Township customers that may be inconsistent with the restrictions set forth in Section 7.03 of the APA. OCA M.B. at 45-46; OCA R.B. at 27.

The OCA also noted that in the Company's direct testimony, Aqua's witness, Mr. William C. Packer, took the position that the proposed rate freeze does not constitute a rate stabilization plan. OCA M.B at 14 (citing Aqua St. 1 at 10-11). The OCA objected to this position, noting that under Section 1329, 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." OCA M.B. at 14 (citing 66 Pa. C.S. § 1329). According to the OCA, 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. The OCA argued that 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 requirement that would be shifted to them under the plan." OCA M.B. at 14 (citing *Implementation of Section 1329 of the Public Utility Code – Final Implementation Order*, Docket No. M-2016-2543193 (Order entered October 27, 2016) at 27). The OCA opined that it would have been helpful to the Commission and the Parties in evaluating the benefits and harms of the proposed transaction, if Aqua had provided such information in this proceeding. The OCA noted that Aqua has provided this type of information in previous Section 1329 proceedings involving proposed rate freezes. OCA M.B. at 14.

The OSBA echoed the position of I&E and the OCA that the proposed rate freeze should be denied. The OSBA refuted Aqua's argument that opposition to the rate freeze is based upon an inapposite speculative scenario. Namely, the OSBA noted that depending on the timing of Aqua's next rate case, the Company's proposed rate freeze could extend beyond the effective date of new rates that result from Aqua's first base rate case following the closing of the proposed transaction. The OSBA stressed that Aqua has not committed to maintaining a three-year period between rate case filings and is not presently subject to a stay-out commitment. OSBA M.B. at 17-18; OSBA R.B. at 6. The OSBA also pointed to the observation of I&E, *supra*, that Aqua never guaranteed that it

would wait to file a base rate case such that new rates would not become effective until after the rate freeze period had ended. Therefore, the OSBA took the position that without an affirmative commitment as to when Aqua will file its next base rate case, all scenarios are equally possible, valid, and subject to consideration by the Commission. OSBA R.B. at 6.

In further support of its position, the OSBA noted that the average monthly bill paid by metered residential customers in the Township was 17.9% lower than the Company's proposed Rate Zone 1 wastewater system rates in its rate case that was pending before the Commission at the time of the closing of the record in this proceeding. As such, the OSBA submitted that it would be wholly inappropriate to freeze the rates for the Township's customers for any period of time beyond the effective date of new rates in Aqua's first base rate proceeding following the close of the proposed transaction. The OSBA stated that to do so would result in increasing the annual subsidy received by the Township's customers at the conclusion of that rate proceeding, at the expense of Aqua's existing customers. In the OSBA's view, all of Aqua's base wastewater rates should be evaluated in each of the Company's base rate proceedings, and all rate areas should exhibit movement toward the system average wastewater rate, or cost of service, in each rate case, consistent with the Commission's long-standing policy of implementing single tariff pricing. OSBA M.B. at 17, 18.

Accordingly, the OSBA asserted that as a condition of approving the Application, the Commission should reject the Company's proposed rate freeze. In the alternative, the OSBA posited that Aqua should be required to impute revenues to Willistown customers, as necessary, to account for the revenue shortfall associated with any rate increase otherwise applicable to the Township in Aqua's first base rate case after the close of the proposed transaction. OSBA M.B. at 18-19.

b. Recommended Decision

The ALJ concurred with I&E, the OCA, and the OSBA that there is currently no authority that would prohibit Aqua from filing a base rate case in 2023, which would result in new rates taking effect before the expiration of the rate freeze. The ALJ highlighted the OSBA's position that if the Company were to file a base rate case before the expiration of the two-year rate freeze, this would exacerbate the rate difference between Aqua's existing wastewater customers and those customers Aqua acquires from the proposed transaction with the Township. The ALJ also noted that in the time period since its 2018 Rate Case, the Company has had other Section 1329 acquisitions approved and also has others pending approval. The ALJ continued that in these acquisitions, the Company projects revenue requirement deficiencies that would likely result in increased rates for acquired or existing customers in the short term and would delay any potential benefits to customers from cost sharing further into the future. Thus, the ALJ concluded that the result is that Aqua's current 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 the proposed transaction. Accordingly, the ALJ recommended that in the event the Commission approves Aqua's Application, then it should be conditioned upon the rate freeze provision being rejected. R.D. at 118, 200-01.

c. Exceptions and Replies

In its Exception No. 10, Aqua finds fault with the ALJ's recommendation that if the Commission approves the Application, then it should do so on the condition that the Company's proposed two-year rate freeze is rejected. The Company remains of the opinion that imposing this condition is not necessary. Aqua insists that based on its current pattern of filing a base rate case every three years, it is very likely that the new rates resulting its next rate case would not become effective until the middle of 2025, or almost a year following the expiration of the two-year rate freeze. Aqua Exc. at 31-32.

Notwithstanding its above assertions, Aqua posits that in the event that it would file a rate case prior to the expiration of the rate freeze, the Company could address this scenario consistent with a similar scenario addressed in its 2018 Rate Case. Aqua continues that in its 2018 Rate Case, it included its then-recently acquired Tobyhanna Sewer System (Tobyhanna) as part of its Rate Zone 4 despite the fact that the APA related to the Tobyhanna acquisition included a rate freeze. Aqua explains that its proposed tariff in that rate case treated the existing rates in effect through the duration of the rate freeze period as a special charge. Aqua states that once the expiration of the rate freeze by contract had elapsed, Tobyhanna customers immediately became subject to Rate Zone 4 tariff rates. According to Aqua, none of its existing customers were harmed, nor did they pay for the rate freeze, because the Company's proof of revenue was calculated at the full cost of service rate, and not the frozen existing rate. Aqua submits that it would likely make a similar proposal for the Willistown system if it filed a base rate case prior to the expiration of the proposed rate freeze. Aqua Exc. at 32.

In its Replies to Exceptions, I&E submits that ALJ Watson properly recommended that the Company's proposed rate freeze be denied. I&E reinforces its observation that the Company made no guarantee in either its testimony or any other form of evidence in this proceeding that it would not file a base rate case until after the expiration of the rate freeze period. I&E also challenges Aqua's reference to its 2018 Rate Case and argues that the Company's acquisition of the Tobyhanna system was prior to the enactment of Section 1329. I&E continues that with regard to the wastewater acquisitions that Aqua has made pursuant to Section 1329, Willistown is not the only wastewater system for which a rate freeze has been promised by the Company. Thus, I&E notes that Aqua will need to be conscious of the rate freeze provisions in several of its Section 1329 proceedings when filing its next base rate case. In addition, I&E states that to its knowledge, there have not been any systems acquired through the Section 1329 process in which the Commission has not assigned some form of rate increase in the subsequent base rate proceedings, regardless of any outstanding rate delay or moratorium

provisions. Therefore, I&E remains of the opinion that if the Commission approves Aqua's Application, then the rate freeze provision must be rejected. I&E R. Exc. at 6-7.

In its Replies to Exceptions, the OCA observes that Aqua has neither committed to timing its next base rate case filing so that the rate freeze will expire before new rates take effect, nor has it committed to impute revenues to Willistown customers in its next base rate case in the same manner in which the Company indicates it did so for its acquired Tobyhanna system. Therefore, the OCA submits that the ALJ properly recommended that the Company's proposed rate freeze be rejected. The OCA asserts that in the alternative, the Commission should adopt the OSBA's alternate proposal to condition approval of the Application on the requirement that Aqua impute revenues to Willistown customers by calculating the Company's proof of revenue at the full cost of service rate, and not the frozen existing rate. According to the OCA, if the acquisition of the Township is approved, existing Aqua customers would already be at risk to cover the revenue requirement required to keep Willistown rates lower than cost. Therefore, the OCA asserts that Aqua's existing customers should not also be tasked with subsidizing the revenue requirement required to keep Willistown rates lower than the new rates established for the Township in a base rate proceeding. OCA R. Exc. at 23-25.

The OSBA, in its Replies to Exceptions, likewise submits that the ALJ properly recommended rejection of the proposed rate freeze. The OSBA reinforces its argument that Aqua has not committed to maintaining a three-year period between its base rate case filings and is not currently subject to any stay-out commitment. According to the OSBA, although the Company states that maintaining a three-year filing frequency is its intention, an intention or aim is not a binding commitment. The OSBA restates that nothing prohibits Aqua from filing its next base rate case prior to the expiration of the proposed two-year rate freeze. The OSBA also reiterates its position that the Township's customers already pay less than the system average rate for wastewater service. Therefore, the OSBA submits that if the rates resulting from Aqua's next base rate case

take effect prior to the expiration of the proposed rate freeze, there will be an increased disparity in the rates paid by Township-acquired customers and those paid by Aqua's current customers such that the annual subsidy received by the Township's customers will increase. OSBA R. Exc. at 4-5.

Next, the OSBA rebuts Aqua's argument that in the event it does file for a rate case before the expiration of the two-year rate freeze, it would likely propose to treat the Willistown system in the same manner that it treated the Tobyhanna system. The OSBA provides that in stating that it "would likely" make a proposal for the Willistown system that is similar to that utilized for Tobyhanna, the Company has not established a firm commitment to freeze the Township's rates in the same manner. Accordingly, the OSBA remains of the opinion that the Company's proposed rate freeze should be rejected outright. In the alternative, the OSBA restates that the Company should be required to impute revenues to Willistown customers, as necessary, to account for the revenue shortfall associated with any rate increase otherwise applicable to Willistown in Aqua's first base rate case following the close of the proposed transaction. OSBA R. Exc. at 5-6.

d. Disposition

On consideration of the record evidence in this proceeding, we shall grant Aqua's Exception No. 10, in part, and deny it, in part, consistent with the following discussion. First, we reject the Company's argument that no condition be imposed with respect to its proposed two-year rate freeze. As the ALJ and each of the Opposing Parties observed, although Aqua claims that the filing of a rate case prior to 2024 is not likely, the Company did not commit to refrain from filing a rate case outside of its current three-year filing cadence. Because the Company is not currently subject to any stay out provision, there is currently nothing that would prohibit the Company from filing a base rate case with rates that would take effect prior to the expiration of the two-year rate freeze period. Thus, in the event the Company files for its next rate case prior to 2024,

the entire revenue deficiency associated with the Willistown acquisition would be paid by Aqua's existing wastewater customers and, possibly, by its existing water customers. As a result, the subsidy received by the Township's customers from general ratepayers would increase at the conclusion of Aqua's next rate case. OCA St. 2 at 4; OSBA St. 1 at 7.

Additionally, in their respective notices to existing customers of proposed acquisition and rate base addition, both Aqua and Willistown acknowledged that the Commission, as the ultimate ratemaking authority, will make the final determination as to whether, and to what extent, rates will increase. Aqua Exhs. I1 and I2 at 1-2; *see also* I&E St. 1 at 9. Because the agreement under the APA does not override the ability of the Commission to set and allocate rates, the Commission could order the Willistown rates to increase before the rate freeze expires. In essence, this would render any benefit of the rate freeze moot. I&E St. 1 at 8-9; I&E R.B. at 7.

In light of the above, we find that, Aqua's rate freeze, as currently proposed, has the potential to have a negative revenue and rate impact on Aqua's ratepayers. At the same time, however, we disagree with the ALJ and the Opposing Parties that Aqua's proposed rate freeze should be rejected outright. As noted, *supra*, Aqua proffered that in the event it does file its next base rate case such that rates take effect before the expiration of the proposed rate freeze, then it "would likely" treat the Willistown system in a similar manner to how it addressed its Tobyhanna system in its 2018 Rate Case. Although I&E correctly observed that the Company did not acquire the Tobyhanna system via a Section 1329 proceeding, we nonetheless find that this proposal represents a viable alternative.

In its surrebuttal testimony, the OSBA, through its witness Mr. Brian Kalcic, noted as follows:

Finally, with regard to Mr. Packer's claim that the OSBA's concerns are misplaced since Aqua "would likely" treat Willistown's proposed rate freeze in the same manner that was used to address the rate freeze applicable to the acquired Tobyhanna Sewer System in Aqua's 2018 rate case, I would point out that I offered this exact remedy for resolving the OSBA's rate freeze concerns as an alternative recommendation in my direct testimony. As such, to resolve this issue to the satisfaction of all parties, 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.

OSBA St. 1-SR at 2-3 (footnote omitted, emphasis added). As discussed above, the OSBA's issue with the Company's proposal is Aqua's use of the phrase "would likely," in lieu of establishing a firm commitment to mirror the approach it used in its 2018 Rate Case. Therefore, we shall impose this commitment on Aqua and shall adopt the OSBA's alternative recommendation.

Accordingly, pursuant to Section 1329 (d)(3)(ii) of the Code, we shall require the following as a condition of approval of the Application:

In the event that Aqua files a base rate case with rates that will take effect prior to the two-year rate freeze, Aqua shall impute revenues to Willistown customers, as necessary, to account for the revenue shortfall associated with any rate increase otherwise applicable to the Township customers. Aqua's proposed tariff in such a rate case shall treat the existing Willistown rates in effect through the duration of the two-year rate freeze period as a special charge. Additionally, the Company shall calculate its proof of revenue at the full cost of service rate, and not the frozen existing rate.

Once the contractual rate freeze term expires, the customers acquired through the acquisition of the Township system shall immediately become subject to the new rate applicable to the Township's customers, as determined in Aqua's first base rate case that includes the Township system assets.

We find that imposing this condition will shift the risk of any shortfall between the revenues the Company recovers under the frozen Willistown rates and the costs it will incur with respect to the Willistown system away from the Company's general ratepayers and on to its shareholders. OSBA St. 1 at 8; OCA R. Exc. at 24-25. We note that we have imposed similar conditions in other Section 1329 proceedings involving Aqua. *See New Garden*, *supra*, at 42, 71.

Based on the forgoing discussion, we shall grant Aqua's Exception No. 10, in part, and deny it, in part and shall modify the ALJ's recommendation by adopting the Company's proposed two-year rate freeze, subject to the condition discussed above.

E. Notice to Customers

As discussed above, in proceedings regarding applications under 66 Pa. C.S. § 1329 which include 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. Notice must be provided to all affected customers in accordance with 52 Pa. Code § 53.45. *McCloskey*, 195 A.2d at 1069; *FSIO* at 30.

Aqua contended that it and the Township provided individualized notice to their customers in compliance with *McCloskey*. In addition, Aqua submitted that no party with the statutory authority to represent the interests of customers of either Aqua or the Township challenged the notice that was provided. Aqua M.B. at 55.

The Township averred that it circulated the Commission-required Notice in December 2021, which provided instructions to its recipients on actions the Township customers could take to participate in this proceeding. The Township also noted that the Opposing Intervenors filed their Petitions to Intervene the same month that Aqua filed its Application, and that Mr. Yordan and Ms. Frissora testified that they received the Commission-required Notice. Willistown M.B. at 17-18.

I&E initially averred that the rate impact for acquired Willistown customers was potentially understated in the Notice. I&E M.B. at 16. However, I&E later stated that this issue was satisfied. I&E R.B. at 10.

The OCA contended that the Township acted unreasonably and did not comply with the directive in *McCloskey* by delaying its service of notice. The OCA argued that Willistown waited until later in the process to give notice to customers about the transaction and its rate impacts, which impacted their ability to be heard in support of their positions. OCA M.B. at 8-9.

The OSBA did not specifically address this issue.

Mr. Yordan argued that Aqua and Willistown manipulated the Commission-required notice to Township customers. Mr. Yordan contended that the public received information that was inaccurate and intentionally delayed. Mr. Yordan further averred 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 notice. Yordan M.B. at 11-12.

Mr. Swift and Ms. Frissora argued that the Township notice is the only one that includes the potential rate increases, and that this notice is the first Commission communication they received about the sale of the sewer system with instructions on how

to get involved in the Commission proceeding. Mr. Swift and Ms. Frissora contended that the Township notice was mailed to acquired customers late and that it contained false information. Swift/Frissora M.B. at 19-20.

While the ALJ noted the delay in the Township's provision of notice to customers, he found that there was no showing that the Township's delay caused or contributed to any individual being precluded from participating in this proceeding. The ALJ also concluded that it was not established that any prejudice resulted from the form or content of the Township's notice. R.D. at 52-53.

The issue of notice to customers of Aqua and the Township of the filing of the Application in this proceeding is addressed in the Constitutional Due Process section at V.A. of this Opinion and Order, *supra*. No Party raised any further Exceptions other than those raised in the prior Constitutional Due Process section as noted. In summary, we conclude that there was no showing that the Township's delay caused or contributed to any individual being precluded from participating in this proceeding. All persons with a vested interest in this proceeding had advance notice of it. Township customers received the Commission-required notice with instructions on actions they could take with regard to the Application. Two Public Input Hearings were held where Township customers and interested parties could testify about their concerns with the proposed transaction. Moreover, any delay in notice did not preclude Township customers from participating in this proceeding, and all affected persons had an opportunity to participate in the proceeding and litigate their protests to the Application.

F. Section 507 Approvals

In its Reply Brief, Aqua explained that no evidence was presented in opposition to Aqua's request to approve its acquisition agreement with Willistown and the assignment of nineteen contracts with various municipalities. The Company

submitted that its acquisition agreement with Willistown and the assignment of nineteen contracts with the municipalities, are reasonable, legal and valid and that certificates of filing under Section 507 of the Code should be issued. Aqua R.B. at 24.

The Township endorsed Aqua's request relating to the Section 507 approvals and no other Parties raised specific objections.

In the Recommended Decision, the ALJ explained that 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 thirty days prior to its effective date to be valid. The ALJ noted further that 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. Acknowledging no objections to Aqua's request for approval of the nineteen contracts with municipalities set forth in the APA, the ALJ recommended that if the Commission were to approve the Application that the requested Section 507 approvals should be issued. R.D. at 208.

No Party filed Exceptions to the ALJ's recommendation pertaining to the Section 507 approvals. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment and direct that certificates of filing under Section 507 of the Code shall be issued.

G. Section 2102 Approval

Upon approval of the Application, Aqua explained that it will be taking assignment of Willistown's rights and responsibilities under the Wastewater Conveyance

Agreement between Aqua Resources, Inc., an affiliate of Aqua, and various municipalities and authorities for the conveyance of wastewater through the Valley Creek Trunk Line. Aqua M.B. at 56 (citing Application at Exh. F19 – Agreement Dated November 20, 2018 (2018 Agreement)).⁶¹ Aqua submitted that the charges under the 2018 Agreement and the 2018 Agreement itself were negotiated by Aqua Resources, Inc., and non-affiliates of Aqua. Thus, the Company asserted that the charges were 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 of the 2018 Agreement will occur as a result of the assignment. Aqua requested that the Commission approve the assignment of the 2018 Agreement to Aqua for the conveyance of wastewater through the Valley Creek Trunk Line. Aqua M.B. at 56.

No objections were raised to the Company’s request.

In the Recommended Decision, the ALJ explained that under Section 2102 of the Code, 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 has received the written approval of the Commission. The ALJ noted that 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. R.D. at 210.

⁶¹ The 2018 Agreement is between Aqua Resources, Inc., and the Townships of Tredyffrin, East Whiteland, Willistown, Charlestown, Schuylkill, East Pikeland and Easttown, Easttown Township Municipal Authority, the Borough of Malvern, Tredyffrin Township Municipal Authority and Valley Forge Sewer Authority. Application, Exh. F19.

Acknowledging no objections to Aqua's request for approval of the 2018 Agreement, the ALJ recommended that if the Commission were to approve the Application that the requested approval of the 2018 Agreement pursuant to Section 2102 be granted. *Id.*

No Party filed Exceptions to the ALJ's recommendation pertaining to the Section 2102 approval. Finding the ALJ's recommendation to be reasonable, we adopt it without further comment and direct that a certificate of filing under Section 2102 of the Code be issued.

H. Other Approvals, Certificates, Registrations and Relief Under the Code

Aqua also requested that the Commission acknowledge the issuance of all other approvals, certificates, registrations, and relief, if any, under the Code as may be appropriate. Aqua M.B. at 56.

None of the Parties raised objections to this general request. In the Recommended Decision, the ALJ found no basis in the record to reject the Company's request. Thus, the ALJ recommended that if the Commission were to approve the Application, Aqua's general request for other approvals, certificates, registrations, and relief under the Code should be granted. R.D. at 211-212.

It is unclear what specific relief the Company is requesting with this general argument. To the extent that Aqua is requesting that we acknowledge our general powers under Section 501 of the Code, 66 Pa. C.S. § 501, we find such an announcement to be unnecessary. Accordingly, we shall decline to adopt the ALJ's recommendation as to the Company's general request pertaining to unspecified approvals, certificates, registrations, and other relief.

VI. Conclusion

Based on the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions of Aqua, the Township, the OCA, Mr. Swift, and Yordan-Frissora; (2) adopt the Recommended Decision, as modified; and (3) approve the Application, as modified; all consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Aqua Pennsylvania Wastewater, Inc., filed on May 2, 2022, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 21, 2022, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions of Willistown Township, filed on May 2, 2022, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 21, 2022, are granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That the Exceptions of the Office of Consumer Advocate filed on May 2, 2022, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 21, 2022, are granted, in part, and denied in part, consistent with this Opinion and Order.

4. That the Exceptions of Robert Swift filed on May 2, 2022, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 21, 2022, are granted, in part, and denied in part, consistent with this Opinion and Order.

5. That the Exceptions of Henry Yordan and Julie Frissora filed on May 2, 2022, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 21, 2022, are granted, in part, and denied in part, consistent with this Opinion and Order.

6. That the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on April 21, 2022, is adopted, as modified, consistent with this Opinion and Order.

7. That the Application of Aqua Pennsylvania Wastewater, Inc., filed on August 3, 2021, seeking approval pursuant to Sections 1102, 1329 and 507 of the Public Utility Code, 66 Pa. C.S. §§ 507, 1102, 1329, for: (1) the acquisition, by Aqua Pennsylvania Wastewater, Inc., of the wastewater system assets of Willistown Township situated within Chester County, Pennsylvania; (2) the approval of the right of Aqua Pennsylvania Wastewater, Inc., to begin to offer, render, furnish, and supply wastewater service to the public in the areas served by the Willistown Township wastewater system; (3) an order establishing the ratemaking rate base of Willistown Township's wastewater system assets pursuant to 66 Pa. C.S. § 1329(c)(2); and (4) the approval of the Asset Purchase Agreement, between Aqua Pennsylvania Wastewater, Inc., and Willistown Township and certain contracts in connection with the proposed acquisition, including the assignments of certain contracts, pursuant to 66 Pa. C.S. § 507, is approved subject to the following conditions in (a) through (e) below:

a) That, except as set forth in Ordering Paragraph No. 7.b, the transaction shall not be permitted to occur unless and until Willistown Township 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

Pennsylvania Wastewater, Inc., at closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights.

b) That, if for circumstances beyond Willistown Township's control 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 Pennsylvania Wastewater, Inc., and Willistown Township may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established for 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.

c) That, in the first base rate case that includes Willistown Township wastewater system assets, Aqua Pennsylvania Wastewater, Inc., shall submit a wastewater cost of service study that removes all costs and revenues associated with the operation of the Willistown Township wastewater system.

d) That, in the first base rate case that includes Willistown Township wastewater system assets, Aqua Pennsylvania Wastewater, Inc., shall also provide a separate cost of service study for the Willistown Township wastewater system. Aqua Pennsylvania Wastewater, Inc., shall file a cost of service study separately for the Willistown Township wastewater system consistent with typically filed rate making exhibits including, but not limited to the following: Rate Base (Measures of Value), Statement of Operating Income, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

e) That, in the event that Aqua Pennsylvania Wastewater, Inc., files a base rate case with rates that will take effect prior to the two-year rate freeze set forth in the Application, Aqua Pennsylvania Wastewater, Inc., shall impute

revenues to Willistown Township customers, as necessary, to account for the revenue shortfall associated with any rate increase otherwise applicable to the Willistown Township customers. Aqua Pennsylvania Wastewater, Inc.'s proposed tariff in such a rate case shall treat the existing Willistown Township rates in effect through the duration of the two-year rate freeze period as a special charge. Additionally, Aqua Pennsylvania Wastewater, Inc., shall calculate its proof of revenue at the full cost of service rate, and not the frozen existing rate. Once the contractual rate freeze term expires, the customers acquired through the acquisition of the Willistown Township system shall immediately become subject to the new rate applicable to the Willistown Township's customers, as determined in Aqua Pennsylvania Wastewater, Inc.'s first base rate case that includes the Willistown Township system assets.

8. That, pursuant to 66 Pa. C.S. § 1329(c)(2), the ratemaking rate base of the Willistown Township wastewater system assets is \$17,500,000.

9. That the Commission's Secretary shall issue a Certificate of Public Convenience evidencing Aqua Pennsylvania Wastewater, Inc.'s right under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3) and 1329(c)(2), subject to the conditions set forth in this Opinion and Order, to: (a) acquire, by sale, the wastewater system assets of Willistown Township; (b) the right of Aqua Pennsylvania Wastewater, Inc., to begin to offer, render, furnish and supply wastewater service to the public in portions of Willistown Township, Chester County, Pennsylvania; and (c) allow Aqua Pennsylvania Wastewater, Inc., to incorporate the ratemaking rate base of \$17,500,000 for the Willistown Township wastewater system assets in its next base rate case pursuant to 66 Pa. C.S. § 1329(c)(2).

10. That the Commission's Secretary shall issue a Certificate of Filing under Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, for each of the following agreements:

a) Asset Purchase Agreement between the Township of Willistown (as Seller) and Aqua Pennsylvania Wastewater, Inc. (as Buyer) dated as of January 20, 2021, attached to the Application as Exhibit B.

b) Valley Forge Treatment Plant Agreement, dated November 1, 1970, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; and Easttown Township Municipal Authority, attached to the Application as Exhibit F1.

c) Composite Amendment No. 1 to Valley Creek Trunk Sewer Agreement, East Whiteland Trunk Line Agreement, and Valley Forge Sewage Treatment Plant Agreement dated December 1, 1974, by and between Tredyffrin Township Municipal Authority, Township of Tredyffrin, Township of Schuylkill, Township of East Pikeland, Township of Charlestown, Township of East Whiteland, Township of Willistown, Township of Easttown, Borough of Malvern, Valley Forge Sewer Authority, Malvern Municipal Authority, East Whiteland Municipal Authority, and Easttown Municipal Authority, attached to the Application as Exhibit F2.

d) Amendment to Valley Forge Sewer Treatment Plant Agreement, dated January 1, 1983, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Easttown Municipal Authority; Tredyffrin Township

Municipal Authority; and Willistown Township Municipal Authority, attached to the Application as Exhibit F3.

e) Supplement to Valley Forge Sewage Treatment Plant Agreement For the Purpose of Complying with United States Environmental Protection Agency Regulations, dated December 2, 1985, by and between Valley Forge Sewer Authority; the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; Malvern Municipal Authority; East Whiteland Municipal Authority; Tredyffrin Township Municipal Authority; Easttown Township Municipal Authority, and Willistown Township Municipal Authority, attached to the Application as Exhibit F4.

f) Addendum to Valley Forge Sewage Treatment Plant Agreement for the Purpose of Permitting and Administering the Sale of Reserved Capacity Among the Parties, dated October 4, 1994, by and between Valley Forge Sewer Authority, the Townships of Schuylkill, East Pikeland, Charlestown, East Whiteland, Tredyffrin, Willistown, and Easttown; the Borough of Malvern; East Whiteland Township Municipal Authority; Easttown Municipal Authority; and Tredyffrin Township Municipal Authority, attached to the Application as Exhibit F5.

g) Inter-Municipal Sewer Line Extension Agreement, dated May 17, 1988, by and between the Borough of Malvern and the Township of Willistown, attached to the Application as Exhibit F6.

h) Intermunicipal Sewer Line Connection and Use Agreement, dated August 20, 1996, by and between the borough of Malvern and the Township of Willistown, attached to the Application as Exhibit F7.

i) Inter-Municipal Sewer Agreement Village at Pennwyck, dated 2000, by and between the Borough of Malvern and the Township of Willistown, attached to the Application as Exhibit F8.

j) Sewage Treatment Agreement, dated October 11, 1988, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown, attached to the Application as Exhibit F9.

k) Sewage Treatment Agreement, dated December 23, 1996, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown — (Phillips), attached to the Application as Exhibit F10.

l) Sewage Treatment Agreement, dated December 23, 1996, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown — (Willow Pond), attached to the Application as Exhibit F11.

m) Sewage Treatment Agreement, dated 2003, by and between East Goshen Township, East Goshen Municipal Authority, and the Township of Willistown, attached to the Application as Exhibit F12.

n) Sanitary Sewage Cross-Easement Agreement, dated March 18, 1993, by and between Okehocking Associates and Quaker Real Estate, Inc., attached to the Application as Exhibit F13.

o) Deed of Dedication and Grant of Easements Sewage Treatment System for Phase 1, dated December 11, 1999, by and between Okehocking Associates, Quaker Sewer, Inc., and the Township of Willistown, attached to the Application as Exhibit F14.

p) Woodview Development Agreement, dated September 14, 1993, by and between the Township of Willistown, East Whiteland Township, and East Whiteland Township Municipal Authority, attached to the Application as Exhibit F15.

q) Wastewater Service Agreement, dated December 1999, by and between the Township of Easttown, Easttown Municipal Authority, and the Township of Willistown, attached to the Application as Exhibit F16.

r) Purchase of Sewage Capacity Agreement, dated August 3, 2009, by and between the Devereux Foundation and the Township of Willistown, attached to the Application as Exhibit F17.

s) Sewer Construction and Maintenance Agreement, dated August 3, 2009, by and between The Devereux Foundation and the Township of Willistown, attached to the Application as Exhibit F18.

t) Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority, attached to the Application as Exhibit F19.

11. That the Commission's Secretary shall issue a Certificate pursuant to Section 2102 of the Public Utility Code, 66 Pa. C.S. § 2102, approving the assignment from Willistown Township to Aqua Pennsylvania Wastewater, Inc., of the Wastewater Conveyance Agreement, dated November 20, 2018, by and between Aqua Resources, Inc., Tredyffrin Township, East Whiteland Township, Willistown Township, Charlestown Township, Schuylkill Township, East Pikeland Township, Easttown Township, Easttown

Township Municipal Authority, The Borough of Malvern, Tredyffrin Township Municipal Authority, and Valley Forge Sewer Authority, attached to the Application as Exhibit F19.

12. That, after closing of the acquisition, Aqua Pennsylvania Wastewater, Inc., shall file with the Commission a compliance tariff supplement to be effective on one day's notice, consistent in form and content with the Tariff Supplement attached to the Application, filed on August 3, 2021, implementing rates for Willistown Township customers post-closing.

13. That the Commission's Secretary, upon the receipt of written notice from Aqua Pennsylvania Wastewater, Inc., filed with the Secretary's Bureau notifying the Commission of the closing of the acquisition and upon the completion of Ordering Paragraph No. 12 above, mark this docket closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 8, 2022

ORDER ENTERED: **July 8, 2022**