

November 12, 2024

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2024-3050056
Isaac Scholle v. Aqua Pennsylvania Wastewater, Inc.
Main Brief of Aqua**

Dear Secretary Chiavetta:

Attached for filing is the Main Brief of Aqua Pennsylvania Wastewater, Inc., in the above-referenced proceeding.

A copy of the Main Brief has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosure

cc: The Hon. Eranda Vero, PA Public Utility Commission [w/encl.]
Heather S. D. Harrison, Aqua Pennsylvania, Inc. [w/encl.]
Isaac Scholle [w/encl.]

**Re: Docket No. C-2024-3050056
Isaac Scholle v. Aqua Pennsylvania Wastewater, Inc.
Main Brief of Aqua**

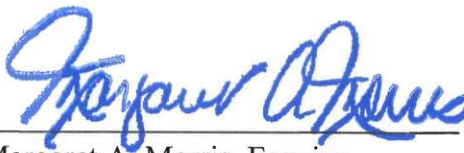
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

Isaac Scholle
isaac.scholle@gmail.com

Dated: November 12, 2024


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ISAAC SCHOLLE

v.

AQUA PENNSYLVANIA WASTEWATER, INC. :

:
:
:
:
:

Docket No. C-2024-3050056

MAIN BRIEF OF
AQUA PENNSYLVANIA WASTEWATER, INC.

Date: November 12, 2024

Margaret A. Morris, Esq.
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
(215) 495-6600 fax
mmorris@regerlaw.com

Counsel for Aqua Pennsylvania Wastewater, Inc.

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I. STATEMENT OF THE CASE

Introduction

The above-captioned proceeding concerns the Formal Complaint filed by Isaac Scholle (Complainant) alleging incorrect charges billed by Aqua Pennsylvania Wastewater, Inc. (Respondent, Company or Aqua) for residential wastewater service in the Complainant's name to 1401 Silo Road, Yardley, Pennsylvania (Service Location) under Account No. 002896707-1520698 (Account).

For the reasons set forth below, the Formal Complaint should be dismissed and the relief requested by the Complainant should be denied.

History of the Proceeding

On July 12, 2024, the Complainant filed a Formal Complaint against Aqua alleging there are incorrect charges on his Account since the terminology on his monthly Aqua bill reflects a Customer Charge and the terminology in the existing Rate Zone 12 Tariff reflects a minimum charge. Complaint at ¶4. He requests the following relief: (1) refund all overpayments due to incorrect charges; (2) force Aqua Pennsylvania Wastewater to bill correctly in the future, and (3) fine Aqua Pennsylvania Wastewater for not following the tariff schedule. Complaint at ¶5.

On July 31, 2024, Aqua filed an Answer and New Matter denying that the material allegations arguing that the Company's minimum charge reflected in its Commission-approved Rate Zone 12 Tariff is defined the same as the customer charge since there is no authorized usage allowance for the Complainant.

On August 5, 2024, the Commission issued a Call-In Telephonic Hearing Notice scheduling the matter for an evidentiary hearing on October 8, 2024, before the Honorable Eranda Vero (Judge Vero). When the hearing convened on October 8, 2024, the parties entered into settlement discussions and when those discussions did not bear fruit, the parties agreed that the dispositive issue was a legal one and an evidentiary hearing was not required. The

Respondent's Proposed Exhibits 1-3 were admitted into the record. Judge Vero directed that each party file simultaneous Main Briefs on November 12, 2024 and Reply Briefs on December 31, 2024.

II. SUMMARY OF ARGUMENT

The Complainant argues that the Company "incorrectly charges a Customer Charge of \$53.49 per month in addition to a consumption charge despite the tariff schedule for rate zone 12 mentioning a minimum charge of \$53.49 and not a Customer Charge of \$53.49." Complaint at ¶4. The Complainant alleges that because Rate Zone 12 uses the terminology "minimum charge" and the issued monthly bill uses the terminology "customer charge," his Account is due a refund and Aqua should be fined.

The Respondent contends the allegation that the Account was not correctly charged is without merit. The Company's definition of customer charge does not contain any usage allowance. Aqua Exhibit 3. The Company's definition of minimum charge does reflect an allowance. Aqua Exhibit 3. Lower Makefield Township's terminology minimum charge, which had to be adopted and implemented in the Company's tariff at the time of acquisition, did NOT include an allowance for residential customers. Judicial Notice 1. To use the terminology "minimum charge" on the Aqua issued monthly bills to the Complainant would be misleading and incorrect since there is no authorized usage allowance for former Lower Makefield residential customers. Judicial Notice 1.

The Account was properly billed and all charges are correct as rendered. No refund or adjustment is warranted. By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982). The Complainant is responsible for the monthly charge of \$53.49 regardless of whether it is labeled customer charge or minimum charge.

III. LEGAL BURDEN

Section 701 of the Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹

To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint.² Such a showing must be by a preponderance of the evidence.³ A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party.⁴ Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.⁵ Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁶ More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁷

Under these principles, the Complainant, as the party seeking relief, has the burden of proof. In this case, the Complainant has the burden of proving, by a preponderance of the evidence, that Aqua is responsible or accountable for the problem described in the Complaint, i.e., incorrect charges on the Account.⁸

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the

¹ 66 Pa.C.S. § 701.

² *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

³ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa. Cmwlt. 218; 221-222, 578 A.2d 600; 602 (1990), app. denied, 602 A.2d 863 (1992).

⁴ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

⁵ *Mill v. Pa. Pub. Util. Comm'n*, 67 Pa. Cmwlt. 597, 447 A.2d 1100 (1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa. Cmwlt. 21, 623 A.2d 6 (1993).

⁶ *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992).

⁷ *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 85 Pa. Cmwlt. 23, 480 A.2d 382 (1984).

⁸ See, *Feinstein, supra*.

burden of persuasion, to rebut the evidence of the Complainant shifts to the Company. If the evidence presented by Aqua is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now must provide some additional evidence to rebut the evidence of the Respondent.⁹

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission.¹⁰

Aqua contends that the Complainant has not carried his burden of proof that the Account was not properly billed due to use of the terminology reflected on the issued monthly bill. Aqua's definition of "minimum charge" includes a usage allowance. Aqua Exhibit 3. The Lower Makefield system acquired by Aqua did not authorize any usage allowance for residential customers. Judicial Notice 1. The Respondent's Compliance Tariff in the Acquisition docket, authorized by the Commission, reflected that there was no allowance for residential customers previously served by Lower Makefield Township. Judicial Notice 3.

IV. ADMITTED EXHIBITS

At the evidentiary hearing, Judge Vero admitted the three Proposed Exhibits submitted by Aqua, identified as follows:

Aqua Exhibit 1 - Customer Screen

Aqua Exhibit 2 – Relevant Tariff Provisions

Aqua Exhibit 3 – Current Monthly Bill, Dated 9/05/2024

V. ARGUMENT

The Account was established in the Complainant's name effective April 26, 2024. Aqua Exhibit 1. The Service Location is located in the Lower Makefield Division. Aqua Exhibit 1. The Account is billed pursuant to the Company's Rate Zone 12 Tariff, effective May 19, 2022, for monthly residential wastewater service, consisting of a recurring monthly charge of \$53.49

⁹ *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

¹⁰ *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

and consumption charges billed in 1,000 gallon increments. Aqua Exhibit 2. The issued monthly bill reflects the definition/explanation of the customer charge and the minimum charge. “Customer charge” is defined as the “charge covers the cost of having wastewater service available, including operations, maintenance, and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater.” “Minimum charge” is defined as “This charge includes a wastewater allowance, plus the cost of having service available, including operations, maintenance, and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater.” The Complainant’s issued monthly bills correctly reflect the term “customer charge” since there is no usage allowance for residential customers previously served by Lower Makefield Township. Aqua Exhibit 3, Judicial Notice 1 and 3.

By way of background, on May 14, 2021, Aqua filed an Application under Sections 507, 1102, and 1329 of the Pennsylvania Public Utility Code (Code) seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of Lower Makefield Township; (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 Lower Makefield Township’s wastewater system assets pursuant to Section 1329(c)(2) of the Code, 66 Pa. C.S. § 1329(c)(2). Application at ¶ 3. Aqua also requested approval of the Asset Purchase Agreement, dated September 17, 2020, as well as other municipal agreements, pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, and requested that the Commission issue an order and Certificate of Public Convenience approving and addressing the items requested in its Application. Application at ¶ 5. Judicial Notice 1.

The Commission approved the acquisition by *Opinion and Order*, entered January 13, 2022, and directed the Company to file, after the closing, a Compliance Tariff implementing the existing rates of Lower Makefield Township. Judicial Notice 2. Aqua acquired the Lower Makefield system on March 4, 2022. On March 7, 2022, the Company filed the Compliance Tariff reflecting Lower Makefield’s then existing tariff which stated the “minimum charge” for residential customers even though the Lower Makefield Township’s Tariff did not offer any usage allowance to residential customers. The Township’s definition of minimum charge was

consistent with Aqua’s definition of a customer charge, i.e., the amount billed each month whether you use wastewater services or not. Judicial Notice 3. By Secretarial Letter, dated March 9, 2022, the Proposed Tariff for Lower Makefield was approved and was effective March 8, 2022. Judicial Notice 4.

Aqua’s Commission-approved Tariff provides the rate and rules for service that it provides. Lower Makefield is part of Rate Zone 12. Aqua Exhibit 2. Residential Customers are billed a flat charge per month of \$53.49 plus consumption charges billed in increments of 1,000 gallons. Aqua Exhibit 2. For certain Commercial, Industrial and Public Customers, they are billed a flat charge per month of \$99.22 plus consumption charges billed in increments of 1,000 gallons. For those Commercial, Industrial and Public Customers, the first 4,400 gallons are included in the billed flat charge of \$99.22. Aqua Exhibit 2. The existing rates of Lower Makefield, adopted by the Company and authorized by the Commission, did not include a usage allowance for residential customers. To use the terminology “minimum charge” on the issued monthly bill, when there is no usage allowance, would be misleading to customers. Aqua correctly uses the term “customer charge” on the Complainant’s issued bills. The Respondent specifically avers that the Account was properly billed consistent with the Rate Zone 12 Tariff and Aqua’s definitions. All bills are correct as rendered.

The Company’s last approved rate application was filed in 2021. By the time of the closing for the Lower Makefield system in March 2022, the rate case proceeding record was closed.¹¹ The Company’s 2024 pending rate case, at Docket No. R-2024-3047824, reflects the Lower Makefield’s acquisition and Aqua’s request that the Lower Makefield system be moved to Rate Zone 1 where there is no usage allowance and all residential customers are billed a customer charge (2024 Rate Case). Judicial Notice 5. A Non-unanimous Settlement Agreement was submitted to the presiding judges in the 2024 Rate Case reflecting that Lower Makefield will move to Rate Zone 1. Judicial Notice 6.

¹¹ Docket No. R-2021-3027486, *Opinion and Order* was entered May 16, 2022.

VI. PROPOSED FINDINGS OF FACT

1. The Complainant became a customer of Aqua effective April 26, 2024. Aqua Exhibit 1.

2. The Complainant's residence is located in the Lower Makefield Division of Aqua. Aqua Exhibit 1.

3. Neither the Code or Commission regulations define the terms customer charge or minimum charge.

4. Aqua's Commission-approved Tariff does not define the term "customer charge" or "minimum charge." Aqua Exhibit 2.

5. The Company's monthly bill defines "customer charge" as "this charge covers the cost of having wastewater service available, including operations, maintenance and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater." Aqua Exhibit 3, page 2.

6. The Company's issued monthly bill defines "minimum charge" as "this charge includes a wastewater allowance, plus the cost of having service available, including operations, maintenance and other necessary services that are not covered under the consumption charge. It is billed whether or not you use any wastewater." Aqua Exhibit 3, page 2.

7. The Lower Makefield Township Tariff used the terminology "minimum charge" for residential customers but did not authorize any usage allowance for those residential customers. Judicial Notice Exhibits 1 and 5.

8. The issued monthly bill for the Complainant accurately reflects that there is no usage allowance and the minimum cost, regardless of any consumption charges, is \$53.49. Aqua Exhibit 3.

9. In the 2024 Rate Case, the Company has proposed that Lower Makefield be moved to Rate Zone 1. Judicial Notice 5 and 6.

VII. PROPOSED ORDERING PARAGRAPHS

1. That the Formal Complaint filed by Isaac Scholle against Aqua Pennsylvania Wastewater, Inc. at Docket No. C-2024-3050056 is dismissed.

2. That the docket at Docket No. C-2024-3050056 is marked closed.

VIII. PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. §§ 102, 107, 1501.

2. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

3. To satisfy the burden of proof, the complainant must demonstrate that the utility violated the Public Utility Code or a regulations or order of the Commission. 66 Pa.C.S. § 701. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990).

4. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602, alloc. den., 602 A.2d 863 (1992).

5. Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

6. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

7. Assertions, personal opinions or perceptions do not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

8. A public utility is required to provide adequate, efficient, safe, and reasonable service. 66 Pa.C.S. §§ 102 and 1501.

9. The Complainant has failed to carry his burden of proof establishing that Aqua violated the Public Utility Code, or a Commission regulation or order of the Commission or its Commission-Approved Tariff. 66 Pa.C.S. § 701, 332.

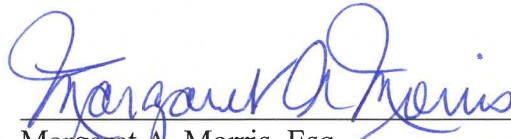
10. Aqua did not provide unreasonable or inadequate service in violation of 66 Pa.C.S. § 1501.

IX. CONCLUSION

The Complainant has failed to establish by a preponderance of the evidence that the Respondent violated the Code, Commission regulation or order. Specifically, the Complainant has not met his burden of proof that the Account was not properly billed and that he is due a refund. Accordingly, the Formal Complaint must be dismissed by the Commission with prejudice.

WHEREFORE, for the foregoing reasons, Aqua Pennsylvania Wastewater, Inc. respectfully requests that this Honorable Court dismiss with prejudice the Formal Complaint of Isaac Scholle at Docket No. C-2024-3050056 in its entirety.

Respectfully submitted,



Margaret A. Morris, Esq.
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
(215) 495-6600 fax
mmorris@regerlaw.com

Date: November 12, 2024

Counsel for Aqua Pennsylvania Wastewater, Inc.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania : Docket No. A-2021-3024267
Wastewater, Inc. (hereinafter referred to as :
"Aqua" or "Applicant") pursuant to Sections :
1102 and 1329 of the Public Utility Code for: :

(1) approval of the acquisition by Aqua of :
the wastewater system assets of Lower :
Makefield Township ("LMT" or :
"Township") situated within the Township of :
Lower Makefield and Yardley Borough, :
Bucks County, Pennsylvania; :

(2) approval of the right of Aqua to begin :
to offer, render, furnish and supply :
wastewater service to the public in Lower :
Makefield Township, Bucks County, :
Pennsylvania; and :
:

(3) an order approving the acquisition :
that includes the ratemaking rate base of the :
Lower Makefield Township wastewater :
system assets pursuant to Section 1329(c)(2) :
of the Public Utility Code. :

Request for Approval of Contracts, :
including Assignments of Contracts, between :
Aqua and Lower Makefield Township, :
Pursuant to Section 507 of the Public Utility :
Code :

APPLICATION

To the Pennsylvania Public Utility Commission ("Commission"):

I. BACKGROUND

1. The name and address of Applicant are:

Aqua Pennsylvania Wastewater, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

2. The name, address and contact information for Applicant's counsel are:

Thomas T. Niesen, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com
Tel. No. (717) 255-7600
Fax No. (717) 236-8278

3. Pursuant to Sections 1102 and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102 and 1329, Applicant hereby requests that the Commission: (1) approve Aqua's acquisition of the wastewater system assets ("Assets") of LMT; (2) approve the right of Aqua to begin providing wastewater service in the requested territory, as shown as the area outlined in red on the map attached hereto as **Exhibit A** (the "Requested Territory");¹ and (3) include, in its Order approving the acquisition, the ratemaking rate base of the Assets as determined under Section 1329(c)(2) of the Public Utility Code.

4. The map of the Requested Territory includes a north arrow depicting map orientation, a graphic scale, the municipal boundaries of LMT and identification and depiction of all private and public roads relative to the Requested Territory. A bearing and angle description of the Requested Territory is included on Exhibit A. The Requested Territory is 17.5 square miles (11,205 acres).

5. Aqua and LMT have reached an agreement regarding the acquisition of the Township Assets, as evidenced by the *Asset Purchase Agreement*, dated as of September 17, 2020 and attached hereto as **Exhibit B** (the "Agreement"). Applicant respectfully requests that the Commission issue an *Order* and *Certificates of Public Convenience* approving and addressing the items requested in this Application.

6. An **Application Filing Checklist** identifying topics addressed and the section, paragraph and page number where they can be found is included with this Application.

¹ A CONFIDENTIAL facilities map is included with the Asset Inventory as addressed *infra*.

II. AFFECTED ENTITIES

7. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 45,000 customer accounts, as reflected in documents already on file with the Commission. Aqua's existing service territories cover various Counties throughout Pennsylvania including parts of Bucks County.

8. LMT is a duly organized and validly existing Township of the Second Class. Township owns the sanitary wastewater collection system which is operated by the Municipal Sewer Authority of the Township of Lower Makefield ("LMTSA") which provides sanitary wastewater service to approximately 11,151 customers in LMT.

9. Applicant incorporates into this Application other information on file with the Commission that establishes the fact that Aqua is qualified to provide adequate public wastewater service. Aqua will supplement this Application with all additional information the Commission may require. Financial Statements of Aqua for 2020 are attached hereto as **Exhibit C**.

III. PLANT-IN-SERVICE

10. Aqua will acquire LMT's wastewater collection system assets as defined in the Agreement. All assets are located in the Township except for a portion of a main that collects wastewater from a small segment of residents in Yardley Borough.²

11. A Sewage Facilities Assessment with Original Cost Estimate of the LMT Sanitary Sewer System, prepared by Ebert Engineering, Inc., Consulting Engineers ("Asset Inventory"), is

² The main is located on University Blvd. and is owned by LMT which loops into, then out of, Yardley Borough. The residents in Yardley Borough that are connected to this main are billed by Yardley Borough.

attached hereto as **Exhibit D**. The facilities map included with the Asset Inventory is considered CONFIDENTIAL.

12. The Asset Inventory explains that the LMT collection system has approximately 150 miles of gravity sewer collection mains, in sizes ranging from 4 inches to 30 inches in diameter with 14 dedicated pump stations. The Asset Inventory also shows the System has approximately 7 miles of force mains and 1 mile of low-pressure mains sized 1.5 to 12 inches.

13. A list of non-depreciable property is presented in Appendix I of the Asset Inventory. The LMT System has no plant held for future use and none is included in the Asset Inventory.

14. All component facilities are installed. The approximate time of installation of component facilities is addressed in Section IV of the Asset Inventory and in Mr. Bubel's testimony.

15. LMT does not own a wastewater treatment plant. Wastewater treatment is mainly provided by the Municipal Authority of the Borough of Morrisville ("MABM") at its Wastewater Treatment Plant in the Borough of Morrisville ("MABM WWTP") pursuant to a Wastewater Service Agreement, dated September 1, 1977, Amended as of February 18, 1982, October 8, 1991, and June 24, 1993, by and between LMT, LMTSA, MABM, Yardley Borough, and Yardley Borough Sewer Authority. Chapter 94 Reports of Lower Makefield Township for the Falls, Morrisville, Neshaminy, and Yardley service areas are attached hereto as **Exhibit E1**. Certain flows of LMT flow into Yardley Borough and are pumped back into LMT which then flows to the MABM WWTP. A copy of MABM's 2020 Chapter 94 Report to the Department of Environmental Protection ("DEP") for the MABM WWTP is attached hereto as **Exhibit E2**. The MABM WWTP Plant has a permitted capacity of 7.1 MGD with EL between EL 5 and EL 12.

16. Certain flow that is collected in LMT flows is sent through the Neshaminy Interceptor owned by the Bucks County Water and Sewer Authority ("BCWSA") which is ultimately transmitted

to the Philadelphia Water Department's ("PWD") Northeast Water Pollution Control Plant ("NEWPCP"). Certain residents in LMT known as the Falls Township Service Area are served and billed by the Township of Falls Authority ("TOFA").³ Also, certain flow from the Newtown Joint Municipal Authority is transported to LMT's Core Creek Interceptor which is then conveyed to BCWSA and ultimately treated at PWD's NEWPCP. A copy of PWD's 2020 Chapter 94 Report to the DEP for the NEWPCP is attached hereto as Exhibit E3. The PWD NEWPCP Plant has a permitted capacity of 210 MGD with EL between EL 5 and EL 18.

17. Elevation of the LMT collection system and the service area varies:

EL 176 to EL 286 along the western boundary.

EL 16 to EL 176 along the southern boundary.

EL 27 to EL 286 along the northern boundary.

EL 16 to EL 27 along the eastern boundary.

18. Water service in the Requested Territory is provided by Pennsylvania American Water Company, the MABM and private wells.

19. The original cost, by year and major plant category, of LMT's used and useful plant in service is \$32,003,924 with a related calculation depreciation reserve of \$12,195,650.

20. Tentative journal entries to record the transaction are presented in Section IV.

IV. ASSET PURCHASE AGREEMENT

21. The Asset Purchase Agreement is dated September 17, 2020. The purchase price is Fifty-Three Million Dollars (\$53,000,000.00).

22. The purchase price is based on arm's length negotiations. Aqua and Township are not affiliated with each other.

³ The Falls Township Service Area is not part of the Requested Territory.

23. Aqua will use short term debt initially for the purchase of the assets with the expectation that the short term debt will be converted to long term debt and equity capital at a later date.

24. The wastewater system assets to be transferred are the “Acquired Assets” and have the meaning specified in Section 2.01 of the Agreement. The Assets include the assets, properties and rights of the Township used in the system and all pipes, pumping stations, generators, manholes and pipelines and billing and collections related assets necessary to run the system.

25. Acquired Assets also include the eighteen contracts identified on Schedule 4.15 of the Agreement to which Township is a party (the “Assigned Contracts”). The Assigned Contracts are attached hereto as Exhibit F1, Exhibit F2, Exhibit F3, Exhibit F4, Exhibit F5, Exhibit F6, Exhibit F7, Exhibit F8, Exhibit F9, Exhibit F10, Exhibit F11, Exhibit F12, Exhibit F13, Exhibit F14, Exhibit F15, Exhibit F16, Exhibit F17, and Exhibit F18, respectively:⁴

F1 – Sewage Transportation Agreement, dated November 20, 2015, by and among the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township, and Yardley Borough Sewer Authority

F2 – Agreement, dated September 1, 1977, by and among the Municipal Authority of the Borough of Morrisville, Borough of Yardley, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

F3 – Agreement, dated February 18, 1982 by and between the Municipal Authority of the Borough of Morrisville, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

F4 – Amendment Agreement, dated October 8, 1991, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority⁵

⁴ As noted below, Exhibits F4, F6, F8, F13 and F17 are missing certain pages and/or exhibits. The Company and LMT have sought to obtain the missing items from the parties to the contracts through Right to Know (“RTK”) requests and have exhausted all avenues to obtain the missing pages/exhibits. No party to these agreements possesses these missing items. Should the documents/information requested via RTK be located and become available, Aqua will supplement the Application and record accordingly.

⁵ Exhibit A to F4 is missing. A RTK request was sent to the Borough of Yardley (“Yardley”) on January 27, 2021 and a response was received on January 28, 2021 indicating that Exhibit A could not be located. The RTK request and the Yardley response are included with Exhibit F4. A RTK request was sent to the MABM on January 27, 2021 and

F5 – Second Amendment Agreement, dated June 24, 1993, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority

F6 – Agreement, dated March 13, 1965, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield⁶

F7 – First Supplemental Agreement, dated February 6, 1975, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

F8 – Agreement, dated December 12, 1988, by and between the Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and the Township of Falls Authority⁷

F9 – Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority

F10 – Agreement, dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township Board of Supervisors, and Bucks County Water and Sewer Authority

F11 – Addendum Agreement to be attached and made part of the Agreement dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, and Lower Makefield Township Board of Supervisors

F12 – Agreement, dated October 23, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield

a response was received on March 17, 2021 indicating that Exhibit A could not be located. The RTK request and the MABM response are included with Exhibit F4.

⁶ Exhibits A and B and a signature page for LMTSA to F6 are missing. A RTK request was sent to the TOFA on January 26, 2021 and a response was received on March 8, 2021 indicating that TOFA does not have a copy of this agreement. The RTK request and the TOFA response are included with Exhibit F6.

⁷ Exhibits A and B and an Engineering Report to F8 are missing. A RTK request was sent to the TOFA on January 26, 2021 and a response was received on March 8, 2021 indicating that while TOFA located the agreement, the missing items could not be located. The RTK request and the TOFA response are included with Exhibit F8.

F13 – Agreement, dated October 28, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield⁸

F14 – Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield

F15 – Agreement, dated January 28, 1980, by and between Middletown Township, Lower Makefield Township, the Municipal Sewer Authority of the Township of Lower Makefield, and the Bucks County Water and Sewer Authority

F16 – Addendum Agreement, dated April 11, 1989, by and between Middletown Township, Lower Makefield Township, and the Municipal Sewer Authority of the Township of Lower Makefield

F17 – Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield⁹

F18 – Water Service Termination Agreement, dated March 17, 2005, by and between Lower Makefield Township and the Municipal Authority of the Borough of Morrisville

26. Acquired Assets also include all Authorizations and Permits of or held by LMT (to the extent transferrable to Aqua under applicable Law), including all Authorizations and Permits which are environmental permits, other operating permits and those items listed or described on Schedule 4.13 of the Agreement.

27. “Excluded Assets,” which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, contracts that are not Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Schedule 2.02(i) of the Agreement.

⁸ Exhibits A through D to F13 are missing. A RTK request was sent to BCWSA on January 26, 2021 and a response was received on February 25, 2021 indicating that Exhibits A through D could not be located. The RTK request and the BCWSA response are included with Exhibit F13.

⁹ Exhibit A to F17 is missing. A RTK request was sent to Newtown Joint Municipal Authority (“NJMA”) on January 27, 2021 and a response was received on January 29, 2021 indicating that Exhibit A could not be located. The RTK request and the NJMA response are included with Exhibit F17.

28. "Assumed Liabilities" has the meaning specified in Section 2.04(a) of the Agreement and include all liabilities and obligations arising out of or relating to Aqua's ownership or operation of the wastewater system and the Acquired Assets on or after Closing.

29. The tentative journal entries to record the transfer in Aqua's accounts are:

	Debit	Credit
Utility Plant Purchased	\$53,000,000	
Cash/Short Term Debt		\$53,000,000

V. CUSTOMERS

30. LMT provides wastewater service to 11,151 customers of which 10,916 are residential and 235 are commercial.¹⁰ LMT does not have any industrial customers.

31. Wastewater flow for LMT customers was approximately 654,207,560 gallons for 2020. A breakdown of gallons treated by customer class is presented in Mr. Bubel's testimony.

32. Township projects growth of 1,272 Equivalent Dwelling Units over the next five years.

VI. RATES

33. After Closing, Aqua will implement LMT's sanitary wastewater rates in effect at closing as reflected on Schedule 7.03 of the Agreement. Aqua and LMT have agreed that rates shall not be increased until after the second anniversary of the Closing Date.¹¹ The Township presently bills on a quarterly basis. Aqua will convert certain customers who receive water service from Pennsylvania-American Water Company to monthly billing, and those customers that receive water service from MABM will continue with quarterly billing after closing. A schedule of rates tariff page

¹⁰ Twin homes, apartments, townhouses, duplexes, and condominiums are considered residential customers. Public, parochial and private schools are considered commercial customers in LMT.

¹¹ As explained in the testimony of Aqua witness Packer, the two-year rate freeze is not a rate stabilization plan.

implementing monthly/quarterly rates for Township customers post-closing is attached hereto as **Exhibit G.**

34. As presented in Schedule 7.03 of the Agreement, LMT has metered rates for sewer customers and flat rates for customers on private wells. Metered residential customers are charged a minimum bill of \$160.48 per quarter and a rate per 1,000 gallons as follows: First 10,000 Gallons \$4.73; Second 10,000 Gallons \$4.60; Third 10,000 Gallons \$4.81; Fourth 10,000 Gallons \$5.29; Fifth 10,000 Gallons \$5.90; Excess over 50,000 Gallons \$6.77. For other residential customers including twin-homes, apartments, townhomes, duplexes, condominiums, or other residential living arrangements rates are established as follows: (1) for a building with one meter and no more than two dwelling units \$269.22 per quarter, plus consumption for the building; (2) for a building with no water meter \$269.22 per quarter; and (3) apartment complexes, a per dwelling unit charge of \$160.48 per quarter, plus consumption determined by taking the total water consumption for the apartment complex divided by the number of dwelling units resulting in a consumption amount per dwelling unit. Dwellings with no water meter are charged \$269.22 per quarter. Commercial customers (which includes public, parochial, and private schools) are charged \$22.93 per 1,000 gallons for consumption, however, no bill to a commercial customer shall be less than \$297.65. A copy of LMT's currently effective Rate Ordinance is attached hereto as **Exhibit H.**

35. Upon Commission approval of this Application and completion of the proposed transaction, Aqua will begin to provide wastewater service in its name to the customers in the Requested Territory. It will implement its *Rules and Regulations* to govern the provision of wastewater service in the Requested Territory, as those *Rules and Regulations* are in effect from time to time for Aqua.

36. Copies of the notices that will be sent to customers of Aqua and to customers of LMT describing the filing and the anticipated effect on rates are attached hereto as **Exhibit I1** and **Exhibit I2**.

VII. COST OF SERVICE

37. Copies of LMT's Annual Financial Report for 2018 and 2019 are attached hereto as **Exhibit J1** and **Exhibit J2**. For the year ended December 31, 2019, the Township had approximately \$49,278,589 of long-term debt.

38. Copies of LMT's Adopted Annual Budgets for 2020 and 2021 are attached hereto as **Exhibit J3** and **Exhibit J4**.

39. A copy of LMT's most recent annual report filed with the Department of Community and Economic Development is attached hereto as **Exhibit K**.

40. Aqua projects annual revenue of \$10,038,836 from the LMT customers based on LMT's current rate schedule, calculated as follows:

	<i>Rate</i>	<i>Customers</i>		<i>Gallons</i>	<i>Revenue</i>
	<i>2020</i>	<i>2020</i>	<i>Method</i>	<i>2020</i>	<i>2020</i>
Service Charges:					
Residential					
Minimum Fee Per Quarter	\$160.48	10,916			\$7,007,199
first 10,000	\$4.37		per 1,000 Gallons Water Used	436,640,000	\$1,908,117
second 10,000	\$4.60		per 1,000 Gallons Water Used	178,257,497	\$819,984
third 10,000	\$4.81		per 1,000 Gallons Water Used		
forth 10,000	\$5.29		per 1,000 Gallons Water Used		
fifth 10,000	\$5.90		per 1,000 Gallons Water Used		
excess over 50,000 gallons	\$6.77		per 1,000 Gallons Water Used		
Subtotal Residential		10,916		614,897,497	\$9,735,300
Commercial	\$22.93	235	per 1,000 Gallons Water Used	13,237,524	\$303,536
Total Revenue at Present Rates		11,151		628,135,020	\$10,038,836

41. Aqua estimates annual operating and maintenance expenses of \$6,194,610 based on LMT's operating expenses presented in the 2019 financial statements, adjusted by the Company.

VIII. PROOF OF COMPLIANCE

42. Aqua will operate and manage the LMT wastewater system as a standalone collection system, but within Aqua's footprint, from its Willow Grove Division Office in Willow Grove, Pennsylvania. The system is approximately 14 miles from the Willow Grove Division Office. Mr. Matthew Miller will be the assigned Certified Wastewater Operator for the system. Mr. Miller's currently effective Wastewater Operator's License is attached hereto as **Exhibit L**.

43. The WQM Permit for the MABM WWTP issued in 2010 is attached as **Exhibit M1**. A WQM permit for the PWD NEWPCP is attached as **Exhibit M2**. The MABM WWTP and PWD NEWPCP are not part of the acquisition transaction. The National Pollution Discharge Elimination System Permits for the MABM WWTP and the PWD NEWPCP are attached hereto as **Exhibit N1** and **Exhibit N2**, respectively. Copies of Discharge Monitoring Reports ("DMR") for the MABM WWTP and the PWD NEWPCP, from January 2016 through December 2020, are attached hereto as **Exhibit N3** and **Exhibit N4**, respectively.

44. Notices of Violation/narrative reports issued by DEP to LMT over the past five years are attached hereto as **Exhibit O1** (Heacock Pump Station) and **Exhibit O2** (Esther Land and Irving Road). The explanations for the NOVs and corrective actions are included in the exhibits. LMT's current Corrective Action Plan ("CAP") related to the Neshaminy Interceptor is attached hereto as **Exhibit O3**. LMT's most recent update to its Connection Management Plan ("CMP") is attached hereto as **Exhibit O4**.

45. Aqua is a Class A utility. It is in good standing with DEP and in general compliance with DEP with regard to the provision of wastewater service.

46. The service area comprising the Requested Territory is consistent with LMT's service area mapped by the Township and in compliance with DEP approved Act 537 Plans. A copy of LMT's Act 537 Plan documents is attached hereto as Exhibit P1 (1999 Plan) and Exhibit P2 (Special Study 2018). A copy of the Morrisville Act 537 Plan is attached hereto as Exhibit P3. A copy of the Philadelphia Act 537 Plan is attached hereto as Exhibit P4. Aqua is not proposing to expand service beyond the sewerred areas.

47. The web address for the LMT Comprehensive Plan is: https://app.sharebase.com/#!/document/674886/share/129-ywJvLZJnykYdYK9crMfHunmyd-I_. The web address for the Bucks County Comprehensive Plan is: <https://dataportal-bucksgis.opendata.arcgis.com/pages/countywide-plans>.

48. Aqua has an existing operational presence and wastewater professionals in the area. Aqua provides wastewater service in Bucks County. Its Willow Grove Division Office is 14 miles from the LMT System, and the Southeastern Division Office is, moreover, approximately 27 miles from the LMT system. The acquisition will easily fold into Aqua's existing wastewater operations. A listing of Aqua's nearby territory and facilities is as follows:

Aqua Facilities	Location	Distance from Township
Peddlers View WWTP	Lahaska, PA	8
Willow Grove Office	Willow Grove, PA	14
Cheltenham System	Cheltenham, PA	15
Southeastern Division Office	Bryn Mawr, PA	27

49. Aqua is not anticipating any physical, operational or managerial changes at its Willow Grove Office as a result of the acquisition. Aqua will be adding three additional operators to address the day-to-day operations of LMT and those operators will also be used on other Aqua systems in the area.

50. Planned capital improvements are addressed in Mr. Bubel's testimony.

IX. AFFECTED PERSONS

51. No corporation or entity, except LMT, is now furnishing or has corporate or franchise rights to furnish wastewater service in the Requested Territory, and no competitive condition will be created by approval of this Application. Water and wastewater service providers abutting or within one mile of the Requested Territory are as follows:

- a. Within neighboring Yardley Borough, water service is provided by Pennsylvania-American Water Company. Wastewater service is provided by Yardley Borough Sewer Authority.
- b. Within neighboring Upper Makefield Township, water service is provided by Upper Makefield Township and private wells. Wastewater service is provided by Upper Makefield Township and private septic systems.
- c. Within neighboring Newtown Township, water service is provided by The Newtown Artesian Water Company. Wastewater service is provided by the Newtown Bucks County Joint Municipal Authority.
- d. Within neighboring Middletown Township, water service is provided by Bucks County Water and Sewer Authority, Lower Bucks County Joint Municipal Authority, and Newtown Artesian Water Company. Wastewater service is provided by Bucks County Water and Sewer Authority.
- e. Within neighboring Falls Township, water service is provided by Pennsylvania-American Water Company, the Municipal Authority of the Borough of Morrisville, and the Township of Falls Authority. Wastewater service is provided by Township of Falls Authority.
- f. Within neighboring Morrisville Borough, water service is provided by the Municipal Authority of the Borough of Morrisville. Wastewater service is provided by the Municipal Authority of the Borough of Morrisville.

X. REASONS SUPPORTING THIS APPLICATION

52. Approval of this Application is necessary or proper for the service, accommodation, convenience or safety of the public. As summarized below and discussed further in the testimonies

of Mr. Packer and Mr. Bubel, which as identified in Section XI below, are attached hereto as **Exhibit U** and **Exhibit V**:

a. Aqua has the technical, regulatory, financial and legal fitness to operate the Assets of LMT, and to maintain the operations and make improvements to meet continuing and future customer needs.¹² The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua;

b. LMT has agreed to sell its Assets. The public interest and need will be served by allowing Aqua, in lieu of LMT, to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The LMT system will benefit from the support of wastewater professionals throughout Aqua's organization;

c. The acquisition is consistent with the Commission's long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."¹³ The benefits of consolidation/regionalization, ultimately, inure to customers both existing and acquired;

d. Aqua provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection

¹² As a certificated provider of utility service, Aqua's fitness is presumed. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

¹³ Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of the Township;

e. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Cmwlth. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) to support a conclusion that there is a public benefit to a transaction;

f. The acquisition of the LMT Sewer system will increase Aqua's customer base by approximately 25%. With a larger customer base, future infrastructure investments, Statewide, will be shared at a lower incremental cost per customer for all Aqua customers; and

g. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or Township customers. As discussed in the testimony of Mr. Packer and presented in the Notice to customers, the increase in rate base may ultimately require an increase in revenue. The hypothetical impact on rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise capital; the furtherance of consolidation/regionalization of wastewater services; and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While

McCloskey concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

XI. ADDITIONAL INFORMATION REQUIRED BY SECTION 1329 OF THE PUBLIC UTILITY CODE AND THE PUBLIC UTILITY COMMISSION'S 1329 CHECKLIST

53. Aqua and LMT have agreed to use the process presented in Section 1329 of the Public Utility Code, 66 Pa. C.S. § 1329, to determine the fair market value of the Assets and the ratemaking rate base. Aqua's verified statement that it selected Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett Fleming") as its Utility Valuation Expert is attached hereto as **Exhibit AA1**. LMT's verified statement that it selected AUS Consultants ("AUS") as its Utility Valuation Expert is attached hereto as **Exhibit AA2**.

54. As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett Fleming, Utility Valuation Expert, and AUS, Utility Valuation Expert, are attached hereto as **Exhibit Q** and **Exhibit R**, respectively. Confidential and Proprietary Work Paper Files, in Excel Format, of Gannett Fleming and AUS are provided with the Application.

55. Applicant states that the purchase price of the Assets of the selling utility as agreed to by Aqua and LMT is \$53,000,000.

56. The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$53,000,000, being the lesser of the purchase price of \$53,000,000 negotiated by Aqua and LMT and the average of the fair market value appraisals which is \$54,967,796 – determined by \$55,505,000 presented in the appraisal of Gannett Fleming and \$54,430,591 presented in the appraisal of AUS.

57. Aqua will incur transaction and closing costs of approximately \$320,000, which it will include in its rate base.

58. A schedule of rates tariff page implementing rates equal to the rates of LMT at the time of closing is attached hereto as Exhibit G, as previously stated.

59. Applicant verifies that Gannett Fleming was selected by Aqua, the acquiring public utility, and that AUS was selected by LMT, the selling municipality.

60. The Utility Valuation Experts were paid \$58,302 for the completed Fair Market Value Appraisal Reports. Documentation of the fees paid to Gannett Fleming and AUS, including the valuation service agreements and all associated invoices, are attached hereto as **Exhibit S1** and **Exhibit S2**, respectively. Fees paid to the Utility Valuation Experts did not exceed 5% of the fair market value of the selling utility.

61. Statements of Gannett Fleming and of AUS verifying that they have no affiliation with Aqua or LMT as specified in Section 1329; that their Appraisals determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of their report, employing the cost, market and income approaches; and that they applied applicable jurisdictional exceptions to their submitted Appraisal are attached hereto as **Exhibit T1** and **Exhibit T2**, respectively.

62. The testimony of William C. Packer, in support of this Application is attached hereto as **Exhibit U**. Mr. Packer's testimony explains that Aqua is not presenting a rate stabilization plan. Aqua is proposing to implement LMT's existing rates after Closing and to maintain those rates until the next Aqua rate proceeding.

63. The testimony of Mark J. Bubel, Sr., in support of this Application is attached hereto as **Exhibit V**.

64. The testimony of Kurt M. Ferguson, Township Manager, LMT, in support of the Application is attached hereto as **Exhibit W**.

65. The Engineer's Asset Inventory of tangible assets of LMT is attached hereto as Exhibit D as aforesaid.

66. The testimony of Harold Walker, III, in support of the Gannett Appraisal is attached hereto as **Exhibit X**.

67. The testimony of Jerome C. Weinert in support of the AUS Consultants Appraisal is attached hereto as **Exhibit Y**.

68. Answers to the Section 1329 Application Standard Data Requests are attached hereto as **Exhibit Z**.

XII. SECTION 507 APPROVAL OF ASSIGNMENT OF CONTRACTS

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

70. Aqua requests that that the Commission, to the extent necessary, issue certificates for filing, pursuant to Section 507, for the following.

- i. F1 – Sewage Transportation Agreement, dated November 20, 2015, by and among the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township, and Yardley Borough Sewer Authority
- ii. F2 – Agreement, dated September 1, 1977, by and among the Municipal Authority of the Borough of Morrisville, Borough of Yardley, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- iii. F3 – Agreement, dated February 18, 1982 by and between the Municipal Authority of the Borough of Morrisville, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- iv. F4 – Amendment Agreement, dated October 8, 1991, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal

Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority

- v. F5 – Second Amendment Agreement, dated June 24, 1993, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority
- vi. F6 – Agreement, dated March 13, 1965, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- vii. F7 – First Supplemental Agreement, dated February 6, 1975, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- viii. F8 – Agreement, dated December 12, 1988, by and between the Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and the Township of Falls Authority
- ix. F9 – Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority
- x. F10 – Agreement, dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township Board of Supervisors, and Bucks County Water and Sewer Authority
- xi. F11 – Addendum Agreement to be attached and made part of the Agreement dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, and Lower Makefield Township Board of Supervisors
- xii. F12 – Agreement, dated October 23, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- xiii. F13 – Agreement, dated October 28, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield
- xiv. F14 – Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield

- xv. F15 – Agreement, dated January 28, 1980, by and between Middletown Township, Lower Makefield Township, the Municipal Sewer Authority of the Township of Lower Makefield, and the Bucks County Water and Sewer Authority
- xvi. F16 – Addendum Agreement, dated April 11, 1989, by and between Middletown Township, Lower Makefield Township, and the Municipal Sewer Authority of the Township of Lower Makefield
- xvii. F17 – Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield
- xviii. F18 – Water Service Termination Agreement, dated March 17, 2005, by and between Lower Makefield Township and the Municipal Authority of the Borough of Morrisville

XIII. OTHER APPROVALS, CERTIFICATES, REGISTRATIONS AND RELIEF, IF ANY

71. Aqua asks that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua’s acquisition of the LMT wastewater system assets.

XIV. CONCLUSION

WHEREFORE, Aqua requests that the Public Utility Commission approve this Application, filed pursuant to Sections 1102, 1329 and 507 of the Public Utility Code, and:

a. Issue *Certificates of Public Convenience* under §1102 of the Pennsylvania Public Utility Code:


(1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of Lower Makefield Township; and

(2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory covered by this Application.

- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
- (1) Include within its territory all the Requested Territory covered by this Application;
 - (2) Adopt and apply Lower Makefield Township's rates as set forth in this Application as Aqua's Base Rates within the Requested Territory; and
 - (3) Apply Aqua's *Rules and Regulations* within the Requested Territory.
- c. Enter an *Order* approving this Application and Aqua's acquisition of the Assets and, as part of that *Order* include the ratemaking rate base of Lower Makefield Township as \$53,000,000 pursuant to Section 1329(c)(2) of the Public Utility Code;
- d. Approve Contracts, including Assignment of Contracts, between Aqua and the Township of Lower Makefield, pursuant to Section 507 of the Public Utility Code; and
- d. Issue such other approvals, certificates, registrations and relief, if any, under the Public Utility Code that may be required with respect to Aqua's acquisition of the Lower Makefield Township wastewater system assets.

Respectfully submitted,

AQUA PENNSYLVANIA WASTEWATER, INC.

By 
Thomas T. Niesen, Esquire
PA Attorney ID No. 31379
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

Counsel for Aqua Pennsylvania Wastewater, Inc.

Date: May 14, 2021

EXHIBIT H

LOWER MAKEFIELD TOWNSHIP
CURRENTLY EFFECTIVE RATES AND RULES

RESOLUTION NO. 2403

**RESOLUTION OF THE TOWNSHIP OF LOWER MAKEFIELD
BUCKS COUNTY, PENNSYLVANIA,
AMENDING THE SEWER RENTAL FEE SCHEDULE**

The Board of Supervisors of the Township of Lower Makefield, Bucks County, Pennsylvania, hereby resolves that the sewer rental fee schedule for the Township provided for by Article III Section 166-17 "Sewer Rentals" of the Township Code is hereby amended to read as follows:

1. Residential Establishments

- a. Each dwelling unit (private dwelling) shall pay a minimum charge of One Hundred Sixty Dollars and forty-eight cents (\$160.48) per quarter, and in addition thereto, pay for each one thousand (1,000) gallons consumed during each quarter year, consumption shall be determined by water meter readings, the following amounts:

<u>Water Consumed Per Quarter</u>	<u>Cents Per Thousand Gallons</u>
first 10,000 gallons	\$4.37
second 10,000 gallons	\$4.60
third 10,000 gallons	\$4.81
fourth 10,000 gallons	\$5.29
fifth 10,000 gallons	\$5.90
excess over 50,000 gallons	\$6.77

- b. Each dwelling unit in a twin-home, apartment, townhouse, duplex, condominium, or any other residential living arrangement shall be classified and billed as a separate dwelling unit except if the building shall have one (1) meter and no more than two (2) dwelling units. If the building has one (1) meter and no more than two (2) dwelling units, then the charge for that building shall be Two Hundred Sixty-Nine Dollars and twenty-two cents (\$269.22) per quarter, plus consumption for the entire building, which is occupied by no more than two (2) dwelling units. Any room, group of rooms, house trailers, enclosures occupied or intended for occupancy as separate living quarters by a family or other group of persons living together, or by a person living alone, shall be classified and billed as a separate dwelling unit.
- c. The foregoing rate shall be determined by the water consumption as indicted on the water meter of each dwelling unit. In the event that a dwelling unit has no water meter, the occupants shall be charged at the rate of Two Hundred Sixty Nine Dollars and twenty-two cents (\$269.22) per quarter, except for apartment complexes, which shall be charged in a different fashion. For apartment complexes, the rate shall be determined by assessing each dwelling unit the

minimum charge of One Hundred Sixty Dollars and forty-eight cents (\$160.48) per quarter, and then measuring the total water consumption for the entire apartment building and dividing that consumption by the number of dwelling units therein to arrive at a water gallonage per dwelling unit, at which time each dwelling unit shall be charged on the average water consumption for each unit in addition to the minimum charge as required by this section. The occupant or owner of any dwelling unit without a water meter shall have the option to install a water meter on the well which supplies water to the dwelling unit. Said installation shall be for each dwelling unit and not for a building containing several dwelling units. The installation of any water meter shall be at the cost of the owner/occupant and shall be installed under the supervision of the Township of Lower Makefield.

d. Service provided to dwellings with no water meter shall be Two Hundred Sixty Nine Dollars and twenty-two cents (\$269.22).

2. Commercial and Industrial Establishments

- a. All owners of commercial and industrial establishments in the Township connected to the sewer system shall pay sewer rentals based upon actual water consumption, except as set forth in subparagraphs (b) and (c) of this paragraph 2 and paragraph 3 of this Resolution. Sewer rentals based upon water consumption shall be billed at the rate of Twenty Two Dollars and ninety-three cents (22.93) per one thousand (1,000) gallons of water consumed during the quarter for which the billing is rendered; provided, however, that no sewer rental bill rendered to each commercial or industrial establishment shall be less than Two Hundred Ninety Seven Dollars and sixty-five cents (\$297.65) per quarter.
- b. For all public, parochial and private schools, water consumption shall be as recorded on water meters from the public water system or at potable well heads. Sewer rentals based upon water consumption shall be billed at the rate of Twenty Two Dollars and ninety-three cents (\$22.93) per one thousand (1,000) gallons of water consumed during the quarter for which the billing is rendered; provided, however, that no sewer rental bill rendered to each commercial or industrial establishment shall be less than Two hundred Ninety-Seven Dollars and sixty-five cents (\$297.65) per quarter.

3. Penalty and Interest

Quarterly charges for sewer service shall be subject to a ten (10%) percent penalty if not paid within thirty (30) days from the billing date. If quarterly charges for sewer service are not paid within sixty (60) days from the billing date, the bill therefore, in addition to the aforesaid ten (10%) penalty, shall be subject to a one (1%) percent penalty per month

or fraction thereof until the date of payment. If not paid within one hundred fifty (150) days from the billing date, the Township shall have the right to cut off sewer service from the delinquent premises and not to restore the same until all delinquent bills against the same and the cost of cutting off and restoring service shall have been paid.

5. All provisions of Article III "Sewer Rents and Charges" of the Lower Makefield Township Code shall remain in effect, except as otherwise set forth herein.

6. This Resolution shall become effective five (5) days after enactment as provided by law and shall apply to all billings made for the first quarter of 2020 and thereafter.


7. In the event any provisions, section, sentence, clause or any part of this Resolution shall be held to be invalid, such invalidity shall not affect or impair any remaining provisions, section, sentence, clause or part of this Resolution. It being intended by this Resolution that such remainder shall be and shall remain in full force and effect.

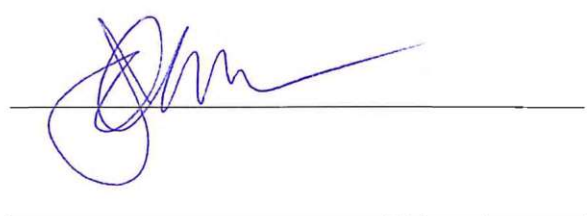
RESOLVED by the Supervisors of the Township of Lower Makefield, Bucks County, Pennsylvania, this 18th day of December, 2019.

BOARD OF SUPERVISORS
LOWER MAKEFIELD TOWNSHIP

ATTEST:


Kurt M. Ferguson, Township Manager



Chapter 164
SANITARY SEWER SYSTEMS

ARTICLE I

**Oil and Grease Interceptors and Traps
[Adopted 3-6-2019 by Ord. No. 417]****§ 164-1. Purpose.**

The purpose of this article is to establish uniform requirements for oil and grease interceptor/trap systems and their maintenance to prevent the discharge of certain oils, grease, fats, grit and similar substances into the public sewer system and to establish permits and penalties for violations of this article.

§ 164-2. Definitions.

As used in this article, the following terms shall have the meanings indicated:

AUTHORIZED AGENT — An employee, consultant, or authorized representative who is delegated to function as an agent of the Lower Makefield Township Board of Supervisors to conduct inspections of grease interceptors and/or traps within Lower Makefield Township.

FATS, OILS, AND GREASES (FOG) — Organic polar compounds derived from animal and/or plant sources that contain multiple carbon chain triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in 40 CFR 136, as may be amended from time to time. All are sometimes referred to herein as "grease" or "greases."

GREASE INTERCEPTOR —

- A. A plumbing appurtenance or appliance that is installed in a sanitary drainage system to intercept nonpetroleum fats, oils, and greases (FOG) from a wastewater discharge and is identified by volume, thirty-minute retention time, baffle(s), a minimum of two compartments, a minimum total volume of 1,000 gallons, and gravity separation. These interceptors are designed by a registered professional engineer who must provide sizing calculations in accordance with the EPA method. Gravity grease interceptors shall be installed outside unless the applicant receives written approval otherwise.
- B. Existing facilities that are in operation prior to the adoption of this article shall not have to comply with the design standards of this article so long as the existing FOG removal equipment was in compliance with the applicable building and plumbing code at the time of installation.

PERSON — Any individual, partnership, corporation, limited-liability company, or any other legal entity.

PROHIBITED DISCHARGE STANDARDS — The standards as described in the current wastewater discharge standards of the receiving wastewater treatment plant and Lower Makefield Township. The maximum allowable concentration FOG shall not exceed 100 mg/l.

§ 164-3. Applicability.

- A. This article shall apply to both new and existing facilities generating fats, oils, or greases as a result of food manufacturing, processing, preparation, or food service, and all such facilities shall install, use, and maintain appropriate grease interceptors as required by this article. Existing facilities that are in operation prior to the adoption of this article shall not have to comply with the design standards of this article so long as the existing FOG removal equipment was in compliance with the applicable building and plumbing code at the time of installation. All existing facilities are required to comply with all other requirements of this article.
- B. Wastewater that contains FOG shall be discharged into the sewer system only under the conditions of this article. The following facilities shall discharge all wastewater from sinks, dishwashers, drains, and any other fixtures through which grease may be discharged, into an adequately sized, properly maintained and functioning grease interceptor before the discharge enters the sanitary sewer system.
- (1) Every commercial food establishment such as restaurants, food courts, banquet facilities, etc.
 - (2) Every facility that prepares or serves food such as day cares, schools, mini markets, etc.
 - (3) All commercial, retail and industrial facilities that have the potential to discharge FOGs.
 - (4) Manufacturing processes that utilize or generate FOGs including cleaning of material.
 - (5) All vehicle repair facilities.
 - (6) All areas of intensified dwelling, including, but not limited to, adult day-care facilities, assisted-living facilities, convalescent homes, day nursing and child-care facilities in which food preparation occurs, homes for the mentally challenged, hotels, maternity homes, motels in which there is a commercial food preparation service, nursing homes, retirement and life care communities and homes, and truck stops with commercial food service, shall be required to have grease interceptors.
 - (7) All other generators discharging grease in amounts that, in the opinion of an authorized agent, will, alone or in concert with other substances from the discharges of other facilities, have a reasonable chance to impede or stop the flow of the sewer system.
- C. Grease interceptors shall not be required for single-family residences, duplexes, triplexes, quadplexes, or apartment complexes, unless an authorized agent first determines there are discharges from the property that may create problems in the sewer system. The

determination shall be made based upon an investigation of the property and a comparison of the content and amount of discharge from the property with the discharges of other properties similar in size and use. Upon a determination that the discharges will create problems in the sewer system, the authorized agent may require the installation of a sufficiently sized grease interceptor to treat the discharges.

- D. No user may intentionally or unintentionally allow the direct or indirect discharge of any fats, oils, or greases of animal or vegetable origin into the public sewer system in such amounts as to cause interference with the collection and treatment system, or as to cause pollutants to pass through the treatment works into the environment.

§ 164-4. Permit requirements.

- A. It shall be unlawful for any existing facility or new facility required to have a grease interceptor to discharge wastewater without authorization in the form of an FOG permit. Application for an FOG permit shall be made to Lower Makefield Township. If, after examining the information contained in the FOG permit application, it is determined by an authorized agent that the proposed discharge does not conflict with the provisions of this article, or any other federal, state, or local requirement or regulation, an FOG permit shall be issued.
- B. An FOG permit shall be issued for a time not longer than two years and must be renewed 60 days prior to expiration of the permit or upon a change in use, tenant or owner of the facility. The terms and conditions of the FOG permit may be subject to modification by Lower Makefield Township at any time during the term of the FOG permit as limitations or requirements as identified in this section are modified or other just causes exist. Any changes or new conditions in the FOG permit shall include a reasonable time schedule for compliance.
 - (1) As a condition precedent to the granting of an FOG permit, the permittee agrees to fully indemnify and hold harmless Lower Makefield Township or any of its authorized agents from any liabilities, obligations, debts or claims which may arise or arising from the permittee's operations under the FOG permit.
 - (2) The permittee shall apply to become permitted by fully completing and signing Lower Makefield Township's FOG permit application and paying the permit fee in an amount as established by resolution of the Lower Makefield Township Board of Supervisors. Such fee shall be payable to Lower Makefield Township and until all applicable fees, charges and expenses have been paid in full, the application shall be considered incomplete and no action shall be taken on any applications or appeal.
 - (3) The FOG permit application shall include the following:

- (a) The permittee or user's name, address and telephone number, and the name, address, and telephone number of the existing facility to be serviced, if different.
 - (b) The name, title, address and phone number of each of the authorized signatory representatives.
 - (c) The name of the contact person for the existing facility.
 - (d) Name(s) on the water supply account(s), the water service account number(s), and a copy of the last water bill.
 - (e) A description of any anticipated changes or expansions to the existing facility during the next three years that could alter wastewater volumes or characteristics.
 - (f) The size of each existing grease interceptor, how often they are currently serviced and if any additives are used.
 - (g) The current shift information.
 - (h) A list of all major equipment used for food preparation.
 - (i) The precise and unambiguous location of the grease interceptor(s) on the property, including a diagram if necessary.
 - (j) A signature and date by an authorized signatory representative.
- (4) A copy of the FOG permit application can be obtained by contacting the Lower Makefield Township office at (610)277-4103, Monday through Friday, between the hours of 8:30 a.m. and 4:30 p.m.

§ 164-5. Fees.

Fees for application, operation, enforcement, administration, and reimbursement of costs incurred pursuant to this article by an authorized agent shall be adopted by resolution by the Lower Makefield Township Board of Supervisors from time to time, including any fees or penalties for violations of this article and its regulations.

- A. Lower Makefield Township, with the approval of the Lower Makefield Township Board of Supervisors, may establish permit fees under this article.
- B. The fees for such permits shall be for a permit issued for a period of one year. If a permit is issued for a period of two years, the permittee shall be responsible to pay a fee for the two-year period. Lower Makefield Township may prorate the amounts for permits with shorter durations. All permits will expire at 12:00 midnight on the date specified on the permit as determined by Lower Makefield Township.

§ 164-6. Exemptions.

A person may apply for an exemption from the requirements of this article if the facility can demonstrate that they do not produce FOG(s) in excess of the maximum allowable concentration and no food preparation is part of their daily activities. The person must submit a written request describing their operation and the reasons why the facility should be granted an exemption to Lower Makefield Township in order to be considered for an exemption. In order for an exemption to be considered, the applicant must provide the following:

- A. Certified laboratory results of a sample of their wastewater demonstrating that their discharge concentrations are below the allowable level. The sample must be taken in the presence of an authorized agent of Lower Makefield Township.
- B. The facility must be inspected by an authorized agent of Lower Makefield Township to confirm that food preparation or other sources of FOG are not present at the facility.
- C. If required by Lower Makefield Township, video inspection of an existing lateral or sewer main to verify that FOG is not present in the pipes.

§ 164-7. Design.

Subject to the requirements of the Uniform Construction Code, an oil and grease interceptor must meet the following criteria:

- A. Provide a minimum detention time of 30 minutes which shall be calculated based upon the maximum flow rate of all fixtures, equipment and sink compartments. The flow rate shall be calculated by the drainage load divided by the drainage rate. The drain load calculation shall utilize 75% of the capacity of the fixture, equipment or sink compartment. The drainage rate shall be one minute. The applicant can also utilize the EPA Method for calculating the size of the grease trap as an approved alternative method of sizing the grease interceptor.
- B. The grease interceptor shall be located outside of the building.
- C. The minimum useable volume shall be 1,000 gallons and provide sufficient detention time to allow the temperature of the wastewater to cool to the point where all of the FOG is retained by the grease interceptor/trap.
- D. The grease interceptor shall be installed at a minimum distance of 10 feet from sinks and dishwashers to allow for adequate cooling of wastewater. Water temperature must be less than 140° F. prior to entering the grease interceptor.
- E. The grease interceptor/trap shall contain two compartments with an access hatch for each compartment for cleaning and maintenance.

- F. There shall be a sampling manhole located immediately downstream of the grease interceptor which shall allow for sampling of the effluent from the grease interceptor prior to the waste stream being combined with the domestic wastewater from the facility. The use of cleanouts shall not be permitted without written approval of Lower Makefield Township. The sampling manhole shall be accessible at all times by Lower Makefield Township and their authorized representatives.

§ 164-8. Discharge criteria.

The following standards shall apply:

- A. Where FOG are a by-product of food preparation and/or cleanup, reasonable efforts shall be made to separate waste oil and grease into a separate container for proper disposal. Except as contained in by-products of food preparation and/or cleanup, waste oil and grease shall not be discharged to any drains or grease interceptors. Such waste shall be placed in a container designed to hold such waste and either utilized by industry or disposed of at suitable disposal sites.
- B. None of the following agents shall be placed directly into a grease interceptor, or into any drain that leads to the grease interceptor:
- (1) Emulsifiers, de-emulsifiers, surface active agents, enzymes, degreasers, or any type of product that will liquefy grease interceptor wastes.
 - (2) Any substance that may cause excessive foaming in the sewer system.
 - (3) Any substance capable of passing the solid or semi-solid contents of the grease interceptor to the sewer system.
 - (4) Illegal discharge items, such as hazardous wastes, including, but not limited to, acids, strong cleaners, pesticides, herbicides, paint, solvents, or gasoline.
 - (5) Use of grease interceptor treatment products, including bacteria designed to digest grease, is specifically prohibited without prior written consent of the Township in accordance with the following:
 - (a) Acceptance of such products for use may be considered only where a valid screening test, showing the product's ability to treat the wastewater and to produce an influent in compliance with this article, has been performed in accordance with methods outlined and approved by the Lower Makefield Township.
 - (b) If a product is approved, each generator shall obtain written permission from Lower Makefield Township to use the product.

- C. The influent to grease interceptors shall not exceed 140° F. The temperature at the flow control device inspection port shall be considered equivalent to the temperature of the influent.
- D. Toilets, urinals, and other similar fixtures shall not discharge through a grease interceptor.
- E. All waste shall only enter the grease interceptor through the inlet flow control device, then the inlet pipe.
- F. Where food-waste grinders are installed in a nonresidential establishment, the waste from those units shall discharge directly into the building drainage system without passing through a grease interceptor.
- G. The concentration of FOG that can be discharged to the sewer system shall not exceed 100 mg/l.

§ 164-9. Inspections.

- A. The owner or person utilizing any property connected to the sanitary sewer system of Lower Makefield Township shall permit an authorized agent of Lower Makefield Township:
 - (1) To enter upon and have access to all properties and facilities for the purposes of inspection, sampling, and testing to determine compliance with the provisions of these regulations; and
 - (2) To examine and copy all records required to be maintained by the property owner and business owner for the purpose of determining compliance with the provisions of these regulations.
- B. Any oil and grease interceptor/trap system may be inspected by an authorized agent of Lower Makefield Township at any reasonable time. Such inspection may require a physical tour of the property, sampling of the oil and grease interceptor/trap, and dye-testing of the interior plumbing to determine the path and ultimate destination of the generated wastewater, and the owner or person utilizing the property shall provide free unfettered access to the property and facilities to the authorized agent of Lower Makefield Township for said inspection.
- C. An initial inspection may be conducted by an authorized agent of Lower Makefield Township to determine the type and functionality of each oil and grease interceptor/trap.
- D. A schedule of routine inspections by Lower Makefield Township may be established to assure proper functioning of the oil and grease interceptor/trap.
- E. An authorized agent of Lower Makefield Township shall inspect systems known or alleged to be malfunctioning. Should said inspections reveal the system is malfunctioning, the authorized agent will order action to be taken to correct the malfunction.

- F. Any person or owner utilizing any property or facility subject to the requirements of this article shall provide free and unfettered access to the facility and property to the authorized agent of Lower Makefield Township for the specific purposes of inspections as required herein.

§ 164-10. Maintenance.

- A. Every person owning a building or structure containing an oil and grease interceptor/trap system, as well as any person making use of the oil and grease interceptor/trap system, shall have the oil and grease interceptor/trap pumped by a pumper/hauler, qualified and approved by the Township as a qualified pumper/hauler, within 60 days of the effective date of this article. Thereafter, all persons required to pump an interceptor system shall do so at least every quarter. The owner and/or utilizer of the oil and grease interceptor/trap shall submit to Lower Makefield Township a manifest from the pumper/hauler confirming the pumping of the oil and grease interceptor/trap within 10 days after the removal of the accumulated oil and grease.
- B. The required pumping frequency may be increased by Lower Makefield Township if determined that increased frequency is required to maintain efficient operating conditions.
- C. Any person owning a property served by an oil and grease interceptor/trap, as well as any person making use of the oil and grease interceptor/trap system, must submit, with each required pumping receipt, a written statement from the pumper/hauler that the baffles in the oil and grease interceptor/trap have been inspected and found to be in good working order. Any person whose oil and grease interceptor/trap baffles are determined to require repair or replacement must first contact Lower Makefield Township for approval of the necessary repair and to obtain all required permits.
- D. Any person owning a building served by an oil and grease interceptor/trap, as well as any person utilizing an oil and grease interceptor/trap system, must follow the operation and maintenance recommendations of the equipment manufacturer. In no case may the service or pumping intervals for the oil and grease interceptor/trap exceed those recommended by the manufacturer.
- E. No person shall introduce, or cause, permit, or suffer the introduction of any surfactant, solvent or emulsifier into a grease interceptor. Surfactants, solvents, and emulsifiers are materials which allow the grease to pass from the grease interceptor into the collection system, and include but are not limited to enzymes, soap, diesel, kerosene, terpene, and other solvents.

§ 164-11. Cleaning schedules.

- A. Grease interceptors shall be cleaned as often as necessary to ensure that sediment and floating materials do not accumulate to impair the

efficiency of the grease interceptor; to ensure the discharge is in compliance with local discharge limits; and to ensure no visible grease is observed in discharge.

B. Grease interceptors shall be completely evacuated a minimum of every 90 days, or more frequently when:

- (1) Twenty-five percent or more of the wetted height of the grease trap or grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases; or
- (2) The discharge exceeds BOD, COD, TSS, FOG, pH, or other pollutant levels established by Lower Makefield Township; or
- (3) If there is a history of noncompliance.

(a) Any person who owns or operates a grease interceptor may submit to Lower Makefield Township a request, in writing, for an exception to the ninety-day cleaning frequency of their grease interceptor. The Township may grant an extension for required cleaning frequency on a case-by-case basis when:

[1] The grease interceptor owner/operator has demonstrated the specific interceptor will produce an effluent, based on defensible analytical results, in consistent compliance with established local discharge limits such as BOD, TSS, FOG, or other parameters as determined by Lower Makefield Township; or

[2] Less than 25% of the wetted height of the grease interceptor, as measured from the bottom of the device to the invert of the outlet pipe, contains floating materials, sediment, oils or greases.

(b) In any event, a grease interceptor shall be fully evacuated, cleaned, and inspected at least once every 180 days.

§ 164-12. Manifest requirements.

A. Each pump-out of a grease interceptor must be accompanied by a manifest to be used for record-keeping purposes. In addition, facilities which generate, collect and transport grease waste shall maintain a record of each individual collection and deposit. Such records shall be in the form of a manifest, which shall meet the following requirements:

- (1) Name, address, telephone, and commission registration number of transporter.
- (2) Name, signature, address, and phone number of the person who generated the waste and the date collected.
- (3) Type and amount(s) of waste collected or transported.

- (4) Name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste.
 - (5) Date and place where the waste was deposited.
 - (6) Identification (permit or site registration number, location, and operator) of the facility where the waste was deposited.
 - (7) Name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received.
 - (8) The volume of the grease waste received.
 - (9) A consecutive numerical tracking number to assist transporters, waste generators, and regulating authorities in tracking the volume of grease transported.
- B. Manifests shall be divided into five parts and records shall be maintained as follows:
- (1) One part of the manifest shall have the generator and transporter information completed and shall be given to the generator at the time of waste pickup.
 - (2) The remaining four parts of the manifest shall have all required information completely filled out and signed by the appropriate party before distribution of the manifest.
 - (3) One part of the manifest shall go to the receiving facility.
 - (4) One part shall go to the transporter, who shall retain a copy of all manifests showing the collection and disposition of waste.
 - (5) One copy of the manifest shall be returned by the transporter to the person who generated the wastes within 10 days after the waste is received at the disposal or processing facility.
 - (6) One part of the manifest shall go to the Lower Makefield Township within 10 days.
 - (7) Copies of manifests returned to the waste generator shall be retained for five years and be readily available for review by the Lower Makefield Township.

§ 164-13. System rehabilitation.

- A. A written notice of violation may be issued to any person who is the owner of any property which is found to be served by a malfunctioning oil and grease interceptor/trap system, and/or to any person utilizing said oil and grease interceptor/trap system, or who is discharging oil and grease without a permit.

- B. Within seven days of notification by Lower Makefield Township that a malfunction has been identified, the property owner, and/or the person utilizing the oil and grease interceptor/trap system, must make application to Lower Makefield Township for approval to repair or replace the malfunctioning system. Within 30 days of initial notification by Lower Makefield Township, construction of the permitted repair or replacement must commence. Within 60 days of the original notification by Lower Makefield Township, the construction must be completed, unless conditions mandate a longer period, in which case Lower Makefield Township may set an extended completion date.
- C. In the event the modifications do not result in the elimination of the malfunction of the existing oil and grease interceptor/trap system, the person owning and/or making use of the interceptor system shall bear responsibility for the continued malfunction of the system. The owner and/or utilizer of said system shall be required to take such action as necessary to eliminate the malfunction.

§ 164-14. Failure to comply; work performed by Township.

Lower Makefield Township, upon forty-eight-hours' advance notice to the owner or person of a facility or property that falls under the requirements of this article that an imminent public health or safety hazard exists due to failure of a property owner and/or utilizer to maintain, repair or replace an oil and grease interceptor/trap system, shall have the authority to contract to have the work performed. The owner of record of the property will be charged for the work performed. Upon receipt of notice of the costs and charges for work performed by Lower Makefield Township under this article, the property owner and/or utilized shall tender full payment to the Township within 15 business days. If said payment is not tendered to the Township within 15 days of notice of the costs and charges, the Township, without any further notice to the owner and/or utilizer, may file a lien against the property in order to collect said costs and charges.

§ 164-15. Oil and grease disposal.

- A. All grease originating within a sewer system intended to flow to the public sewer system shall be disposed of in accordance with the requirements of the Solid Waste Management Act (Act 97 of 1980, 35 P.S. § 6018.101 et seq.) and all other applicable laws, and shall be disposed of at sites or facilities approved by the Pennsylvania DEP.
- B. Oil and grease pumpers/haulers operating within Lower Makefield Township's collection system shall operate in a manner consistent with the provisions of the Pennsylvania Solid Waste Management Act (Act 97 of 1980, 35 P.S. §§ 6018.101 through 6018.1003) and all other applicable laws.

§ 164-16. Violations and penalties.

- A. It is unlawful for any generator to discharge into the sewer system in any manner that is in violation of this article, or of any condition set forth in this article. Additionally, a person commits an offense if the person causes or permits the plugging or blocking of, or otherwise interferes with or permits the interference of, a grease interceptor or the sewer system, including alteration or removal of any flow constricting devices so as to cause flow to rise above the design capacity of the grease interceptor. No person and/or existing facility shall discharge grease in excess of 100 mg/l to the sewer system. If such discharge occurs, the person or existing facility shall be considered in violation of this article and subject to the remedies described herein. Such remedies include but are not limited to nonpermitted existing facilities. The authorized agent is hereby empowered to enter and inspect any premises upon which he/she has reasonable grounds to believe a violation exists. If violation of any of the provisions of this article exists, the authorized agent shall issue written notice to be served by registered or certified mail upon the owner of such premises or, if the owner's whereabouts or identity be unknown, by posting the notice conspicuously upon the offending premises. Such notice shall specify the condition of the violation and shall require the owner to commence to remove or otherwise rectify the offending condition within five days of notification and thereafter to fully comply with the requirements of the notice within 20 days. Failure to comply and remediate the violation as noted shall result in the remediation and/or repairs being completed by Lower Makefield Township, subject to collection of all costs, fees and other related charges as set forth hereinabove, including payment of such fines and/or penalties as set forth and adopted by the Township, approved by the Lower Makefield Township Supervisors.
- B. Lower Makefield Township may immediately request to suspend water service when such suspension is necessary, in the opinion of Lower Makefield Township, in order to stop an actual or threatened discharge which:
- (1) Presents or may present an imminent or substantial endangerment to the health or welfare of persons or the environment.
 - (2) Causes stoppages or excessive maintenance to be performed to prevent stoppages in the sewer system.
 - (3) Causes interference to the sewer system.
 - (4) Causes the receiving WWTP to violate any condition of its NPDES permit.
- C. Any person notified of a suspension of the water service shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, Lower Makefield Township shall take such steps as deemed necessary, including immediate termination of water service, to prevent or

minimize damage to the sewer system or sewer connection or endangerment to any individuals. Lower Makefield Township shall reinstate the water service when such conditions causing the suspension have passed or been eliminated. A detailed written statement submitted by the generator describing the cause(s) of the harmful discharge and the measure(s) taken to prevent any future occurrence shall be submitted to Lower Makefield Township within 15 days of the date of occurrence.

- D. In addition to prohibiting certain conduct by persons, it is the intent of this article to hold a corporation, association, limited-liability corporation, limited-liability partnership or private owner legally responsible for prohibited conduct performed by an agent acting on behalf of a corporation or association and within the scope of his office or employment.
- E. Enforcement shall be as set forth in Section 1-9 of the Lower Makefield Township Code, as amended from time to time, including the filing of any nontraffic violation citation with the local courts and the Township seeking payment of such fines and/or penalties as more fully set forth and adopted by the Township Supervisors.
- F. An owner, permittee and/or utilizer shall be liable to Lower Makefield Township for any and all expense, loss, or damage occasioned or incurred by Lower Makefield Township as a result of appropriate cleanup and proper disposal of said wastewater materials resultant from the improper and/or unpermitted discharge of materials as governed by this article. Additionally, an administrative fee equal to 1/2 of assessed cleanup costs shall be levied by Lower Makefield Township against the guilty party.
- G. The performance by Lower Makefield Township of its obligations as set forth in this article shall create no liability of any nature upon Lower Makefield Township, its officials, employees or authorized agents.
- H. All reports, inspections, appraisals, certification or records required or produced by Lower Makefield Township, or its authorized agents, as required by this article, shall be for the use and benefit of Lower Makefield Township only and shall not be accepted, utilized or relied upon by any other person or party by way of certification or otherwise.

§ 164-17. Appeals.

- A. Any property owner aggrieved by the decision of a Lower Makefield Township employee or other authorized agent of Lower Makefield Township pursuant to this article may appeal said decision by sending the appropriate completed appeal form to the Lower Makefield Township Manager, which appeal shall be filed within 30 days from the date of the decision at issue.

- B. The property owner and/or person filing said appeal shall be entitled to a hearing before the Lower Makefield Township Board of Supervisors, or its designee, within 30 days of receipt of the appeal.
- C. Either party, by good cause shown, may extend the time for a hearing, but said decision shall be left to the discretion of the Lower Makefield Township Board of Supervisors or its designee. A hearing shall be conducted in accordance with the provisions of the Pennsylvania Local Agency Act.¹
- D. A decision shall be rendered, in writing, within 45 days of the conclusion of the hearing and all proceedings related thereto. If the Lower Makefield Township Board of Supervisors or its designee shall fail to render a decision within 45 days following the conclusion of all proceedings related to the hearing, then the relief sought by the property owner and/or person filing the appeal shall be deemed granted. Any property owner and/or person aggrieved by a decision of the Lower Makefield Township Board of Supervisors or its designee may, within 30 days after such decision of the Board, file an appeal to the Court of Common Pleas of Bucks County.

1. Editor's Note: See 2 Pa.C.S.A. § 551 et seq.

ARTICLE II
Sewer Lateral Inspections
[Adopted 12-4-2019 by Ord. No. 421]

§ 164-18. Recitals.

The above recitals shall form a part of this article as though the same were set forth herein at length.²

§ 164-19. Definitions.

- A. Unless the context specifically indicates otherwise, the meaning of the terms used in this article shall be as follows:

APARTMENT COMPLEX — A building or group of buildings that contain four or more units or suites of rooms that form a residence, and which are rented for independent residential use of each unit.

BOARD OF SUPERVISORS — The Board of Supervisors of Lower Makefield Township.

CERTIFICATION — As described herein, shall reference the document issued by the Township certifying the subject inspected lateral as having met the necessary standards for issuance of an accompanying private sanitary sewer lateral inspection permit.

(1) A residential certification shall be valid for up to two years.

(2) A nonresidential certification shall be valid for up to 10 years.

COMMON LATERAL — The sanitary sewer lateral where more than one private sanitary sewer lateral is connected to form a common or manifold of multiple laterals. This portion of the lateral is generally owned, maintained and the responsibility of an association such as a homeowner's association or another entity. The common lateral is generally identified on Exhibit B.³

COMPLIANCE — Compliance with the provisions of this article as set forth herein, and any amendments thereto; the Township Code of the Lower Makefield Township, including, but not limited to, Chapter 322, Sewers; all rules, regulations, and resolutions of any applicable municipal authority and the Pennsylvania Department of Environmental Protection; sound engineering practice; and the standard specifications governing connection to and use of sanitary sewer collection systems.

EMPLOYEES — Such employees, agents, and designated representatives or officials of the Lower Makefield Township as the Township shall, from time to time, designate and utilize in the making of the inspection and/or tests hereafter described in carrying out the duties as prescribed herein to be performed on behalf of the Township.

2. **Editor's Note: The recitals to this article can be found in the text of Ord. No. 421, on file in the Township offices.**

3. **Editor's Note: Exhibit B is included as an attachment to this chapter.**

FALLS TOWNSHIP SERVICE AREA — The portion of Lower Makefield Township identified on the plan shown in Exhibit A⁴ as the Falls Township Service Area. The sanitary sewer mains and manholes in this area are owned and maintained by the Township of Falls Authority. The private sanitary sewer laterals which are owned and the responsibility of the property owners extend from the building to the connection point to the sanitary sewer main.

I/I — Inflow and infiltration of groundwater and surface water into the sanitary sewer mains, manholes and laterals that either connect to or are a component of the public sanitary sewer system.

NONRESIDENTIAL UNITS — Any unit or property in Lower Makefield Township which is not used for residential purposes as defined by the Lower Makefield Township Zoning Code. Nonresidential units shall include, but are not limited to, any and all commercial, industrial and institutional buildings that are connected to the public sanitary sewer system.

NOTICE — Advisements of inspections and tests of the system to be performed by the Township.

POSS — The publicly owned sanitary system located in Lower Makefield Township. This includes all of the sanitary sewer mains, manholes, laterals (from sanitary sewer main to right-of-way of a road or edge of a sanitary sewer easement), pump stations and related sanitary sewer facilities.

PRIVATE SANITARY SEWER LATERAL — The sewer pipe extending from a building to the right of way of a public street or the edge of a sanitary sewer easement in all areas of Lower Makefield Township except for the Falls Township service area where the private sanitary sewer lateral extends all the way from the building to the sanitary sewer main.

SUMP PUMP — Any pump connected to the private sanitary sewer lateral, or to any pipe connected to the private sanitary sewer lateral that is being used to pump groundwater or surface water into the sanitary sewer system.

SYSTEM — All facilities for collecting, pumping, and disposing of sanitary sewage, which are owned by the Township or the Township of Falls Authority.

TOWNSHIP — The Lower Makefield Township.

TRANSFER — The transfer of title to real estate when sale or gift is intended, but excluding transfers that occur for the following reasons:

- (1) Conversion: A change in an entity's form or organization, place of organization, or name.

4. Editor's Note: Exhibit A is included as an attachment to this chapter.

- (2) Financing transaction: When realty is transferred by the debtor solely for the purpose of serving as security for the payment of a debt, or when no sale or debt is intended.
- (3) Living trust is established.
- (4) Confirmatory or corrective deeds.
- (5) Deeds that transfer title of ownership from a single individual into the names of the marital unit of husband and wife, or from the marital unit of husband and wife to an individual in accordance with terms of a divorce decree or other court document.

USER — The owner, lessee, or occupant of the property on which the buildings and/or appurtenances that are connected to the system are located.

- B. Throughout this article, references to the singular shall include the plural, and vice versa, wherever required by the context.

§ 164-20. Sale or transfer of residential properties; inspection required.

- A. The seller of any residential property located in the Township which is connected to the system shall be required to retain the services of a licensed plumber or licensed utility contractor for the purposes of conducting an inspection of the private sanitary sewer lateral to ensure compliance with the provisions of this article. Said inspections shall include, among other things, a video inspection of the private sanitary sewer lateral from the building to the point where the lateral connects to the Lower Makefield Township lateral, common lateral or Township of Falls Authority sanitary sewer main, all of which together shall constitute the certification of compliance of private sanitary sewer lateral.
- B. Should the private sanitary sewer lateral be found not in compliance, the lateral including cleanouts and vent pipes shall be replaced or repaired by the property owner and brought into compliance before transfer or sale of the property can be approved by the Township. The pipe replacement or repair shall be performed by a licensed plumber or licensed utility contractor.
- C. In the event that any transfer of title occurs without the required inspection under this article having being conducted and without the seller obtaining an approved inspection permit from the Township, the buyer or purchaser of the property shall be responsible for having the required inspection completed and for the submission of an approvable inspection form with required inspection video to the Township. Any claims of damages between the seller and buyer/purchaser of the property for the lack of compliance with this article shall be solely a private civil matter between the parties and shall not fall under the Township's domain, jurisdiction or authority to settle or mediate.

- D. This section shall not apply to the initial transfer of a newly constructed building involving a new private sanitary sewer lateral connection.
- E. The Township, upon payment of any application and inspection fee and upon the Township's receipt and approval of the certification set forth in Subsection A above, including a copy of the televised video inspection, which shall include the certification specifically certifying that: a) no I/I enters into the private sanitary sewer lateral; b) the private sanitary sewer lateral does not require any repairs, nor contains any illegal connections; and c) that the cleanout vent is undamaged and capped above grade, shall then issue a private sanitary sewer lateral inspection permit to the seller who shall deliver said permit to the buyer or purchaser of the property at the time of the sale or conveyance.
- F. In the event that the property owner fails to repair or replace the private sanitary sewer lateral as required by Subsection B above, the Township shall be authorized as permitted by law to enter the property and repair or replace the private sanitary sewer lateral. If the Township repairs or replaces the private sanitary sewer lateral, the Township shall charge the property owner for the cost and expenses incurred by the Township to repair or replace the private sanitary sewer lateral, and the property owner shall pay the Township within 30 days of the date of the charge/invoice. In the event that the property owner fails to tender payment or fails to enter into satisfactory payment arrangements with the Township, the Township may file a municipal lien against the property pursuant to Pennsylvania's Municipal Claims Act⁵ and/or pursue other legal remedies for the collection of same.
- G. The property owner shall permit the designated employees or agents of the Township access during reasonable hours of the day to all parts of the property to make necessary inspections and observations for the Township to ensure compliance with this article.

§ 164-21. Problem laterals and conveyance lines; inspection required.

- A. Upon 10 days written notice from the Township that the Township intends to replace or repair a sanitary sewer conveyance line to which the user's private sanitary sewer lateral is connected or upon the Township identifying a problem with any private sanitary sewer lateral during a routine inspection of the sanitary sewer system, all affected users of the system, after notice by the Township, shall make an appointment with the Township to allow the user's private sanitary sewer lateral to be inspected in accordance with the terms and conditions set forth herein to determine compliance.
- B. Upon completion of an inspection by the Township, if the private sanitary sewer lateral is found not to be in compliance with the terms of this article and/or other applicable Township regulations, the lateral,

5. Editor's Note: See 53 P.S. § 7101 et seq.

including all cleanouts and vent pipes, shall be replaced or repaired and brought into compliance by the property owner within 30 days of the date of the notice of the noncompliance of the system. The pipe replacement or repair shall be performed by a licensed plumber or licensed utility contractor.

- C. The purpose of the inspection required by this article is to remove any I/I from entering into the private sanitary sewer lateral; to ensure that there are no holes or damage(s) in or to the private sanitary sewer lateral; to verify that all cleanouts and/or vents are properly capped above ground and not damaged; and to identify and remove any roof leaders, yard, driveway drains or sump pumps connections as well as any other potential sources of I/I in or to the laterals throughout the Township.
- D. The Township shall not charge the user for the inspection required by this § 164-21.
- E. In the event that the property owner fails to repair or replace the private sanitary sewer lateral as required by Subsection B above, the Township shall be authorized as permitted by law to enter the property and replace the private sanitary sewer lateral. If the Township repairs or replaces the private sanitary sewer lateral, the Township shall charge the property owner for the cost and expenses incurred by the Township to repair or replace the private sanitary sewer lateral, and the property owner shall pay the Township within 30 days of the date of the charge/invoice. In the event that the property owner fails to tender payment or fails to enter into satisfactory payment arrangements with the Township, the Township may file a municipal lien against the property pursuant to Pennsylvania's Municipal Claims Act⁶ and/or pursue other legal remedies for the collection of same.
- F. The property owner shall permit the designated employees or agents of the Township access during reasonable hours of the day to all parts of the property to make necessary inspections and observations for the Township to ensure compliance with this article.

§ 164-22. Residential units with common laterals; inspection schedule; requirements.

- A. Residential housing units, excluding apartments, with common laterals to multiple residential units are required by this article to perform the inspection of the common lateral from the point where more than one private lateral line is connected and forms a common lateral or manifold to the location of the Township-owned portion of the lateral, or to the sanitary sewer main in the Falls Township service area. An example of the common lateral is contained in Exhibit B⁷ to this article. Common

6. Editor's Note: See 53 P.S. § 7101 et seq.

7. Editor's Note: Exhibit B is included as an attachment to this chapter.

laterals may be owned and are the responsibility of a homeowner's association or other type of association.

- B. The common laterals are to be inspected and repaired on the schedule that is outlined in Subsection C below. The property owner(s) of each unit will be responsible to inspect, repair if necessary and obtain an approved lateral inspection form which, once approved by the Township, will be the private sanitary sewer lateral permit subject to the same requirements for all other residential units without common laterals in the Township. This section applies only to residential nonapartment units with common laterals that are subject to the schedule. The transfer of any property connected to a common lateral will not be delayed or postponed by the Township due to an issue with the common lateral.
- C. The owners of the common laterals, as defined by this article, must comply with the following ten-year cycle for the inspection and repairs of all common lateral lines:
- (1) The common laterals must be visually inspected with a video inspection performed by a licensed plumber in every year ending in the number two (i.e., 2022, 2032, 2042).
 - (2) The owners of the common laterals shall obtain a cost estimate for any repairs that are identified either as a result of the inspection or as noted by the Township, which cost estimate must be obtained no later than any year ending in the number three (i.e., 2023, 2033, 2043). This schedule for obtaining a cost estimate is intended to provide the owners of the common lateral sufficient time to secure funds for the necessary repairs.
 - (3) The owners of the common lateral shall perform the required repairs and provide an updated inspection form with a video inspection to the Township documenting that the common lateral has had all repairs completed and that the common lateral complies with all Township requirements, which shall be completed and provided to the Township in every year ending in the number four (i.e., 2024, 2034, 2044). Submissions by any owners of the common lateral to the Township for extension of time to perform repairs based upon claim of hardship by owners of the common lateral, as set forth in Subsection C(4) below, shall be submitted prior to September of any year ending in the number four.
 - (4) The owners of the common lateral may request a one-year extension to perform the required repairs by applying for a hardship to the Township, which shall be determined as approved solely in the Township's discretion. The owners of the common lateral shall provide to the Township the basis for any claimed hardship with documentation of the hardship to the Township and shall further provide certification that the required work,

regardless of the hardship, will be completed in the year ending in the number five (i.e., 2025, 2035, 2045).

§ 164-23. Nonresidential and/or apartment complex units; inspection schedule and requirements.

- A. All nonresidential units and apartment complexes, as defined in this article, shall have laterals inspected and repaired on the schedule that is outlined in Subsection B below. The property owners of each nonresidential unit or apartment complex/units will be responsible to inspect, repair if necessary and obtain an approved lateral inspection form which, once approved by the Township, will be the private sanitary sewer lateral permit.
- B. The property owners of all nonresidential units and apartment complexes must comply with the following ten-year cycle for the inspection and repairs of all private sanitary sewer laterals:
- (1) The nonresidential unit or apartment complex/units private sanitary sewer laterals must be visually inspected with a video inspection performed by a licensed plumber or licensed utility contractor in every year ending in the number two (i.e., 2022, 2032, 2042).
 - (2) Owners of the nonresidential unit or apartment complex/units private sanitary sewer laterals shall obtain a cost estimate for any repairs that are identified either as a result of the inspection or as noted by the Township, which cost estimate must be obtained no later than any year ending in the number three (i.e., 2023, 2033, 2043). This schedule for obtaining a cost estimate is intended to provide the owners of the nonresidential unit or apartment complex/units with sufficient time to secure funds for the necessary repairs.
 - (3) Owners of the nonresidential unit or apartment complex/units shall perform the required repairs and provide a updated inspection form with a video inspection to the Township documenting that the private sanitary sewer lateral has had all repairs completed and that the private sanitary sewer lateral complies with all Township requirements which shall be completed and provided to the Township in every year ending in the number four (i.e., 2024, 2034, 2044). Submissions by owners of a nonresidential unit or apartment complex to the Township for extension of time to perform repairs based upon owner's claim of hardship, as set forth in Subsection B(4) below, shall be submitted prior to September of any year ending in the number four.
 - (4) Owners of the nonresidential unit or apartment complex/units may request a one-year extension to perform the required repairs by applying for a hardship to the Township, which shall be determined as approved solely in the Township's discretion. The nonresidential

unit or apartment complex/units property owner shall provide to the Township the basis for any claimed hardship with documentation of the hardship to the Township, and shall further provide certification that the required work, regardless of the hardship, will be completed in the year ending in the number five (i.e., 2025, 2035, 2045).

§ 164-24. Noncompliance.

- A. In the event a user refuses to comply with any of the terms or conditions of §§ 164-20 through 164-23 hereinabove, a surcharge of \$25 per month for each and every month that said noncompliance exists shall be imposed by the Township to the user, in addition to all other charges authorized and imposed under law. Should a user continue to refuse to comply for a period of 60 days after the final notice of noncompliance, the surcharge shall be increased to \$50 per month for each and every month that said noncompliance exists and shall be imposed by the Township to the property owner, in addition to all other charges authorized and imposed under law.
- B. In the event a user claims compliance with the inspection requirements of §§ 164-20 through 164-23 above, but the Township determines that the buildings and/or appurtenances of said user are not in compliance, then and in such event, the Township, by its designated employee, shall provide written notice of the noncompliance to the user, and the user shall be required to achieve compliance within 45 days of the date of the notice.
- C. After notice to the user as required in Subsection B above, and in the event that the building and/or appurtenances of the user are still determined by the Township not to be in compliance following the time period for corrective work set forth in Subsection B above, and the user refuses or fails to bring the buildings and/or appurtenances into compliance, a surcharge of \$50 per month as set forth in Subsection A above shall be imposed for each user not in compliance, in addition to all other charges authorized and imposed under any applicable law, which surcharges shall commence with the billing period immediately following the date of the inspection or testing by the Township or the date that such noncompliance was determined.
- D. The surcharge referred to herein shall be satisfied upon the following conditions:
 - (1) The user utilizing the system executes a grant of inspection to the Township; and
 - (2) The Township or its authorized agent inspects and/or performs tests on the building and/or appurtenances connected to the system and determines that the buildings and/or appurtenances connected to the system to be in compliance.

- E. Unless the conditions as listed above are met, surcharges will continue to be billed to the user until the date when the buildings and/or appurtenances in question are determined to be in compliance.
- F. In the event that subsequent inspections and/or tests of a property previously in compliance with this article determine that the property no longer complies with this article, the terms and provisions of § 164-24 shall apply, except the user shall also be liable for the payment of a sum equal to the number of the months since the original determination of compliance was made, multiplied by the monthly surcharge amount provided for in Subsection C for knowingly, willfully and/or intentionally creating or permitting such violation to commence and continue. An example of noncompliance reoccurrence is when a reconnection of a sump pump or other prohibited connection is discovered.

§ 164-25. Penalty for noncompliance.

In the event a user is determined to be noncompliant of a second or subsequent violation, then the user shall be liable for the payment of a sum equal to \$1,000 per day, plus an amount equal to the sum of the months since the original noncompliance was corrected (and if never corrected, from the date of such noncompliance determination), multiplied by the monthly surcharge amount provided for in § 164-24.

§ 164-26. Violations.

Any user violating any of the provisions of this article shall be liable to the Township for any and all expenses, costs, and fees including, but not limited to, reasonable attorney's fees, occasioned or caused to the Township by reason of seeking enforcement of such article against the violator, as well as for any losses or damages occasioned or caused to the Township by reason of such violation.

§ 164-27. Remedies.

The Township shall have full power and authority to invoke any legal, equitable, or special remedy for the enforcement of this article.

§ 164-28. Supplemental ordinance.

This article shall be deemed supplemental to all other ordinances and provisions thereof for enforcement and compliance purposes, and shall not be deemed to amend or rescind said other ordinances and provisions; further that any fines, fees, charges, or penalties levied or imposed pursuant to this article shall be in addition to any fines, fees, charges, or penalties levied or imposed pursuant to all other ordinances and provisions thereof.

§ 164-29. Severability provisions.

The provisions of this article shall be deemed severable, and should any section or part hereof be deemed invalid or unenforceable by the courts of the Commonwealth of Pennsylvania, such section, clause, sentence, or provision shall be deemed stricken and the invalid or unenforceable part shall not affect the validity or enforceability of any other part or parts of this article which can be given effect without such part or parts as may be so deemed invalid or unenforceable.

Chapter 166

SEWERS

GENERAL REFERENCES

Sewer Authority — See Ch. 4, Art. I.

Solid waste — See Ch. 172.

Plumbing — See Ch. 150.

Streets and sidewalks — See Ch. 175.

ARTICLE I

**Connection to Falls Township Sewer System
[Adopted 6-3-1963 by Ord. No. 55]****§ 166-1. Definitions.**

As used in this article, the following terms shall have the meanings indicated:

AUTHORITY — The Township of Falls Authority as presently or hereafter constituted, which has been created by the Board of Supervisors of the Township of Falls.

OCCUPIED BUILDING — Each single-dwelling unit, household unit, flat or apartment unit, store, shop, office, business or industrial unit or family unit contained within any structure erected within 150 feet from the sewer system and intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sanitary sewage is or may be discharged.

PERSON — Any individual, firm, company, association, society, corporation or group.

PROPERTY ACCESSIBLE TO THE SEWER SYSTEM — Improved property which adjoins, abuts on or is adjacent to the sewer system or as may be further defined or modified under rules and regulations adopted pursuant to § 166-6.

SANITARY SEWAGE — The normal water-carried household and toilet wastes from residences, business buildings, institutions and industrial establishments.

SEWER SYSTEM — The public sanitary sewer collection system constructed in accordance with the plan dated March 1962, heretofore submitted to and approved by the Township.

TOWNSHIP — The Township of Lower Makefield, Bucks County, Pennsylvania, or the duly constituted and elected municipal authorities thereof.

§ 166-2. Notice of completion.

Whenever the sewer system is completed and ready for public use, it shall be the duty of the Authority to cause notice of the fact to be given by advertisement published once in one newspaper of general circulation in the Township, and such advertisement shall state that the sewer system may be used by all persons owning occupied buildings or property accessible to the sewer system, subject to the payment of connection charges and annual sewer rentals in amounts as may from time to time be fixed by the Authority.

§ 166-3. Connection required; single and separate connections.

- A. All persons owning any occupied building now erected upon property accessible to the sewer system shall, at their own expense, connect such building with the sewer system within 90 days after the date of publication specified in § 166-2.
- B. All persons owning any property accessible to the sewer system upon which an occupied building is hereafter erected shall, at the time of the erection of such building and at their own expense, connect the same with the sewer system.
- C. All persons owning any occupied building upon property which hereafter becomes accessible to the sewer system shall, at their own expense, connect such building with the sewer system within 90 days after notice to do so from the Authority.
- D. Where more than one occupied building, as hereinbefore defined, is contained in a separate structure, a single common connection to the lateral of the sewer system shall be permitted for accommodating all units contained in such structure, except that separate connections shall be required for each semidetached or row-type house or structure.

§ 166-4. Use of privies and other receptacles prohibited.

It shall be unlawful for any person owning any property accessible to the sewer system to erect, construct, use or maintain or cause to be erected, constructed, used or maintained, any privy, cesspool, sinkhole, septic tank or other receptacle on such premises or otherwise for receiving sanitary sewage after the expiration of the particular period specified in § 166-3 hereof or otherwise at any time to erect, construct, use or maintain any pipe, conduit, drain or other facility for the discharge of sanitary sewage into the gutters of the Township, the storm sewers of the Township or upon public or private property or otherwise except into the sewer system.

§ 166-5. Declaration of nuisances; abatement.

Any person who erects, constructs, uses or maintains a privy, cesspool, sinkhole or septic tank on any property accessible to the sewer system or otherwise erects, constructs, uses or maintains any pipe, conduit, drain or other facility for the discharge of sanitary sewage in violation of this article, shall be deemed and shall be declared to be erecting, constructing and maintaining a nuisance, which nuisance the Township is hereby authorized and directed to abate in the manner provided by law.

§ 166-6. Compliance with regulations.

No connection shall be made to the sewer system, except in compliance with the ordinances and resolutions, as well as such rules and regulations as may from time to time be enacted, adopted, approved or promulgated by the Township or the Authority.

§ 166-7. Failure to connect; notice.

After the expiration of the particular periods specified in § 166-3 of this article, if any owner of an occupied building on property accessible to the sewer system fails to connect to the sewer system as required by said § 166-3, the Authority shall cause to be served on the owner of such property so failing to connect to said sewer system, and also upon the occupants of the building in question, a copy of this article and a written or printed notice requiring such connection to be made, and such notice shall further state that its requirements shall be complied with within 30 days from the date thereof.

§ 166-8. Violations and penalties. [Amended 10-21-1996 by Ord. No. 305]

The provisions of this article are declared to be for the health, safety and welfare of the citizens of the Township and persons violating any provisions of this article, upon conviction before any District Justice, shall be fined not more than \$1,000, plus costs of prosecution, including reasonable attorney's fees. Each ninety-day period during which such violation of such provisions shall continue shall be deemed to be a separate offense. Each occupied building, as hereinbefore defined, whether or not the owners thereof shall be permitted to connect two or more occupied buildings or units by a single common connection to a lateral of the sewer system or shall be required to make separate connections for each occupied building or unit, shall constitute a separate and distinct unit under the provisions of this article and the persons owning occupied buildings, consisting of multiple units contained in the same structure, who violate any of the provisions of this article, shall be subject to the aforesaid fine for each and every one of such occupied buildings or units which are in violation of the provisions of this article. All fines collected under this article shall forthwith be turned over by the Township to the Authority. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

ARTICLE II
Connection to Lower Makefield Sewer System
[Adopted 3-1-1965 by Ord. No. 68]

§ 166-9. Purpose.

It is declared that enactment of this article is necessary for the protection, benefit and preservation of the health, safety and welfare of inhabitants of this Township.

§ 166-10. Definitions.

Unless the context specifically and clearly indicates otherwise, the meanings of terms used in this article shall be as follows:

AUTHORITY — The Municipal Sewer Authority of the Township of Lower Makefield, a Pennsylvania municipality authority.

BUILDING SEWER — The extension from the sewage drainage system of any improved property to the lateral of a sewer.

IMPROVED PROPERTY — Any property within this Township upon which there is erected a structure intended for continuous or periodic habitation, occupancy or use by human beings or animals and from which structure sewage and/or industrial wastes shall be or may be discharged.

INDUSTRIAL WASTES — Any solid, liquid or gaseous substance or form of energy rejected or escaping in the course of any industrial, manufacturing, trade or business process or in the course of the development, recovery or processing of natural resources, as distinct from sewage, including such ground-, surface- or stormwater as may be present.

LATERAL — That part of the sewer system extending from a sewer to the curblineline or, if there shall be no curblineline, to the edge of pavement or to the edge of cartway if not paved or, if no such lateral shall be provided, then "lateral" shall mean that portion of, or place in, a sewer which is provided for connection of any building sewer.

OWNER — Any person vested with ownership, legal or equitable, sole or partial or any property located in this Township.

PERSON — Any individual, partnership, company, association, society, corporation or other group or entity.

SEWAGE — Normal water-carried household and toilet wastes from any improved property, including such ground-, surface- or stormwater as may be present.

SEWER — Any pipe or conduit constituting a part of the sewer system used or usable for sewage collection purposes.

SEWER SYSTEM — All facilities, as of any particular time, for collecting, pumping, transporting, treating and disposing of sewage and industrial wastes, situate in or adjacent to this Township and owned, maintained and operated by the Authority or the Township.

TOWNSHIP — The Township of Lower Makefield, Bucks County, Pennsylvania, a political subdivision, acting by and through its Board of Supervisors or, in appropriate cases, by and through its authorized representatives.

§ 166-11. Use of public sewers required; notice; prohibited discharges.

- A. The owner of any improved property which is or hereafter becomes accessible to and whose principal building is within 150 feet of the sewer system shall make connection therewith in such manner as this Township and the Authority may require, within 60 days after notice to such owner from this Township to make such connection, for the purpose of discharge of all sewage and acceptable industrial wastes from such improved property, subject to such limitations and restrictions that shall be established herein or otherwise shall be established by this Township or the Authority, from time to time.
- B. All sewage and acceptable industrial wastes from any improved property, after connection of such improved property with a sewer shall be required under Subsection A, shall be conducted into a sewer, subject to such limitations and restrictions as shall be established herein or otherwise shall be established by this Township or the Authority from time to time.
- C. No person shall place or deposit or permit to be placed or deposited upon public or private property within this Township any sewage or industrial wastes in violation of Subsection A. No person shall discharge or permit to be discharged to any natural outlet within this Township any sewage or industrial wastes in violation of Subsection A, except where suitable treatment has been provided which is satisfactory to this Township.
- D. No privy vault, cesspool, sinkhole, septic tank or similar receptacle shall be used and maintained at any time upon any improved property which has been connected to a sewer or which shall be required under Subsection A to be connected to a sewer. Every such privy vault, cesspool, sinkhole, septic tank or similar receptacle in existence shall be abandoned and, at the discretion of this Township, shall be cleaned and filled under the direction and supervision of this Township; and any such privy vault, cesspool, sinkhole, septic tank or similar receptacle not so abandoned and, if required by this Township, cleansed and filled, shall constitute a nuisance and such nuisance may be abated as provided by law, at the expense of the owner of such improved property.
- E. No privy vault, cesspool, sinkhole, septic tank or similar receptacle at any time shall be connected with a sewer.
- F. The notice by this Township to make a connection to a sewer, referred to in Subsection A, shall consist of a copy of this article, including any amendments at the time in effect and a written or printed document

requiring the connection and may be given at any time after a sewer is in place which can receive and convey sewage and industrial wastes for treatment and disposal from the particular improved property. Such notice shall be served upon the owner either by personal service or by registered or certified mail, as provided by law.

§ 166-12. Building sewers and connections.

- A. Except as otherwise provided in this section, each improved property shall be connected separately and independently with a sewer through a building sewer. Grouping of more than one improved property on one building sewer shall not be permitted except under special circumstances and for good sanitary reasons or other good cause shown, but then only after special permission of this Township and the Authority, in writing, shall have been secured.
- B. All costs and expenses of construction of building sewer and all costs and expenses of connection of a building sewer to a lateral or sewer shall be borne by the owner of the improved property to be connected, and such owner shall indemnify and save harmless this Township and the Authority from all loss or damage that may be occasioned, directly or indirectly, as a result of construction of a building sewer or of connection of a building sewer to a lateral or sewer.
- C. A building sewer shall be connected to a sewer at the place designated by the Authority or where the lateral is provided. The invert of a building sewer at the point of connection shall be at the same or a higher elevation than the invert of the lateral or sewer. A smooth, neat joint shall be made and the connection of a building sewer to the lateral shall be made secure and watertight.
- D. If the owner of any improved property located in the Township and which improved property is or hereafter becomes accessible to and whose principal building is within 150 feet from the sewer system, after 60 days' notice from the Township, in accordance with § 166-11A, shall fail to connect such improved property as required, this Township may enter upon such property and construct such connection and may collect from such owner the costs and expenses thereof. In such case, the Township shall forthwith, upon completion of the work, send an itemized bill of the cost of the construction of such connection to the owner of the improved property to which connection has been so made, which bill shall be payable forthwith. In case of neglect or refusal by the owner of such improved property to pay said bill, the Township shall file municipal liens for said construction within six months of the date of the completion of the construction of said connection, the same to be subject in all respects to the general law provided for the filing and recovery of municipal liens.

§ 166-13. Rules and regulations governing building sewers and connections.

- A. Where an improved property, at the time connection to a sewer is required, shall be served by its own sewage disposal system or device, the existing house sewer line shall be broken on the structure side of such sewage disposal system or device and attachment shall be made, with proper fittings, to continue such house sewer line, as a building sewer.
- B. No building sewer shall be covered until it has been inspected and approved by this Township and the Authority. If any part of a building sewer is covered before so being inspected and approved, it shall be uncovered for inspection at the cost and expense of the owner of the improved property to be connected to a sewer.
- C. Every building sewer of any improved property shall be maintained in a sanitary and safe operating condition by the owner of such improved property.
- D. Every excavation for a building sewer shall be guarded adequately with barricades and lights to protect all persons from damage and injury. Streets, sidewalks and other public property disturbed in the course of installation of a building sewer shall be restored, at the cost and expense of the owner of the improved property being connected, in a manner satisfactory to this Township.
- E. If any person shall fail or refuse, upon receipt of a notice of this Township or the Authority, in writing, to remedy any unsatisfactory condition with respect to a building sewer, within 60 days of receipt of such notice, this Township or the Authority may refuse to permit such person to discharge sewage and industrial wastes into the sewer system until such unsatisfactory condition shall have been remedied to the satisfaction of this Township and the Authority.
- F. This Township reserves the right to adopt from time to time additional rules and regulations as it shall deem necessary and proper relating to connections with a sewer and the sewer system, which additional rules and regulations to the extent appropriate shall be construed as part of this article.
- G. Every connection made pursuant to the provisions of this article shall likewise be made in pursuance of the Township Plumbing Code.¹ The owner of the improved property upon which such connection is made shall be required to secure permits as required under such plumbing code (any notice under the provisions of this article shall not be construed to be a plumbing permit or compliance under the plumbing code with the requirements of a permit), and such work likewise shall be done in compliance with such plumbing code.

§ 166-14. Violations and penalties; enforcement. [Amended 10-21-1996 by Ord. No. 305]

1. Editor's Note: See Ch. 150, Plumbing.

- A. Any person who shall violate this article shall be liable to a fine of not more than \$1,000, together with costs of prosecution, including reasonable attorney's fees, in each case. Each day that a violation shall continue shall be deemed and shall be taken to be a separate offense and shall be punishable as such. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.
- B. Fines and costs imposed under provisions of this article shall be enforceable and recoverable in the manner at the time provided by applicable law.

ARTICLE III
Sewer Rents and Charges
[Adopted 3-1-1965 by Ord. No. 69]

§ 166-15. Definitions.

Unless the context specifically indicates otherwise, the meanings of terms used in this article shall be as follows:

AUTHORITY — The Municipal Sewer Authority of the Township of Lower Makefield, as well as the duly qualified and acting members of the Board thereof.

COMMERCIAL ESTABLISHMENT — Each structure or any portion thereof intended to be used wholly or in part for the purposes of carrying on a trade, business or profession or for social, amusement, religious, educational, charitable or public uses and which contains plumbing for kitchen, toilet or washing facilities. Hotels, motels, rooming houses, schools, hospitals, churches, institutions, public buildings, etc., shall be included in this definition.

DWELLING UNIT — A structure or dwelling intended to be occupied as a whole by one family or an apartment intended to be occupied by one family or any other one-family living unit.

INDUSTRIAL ESTABLISHMENT — Each structure intended to be used wholly or in part for the manufacturing, fabricating, processing, cleaning, laundering or assembly of any product, commodity or article or any other premises from which industrial waste as distinct from sanitary sewage is discharged.

INDUSTRIAL WASTE — Any solid, liquid or gaseous substance or waterborne wastes or form of energy rejected or escaping from any industrial, manufacturing, trade or business process or from the development, recovery or processing of natural resources, as distinct from sanitary sewage.

PERSON — Any individual, firm, company, association, society, corporation or group.

SANITARY SEWAGE — The normal water-carried household and toilet wastes from residences, business buildings, institutions, commercial and industrial establishments.

SEWER SYSTEM — All temporary and permanent facilities at any time and from time to time owned or leased or operated by the Township and used or usable for or in connection with the collection, treatment or disposal of sanitary sewage and acceptable industrial wastes.

TOWNSHIP — The Township of Lower Makefield, Bucks County, Pennsylvania, and the group of elected officials acting as the Board of Supervisors of the Township.

WATER SUPPLIER — The public agency or private company furnishing water service to the particular property connected to the sewer system.

§ 166-16. Connection required. [Amended 2-9-1976 by Ord. No. 103; 7-24-1978 by Ord. No. 127]

All owners of property shall connect their premises to the sewer system as and when the same may be available, upon notice to do so from the Township and in a manner approved by the Township.

§ 166-17. Sewer rentals. [Amended 4-1-1972 by Ord. No. 83; 2-9-1976 by Ord. No. 103; 3-27-1978 by Ord. No. 123; 10-23-1978 by Ord. No. 129; 5-12-1987 by Ord. No. 211; 1-20-1992 by Ord. No. 268; 10-21-1996 by Ord. No. 305]

A. All owners of property in the Township connected to and from which sanitary sewage and/or acceptable industrial waste are discharged to the sewer system shall pay the Township sewer rentals as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors.²

- (1) Each dwelling unit in a twin-home, apartment, townhouse, duplex, condominium or any other residential living arrangement shall be classified and billed as a separate dwelling unit except if the building shall have one water meter, but no more than two dwelling units. If the building has one meter and no more than two dwelling units, then the charge for that building shall be as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors.³ Any room, group of rooms, house trailers, enclosures occupied or intended for occupancy as separate living quarters by a family or other group of persons living together or by a person living alone shall be classified and billed as a separate dwelling unit.
- (2) The foregoing rate shall be determined by the water consumption as indicated on the water meter of each dwelling unit. In the event that a dwelling unit has no water meter, the occupants shall be charged at the rate set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors,⁴ except for apartment complexes, which shall be charged in a different fashion. The occupant or owner of any dwelling unit without a water meter shall have the option to install a water meter on the well which supplies water to the dwelling unit. Said installation shall be for each dwelling unit and not for a building containing several dwelling units. The installation of any water meter shall be at the cost of the owner/occupant and shall be installed under the supervision of the Township of Lower Makefield.

2. Editor's Note: See Ch. A205, Fees.

3. Editor's Note: See Ch. A205, Fees.

4. Editor's Note: See Ch. A205, Fees.

- (3) The cost for service provided to dwellings with no water meter shall be as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors.⁵
- (4) In addition to the aforementioned costs, each dwelling unit shall be assessed a charge for minimum service in addition to the costs for consumption. Said charge shall be as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors.

B. Commercial and industrial establishments.

- (1) All owners of commercial and industrial establishments in the Township connected to the sewer system shall pay sewer rentals based upon actual water consumption, except as set forth in Subsections B(2) and (3) and Subsection C. Sewer rentals based upon water consumption shall be billed at the rate set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors.⁶
- (2) Sewer rental billings, calculated under Subsection B(1) above, to industrial and commercial establishments discharging sanitary sewage and/or industrial waste into the sewer system, except as hereinafter set forth, shall be as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors, and shall be based upon the average number of persons employed per working day during the service period for which the billing is rendered. Minimum sewer rentals per employee shall be applicable to all industrial establishments and to all commercial establishments, except schools, churches, hospitals, charitable institutions, public buildings and firehouses. The total billing to industrial establishments and to all commercial establishments, except as aforesaid, for any billing period shall be not less than 50% of the maximum billing of any one of the three consecutive preceding billing periods.
- (3) All public, parochial and private schools shall have sewer rentals based upon water consumption which said sewer rentals shall be billed at the rate set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors. Water consumption shall be as recorded on water meters from the public water system or at potable well heads. For school buildings without the aforementioned water meters, the sewer rental billing shall be as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors and shall be based upon the average number of pupils enrolled on days when the school was in session during the full school term immediately preceding the date of each bill rendered. Teachers and employees of the school shall

5. Editor's Note: See Ch. A205, Fees.

6. Editor's Note: See Ch A205, Fees.

be classified as pupils for sewer rental purposes and be designated "Average Daily Membership (ADM)."

C. Surcharge for excess strength sewage and industrial waste.

- (1) Industrial establishments discharging domestic sewage and industrial wastes to the sewer system having an average five-day biochemical oxygen demand (BOD) greater than 200 parts per million (ppm) and a suspended solids content greater than 250 ppm shall pay a strength of waste surcharge, in addition to applicable volume charges, equal to 5/100 of 1% of the applicable volume charge for each part per million by which the BOD exceeds 200 ppm plus 5/100 of 1% of the applicable volume charge for each part per million by which the suspended solids exceeds 250 ppm. Surcharges shall be applicable to billings for sewer rentals under Subsections B(1), (2) and (3) above. The strength of sewage and industrial wastes to be used for establishing the amount of surcharge shall be determined at least once annually either:
 - (a) By suitable sampling and analyses of the wastes for a three-day period during which time the strength of waste discharged or production is at a maximum.
 - (b) By relating production and waste strength at the time of sampling to waste strength at maximum production if sampling is not performed at the time of maximum production.
 - (c) From estimates made by the Township.
 - (d) From known relationships of products produced to strengths of wastes for those industries where such factors have been established.
- (2) In establishing waste strengths for surcharge purposes by analyses, analyses shall be made in accordance with procedures outlined in the latest edition of Standard Methods for Analysis of Water and Sewage, published by the American Public Health Association.

§ 166-18. Volume measurements; meters.

- A. The volume of water to be used for billing for commercial and industrial establishments shall include any and all water purchased from the water supplier and all water obtained from other sources (wells, springs, streams, etc.) as determined by:
- (1) Meters installed and maintained by the water supplier.
 - (2) Meters installed and maintained by the Township.
 - (3) Meters installed by the property owner as may be approved by the Township.

- (4) Estimates or measurements made by the Township where the Township deems metering impractical.
- B. Exclusion from the sewer system of noncontaminated wastewaters and waters used solely for cooling purposes may be required by the Township, or such exclusion may be optional with the property owner if not required by the Township. When such wastewaters are excluded, sewer rentals shall be based upon total water consumption, less water excluded, at the rates set forth under § 166-17B(1) above. Water excluded shall be determined from meters installed and maintained by the property owner as required and approved by the Township or the property owner may elect to measure waste volumes actually discharged to the sewer system as provided for below.
- C. The Township may require an industrial establishment or the industrial establishment may elect to install, pay for and maintain a meter approved by the Township for measuring wastewaters discharged to the sewer system in which case sewer rentals shall be based upon the actual volume of wastes so metered as being discharged to the sewer system. Said sewer rentals shall be computed at the rates set forth under § 166-17B(1).
- D. The volume of water to be used for billing for residential use shall include any and all water purchased from the water supplier and all water obtained from other sources (wells, springs, streams, etc.) except that there shall be excluded from the measurement of the volume of water those waters which do not flow into the sewer system. The exclusion of such waters shall be conditioned upon the installation of such meter or meters to measure the flow of water not actually discharged into the sewer system. Said meter or meters shall be installed at the option and at the sole cost of the residential user. The installation of the meter and the meter shall be approved by the Township prior to the actual installation. The installation request shall be accompanied by an application for a plumbing permit which shall include a sketch setting forth the plumbing plan and the placement of the meter. The Township shall periodically read the meter installed by the property owner for the purpose of making adjustments to the sewer charge based on that flow of water not entering into the sewer system as set forth in this provision. The property owner shall pay the Township of Lower Makefield an amount as set forth in the Fee Schedule, adopted from time to time by resolution of the Board of Supervisors,⁷ to defray the cost of the meter reading. **[Added 4-13-1981 by Ord. No. 151]**

§ 166-19. Maintenance of manholes by industrial establishments; inspection.

When directed by the Township, industrial establishments shall install, pay for and maintain a manhole and other devices as may be approved by the Township to facilitate observation, measurement and sampling of

7. Editor's Note: See Ch. A205, Fees.

wastes discharged to the sewer system. The Township or its duly authorized representatives shall, at all reasonable times, be permitted to enter upon any and all properties for the purpose of inspecting, observing, measuring and sampling wastes discharged to the sewer system. Any industrial establishment that desires to connect to the sewer system or which is connected to the sewer system and plans to change its operation so as to materially alter the characteristics and volumes of wastes discharged thereto shall notify the Township, in writing, at least 10 days before making such connection or changing its operations.

§ 166-20. Exclusion of harmful waste.

- A. The Township reserves the right to refuse permission to connect to the sewer system, to compel discontinuance of use of the sewer system or to compel pretreatment of industrial waste by any industrial establishment in order to prevent discharges deemed harmful or to have a deleterious effect upon any portion of the sewer system or upon the sewers and any treatment facilities or upon the processes of any sewage treatment. The discharge of roofwater, stormwater, surface drainage and building foundation drainage to the sewer system is expressly prohibited. No sanitary sewage and/or industrial waste shall be discharged to the sewer system which:
- (1) Has a temperature higher than 140° F.
 - (2) Contains more than 100 parts per million by weight of fats, oils and grease.
 - (3) Contains any gasoline, benzine, naphtha, fuel oil or other inflammable or explosive liquids, solids or gases.
 - (4) Contains any garbage which has not been ground by household-type or other suitable garbage grinders.
 - (5) Contains any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure or any other solid or viscous substances capable of causing obstructions or other interferences with proper operation of the sewer system or sewers and treatment facilities or upon the processes of sewage treatment.
 - (6) Has a pH lower than 6.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazards to structures, equipment or personnel of the sewer system.
 - (7) Contains toxic or poisonous substances in sufficient quantity to injure or interfere with any sewage treatment process, to constitute hazards to humans or animals or to create any hazard in waters which receive treated effluent from any sewage treatment plant. Toxic wastes shall include, but not by way of limitation, wastes containing cyanide, chromium, copper and nickel ions.

- (8) Contains noxious or malodorous gases or substances capable of creating a public nuisance.
 - (9) Contains solids of such character and quantity that special and unusual attention is required for their handling.
- B. Suitable pretreatment facilities shall be installed to meet the above requirements.

§ 166-21. Devices for equalizing waste flows.

The Township reserves the right to require industrial establishments having large variations in rates of waste discharge to install suitable regulating devices for equalizing waste flows to the sewer system.

§ 166-22. Access to meters.

The Township's representatives shall have access at all reasonable times to water and any other meters used for establishing or determining water consumption, water excluded from the sewer system and/or wastewaters discharged to the sewer system.

§ 166-23. Surcharges for excess strength sewage and industrial waste.

The Township reserves the right to impose surcharges for excess strength sewage and industrial waste as circumstances deem advisable.

§ 166-24. Payments of charges; billings.

- A. The tapping or connection fees shall be payable upon application for permit to make connection to the sewer system.
- B. Sewer rentals or charges shall be due and paid quarterly and quarterly billings for sewer rentals shall be made by bills dated on the first days of January, April, July and October of each year, for the quarterly calendar period immediately preceding the date of the bill. The bills for sewer rentals under § 166-17 for the first quarter during which a property is connected will be prorated on the basis of the quarterly rate. All bills shall be due and payable on their respective dates.

§ 166-25. Delinquent charges; penalty for nonpayment.

- A. Quarterly charges for sewer service shall be subject to a ten-percent penalty if not paid within 30 days after they are due. If quarterly charges for sewer service are not paid within 60 days after becoming due the bill therefore, in addition to the aforesaid ten-percent penalty, shall be subject to a one-percent penalty per month or fraction thereof until the date of payment. If not paid within 150 days after becoming due, the Township shall have the right to cut off sewer service from the delinquent premises and not to restore the same until all delinquent bills against the same and the cost of cutting off and restoring service

shall have been paid. **[Amended 2-9-1976 by Ord. No. 103; 1-20-1992 by Ord. No. 268]**

- B. All persons connected to the sewer system must give the Township their correct address. Failure to receive bills will not be considered an excuse for nonpayment nor permit an extension of the period during which bills are payable at face amount.
- C. Payments made, as evidenced by the United States Post Office mark, on or previous to the end of the period during which the bills are payable at face amount, will be deemed to be a payment within such period.
- D. All sewer rentals, together with all penalties thereon, not paid on or before the end of one year from the date of each bill shall be deemed to be delinquent. All delinquent sewer rentals and all penalties thereon shall be a lien on the property served and shall be entered as a lien against such property in the office of the Prothonotary of Bucks County and shall be collected in the manner provided by law for the filing and collection of such liens.
- E. If quarterly charges for sewer service are not paid within 60 days after becoming due, the Township shall have the right to request the water company to shut off water service to delinquent premises and not restore same until all overdue rentals, rates and charges, together with any interest and penalties assessed thereon are paid in full together with the cost of shutting off and restoring the water service to such premises. The cost of shutting off and restoring water service to such premises shall include, in addition to the customary charge that is set forth, the loss of revenue sustained by the water company resulting from the shutoff of water pursuant to this section. Prior to requesting the water company to terminate water service to a delinquent sewer account, the responsible officer of the Township shall: **[Added 4-13-1981 by Ord. No. 151]**
 - (1) Provide at least 10 days' written notice to the delinquent account of its intention to request the water company to shut off the supply of water to the delinquent account to the person liable for the payment of such rental and charges and the like.
 - (2) Post a written notice at the main entrance to the delinquent premises setting forth the Township's intention to request the water company to shut off the supply of water to such premises until such time as all rental and other charges shall have been paid in full.
- F. Upon the payment of all charges as set forth in this provision, the responsible Township officer shall see to it that service is returned to the delinquent premises without undue delay.

§ 166-26. Segregation of sewer revenues.

The funds received by the Township from the collection of the tapping or connection fees and from sewer rentals and all penalties thereon, as herein provided for, shall be segregated and kept separate and apart from all other funds of the Township and shall be used only for the purpose of defraying the expenses of the Township in the operation, maintenance, repair, alteration, inspection, depreciation or other expenses in relation to the sewer system and for such payments as the Township may be required to make under any lease or agreement it may enter into in connection with the financing of the sewer system or the treatment or transportation of sewage.

§ 166-27. Rules and regulations.

The Township reserves the right to, and may from time to time, adopt, revise, amend and readopt such rules and regulations as it deems necessary and proper for the use and operation of the sewer system, and all such rules and regulations shall be and become a part of this article.

§ 166-28. When effective; applicability.

- A. This article and any rules and regulations hereunder shall become effective at once and shall be applicable to all properties as soon as they respectively become connected with and have the right to use the sewer system. The Township reserves the right to make such changes therein from time to time as in its opinion may be desirable or beneficial and to amend this article or to change the rates or charges in such manner and at such times as in its opinion may be advisable.
- B. This article shall become effective upon enactment and shall apply to all properties presently connected to the sewer system and all properties to be connected.

§ 166-29. Prohibited discharges. [Added 4-1-1974 by Ord. No. 91]

- A. Surface water that has accumulated in or been drained into sump holes in basements, crawl spaces or other areas shall not be discharged into the sanitary sewer system. Such water shall be discharged onto lawns, open fields or into dry wells. Piping for the discharge of surface waters shall be by direct connection from the sump pump to the outside. Only rigid piping of the type approved by Chapter 150, Plumbing, shall be permitted.
 - (1) No other connections to this discharge piping shall be permitted and no valves except check valves shall be permitted.
 - (2) Discharge onto public roads or adjoining land belonging to others shall not be permitted.
- B. Wastewater from laundry (washing) machines or laundry tubs shall not be discharged into the sanitary sewer system.

- C. Swimming pool and backwash water shall not be discharged into the sanitary sewer system.
- D. No common drainage or piping systems involving interconnections between surface water sump pumps and laundry tubs or laundry (washing) machines shall be permitted. No down spouts, rain gutters, vents or surface drains shall be constructed in such a manner to permit water to be drained into the sanitary sewer system.

§ 166-30. Registration of sump pumps; installation. [Added 6-13-1983 by Ord. No. 169]

- A. The owners of all structures, whether residential, commercial or the like that are connected to the sanitary sewer system of Lower Makefield Township, shall on or before July 15, 1983, register with the Township of Lower Makefield the existence and use of all sump pumps located on their property. The Township Manager or his authorized representatives shall prepare the appropriate registration forms and there shall be no charge for registering the existence of any sump pumps as provided for in this article.
- B. All sump pumps which may have been installed in violation of this article, as amended by Ordinance No. 91, shall comply with the provisions of this article, as amended by Ordinance No. 91, on or before August 15, 1983. If a violation of this article, as amended by Ordinance No. 91, has occurred, no penalties shall be assessed because of that violation if the property owner complies with the provisions of this article, as amended by Ordinance No. 91, on or before August 15, 1983. Thereafter, any person who shall violate this article shall be subject to the penalties as set forth hereinafter.

§ 166-31. Inspections. [Amended 6-13-1983 by Ord. No. 169]

The Township of Lower Makefield or its duly authorized representatives shall at all reasonable times be permitted to enter upon any or all properties for the purpose of inspecting the system and connections, observing, measuring and sampling waste discharged into the sewer system and for the purpose of determining whether or not the property owner has in use a sump pump and whether or not the sump pump is installed in violation of this article.

§ 166-32. Violations and penalties. [Amended 6-13-1983 by Ord. No. 169; 10-21-1996 by Ord. No. 305]

Any person who shall violate a provision of this article or shall fail to comply with any of the requirements thereof shall be punishable by a fine of not more than \$1,000, plus costs of prosecution, including reasonable attorney's fees incurred by the Township. Each day that a violation continues shall be deemed a separate offense. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure.

ARTICLE IV

Extension of Existing Sewers

**[Adopted 7-12-1976 by Ord. No. 105; amended in its entirety
10-21-1996 by Ord. No. 305]**

§ 166-33. Adoption of controlling standards.

Extensions of the existing sanitary sewer system and connections thereto shall be controlled by the rules and regulations promulgated by Gannett Fleming Corddry and Carpenter, Inc., in a document entitled "Standard Construction and Material Specifications for Sanitary Sewer Extensions, Force Mains, Ejector and Pumping Stations," dated 1996. The aforesaid document is incorporated herein as though written out in its entirety and a copy of the same is attached to this article.⁸

8. Editor's Note: The document is on file in the Township offices.

ARTICLE V
Temporary Holding Tanks
[Adopted 8-1-2007 by Ord. No. 370]

§ 166-34. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ACT — The Pennsylvania Sewage Facilities Act (35 P.S. § 750.1, et seq.)

HOLDING TANK or RETAINING TANK — A water-type receptacle, whether permanent or temporary, which receives and retains sewage conveyed by a water-carrying system and is designed and constructed to facilitate the ultimate disposal of the sewage at another site. The terms "holding tank" and "retaining tank" shall, for the purpose of this article, be interchangeable. The terms "holding tank" and "retaining tank," shall not, for purposes of this article, include a privy, chemical toilet, incinerating toilet, composting toilet or recycling toilet.

HOLDING TANK SECURITY AGREEMENT — An agreement between the permit holder and the Township whereby the permit holder guarantees the performance of all obligations of a permit holder under this article.

PERMIT — A valid sewage disposal system permit issued by the Bucks County Department of Health, after further review and approval by the Lower Makefield Township Board of Supervisors.**[Amended 10-20-2010 by Ord. No. 387]**

PERMIT HOLDER — A person who possesses a valid holding tank permit as issued by the Bucks County Department of Health, and after further review and approval by the Lower Makefield Township Board of Supervisors.**[Amended 10-20-2010 by Ord. No. 387]**

§ 166-35. Holding tanks; restrictions on use. [Amended 10-20-2010 by Ord. No. 387]

A holding tank may not be installed and/or used unless the property owner(s) possess(es) the valid sewage disposal system permit issued by the Bucks County Department of Health. The installation and/or use of any holding tank on any property within the Township is hereby prohibited except by the holder of a valid and current permit, a valid and current sewage disposal system permit issued by the Bucks County Department of Health and such use issued in conformity with the provisions of this article, the Bucks County Department of Health rules and regulations governing individual and community on-lot sewage disposal systems, applicable provisions of the Act and such other applicable statutes, regulations and plans, including, but not limited to, the Act 537 Plan of the Township of Lower Makefield. The use of temporary holding tanks in the Township may be permitted, subject to the following conditions, as follows:

- A. The permit holder shall connect to a public sewer once access becomes available and cease using the temporary holding tank within a period of

30 days after the permit holder has been approved to connect to a public sewer.

- B. The permit holder, upon cessation of use of the holding tank, is responsible for having the tank pumped out by a Bucks County Department of Health licensed sewage hauler and removal of the tank or, in the alternative, to insure that the tank is to be drained and backfilled with crushed stones or screening.
- C. A temporary holding tank under this article must comply with the applicable provisions of the Pennsylvania Code, including, but not limited to, Title 25, Environmental Protection; Chapter 72 and Chapter 73; § 73.62, Standards for holding tanks, (a), (b), (c) and (d); and Chapter 73, § 73.31, Standards for Septic Tanks, (b)(1).
- D. The Township may, in its discretion, require the permit holder to post a performance bond with the Township in an amount to be determined by the Township.
- E. The permit holder must execute a holding tank security agreement on a form approved by the Township whereby the permit holder assumes responsibility for the installation and maintenance of the proposed sewage generated thereby and ultimate removal/drainage/backfill of a temporary holding tank upon expiration of the applicable time period set forth in this article, with an indemnification agreement saving and holding the Township harmless from any and all liability and expenses, including legal fees, arising from the use of said facility or related to the sewage therefrom at any and all times and of every nature.

§ 166-36. Duties of improved property owner/permit holder.

The owner of an improved property in the Township that utilizes a temporary holding tank and every permit holder shall comply with the following:

- A. Maintain the holding tank in conformance with this article and the holding tank security agreement, and abide by the provisions of any applicable law, and the applicable regulations of any administrative agency of the Commonwealth of Pennsylvania and any applicable plan, including, but not limited to, the Act 537 Plan of the Township of Lower Makefield.
- B. Permit the Township or its designated agent to inspect holding tanks at any reasonable time to insure that the facility is properly maintained and functioning.
- C. Retain pumping receipts and maintenance records from the holding tank to be produced for the Township upon the Township's request.
- D. Permit only the property owner or a person lawfully occupying the premises designated in the permit to use the holding tank facility or deposit sewage therein.

- E. Holding tanks must be pumped out solely by a Bucks County Department of Health licensed sewage hauler and removed or backfilled with crushed stone or screening.

§ 166-37. Township permit requirement.

No holding tank shall be used or installed on any property in the Township unless or until a permit therefor has been issued in accordance with the provisions of this article.

- A. A permit may be issued only when the proposed site and proposed holding tank conform to the use restrictions in § 166-35.
- B. A person requesting a permit for a holding tank shall submit a written application, on a form provided by the Township, together with such fee as is established by resolution of the Board of Supervisors.
- C. If the Township determines that an initial application is incomplete or is unable to verify the information contained therein, the Township shall notify the applicant in writing within seven days of receipt of the application. The notice shall include the reasons why the application is not acceptable. When the required information is received, the Township shall act upon the application within 15 days of such receipt.
- D. The application for a permit shall include and be accompanied by the following:
- (1) A detailed statement of reasons the temporary holding tank is requested;
 - (2) A plan at a proposed site detailing the location of the placement of the temporary holding tank;
 - (3) A notarized statement from an entity or an agency licensed or approved by the Department of Environmental Protection for sewage disposal confirming without reservation that said entity or agency shall accept sewage from the proposed facility during the entire period of use thereof;
 - (4) A copy of a valid sewage disposal system permit issued by the Bucks County Department of Health; and
 - (5) A security agreement on a form approved by the Township, whereby the applicant assumes responsibility for the installation and maintenance of the proposed facility and the pumping, hauling and ultimate disposal of the sewage generated thereby and ultimate removal of a temporary holding tank upon expiration of the permit with an indemnification agreement saving and holding the Township harmless from any and all liability and expenses, including legal fees, arising from the use of the said facility or related to the sewage therefrom at any and all time and of every nature.

- E. A permit shall be required for alterations or connections to an existing holding tank when the alteration or connection requires the repair, replacement or enlargement of a holding tank, or the repair, replacement, disturbance, modification or enlargement of a soil absorption area or spray field, or the soil within or under the soil absorption area or spray field, as described in Title 25 of the Pennsylvania Administrative Code or any other applicable statute or regulation.
- F. In addition, the applicant shall comply with all provisions of §§ 166-35 and 166-36 and all applicable laws, and the regulations of any administrative agency of the Commonwealth of Pennsylvania.

§ 166-38. Issuance of permits; conditions and safeguards.

- A. The Board of Supervisors, or its designated agent, may issue a permit upon determining that the application is complete, that the applicant has satisfied all requirements of this article and that the proposed holding tank will not create a nuisance or a threat to the health and welfare and the community and the public.
- B. The Board of Supervisors, or its designated agent, may impose such reasonable conditions and safeguards upon the permit as are necessary to protect the public interest.
- C. The Township shall issue or deny the required permit in writing within seven days from the date the complete application and all supporting documentation is received.
- D. Failure to act on an application shall not be deemed an approval thereof. If the Township fails to act upon an application within seven days of receipt, or within 15 days of receipt of supplemental information under § 166-37C, the applicant may request a hearing before the Board of Supervisors.
- E. The Township will not issue a building permit or occupancy permit for a building structure that will utilize a temporary holding tank until the application, design and construction of the tank are approved by the Bucks County Department of Health and it has issued an Act 537 permit for such system. **[Amended 10-20-2010 by Ord. No. 387]**

§ 166-39. Denial of permit.

In the event an application is denied, written notice of denial setting forth the reasons for said action shall be mailed to the applicant not later than seven days following the date of said denial. The Township shall provide the required notice to such other state and local entities and departments as are required by applicable law and regulation.

§ 166-40. Restriction on permit transfer.

A permit issued pursuant to this article shall not be transferred. A transfer or attempted transfer of any permit, or any interest therein, shall constitute a default under the holding tank security agreement and a violation subject to the hereinafter stated penalties.

§ 166-41. Inspection/receipts.

As set forth under Title 25, § 71.63, of the Pennsylvania Code, there shall be an annual inspection of the temporary holding tank and said inspection shall generate a written inspection report. The Township is to receive, review and retain all pumping receipts from permitted holding tanks.

§ 166-42. Violations and penalties.

- A. Any person who violates any provision of this article shall, upon conviction thereof by summary proceedings before a Magisterial District Judge, be sentenced to pay a fine of not less than \$1,000, plus all court costs, including reasonable attorneys' fees incurred by the Township as a result thereof. No judgment shall commence or be imposed, levied or payable until the date of determination of violation by the Magisterial District Judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure. Each day that a violation continues of each section of this article shall constitute a separate offense.
- B. In addition, the Township, upon violation of a provision of this article or default under a security agreement or performance bond hereunder, shall, after five days', written notice is mailed to the address of the property owner as stated in the permit or application, have the following rights and recourse:
- (1) The Township shall have the right to revoke any permit issued hereunder and institute any and all appropriate legal action to restrain and prevent further use of the facility.
 - (2) The Township, or its designated agent or agents, shall have the right to enter upon the premises of the property owner and take such remedial action as is necessary to maintain the system or prevent a nuisance or health hazard, including the disconnection of the system, pumping thereof, and hauling and disposal of the sewage therefrom.
 - (3) The Township shall have the right to impose upon the property owner or permit holder all costs, fees and expenses, including reasonable legal fees incurred as a result of a remedial action, enforcement proceeding or litigation required or occasioned by any default, and to institute any and all lawful proceedings in any court, including actions for damages and costs, and equitable or

injunctive relief, including restraint of further use and occupancy of the premises.

- (4) The Township shall, in addition, have the right to enter a lien upon the property owner or permit holder in the Office of the Prothonotary or Recorder or Deeds in an amount equal to the costs and expenses incurred as a result of any default or violation. Upon the owner's failure to satisfy said lien, the Township shall have the right to enforce the same by execution sale or foreclosure.

§ 166-43. Abatement of nuisances.

In addition to any other remedies provided in this article, any violation of § 166-38 shall constitute a nuisance and shall be abated by the Township by either seeking mitigation of the nuisance or appropriate equitable or legal relief from a court of competent jurisdiction.

§ 166-44. Temporary use.

The use of the retaining tanks is temporary and the validity of the permit, as provided in this agreement, shall not exceed the period of 30 days after the applicant has been approved to connect to a public sewer. The applicant or the permit holder is responsible for removing said holding tank from the ground upon expiration of the permit. Extensions of permits will be granted by the discretion of the Township for good cause only.

§ 166-45. Revocation of permit.

- A. A permit shall be revoked by the Township at any time for one or more of the following reasons:
 - (1) When a change has occurred in the physical conditions of lands which will materially affect the operation of a holding tank covered by a permit issued by the Township under this article;
 - (2) When one or more tests material to the issuance of the permit has not been properly conducted;
 - (3) When information relevant to the issuance of the permit has been falsified;
 - (4) When the original decision of the Township otherwise failed to conform with the Act and this article; and/or
 - (5) When the permit holder has violated the Act, this article or the requirements of the permit.
- B. The notice of revocation of a permit shall be in writing to the permit holder and shall include the reasons for revocation, notice of the permit holder's opportunity to request a hearing before the Township within 10 days of receipt of the revocation notice, and notice that no further construction or use of either the holding tank or the structure for which

it is intended may take place until a new permit is issued or the revocation is reversed by the Township.

- C. If a permit holder fails to file a written request for a hearing under this article within 10 days after receipt of notice of revocation, revocation shall be final.

§ 166-46. Repeal.

This article constitutes the exclusive basis whereby temporary holding tanks may be utilized within Lower Makefield Township. All other ordinances, resolutions or parts of ordinances or resolutions, insofar as they are inconsistent herewith, or purport to authorize the use of holding tanks except as herein provided, are hereby repealed.

§ 166-47. Severability.

If any sentence, clause, section or part of this article is for any reason found by a court of competent jurisdiction to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this article. It is hereby declared as the intent of the Board of Supervisors of Lower Makefield Township that this article would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof had not been included therein.

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

Public Meeting held January 13, 2022

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(a) and 1329 (relating to enumeration of acts requiring certificate; and valuation of acquired water and wastewater systems) for approval of: (1) the transfer by sale, of substantially all of the wastewater system assets, properties and rights of Lower Makefield Township related to its wastewater collection and conveyance system; (2) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer or furnish wastewater service to the public in Lower Makefield Township, Bucks County; and (3) the use for ratemaking purposes of the lesser fair market value or the negotiated purchase price of the Lower Makefield Township assets related to its wastewater collection and conveyance system.

A-2021-3024267

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Aqua Pennsylvania Wastewater, Inc. (Aqua, the Company, or the Applicant) and the Office of Consumer Advocate (OCA), filed on November 29, 2021, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Jeffrey A. Watson, issued on November 17, 2021, in the above-captioned proceeding. Aqua and the OCA filed Replies to Exceptions on December 6, 2021. Also, before the Commission is the Joint Petition for Approval of Partial Settlement (Joint Petition or Partial Settlement) filed by Aqua, the Commission's Bureau of Investigation and Enforcement (I&E), the OCA, the Office of Small Business Advocate (OSBA), and Lower Makefield Township (LMT or the Township) (collectively, Joint Petitioners), on October 8, 2021. For the reasons stated, *infra*, we shall: (1) grant, in part, and deny, in part, the Exceptions of Aqua; (2) deny the Exceptions of the OCA; (3) adopt the ALJ's Recommended Decision, as modified, consistent with this Opinion and Order; and (4) approve the Joint Petition, without modification, as being in the public interest.

I. Procedural History

On May 14, 2021, Aqua filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code (Code) seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of the Township; (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 Section 1329(c)(2) of the Code,

66 Pa. C.S. § 1329(c)(2).¹ Application at ¶ 3. Aqua also requested approval of the Asset Purchase Agreement (APA) dated September 17, 2020, as well as other municipal agreements, pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, and requested that the Commission issue an order and Certificate of Public Convenience approving and addressing the items requested in its Application. Application at ¶ 5.

On June 9, 2021, the OSBA filed a Notice of Intervention and Public Statement. On June 16, 2021, I&E filed a Notice of Appearance.

By Secretarial Letter dated June 25, 2021, the Commission conditionally accepted the Application for filing. The Commission required individual notice to be provided to Aqua's existing water and wastewater customers, that Aqua ensure concurrent notice was provided to all current LMT wastewater customers, and that newspaper notice in the LMT area be provided. Upon completion, Aqua was directed to file a verification that the notice had been provided. On June 30, 2021, Aqua filed a letter with the Commission, with the attached verification, stating that it had complied with the notice requirements.

On June 29, 2021, LMT filed a Petition to Intervene. The OCA filed a Protest and Public Statement on July 2, 2021.

By Secretarial Letter dated August 5, 2021, the Commission informed Aqua that it had accepted the Application for filing. The Commission published a notice

¹ Under 66 Pa. C.S. § 1329, *inter alia*, Aqua sought to establish a ratemaking rate base of \$53 million for LMT's wastewater system assets based on the negotiated purchase price, as the negotiated purchase price of \$53 million is less than the average of the fair market value appraisals, which are \$54,967,796 (determined by \$55,505,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming) and \$54,430,591 presented in the appraisal of AUS Consultants, Inc. (AUS)). Application at 17.

of the Application in the August 21, 2021 edition of the *Pennsylvania Bulletin* with a protest deadline of September 7, 2021. 51 Pa. B. 5343.

Six protests to the Application were filed by *pro se* individuals.²

On September 9, 2021, a Telephonic Prehearing Conference convened, as scheduled, in which Aqua, I&E, the OCA, the OSBA, LMT, Protestant Summers, and Protestant Lachance participated.³ A litigation schedule was adopted providing for, *inter alia*, the distribution of direct testimony of other parties,⁴ rebuttal, surrebuttal and outlines of oral rejoinder testimony, and evidentiary hearings on September 29 and 30, 2021.

A Telephonic Public Input Hearing was held on September 23, 2021, during which three witnesses offered testimony (Protestant Summers, Jeffrey Hall-Gale,

² Protests were filed by John Char on August 2, 2021, Barry Summers (Protestant Summers) on August 5, 2021, Kevin and Beth Cauley on August 13, 2021, Jaan Pesti on August 25, 2021, and Peter A. Lachance (Protestant Lachance) on August 27, 2021. An additional protest was filed after the protest deadline of September 7, 2021 by Keisha Jackson-Spence on September 10, 2021.

³ Subsequent to the Prehearing Conference, ALJ Watson issued an Initial Decision, entered September 20, 2021, dismissing the Protest of Protestant Lachance for lack of standing. Aqua and the Township had opposed Protestant Lachance's participation in the proceeding, filing preliminary objections seeking dismissal of the protest on September 8, 2021 and September 10, 2021, respectively.

⁴ Aqua included the direct testimony of William C. Packer, Mark J. Bubel, Sr., Kurt M. Ferguson, Harold Walker, III, and Jerome C. Weinert as Aqua Exhibits U, V, W, X, and Y, respectively, to its Application filed May 14, 2021.

and Protestant Lachance).⁵ The testimony from the Public Input Hearing is discussed in more detail in the Recommended Decision on pages 50 through 51.

A call-in evidentiary hearing was convened on September 29, 2021, as scheduled. Written testimony was admitted into the evidentiary record by stipulation and cross examination was waived.⁶ Oral rejoinder testimony by the Utility Valuation Experts (UVEs) was presented and subject to cross examination.

ALJ Watson approved the Joint Stipulation by Interim Order, dated September 29, 2021, Approving Joint Stipulation for the Admission of Testimony and Exhibits, Providing for the Filing of Objections to Any Settlement and Responses to Objections and Revising Litigation Schedule.

On October 8, 2021, Aqua, I&E, the OCA, the OSBA and LMT filed a Joint Petition for Approval of Partial Settlement proposing a resolution of all issues with the exception of: (1) the determination of ratemaking rate base; and (2) the treatment of income tax savings on repairs deductions.

⁵ Protestant Summers elected to withdraw his written direct and surrebuttal testimonies served on September 10, 2021 and September 22, 2021, respectively. R.D. at 6. Additionally, on September 23, 2021, an Interim Order was entered granting the Motion of Aqua to strike the written testimony of Protestant Lachance. R.D. at 5.

⁶ Prior to the start of the hearing on September 29, 2021, Aqua, I&E, the OCA, the OSBA, and LMT submitted a Joint Stipulation for Admission of Testimony and Exhibits (Joint Stipulation) to ALJ Watson providing, *inter alia*, for the stipulation of written testimony and exhibits into the evidentiary record and the waiver of cross examination of each other's written testimony. Protestant Summers joined in the Joint Stipulation during the course of the hearing.

On October 8, 2021, Main Briefs were filed by Aqua and the OCA, addressing the two unresolved issues.⁷ Reply Briefs were filed by Aqua and the OCA on October 18, 2021, closing the record in this proceeding.

In the Recommended Decision issued on November 17, 2021, ALJ Watson recommended approving the Joint Petition without modification because it is supported by substantial evidence and is in the public interest. R.D. at 1, 98. Concerning the two issues reserved for litigation: (1) ALJ Watson recommended adoption of the OCA's proposed adjustments to the fair market value (FMV) appraisals of Gannett Fleming and AUS. The effect of the adjustments reduces the ratemaking rate base for the acquired assets by \$1,763,741 from the proposed \$53,000,000 to \$51,236,259, and (2) as to the treatment of income tax savings on repairs deductions, ALJ Watson rejected the OCA's proposal to record the income tax effect of repairs deductions in a regulatory liability account to be addressed in Aqua's next base rate case. R.D. at 92, 96-99.

As noted above, Aqua and the OCA filed Exceptions on November 29, 2021; Aqua excepting to the recommended reduction of ratemaking rate base from \$53,000,000 to \$51,236,259, and the OCA excepting to the denial of its proposed recording of the income tax effect of repairs deductions in a regulatory liability account. On December 6, 2021, Aqua and the OCA filed Replies to Exceptions.

II. 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

⁷ On October 8, 2021, the Township filed a letter in support of Aqua's Main Brief regarding the ratemaking rate base for the Township's system.

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 of Public Convenience (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) (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).

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.

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 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 Uniform Standards of Professional Appraisal Practice (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).

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. Settlements in the Public Interest

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7. Despite this policy, the Commission does not simply rubber stamp settlements without determining whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

F. General Standards

In the Recommended Decision, ALJ Watson made twenty-two Findings of Fact and reached thirty-one Conclusions of Law. *See* R.D. at 10-13, 99-105. 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.

III. 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 Bucks County. Application at ¶ 7.

LMT owns a sanitary wastewater collection system operated by the Municipal Sewer Authority of the Township of Lower Makefield, which provides direct wastewater service to 11,151 customers in the Township. Application at ¶ 8; Aqua St. 2 at 10. LMT does not own a wastewater treatment plant. Wastewater treatment is mainly provided by the Municipal Authority of the Borough of Morrisville and also by Yardley Borough Sewer Authority. Application at ¶ 15.

On September 17, 2020, Aqua and LMT entered into an APA for the sale of substantially all of the assets, properties, and rights related to the Township's wastewater

system at an agreed-upon price of \$53,000,000.⁹ 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 LMT jointly retained the services of Ebert Engineering, Inc., Consulting Engineers (Ebert) to complete the engineering assessment and original cost estimate of the wastewater system (Assessment of Tangible Property). Aqua St. 1 at 20; Application at ¶ 11. Aqua selected Gannett Fleming, and the Township selected AUS, as their respective UVEs to prepare FMV appraisals of the wastewater system. Application at ¶ 53. Gannett Fleming's FMV report concluded that the value of the wastewater system was \$55,505,000; AUS' FMV was \$54,430,591. Application Exhs. Q and R. Both appraisals were prepared in compliance with the USPAP standards. Application at ¶ 61; Application Exhs. T1 and T2.

In its Application, Aqua proposed a ratemaking rate base of \$53,000,000 based on the agreed-to purchase price of \$53,000,000. This amount is less than the average of the two UVE appraisals for the wastewater system ($(\$55,505,000 + \$54,430,591)/2 = \$54,967,796$). OCA M.B. at 6; *See* 66 Pa. C.S. § 1329(c)(2).

In addition, Aqua is seeking approval of the APA with LMT. Application Exh. B. The APA requires Aqua to implement rates that are no higher than the Township's rates in effect at closing. Application Exh. B at Section 7.04. The APA also provides that Aqua intends to bill customers on a monthly basis instead of an annual basis. *Id.* 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. Separate customer notices were sent to the Township customers and

⁹ All assets are located in the Township except for a portion of a main that collects wastewater from a small segment of residents in Yardley Borough. The main is located on University Blvd. and is owned by LMT which loops into, then out of, Yardley Borough. The residents in Yardley Borough that are connected to this main are billed by Yardley Borough. Application at 3.

current Aqua customers informing them of the proposed transaction and the potential rate impact.

IV. Joint Petition for Partial Settlement

A. Terms and Conditions of the Partial Settlement

As previously indicated, the Partial Settlement resolves all but two issues raised in this proceeding, which are reserved for litigation: (1) the determination of ratemaking rate base; and (2) the income tax savings on repairs deductions. The Joint Petition contains the Partial Settlement Terms and Conditions. The Statements in Support of Aqua, I&E, the OCA, the OSBA, and the Township are Attachments A through E, respectively, of the Joint Petition. Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Ordering Paragraphs are attached to the Joint Petition as Attachments F through H, respectively.

The essential terms and conditions of the Partial Settlement are set forth in Section II of the Joint Petition, and are shown below in full as they appear in the Joint Petition:

A. Approval of Application and Acquisition

- (1) The Commission should approve Aqua's acquisition of Lower Makefield Township wastewater collection system assets and Aqua's right to begin to offer, render, furnish, or supply wastewater service in the areas served by Lower Makefield.

- (2) The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.¹⁰

B. Tariff

The pro forma tariff submitted with the Application, as updated in Aqua’s supplemental information filed by letter dated June 21, 2021, including all rates, rules and regulations regarding conditions of Aqua’s wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

C. Engineering Assessment

On a going forward basis, Aqua will require engineering firms conducting Section 1329 assessments to present, as part of the engineering assessment, a detailed Engineer’s Assessment Study containing the seller’s utility assets description of the condition of inventory and assets. The designation of condition shall be limited to those assets that can be observed and whether the categories of system assets appraised are in poor, fair, good or very good condition.

D. Easements and Other Property Rights

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

¹⁰ The OCA does not join in this Subparagraph A(2) but does not oppose Aqua’s request.

E. Cost of Service Study

- (1) In the first base rate case that includes Lower Makefield wastewater system assets, Aqua will submit a wastewater cost of service study that removes all costs and revenues associated with the operation of the Lower Makefield system.
- (2) In the first base rate case that includes Lower Makefield wastewater system assets, Aqua will also provide a separate cost of service study for the Lower Makefield system. Aqua will file a Cost of Service Study separately for the Lower Makefield 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.

F. Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs

- (1) Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge (“DSIC”) for book and ratemaking purposes, will be addressed in Aqua’s first base rate case which includes Lower Makefield wastewater system assets.
- (2) Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The parties’ assent to this agreement should not be construed to operate as its preapproval of Aqua’s requests.

G. Long Term Infrastructure Improvement Plan (“LTIIP”) and Distribution System Improvement Charge

- (1) If Aqua proposes to modify its LTIIP to include the Lower Makefield wastewater system, the projects added for Lower Makefield will be in addition to those that Aqua plans for its existing systems.
- (2) In future LTIIPs or Annual Asset Optimization Plans (“AAOP”) that include the Lower Makefield wastewater system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua’s current practice and ability to allocate projects as needed for its capital program.
- (3) Upon approval of the Commission of a modification to its LTIIP which includes the Lower Makefield wastewater system, Aqua shall be permitted to collect a DSIC related to the Lower Makefield wastewater system prior to the first base rate case in which the Lower Makefield assets are incorporated into rate base.

H. Lower Makefield Rates

- (1) The current average Lower Makefield residential rate is \$74.32 per month based on four thousand seven hundred gallons of usage. As set forth in the notice sent to Lower Makefield customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on Lower Makefield wastewater customers of 28.17%.
- (2) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the Lower Makefield customers that are in excess of the restrictions contained in Section 7.03 of the APA.

- (3) Aqua and Lower Makefield agree that, at the time of Aqua's first base rate case that includes the Lower Makefield system, Aqua will propose the timing of the rate effect consistent with the terms of Section 7.03 of the APA. All parties reserve their rights to address Aqua's proposal.
- (4) In the first base rate proceeding filed by Aqua that includes Lower Makefield's wastewater system assets, Aqua shall propose to move the Lower Makefield system to its cost of service, based on a separate cost of service study for Lower Makefield's system; provided, however, that Aqua will not be obligated to propose Lower Makefield wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that Aqua may agree to rates other than those proposed for Lower Makefield customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and Lower Makefield reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua agrees to provide written notice to Lower Makefield Township customers of the rate filing and the level of increase, if any, resulting from this provision.

I. Welcome Letter

Aqua will send a welcome letter to Lower Makefield Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

J. Legal Fees

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

challenge the reasonableness, prudence, and basis for such fees.

Joint Petition at 6-9.

In addition to the specific terms and conditions to which the Joint Petitioners have agreed, the Partial Settlement contains other general terms and conditions typically found in settlements submitted to the Commission. Specifically, the Joint Petitioners agreed that the Partial Settlement is conditioned upon the Commission's approval of all the terms and conditions contained therein without modification. The Joint Petition establishes the procedure by which any of the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case if the Commission should act to modify or reject the Partial Settlement. Additionally, the Joint Petitioners submitted that the Partial Settlement is made without any admission against, or prejudice to, any position which any of the Joint Petitioners might adopt in any subsequent litigation of this proceeding or in future proceedings. Moreover, the Joint Petitioners waived their right to file Exceptions concerning the issues in the Partial Settlement if the ALJ recommended that the Commission adopt the Partial Settlement without modification. *Id.* at 10.

B. ALJ's Recommendation on the Partial Settlement

In the Recommended Decision, the ALJ set forth the terms and conditions of the Partial Settlement and recommended approval of the Joint Petition, without modification, finding that it is supported by substantial evidence and is in the public interest. The ALJ determined that the Partial Settlement complies with the relevant Sections of the Code regarding applications for the acquisition of wastewater system assets and is consistent with the Commission's Regulations promoting settlements. R.D. at 1, 51-53.

The ALJ reasoned that the Partial Settlement will ensure that the Township's residents will receive quality wastewater service from Aqua, a certificated public utility with the necessary financial, technical, and legal resources to provide that service into the foreseeable future. The ALJ concluded that bringing the Township's existing customers into Aqua's customer base will also ensure that the Township's residents have access to the Commission's procedures for investigating and enforcing any complaints the residents may have concerning the Township's wastewater service and that future rate increases will be subject to the Commission's jurisdiction. R.D. at 51.

The ALJ's analysis of the essential Partial Settlement terms and recommendation for approval of the Joint Petition, without modification, is summarized as follows:¹¹

1. Approval of Application and Acquisition

The ALJ determined that the record supports the findings that Aqua is technically, legally, and financially fit to acquire the Township's wastewater system, and none of the Parties have rebutted these findings through record evidence. R.D. at 23-24. The ALJ also determined that this transaction will provide affirmative public benefits, as fully set forth in Aqua's direct testimony, which include furthering the goal of regionalizing water systems, better management practices, economies of scale, and greater customer, environmental, and economic benefits. Further, the ALJ determined that the value of the public benefits will be better realized under the Partial Settlement because the Partial Settlement contains numerous terms that protect Aqua's existing and future ratepayers and will ensure that Aqua's ratepayers receive the benefit of the bargain that Aqua negotiated without being subject to protracted and expensive litigation.

¹¹ The ALJ also provides a detailed summary of the Joint Petitioners' positions on each of the essential Settlement terms as set forth in their respective Statements in Support. *See* R.D. at 22-47.

Id. at 24. The ALJ noted that the transaction, with the conditions described in the Partial Settlement, benefits all of the stakeholder groups impacted by the transaction: the public-at-large; the Township (as seller of the System); the Township’s existing customers; and Aqua’s existing customers. *Id.* at 25. The ALJ reasoned that the transaction benefits members of the public-at-large and the Township and Aqua’s existing customers because it promotes the Commission’s policy favoring regionalization and consolidation of water and wastewater systems. *Id.* (citing 52 Pa. Code § 69.721(a); Aqua St. 1 at 17).

2. Tariff

The ALJ observed that the Joint Petitioners agreed that the *pro forma* tariff Aqua submitted with its Application, as updated in the supplemental information submitted by letter dated June 21, 2021, will become effective upon Closing. The ALJ stated that the *pro forma* tariff will implement the Township’s current rates inclusive of any then-existing miscellaneous fees and charges. The ALJ also stated that the Township currently bills on a quarterly basis. R.D. at 26. Aqua plans to convert certain customers who receive water service from Pennsylvania-American Water Company to monthly billing, and customers that receive water service from the Municipal Authority of the Borough of Morrisville will continue with quarterly billing after closing. *Id.* (citing Aqua Statement in Support at 11). Accordingly, the ALJ concluded that the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of Aqua’s wastewater service, and this full and accurate disclosure of rates is in the public interest. R.D. at 27.

3. Engineering Assessment

The ALJ stated that Aqua agreed in the Partial Settlement that in any future Section 1329 applications it submits, the engineering assessment required under 66 Pa. C.S. § 1329(a)(4) will designate the condition of the inventory and assets appraised.

Aqua also agreed that such designation of the condition shall be limited to whether the categories of system assets appraised are in poor, fair, good, or very good condition. R.D. at 28. The ALJ concluded that the Joint Petitioners agreed to this term and, as I&E explained, ensuring that incongruent valuations are not produced in the future as a result of the engineering report's lack of condition designation is necessary to protect the integrity of the fair market valuations and the Section 1329 process. *Id.* (citing Joint Petition at 11-12).

4. Easements and Other Property Rights

The ALJ observed that under the Partial Settlement, Aqua has agreed to work with the Township to ensure the transfer of all real property rights, including easements and missing easements as defined in the APA, by Closing and to provide an update to I&E, the OCA, and the OSBA in advance of Closing and a final update before Closing regarding the status of the transfer of real property rights including easements. The Partial Settlement also includes a provision for the establishment of an escrow from the purchase price to ensure transfer of the real property rights. The ALJ noted that I&E explained the public interest would be harmed if Aqua paid a purchase price that assumed that all rights necessary to operate the Township would be transferred, and at the Township's cost, and such action did not occur. To protect against this possibility, the Partial Settlement includes establishment of an escrow account that would be imposed on the Township to ensure that any right not transferred at closing must be financially accounted for by payment to the escrow account. R.D. at 31. The ALJ found that this Partial Settlement term is in the public interest and, as I&E asserted, provides an additional layer of accountability if Aqua and the Township would mutually decide to waive the applicable sections of the APA that bind it to deliver good and marketable title to all real property necessary for the operation of the acquired system. *Id.* at 31-32 (citing I&E Statement in Support at 9).

The ALJ also found that Aqua's agreement to provide the Statutory Parties with an update on the status of the transfer of real property rights related to the system in advance of the anticipated Closing Date provides an effective mechanism to monitor the Township's progress in meeting its property transfer obligations, and it enables the Statutory Parties to take any action that may be warranted and available to ensure that Aqua's ratepayers are not paying for property rights that are not obtained or paying any costs associated with obtaining those rights. R.D. at 32 (citing I&E Statement in Support at 9-10).

5. Cost of Service Study

The ALJ explained that the Partial Settlement provides that in Aqua's first base rate case following closing in which the Company includes the Township's assets in rate base, Aqua will submit a wastewater cost of service study that removes all costs and revenues associated with the Township system, and the Company will also provide a separate cost of service study for the Township system. The ALJ reasoned that these Partial Settlement terms will provide a mechanism for the parties to use the cost of service data to set rates for the Township's customers that differ, as appropriate, from rates established for other wastewater customers. The ALJ agreed with I&E's position that without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing Aqua customers and its options of addressing that impact to provide any appropriate relief to existing customers could be compromised. R.D. at 34. The ALJ further agreed with I&E's position that Aqua's cost of service study commitment will serve the public interest, because a cost of service study can establish the existence and extent of subsidization (inter and intra-class) and assist in determining the appropriate amount of revenue requirement that is reasonable to shift from the wastewater customers to the water customers. *Id.* (citing I&E Statement in Support at 10-11).

6. Allowance for Funds Used During Construction, Deferral of Depreciation and Transaction Costs

The ALJ stated that Aqua agreed in the Partial Settlement that any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC will be addressed in Aqua's first base rate case which includes Township wastewater system assets, and the Joint Petitioners reserve the right to litigate claims for AFUDC, deferral of depreciation, and transaction costs in future rate cases. R.D. at 36. The ALJ noted that as Aqua explained, the Commission has previously directed a similar condition to meet the affirmative public benefit standard. *Id.* (citing *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329, and 507 of the Public Utility Code*, Docket No. A-2019-3008491 (Order entered November 5, 2019)). The ALJ concluded that preserving the ability to litigate any of Aqua's proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available, and ratemaking issues are ripe for determination. R.D. at 36 (citing I&E Statement in Support at 11).

7. Long Term Infrastructure Improvement Plan and Distribution System Improvement Charge

The ALJ noted that under the Partial Settlement, the Joint Petitioners agreed that Aqua may apply the DSIC to customers in the Township service area before the first base rate case in which the system's plant in service is incorporated into rate base pursuant to Section 1329(d)(4) of the Code. R.D. at 38. The Partial Settlement provisions provide that if Aqua proposes to revise its LTIPP to include the Township and related projects, the projects added for the acquired system will be in addition to those that Aqua plans for its existing systems, and are in addition to the projects already included in Aqua's approved LTIPP. *Id.* at 38-39. The ALJ reasoned that this Partial

Settlement term allows Township customers to begin contributing, up to 5% of their total wastewater bill, toward DSIC-eligible capital projects. *Id.* at 39 (citing Joint Petition at 13). The Partial Settlement further provides that if Aqua seeks to modify its LTIIP to include the Township system, Aqua will not reprioritize other existing capital improvements that the Company already committed to undertake in other service areas. R.D. at 39. The ALJ agreed with the Joint Petitioners that these terms help to ensure that projects and expenditures already planned for existing Aqua wastewater customers will not be given less priority as a result of the Township acquisition. *Id.* (citing Aqua Statement in Support at 14).

8. Township Rates

The ALJ observed that the Township indicated that the current average Township residential rate is \$74.32 per month, and notice sent to the Township's customers provided a non-binding estimated incremental rate effect of 28.17% as a result of the proposed rate base addition. R.D. at 41 (citing Township Statement in Support at 7). In the Partial Settlement, the Joint Petitioners agreed to a framework for addressing Township rates in the first base rate proceeding that includes LMT's wastewater system assets. R.D. at 41-42. The ALJ stated that the framework provides that: (1) Aqua shall propose to move the Township system to its cost of service, based on a separate cost of service study for the Township's system; provided, however, that Aqua will not be obligated to propose Township wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates; (2) Aqua may agree to rates other than those proposed for the Township's customers in the context of a settlement of the first base rate case; (3) at the time of Aqua's first base rate case that includes the Township system, Aqua will propose the timing of the rate effect consistent with the terms of Section 7.03 of the APA; (4) Aqua will provide written notice to the Township's customers of a base rate case filing and the level of increase in the first base rate case that includes the Township's assets; and (5) the OCA, I&E, the OSBA, and the Township reserve their rights to fully

address Aqua's proposal, and to make other rate proposals in the base rate case. R.D. at 42 (citing Joint Petition at 13-14).

9. Welcome Letter

The ALJ noted that Aqua has agreed to send a Welcome Letter to Township wastewater customers within thirty days following Closing, and the Letter will include information about the conversion to monthly billing for the Township customers' sewer service. The ALJ found that this Settlement provision is in the public interest and will ensure that the newly acquired customers are aware of the conversion to monthly billing in a timely manner. R.D. at 43.

10. Legal Fees

The ALJ noted that under the Partial Settlement, Aqua has agreed to separately identify legal fees included in its transaction and closing costs pursuant to the APA between Aqua and the Township and to specify amounts Aqua expends on behalf of the Township. Additionally, the Statutory Advocates reserve the right to challenge the reasonableness and basis for these legal fees. R.D. at 45. The ALJ agreed with I&E's positions that Aqua's commitment to separately identify these legal fees is consistent with ensuring that Aqua will only be permitted to recover prudently incurred costs from ratepayers and that the statutory parties will be able to challenge the basis of any claimed Township legal fees. *Id.* (citing I&E Statement in Support at 13-14). The ALJ found that the combined commitments in the Settlement will protect Aqua's ratepayers from bearing the burden of the Township's legal fees. R.D. at 45-46.

11. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, if any, under the Code

The Partial Settlement provides that the “Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507.” The ALJ lists the various agreements for which the Joint Petitioners request that the Commission issue Certificates of Filing pursuant to Section 507. *See* R.D. at 48-49; Joint Petition at 15-17. The ALJ noted that there is no opposition to the issuance of the Certificates of Filing for the contracts and directed that Certificates of Filing be issued for the various agreements between Aqua and the Township.¹² *See* R.D. Ordering Paragraph No. 5.

C. Public Interest Analysis of the Settlement

Upon review of the record and the Statements in Support of the Joint Petitioners, we determine that the Partial Settlement is in the public interest and should be approved without modification. We concur with the ALJ’s well-reasoned analysis and summary of the extensive public benefits that will result from the Partial Settlement, as set forth in detail above. We also agree with the ALJ that the Partial Settlement will ensure that the Township’s existing customers will receive quality wastewater service from Aqua and, as a result of the transaction, will benefit from the Commission’s protections and procedures for investigating and enforcing any complaints concerning

¹² We note that the Parties appear to have inadvertently excluded Exhibit F18: Water Service Termination Agreement, by and between Lower Makefield Township and the Municipal Authority of the Borough of Morrisville, from the Settlement and the Proposed Ordering Paragraphs. The ALJ utilized the Proposed Ordering Paragraphs and thus also excluded Exhibit F-18 from the Ordering Paragraphs in the Recommended Decision. Although the Parties did not note this apparent error in the Recommended Decision, it is clear that the Agreement (Aqua Exh. No. 1 with Exhibits A through AA2, and thus including F-18) were admitted into the evidentiary record. We have included Exhibit F-18 in Ordering Paragraph No. 10 *infra*. *See* Tr. at 161.

wastewater service as well as the Commission's jurisdiction over any future rate increases.

Additional affirmative public benefits that will result from the Partial Settlement include the following: furthering the goal of consolidation/regionalization of water and wastewater systems throughout Pennsylvania, enhanced management practices, capital improvements, expense efficiencies, economies of scale, and the resulting customer, environmental, and economic benefits. *See* Aqua Statement in Support at 6-9; Aqua Application, Exhibit U, St. 1 at 13-19; I&E Statement in Support at 7. Through the Partial Settlement, the public benefits will be better realized because the Partial Settlement contains various terms that protect both Aqua's existing ratepayers and those who will become Aqua's ratepayers as a result of this transaction.

Moreover, by resolving all but two of the issues in this proceeding, the Partial Settlement reflects a consensus on many of the issues in this proceeding and has reduced the time, effort, and expense of litigating this case in full. This benefits not only the named Parties directly, but, indirectly, benefits customers of the Company, as litigation costs are borne not only by the Company but also by the Company's customers. For all of these reasons, we shall adopt the ALJ's recommendation and approve the Joint Petition, without modification.

V. Unresolved Issues

A. Determination of Ratemaking Rate Base

As a preliminary matter, we shall address the ability of parties to challenge FMV appraisals. Aqua argued that the Commission should not adopt the OCA's proposed adjustments by arguing that OCA witness, Mr. Ralph Smith, did not perform an appraisal of the Township's system, presented "no evidence showing that he has the

experience or legal competency to critique the appraisals of certified UVEs,” and that “Mr. Smith’s adjustments do not meet a standard of value of fair market value.” Aqua M.B. at 10. The OCA countered that “Aqua’s position that parties cannot challenge UVE appraisals has repeatedly been rejected by the Commission and it should be rejected in this proceeding as well.” OCA R.B. at 4.

ALJ Watson noted this disagreement as to whether the Commission or other parties may challenge the appropriateness of the FMV determinations of the UVEs, finding that Section 1329 does not eliminate the Commission’s authority to determine rate base or prohibit the consideration of the OCA’s testimony on FMV. R.D. at 69-70, 80-81. The ALJ, in agreement with the OCA, noted that the Commission has stated that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals and make arguments as to their reasonableness and to recommend adjustments.” *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) at 53 (*New Garden*).

The ALJ cited to two subsequent Section 1329 proceedings, in which the Commission reiterated that Section 1329 contains no prohibitions on the ability of parties to review the UVE appraisals as to their reasonableness and stated as follows:

We agree that Section 1329 does not prevent a review of the UVE assumptions for reasonableness, and for the reasons discussed below, we find that the ALJ appropriately considered several of the recommendations to the fair market appraisals of the Limerick system.

R.D. at 70 (citing *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) at 36 (*Limerick*)).

[T]he Commission has already considered and rejected Aqua's position and determined that Section 1329 contains no prohibitions on the ability of parties, or the Commission, to review the UVE appraisals as to their reasonableness and, accordingly, propose, or adopt, adjustments to the UVE appraisals. Specifically, in the *Limerick Order*, citing to the *New Garden Order*, we rejected Aqua's position in those cases, the position Aqua reiterated in this proceeding. *Limerick Order* at 35-36.

R.D. at 81 (citing *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*)). As such, the ALJ noted that the Commission has already made the determination, as it did in other Aqua Section 1329 acquisitions such as *New Garden*, *Limerick*, and *Cheltenham*, that challenges to appraisals are permissible. R.D. at 70.

No Party filed Exceptions on this issue.¹³ Finding the ALJ's recommendation to be reasonable and supported by substantial evidence in the record, we shall adopt it without further comment. Therefore, we will continue with our discussion and consideration of Aqua's Exceptions, regarding the ALJ's recommendation and acceptance of the OCA's proposed adjustments to several of the UVE appraisal approaches.


¹³ It should be noted that, while no Party disagreed that challenges to appraisals are permissible, Aqua's Exception No. 5, discussed *infra*, contends that the Commission's review is constrained to compliance with USPAP. See Aqua Exc. at 22-23.

1. Aqua's Application

As previously indicated, appraisers, Gannett Fleming and AUS, found appraised values of approximately \$55.505 million and \$54.431 million, respectively, for an averaged appraised value of approximately \$54.968 million. The purchase price of \$53 million is below the average appraised value; consequently, Aqua proposed the \$53 million purchase price amount be included in rate base, if the transaction is approved. Application at ¶ 21; 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, Market, and Income Approaches to arrive at the FMV of the system. Both firms were pre-certified as authorized UVEs. Aqua M.B. at 6-7. In arriving at its estimate, Gannett Fleming considered all three approaches, assigning an equal weight to the result of each approach. While AUS primarily relied on the Cost Approach, with the Income and Market Approaches being utilized to confirm the overall value of the wastewater system's operation.¹⁴ The results of each are summarized as follows:

¹⁴ In preparation of their FMV estimates, specifically in the cost approach, Gannett Fleming and AUS utilized the Assessment of Tangible Property provided by Ebert. Aqua St. 4 at 16; Application Exh. R, Narrative Report at 2.

Summary of Results Prepared by Gannett Fleming			
	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$54,531,935	33.33%	\$18,175,494
Income Approach	\$53,741,785	33.33%	\$17,912,137
Market Approach	\$58,239,781	33.34%	\$19,417,143
		100%	\$55,504,774
Conclusion			\$55,505,000

See Aqua St. 4 at 13. In summary, Gannett Fleming’s Cost Approach utilized the original cost new (OCN) to calculate the trended original cost (TOC) measures, or the reproduction cost of the depreciable assets by multiplying the OCN by specific cost indices. Reproduction cost new was converted to replacement cost new after factoring in obsolescence. Gannett Fleming indicated its use of the TOC method over the reproduction cost or the replacement cost methods was essentially dictated by the mandated use of the Assessment of Tangible Property’s original cost. Its Income Approach considers the results of two types of discounted cash flow (DCF) 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).¹⁵ Gannett Fleming’s Market Approach is supported by the market multiples method and selected transaction method. Aqua St. 4 at 16-18, 24.

¹⁵ EBIT is earnings before interest and taxes and EBITDA is earnings before interest, tax, depreciation, and amortization.

Summary of Results Prepared by AUS			
	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$51,414,555	50%	\$25,707,278
Income Approach	\$57,872,959	40%	\$23,149,184
Market Approach	\$55,741,285	10%	\$5,574,129
		100%	<u>\$54,430,591</u>
Conclusion			\$54,430,591

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 6-8, 11.

Even before reviewing the specifics of each consultant's analyses, as summarized above, the OCA asserted that it is clear that judgment is involved in the inputs used, the weighting given to each approach and the determinations. That is why two UVEs have reached different FMV results for the Township's system. OCA M.B. at 8-9.

As discussed below, OCA witness Ralph Smith proposed adjustments to several of the UVE appraisal approaches in this proceeding. In summary, the culmination of the OCA's proposed adjustments to (1) the service life for Gravity Collection Mains utilized in AUS's Cost Approach; and (2) the Income Approaches

utilized by both Gannett Fleming and AUS, results in a \$1,763,741 reduction to Aqua's requested rate base of \$53,000,000.^{16, 17}

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 28 (citing *Approaches to Value*. American Society of Appraisers accessed Jan. 27, 2017, <http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value>).

a. Positions of the Parties

The UVEs rely on the Assessment of Tangible Property in performing the cost approach analysis. Using the Assessment of Tangible Property developed by Ebert, Gannett Fleming showed the original cost of LMT's wastewater system and land to be \$32,003,924 with calculated accumulated depreciation of \$12,195,650, for a net depreciated original cost of the LMT wastewater assets of \$19,808,274.¹⁸ As illustrated in the following table, and noted by OCA witness Smith, the largest single account, by

¹⁶ The OCA also proposed an adjustment to the AUS Market Approach; however, this adjustment has no impact on the determination of ratemaking rate base.

¹⁷ The OCA calculated that the adjusted Gannett Fleming appraisal result would be \$54,163,000, and the adjusted AUS appraisal result would be \$48,309,516, in order to properly reflect financial and ratemaking principles. OCA Exh. RCS-1SR, Col. G, lns. 5 and 10. The recalculated average of the two appraisal results is \$51,236,259, which is the amount the OCA recommended be used by the Commission for establishing rate base under Section 1329 rather than the \$53,000,000 proposed by Aqua. OCA Exh. RCS-1SR, Col. G, ln. 13; OCA M.B at 9.

¹⁸ Application Exh. Q, Fair Market Value Appraisal Report as of March 22, 2021 for Aqua prepared by Gannett Fleming, Exh. 7 at 1.

far, in the LMT wastewater system is Account 361.20 – Gravity Collection Mains. OCA St. 1 at 21-22.

LOWER MAKEFIELD TOWNSHIP, BUCKS COUNTY, PA ORIGINAL COST OF WASTEWATER COLLECTION SYSTEM AS OF MARCH 22, 2021		
Account No.	Description	Original Cost (\$)
353.20	Land and Right-of-Ways	\$ 646.00
354.20	Pump Station Structures and Improvements	\$ 2,213,536.78
354.40	Structures and Improvements - Treatment and Disposal Facilities	\$ 2,186,739.00
355.20	Pump Station Power Generation Equipment	\$ 292,281.69
356.20	Pump Station Power Protection and Control Devices	\$ 506,720.07
359.20	Collection Sewers - Low Pressure	\$ 354,372.85
360.20	Pump Station Force Mains	\$ 837,435.81
361.20	Collection Sewers - Gravity	\$ 22,142,440.90
363.20	Services to Customers - Laterals	\$ 2,286,076.98
363.20	Services to Customers - Flow Meters	\$ 308,281.03
371.20	Pump Station Pumping Equipment	\$ 875,393.07
	System Total	<u>\$ 32,003,924.18</u>

AUS witness, Jerome C. Weinert used an 80-year, 80-R2.5, depreciable life and survivor curve for this account in the AUS Cost Approach. The OCA argued that AUS’ 80-year service life for Account 361.20 is 15 years longer than the 65-year, 65-R2.5 curve utilized by Gannett Fleming for the same account, and that such a discrepancy could lead to misstated results. OCA St. 1 at 35-36.

The OCA argued that Aqua has not met its burden of proof to support an 80-year service life for the account at issue. Given that there is missing documentation concerning the type and age of the pipe and the susceptibility of old Vitrified Clay Pipe (VCP) to cracking, for valuation purposes, OCA witness Smith recommended adjusting the 80-year service life used in AUS’ appraisal to match the 65-year service life for this same account utilized by Gannett Fleming, which would reduce the AUS Cost Approach by \$4,714,148 from \$51,414,555 to \$46,700,407. OCA St. 1 at 23, 36; OCA M.B. at 12; OCA Exhs. RCS-1 and RCS-1SR, Cols. A, C and E, ln. 1.

In support of its recommendation the OCA explained that this issue was previously addressed in the *Cheltenham* proceeding as follows:

Upon review of the record, the ALJ's Recommended Decision and the Parties' Exceptions, we find that the ALJ properly considered and rejected Aqua's arguments regarding the use of a 90-year service life for VCP mains, laterals, and manholes in the AUS' cost approach. Aqua did not meet its burden of proof on this issue. It presented no testimony to support its arguments that "[t]he AUS extended service lives are also supported by the Engineer's Assessment and the AUS detailed cost approach calculations" and that using relining techniques extends the life expectancy of the mains. Aqua Exc. at 7. Mr. Weinert, AUS' UVE, in testimony did not address the relining of mains, so it is not clear whether AUS considered the relining of a very small portion of the collection mains to be relevant to the service life of the collection mains.

We find it compelling that, Mr. Walker, Aqua's UVE, based his appraisal on the same Engineer's Assessment and concluded that a 75-year service life for these same-lined VCP mains was appropriate. OCA R. Exc. at 4 (citing OCA St. 1 at 11). In addition, Aqua's own testimony indicates that the average age of the pipe in the system is approximately 75 years old. Aqua St. No. 2 at 8. Moreover, with Aqua's budgeted \$54.8 million for implementing corrective actions needed under the DEP Corrective Action Plan to address the system's chronic I&I, and the focus of the Corrective Action Plan on lines, manholes and laterals that may be sources of I&I, the service life of 90 years used by AUS is not reasonable. See Aqua St. No. 2 at 7. Accordingly, for all of the foregoing reasons stated above, we deny Aqua Exception No. 2.

We agree with the OCA that the use of a 75-year service life for VCP mains, laterals and manholes is both reasonable and consistent with Gannett Fleming's depreciation analysis under the cost approach in this proceeding. We also agree with the OCA that the correct adjustment amount to the AUS cost approach to reflect the adjustment from a 90-year to a 75-year service life for VCP

mains, laterals and manholes is \$12,339,645 to the AUS cost approach (correcting the typographical error shown in the R.D. of \$12,319,645, see R.D. at 41). We shall grant OCA Exception No. 1. This produces an adjusted AUS cost approach result of \$37,544,813.

OCA St. 1 at 36-37 (citing *Cheltenham* at 44-45).

The OCA noted that, in Mr. Weinert's previous appraisals, he has typically used between 65 and 75 years as the service life for gravity collection systems. Moreover, Mr. Weinert's previous appraisals indicate his use of a 75-year service life for VCP. As noted above, in *Cheltenham* Mr. Weinert utilized a 75-year service life for VCP mains, laterals, and manholes, consistent with Gannett Fleming's depreciation analysis in that proceeding. See *Cheltenham* at 44-45; OCA M.B. at 13.

Aqua countered that the OCA's attempt to shorten the service life for Gravity Collection Mains is not reflective of, and is at odds with, the new practice of relining existing pipe and associated manholes with cure-in-place plastic (CIPP) linings, which Aqua submitted, significantly extends the life of existing pipe. Aqua M.B. at 12.

Aqua further pointed out that a service life for Gravity Collection Mains in the range of 75 years to 80 years is supported by depreciation studies filed by Aqua and Pennsylvania-American Water Company (PAWC) in their recent base rate proceedings. Aqua explained the depreciation parameters determined in those depreciation studies were the result of analysis of historical survival and retirement experience over a wide span of years thus representing actual service life experience of wastewater plant. Aqua M.B. at 12-13.

b. ALJ's Recommendation

The ALJ provided that a service life of 65 years for gravity collection sewers municipally owned and consisting of a large quantity of VCP is appropriate and supported by the record evidence in this proceeding. The ALJ explained that the record evidence included the engineering assessment provided as Exhibit D to the Application. Exhibit D identified the quantity of VCP in the LMT system. R.D. at 90.

The ALJ explained further that the appropriate service life is dependent on various factors including the materials used in the construction of the collection system. The ALJ noted that Aqua argued the use of CIPP linings has the effect of extending the useful service life of mains and manholes by 50 years thereby extending the useful life of these assets into the low 100-year range. R.D. at 91 (citing Aqua M.B. at 12). The ALJ stated that the problem with this argument is that there is no evidence that LMT has used this technology to extend the service life of its VCP. The ALJ reasoned that the service life applied to the assets should be reflective of the actual assets being acquired in the condition that they are being acquired, in this case a collection system which includes a large quantity of VCP installed by developers and the township. R.D. at 91.

The ALJ noted that Mr. Weinert failed to provide any reasonable basis to conclude that the 80-year service life that he uses for collection mains is more appropriate than the 65-year service life used by Gannett Fleming in this proceeding. The ALJ agreed with the OCA witness Mr. Smith's recommended adjustment of \$4,714,148 to the AUS appraisal to match the 65-year service life utilized by Gannett Fleming. R.D. at 91 (citing OCA Table I at Col. D, ln. 2). The ALJ recommended that the OCA's proposed 65-year service life for Gravity Collection Mains be adopted. R.D. at 92.

c. Aqua Exception No. 3 and Replies

In its Exception No. 3, Aqua contends that Mr. Weinert offered very clear and convincing support for his use of an 80-year service life for Gravity Collection Mains. Aqua provides that Mr. Weinert explained that an 80-year service life is reflective of the new practice of relining existing pipe and associated manholes with CIPP linings, which extends the useful service life by 50 years thus extending the useful life beyond 80-years into the low 100-year range. Aqua Exc. at 18.

Aqua avers that there is no evidence of record that the OCA witness Mr. Smith considered, or was even aware of, CIPP lining and its significance in the development of service lives within the cost approach. *Id.*

Aqua contends that the Recommended Decision dismisses the significance of CIPP lining stating that there is no evidence that LMT has used this technology to extend the service life of VCP. Aqua provides that there is substantial evidence that LMT has used and is using CIPP lining. Aqua notes that the Chapter 94 Reports submitted with the Application explain that the Township undertook CIPP lining in 2020 as follows:

Lower Makefield Township significantly increased the Township budget to address I/I issues as well as the need to upgrade their existing pump stations. Starting in 2020 and moving forward Lower Makefield Township has budgeted approximately \$215,000.00 per year for Cured In Place Pipe (CIPP) liners and \$20,000.00 per year to rehabilitate manholes. In 2020 Lower Makefield Township lined approximately 2,125 linear feet of twelve inch sanitary sewer mains and lined six manholes. The same amount of work is currently being bid for 2021.

Lower Makefield Township as part of the CAP and in conjunction with their I/I program budgeted \$175,000.00 for

cured in place pipe liners and \$20,000.00 for manhole rehabilitation in 2020. These projects were completed and 1,977 linear feet of ten inch sanitary sewer mains were lined using CIPP and 5 manholes were rehabilitated utilizing a spray liner in 2020.

Aqua Exc. at 19 (citing Aqua Exh. 1, Application Exh. E2 at 231; Aqua Exh. 1, Application Exh. E1 at 68).

Aqua argues that it was inappropriate for the Recommended Decision to rely on Gannett Fleming's use of a 65-year service life for Gravity Collection Mains to reduce the service life in AUS' cost approach from 80 to 65 years. Aqua maintains that the Gannett Fleming and AUS appraisals were conducted independently, and it is reasonable and appropriate for the appraisal results to differ. Aqua Exc. at 20.

Aqua submits that Mr. Weinert emphasized that a service life for Gravity Collection Mains in the range of 75 to 80 years is supported by the depreciation studies filed by Aqua and PAWC in their recent general rate proceedings. Aqua maintains that the depreciation parameters determined in those depreciation studies were the result of analysis of historical survival and retirement experience over a wide span of years thus representing actual service life experience of wastewater plant. Aqua Exc. at 20 (citing Aqua St. 5-R at 4-5).

Further, Aqua argues that the Commission's decision in *Cheltenham* cited by the OCA does not support the use of a 65-year service life for Gravity Collection Mains in this proceeding. Rather, the question in *Cheltenham* was whether the Commission should reduce the AUS service life for manholes and laterals from 90 to 75 years and does not support the further reduction here to 65 years. Aqua Exc. at 20 (citing R.D. at 83).

In its Replies to Aqua Exception No. 3, the OCA notes that Aqua argues that use of an 80-year service life is appropriate as Mr. Weinert relied upon depreciation studies prepared for Aqua and PAWC by a recognized firm in the depreciation consulting area, Gannett Fleming. OCA R. Exc. at 7 (citing Aqua Exc. at 20). The OCA points out that Gannett Fleming's UVE utilized a shorter service life for gravity collection mains in the LMT system. The OCA witness, Mr. Smith explained:

A 65-R2.5 survivor curve has been recommended by Gannett Fleming for this LMT account. Gannett Fleming is the firm that performed a number of depreciation rate studies for Pennsylvania utilities, including the depreciation rate studies for Aqua and PAWC that are being relied upon by Mr. Weinert of AUS Consultants. Those studies do not specifically address the composition of Gravity Mains in LMT's system or its useful life. The LMT specific survivor curve / useful life recommendation in this current LMT acquisition case, of 65 years, should therefore carry far more weight than the non-LMT specific studies that were relied upon by Mr. Weinert.

OCA R. Exc. at 7 (citing OCA St. 1SR at 18).

While Aqua argues that the comparison of the AUS Market Value appraisal to the Gannett Fleming value is inappropriate, the OCA avers that use of a 65-year service life by Gannett Fleming is not the only reason that using an 80-year service life is not reasonable. OCA R. Exc. at 7-8 (citing Aqua Exc. at 19). The OCA provides that there is a lack of historical records for the LMT system and there is an assumption that the older plant in the Collection Sewers-Gravity Mains plant account for LMT is VCP. OCA R. Exc. at 8 (citing OCA St. 1SR at 18-19). The OCA notes that the Ebert Engineering Report stated that documentation was missing for the age, size and material of the gravity collection mains in the LMT system, but estimates were made using the Township staff's institutional knowledge that sanitary gravity pipe was assumed to be

VCP if constructed before 1980, and SDR-35¹⁹ after 1980. OCA R. Exc. at 8 (citing Application Exh. D at 2).

The OCA provides that in other Section 1329 acquisitions, Mr. Weinert's previous appraisals indicated a 75-year service life for VCP gravity collection mains. OCA R. Exc. at 8 (citing OCA M.B. at 12-13). In *Cheltenham*, Mr. Weinert utilized a 90-year service life for all of Cheltenham's gravity collection mains. The Commission agreed with Gannett Fleming, Aqua's UVE in the Cheltenham case, and recommended a 75-year life for VCP mains, laterals and manholes. OCA R. Exc. at 8-9 (citing *Cheltenham* at 44-45). The OCA notes that Mr. Weinert acknowledged that he relied on Gannett Fleming's depreciation studies in formulating the AUS Cost Approach. OCA R. Exc. at 9 (citing Tr. at 77).

While Aqua contends that OCA witness Mr. Smith did not consider CIPP, the OCA indicates that there is no mention of CIPP in either AUS' appraisal or the engineering report filed with the Application. OCA R. Exc. at 9-10 (citing Application Exhs. D, Q).

The OCA disagrees with Aqua's contention that it was inappropriate for the Recommended Decision to rely on Gannett Fleming's use of a 65-year service life. The OCA provides that the Recommended Decision did not rely solely on Gannett Fleming's 65-year service life estimate, but rather the ALJ stated:

Obviously, the appropriate service life is dependent on various factors including the materials used in the construction of the collection system. Aqua argues the use of CIPP linings has the effect of extending the useful service life of mains and manholes by 50 years thus pushing the useful life of these assets into the low 100-year range. Aqua Main

¹⁹ SDR-35 is a type of PVC (*i.e.*, plastic) pipe that is used for sewer main pipe and for storm drainage purposes. OCA St. 1 at 23.

Brief p. 12. The problem with this argument is that there is no evidence that Lower Makefield has used this technology to extend its service life of its VCP. The service life applied to the asset should be reflective of the actual assets being acquired in the condition that they are being acquired, in this case a collection system which includes of [sic] a large quantity of VCP installed by developers and the township. Mr. Weinert failed to provide any reasonable basis to conclude that the 80-year service life that he uses for collection mains is more appropriate than the 65-year service life for the same collections mains that was used by Gannett Fleming in this proceeding. Accordingly, OCA witness Smith recommended an adjustment of \$4,714,148 to the AUS appraisal to match the 65-year service life utilized by Gannett Fleming. OCA Table I at Col. D, Ln. 2. I agree with OCA and conclude that Mr. Smith's adjustment to the Cost Approach should be accepted.

OCA R. Exc. at 10 (citing R.D. at 91).

The OCA submits that Mr. Weinert failed to provide any reasonable basis to conclude that the 80-year service life that he uses is more appropriate than the 65-year service life for the same collections mains that was used by Gannett Fleming in this proceeding. OCA R. Exc. at 10 (citing R.D. at 90-92). According to the OCA, the Recommended Decision properly determined that the 80-year estimated useful life for Gravity Mains proposed by Mr. Weinert has no reasonable basis and should be rejected. OCA R. Exc. at 11.

d. Disposition

We note that AUS proposed an 80-year life for the gravity collection mains in LMT, while Gannett Fleming proposed a 65-year life for the same collection mains. AUS based its service life (with an increase of 5 years) on Gannett Fleming's depreciation studies used in other 1329 cases that proposed a 75-year life. Tr. at 209.

While AUS used three depreciation studies previously done by Gannett Fleming for other 1329 proceedings, Gannett Fleming based the 65-year life in its UVE report in this case on more site-specific information about LMT as follows:

Gannett Fleming viewed or observed the Wastewater System's facilities on April 6, 2021. The functionality of the system assets was determined based on the Engineering Assessment Study, Wastewater System's Chapter 94 Reports, the Wastewater System's Corrective Action Plan, the Wastewater System's Connection Management Plan, and other information provided by Aqua/LMT. Gannett Fleming determined the average service lives of depreciable assets based on the materials used for construction and how long the depreciable assets are likely to meet service demands. We determined the average service lives of depreciable assets based on our experience of having determined average service lives for numerous other water and wastewater utilities and given the fact the system assets resemble those used by other Pennsylvania wastewater companies.

OCA Hearing Exh. 2 at 1.

Aqua contends that the 80-year life used by AUS is appropriate for VCP that has been lined using CIPP. The OCA provided that CIPP is not mentioned in either the AUS' appraisal or the engineering report filed with the Application. OCA R. Exc. at 10 (citing Application Exhs. D, Q). While Aqua claimed that the Section 94 report for LMT cited the use of CIPP, we cannot assume CIPP has been widely used throughout the LMT system. The Section 94 reports state that the CIPP program began in 2020 with approximately 2,000 linear feet at a cost of approximately \$200,000. Aqua Exc. at 19. The amount of pipe that has been lined according to the Section 94 reports is only a small portion²⁰ of the total VCP in the system. The remainder of the VCP to be lined and the

²⁰ The Ebert Engineering report estimated the amount of VCP of the Gravity Collection Mains in the LMT system as approximately 300,000 linear feet of VCP. OCA Exh. 1 at 7.

cost to do so are substantial. As the OCA provided, records are not available for the detailed characterization of the gravity collection mains in the LMT system. We can only assume that pipe constructed before 1980 is VCP and another type after 1980. As the ALJ stated “The service life applied to the asset should be reflective of the actual assets being acquired in the condition that they are being acquired, in this case a collection system which includes a large quantity of VCP installed by developers and the township.” R.D. at 91. As the Gannett Fleming service life is based on a more site-specific study and only a small portion of the system may be lined VCP, we find that the use of the Gannett Fleming 65-year service life for gravity collection mains is reasonable. The OCA’s recommended adjustment, as adopted by the ALJ, to the AUS Cost Approach to reduce the service life for Gravity Collection Mains from 80-years to 65-years is appropriate. The AUS Cost Approach is adjusted by \$4,714,000 from \$51,414,555 to \$46,700,407. The overall FMV is also adjusted as discussed *infra*. Accordingly, we will deny Aqua Exception No. 3.

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. OCA St. 1 at 29-30. The Income Approach is defined as:

A procedure to conclude an opinion of present value by calculating the anticipated monetary benefits (such as a stream of income) for an income-producing property.

OCA St. 1 at 29-30 (citing *Approaches to Value*. American Society of Appraisers accessed March 5, 2020, <http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value>).

There are two commonly used methods of the Income Approach: the DCF approach and the capitalized income approach. Mr. Smith described the Income Approach models utilized by the UVEs in this proceeding as follows:

The income approach models utilized by both the buyer and seller employ a discounted cash flow model wherein annual cash flows are projected based upon forecasted levels of revenues, cash O&M [Operation and Maintenance] expenses, income taxes, capital expenditures and changes in working capital. These annual cash flows are modeled for a set number of years into the future and then a terminal value is added to the previous discounted annual cash flows as a measure of the expected cash flows in perpetuity.

OCA St. 1 at 30-31.

Gannett Fleming's DCF methods use two different assumptions for LMT system operations over the next twenty-four years: (1) a municipal-owned (MUNI) scenario;²¹ and (2) an investor-owned utility (IOU) scenario.²²

Under the MUNI ownership scenario, the results of the Capitalization DCF show a range of value for the Township's system of \$59.0 million to \$60.9 million, and the results of the Market Multiple DCF show a value of \$57.1 million.

Under the IOU scenario, results of the Capitalization DCF show a range of value for the Township's system of \$39.0 million to \$47.2 million, and the results of the Market Multiple DCF show a range of value of \$49.7 million to \$58.9 million.

²¹ Application Exh. Q, Gannett Fleming Fair Market Value Appraisal Report, Exh. 15 at 7.

²² Application Exh. Q, Gannett Fleming Fair Market Value Appraisal Report, Exh. 16 at 6.

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 \$59.0 million for the Township’s system. The results of its DCF methods based on the IOU scenario indicated a value of approximately \$48.5 million for the Township’s wastewater system. Collectively, Gannett Fleming’s DCF methods indicate a value of approximately \$53.7 million based on the Income Approach.

Exhibit 15, page 6.	
DCF With Capitalization of Terminal Value Model @ 2.99%	\$60,904,029
DCF With EBIT & EBITDA Terminal Value Model	<u>\$57,125,576</u>
Median	<u><u>\$59,014,802</u></u>
Exhibit 16, page 6.	
DCF With Capitalization of Terminal Value Model @ 6.34%	\$47,226,335
DCF With Capitalization of Terminal Value Model @ 7.53%	\$39,244,894
DCF With EBIT & EBITDA Terminal Value Model - Discount Rate of 6.54%	\$58,877,558
DCF With EBIT & EBITDA Terminal Value Model - Discount Rate of 7.73%	<u>\$49,711,201</u>
Median	<u><u>\$48,468,768</u></u>
Conclusion	
MUNI DCF	\$59,014,802
IOU DCF	<u>\$48,468,768</u>
Median	<u><u>\$53,741,785</u></u>

See OCA Exh. RCS-5.

The Income Approach analysis presented by the Township’s witness, Mr. Weinert from AUS, also utilized the DCF technique. AUS’ income indicator of value was set equal to the sum of the present value of the projected cash flows over nineteen periods, including the present value of period twenty cash flows as if it will

continue on indefinitely for future periods. The AUS DCF analysis indicated a value of approximately \$57.9 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 \$53,741,785 for the LMT system.²³ The AUS Income approach indicated a value of \$57,872,959 for the LMT system.

a. Positions of the Parties

As discussed below, the OCA argued that the fundamental flaw in both the Gannett Fleming and AUS analyses is in the calculation of the terminal values for LMT's wastewater operations. Aqua explained the "terminal value" as follows:

Simply put, the "terminal value" is a mathematical shortcut to avoid having to show and/or calculate annual Debt Free Net Cash Flows for hundreds of time periods, or hundreds of years. Within the Discounted Cash Flow analysis, the "terminal value" is simply a point in time in which the growth in annual Debt Free Net Cash Flows changes from multiple growth rates to a constant growth rate. For example, in our Discounted Cash Flow analysis, the growth rate of annual Debt Free Net Cash Flows during time periods 1 through 24 changes multiple times due to the various general assumptions listed in the Gannett Fleming Appraisal Report. After time period 24, the growth in annual Debt Free Net Cash Flows is a constant growth rate. Accordingly, period 24, or year 24, is the "terminal value" year in our DCF method.

Aqua St. 4 at 23-24.

²³ Mr. Walker of Gannett Fleming allocated 33.33% to the Income Approach which gave it a weighted value of \$17,912,137. AUS allocated 40% weight to the Income Approach which gave it a weighted value of \$23,149,184.

The OCA noted that, in calculating terminal values, both UVEs utilized a “capitalization rate” to project future cash flows in perpetuity. The OCA witness, Mr. Smith testified as follows:

In calculating the terminal value, both UVEs utilized what is known as a “capitalization rate” to project future cash flows in perpetuity. In simple terms, each UVE calculated a terminal value (in nominal terms) by applying the projected cash flow in the last year of the model to a capitalization rate. Specifically, the last model year’s annual cash flow is multiplied by 1, and then divided by the calculated capitalization rate. Mathematically, this approach escalates annual cash flows at a constant annual growth rate (percent) in perpetuity. **It essentially assumes that net cash flows would grow at a constant annual growth rate to infinity.** A capitalization rate is defined as a firm’s total cost of capital (k) minus its expected future annual constant rate of growth (g).

OCA M.B. at 14 (citing OCA St. 1 at 31)(emphasis in original).

The OCA contended that it is inappropriate to apply a capitalization rate concept to estimate the terminal value of a regulated utility, as was done by the UVEs in this proceeding. Rather, the OCA proposed adjustments to the Income Approach of the UVEs to recalculate the terminal value using the amount of net plant less accumulated deferred income taxes (ADIT) projected to be remaining at the end of period 24 and 19, respectively. OCA St. 1 at 33, 38. The OCA argued that the approach utilized by the UVEs in quantifying the terminal value fails to recognize that the wastewater assets are for a regulated utility, not a non-regulated business, and therefore, result in a significant overstatement of the terminal value component. The OCA explained the theory underlying the use of capitalization rates is that a firm’s net cash flow will grow at a constant rate in perpetuity without significant reinvestment greater than historical depreciation. OCA St. 1 at 31. According to the OCA, this is not the case for regulated utilities. A regulated utility’s net cash flow is a direct function of its plant in service.

OCA St. 1 at 32. Regarding a regulated utility, the OCA noted that Mr. Smith explained as follows:

A utility's allowable revenue requirement is equal to its cash operating expenses plus depreciation plus a return on its net investment (rate base) plus income taxes on the return. Therefore, the resulting annual net cash flow is equal to depreciation plus the after-tax return on the net investment. As such, the higher the assumed level of investment, the higher the periodic cash flows and the higher the ultimate valuation.

OCA St. 1 at 30. A utility's net cash flow can, and will, only grow with increases to its plant investment and rate base. The utility recoups these additional investments over time through future depreciation rates. Unlike the private sector, for rate regulated utilities, spending on plant additions is a *use* of cash and depreciation expense is a *source* of cash. OCA St. 1 at 32.

The OCA pointed out that in both UVEs' estimation of a terminal value, the capital expenditures in the final year of the model are less than the depreciation expense on existing plant during that year, meaning that LMT would be depreciating and depleting its plant faster and to a higher degree than investments are being made to replace that plant. OCA St. 1 at 32. Accordingly, the OCA asserted that the terminal value approach used by Gannett Fleming and AUS unrealistically overstates the valuation and would result in excessive valuation and return. OCA M.B. at 16.

Conversely, the OCA provided that Mr. Smith's approach: (1) will ensure that investors will earn a fair rate of return over the life of the plant in service and recoup their initial investment through depreciation; and (2) will not increase rates to provide excessive returns over the life of the plant. OCA M.B. at 16.

The result of the OCA's recommendation to use net plant less ADIT as the terminal value, in lieu of a capitalization rate concept, is a downward adjustment of \$4,024,687 (\$53,741,785 - \$49,717,098) to the Gannett Fleming Income Approach to value.²⁴ *See* OCA Exh. RCS-1SR, Col. D, ln. 7.

Consistent with its adjustment to the terminal value for the Gannett Fleming Income Approach, the OCA, likewise, proposed an adjustment to the AUS Income Approach. *See* OCA Exh. RCS-4. The OCA's adjustment reduced the Income Approach amount in the AUS appraisal by approximately \$9.41 million (\$57,872,959 - \$48,462,957). *See* OCA Exh. RCS-1SR, Col. D, ln. 2; OCA Exh. RCS-4.

Terminal value is an important concept in DCF analyses as it may account for a significant percentage of the total valuation under the Income Approach. The effects of the OCA's proposed adjustments are summarized below in the following tables.

²⁴ As shown on OCA Exhibit RCS-2SR, OCA witness, Mr. Smith, recalculated the valuation of the terminal value using the amount of net plant less ADIT remaining at the end of year 24. Page 2 of OCA Exhibit RCS-2SR shows the calculations under Gannett Fleming's MUNI scenario, with an indicated value result of \$59,186,879. Page 3 shows the calculations under Gannett Fleming's IOU scenario with an indicated value result of \$40,247,316. The two indicated value results are averaged, as shown on page 1 of Exhibit RCS-2SR, for an adjusted Income Approach value of \$49,717,098.

Percentage of Terminal Value within Total DCF Valuation

Gannett Fleming DCF						
	<u>MUNI DCF</u>		<u>IOU DCF</u>		<u>Conclusion (Median)</u>	
Present Value of Projected Net Cash Flows (years 2022-2045)	\$30,359,513	51%	\$33,115,458	68%	\$31,737,485	59%
Present Value of Projected Terminal Value (year 2045 forward)	\$28,655,289	49%	\$15,353,310	32%	\$22,004,300	41%
Total	<u>\$59,014,803</u>	100%	<u>\$48,468,768</u>	100%	<u>\$53,741,785</u>	100%
OCADCF						
	<u>MUNI DCF</u>		<u>IOU DCF</u>		<u>Conclusion (Median)</u>	
Present Value of Projected Net Cash Flows (years 2022-2045)	\$31,004,309	52%	\$31,625,933	79%	\$31,315,121	63%
Present Value of Projected Terminal Value (year 2045 forward)	\$28,182,570	48%	\$8,621,383	21%	\$18,401,977	37%
Total	<u>\$59,186,879</u>	100%	<u>\$40,247,316</u>	100%	<u>\$49,717,098</u>	100%

See Application Exh. Q, Gannett Fleming Fair Market Value Appraisal Report, Exhs. 15, 16; OCA Exh. RCS-2SR.

As can be seen from the above table, the OCA’s proposal has the effect of reducing the portion of Gannett Fleming’s DCF analysis attributable to the present value of the terminal value from 41% to 37%. Likewise, as illustrated in the following table, the OCA’s proposal has the effect of reducing the portion of AUS’ DCF analysis attributable to the present value of the terminal value from 28% to 15%.

Percentage of Terminal Value within Total DCF Valuation

AUS DCF		
Present Value of Projected Net Cash Flows (19 periods)	\$41,424,905	72%
Present Value of Projected Terminal Value (Period 20 forward)	\$16,448,054	28%
Total	\$57,872,959	100%
OCA DCF		
Present Value of Projected Net Cash Flows (19 periods)	\$41,424,905	85%
Present Value of Projected Terminal Value (Period 20 forward)	\$7,038,052	15%
Total	\$48,462,957	100%

See Application Exh. R, Narrative Report at 9; OCA Exh. RCS-4.

Aqua disagrees with the OCA’s criticism of the Gannett Fleming and AUS terminal values, submitting that as it has been presented in several Section 1329 proceedings and thoroughly rejected by the certified UVEs in each instance. Aqua argued that Mr. Smith’s criticism is flawed because it changes the present value analysis, which is essential to the Income Approach, to a hybrid analysis that incorporates part of a present value Income Approach with part of a future book value Cost Approach. As such, Aqua argued, it is contrary to legislative intent and inconsistent with statutory language that requires a fair market value appraisal reflective of an Income Approach to valuation, not a hybrid Income Approach / Cost Approach to valuation. Aqua M.B. at 14.

Aqua asserted that, in this proceeding, the value of the investment in plant and equipment for the LMT system assets is being determined based upon a fair market value standard instead of an original cost standard. Aqua M.B. at 17 (citing Aqua St. 4-R

at 4-5). Aqua further submitted that the OCA's proposed use of net plant value from time period 24 (or year 2045) as the terminal value in the Income Approach: (1) is not in accordance with accepted valuation practice; (2) is unreasonable; (3) was rejected by the Commission in *Cheltenham*; and (4) is inconsistent with the Commission's decision in *Limerick*, where the Commission accepted "Aqua's arguments in support of the 13-year model," which utilized the Gannett Fleming appraisal.²⁵ Aqua M.B. at 16, 17 (citing Aqua St. 4-R at 5, 7; *Limerick* at 50).

The Company provided that the Gannett Fleming appraisal lists the current market multiples applicable to the corresponding financial and operating statistics of the LMT system. Aqua M.B. at 17 (citing Aqua Exh. 1, Application Exhs. Q, 17 at 1-3). Aqua stated that its witness, Mr. Walker of Gannett Fleming, provided the following evidentiary analysis demonstrating the market multiples and corresponding financial and operating statistics of the LMT system which were utilized by Mr. Smith:

²⁵ It should be noted that, regarding *Limerick*, the OCA proposed a 50-year model *without* a terminal value, in lieu of Gannett Fleming's 13-year model, which included a terminal value. *See Limerick* at 46-50.

Table 1

<u>Lower Makefield Township Wastewater System Assets</u>			
	Period 24 Statistic <u>From DCF *</u>	Valuation Multiples **	Period 24 Market Multiples <u>Valuation</u>
Gross PP&E	\$147,579,480	1.15x	\$169,716,402
Net PP&E	\$56,320,084	1.45x	\$81,664,122
Revenues	\$18,401,995	6.07x	\$111,700,110
EBITDA	\$7,441,228	14.22x	\$105,814,267
EBIT	\$5,083,881	21.02x	\$106,863,179
Customers	12,713	\$8,835	\$112,323,282

* - OCA Exhibit RCS-2, page 3 and workpapers
 ** - From Exhibit 17, page 1, Aqua Exhibit Q

Aqua M.B. at 17-18; Aqua St. 4-R at 6. In referring to the above Table 1, Aqua explained that the indicated future market value in period 24 (year 2045) applicable to each metric range, from \$81.664 million to \$169.716 million, collectively proves that net plant value (*i.e.* \$56.320 million) is not a good measure or proxy for future market value, or sales price, of existing assets because the indicated future market value is about 194% higher than Mr. Smith’s recommendation of \$56.320 million. Aqua M.B. at 18 (citing Aqua St. 4-R at 6-7).

Aqua noted that Mr. Walker disagreed with Mr. Smith’s assertion that a “regulated utility’s net cash flow is a direct function of its plant in service.” Aqua M.B. at 18 (citing Aqua St. 4-R at 7). Regarding the LMT system assets, the Company provided that the value of the investment in plant and equipment is being determined in these proceedings. Aqua further provided that the appraised value estimated by AUS and Gannett Fleming of \$54.4 million and \$55.5 million, respectively, and the purchase price

negotiated by Aqua and LMT of \$53.0 million, are higher than the present value of terminal value of the net plant and equipment cost of \$28.1 million to \$10.0 million used by Mr. Smith. Aqua M.B. at 18 (citing Aqua St. 4-R at 7; OCA Exhs. RCS-1 at 2-3).

Aqua also disagreed with Mr. Smith's statement that, under the UVE assumptions and modeling techniques, LMT is depreciating and using up its existing plant faster, and to a higher degree, than it is making investments to replace that plant. The Company countered that, over the course of the 24-year DCF model, the depreciation expense totals \$48.251 million and the capital expenditures total \$53.979 million. In the 24th year (2045), Aqua continued, the depreciation expense of \$2.357 million and the capital expenditures of \$2.321 million result in a difference of less than 2%. Aqua concluded that, assuming a net plant investment of \$56.320 million (year 2045) and a \$0.036 million difference between depreciation expense and capital expenditures ($\$2.357 - \2.321), it would take 1,564 years to use up the existing plant investment ($\$56.320 / \$0.036 = 1,564$). Aqua R.B. at 7; Aqua M.B. at 18-19 (citing Aqua St. 4-R at 8).

Additionally, Aqua pointed out that, Mr. Smith acknowledged that he did not properly account for ADIT in his terminal value calculations. Aqua M.B. at 19 (citing OCA St. 1SR at 15; OCA Exh. RCS-2). However, Aqua contended that, despite Mr. Smith's suggestion that the oversight occurred because Gannett Fleming had not identified ADIT in its valuation support, Mr. Smith had no reason to think that Gannett Fleming's valuation supporting details were deficient. Aqua M.B. at 19.

Finally, Aqua noted Mr. Walker's additional observations of Mr. Smith's use of net plant as the terminal value in the Income Approach, including that: (1) the use of original cost net plant as the terminal value is incorrect; (2) although Gannett Fleming's analysis used a present value factor of 7.14%, Mr. Smith used a present value factor of 7.61%; (3) although the ratio of ADIT to net plant is never the same for two

companies or two income approaches, Mr. Smith's analysis used a hypothetical value for ADIT; and (4) although the cash flows from the deferred taxes that resulted in the ADIT would offset the negative effect of ADIT, Mr. Smith's analysis did not include such cash flows. Aqua M.B. at 19-20.

As noted, *supra*, the AUS Income Approach indicated a value for the LMT system of \$57,872,959, and Mr. Smith's adjustment is a downward, or negative, adjustment to the AUS Income Approach value of \$9.41 million. Aqua averred that, similar to the Company's discussion regarding Mr. Smith's proposed adjustment to the Gannett Fleming Income Approach to value, Mr. Smith's proposed use of net plant as the terminal value in the AUS Income Approach to value should be denied and rejected for the same reasons. Aqua M.B. at 20-21.

Aqua provided that, according to Mr. Weinert of AUS, Mr. Smith's proposed use of net plant as the terminal value is unreasonable because Mr. Smith's analysis replicates AUS' DCF analysis with the exception of period 20 and forward, for which a net book value adjusted for ADIT was substituted. Further, Mr. Weinert provided that Mr. Smith's analysis is incorrect for several reasons, including: (1) the benefits to the owner and customers for operating the property efficiently are eliminated; (2) the fact that the LMT property will continue to remain in service for several years after period 19 of the DCF analysis, which the capitalization of the operation's cashflows related to periods 20 and beyond is intended to represent, is ignored; and (3) the fact that, during the forecast of future periods cashflows, the capital expenditures that amount to \$7.6 million for each of those periods is ignored. Moreover, Mr. Weinert noted that the capital expenditures reflect plant renewal which will allow the LMT property to continue providing service for the LMT customers, thereby providing economic benefit to the property's owner. Aqua M.B. at 21 (citing Aqua St. 5-R at 9).

Additionally, Aqua noted that, Mr. Weinert demonstrated that, if the AUS DCF forecast period is increased from 20 periods to 60 periods, the impact of ADIT declines from \$4,871,174 to \$948,406, with a corresponding present worth of cash flows, based on Mr. Smith's methodology, of \$57,809,909. Aqua asserted that, when compared to AUS' original Income Approach value of \$57,872,959, Mr. Smith's adjustment of AUS' Income Approach to value by a negative \$9.41 million to \$48,462,957 does not quantify the sum of LMT's economic returns. Aqua M.B. at 21-22 (citing Aqua St. 5-R at 10-11).

b. ALJ's Recommendation

The ALJ's Recommended Decision adopts the OCA's proposed adjustments to the Income Approach of Gannett Fleming's and AUS' UVEs, which recalculates the terminal value using the amount of net plant less ADIT projected to be remaining at the end of period 24 and 19, respectively. ALJ Watson determined that the OCA's proposal is appropriate in order to properly reflect financial and ratemaking principles under Pennsylvania law. R.D. at 1, 92, and Ordering Paragraph No. 7.

The result of the OCA's recommendation, adopted by the ALJ, is a downward adjustment of \$4,024,687 to the Gannett Fleming Income Approach to value.²⁶ Likewise, adoption of the OCA's recommendation on this issue results in a downward adjustment of approximately \$9.41 million to the AUS Income Approach to value. See OCA Exh. RCS-4.

²⁶ Although pages 78 and 87 of the Recommended Decision presented the OCA's adjustment to the Gannett Fleming Income Approach as \$5,278,828 and the adjusted Gannett Fleming Income Approach value as \$48,462,957, the OCA's proposed adjustment to the Gannett Fleming Income Approach as presented in the surrebuttal testimony of OCA witness Smith is \$4,024,687 and the OCA's adjusted Gannett Fleming Income Approach value is \$49,717,098. OCA Exh. RCS-1SR, ln 7.

c. Aqua Exception No. 1 and Replies

In its Exception No. 1, Aqua maintains that the OCA's proposed adjustments are not in accordance with valuation practice. Further, Aqua disagrees with the ALJ's acceptance of the OCA's recommended adjustment to the Gannett Fleming Income Approach. The Company argues that the adjustment proposed by the OCA is inconsistent with Commission precedent and the use of net plant as the terminal value in the Income Approach, which was rejected by the Commission in *Cheltenham*, is inappropriate in this proceeding. Aqua Exc. at 6-7 (citing R.D. at 92; Aqua St. 4-R at 7). Aqua provides that its witness, Mr. Walker of Gannett Fleming, noted that in the instant proceeding, Gannett Fleming utilized the same capitalization rate concept in several prior 1329 proceedings and the concept was not adjusted by the Commission in any of those prior proceedings.²⁷ Aqua Exc. at 7 (citing Aqua 4-R at 3).

Aqua contends that, contrary to the conclusion of the Recommended Decision, the results and approaches of the OCA's witness, Mr. Smith, are unreasonable and inconsistent with the Code and the Commission's analysis in *Cheltenham*. Aqua Exc. at 9. Aqua cites the *Cheltenham* case to note that the basis to determine whether an adjustment to a UVE's Income Approach is necessary involves a precedent established for "unreasonable approach" and "unreasonable results." Aqua Exc. at 8 (citing *Cheltenham* at 55, Recommended Decision issued August 1, 2019, at 36-37). The Company explains that, because Gannett Fleming's Income Approach produced a value that is approximately 99% of the indicated value determined by Gannett Fleming's Cost Approach, the OCA's witness, Mr. Smith, did not recommend adjusting Gannett Fleming's Cost Approach, nor did he claim that Gannett Fleming's Income Approach was unreasonable or produced unreasonable results. Comparatively, Aqua continues, Mr. Smith recommended an Income Approach value of \$49,717,098, which is 91% and

²⁷ It should be noted that Aqua does not provide citations to the "sixteen proceedings" that they reference.

85% of Mr. Smith's indicated values recommended under the Cost Approach and Market Approach, respectively. Aqua Exc. at 9.

Aqua also claims that, if the Recommended Decision were adopted, then the only method to value assets would be an original cost less depreciation analysis and, therefore, the need to appraise plant assets would be eliminated. The Company maintains that in this proceeding, the determination of the value of the investment in plant and equipment for the LMT assets is based upon a standard of value of fair market value and not a standard of value of original cost. Aqua Exc. at 9-10.

Aqua reiterates its disagreement with the use of net plant to determine terminal value, explaining that such an action is inconsistent with statutory language because it will change the present value analysis, which is essential to the Income Approach, to a hybrid analysis, which incorporates part of a present value Income Approach and part of a future book value Cost Approach. Aqua Exc. at 10. The Company argues that the use of a terminal value within the Income Approach based on something other than a present value analysis is incorrect and inconsistent with Mr. Smith's statement that the "income approach involves capitalizing and discounting a future income stream to a present value." Aqua Exc. at 10 (citing OCA St. 1 at 30).

Aqua also repeats that its witness, Mr. Walker, a qualified UVE of Gannett Fleming, explained that the use of net plant from time period 24 as the terminal value in the Gannett Fleming Income Approach is not in accordance with valuation practice and is not a good measure or proxy for future market value.²⁸ Aqua refers to Mr. Walker's analysis of market multiples and the corresponding financial and operating statistics of the LMT system provided, which was utilized by Mr. Smith, to criticize Mr. Smith's

²⁸ As previously discussed, Aqua notes that the use of a terminal value in the DCF model is a "mathematical shortcut to avoid having to show and / or calculate Debt Free Net Cash Flows for hundreds of time periods." Aqua Exc. at 11.

recommendation of future net plant value of \$56.320 million (year 2045). Aqua Exc. at 11-12 (citing Aqua St. 4-R at 6-7). According to Aqua, the statement that the values in Mr. Walker's analysis are "grossly excessive" reflects a misapprehension of the purpose of those values, as the values reflect *future* values (year 2045), but the OCA's comparison of those values to Gannett Fleming's Income Approach of \$53.741 million reflects a *present* value (year 2021). Aqua Exc. at 12 (citing R.D. at 85).

Aqua maintains its disagreement with Mr. Smith's statement that, under the assumptions and modeling techniques of the UVE, LMT is depreciating and using up its existing plant faster than it is making investments for plant replacement. The Company continues to claim \$48.251 million of depreciation expense and \$53.979 million of capital expense over the 24-year DCF model and, in the 24th year (2045), the depreciation expenses are \$2.357 million and the capital expenditures are \$2.321 million, resulting in a difference of less than 2%. Therefore, Aqua concludes that, based on a net plant investment of \$56.320 million (year 2045) and a \$0.036 million difference between depreciation expense and capital expenditures (\$2.357 - \$2.321), Mr. Smith was incorrect to suggest that the rate base approaches zero or becomes negative. Aqua Exc. at 12-13 (citing R.D. at 85-87; Aqua St. 4-R at 8). Additionally, Aqua clarifies, based on the \$0.036 million difference between depreciation expense and capital expenditures, the \$56.320 million plant investment account balance would last 1,564 years. Aqua Exc. at 13.

Aqua also criticizes Mr. Smith's use of net plant to determine the terminal value. According to the Company, Mr. Smith recommended that net plant is worth at least 1.45x under the Market Approach; however, Mr. Smith claims in his Income Approach that net plant used to determine terminal value is worth 1.00x. Aqua Exc. at 13 (citing OCA St. 1 at 34).

Additionally, Aqua repeats its disagreement regarding the determination of the value of the investment in plant and equipment system assets of LMT. Aqua maintains that the appraised values estimated by AUS and Gannett Fleming of \$54.4 million and \$55.5 million, respectively, and the purchase price negotiated by Aqua and LMT of \$53.0 million, are higher than Mr. Smith's present value of terminal value of net plant and equipment cost of \$28.1 million to \$10.0 million. Aqua Exc. at 13-14 (citing Aqua St. 4-R at 7; OCA Exh. RCS-1 at 2-3).

Aqua also reiterates Mr. Walker's criticisms of Mr. Smith's use of net plant as the terminal value in the Income Approach, including that: (1) the use of original cost net plant as the terminal value is incorrect; (2) although Gannett Fleming's analysis used a discount rate of 7.14%, Mr. Smith used an incorrect discount rate of 7.61%; (3) although the ratio of ADIT to net plant is never the same for two companies or two Income Approaches, Mr. Smith's analysis used a hypothetical value for ADIT; and (4) although the cash flows from the deferred taxes that resulted in the ADIT would offset the negative effect of ADIT, Mr. Smith's analysis did not include such cash flows. Aqua Exc. at 14.

Finally, Aqua notes that the effect of the OCA's proposed adjustment to the Income Approach would result in double counting the impact of ADIT on ratemaking rate base. The Company explains that, in the determination of rate base during a base rate case, subtracting ADIT from net plant gives effect to ADIT and, in this proceeding and in a subsequent rate case, the effect would be double counted. Aqua explains that, assuming that net plant in a Section 1329 application proceeding were \$100 and then reduced by \$10 of ADIT as part of the Income Approach, the resulting ratemaking rate base would be \$90 and, in the next rate case, the ratemaking rate base of \$90 would again be reduced by ADIT of \$10, thereby resulting in a ratemaking rate base of \$80 and a double counted ADIT. Aqua Exc. at 14-15.

In its Replies to Aqua's Exception No. 1, the OCA counters that the adjustment to the terminal value of the Gannett Fleming Income Approach is reasonable, appropriate, and consistent with ratemaking principles. The OCA maintains that the assumptions used by the Company's witness, Mr. Walker of Gannett Fleming, are flawed and inconsistent with ratemaking principles. OCA R. Exc. at 1 (citing OCA R.B. at 8-11; OCA M.B. at 14-17). Accordingly, the OCA submits that, in place of Gannett Fleming's proposed amount of \$53,741,785, the Recommended Decision's Income Approach valuation of \$48,462,957 should be adopted. OCA R. Exc. at 4 (citing OCA R.B. at 11; OCA Exh. RCS-3SR).

The OCA contends that, based on the traditional concepts of cost-based utility regulation, the focus of an approach to terminal value for a rate-regulated public utility should be the remaining amount of net plant and not a "perpetual capitalization of prospective earnings." OCA R. Exc. at 1 (citing OCA St. 1SR at 19). The OCA further argues that the present value of the future cash flow for a firm that is expected to earn a return on investment at its cost of capital and recover its depreciation expense is equal to the present value of the firm's investment. OCA R. Exc. at 1-2 (citing OCA St. 1SR at 13).

In responding to the Company's assertion that its witness, Mr. Smith, did not attempt to distinguish the LMT acquisition from previous Section 1329 acquisitions and the Commission's determinations in prior cases, the OCA cites the testimony of Mr. Smith to discount Aqua's assertion as meritless. OCA R. Exc. at 2-3 (citing Aqua Exc. at 7; OCA St. 1SR at 12-13). Further, in response to Aqua's position that the annual debt free net cash flows is a constant growth rate after time period 24 (year 2045), the OCA asserts that each of the values presented by Mr. Walker in his "Market Multiples Valuation" are excessive, even in comparison to his own recommended Income Approach result of \$53,741,785. OCA R. Exc. at 3 (citing Aqua Exc. at 6; OCA R.B. at 10; Aqua St. 4-R at 6). The OCA asserts that, Mr. Smith correctly explained that, if

depreciation exceeds capital expenditures, a public utility cannot be sustained under the rate base or rate of return approach to determine revenue requirement. *Id.* (citing OCA St. 1SR at 14-15).

Regarding the depletion of existing plant, the OCA argues that, although no LMT plant has a depreciation life that will last 1,564 years, the investment dollars in the plant account balance would last 1,564 years and the accumulated depreciation is an offset to the plant account balance. OCA R. Exc. at 3 (citing Aqua Exc. at 12-13). The OCA avers that, Aqua fails to address that whenever depreciation exceeds capital expenditures, utility rate base declines and, if the decline continues, rate base would eventually approach zero. Accordingly, the OCA asserts that, by recalculating the valuation of the terminal value using the amount of net plant less ADIT remaining at the end of year 24, Mr. Smith properly adjusted Gannett Fleming's Income Approach. OCA R. Exc. at 3-4 (citing OCA Exh. RCS-2SR at 3).

The OCA notes that Aqua's arguments regarding an unreasonable double count of the impact of ADIT on rate base is misleading, inappropriate and moot. OCA R. Exc. at 4 (citing Aqua Exc. at 14-15; Aqua M.B. at 19-20; OCA R.B. at 10-11; OCA St. 1SR at 15-16; OCA Exh. RCS-2SR). The OCA explains that, in response to the Company's claim that Mr. Smith did not subtract ADIT from his calculations, Mr. Smith addressed the oversight in OCA Exhibit RCS-2-SR and reflected the deduction of ADIT from the amount of net plant. *Id.* (citing OCA R.B. at 11; OCA St. 1SR at 15; OCA Exh. RCS-2SR). The OCA also notes that AUS also reflected a deduction for ADIT in its Income Approach and that Mr. Smith agreed with both UVEs that ADIT should be deducted from utility net plant for the investor ownership scenarios in the Income Approach. *Id.* (citing OCA R.B. at 11).

d. Aqua Exception No. 2 and Replies

In its Exception No. 2, Aqua avers that, similar to the Company's disagreement regarding Mr. Smith's proposed adjustment to the Gannett Fleming Income Approach to value, Mr. Smith's proposed use of net plant less ADIT as the terminal value in the AUS Income Approach to value should be denied and rejected for the same reasons. Aqua Exc. at 15-16.

Aqua repeats the observation offered by its witness, Mr. Weinert of AUS, that Mr. Smith's analysis, with the exception of period 20 and forward, replicates AUS' DCF analysis for which a net book value adjusted for ADIT was substituted. The Company also reiterates Mr. Weinert's reasons that Mr. Smith's analysis is not accurate, including: (1) the benefits of efficient property operations are eliminated; (2) the continued operation and capitalization of the LMT operation's cashflows, related to periods 20 and beyond, is ignored; and (3) the capital expenditures, which amount to an estimated \$7.6 million for the future periods cashflows and will allow the LMT property to continue providing service for the LMT customers, is ignored. Aqua Exc. at 16 (citing Aqua St. 5-R at 9).

Additionally, Aqua maintains that, if the AUS DCF forecast period is increased from 20 periods to 60 periods, then the impact of ADIT will decline from \$4,871,174 to \$948,406, with a corresponding present worth of cash flows, based on Mr. Smith's methodology, of \$57,809,909, in comparison to AUS' original Income Approach value of \$57,872,959. The Company concludes that Mr. Smith's recommended adjustment to AUS' Income Approach to value does not quantify the sum of LMT's economic returns. Aqua Exc. at 17 (citing Aqua St. 5-R at 10-11).

In its Replies to Aqua's Exception No. 2, the OCA maintains that Mr. Smith's recommended adjustment to the AUS Income Approach is reasonable,

supported, and should be adopted. OCA R. Exc. at 6-7 (citing OCA R.B. at 12; OCA St. 1SR at 10; OCA Exh. RCS-1SR). The OCA counters that the benefits to the owner at the end of the valuation period are not eliminated by the terminal value approach. The Company elaborates that the terminal value calculates the remaining benefit in a reasonable manner and reflects that LMT, under Aqua's ownership, is a regulated public utility and not a competitive business. Aqua also clarifies that, at the end of the valuation period for the Income Approach, a terminal value provides a benefit to the owner of the system of \$7.038 million, thereby demonstrating that the benefit to the owner at the end of the valuation period is not eliminated. OCA R. Exc. at 5 (citing OCA R.B. at 12).

Additionally, the OCA notes that the value of the LMT utility property, which is a rate regulated public utility and not a competitive business, should be calculated based on the equivalent of a utility net depreciated plant rate base amount, net of the ADIT offset. Furthermore, the OCA cites the testimony of Mr. Smith to note that extending the Income Approach an additional 40 years, as presented by AUS, is "inherently unreliable." OCA R. Exc. at 5-6 (citing OCA R.B. at 12-13; OCA St. 1SR at 9-10).

e. Disposition

Upon review of the record, the Recommended Decision, and the Parties' Exceptions and Replies thereto, we shall grant the first and second Exceptions filed by Aqua. In our view, the discussion and subsequent recommendation in the Recommended Decision regarding the inclusion of the appropriate terminal value, following the period of explicit net cash flow forecasts, in the valuation under the Income Approach conflict with one another. Although Section 1329 is a relatively new statute, the OCA's approach as adopted in the Recommended Decision conflicts with prior Commission precedent. Notably, in *Cheltenham*, the ALJ and the Commission rejected the use of net plant as the terminal value in the Income Approach. The *Cheltenham* Order noted the following in

regard to the UVEs' terminal values and, in doing so its rejection of the OCA's criticism of it:

...[R]egarding the OCA's proposed adjustments relating to the UVEs' use of a terminal value, the ALJ rejected the OCA's arguments challenging Gannett's use of a 13-year terminal value and AUS' use of a 20-year terminal. We adopt the ALJ's recommendation and note the ALJ's recommendation is consistent with our decision in *Limerick*. See *Limerick Order* at 22.

Cheltenham at 56. In this proceeding, the Recommended Decision nonetheless recommended that the terminal values be calculated based on the equivalent of net plant less ADIT, as proposed by the OCA,²⁹ finding the OCA's recommended adjustments to be "...reasonable..." and "...consistent with the Public Utility Code and precedent..." R.D. at 92.

The ALJ in *Cheltenham* explained as follows:

OCA advocates for using revised revenues sufficient to earn a return on rate base typically authorized by the Commission and a revised terminal value. OCA bases its revised revenues off of its proposed [depreciated original cost (DOC)] rate base. OCA MB at 27. OCA bases its terminal value off of the value of the CT system's net investment in the 20th year. *Id.* at 30.

[Aqua, herein "APW"] also agrees that the ratemaking required return is the correct return to apply to the Commission-determined rate base in calculating the system's revenue requirements. APW MB at 57. APW notes accepting DOC as the terminal value eliminates the need to appraise plant assets since the indicated value of DOC is DOC. APW MB at 53. I find the following testimony of OCA witness Watkin's particularly compelling,

²⁹ The OCA witness, Mr. Smith, acknowledged that the Commission rejected the use of net plant as the terminal value in *Cheltenham*. OCA St. 1SR at 13.

[I]f a firm is expected to earn a return on its investment at its cost of capital and also recover its depreciation expense, the present value of that future cash flow is exactly equal to the present value of its investment.

OCA St. 2 at 16-17.

As previously discussed, I disagree with OCA's contention that the RCNLD rate base used by AUS is unreasonable. However, I find no fault in OCA's argument; the reasonable result of AUS's income approach is inevitable. Because the Commission would not reasonably permit a utility to earn an excessive return on its rate base, AUS's income approach must be adjusted to be equal to AUS's initial RCNLD rate base, as adjusted.

OCA also contends the capital structure and cost of equity employed by AUS are unreasonable. OCA MB at 25. APW posits that AUS's assumptions regarding the capital structure used to finance the acquisition and to earn a required return on rate base are reasonable. APW RB at 11-12. Based upon the record, I find that OCA has not adequately shown that the capital structure and cost of equity values used by AUS in its RCNLD model would result in excessive returns for a potential buyer.

Cheltenham R.D. at 37-38.

Here, we agree with Aqua that the OCA's reasoning for a downward adjustment of the respective UVEs' Income Approaches, based on the use of net plant less ADIT as the terminal value, is not well founded in Commission precedent. The Recommended Decision, therefore, strays from prior Commission precedent, and makes no attempt to distinguish Aqua's acquisition of LMT's wastewater assets from *Cheltenham* or explain why the use of net plant less ADIT, previously rejected by the Commission, is appropriate in this proceeding.

Furthermore, we find persuasive Aqua’s argument that the OCA’s proposal changes the present value analysis, essential to the Income Approach, to a hybrid analysis that incorporates part of a present value Income Approach with part of a future book value Cost Approach. Aqua M.B. at 14; Aqua R.B. at 5-6.

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).

As previously indicated, the Income Approach is based on the premise that the value of a property is the present value of the future net benefits of owning the property. This approach is relevant when the property being valued generates or is anticipated to generate net income. For regulated utility properties, benefits originate from the cooperative effort of a group of integrated assets functioning as a single unit. Income arises in the aggregate and is not known or recorded on an asset-by-asset basis. Each asset required for the system operation makes an implicit contribution to income through its beneficial use regardless of whether it is included in or excluded from a rate base calculation used in establishing revenue requirements.

As such, Aqua makes a compelling argument that the OCA's adjustments are contrary to legislative intent and inconsistent with clear statutory language that requires a fair market value appraisal reflective of an Income Approach to valuation - not a hybrid Income Approach / Cost Approach to valuation, wherein 37% of Gannett Fleming's DCF analysis and 15% of AUS' DCF analysis would be attributable to the present value of a projected net plant less ADIT balance (*i.e.*, the OCA's proposed terminal values).

Although the OCA acknowledged the Company's reliance on *Cheltenham*, there has been no effort by the OCA to distinguish the prior precedent, or to persuasively argue that we should depart from our prior determination on this issue in this proceeding.

Accordingly, we find no support for the conclusion in the Recommended Decision that the OCA's proposal to modify the terminal value used in the Income Approach is reasonable and consistent with the Code and prior Commission Orders. Therefore, we shall grant Aqua's Exception Nos. 1 and 2, and reverse the ALJ's Recommended Decision, in part, consistent with the discussion in this Opinion and Order.

4. Market Approach

The Market Approach (called the Sales Comparison Approach by The American Society of Appraisers) is defined by The American Society of Appraisers as follows:

A procedure to conclude an opinion of value for a property by comparing it with similar properties that have been sold or are for sale in the relevant marketplace by making adjustments to

prices based on marketplace conditions and the properties' characteristics of value.³⁰

a. Positions of the Parties

The Gannett Fleming valuation produced a Market Approach result of \$58.24 million. The AUS valuation shows a Market Approach result of \$55.741 million. AUS included the Delaware County Regional Water Quality Authority (DELCORA) in its comparison group and indicated a final purchase price of \$276,500,000 for DELCORA. OCA M.B. at 17 (citing OCA St. 1 at 38-39; Application Exh. R at 10). The OCA recommended that the DELCORA acquisition be removed from AUS' comparison group. The adjustment has no impact on the AUS Market Approach valuation. AUS witness, Mr. Weinert explained that it is not necessary to exclude the Aqua-DELCORA wastewater acquisition as a comparable, as the purchase price used in the AUS Market Approach is a comparison of the purchase price as detailed in the initial asset purchase agreement to the various comparability measures, *i.e.*, original cost less depreciation, replacement cost less depreciation, customer, and cash flows (EBITDA). Aqua M.B. at 22 (citing Aqua St. 5-R at 11-12).

The OCA contended that the Aqua-DELCORA acquisition is an ongoing matter and has not closed. The OCA explained that the \$276,500,000 purchase price and ratemaking rate base proposed by Aqua in the DELCORA proceeding has not been finalized and, further, in March 2021, the Commission issued an Order to vacate the Recommended Decision, reopen the record, and remand the proceeding, which has been stayed. OCA M.B. at 18 (citing *Application of Aqua Pennsylvania Wastewater, Inc.*, A-2017-2606103, ALJ Order Staying Proceeding (April 16, 2021)). The OCA argued

³⁰ OCA St. 1 at 28 (citing *Approaches to Value*. American Society of Appraisers accessed March 5, 2020, <http://www.appraisers.org/Disciplines/Personal-Property/pp-appraiser-resources/approaches-to-value>).

that including the DELCORA acquisition and indicating \$276,500,000 as the “final purchase price” for the DELCORA system is inaccurate and potentially misleading. OCA M.B. at 18.

The OCA provided that the *FSIO*³¹ states as follows regarding the jurisdictional exceptions under the Market Approach:

3. Speculative growth adjustments will not be used.
6. Comparable sales used to establish the valuation should use the current customers.

OCA M.B. at 18 (citing *FSIO* at 87-88 (emphasis in original)).

The OCA witness, Mr. Smith recommended that the Aqua-DELCORA acquisition be removed from AUS’ comparison group as the DELCORA system has not been purchased and there is no final purchase price for the system. OCA M.B. at 18 (citing OCA St. 1 at 39). The OCA also explained that the DELCORA customers are not currently customers of Aqua. According to the OCA, eliminating the DELCORA acquisition from the comparison group did not impact the final resulting valuation under the AUS Market Approach but it is reasonable to make the elimination. *Id.*

b. ALJ’s Recommendation

The ALJ found the OCA witness Mr. Smith’s adjustment to the AUS Market Approach comparison group to be reasonable. The ALJ provided that whether the DELCORA acquisition will close and have a final purchase price of \$276,500,000 is

³¹ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order (Order entered February 28, 2019) (*FSIO*).

speculative. Further, the ALJ noted that the DELCORA customers are not currently customers of Aqua. R.D. at 89-90.

c. Aqua Exception No. 4 and Replies

In its Exception No. 4, Aqua argues that the removal of the DELCORA transaction from the AUS Market Approach is neither reasonable nor necessary. Aqua provides that Mr. Weinert explained that although the DELCORA acquisition has not been finalized, it is not necessary to exclude it as a comparable. Aqua explains that the comparison used is of a purchase price in the original asset purchase agreement comparability measures. Aqua avers that the OCA's criticism of the AUS Market Approach and the proposed removal of the Aqua-DELCORA transaction from the AUS comparables should be rejected. Aqua Exc. at 21.

In its Replies to Aqua Exception No. 4, the OCA argues that the \$276,500,00 "final purchase price" for DELCORA from AUS' comparison price should be removed because the DELCORA system has not been purchased. OCA R. Exc. at 11 (citing OCA M.B. at 18-19; OCA St. 1 at 39). The OCA disagrees with Aqua's assertion that the DELCORA acquisition should remain since the comparison is of a purchase price in the asset purchase agreement to comparability measures, such as customers. OCA R. Exc. at 11 (citing Aqua Exc. at 21). According to the OCA, the DELCORA acquisition is an outlier. All of the other acquisitions in the comparison group are closed transactions. The OCA explains that including the DELCORA acquisition and indicating \$276,500,000 as a "final purchase price" for that system is inaccurate and potentially misleading. OCA R. Exc. at 11.

d. Disposition

The Aqua-DELCORA acquisition is not final and should not be used in the AUS comparison group. The “final purchase price” is not known at this time. The proposed Aqua-DELCORA acquisition is indeed an “outlier” as the OCA argued, as it is the only acquisition in the AUS comparison group that is not finalized. Use of the proposed Aqua-DELCORA transaction in the AUS comparison group is speculative. For these reasons, Aqua Exception No. 4 is denied.

5. Conclusion – Section 1329 Fair Market Valuation

a. Positions of the Parties

Aqua submitted that the ratemaking rate base of the LMT wastewater system, determined pursuant to Section 1329(c)(2), is \$53,000,000, the lesser of the negotiated purchase price of \$53,000,000 and the average of the UVE appraisals of \$54,967,796. Aqua averred that the OCA’s criticisms of the appraisals should be rejected and given no weight. Aqua M.B. at 22.

The OCA provided that the OCA witness Smith calculated that, in order to properly reflect financial and ratemaking principles under Pennsylvania law, the adjusted Gannett Fleming appraisal result would be \$54,163,000 and the adjusted AUS appraisal result would be \$48,309,516, in order to properly reflect financial and ratemaking principles.³² OCA R.B. at 14 (citing OCA Exh. RCS-1SR at Col. G, Ins. 5, 10). The OCA averred that Mr. Smith’s recommended adjustments are reasonable, consistent with

³² We note that the OCA Reply Brief transposed the values for the Gannett Fleming and AUS appraisal adjusted amounts. The values used in OCA Exh. RCS-1SR are correct and are used here.

the Code and precedent, and should be adopted by the Commission in this proceeding. OCA R.B. at 14.

b. ALJ's Recommendation

The ALJ adopted the OCA's recommendation to adjust the Income Approach values of both the Gannett Fleming and AUS appraisals. The ALJ also adopted the OCA's recommendation to use the 65-year service life for Gravity Collection Mains in the AUS Cost Approach. The resulting recalculated average of the two appraisal results is \$51,236,259, which the ALJ recommended for establishing rate base under Section 1329 rather than the \$53,000,000 proposed by Aqua. R.D. at 92; *see also* OCA Exh. RCS-1SR at Col. G, lns. 5, 10.

c. Aqua's Exception No. 5 and Replies

In its Exception Nos. 1, 2, and 3, Aqua excepts to the individual adjustments to the Gannett Fleming Income Approach and to the AUS Cost and Income Approaches that reduce the ratemaking rate base. In Exception No. 5, Aqua excepts to the end result of those adjustments that reduce the ratemaking rate base from \$53,000,000 to \$51,236,259. Aqua Exc. at 22.

Additionally, Aqua disagrees with the Recommended Decision and the adjustment of the appraisals on a basis other than the USPAP – specifically, the application of “financial and ratemaking” principles to support the adjustments. Aqua contends that the statutory standard is “fair market value in compliance with the USPAP employing the cost, market, and income approaches.” Aqua Exc. at 22 (citing 66 Pa. C.S. § 1329(a)(3)).

Aqua maintains that this was affirmed in *New Garden* where the Commission stated that “when construing Section 1329 in conjunction with both Section 505 and Section 1103(b) of the Code, it is clear that the Commission retains the authority to review and analyze the UVE valuations to determine compliance with the USPAP standards and whether the three methods were accurately applied to the UVEs’ analyses.” Aqua Exc. at 23 (citing *New Garden* at 14).

Aqua states that it is not suggesting that the determination of ratemaking rate base must be “formulaic” or that the Appraisals cannot be challenged. Aqua submits that the UVE appraisals are prepared and sponsored by certified UVEs who are qualified by statute and Commission sanction. Aqua Exc. at 23. Aqua holds that the ratemaking rate base determined pursuant to Section 1329(c)(2) is \$53,000,000 being the lesser of the negotiated purchase price of \$53,000,000 and the average of the UVE appraisals of \$54,967,796. Aqua avers that the Gannett Fleming and AUS appraisals are supported by the evidence of record and consistent with the Code and precedent. *Id.*

In its Replies to Aqua Exception No. 5, the OCA explains that Section 1329 creates a valuation process, which begins with two UVEs providing individual appraisals of “fair market value.” OCA R. Exc. at 12 (citing 66 Pa. C.S. § 1329(a)(3)). The OCA explains further that the statute anticipates that these appraisals will differ and provides for the appraisals to be averaged. OCA R. Exc. at 12 (citing 66 Pa. C.S. § 1329(g)).

The OCA avers that the two UVEs, who both must comply with the USPAP and employ the Cost, Market, and Income Approaches, may recommend different fair market values establishes that the appraisal process is not simply a “formulaic” mathematical exercise. OCA R. Exc. at 12-13.

According to the OCA, the UVEs are required to make judgments in each type of analysis and in how much weight is given to each approach. The OCA reasons

that the consumer interest can only be protected if the Commission may consider evidence regarding errors and unsupported adjustments in the UVE appraisals. *Id.*

The OCA notes that the Commission has previously ruled on Aqua's argument on whether compliance with the USPAP is the sole standard of review for the ratemaking rate base valuation in a Section 1329 Application. OCA Exc. at 13 (citing *Cheltenham* at 34-40). According to the OCA, the Commission previously viewed Aqua's argument as an "attempt to unreasonably tie the Commission's hands to an unreasonably narrow standard by which the Commission can review a UVE's valuation of utility property for determining the ratemaking rate base – that is, whether a UVE's valuation of utility property is compliant with USPAP." OCA R. Exc. at 13 (citing *Cheltenham* at 36-37). The OCA provides that the Commission further stated that Aqua's position represents a very narrow construction of Section 1329 that would support the proposition that Section 1301's mandate for just and reasonable rates be given *no effect*. *Id.* The OCA states that the Commission concluded as follows:

Therefore, we agree with the OCA and the ALJ that the statutory appraisal process is not simply a formulaic mathematical exercise, nor is the Commission acting as some type of USPAP-compliance board. We agree that review of the appraisals provided by Aqua and Cheltenham UVEs shows that there are judgments made in each type of analysis as well as in how much weight is to be given to each approach. We also agree that it would be inconsistent with the requirements of the Code and prior Commission orders to permit Aqua to simply present a rate base number, show that the appraisers chose numbers to fill in all the blanks in the formulas and based solely upon the judgments of the UVEs, and to not permit any review or challenges of those inputs, methods or judgments.

OCA R. Exc. at 13 (citing *Cheltenham* at 40, *see also* the full discussion at *Cheltenham* at 36-40).

Further, the OCA argues, in *Limerick*³³, the Commission was clear that the USPAP is not the controlling text for Section 1329 valuations involving regulated utilities. OCA R. Exc. at 12-13.

The OCA argues that non-UVes are permitted to recommend adjustments as there is no prohibition on the ability of the parties to recommend adjustments in order to ensure that proposed transactions under Section 1329 comply with Pennsylvania law and result in just and reasonable rates. The OCA avers that Mr. Smith is highly qualified to review the appraisals and present his critiques. OCA R. Exc. at 14.

d. Disposition

We disagree with Aqua's argument regarding *New Garden*, that the Commission's review is constrained to compliance with USPAP. While Aqua cited to *New Garden*³⁴ as reason to disagree with the Recommended Decision and the adjustment of the Appraisals on a basis other than the USPAP, the very next paragraphs in *New Garden* explain that the Commission in *New Garden* is not recommending that the Commission's review focus only on the USPAP compliance as follows:

There is no language in Section 1329 abrogating or repealing the Commission's authority under Section 505 to conduct an inquiry into the value of the assets that Aqua seeks to acquire. Likewise, because the Application proceeding includes the determination of whether a Certificate should be granted, the Commission retains the authority under Section 1103(b) to "make such inquiries, physical examinations, valuations, and investigations, and may require such plans, specifications,

³³ *Limerick* at 58.

³⁴ "[W]hen construing Section 1329 in conjunction with both Section 505 and Section 1103(b) of the Code, it is clear that the Commission retains the authority to review and analyze the UVE valuations to determine compliance with the USPAP standards and whether the three methods were accurately applied to the UVE's analyses." Aqua Exc. at 23 (citing *New Garden*, slip op. at 14).

and estimates of cost, as it may deem necessary or proper in enabling it to reach a finding or determination.” 66 Pa. C.S. § 1103(b). Section 1329 does not contain language invalidating the General Assembly’s delegation of investigatory authority to the Commission under Section 1103.

We agree with I&E that Section 1329, despite being a later enacted statute, is reconcilable with Sections 505 and 1103(b). Thus, consistent with 1 Pa. C.S. § 1971(c), we do not believe the General Assembly intended to repeal the earlier enacted provisions under Sections 505 and 1103(b) of the Code. *See also, Royal Indem. Co. v. Adams*, 455 A.2d 135, 141 (Pa. Super. 1983) (“When interpreting statutes, they should be interpreted as being in harmony with each other and construed as a component of the whole statutory structure.”). Accordingly, we find that Section 1329 permits the Commission and the Parties to develop a record pertaining to the review and analysis of the fair market value appraisals of the UVEs.

New Garden at 34-35, footnote omitted.



As the ALJ in this proceeding noted, *Cheltenham* has addressed this very issue as follows:

[T]he Commission has already considered and rejected Aqua’s position and determined that Section 1329 contains no prohibitions on the ability of parties, or the Commission, to review the UVE appraisals as to their reasonableness and, accordingly, propose, or adopt, adjustments to the UVE appraisals. Specifically, in the *Limerick Order*, citing to the *New Garden Order*, we rejected Aqua’s position in those cases, the position Aqua reiterated in this proceeding. *Limerick Order* at 35-36.

R.D. at 81 (citing *Cheltenham* at 39).

Cheltenham has further clarified that “the statutory appraisal process is not simply a formulaic mathematical exercise, nor is the Commission acting as some type of USPAP-compliance board.” *Cheltenham* at 40.

As discussed *supra*, we agree with the ALJ that OCA’s proposed adjustment to the AUS Cost Approach is reasonable and appropriate. We disagree with the OCA’s adjustment to the Gannett Fleming and AUS Income Approaches. We have adopted the ALJ’s recommendations to adjust the AUS Cost Approach and rejected the ALJ’s recommendations to adjust the Income Approaches and modified the ALJ’s recommendation to the UVE appraisal values. The Gannett Fleming Appraisal is unchanged at \$55,505,000 from that proposed by Gannett Fleming. The AUS Appraisal is modified by reducing the Cost Approach from \$51,414,555 to \$46,700,407, a reduction of \$4,714,148 to reflect the change in service life for Gravity Collection Mains from 80 to 65 years. The recalculated AUS Appraisal result is \$52,073,517. The recalculated average of the Gannett Fleming Appraisal result and the adjusted AUS Appraisal result is \$53,789,258, as follows:

Gannett Fleming Appraisal (Unchanged)			
Conclusion			\$55,505,000
Summary of Results Prepared by AUS (As Modified)			
	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$46,700,407	50%	\$23,350,204
Income Approach	\$57,872,959	40%	\$23,149,184
Market Approach	\$55,741,285	10%	\$5,574,129
		100%	\$52,073,517
Conclusion			\$52,073,517
	Average		\$53,789,258

The FMV is the lesser of the purchase price and the average of the appraisal results, or \$53,000,000. For the reasons above, we shall adopt, in part, and deny, in part, Aqua Exception No. 5.

B. Income Tax Savings on Repairs Deductions

1. Positions of the Parties

The OCA submitted that, if the Commission approves the acquisition of LMT by Aqua, then the impact on income tax expense experienced from repairs deductions claimed by the Company for LMT system assets should be: (1) recorded in a regulatory liability account; and (2) addressed in Aqua’s first base rate case that includes rates for the acquired LMT customers. OCA M.B. at 19 (citing OCA St. 1 at 41).

The OCA explained that the Company is expected to have federal income tax deductions for repairs to the acquired LMT wastewater system and, as such, Aqua can take advantage of tax deductions for the repairs, including where the accounting treatment results in the costs for the repairs being capitalized for book purposes. The OCA noted that the repairs deductions can be substantial and result in a reduction to income tax expense. Further, the OCA noted that its witness, Mr. Smith, stated that the Company has treated federal income tax deductions for repairs for regulatory purposes by applying flow-through accounting for the impact of those deductions. Mr. Smith, therefore, anticipated that upon the completion of a property assessment relative to the Internal Revenue Service (IRS) tangible property regulations, Aqua would attempt to utilize flow-through accounting for the impact of repair deductions related to the assets of LMT. OCA M.B. at 19-20 (citing OCA St. 1 at 40).

The OCA detailed that the federal income tax repairs deductions for the acquired LMT system are related to the Company's ownership of LMT and represent a potentially significant benefit to Aqua's ratepayers that could help offset the estimated rate increases projected by the Company. Further, the OCA noted that not requiring deferred accounting would allow income tax savings from repairs deductions for the LMT system, from the acquisition date through Aqua's next base rate case that includes LMT, to be retained by the Company for its investors. Accordingly, the OCA recommended that Aqua be required to account for the impact of the tax savings resulting from claimed repairs deductions in a regulatory liability account that would be addressed in the Company's next base rate case that includes the LMT system. OCA M.B. at 20-21 (citing OCA St. 1SR at 6).

In opposition, Aqua stated Mr. Smith's proposal to defer one cost of service component and conditionally create a regulatory liability account is unreasonable and inappropriate. Aqua M.B. at 23-24. The Company explained that at its existing rates, the LMT system has a deficiency in revenue requirement and, given that it will be a few

years until the LMT system is presented in a base rate case, Aqua will carry the deficiency in revenue requirement as regulatory lag without deferral. Further, Aqua asserted that, if the Company does yield a tax repair benefit, then during the time leading up to the rate case that would include the LMT system, the revenue requirement deficiency would be offset by the benefit. Aqua M.B. at 23 (citing Aqua St. 1-R at 10). Moreover, Aqua averred that when the Company does present itself before the Commission in a base rate case, any repair benefits will accrue to customers at that time and going forward. Additionally, Aqua stated that, IRS regulations dictate that in order to claim repairs deductions on assets, the “wear and tear” on those assets must have occurred during the taxpayer’s use of those assets. Aqua M.B. at 23. The Company averred that because the wear and tear on the system assets has been under the ownership of LMT and not Aqua, it is unlikely that a material repair benefit would be realized. Accordingly, Aqua disagrees with the OCA’s proposed condition and creation of a regulatory liability account. Aqua M.B. at 23-24.

2. ALJ’s Recommendation

In his Recommended Decision, the ALJ recommended that the Commission deny the proposed accumulation of the income tax effect of repairs deductions in a regulatory liability account as a condition for approval of the transaction. The ALJ explained that, in order to direct the use of a regulatory liability for repairs tax reductions, the Commission is required to determine that such amounts are, or appear to be, extraordinary, substantial, and non-recurring. Accordingly, the ALJ found that the OCA failed to demonstrate that such repairs tax reductions are, or appear to be, substantial. R.D. at 96-97.

The ALJ provided that, in the case of a utility seeking Commission authorization to defer and record specific expenses as a regulatory asset, the Commission found that the standard that must be met to secure Commission authorization is whether,

based on Commission precedent, “the expense item appears to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery of expenses (Eligible Deferral Item).” R.D. at 96 (citing *Petition of Pennsylvania American Water Company*, P-2012-2308982 (Order entered August 30, 2012) (*PAWC 2012*)). The ALJ noted that, in *PAWC 2012*, the Commission stated that authorizations for deferral accounting are not intended to develop a factual record and are not an assurance of future ratemaking treatment. The ALJ found that, in the instant case, it appears reasonable to apply a similar standard. R.D. at 96.

The ALJ reasoned that the OCA, as the proponent for deferral accounting, must demonstrate that, based on Commission precedent, repairs tax reductions appear to be within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive ratemaking. Therefore, the ALJ concluded that, based on the record, the OCA did not present sufficient evidence to determine that repairs tax reductions are an Eligible Deferral Item and, accordingly, the ALJ did not recommend that the Commission approve the creation of a regulatory liability at this time. R.D. at 96.

Additionally, the ALJ noted that, notwithstanding whether repairs tax reductions are an Eligible Deferral Item, the OCA’s recommendation necessitates the Commission directing, rather than allowing, deferral accounting. The ALJ referenced the *Tax Cuts and Jobs Act of 2017*, Docket No. M-2018-2641242 (Order entered May 17, 2018) (*TCJA 2017*) to note that, in the case of the Commission directing utilities to defer and record certain expense reductions as a regulatory liability, the Commission found that such expense reductions were extraordinary, substantial, and non-recurring. R.D. at 96.

3. OCA Exception No. 1 and Replies

In its Exception No. 1, the OCA challenges the ALJ's recommendation that the Commission deny the OCA's recommendation that, if the Commission approves the transaction, then the impact of the income tax expense savings resulting from claimed repairs deductions claimed by Aqua for LMT system assets should be recorded in a regulatory account and addressed in the Company's first base rate case that includes the acquired LMT system. Specifically, the OCA disagrees with the ALJ's conclusion that the OCA failed to demonstrate that the tax repairs deductions are, or appear to be, substantial. OCA Exc. at 3 (citing R.D. at 96-97). The OCA asserts that, given the size of the proposed transaction and the potential benefits of utilizing tax repairs, requiring the Company to defer the tax savings for later review is reasonable and appropriate. Accordingly, the OCA requests that the Commission include the recommendation of the OCA's witness, Mr. Smith, regarding the treatment of tax repairs deductions as part of its Order in this proceeding. OCA Exc. at 5.

The OCA notes that, although Aqua asserted that the size of the repairs deductions is currently unknown, the OCA witness, Mr. Smith testified that repairs deductions can be substantial and result in reducing income tax expense. OCA Exc. at 3-4 (citing OCA St. 1 at 40; Aqua St. 1-R at 9-10; OCA St. 1SR at 6). The OCA also argues that Aqua did not provide evidence demonstrating that the costs are insubstantial and that, as a result of the proposed transaction, Aqua is expected to have federal income tax deductions for repairs for the acquired LMT system. OCA Exc. at 4 (citing OCA M.B. at 20-22; OCA St. 1 at 40-42). Accordingly, the OCA avers that, where the accounting treatment results in the repairs costs being capitalized for book purposes, Aqua can avail itself of tax deductions for repairs. OCA Exc. at 4

The OCA notes that its witness, Mr. Smith recommended that the Company be required to account for the impact of the tax savings resulting from claimed repairs

deductions in a regulatory liability account that would be addressed in Aqua's next base rate case that includes the acquired LMT system. OCA Exc. at 4 (citing OCA St. 1SR at 7). Further, the OCA contends that, although the OCA does not bear the burden of proof in this proceeding, Aqua posits an unsupported expectation that repairs deductions will be relatively small and such an expectation is not sound reasoning against the recommendation of deferred accounting. *Id.* (citing Aqua St. 1-R at 10). Moreover, the OCA notes that it is not possible to determine the size of future tax repairs deductions and a deferral account would preserve the issue so that the tax repairs deductions are able to be addressed in the first base rate case that includes LMT. Furthermore, the OCA maintains that such deferred accounting would allow the income tax savings from repairs deductions for the LMT system, from the acquisition date through Aqua's next base rate case including LMT, to be retained by the Company for its investors. *Id.* (citing OCA R.B. at 16; OCA St. 1SR at 6). The OCA adds that the savings in setting rates in the next rate case that includes the acquired LMT system would not be experienced by Aqua's ratepayers. *Id.*

The OCA notes that accounting for Aqua's repairs deductions for the acquired LMT system, from the date of the acquisition through the test year being used in the Company's next base rate case, in a deferred regulatory liability account will preserve the issue for Aqua's next rate case. Further, the OCA notes that, at this point and in the context of a base rate case, the actual tax repairs deductions that the Company receives can be reviewed by the OCA, the Parties, and the Commission. Moreover, the OCA is not requesting that retroactive ratemaking treatment be given to unknown tax repairs deductions, as requiring the accounting of the impact of the tax savings resulting from claimed repairs deductions in a regulatory liability account addresses any retroactive ratemaking concern by preserving the issue so that it could be addressed in Aqua's next base rate case that includes the acquired LMT system. Furthermore, the OCA notes that, if Aqua believes that the amounts accumulated in the regulatory liability account for LMT repairs deductions should not be used to offset rate increases in that case, the

Company would have the opportunity to present its reasoning in that future rate case. OCA Exc. at 4-5.

In its Replies to the OCA's Exception No. 1, Aqua counters that the OCA's claim that repairs deductions could be substantial is an insufficient basis to conclude that the deductions are an Eligible Deferral Item, as the same claim could be made by the OCA or a utility for any utility cost component. Aqua asserts that the Recommended Decision properly concluded that the OCA did not present sufficient evidence to determine that repairs tax reductions are an Eligible Deferral Item. Further, the Company questions the OCA's statement that it is not requesting retroactive ratemaking treatment, adding that the OCA's proposal indicates otherwise. Aqua R. Exc. at 3, 5.

Aqua argues that deferral accounting is an exception to the rule against retroactive recovery of expenses and, in the instant case, the OCA does not support its claim that repairs tax deductions should be allowed. The Company notes that the OCA does not cite one instance where the Commission has required, as a condition for approval of a fair market value transaction, the creation of a regulatory liability account. Further, Aqua notes that, contrary to the OCA's contention, there is no evidence that the repairs tax deductions will ultimately be substantial. The Company notes that its witness, Mr. Packer, testified that in the first five years of the Company's ownership prior to the inclusion of the LMT system in an Aqua rate case, the likelihood of repairs deductions being realized or availed to Aqua is remote. Aqua R. Exc. at 3 (citing Aqua St. 1-R at 9).

Aqua maintains that it is unlikely that any meaningful repair benefit would be realized. Aqua also reiterates that, Mr. Packer testified that IRS regulations require that the "wear and tear" on the utility assets acquired must have occurred during the taxpayer's use of the assets and, to date, wear and tear on the LMT system has been under LMT ownership. Aqua R. Exc. at 4 (citing Aqua St. 1-R at 9-10).

Further, Aqua submits that, although the Company has the burden of proof to support its request for an order granting the Application and issuance of certificates of public convenience, the Company does not have the burden to disprove a deferred accounting proposal submitted by the OCA's witness. The Company also submits that, consistent with the reasoning presented in the Recommended Decision, the OCA is obligated to present sufficient evidence to determine that repairs tax reductions are an Eligible Deferral Item and that the amounts involved are substantial. Aqua R. Exc. at 4.

Moreover, Aqua points out that the OCA's proposal is one-sided and repeats that, given LMT's existing rates and the amount of time before the LMT system is presented in a base rate case, the deficiency in revenue requirement will be borne by the Company as a regulatory lag. Aqua also emphasizes that the Company is not requesting that the revenue deficiency be deferred and any tax repair benefit yielded by Aqua would be offset the revenue deficiency. Aqua R. Exc. at 4 (citing Aqua St. 1-R at 10).

Aqua repeats that when the Company presents itself before the Commission in a base rate case, any repair benefits will accrue to customers at that point and going forward. Furthermore, Aqua notes that the OCA's proposed treatment of income tax savings on repairs deductions ignores other costs of providing service that are likely to increase and be borne by the Company as regulatory lag until the LMT system is included in the rate case. Aqua R. Exc. at 4.

4. Disposition

We agree with the ALJ's recommendation to deny the OCA's proposal that, as a condition for approval of the LMT transaction, the accumulation of the income tax effect of repairs deductions be accounted for in a regulatory liability account. The OCA claims that after the Company's acquisition of LMT, Aqua will have potentially large

federal income tax deductions for repairs to the LMT wastewater system. Although the OCA argues that repairs deductions “can be” substantial, the record evidence does not demonstrate that repairs deductions for the LMT wastewater system *will* be substantial. OCA Exc. at 3 (citing OCA St. 1 at 40). Indeed, as discussed by the ALJ, the OCA, as the advocate for deferral accounting, must demonstrate that deductions for repairs are, or appear to be, substantial. R.D. at 96.

Nevertheless, the OCA contends that, based on the possibility of substantial repairs deductions that can result in a reduction to income tax expense, Aqua should be required to account for the resulting impact on income tax expense in a regulatory liability account. We agree with the ALJ’s reasoning that directing, rather than allowing, Aqua to defer and record specific expense reductions in a regulatory liability account requires the Commission to determine that such expense reduction amounts “are, or appear to be, extraordinary, substantial, and non-recurring.” R.D. at 96 (citing *TCJA 2017*). Given that the record evidence does not support a finding that the repairs deductions for the LMT system will be substantial, we conclude that the OCA’s proposal that, as a condition of the LMT acquisition, the Company be required to account for the tax savings effect resulting from claimed repairs to the LMT system in a regulatory liability account, be denied.³⁵

³⁵ We note that, similarly, there is a lack of evidentiary support for a finding that the proposed expense reduction would also be extraordinary and non-recurring, or that it is within the scope of the type of items that the Commission has allowed as an exception to the general rule against retroactive recovery, particularly within the context of a Section 1329 proceeding. *See, e.g., Petition of Pennsylvania-American Water Company for Authorization to Defer, and Record as Regulatory Assets for Future Recovery: (1) Incremental Expenses Incurred Because of the Effects of the COVID-19 Emergency; (2) Revenue Reductions Attributable to the Effects of the COVID-19 Emergency; and (3) Carrying Charges on the Amounts Deferred*, Docket No. P-2020-3022426 (Order entered September 15, 2021).

VI. Conclusion

Based on the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions of Aqua; (2) deny the Exceptions of the OCA; (3) adopt the ALJ's Recommended Decision, as modified, consistent with this Opinion and Order; and (4) approve the Joint Petition, without modification, as being in the public interest, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Aqua Pennsylvania Wastewater, Inc. filed on November 29, 2021, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on November 17, 2021, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exception of the Office of Consumer Advocate filed on November 29, 2021, to the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on November 17, 2021, is denied, consistent with this Opinion and Order.

3. That the Recommended Decision of Administrative Law Judge Jeffrey A. Watson, issued on November 17, 2021, is adopted as modified, consistent with this Opinion and Order.

4. That the Joint Petition for Approval of Partial Settlement filed by Aqua Pennsylvania Wastewater, Inc., the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and Lower Makefield Township on October 8, 2021, at Docket No. A-2021-3024267, including all terms and conditions thereof, is approved without modification.

5. That the Application of Aqua Pennsylvania, Inc., filed on May 14, 2021, seeking approval of: (1) the acquisition, by Aqua Pennsylvania Wastewater, Inc., of the wastewater system assets of Lower Makefield Township situated within the Township of Lower Makefield and Yardley Borough, Bucks County, Pennsylvania, pursuant to 66 Pa. C.S. § 1102(a)(3); (2) the right of Aqua Pennsylvania Wastewater, Inc. to begin to offer, render, furnish, and supply wastewater service to the public in Lower Makefield Township, pursuant to 66 Pa. C.S. § 1102(a)(1); (3) certain contracts in connection with the proposed acquisition, including the assignments of certain contracts, pursuant to 66 Pa. C.S. § 507; and (4) an order establishing the ratemaking rate base of Lower Makefield Township's wastewater system assets pursuant to 66 Pa. C.S. § 1329(c)(2), is approved subject to the following conditions in (a) through (p) below, and subject to Ordering Paragraph Nos. 6, 7, 8 and 11, below:

a) The pro forma tariff submitted with the Application, as amended in Aqua Pennsylvania Wastewater, Inc.'s supplemental information filed by letter dated June 21, 2021, including all rates, rules and regulations regarding conditions of Aqua's wastewater service, shall be permitted to become effective immediately upon closing of the transaction.

b) On a going forward basis, Aqua Pennsylvania Wastewater, Inc. shall require engineering firms conducting Section 1329 assessments to present, as part of the engineering assessment, a detailed Engineer's Assessment Study containing the seller's utility assets description of the condition of inventory and assets. The designation of condition shall be limited to those assets that can be observed and whether the categories of system assets appraised are in poor, fair, good or very good condition.

c) Aqua Pennsylvania Wastewater, Inc. and Lower Makefield Township shall work to ensure the transfer of all real property rights including

easements and missing easements as defined in the Asset Purchase Agreement by Closing. However, Aqua Pennsylvania Wastewater, Inc. shall be permitted in its discretion to close without the transfer of all of the Real Property Rights, provided that an escrow is established from the Purchase Price to be used to obtain any post-Closing transfers of the Real Property Rights. Aqua Pennsylvania Wastewater, Inc. shall provide an update to the Bureau of Investigation & Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate approximately thirty (30) days in advance of the anticipated Closing Date and a final update before Closing regarding the status of the transfer of real property rights including easements related to the system.

d) In the first base rate case that includes Lower Makefield 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 Lower Makefield Township wastewater system.

e) In the first base rate case that includes Lower Makefield Township wastewater system assets, Aqua Pennsylvania Wastewater, Inc. shall also provide a separate cost of service study for the Lower Makefield Township wastewater system. Aqua Pennsylvania Wastewater, Inc. shall file a Cost of Service Study separately for the Lower Makefield 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.

f) Any claims for Allowance for Funds Used During Construction and deferred depreciation related to post-acquisition improvements not recovered through the Distribution System Improvement Charge for book and ratemaking

purposes, shall be addressed in Aqua Pennsylvania Wastewater, Inc.'s first base rate case which includes Lower Makefield Township wastewater system assets.

g) Regarding future claims for Allowance for Funds Used During Construction, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The Parties' assent to this agreement shall not be construed to operate as its preapproval of Aqua Pennsylvania Wastewater, Inc.'s requests.

h) If Aqua Pennsylvania Wastewater, Inc. proposes to modify its Long-Term Infrastructure Improvement Plan to include the Lower Makefield Township wastewater system, the projects added for Lower Makefield Township shall be in addition to those that Aqua Pennsylvania Wastewater, Inc. plans for its existing systems.

i) In future Long-Term Infrastructure Improvement Plans or Annual Asset Optimization Plans that include the Lower Makefield Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall not reprioritize other existing capital improvements that the Company already committed to undertake. This section does not limit Aqua Pennsylvania Wastewater, Inc.'s current practice and ability to allocate projects as needed for its capital program.

j) Upon approval of the Commission of a modification to its Long-Term Infrastructure Improvement Plan which includes the Lower Makefield Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall be permitted to collect a Distribution System Improvement Charge related to the Lower Makefield Township wastewater system prior to the first base rate case in

which the Lower Makefield Township wastewater assets are incorporated into rate base.

k) The current average Lower Makefield Township residential rate is \$74.32 per month based on four thousand seven hundred gallons of usage. As set forth in the notice sent to Lower Makefield Township customers in this proceeding (Application Exhibit I2), Aqua Pennsylvania Wastewater, Inc. provided a non-binding, estimated incremental rate effect of the proposed rate base addition on Lower Makefield Township wastewater customers of 28.17%.

l) Joint Petitioners acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the Lower Makefield Township customers that are in excess of the restrictions contained in Section 7.03 of the Asset Purchase Agreement.

m) At the time of Aqua Pennsylvania Wastewater, Inc.'s first base rate case that includes the Lower Makefield Township wastewater system, Aqua Pennsylvania Wastewater, Inc. shall propose the timing of the rate effect consistent with the terms of Section 7.03 of the Asset Purchase Agreement. All Parties reserve their rights to address Aqua Pennsylvania Wastewater, Inc.'s proposal.

n) In the first base rate proceeding filed by Aqua Pennsylvania Wastewater, Inc. that includes Lower Makefield Township's wastewater system assets, Aqua Pennsylvania Wastewater, Inc. shall propose to move the Lower Makefield Township system to its cost of service, based on a separate cost of service study for Lower Makefield Township's wastewater system; provided, however, that Aqua Pennsylvania Wastewater, Inc. shall not be obligated to propose Lower Makefield Township wastewater rates in excess of Aqua

Pennsylvania Wastewater, Inc.'s proposed Rate Zone 1 system-average rates. The Joint Petitioners acknowledge, however, that Aqua Pennsylvania Wastewater, Inc. may agree to rates other than those proposed for Lower Makefield Township customers in the context of a settlement of the base rate case. The Office of Consumer Advocate, the Commission's Bureau of Investigation and Enforcement, the Office of Small Business Advocate and Lower Makefield Township reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In the next rate case, Aqua Pennsylvania Wastewater, Inc. shall provide written notice to Lower Makefield Township customers of the rate filing and the level of increase, if any, resulting from this provision

o) Aqua Pennsylvania Wastewater, Inc. shall send a welcome letter to Lower Makefield Township wastewater customers within thirty (30) days following Closing which shall include information regarding the conversion to monthly billing for their sewer service.

p) In its next base rate case, Aqua Pennsylvania Wastewater, Inc. shall separately identify any legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between Aqua Pennsylvania Wastewater, Inc. and Lower Makefield Township and specify amounts expended by Aqua Pennsylvania Wastewater, Inc. on behalf of Lower Makefield Township. The Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate and the Office of Small Business Advocate reserve the right to challenge the reasonableness, prudence, and basis for such fees.

6. That, pursuant to 66 Pa. C.S. § 1329(c)(2), the ratemaking rate base of the Lower Makefield Township wastewater system assets is \$53,000,000.

7. That the Office of Consumer Advocate’s proposed accumulation of the income tax effect of repairs deductions in a regulatory liability account as a condition for approval of the transaction is denied.

8. That the Office of Consumer Advocate’s proposed income tax expense from repairs deduction and request that Lower Makefield Township wastewater utility system assets be recorded in a regulatory liability account and addressed in Aqua Pennsylvania Wastewater, Inc.’s first base rate proceeding in which rates for the acquired Lower Makefield Township wastewater utility customers are included is denied.

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 Lower Makefield 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 Lower Makefield Township, Bucks County, Pennsylvania; and (c) allow Aqua Pennsylvania Wastewater, Inc. to incorporate the ratemaking rate base of \$53,000,000 for the Lower Makefield 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 Lower Makefield (as Seller) and Aqua Pennsylvania Wastewater, Inc. (as Buyer), dated as of September 17, 2020, as attached to the Application as Exhibit B.

b) Sewage Transportation Agreement, dated November 20, 2015, by and among the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township, and Yardley Borough Sewer Authority, attached to the Application as Exhibit F1.

c) Agreement, dated September 1, 1977, by and among the Municipal Authority of the Borough of Morrisville, Borough of Yardley, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F2.

d) Agreement, dated February 18, 1982 by and between the Municipal Authority of the Borough of Morrisville, Yardley Borough Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F3.

e) Amendment Agreement, dated October 8, 1991, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority, attached to the Application as Exhibit F4.

f) Second Amendment Agreement, dated June 24, 1993, by and between the Municipal Authority of the Borough of Morrisville, Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and Yardley Borough Sewer Authority, attached to the Application as Exhibit F5.

g) Agreement, dated March 13, 1965, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer

Authority of the Township of Lower Makefield, attached to the Application as Exhibit F6.

h) First Supplemental Agreement, dated February 6, 1975, by and between the Township of Falls Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F7.

i) Agreement, dated December 12, 1988, by and between the Township of Lower Makefield, the Municipal Sewer Authority of the Township of Lower Makefield, and the Township of Falls Authority, attached to the Application as Exhibit F8.

j) Agreement, dated April 18, 1996, by and between the Township of Falls, the Township of Lower Makefield, and the Lower Makefield Township Sewer Authority, attached to the Application as Exhibit F9.

k) Agreement, dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, Lower Makefield Township Board of Supervisors, and Bucks County Water and Sewer Authority, attached to the Application as Exhibit F10.

l) Addendum Agreement to be attached and made part of the Agreement dated April 11, 1974, by and between Middletown Township Bucks County Municipal Authority, Middletown Township Board of Supervisors, the Municipal Sewer Authority of the Township of Lower Makefield, and Lower Makefield Township Board of Supervisors, attached to the Application as Exhibit F11.

m) Agreement, dated October 23, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F12.

n) Agreement, dated October 28, 1975, by and between the Bucks County Water and Sewer Authority, Township of Lower Makefield, and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F13.

o) Supplemental Agreement Neshaminy Interceptor, dated February 7, 2018, by and between the Bucks County Water and Sewer Authority and the Township of Lower Makefield, attached to the Application as Exhibit F14.

p) Agreement, dated January 28, 1980, by and between Middletown Township, Lower Makefield Township, the Municipal Sewer Authority of the Township of Lower Makefield, and the Bucks County Water and Sewer Authority, attached to the Application as Exhibit F15.

q) Addendum Agreement, dated April 11, 1989, by and between Middletown Township, Lower Makefield Township, and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F16.

r) Agreement, dated September 14, 1987, by and between Newtown Joint Municipal Authority and the Municipal Sewer Authority of the Township of Lower Makefield, attached to the Application as Exhibit F17.

s) Water Service Termination Agreement, dated March 17, 2005, by and between Lower Makefield Township and the Municipal Authority of the Borough of Morrisville, attached to the Application as Exhibit F18.

11. That Aqua Pennsylvania Wastewater, Inc., within ten (10) days after closing of the acquisition, 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 May 14, 2021, as amended in Aqua Pennsylvania Wastewater, Inc.'s supplemental information filed by letter dated June 21, 2021, implementing rates for Lower Makefield Township customers post-closing.

12. 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. 11 above, mark this docket closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 13, 2022

ORDER ENTERED: January 13, 2022



March 7, 2022

VIA E-FILING

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

Re: Aqua Pennsylvania Wastewater, Inc. – Acquisition of the wastewater system assets of the Lower Makefield Township, Docket No. A-2021-3024267 – Tariff Supplement No. 13

Dear Secretary Chiavetta:

In accordance with the Pennsylvania Public Utility Commission’s Order Adopted and Entered on January 13, 2022 in Docket No. A-2021-3024267, Ordering Paragraph 5; enclosed please find Aqua Pennsylvania Wastewater, Inc.’s Tariff Supplement No. 13 to Tariff Sewer-PA P.U.C. No. 2, which establishes the rates of the Lower Makefield Township Division. Closing took place on March 4, 2022.

Should you have any questions regarding this filing, please contact me at (610) 520-6359.

Sincerely,

A handwritten signature in blue ink that reads "Erin Feeney".

Erin M. Feeney
Manager of Rates & Planning
Aqua Pennsylvania, Inc.

Enclosure

cc: Paul Diskin, Bureau of Technical Utility Services (via Email)
Dan Searforce, Bureau of Technical Utility Services (via Email)
Sean Donnelly, Bureau of Technical Utility Services (via Email)
Marissa Boyle, Bureau of Technical Utility Services (via Email)

AQUA PENNSYLVANIA WASTEWATER, INC.
(hereinafter referred to as the "Company")

RATES, RULES, AND REGULATIONS

GOVERNING THE COLLECTIONS OF

WASTEWATER

IN PORTIONS OF

ADAMS, BUCKS, CARBON, CHESTER, CLARION, CLEARFIELD, DELAWARE,
LACKAWANNA, LUZERNE, MONROE, MONTGOMERY, PIKE, SCHUYLKILL, VENANGO,
AND WYOMING COUNTIES

IN THE COMMONWEALTH OF PENNSYLVANIA

ISSUED: March 7, 2022

EFFECTIVE: March 8, 2022

By:

Marc Lucca, President
Aqua Pennsylvania, Inc.
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

NOTICE

THIS TARIFF ESTABLISHES THE WASTEWATER RATES FOR THE
CUSTOMERS OF LOWER MAKEFIELD TOWNSHIP SITUATED WITHIN BUCKS
COUNTY, PENNSYLVANIA.

LIST OF CHANGES MADE BY THIS TARIFF

Changes: This tariff makes changes to reflect the acquisition of the wastewater assets of Lower Makefield, located within Lower Makefield Township, Bucks County, Pennsylvania. Closing on the acquisition took place on 03/04/2022, with the effective date of ownership occurring at 12:01AM on 03/05/2022. (See pages 7 and 8.12.1, 8.12.2, and 8.12.3)

This tariff is made pursuant to the Commission's Order adopted and entered 01/13/2022 at Docket No. A-2021-3024267, which authorizes the issuance of the Certificate of Public Convenience.

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DESCRIPTION OF TERRITORIES SERVED

	<u>Township</u>	<u>County</u>
(C) RATE ZONE 12 Lower Makefield Township Division	Lower Makefield	Bucks

SCHEDULE OF RATES

RATE ZONE 12 – METERED AND UNMETERED

The rates under this schedule apply to all customer classes in the territories served subject to Rate Zone 12 rates as noted in the Description of Territories Served section under this tariff unless otherwise specifically identified below.

QUARTERLY SERVICE & CONSUMPTION CHARGES (\$)A. Residential

Minimum Charge per quarter:

Per Dwelling Unit (private dwelling)	\$160.48
Exception: Residential Building with 1 meter meter and no more than 2 dwelling units	\$269.22

Consumption Charge:

(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 10,000 gallons per quarter	\$4.37	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.60	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.81	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.29	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.90	per 1,000 gallons
Over 50,000 gallons per quarter	\$6.77	per 1,000 gallons

Unmetered (This charge is a flat fee for customers not metered for water consumption.)

Unmetered Charge	\$269.22
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B. Commercial - Apartments billed under the residential rate
by Lower Makefield Township**

Minimum Charge per quarter:

Per Dwelling Unit	\$160.48
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Consumption Charge:

(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 10,000 gallons per quarter	\$4.37	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.60	per 1,000 gallons
Next 10,000 gallons per quarter	\$4.81	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.29	per 1,000 gallons
Next 10,000 gallons per quarter	\$5.90	per 1,000 gallons
Over 50,000 gallons per quarter	\$6.77	per 1,000 gallons

RATE ZONE 12 – CONTINUED

QUARTERLY SERVICE & CONSUMPTION CHARGES (\$) continuedC. Commercial (Other than Customers in subsection B above), Industrial, and Public Customers

Minimum Charge per quarter	\$297.65	
Consumption Charge: (Based on Water Usage or Sewage Flows, determined at the Company's discretion)		
		Included in Minimum Charge
First 12,981 gallons per quarter		
Over 12,981 gallons per quarter	\$22.93	per 1,000 gallons

MONTHLY SERVICE & CONSUMPTION CHARGES (\$)A. Residential

Minimum Charge per month:		
Per Dwelling Unit (private dwelling)	\$53.49	
Exception: Residential Building with 1 meter meter and no more than 2 dwelling units		
	\$89.74	
Consumption Charge: (Based on Water Usage or Sewage Flows, determined at the Company's discretion)		
First 3,400 gallons per month	\$4.37	per 1,000 gallons
Next 3,300 gallons per month	\$4.60	per 1,000 gallons
Next 3,300 gallons per month	\$4.81	per 1,000 gallons
Next 3,400 gallons per month	\$5.29	per 1,000 gallons
Next 3,300 gallons per month	\$5.90	per 1,000 gallons
Over 16,700 gallons per month	\$6.77	per 1,000 gallons

Unmetered (This charge is a flat fee for customers not metered for water consumption.)

Unmetered Charge \$89.74

RATE ZONE 12 – CONTINUED

MONTHLY SERVICE & CONSUMPTION CHARGES (\$) continuedB. Commercial - Apartments billed under the residential rate
by Lower Makefield Township**

Minimum Charge per month:

Per Dwelling Unit \$53.49

Consumption Charge:

(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 3,400 gallons per month	\$4.37	per 1,000 gallons
Next 3,300 gallons per month	\$4.60	per 1,000 gallons
Next 3,300 gallons per month	\$4.81	per 1,000 gallons
Next 3,400 gallons per month	\$5.29	per 1,000 gallons
Next 3,300 gallons per month	\$5.90	per 1,000 gallons
Over 16,700 gallons per month	\$6.77	per 1,000 gallons

C. Commercial (Other than Customers in subsection B above), Industrial,
and Public Customers

Minimum Charge per month \$99.22

Consumption Charge:

(Based on Water Usage or Sewage Flows, determined at the Company's discretion)

First 4,400 gallons per month	Included in Minimum Charge	
Over 4,400 gallons per month	\$22.93	per 1,000 gallons

**For apartment complexes, the rate shall be determined by assessing each dwelling unit the minimum charge per quarter, and then measuring the total water consumption for the entire apartment building and dividing that consumption by the number of dwelling units therein to arrive at a water gallonage per dwelling unit, at which time each dwelling unit shall be charged on the average water consumption for each unit in addition to the minimum charge.

Wastewater customers in Lower Makefield Township are required to comply with the wastewater control regulations adopted by Lower Makefield Township and included in Exhibit H to the Application filed at Docket No. A-2021-3024267.

The DSIC surcharge shall not be applied to bills of wastewater customers in Lower Makefield Township; this will remain effective until an amended Long-Term Infrastructure Improvement Plan (LTIIP) is filed and approved which includes Lower Makefield. Following the approval of an amended LTIIP, the DSIC surcharge shall be applicable to wastewater customers in Lower Makefield Township.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET
HARRISBURG, PENNSYLVANIA 17120

JUDICIAL NOTICE 4

March 9, 2022

Docket No. A-2021-3024267

Utility Code: 230240

Erin M. Feeney
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010

Re: Aqua Pennsylvania Wastewater, Inc. – Acquisition of the wastewater system assets of the Lower Makefield Township, Docket No. A-2021-3024267 – Tariff Supplement No. 13

Dear Ms. Feeney:

By Order entered January 13, 2022, the Commission authorized Aqua Pennsylvania Wastewater, Inc. (the Company) to file a compliance tariff supplement to be effective on one day's notice, consistent in form and content with the pro forma tariff submitted with the Application, filed on May 14, 2021, as amended in the supplemental information filed by letter dated June 21, 2021, implementing rates for Lower Makefield Township customers post-closing. On March 7, 2022, the Company filed Supplement No. 13 to Tariff Sewer-PA P.U.C. No. 2 to become effective March 8, 2022.

Commission Staff has reviewed the tariff revisions and found that suspension or further investigation does not appear warranted at this time. Therefore, in accordance with 52 Pa. Code Chapter 53, Supplement No. 13 to Tariff Sewer-PA P.U.C. No. 2 is effective by operation of law as of the effective date contained on each page of the supplement. However, this is without prejudice to any formal complaints timely filed against said tariff revisions.

If you have any questions in this matter, please contact Marissa Boyle, Bureau of Technical Utility Services, at (717) 787-7237 or maboyle@pa.gov.

Sincerely,

Rosemary Chiavetta
Secretary

JUDICIAL NOTICE 5

TARIFF SEWER-PA P.U.C. NO. 4

AQUA PENNSYLVANIA WASTEWATER, INC.
(hereinafter referred to as the “Company”)

RATES, RULES, AND REGULATIONS

GOVERNING THE COLLECTIONS OF

WASTEWATER

IN PORTIONS OF

ADAMS, BERKS, BUCKS, CARBON, CHESTER, CLARION, CLEARFIELD, DELAWARE,
LACKAWANNA, LUZERNE, MONROE, MONTGOMERY, PIKE, SCHUYLKILL, VENANGO,
AND WYOMING COUNTIES

IN THE COMMONWEALTH OF PENNSYLVANIA

ISSUED: May 23, 2024

EFFECTIVE: July 22, 2024

By:

Marc Lucca, President
Aqua Pennsylvania, Inc.
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

NOTICE

THIS TARIFF PROPOSES INCREASES IN RATES AND CHANGES IN RULES
AND REGULATIONS OF SERVICE.

LIST OF CHANGES MADE BY THIS TARIFF

This proposed TARIFF SEWER-PA P.U.C. NO. 4 as filed by Aqua Pennsylvania Wastewater, Inc. on May 23, 2024 supersedes TARIFF SEWER-PA P.U.C. NO. 3 and its related supplements.

This proposed tariff also resets both the Distribution System Improvement Charge (DSIC) to zero percent and the State Tax Adjustment Surcharge (STAS) to zero percent, simultaneously with the effective date of new base rates.

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DESCRIPTION OF TERRITORIES SERVED

	<u>Township</u>	<u>County</u>
RATE ZONE 1		
Bunker Hill Subdivision (Rate Zone 1A)	Clinton	Wyoming
Bridlewood Division	Thornbury (portion)	Chester
Cheltenham Township Division	Cheltenham	Montgomery
Cheltenham Township Division	Jenkintown Borough (portion)	Montgomery
Eagle Rock Division	Black Creek (portion)	Luzerne
Eagle Rock Division	Hazle (portion)	Luzerne
Eagle Rock Division	East Union (portion)	Schuylkill
Eagle Rock Division	North Union (portion)	Schuylkill
East Norriton Township Division	East Norriton	Montgomery
Limerick Division	Limerick (portion)	Montgomery
Lower Makefield Township Division	Lower Makefield	Bucks
Media Division*	Media	Delaware
North Heidelberg Sewer Division	Jefferson	Berks
North Heidelberg Sewer Division	North Heidelberg	Berks
Penn Township Division	Penn	Chester
Treasure Lake Division (Rate Zone 1A)*	Sandy	Clearfield
Village at Valley Forge Division (Rate Zone 1A)*	Upper Merion	Montgomery
RATE ZONE 2		
East Bradford Township Division	East Bradford (portion)	Chester
East Bradford Township Division	Birmingham (portion)	Chester
Emlenton Borough Division	Richland (portion)	Clarion
Emlenton Borough Division	Salem (portion)	Clarion
Emlenton Borough Division	Emlenton	Venango
Emlenton Borough Division	Richland (portion)	Venango
New Garden Township Division	New Garden	Chester
Pinecrest Division	Tobyhanna (portion)	Monroe
Rivercrest Division	Tunkhannock	Wyoming
Rivercrest Division	Washington	Wyoming
White Haven Division (Kidder)	Dennison (portion)	Carbon
White Haven Division (Kidder)	East Side (portion)	Carbon
White Haven Division (Kidder)	Dennison (portion)	Luzerne
White Haven Division (Kidder)	White Haven Borough	Luzerne

DESCRIPTION OF TERRITORIES SERVED

	<u>Township</u>	<u>County</u>
RATE ZONE 3		
Beech Mountain Lakes Division	Butler	Luzerne
Beech Mountain Lakes Division	Dennison	Luzerne
Deerfield Knoll Division	Willistown (portion)	Chester
Laurel Lakes Division (Wilbar)	Rice	Luzerne
Links at Gettysburg Division	Cumberland	Adams
Links at Gettysburg Division	Mount Joy	Adams
Stony Creek Division	Worcester (portion)	Montgomery
Thornhurst Division	Lehigh	Lackawanna
Willistown Woods Division (Chesterdale)	Westtown (portion)	Chester
Willistown Woods Division (Chesterdale)	Willistown (portion)	Chester
Woodloch Springs Division	Lackawaxen (portion)	Pike
Woodloch Springs Division (Woodloch Pines)	Lackawaxen (portion)	Pike
RATE ZONE 4		
Honeycroft Village Division	Londonderry (portion)	Chester
Lake Harmony Division	Kidder	Carbon
New Daleville Division	Londonderry (portion)	Chester
Peddlers View Division	Solebury (portion)	Bucks
Tobyhanna Township Division	Tobyhanna (portion)	Monroe
Twin Hills Division	West Pikeland (portion)	Chester
RATE ZONE 5		
Avon Grove School District	New London (portion)	Chester
Avon Grove School District	Penn (portion)	Chester
East Bradford Division (Brandywine)	East Bradford (portion)	Chester
Little Washington Division	East Brandywine (portion)	Chester
Plumsock Division*	Willistown (portion)	Chester
The Greens at Penn Oaks Division	Thornbury (portion)	Chester
Newlin Green Division	Newlin	Chester
Sage Hill Division	Thornbury (portion)	Chester
RATE ZONE 6		
CS Sewer Division (Masthope)	Lackawaxen	Pike
RATE ZONE 7		
East Whiteland Township Division	East Whiteland	Chester

*All Divisions and Subdivisions above are billed on a per EDU basis, with the exception of the Media Division, Plumsock Division, Treasure Lake Division, and Village of Valley Forge Division

DESCRIPTION OF TERRITORIES SERVED

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DESCRIPTION OF TERRITORIES SERVED

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SCHEDULE OF RATES

RATE ZONE 1 – METERED AND UNMETERED

The rates under this schedule apply to all customer classes in the territories served subject to Rate Zone 1 rates as noted in the Description of Territories Served section under this tariff unless otherwise specifically identified below.

RESIDENTIALMONTHLY SERVICE CHARGE

Customer Charge (\$)	Rate Zone 1	Rate Zone 1A
Fixed (per EDU)	\$ 47.64	\$ 47.64
<u>Meter Size:</u>		
5/8 inch	47.64	47.64
3/4 inch	71.46	47.64
1 inch	119.10	47.64
1-1/2 inch	238.20	95.28
2 inch	381.12	152.45
3 inch	714.60	285.84
4 inch	1,191.00	476.40
6 inch	2,382.00	768.39
8 inch	3,811.20	
10 inch	5,478.60	
Unmetered Charge (per EDU)	\$ 92.85	\$ 92.85

MONTHLY CONSUMPTION CHARGE

Consumption Charge for all divisions (per 1,000 gallons water used)	\$ 11.6810	\$ 11.6810
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QUARTERLY SPECIAL CHARGES

Lower Makefield Township Division - Quarterly Customers

Customer Charge (\$)		
Fixed (per EDU)	\$ 142.92	
Consumption Charge (per 1,000 gallons water used)		\$ 11.6810
Unmetered Charge (per EDU)	\$ 278.55	

SCHEDULE OF RATES

RATE ZONE 1 – METERED AND UNMETERED (cont'd)

NON-RESIDENTIAL**MONTHLY SERVICE CHARGE**

Customer Charge (\$)	Rate Zone 1	Rate Zone 1A
Fixed (per EDU)	\$ 47.64	\$ 47.64
<u>Meter Size:</u>		
5/8 inch	47.64	47.64
3/4 inch	71.46	47.64
1 inch	119.10	47.64
1-1/2 inch	238.20	95.28
2 inch	381.12	152.45
3 inch	714.60	285.84
4 inch	1,191.00	476.40
6 inch	2,382.00	768.39
8 inch	3,811.20	
10 inch	5,478.60	

Unmetered Charge (per EDU)	\$ 92.04	\$ 92.04
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Special Charges

Bridlewood Division - Unmetered:

Apartment Complex will be billed at 217 EDU's

Children's World Daycare will be billed at 7 EDU's

MONTHLY CONSUMPTION CHARGE

Consumption Charge for all divisions (per 1,000 gallons water used)	\$ 11.4740	\$ 11.4740
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QUARTERLY SPECIAL CHARGES

Lower Makefield Township Division - Quarterly Customers

Customer Charge (\$)

Fixed (per EDU) \$ 142.92

Consumption Charge

(per 1,000 gallons water used) \$ 11.4740

Unmetered Charge (per EDU) \$ 276.12

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the Limerick Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system from April through October. A request for deduction shall be subject to the following regulations:

- A. To be an eligible Customer for this credit, the Customer shall have applied for or shall have been currently using the credit as of the execution date of November 16, 2016, of the Asset Purchase Agreement between the Company and Limerick Township.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers who are delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the Company approved deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The administrative fee charged by the Company to the customer is \$50.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Eligible Customers are required to submit, or cause to be submitted, all data required to calculate the credit in a manner approved by the Company within a time period determined by the Company. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate. Failure to make such change or provide such calibration data will result in disqualification from the program.
- J. All approved meters will be subject to the Company's backflow requirements.

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the Cheltenham Township Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system. A request for deduction shall be subject to the following regulations:

- A. Deductions apply within the Cheltenham Division and, in particular, to those customers identified on Exhibit G of the Application filed by Aqua Pennsylvania Wastewater, Inc., dated March 13, 2019. The Application of the Company was approved by the Pennsylvania Public Utility Commission in its Order entered on November 5, 2019, at PUC Docket Number A-2019-3008491.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers who are delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The inspection fee charged by the Company to the customer is \$100.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Customers are responsible for making their meter accessible to the Company for reading on a monthly basis. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate.

Wastewater customers in Cheltenham Township are required to comply with the City of Philadelphia's wastewater control regulations adopted by Cheltenham Township and included in Exhibit H to the Application filed at Docket No. A-2019-3008491.

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the East Norriton Township Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system from April through October. A request for deduction shall be subject to the following regulations:

- A. To be an eligible Customer for this credit, the Customer shall have applied for or shall have been currently using the credit as of the execution date of October 29, 2018, of the Asset Purchase Agreement between the Company and East Norriton Township.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers who are delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the Company approved deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The administrative fee charged by the Company to the customer is \$50.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Eligible Customers are required to submit, or cause to be submitted, all data required to calculate the credit in a manner approved by the Company within a time period determined by the Company. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate. Failure to make such change or provide such calibration data will result in disqualification from the program.
- J. All approved meters will be subject to the Company's backflow requirements.

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the Lower Makefield Township Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system from April through October. A request for deduction shall be subject to the following regulations:

- A. To be an eligible Customer for this credit, the Customer shall have applied for or shall have been currently using the credit as of the execution date of September 17, 2020, of the Asset Purchase Agreement between the Company and Lower Makefield Township.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the Company approved deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The administrative fee charged by the Company to the customer is \$50.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Eligible Customers are required to submit, or cause to be submitted, all data required to calculate the credit in a manner approved by the Company within a time period determined by the Company. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate. Failure to make such change or provide such calibration data will result in disqualification from the program.
- J. All approved meters will be subject to the Company's backflow requirements.

Wastewater customers in Lower Makefield Township are required to comply with the wastewater control regulations adopted by Lower Makefield Township and included in Exhibit H to the Application filed at Docket No. A-2021-3024267.

JUDICIAL NOTICE 6

SUPPLEMENT NO. 2
TARIFF SEWER-PA P.U.C. NO. 4

AQUA PENNSYLVANIA WASTEWATER, INC.
(hereinafter referred to as the "Company")

RATES, RULES, AND REGULATIONS

GOVERNING THE COLLECTIONS OF

WASTEWATER

IN PORTIONS OF

ADAMS, BERKS, BUCKS, CARBON, CHESTER, CLARION, CLEARFIELD, DELAWARE,
LACKAWANNA, LUZERNE, MONROE, MONTGOMERY, PIKE, SCHUYLKILL, VENANGO,
AND WYOMING COUNTIES

IN THE COMMONWEALTH OF PENNSYLVANIA

ISSUED: February 21, 2025

EFFECTIVE: February 22, 2025

By:

Marc Lucca, President
Aqua Pennsylvania, Inc.
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

NOTICE

THIS TARIFF PROPOSES INCREASES IN RATES AND CHANGES IN RULES
AND REGULATION OF SERVICE.

LIST OF CHANGES MADE BY THIS TARIFF

This TARIFF SEWER-PA P.U.C. NO. 4 as filed by Aqua Pennsylvania Wastewater, Inc. at Docket No. R-2024-3047824 on February 21, 2025 supersedes TARIFF SEWER-PA P.U.C. NO. 3 and its related supplements.

This proposed tariff also resets both the Distribution System Improvement Charge (DSIC) to zero percent and the State Tax Adjustment Surcharge (STAS) to zero percent, simultaneously with the effective date of new base rates.

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DESCRIPTION OF TERRITORIES SERVED

	<u>Township</u>	<u>County</u>
RATE ZONE 1		
Bunker Hill Subdivision (Rate Zone 1A)	Clinton	Wyoming
Bridlewood Division	Thornbury (portion)	Chester
Cheltenham Township Division	Cheltenham	Montgomery
Cheltenham Township Division	Jenkintown Borough (portion)	Montgomery
Eagle Rock Division	Black Creek (portion)	Luzerne
Eagle Rock Division	Hazle (portion)	Luzerne
Eagle Rock Division	East Union (portion)	Schuylkill
Eagle Rock Division	North Union (portion)	Schuylkill
East Norriton Township Division	East Norriton	Montgomery
Limerick Division	Limerick (portion)	Montgomery
Lower Makefield Township Division	Lower Makefield	Bucks
Media Division*	Media	Delaware
North Heidelberg Sewer Division	Jefferson	Berks
North Heidelberg Sewer Division	North Heidelberg	Berks
Penn Township Division	Penn	Chester
Treasure Lake Division (Rate Zone 1A)*	Sandy	Clearfield
Village at Valley Forge Division (Rate Zone 1A)*	Upper Merion	Montgomery
RATE ZONE 2		
East Bradford Township Division	East Bradford (portion)	Chester
East Bradford Township Division	Birmingham (portion)	Chester
Emlenton Borough Division	Richland (portion)	Clarion
Emlenton Borough Division	Salem (portion)	Clarion
Emlenton Borough Division	Emlenton	Venango
Emlenton Borough Division	Richland (portion)	Venango
New Garden Township Division	New Garden	Chester
Pinecrest Division	Tobyhanna (portion)	Monroe
Rivercrest Division	Tunkhannock	Wyoming
Rivercrest Division	Washington	Wyoming
White Haven Division (Kidder)	Dennison (portion)	Carbon
White Haven Division (Kidder)	East Side (portion)	Carbon
White Haven Division (Kidder)	Dennison (portion)	Luzerne
White Haven Division (Kidder)	White Haven Borough	Luzerne

DESCRIPTION OF TERRITORIES SERVED

	<u>Township</u>	<u>County</u>
RATE ZONE 3		
Beech Mountain Lakes Division	Butler	Luzerne
Beech Mountain Lakes Division	Dennison	Luzerne
Deerfield Knoll Division	Willistown (portion)	Chester
Laurel Lakes Division (Wilbar)	Rice	Luzerne
Links at Gettysburg Division	Cumberland	Adams
Links at Gettysburg Division	Mount Joy	Adams
Stony Creek Division	Worcester (portion)	Montgomery
Thornhurst Division	Lehigh	Lackawanna
Willistown Woods Division (Chesterdale)	Westtown (portion)	Chester
Willistown Woods Division (Chesterdale)	Willistown (portion)	Chester
Woodloch Springs Division	Lackawaxen (portion)	Pike
Woodloch Springs Division (Woodloch Pines)	Lackawaxen (portion)	Pike
RATE ZONE 4		
Honeycroft Village Division	Londonderry (portion)	Chester
Lake Harmony Division	Kidder	Carbon
New Daleville Division	Londonderry (portion)	Chester
Peddlers View Division	Solebury (portion)	Bucks
Tobyhanna Township Division	Tobyhanna (portion)	Monroe
Twin Hills Division	West Pikeland (portion)	Chester
RATE ZONE 5		
Avon Grove School District	New London (portion)	Chester
Avon Grove School District	Penn (portion)	Chester
East Bradford Division (Brandywine)	East Bradford (portion)	Chester
Little Washington Division	East Brandywine (portion)	Chester
Plumsock Division*	Willistown (portion)	Chester
The Greens at Penn Oaks Division	Thornbury (portion)	Chester
Newlin Green Division	Newlin	Chester
Sage Hill Division	Thornbury (portion)	Chester
RATE ZONE 6		
CS Sewer Division (Masthope)	Lackawaxen	Pike
RATE ZONE 7		
East Whiteland Township Division	East Whiteland	Chester

*All Divisions and Subdivisions above are billed on a per EDU basis, with the exception of the Media Division, Plumsock Division, Treasure Lake Division, and Village of Valley Forge Division

DESCRIPTION OF TERRITORIES SERVED

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DESCRIPTION OF TERRITORIES SERVED

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SCHEDULE OF RATES

RATE ZONE 1 – METERED AND UNMETERED

The rates under this schedule apply to all customer classes in the territories served subject to Rate Zone 1 rates as noted in the Description of Territories Served section under this tariff unless otherwise specifically identified below.

RESIDENTIALMONTHLY SERVICE CHARGE

Customer Charge (\$)	Rate Zone 1	Rate Zone 1A
Fixed (per EDU)	\$ 49.41	\$ 49.41
<u>Meter Size:</u>		
5/8 inch	49.41	49.41
3/4 inch	74.12	49.41
1 inch	123.53	49.41
1-1/2 inch	247.05	98.82
2 inch	395.28	158.11
3 inch	741.15	296.46
4 inch	1,235.25	494.10
6 inch	2,470.50	796.94
8 inch	3,952.80	
10 inch	5,682.15	
Unmetered Charge (per EDU)	\$ 101.19	\$ 101.19

MONTHLY CONSUMPTION CHARGE

Consumption Charge for all divisions (per 1,000 gallons water used)	\$ 13.379	\$ 13.379
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QUARTERLY SPECIAL CHARGES

Lower Makefield Township Division - Quarterly Customers

Customer Charge (\$)		
Fixed (per EDU)	\$ 148.23	
Consumption Charge (per 1,000 gallons water used)		\$ 13.379
Unmetered Charge (per EDU)	\$ 303.57	

SCHEDULE OF RATES

RATE ZONE 1 – METERED AND UNMETERED (cont'd)

NON-RESIDENTIAL**MONTHLY SERVICE CHARGE**

Customer Charge (\$)	Rate Zone 1	Rate Zone 1A
Fixed (per EDU)	\$ 49.41	\$ 49.41
<u>Meter Size:</u>		
5/8 inch	49.41	49.41
3/4 inch	74.12	49.41
1 inch	123.53	49.41
1-1/2 inch	247.05	98.82
2 inch	395.28	158.11
3 inch	741.15	296.46
4 inch	1,235.25	494.10
6 inch	2,470.50	796.94
8 inch	3,952.80	
10 inch	5,682.15	

Unmetered Charge (per EDU)	\$ 107.31	\$ 107.31
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Special Charges

Bridlewood Division - Unmetered:

Apartment Complex will be billed at 217 EDU's

Children's World Daycare will be billed at 7 EDU's

MONTHLY CONSUMPTION CHARGE

Consumption Charge for all divisions (per 1,000 gallons water used)	\$ 12.424	\$ 12.424
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QUARTERLY SPECIAL CHARGES

Lower Makefield Township Division - Quarterly Customers

Customer Charge (\$)

Fixed (per EDU) \$ 148.23

Consumption Charge

(per 1,000 gallons water used) \$ 12.424

Unmetered Charge (per EDU) \$ 321.93

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the Limerick Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system from April through October. A request for deduction shall be subject to the following regulations:

- A. To be an eligible Customer for this credit, the Customer shall have applied for or shall have been currently using the credit as of the execution date of November 16, 2016, of the Asset Purchase Agreement between the Company and Limerick Township.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers who are delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the Company approved deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The administrative fee charged by the Company to the customer is \$50.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Eligible Customers are required to submit, or cause to be submitted, all data required to calculate the credit in a manner approved by the Company within a time period determined by the Company. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate. Failure to make such change or provide such calibration data will result in disqualification from the program.
- J. All approved meters will be subject to the Company's backflow requirements.

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the Cheltenham Township Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system. A request for deduction shall be subject to the following regulations:

- A. Deductions apply within the Cheltenham Division and, in particular, to those customers identified on Exhibit G of the Application filed by Aqua Pennsylvania Wastewater, Inc., dated March 13, 2019. The Application of the Company was approved by the Pennsylvania Public Utility Commission in its Order entered on November 5, 2019, at PUC Docket Number A-2019-3008491.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers who are delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The inspection fee charged by the Company to the customer is \$100.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Customers are responsible for making their meter accessible to the Company for reading on a monthly basis. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate.

Wastewater customers in Cheltenham Township are required to comply with the City of Philadelphia's wastewater control regulations adopted by Cheltenham Township and included in Exhibit H to the Application filed at Docket No. A-2019-3008491.

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the East Norriton Township Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system from April through October. A request for deduction shall be subject to the following regulations:

- A. To be an eligible Customer for this credit, the Customer shall have applied for or shall have been currently using the credit as of the execution date of October 29, 2018, of the Asset Purchase Agreement between the Company and East Norriton Township.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers who are delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the Company approved deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The administrative fee charged by the Company to the customer is \$50.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Eligible Customers are required to submit, or cause to be submitted, all data required to calculate the credit in a manner approved by the Company within a time period determined by the Company. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate. Failure to make such change or provide such calibration data will result in disqualification from the program.
- J. All approved meters will be subject to the Company's backflow requirements.

RATE ZONE 1 – (cont'd)

Sewer Charge Adjustment for the Lower Makefield Township Division

The Company is authorized to allow deductions on sewer bills for water which is used but does not enter the Company's system from April through October. A request for deduction shall be subject to the following regulations:

- A. To be an eligible Customer for this credit, the Customer shall have applied for or shall have been currently using the credit as of the execution date of September 17, 2020, of the Asset Purchase Agreement between the Company and Lower Makefield Township.
- B. No deduction shall be granted for customers who do not have a metered water supply
- C. No deduction shall be granted for customers delinquent in their payment for service.
- D. One hundred percent of any used water for which a deduction is requested must have been prevented from entering the system.
- E. It is the responsibility of the customer to purchase, install, and maintain the Company approved deduct meter at the approved and inspected water outlet on their property. The meter shall measure water not entering the system and shall be eligible for deduction of that used water monthly.
- F. Customers are responsible for the installation and removal of their meters at the approved service locations each year to prevent freezing and damage. Deduct meters shall be inspected by the Company at the time of installation at which time the customer agrees to allow the Company the right to enter upon their property for inspection. Every deduct meter shall be required to be inspected annually by the Company in order for the customer to be eligible for sewer adjustment charges. The administrative fee charged by the Company to the customer is \$50.00.
- G. All deduct meters shall be of a design approved by the Company, shall be registered with the Company prior to use, and shall be used only by the customer to whom it is registered and at the service location to which it is assigned in accordance with the Company's records.
- H. Eligible Customers are required to submit, or cause to be submitted, all data required to calculate the credit in a manner approved by the Company within a time period determined by the Company. The Company shall then credit the customer's total gallons consumed by the gallons recorded from the customer's deduct meter.
- I. The Company shall be authorized to inspect meters for accuracy and calibration at any time the meter readings are suspect and/or not considered representative of usage. The customer shall be responsible for obtaining calibration of the meter if the Company determines it is not accurate. Failure to make such change or provide such calibration data will result in disqualification from the program.
- J. All approved meters will be subject to the Company's backflow requirements.

Wastewater customers in Lower Makefield Township are required to comply with the wastewater control regulations adopted by Lower Makefield Township and included in Exhibit H to the Application filed at Docket No. A-2021-3024267.