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April 22, 2025

VIA ELECTRONIC FILING

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 507, 508,
1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the
Wastewater System Assets of the City of Beaver Falls
Docket No. A-2022-3033138**

Dear Secretary Homsher:

Attached for filing are the Exceptions of Aqua Pennsylvania Wastewater, Inc. to the Recommended Decision in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/dmc
Attachment

cc: The Honorable F. Joseph Brady (*via email; w/attachment*)
Office of Special Assistants (*via email; w/attachment*)
Certificate of Service

CERTIFICATE OF SERVICE

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

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Date: April 22, 2025


Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. : Docket No.
(hereinafter referred to as “Aqua” or “Applicant”) pursuant : A-2022-3033138
to Sections 1102 and 1329 of the Public Utility Code for: :

**(1) approval of the acquisition by Aqua of the wastewater :
system assets of the City of Beaver Falls (“Beaver Falls” or :
“City”) situated within the City of Beaver Falls Eastvale :
Borough, and West Mayfield Borough, Beaver County, :
Pennsylvania; :**

**(2) approval of the right of Aqua to begin to offer, render, :
furnish and supply wastewater service to the public in the :
City of Beaver Falls, Beaver County, Pennsylvania; and :**

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

**Request for Approval of Contracts, between Aqua and the :
City of Beaver Falls, Pursuant to Section 507 of the Public :
Utility Code :**

**EXCEPTIONS OF
AQUA PENNSYLVANIA WASTEWATER, INC.**

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Dated: April 22, 2025

*Counsel for Aqua Pennsylvania Wastewater,
Inc.*

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I. INTRODUCTION

Aqua Pennsylvania Wastewater, Inc. (“Aqua,” or the “Company”) hereby files these Exceptions to the Recommended Decision dated April 10, 2025, (hereinafter, the “RD”) issued by Administrative Law Judge F. Joseph Brady (the “ALJ”).

Through this proceeding, Aqua requested: (1) Pennsylvania Public Utility Commission (“Commission”) approval for Aqua to acquire the wastewater system assets (the “System”) of the City of Beaver Falls (“City” or “Beaver Falls”); (2) Commission approval for Aqua to begin to offer, render, furnish and supply wastewater service to the public in the City; (3) that the Commission include in its order approving the acquisition, the ratemaking rate base of the City wastewater system assets as determined under Section 1329(c)(2) of the Public Utility Code (“Code”), 66 Pa. C.S. § 1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, for certain municipal contracts that Aqua included in the Application (to the extent necessary), including new service agreements that Aqua would negotiate and enter into with Big Beaver Borough, West Mayfield Borough, White Township, North Sewickley Township, Eastvale Borough, Patterson Township, and Patterson Heights Borough (the “Contributing Municipalities”) prior to Closing and which will replace any prior agreements; and (5) that the Commission allow certain existing agreements between Aqua and the Contributing Municipalities to be modified because the agreements contain a rate formula that is inconsistent with the rates charged by the City to the Contributing Municipalities.

Aqua, Beaver Falls, the Bureau of Investigation and Enforcement (“I&E”) of the Commission, and the Office of Consumer Advocate (“OCA”)—collectively, “Settlement Parties” or “Joint Petitioners”—submitted a Joint Petition for Non-Unanimous Settlement of All Issues (“Settlement”) on March 25, 2025. Therein, the Settlement Parties respectfully requested that the

ALJ recommend approval of, and the Commission approve, the above-captioned Application, as amended, consistent with the terms and conditions set forth in this Settlement. The Office of Small Business Advocate (“OSBA”) was not a signatory to the Settlement, and filed a Brief in Opposition to the Settlement on March 28, 2025. As fully set forth and explained in the Settlement and the Settlement Parties’ Statements in Support, as well as Aqua’s Reply Brief,¹ the Joint Petitioners agreed to a settlement of all issues among them, related to the above-captioned Application for Aqua to acquire the System. Among other provisions, the Settlement specifically provided for a ratemaking rate base of \$29,900,000, which represented a substantial reduction to the as-filed ratemaking rate base of \$41,250,000, and further contributions by Aqua to its Hardship Fund for low-income customers. Critically, the ratemaking rate base agreed upon in the Settlement was within the range of litigation positions regarding the fair market value (“FMV”) of the System that were included in the record, which was noted by Aqua’s, I&E’s, and OCA’s respective Statements in Support of the Settlement.

In the April 10, 2025 RD, the ALJ recommends that the Commission deny the Settlement, and that the above-captioned Application be denied. The only justification offered by the RD to deny the Settlement and the Application is that the ratemaking rate based specified in the Settlement “is neither the purchase price, nor the FMV of the wastewater system.” RD, p. 9. The RD therefore recommends that the Settlement be denied “because an essential term of the [Settlement] (i.e., ¶ 39) is a violation of the Code and unenforceable...[and] since this essential term is illegal, the Settlement as a whole is void and unenforceable.” RD, p. 10. Despite rejecting

¹ Due to the timing of the submission of the Settlement, Aqua’s Reply Brief was limited in responding to the arguments and opposition of the OSBA. Aqua submitted a Main Brief on March 18, 2025, which explained why the Application, as amended, should be approved.

the Settlement, the RD renders no decision on the merits of Aqua's Application, other than to say that it should be denied because the Settlement should be denied.

The Commission should decline to adopt the RD because it commits several serious errors and, moreover, provides no actual recommendation on the merits of this matter if, as recommended, the Settlement is not adopted. First, the RD errs by *sua sponte* disposing of the Settlement based upon an argument not raised by any party to this proceeding. Second, the RD is incorrect that Paragraph 39 of the Settlement, which establishes the ratemaking rate base for the System, violates Section 1329(c) of the Code. The RD's interpretation of the Settlement is untethered to the Commission's precedent that establishes its authority to review and modify the ratemaking rate base that may be established in a Section 1329 acquisition utilizing FMV, ignores all record evidence presented regarding FMV in this proceeding, and ignores the parties' intent and support for Paragraph 39 of the Settlement. Consistent with Commission precedent, the Settlement Parties clearly recognized that the Commission has authority to adjust the FMV recommendations of the utility valuation experts ("UVEs") in Section 1329 proceedings, and the parties agreed to a ratemaking rate base that is within the range of the parties' competing litigation positions regarding FMV in this case. In addition, the RD's interpretation of the Settlement language at issue in this matter stands in isolation from the Commission's review and analysis of settlements in a number of other Section 1329 acquisition proceedings. Indeed, the Commission has repeatedly approved settlement language that, like the Settlement here, establishes a specific, non-purchase price value, where it is within the range of the parties' litigation positions on FMV, as the "ratemaking rate base" of the subject system in other Section 1329 cases. Third, the RD is simply incomplete. It presents no findings of fact, and engages in no analysis of the record evidence in this proceeding. If the Settlement is denied, then the ALJ was required by law and

under the terms of the Settlement to render a decision on the merits of Aqua's Application based upon the litigation positions of the parties. It is not sufficient, as the RD seems to suggest, to simply deny the Settlement and, based upon this denial and without any analysis of any of facts on any other material issue applicable to the Application, deny Aqua's Application as amended. These significant flaws in the RD demonstrate that it should not be adopted by the Commission.

For the reasons set forth herein, the Commission should grant these Exceptions and decline to adopt the RD issued in this matter. Instead, the Commission should (1) approve the Settlement without modification, and (2) approve the Application, as amended, subject to the terms and conditions of the Settlement. Alternatively, the parties should be provided the opportunity to submit Reply Briefs on the merits of Aqua's Application, which can be considered if the ALJ's denial of the Settlement is upheld by the Commission.

II. EXCEPTIONS

A. EXCEPTION NO. 1 – THE RD ERRS BY *SUA SPONTE* DISPOSING OF AN ISSUE BY ADOPTING AN ARGUMENT NOT RAISED BY ANY PARTY TO THIS PROCEEDING. (RD, at pp. 8-10, Ordering Paragraph 1.)

As a threshold matter, Aqua submits that the ALJ erred in concluding Paragraph 39 of the Settlement "is a violation of the Code and unenforceable" because this issue was not before the ALJ. RD, p. 10. The RD does not cite to any party having raised this argument, and it cannot do so. The OSBA—as the only party that opposed the Settlement—did not argue the Settlement should be rejected because Paragraph 39 of the Settlement does not comply with Section 1329(c) of the Public Utility Code. This argument was not raised by OSBA in its Main Brief, nor was it raised by OSBA in its Brief in Opposition to the Settlement. As such, this argument was not raised by a party to be decided by the ALJ.

While the RD asserts that the requirement set forth in Section 1329(c)(2) “is not negotiable” (RD, p. 9), this argument does not justify the ALJ’s error. Pennsylvania appellate courts have repeatedly confirmed that trial court judges² are not authorized to raise non-jurisdictional arguments, issues or theories *sua sponte*. The Supreme Court of Pennsylvania has explained that while “[t]he trial judge is charged with the responsibility of defining all *pertinent* questions of law and clarifying the issues to be resolved...[t]his responsibility however does not cast him in the role of an advocate.” *Hrivnak v. Perrone*, 372 A.2d 730, 732 (Pa. 1977) (emphasis in original) (citations omitted). Indeed, while a judge may “crystallize the issues raised by the litigants and explain the relevant principles of law, he may not assume the advocate’s function of inducing theories not raised by the parties.” *Id.* at 733. It is for this reason that the Commonwealth Court has held that a trial court errs by raising non-jurisdictional issues *sua sponte*. *Society Created to Reduce Urban Blight v. Zoning Bd. of Adjustment*, 682 A.2d 1, 3 (Pa. Cmwlth. 2006). The Commonwealth Court has similarly “held that raising issues *sua sponte* after the record is closed and without notice to the parties constitutes a due process violation.” *Dep’t of Transp. v. Malone*, 520 A.2d 120, 122 (Pa. Cmwlth. 1987) (citation omitted).

Section 1329(c)(2) does not involve a jurisdictional matter regarding the authority of the Commission to hear and dispose of this case. Rather, it involves a non-jurisdictional determination that is made as a part of a utility’s proposal to avail itself of Section 1329 when it acquires a water or wastewater system. By reasoning that Paragraph 39 of the Settlement does not comply with Section 1329(c) of the Code, the ALJ has impermissibly adopted the function and role of an

² The Commission, not an administrative law judge, is the ultimate fact-finder in proceedings before it under the Public Utility Code. 66 Pa. C.S. § 335(a); *see also* *Milkie v. Pa. PUC*, 768 A.2d 1217, 1220, n.7 (Pa. Cmwlth. 2001). Administrative law judges of the Commission may “[m]ake decisions or recommended decisions in conformity” with the Public Utility Code. 66 Pa. C.S. § 331(d)(8).

“advocate” and introduced a legal theory that was not raised by any of the parties. *See Hrivnak*, 372 A.2d at 733. For this threshold reason alone, the Commission should decline to adopt the RD.

The Commission should grant Aqua’s Exception No. 1, decline to adopt the RD, and issue an order approving the Settlement without modification and approving the Application as amended subject to the terms and conditions of the Settlement.

B. EXCEPTION NO. 2 – THE RD ERRS BY CONCLUDING THAT PARAGRAPH 39 OF THE SETTLEMENT DOES NOT COMPLY WITH SECTION 1329(C) OF THE PUBLIC UTILITY CODE. (RD, at pp. 8-10, Ordering Paragraph 1.)

The RD reasons that “in a proposed acquisition such as this one, the ratemaking rate base *shall be* either the lesser of the purchase price or the [FMV] of Beaver Falls’ wastewater system.” RD, p. 9. In addition, the RD states that “[t]his requirement is not negotiable.” RD, p. 9. Against these descriptions of Section 1329(c)(2), the RD then concludes that the parties agreed upon a rate base of \$29,900,000 and a purchase price for the System of \$37,750,000, but that the Settlement “is silent regarding the FMV of the Beaver Falls wastewater system.” RD, p. 9. It also asserts that “the Statements in Support of Beaver Falls, OCA, and I&E do not discuss FMV” and that “Aqua’s Statement in Support states the FMV of the system is \$42,245,674.” RD, p. 9. The RD therefore concludes that Paragraph 39 of the Settlement is an essential term of the Settlement, is a violation of Section 1329(c)(2) and unenforceable, and “the Settlement as a whole is void and unenforceable.” RD, p. 10. The RD’s reasoning constitutes a fundamental misapplication of Section 1329(c)(2) because it ignores the precedent of this Commission, the facts of record, the language of the Settlement, and the Settlement Parties’ submissions in support of the Settlement.

Section 1329(c) of the Code states:

(c) Ratemaking rate base.--The following apply:

- (1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

66 Pa. C.S. § 1329(c). Importantly, nothing in this provision abrogates or repeals the Commission's authority to analyze the value of the assets at issue in a Section 1329 proceeding, or adopt modifications to the FMV appraisals based upon the record evidence before it.

The RD also reaches its conclusion by ignoring applicable Commission precedent regarding the Commission's authority to review and develop a modified FMV for systems to be acquired under Section 1329. In *New Garden*,³ the Commission considered an argument by Aqua that Section 1329 precludes Commission review and analysis of UVE FMV appraisals. The administrative law judge assigned to this case rejected Aqua's arguments that there is no allowance under Section 1329 for parties to challenge or question the appropriateness of the rate base values proposed by the applicant. *New Garden*, at * 27-28. In its exceptions, Aqua specifically argued that the plain language of Section 1329 "requires the efforts of only two UVEs to establish fair market value" and that the General Assembly established a mandatory directive that required "the ratemaking rate base to be determined by the lesser of negotiated purchase price and the fair market value of the selling utility." *New Garden*, at *45-46.

The Commission denied Aqua's exceptions and held that the Commission can review, analyze and adjust the FMV of a system to be acquired under Section 1329. *New Garden*, at *54-

³ *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, 2017 Pa. PUC LEXIS 163 (Order entered June 29, 2017) ("*New Garden*").

55. The Commission reviewed Section 1329, Section 505 (which provides the Commission general authority to inquiry into the value of public utility assets), and Section 1103(b) (which provides the Commission the authority generally make the inquiries and valuations and estimates of costs it may deem necessary or proper to render a decision on a request for a certificate of public convenience), and concluded that “it is clear that the Commission retains the authority to review and analyze the UVE evaluations” in Section 1329 proceedings. *New Garden*, at *52-53. The Commission further explained that:

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, 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. We further note that there is no evidence that either the Commission or the Parties were impeded from developing a full record in this proceeding and commend the ALJ for his handling of this matter of first impression before the Commission.

New Garden, at *53-55 (emphasis added).

Consistent with its decision in *New Garden*, the Commission has **repeatedly approved** settlements in Section 1329 proceedings where the settlement proposed a ratemaking rate base that was within the range of litigation outcomes developed on the record regarding the FMV of the subject system. In fact, a brief review of prior cases highlights that the Settlement before the ALJ was similarly negotiated and that the description of the Settlement was handled in the same fashion. There is clear precedent on this issue. In each of the proceedings noted below,⁴ the Commission specifically approved a settlement that established a modified ratemaking rate base for the subject system that was within the range of FMV positions advanced by the parties. Moreover, the Commission specifically recognized in these cases that a settlement term that specified the ratemaking rate base of a system acquired under Section 1329, like Paragraph 39 of the Settlement here, complies with the statute where it falls within the range of litigation positions offered on ratemaking rate base.

In *PAWC-York Acquisition*,⁵ Paragraph 25 of the Commission-approved Joint Petition for Approval of Unanimous Settlement of All Issues provided that “[t]he Joint Petitioners agree that, pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$231,500,000 for ratemaking rate base purposes for the acquired system.” The Recommended Decision, which the Commission adopted as its action without modification, explained that:

⁴ These cases do not include proceedings where the ratemaking rate base was the purchase price of the system.

⁵ *In re: Application of Pennsylvania-American Water Company under Section 1102(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1102(a), for approval of (1) the transfer, by sale, to Pennsylvania-American Water Company, of substantially all of the assets, properties and rights related to the wastewater collection and treatment system owned by the York City Sewer Authority and operated by the City of York, (2) the rights of Pennsylvania-American Water Company to begin to offer or furnish wastewater service to the public in the City of York, Pennsylvania, and to three bulk service interconnection points located in North York Borough, Manchester Township and York Township, York County, Pennsylvania, and (3) the rights of Pennsylvania-American Water Company to begin to offer and furnish Industrial Pretreatment Program to qualifying industrial customers in Manchester Township, Spring Garden Township and West Manchester Township, York County, Pennsylvania*, Docket No. A-2021-3024681 (Recommended Decision dated Feb. 28, 2022), *adopted without modification* (Order entered April 14, 2022) (“*PAWC-York Acquisition*”).

the negotiated rate base value of \$231,500,000 was fully analyzed and vetted by the parties and determined to be reasonable. It was reached as a compromise of competing positions that was ultimately established after extensive analysis by the parties' respective experts and extensive negotiation by experienced legal counsel. The agreed upon rate base value falls between the original positions of the parties and, as noted by OCA, falls within the range of likely outcomes in the event of full litigation of the case. The value is approximately \$23.5 million less than the average of the two appraisals (\$255 million) submitted by PAWC with its application. I find that the settlement rate base value represents a reasonable compromise by the parties and recommend that it be approved.

PAWC-York, p. 32 (emphasis added).

Similarly, in *East Norriton*,⁶ Paragraph 23.F. of the Commission-approved Joint Petition for Approval of Settlement provided that “[p]ursuant to Section 1329(c), Aqua shall be permitted to use \$20,750,000 for ratemaking rate base for the acquired assets.” In its review of the Settlement, the Commission explained that:

The ALJ reviewed the settlement term which provides that Aqua shall be permitted to use a value of \$20,750,000 for ratemaking rate base purposes. The ALJ noted that the proposed purchase price of East Norriton's wastewater system is \$21,000,000, and that the proposed purchase price was below the average fair market valuation of \$24,674,297 (\$24,284,000+\$25,064,594)/2 of two appraisals for the East Norriton wastewater system, and is consistent with Section 1329(c)(2).

East Norriton, p. 27 (emphasis added). The Commission further noted that “The ALJ concluded that acceptance of the agreed upon value was a reasonable compromise of the Parties' positions and in the public interest.” *Id.*

⁶ *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329, and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Norriton Township*, Docket No. A-2019-3009052 (Order entered May 21, 2020) (“*East Norriton*”).

The Commission adopted similar reasoning in *Exeter*.⁷ Paragraph 30 of the Commission-approved⁸ Joint Petition for Approval of Partial Settlement provided that “[p]ursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$92,000,000 for ratemaking rate base purposes based on a modified purchase price of \$93,500,000.” The August 5, 2019 Recommended Decision issued in *Exeter* approved the settlement and explained that:

based on appraisals presented by PAWC and Exeter, PAWC sought a ratemaking rate base of \$96,000,000, which was less than the average of the two appraisals, which was \$102,968,602. *See, e.g.* OCA St. Sup. p. 4. The parties have agreed in the Settlement that the ratemaking rate base should be \$92,000,000. Settlement ¶ 30. This number represents a compromise of the parties’ positions and represents a result that is within the range of likely outcomes if the case were fully litigated. This provides some mitigation of the rate impact of the transaction for existing PAWC customers and the acquired Exeter Township customers by reducing overall costs.

Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of wastewater system assets of Exeter Township, Docket No. A-2018-3004933, Recommended Decision, p. 51 (Aug. 5, 2019) (emphasis added).

Likewise, in *Steelton*,⁹ Paragraphs 21 and 22 of the Commission-approved Joint Petition for Approval of Settlement of All Issues provided:

21. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$20,500,000 for ratemaking rate base purposes based on a modified purchase price of \$21,750,000 for the acquired assets. Commission approval of the Transaction shall be conditioned upon PAWC’s filing of an amendment to the Asset Purchase Agreement, along with copies of required authorizations from Steelton Borough

⁷ *Application of Pennsylvania-American Water Company under Sections 507, 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of wastewater system assets of Exeter Township*, Docket No. A-2018-3004933 (Opinion and Order entered Oct. 3, 2019) (“*Exeter*”).

⁸ The Commission disposed of exceptions unrelated to the settlement term related to ratemaking rate base by Opinion and Order entered October 3, 2019.

⁹ *Application of Pennsylvania-American Water Company Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Opinion and Order entered Oct. 3, 2019) (“*Steelton*”).

Authority's Board of Directors that adjusts the purchase price to \$21,750,000.

22. The Joint Petitioners agree that the adjustment to ratemaking rate base reflects a compromise of the various positions of the Joint Petitioners. All Joint Petitioners reserve the right to present adjustments and oppose adjustments to appraisals in future cases.

Steelton, pp. 15-16. Adopting the Recommended Decision's recommendation to approve this settlement, the Commission explained that "The ALJs concluded this term was a reasonable resolution of the fair market value for ratemaking rate base purposes, since PAWC's original Application and the APA between PAWC and Steelton was for \$22.5 million, with a proposed ratemaking rate base value for those assets of \$22.34 million." *Id.*, p. 22 (emphasis added). The Commission further noted that this term "represents a reasonable compromise of the Parties' various litigation positions and that it falls within the range of likely outcomes of a fully litigated proceeding." *Id.*, p. 23.

Furthermore, in *Sadsbury*,¹⁰ Paragraphs 13 and 14 of the Commission-approved Joint Petition for Approval of Settlement of All Issues provided:

13. Pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$8,300,000 for ratemaking rate base purposes for the acquired assets.

14. The Joint Petitioners agree that the adjustments to the appraisals reflect a compromise of the various positions of the Joint Petitioners. All Joint Petitioners reserve the right to present adjustments and oppose adjustments to appraisals in future cases.

Sadsbury, p. 16. The presiding administrative law judge explained in the Recommended Decision that "[t]his settlement reflects a compromise on various evaluation issues" and that "given the

¹⁰ *In re: Application and related filings of Pennsylvania-American Water Company under Sections 507, 1102(a), and 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 507, 1102(a), 1329, for approval of its acquisition of wastewater system assets of Sadsbury Township, related wastewater service rights, fair market valuation ratemaking treatment, deferral of the post-acquisition improvement costs, and certain contracts with municipal corporations*, Docket No. A-2018-3002437 (Recommended Decision dated Oct. 4, 2018), *adopted without modification* (Order entered Oct. 25, 2018) ("*Sadsbury*").

range of valuations, the \$8.3 million is within the range of litigation positions of the Joint Petitioners and evidence presented.” *Id.*, p. 31.

Finally, in *McKeesport*,¹¹ Paragraph 14 of the Commission-approved Joint Petition for Settlement of All Issues provided that “PAWC shall be permitted to use \$158,000,000 for ratemaking rate base purposes for the acquired assets.” *McKeesport*, p. 20. It was recognized that “[t]he agreed upon ratemaking rate base value is within the range of proposals made by the parties during the litigation and is consistent with the mandates of Section 1329.” *Id.*, p. 45.

Not only does the RD fail to take any of these prior Commission decisions into account, it also fails to conduct a reasoned review of record evidence regarding the FMV of the System. Aqua, the City, OCA and OSBA all presented evidence regarding the FMV of the System. Aqua’s UVE presented testimony that established the FMV of the System was \$40,119,348. Aqua MB, p. 33 (citing Aqua St. No. 5, p. 13). The City’s UVE presented testimony that established the FMV of the System was \$44,292,000. Aqua MB, p. 33 (citing Aqua St. No. 6, p. 13). Thus, the average of the two FMV appraisals was \$42,245,674. Amended Application ¶ 56. I&E did not oppose Aqua’s proposed ratemaking rate base of \$41,250,00. Aqua MB, p. 39 (citing I&E St. No. 2, p. 5). One of OCA’s witnesses testified that the FMV of the System should be adjusted to \$19,628,354. Aqua MB, p. 39 (citing OCA St. No. 2, p. 5). And OSBA’s witness testified that the ratemaking rate base of the System should not exceed \$8,454,113.¹² Aqua MB, pp. 39-40

¹¹ *Application of Pennsylvania-American Water Company-Wastewater under Section 1329 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 1329, for approval of the use for ratemaking purposes of the lesser of the fair market value or the negotiated purchase price of The Municipal Authority of the City of McKeesport's assets related to its wastewater collection and treatment system and other related transactions*, Docket No. A-2017-2606103 (Recommended Decision dated Sept. 27, 2017), *adopted without modification* (Order entered Oct. 26, 2017) (“*McKeesport*”).

¹² OSBA’s argument regarding FMV relies exclusively upon an argument that ratemaking rate base is “capped” by the Reasonableness Review Ratio (“RRR”) set forth in *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Final Supplemental Implementation Order, p. 32 (Order entered July 2, 2024). OSBA MB, p. 6.

(citing OSBA St. No. 1, p. 9). The record evidence in this case clearly includes a range of possible litigation outcomes regarding the FMV of the System, which have been advocated for by each of the parties.

Based on the evidence presented, the Settlement Parties reached an agreement regarding the appropriate ratemaking rate base for the System. Paragraph 39 of the Settlement states, “[t]he Settlement Parties agree that the rate base of the ‘Acquired Assets’ (as that term is defined in the APA) that are the subject of the Amended Application will be \$29,900,000.” (Settlement ¶ 39.) Relatedly, Paragraph 40 states that “Aqua and Beaver Falls agree that the APA, dated as of October 20, 2021, and attached to the Amended Application as **Exhibit B** will be amended to reflect a purchase price of \$37,750,000” (Settlement ¶ 40.) These two provisions of the Settlement make clear that, in light of the record evidence, the Settlement Parties intended for both (1) the purchase price of the System to be amended to reflect a lower purchase price and (2) the ratemaking rate base of the System be set at \$29,900,000, pursuant to Section 1329(c)(2), as a condition of approval of Aqua’s acquisition of the System. The RD clearly disregards the record evidence regarding FMV and the Settlement language agreed upon by the parties based upon this evidence.

Moreover, the Settlement Parties crystallized that the ratemaking rate base of \$29,900,000 was reasonable and should be adopted because it was within the range of litigation outcomes on FMV that were advanced in this proceeding. The RD asserts that Aqua stated, in its Statement in Support, that the FMV was \$42,245,674. This is a selective reading of Aqua’s Statement in Support. While Aqua did state that the FMV, as defined by the average of the two UVEs’ appraisals, was \$42,245,674, Aqua’s Statement in Support further explained that the Settlement represented a compromise of competing positions on ratemaking rate base:

If the case were fully litigated, the Settlement Parties recognize that the Commission might accept some, but not necessarily all, of the FMV adjustments proposed by OCA. In particular, several of the proposed adjustments offered by OCA Witness Garrett have been previously considered and rejected by the Commission. See, e.g., *Application of Aqua Pennsylvania Wastewater, Inc. – East Whiteland Township*, Docket No. A-2021-3026132, pp. 81-83 (Opinion and Order entered July 29, 2022) (“*East Whiteland*”) (rejecting Mr. Garrett’s Income Approach); *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3927268, p. 71 (Order entered July 8, 2022) (“*Willistown*”) (approving Gannett Fleming’s Cost valuation approach, and rejecting Mr. Garrett’s proposed adjustment); *Willistown* p. 123 (accepting Gannett Fleming’s weighting of Selected Transactions for its Market Approach, based upon comparability of the transactions to the system being acquired). The Settlement ratemaking rate base of \$29,900,000 is slightly less than the average (\$30,439,000) of Aqua’s and the OCA’s litigation positions. The compromise amount is in the public interest, particularly in the context of the other substantial public benefits that are provided by the transaction, and should be adopted.

Aqua Statement in Support, pp. 15-16. In response to OSBA’s opposition in this matter, Aqua’s Reply Brief similarly stated that “Under the terms of the Settlement, the Settling Parties have agreed to a ratemaking rate base of \$29,900,000, which is an amount between the negotiated purchase price and the OCA’s position on FMV.” Aqua RB, p. 2, n.2.

Similarly, the RD’s assertion that I&E and OCA made no mention of FMV is an incomplete reading of these parties’ respective Statements in Support. I&E supported the Settlement by explaining that:

Per the Settlement Aqua will be permitted to use \$29,900,000 for the ratemaking rate base of the acquired assets. Ultimately, through use of both the formal and informal discovery process and its extensive investigation, I&E was able to determine that this proposed value of,[sic] comported with the valuation standards and requirements of Section 1329. The proposed ratemaking rate base is \$11.35 million less than what was requested in the Application. As a result, I&E avers that approval of \$29,900,000 million for the ratemaking rate base is both warranted and in the public interest. Further, this \$29,900,000 million is lower than the purchase price of \$37,750,000 agreed to by Aqua and Beaver Falls and is within the

range of possible outcomes if this case were to be litigated to its full conclusion.

I&E Statement in Support, p. 6 (emphasis added). Indeed, I&E makes clear that the proposed Settlement value of the system “comported with the valuation standards and requirements of Section 1329.” *Id.* OCA’s Statement in Support explains that “the Settlement’s \$29.9 million ratemaking rate base represents an amount that is within the range of possible outcomes in a Commission final order in the event of full litigation of the case based on substantial record evidence.” OCA Statement in Support, p. 5. OCA Statement in Support, p. 14. Thus, the RD’s claim that the Statements in Support submitted by the other Settlement Parties do not discuss FMV is wrong.

In summary, the RD is contrary to Section 1329, the Commission’s precedent, the parties’ Statements in Support, and the facts of record in this matter. It is clear error for the RD to conclude—without reference to applicable precedent or evidence of record—that Paragraph 39 of the Settlement violates Section 1329(c)(2). If the RD is upheld, the Commission would effectively abdicate its authority to review and modify FMV proposals under Section 1329, which it previously determined that it possessed in *New Garden*. Therefore, the Commission should grant Aqua’s Exception No. 2, decline to adopt the RD, and issue an order approving the Settlement without modification and approving the Application as amended subject to the terms and conditions of the Settlement.

C. EXCEPTION NO. 3 – IF THE RD’S DECISION TO DENY THE SETTLEMENT IS UPHELD, THEN THE RD ERRS BY FAILING TO RENDER A DECISION ON THE MERITS OF AQUA’S APPLICATION, AS AMENDED, BASED UPON RECORD EVIDENCE. (RD, at pp. 10, 11-12, Ordering Paragraph 2.)

Based upon its erroneous decision to deny the Settlement, and this erroneous decision alone, the RD concludes that Aqua’s Application should be denied. RD, at pp. 11-12, Ordering

Paragraph 2. The Commission should decline to adopt this erroneous and fundamentally incomplete RD.

The Code clearly empowers the Commission to utilize administrative law judges and to authorize administrative law judges to make initial decisions or recommend decisions in conformity with the Code. *See* 66 Pa. C.S. §§ 331(b) (authorizing all on-the-record proceedings to be referred to an administrative law judge, with exceptions), 331(d) (authorizing an administrative law judge to “[m]ake decisions or recommend decisions in conformity within this part”), 335(a) (stating that “[w]hen the commission does not preside at the reception of evidence, the presiding officer shall initially decide the case . . .”). In addition, the Public Utility Code requires that:

. . . All decisions, including initial, recommended and tentative decisions, are a part of the record and shall include a statement of:

- (1) findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record; and
- (2) the appropriate rule, order, sanction, relief or denial thereof.

66 Pa. C.S. § 335(c). It is clear that, while an administrative law judge may issue a recommended decision, any recommended decision issued by an administrative law judge must set forth all findings and conclusions of fact and law on all material issues of fact and law.

It is also not sufficient for the administrative law judge to recommend denial of a settlement or the Commission to deny a settlement, and offer such denial as the sole basis for the disposition of all material issues in a proceeding. Rather, if a settlement is denied, then either (a) a decision on the merits should be reached, or (b) the matter should be remanded to the Office of Administrative Law Judge for further proceedings. Where, as here, the specific statutory provision that gives rise to the proceeding provides that the case must be resolved on a specific time frame

(i.e., six months), if the ALJ recommended denial of the Settlement, then they should also have rendered a decision on the merits of the matter.

Furthermore, the Settlement provided to the ALJ in this case makes clear that:

64. If the Commission does not approve the Settlement and the proceedings continue, the Settlement Parties reserve their respective procedural rights. The Joint Petition for Settlement is made without any admission against, or prejudice to, any position which any Settlement Party may adopt in the event of any subsequent litigation of these proceedings, or in any other proceeding.

(Settlement ¶ 64.) Thus, if the ALJ recommends denial, this denial defaults the parties to their litigation positions and the parties have retained their procedural rights to seek to obtain their respective litigation positions.

Here, the RD denies the Settlement and, for this reason alone, denies Aqua's Application. The RD does not even attempt to review any record evidence or dispose of any material issues that are related to Aqua's Application. Likewise, the RD does not even discuss any of the record evidence in this matter, let alone set forth any findings of facts. Moreover, it does not reach any conclusions of law germane to any issue except its denial of the Settlement. More specifically, it does not reach any conclusions regarding whether: (1) Aqua is fit to acquire and operate the System; (2) whether Aqua's acquisition of the System is necessary or proper for the service, accommodation, safety and convenience of the public; (3) whether Aqua's acquisition of the System will result in substantial affirmative public benefits; (4) whether Aqua should be authorized to file tariff revisions to include with its service territory all of the Requested Territory set forth in the Application and adopt and apply the rates of the City as Aqua's base rates and apply Aqua's Rules and Regulations in the Requested Territory; (5) whether Aqua has demonstrated that the ratemaking rate base of the System should be \$41,250,000, representing the lesser of the purchase price or the average of the two FMV appraisals submitted in this proceeding under 66 Pa. C.S. §

1329(c)(2); and/or (6) whether certificates of filing should be issued for certain municipal contracts under 66 Pa. C.S. § 507. In this regard, the RD is fundamentally incomplete and is effectively not a recommended decision that can be adopted in whole or in part by this Commission.

To be clear, Aqua submits that the Commission should decline to adopt the RD, and approve the Settlement. However, if the Commission elects—like the RD—to deny the Settlement, Aqua submits that its Application to acquire the Beaver Falls System should be approved as amended for the reasons fully set forth in its Main Brief and its Reply Brief, which reasons Aqua fully incorporates herein. Moreover, as Aqua’s Reply Brief was limited to responding to the positions of OSBA in this matter and neither I&E nor OCA submitted a Reply Brief in light of the Settlement, it would be appropriate for the parties to be provided the opportunity to submit Reply Briefs (supplemental or otherwise) on the merits of their respective litigation positions if the Settlement is determined to be denied.

For these reasons, if the Commission does not grant Aqua’s Exceptions 1 and 2, the Commission should grant Aqua’s Exception No. 3 and proceed to determine the material issues in this case.

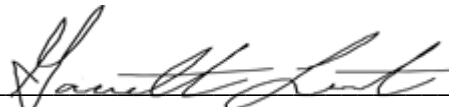
III. CONCLUSION

WHEREFORE, and for all of the foregoing reasons, Aqua Pennsylvania Wastewater, Inc., respectfully requests that the Pennsylvania Public Utility Commission grant these Exceptions and decline to adopt the Recommended Decision of Administrative Law Judge F. Joseph Brady. The Commission should also approve the Joint Petition for Non-Unanimous Settlement of All Issues and approve Aqua's Application as amended and subject to the terms and conditions of the Joint Petition for Non-Unanimous Settlement of All Issues, and:

1. Issue all certificates of public convenience under 66 Pa. C.S. §§ 1102 and 1103 necessary to authorize Aqua to acquire, by purchase, the wastewater system assets of the City of Beaver Falls, and begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory set forth in the Application;
2. Authorize Aqua to file tariff revisions, effective upon one day's notices to include within its service territory all the Requested Territory set forth in the Application, and adopt and apply the rates of the City of Beaver Falls as set forth in Appendix F to the Settlement as Aqua's base rates, and apply Aqua's Rules and Regulations as set forth in its tariff within the Requested Territory.
3. Enter an order approving the Application and Aqua's acquisition of the System and, as a part of the Order, include the ratemaking rate base of the wastewater system assets of the City of Beaver Falls as \$29,900,000 as set forth in the Settlement, pursuant to 66 Pa. C.S. § 1329(c)(2).
4. Approve Contracts, including the amended Asset Purchase Agreement, New Wastewater Service Agreements entered into by Aqua and the Contributing Municipalities, the pro forma meter read agreement between Aqua and the BFMA, and the Settlement Agreement entered into by Aqua, the City and the Plaintiff Municipalities pursuant to Section 507 of the Public Utility Code; and
5. 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 wastewater system assets of the City of Beaver Falls.

Respectfully submitted,

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