



COMMONWEALTH OF PENNSYLVANIA

April 29, 2025

E-FILED

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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:

Enclosed please find the Reply Exceptions, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-referenced proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Steven C. Gray

Steven C. Gray
Senior Attorney
Assistant Small Business Advocate
Attorney I.D. No. 77538

Enclosures

cc: Rebecca Forbes
Kevin Higgins
Parties of Record

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. pursuant to Sections 1102 : **Docket No. A-2022-3033138**
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 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; (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; and (4) :
request for Approval of Contracts, between :
Aqua and the City of Beaver Falls, :
Pursuant to Section 507 of the :
Public Utility Code :

**REPLY EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Date: April 29, 2025

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I. INTRODUCTION

On February 17, 2023, Aqua Pennsylvania Wastewater, Inc. (“Aqua PA”) filed an Application (“Application”) 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 (the “City”).

The Application addresses the purchase asset agreement signed between Aqua PA and the City on October 20, 2021. The Application requests (1) approval of the acquisition by Aqua PA of the wastewater system assets of the City; (2) the approval of the right of Aqua PA to begin to offer, render, furnish, and supply wastewater service to the public in the City; (3) that the Commission, in its Order approving the acquisition, include the ratemaking rate base of the City wastewater system assets as determined under §1329(c)(2) of the Public Utility Code, 66 Pa. C.S. §1329(c)(2); (4) that the Commission issue certificates for filing, pursuant to §507 of the Public Utility Code, 66 Pa. C.S. § 507, for certain municipal contracts that Aqua PA has included in the Application (to the extent necessary), including new service agreements that Aqua PA will 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 allows certain existing agreements between Aqua PA and the Contributing Municipalities to be modified because those agreements contain a rate formula that is inconsistent with the rates charged by the City to the Contributing Municipalities.

On March 17, 2023, the Office of Small Business Advocate (“OSBA”) filed a Protest and Notice of Intervention in response to the Application.

On June 28, 2023, after a series of deficiency delays filed by Aqua PA, the Commission issued a Secretarial Letter conditionally accepting the Application.

On March 28, 2024, Aqua PA filed an Amended Application (“Amended Application”).

On April 4, 2024, the Commission issued a Secretarial Letter withdrawing the Commission’s conditional acceptance of the Application.

On June 27, 2024, the Commission issued a Secretarial Letter conditionally accepting the Amended Application.

On December 30, 2024, the Commission issued a Secretarial Letter formally accepting the Amended Application.

On January 29, 2025, a Prehearing Conference was held before Administrative Law Judge (“ALJ”) F. Joseph Brady.

On February 4, 2025, ALJ Brady issued his Prehearing Order.

On February 14, 2025, the OSBA served the Direct Testimony and Exhibits of Rebecca Forbes.

On March 4, 2025, the OSBA served the Surrebuttal Testimony of Ms. Forbes.

The March 10, 2025, evidentiary hearing was cancelled by ALJ Brady.

On March 18, 2025, the OSBA filed a Main Brief in accordance with the procedural schedule set forth in ALJ Brady’s February 4th Prehearing Order.

On March 25, 2025, parties other than the OSBA filed a Joint Petition for Non-Unanimous Settlement (“Joint Petition for NUS”) of All Issues.

On March 28, 2025, the OSBA filed its Brief in Opposition to the Joint Petition for NUS.

On April 10, 2025, ALJ Brady issued his Recommended Decision (“RD”).

On April 22, 2025, the OSBA filed a Letter stating that this Office would not be filing Exceptions to the RD.

The OSBA submits the following Reply Exceptions in response to the Exceptions filed by the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement (“I&E”), the City of Beaver Falls (the “City”), and Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”) (collectively, the “Excepting Parties).

II. REPLY EXCEPTIONS

A. Reply to OCA Exception No. 1: The ALJ did not enact a “blanket prohibition” on the calculation of the Fair Market Value of a selling utility. (OCA Exceptions, at 4-9)

In his RD, ALJ Brady stated that “[e]ssential to the acquisition of a wastewater utility is the establishment of the ratemaking rate base pursuant to Section 1329(c) of the Code.” RD, at 8. Section 1329(c) of the Public Utility Code, 66 Pa. C.S. Section 1329(c) is set forth, below:

(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) (emphasis added).

In its Exceptions, the OCA provides a discussion of the issue that “Fair Market Value is not a means by which the UVEs can submit appraisals without challenge.”¹ The OCA quotes the Commission, as follows:

In *New Garden*, the first Section 1329 proceeding, the Commission found 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.’

OCA Exceptions, at 5 (citations omitted).

As the OCA correctly concluded, the Commission has “authority and discretion to consider substantial evidence presented by statutory advocates regarding adjustments to UVE appraisals.”²

Simply put, the Commission has concluded that the UVE appraisals, conducted during a Section 1329 proceeding, are the *starting point* for the consideration of the ultimate Fair Market Value (“FMV”) of the selling utility, while the *ultimate* FMV approved by the Commission can change due to testimony, litigation, and settlement.

However, the OCA takes its analysis of Commission decisions and wrongly concludes that the ALJ created a “blanket prohibition on the Commission from exercising its expert ratemaking discretion to adopt adjustments to the UVE appraisals.”³ Specifically, the OCA stated, as follows:

The OCA respectfully disagrees with the ALJ’s statutory interpretation as it runs contrary to the Commission’s prior interpretation of the statute and produces an absurd result where the Commission is blanketly prohibited from exercising its expert ratemaking discretion to adopt adjustments to the UVE appraisals that the Commission finds reasonable. Accordingly, the OCA submits that the ALJs’ conclusion that the Joint Petition for Settlement runs contrary to law, is incorrect, and is plain error.

¹ The full discussion of this issue is set forth in the OCA Exceptions, at 5-7.

² OCA Exceptions, at 7

³ OCA Exceptions, at 7.

OCA Exceptions, at 4.

To address the OCA assertion that the ALJ's RD produced a "blanket prohibition," it is necessary to review the record evidence presented on the FMV of the City of Beaver Falls wastewater facilities.

Aqua states that the filed FMV, as calculated by the average of value presented by Gannett Fleming and ScottMadden, was \$42,245,674.⁴

OCA witness David J. Garrett applied corrections to the methodology employed by Gannett Fleming and ScottMadden (resulting in \$43,036,500 and \$32,745,017, respectively), resulting in an averaged FMV of \$37,890,758.50.⁵

In addition, OCA witness Garrett modified the approaches taken by both Gannett Fleming and ScottMadden. Using his modified approach, OCA witness Garrett came up with an identical FMV of \$19,628,354 for both (no averaging necessary).⁶

Finally, the OSBA employed the Commission's RRR metric to calculate a ratemaking rate cap of \$8,454,113.⁷

The Joint Petition for NUS set the purchase price of the selling utility at \$37,750,000.⁸

The Joint Petition for NUS agreed upon a ratemaking rate base of \$29,900,000.⁹

Contrary to the OCA's claim, the ALJ placed no blanket prohibition on the determination of the FMV of a selling utility. Instead, the ALJ simply pointed out the error made by the signatories, as follows:

⁴ Aqua Statement in Support, at 15.

⁵ OCA Main Brief, at 47.

⁶ OCA Main Brief, at 47.

⁷ OSBA Brief in Opposition, at 7.

⁸ Joint Petition for NUS, at Paragraph 40.

⁹ Joint Petition for NUS, at Paragraph 39.

In addition, the Joint Petition is silent regarding the FMV of the Beaver Falls wastewater system. Likewise, the Statements in Support of Beaver Falls, OCA, and I&E do not discuss FMV. Aqua's Statement in Support states the FMV of the system is \$42,245,674.

RD, at 9.

There is no passage in ALJ Brady's RD that places any prohibition on the ability of any party to argue the correct FMV of a selling utility. Thus, the OCA's assertion is incorrect:

If the ALJ's interpretation of Section 1329 is adopted, the RRR would seemingly contradict Section 1329 as no other ratemaking rate base could be applied to acquired systems beyond the lesser of the average of the *unadjusted UVE appraisals* or the purchase price.

OCA Exceptions, at 8 (emphasis added). Nowhere in the RD does ALJ Brady state that only the "unadjusted UVE appraisals" are to be considered. The OCA is fabricating its "blanket prohibition" argument while providing no citation to the RD where any such statement was made. Instead, as set forth above, ALJ Brady simply observed the legal error made by the signatories to the Joint Petition for NUS.

Conclusion

The OSBA respectfully requests that OCA Exception No. 1 be denied.

B. Reply to OCA Exception No. 3; I&E Exceptions Letter; City Exception No. 1; Aqua Exception No. 2: The ALJ correctly concluded that the Joint Petition for NUS violated the explicit requirements of Section 1329 of the Public Utility Code. (OCA Exceptions, at 11-13; I&E Exceptions Letter, at 1-2; City Exceptions No. 1, at 5-10; Aqua Exceptions, at 6-16)

In its Exceptions, the OCA states, as follows:

To date, sixteen Section 1329 proceedings have settled. Of these sixteen settlements, six settlements (*McKeesport, Sadsbury, Exeter, Steelton, East Norriton, and Butler*) resulted in a difference between the initially proposed FMV and the Commission-approved ratemaking rate base. Three Section 1329 proceedings were litigated and resulted in a variance between the initially

proposed FMV and the approved ratemaking rate base (*Limerick, Cheltenham, and East Whiteland*). The Recommended Decision implies that these litigated and settled cases are contrary to the law.

OCA Exceptions, at 12 (citations omitted). First, the OCA is incorrect that the RD concludes that any of these cases are contrary to law. Second, the phrase employed by the OCA “the initially proposed FMV” is critical to understanding the OCA’s misapprehension.

I&E repeats the same argument¹⁰ citing to the *Butler* case.

The City also repeats the same argument, citing to *New Garden Township, East Norriton Township, City of York, Exeter Township, Steelton Borough Authority, City of McKeesport, and Sadsbury Township*.¹¹

Finally, Aqua again repeats the same argument, citing to *New Garden Township, City of York, East Norriton Township, Exeter Township, Steelton, Sadsbury Township, and McKeesport*.¹²

In fact, the Commission decided each of the above-cited cases in the following manner: In order to comply with Section 1329(c)(2), the Commission Orders result in the FMV of the selling utility being equal to the litigated (or settled) ratemaking rate base dollar amount.

This legal methodology was cited by Aqua (without the section title) in its Exceptions. Specifically, the Company cited, as follows:

Adopting the Recommended Decision’s recommendation to approve this settlement, the Commission explained that ‘The ALJs concluded this term [ratemaking rate base of \$20,500,000] 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.’

¹⁰ I&E Exceptions Letter, at 1-2.

¹¹ City Exceptions, at 5-10.

¹² Aqua Exceptions, at 6-16.

Aqua Exceptions, at 12. Aqua’s citation is to the *Steelton* case where (to use the OCA’s terminology) “the initially proposed FMV” was \$22.34 million. However, as the Commission confirmed, the FMV was set at \$20,500,500, not the FMV as originally calculated by the two UVEs.¹³

To repeat what was set forth above, the Commission has consistently concluded that the FMV of the selling utility is not exclusively determined by “the initially proposed FMV” as calculated by the two UVEs. The FMV of the selling utility is subject to litigation, settlement, and a final determination by the Commission.

The Excepting Parties cited to numerous Commission Orders in support of their legal argument. For example, I&E cited to the *Butler* case in its Exceptions Letter. As originally filed, the average of the two UVE appraisals was \$239,303,632. *Butler Order*, at 9. The original purchase price was \$231,500,000. *Butler Order*, at 9. The Commission Order stated the terms of the settlement, as follows:

E. Fair Market Value for Ratemaking Rate Base Purposes

21. Joint Petitioners agree that pursuant to 66 Pa. C.S. § 1329, PAWC shall be permitted to use \$228,000,000 for ratemaking rate base purposes for the acquired System.

22. The Joint Petitioners agree that PAWC may record the acquisition at the net value of the assets, consistent with generally accepted accounting principles.

Butler Order, at 21. The Commission then approved settlement in Ordering Paragraph 13 (“That, pursuant to 66 Pa. C.S. § 1329(c), the ratemaking rate base of the Butler Area Sewer Authority wastewater system assets is \$228,000,000.”) and Ordering Paragraph 14 (“That Pennsylvania-

¹³ *Steelton*, at 22 and Ordering Paragraph 4.j.

American Water Company shall be permitted to record the acquisition at the net value of the assets (\$228,000,000), pursuant to 66 Pa. C.S. § 1702.”).

The OSBA notes the title of Section E. of that Settlement Agreement – “Fair Market Value for Ratemaking Rate Base Purposes.”

The OCA, the City, and Aqua all cited to the *Sadsbury Township* case. In the RD, ALJ Darlene Davis Heep observed, as follows:

The Joint Petition includes the terms and conditions of the Settlement relating to *the agreed upon fair market value for ratemaking purposes*, the rate treatment of the acquired system, cost of service study, DSIC, long term infrastructure improvement plan (LTIIP), allowance for funds used during construction, deferral of depreciation and transaction costs and other rate-related issues and the agreements necessary to effectuate the transaction.

Sadsbury Township Recommended Decision, at 15 (emphasis added). ALJ Heep continued by citing the terms of the proposed settlement. Paragraph C states, as follows:

C. Fair Market Value for Ratemaking Rate Base Purposes

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. The Joint Petitioners further agree, however, for the purposes of this proceeding, that the following adjustments are explicitly accepted by the Joint Petitioners...

Sadsbury Township Recommended Decision, at 16 (citation omitted). Thus, the FMV was set at the ratemaking rate base of \$8,300,000 while the agreed upon purchase price, as noted by ALJ Heep, was \$8,600,000.

In ALJ Heep’s Recommendation section, Paragraph 5 approved the settled ratemaking rate base of \$8.3 million, and Paragraph 6 set forth the series of “adjustments” to the original UVE appraisals that were advocated by the parties during that proceeding.

The Commission approved ALJ Heep’s RD in its *Sadsbury Township Order*, at 2-3, Ordering Paragraphs 5 and 6. Thus, Section 1329(c) was followed.

Again, the OSBA observes the title of Section C. of that Settlement Agreement – “Fair Market Value for Ratemaking Rate Base Purposes.”

Another case cited by the OCA, the City, and Aqua PA is *East Norriton*. In its *East Norriton*, the Commission set forth the terms of the Settlement Agreement. Paragraph F states, as follows:

F. Fair Value Ratemaking Rate Base

Pursuant to Section 1329(c), Aqua shall be permitted to use \$20,750,000 for ratemaking rate base for the acquired assets.

East Norriton, at 19. The Commission continued, and cited the reasoning of ALJ Angela T. Jones, as follows:

5. Ratemaking Rate Base - Fair Market Value

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, at 27. The Commission approved the *East Norriton* settlement and approved the ratemaking rate base of \$20,750,000 in its Ordering Paragraph 8.

The three cases, discussed above, demonstrate the same legal result – to be consistent with Section 1329(c), the FMV of the selling utility and the settled ratemaking rate base dollar amount are equal. The FMV of the UVE’s in each case is the starting point, not the ultimate result.

The same result obtains for each of the cases cited by the Excepting Parties above.¹⁴ Of those cases, *East Whiteland* stands out as a seminal example. In *East Whiteland*, the ALJ did not calculate a ratemaking rate base dollar amount. Instead, the Commission calculated the FMV of East Whiteland, and set that FMV dollar amount as the ratemaking rate base.¹⁵

Conclusion

In each of the cases cited by the OCA, I&E, the City, and Aqua, the FMV of the selling utility was ultimately equal to the ratemaking rate base dollar amount, regardless of whether the case was settled or litigated. As a result, each of the cited Commission Orders complied with the requirements of Section 1329(c)(2).

The Recommended Decision did nothing to change that result.

Instead, the ALJ observed a fundamental error in the Joint Petition for NUS. While Joint Petition for NUS set the selling price at \$37,750,000 and the ratemaking rate base at \$29,900,000, the only FMV amounts in the record evidence are \$42,245,674 (Aqua PA), \$37,890,758.50 or \$19,628,354 (OCA), or \$8,454,113 (OSBA) for the City for Beaver Falls wastewater facilities.

Obviously, none of the FMV record evidence amounts are equal to the settled ratemaking rate base value of \$29.9 million. Thus, the ALJ correctly ruled that the Joint Petition for NUS

¹⁴ *McKeesport*, RD at 38; *Exeter*, at 14; *Limerick*, at 23,36, Ordering Paragraph 4 (Order entered November 29, 2017); *Cheltenham*, at 27, 73, Ordering Paragraph 8; *City of York*, RD at 31-32, Commission Ordering Paragraphs 1, 3.g., 3.h.

¹⁵ *East Whiteland*, at 100-102, Ordering Paragraph 7.

was unlawful on its face, violated Section 1329(c)(2), and rejected the settlement. The ALJ committed no error of law and followed Commission precedent.

Therefore, the OSBA respectfully requests that OCA Exception No. 3, the I&E Exceptions Letter, City Exception No. 1, and Aqua Exception No. 2 be denied.

C. Reply to Aqua Exception No. 1: The ALJ properly invoked the explicit terms of Section 1329(c)(2) of the Public Utility Code. (Aqua Exceptions, at 4-6)

In its Exceptions, Aqua makes the following legal argument:

Section 1329(c)(2) does not involve a jurisdictional matter regarding the authority of the Commission to hear and dispose of this case.

Aqua Exceptions, at 5.

The full citation of Section 1329(c)(2) is 66 Pa. C.S. 1329(c)(2), and Title 66 is commonly known as the “Public Utility Code.” Aqua then argues, as follows:

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 ‘advocate’ and introduced a legal theory that was not raised by any of the parties.

Aqua Exceptions, 5-6.

The OSBA respectfully observes that this is an unusual argument proffered by Aqua, essentially claiming that an Administrative Law Judge of the Commission should not apply the law, specifically the Public Utility Code, when deciding this case. Aqua’s argument appears to contradict an earlier citation employed by Aqua in its Exceptions:

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...’

Aqua PA, at 4 (citations omitted) (emphasis by Aqua).

Consequently, Aqua’s legal arguments in its Exception No. 1 are two-fold. First, that Section 1329(c)(2) is a non-jurisdictional matter that the Commission has no authority over. Second, that Section 1329(c) is not a pertinent question of law that ALJ Brady should be addressing.

In response, the OSBA points to the title of Aqua’s originally filed Application: “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” (emphasis added).

Furthermore, in the Joint Petition for NUS, the signatories, including Aqua, requested approval of the settlement under Section 1329(c)(2):

The Commission enter an order approving the Amended 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 Paragraph 39 of the Settlement and pursuant to 66 Pa.C.S. § 1329(c)(2).

Joint Petition for NUS, at 15, Conclusion Paragraph 4.

Conclusion

The legal requirements of Section 1329 apply to this case. The OSBA respectfully requests that Aqua Exception No. 1 be denied.

D. Reply to OCA Exception No. 2; I&E Exceptions Letter; City Exception No. 2: The Commission’s Policy that encourages settlements does not overcome the Joint Petition for NUS’s violation of Section 1329 of the Public Utility Code. (OCA Exceptions, at 9-11; I&E Exceptions Letter, at 2-3; City Exceptions at 10-12)

The OCA, I&E, and the City all make similar arguments that the RD didn’t follow the Commission’s Policy on encouraging settlements. For example, the City’s Exception No. 2

states: “The Recommended Decision Erred in Departing from the Commission’s Policy of Encouraging Settlement, and in Finding that the Settlement Petition is not in the Public Interest.”

The ALJ recognized this is Commission Policy in his RD.¹⁶

However, as a Commission Policy it does not have the force of law. Nor does it have the force of a regulation.

Section 1329(c)(2) of the Public Utility Code, 66 Pa. C.S. Section 1329(c)(2), as set forth, above, states:

(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.

Section 1329(c)(2) (emphasis added). The Pennsylvania Supreme Court in *Commonwealth v. Baker*, 547 Pa. 214 (1997), stated, as follows:

‘[T]he word ‘shall’ as used in a statute is generally regarded as mandatory, i.e. imposing a duty upon the party to whom the statute is directed.’

Commonwealth v. Baker, at 221, quoting *Commonwealth v. Sojourner*, 513 Pa. 36, 41-42 (1986).

Conclusion

Section 1329(c)(2) requires that the Joint Petition for NUS shall have a ratemaking rate base that is less than the FMV or the purchase price of the City of Beaver Falls wastewater system. No Commission Policy can override the failure of the signatories to follow the requirements of Section 1329(c)(2).

The OSBA respectfully requests that OCA Exception No. 2, the I&E Exceptions Letter, and City Exception No. 2 be denied.

¹⁶ RD at 8, citing 52 Pa. C.S. § 5.231(a) (“It is the policy of the Commission to encourage settlements.”)

E. Reply to City Exception No. 3; Aqua Exception No. 3: The merits of the Joint Petition for NUS do not overcome its violation of Section 1329(c)(2) of the Public Utility Code. (City Exceptions, at 12-24; Aqua Exceptions at 16-19)

The City argues that the ALJ's RD should have rendered "a legitimate decision on the merits." City Exceptions at, 12.

Similarly, Aqua argues that, as follows:

[I]f 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.

Aqua Exceptions, at 17.

In support of its argument, Aqua cites to 66 Pa. C.S. Section 335(c).

The OSBA respectfully submits that the ALJ fully complied with the requirements of Section 335(c). As cited by the ALJ in his RD, the Pennsylvania Superior Court has ruled that "an agreement that cannot be performed without violating a statute is illegal and will not be enforced." RD, at 11.

The Joint Petition for NUS violated the requirements of Section 1329(c)(2) and therefore was illegal on its face. Judicial economy, and well as Section 335(c), require nothing more from the ALJ than to deny, with reasons, the Joint Petition for NUS.

Conclusion

The OSBA respectfully requests that City Exception No. 3 and Aqua Exception No. 3 be denied.

III. CONCLUSION

For the reasons set forth herein, the OSBA respectfully requests that the Commission deny OCA Exceptions No. 1, 2, and 3; I&E's Letter of Exceptions; City's Exceptions No. 1, 2, and 3; and Aqua PA Exceptions No. 1, 2, and 3.

Respectfully Submitted,

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Dated: April 29, 2025

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. pursuant to Sections 1102	:	Docket No. A-2022-3033138
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 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; (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; and (4)	:	
request for Approval of Contracts, between Aqua	:	
and the City of Beaver Falls, Pursuant to Section	:	
507 of the Public Utility Code	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via e-mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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