

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	
Wastewater, Inc. Section 1329 of the	:	
Pennsylvania Public Utility Code,	:	A-2021-3026132
66 Pa. C.S. § 1329, for the Acquisition of	:	
East Whiteland Township, Chester County	:	
Sanitary Wastewater Collection System	:	

RECOMMENDED DECISION

Before
Marta Guhl
Administrative Law Judge

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I. INTRODUCTION

In this application, Aqua Pennsylvania seeks, *inter alia*, to acquire the East Whiteland Township wastewater system assets. This decision recommends that the Commission deny the application because Aqua Pennsylvania Wastewater Inc. did not meet its burden of establishing that there is an affirmative public benefit to the acquisition of East Whiteland Township's wastewater assets. The Commission's last reasonable Public Meeting before the end of the six-month statutory deadline is July 14, 2022.

II. HISTORY OF THE PROCEEDING

On July 26, 2021, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company) filed with the Pennsylvania Public Utility Commission (Commission) its Application, pursuant to Sections 1102, 1329, 507 and 2102 of the Public Utility Code, for Approval of its Acquisition of the Wastewater System Assets of East Whiteland Township (EWT or Township). 66 Pa.C.S. §§ 507, 1102, 1329, 2102. The Application requests: (1) approval of the acquisition by Aqua of the wastewater system assets of EWT situated within the Township of East Whiteland, Chester County, Pennsylvania; (2) approval of the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of East Whiteland Township, Chester County, Pennsylvania; and (3) an order approving the acquisition that includes the ratemaking rate base of the EWT wastewater system assets pursuant to Section 1329(c)(2) of the Public Utility Code. 66 Pa.C.S. § 1329 (c)(2). Aqua also requests approval of contracts, including assignments of contracts, between Aqua and EWT, pursuant to Section 507 of the Public Utility Code and for approval of a contract between affiliated interests, pursuant to Section 2102 of the Public Utility Code. 66 Pa.C.S. §§ 507 and 2102.

On August 26, 2021, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention and Public Statement as well as a Notice of Appearance for Erin Fure, Esquire.

On September 17, 2021, the Office of Consumer Advocate (OCA) filed a Protest to the Application and Notice of Appearance for Harrison Breitman, Esquire and Erin Gannon, Esquire.

On October 4, 2021, the Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance for Carrie Wright, Esquire.

On December 20, 2021, the Secretary's Bureau issued a Letter conditionally accepting Aqua's Application.

On December 29, 2021, OCA filed a Notice of Appearance for Lauren Antinucci, Esquire, and Christine Maloni Hoover, Esquire.

On February 3, 2022, EWT filed a Petition to Intervene in this matter.

On February 4, 2022, the Secretary's Bureau issued a Letter accepting the Application of Aqua to acquire EWT.

On February 4, 2022, Aqua customer, Richard Gage, filed a Protest to the Application.

On the same date, an Initial Telephonic Prehearing Conference Notice was issued which scheduled a telephonic prehearing conference for March 8, 2022 at 10:00 a.m. and the matter was assigned to me.

On February 24, 2022, I issued a Prehearing Conference Order which indicated the issues to be addressed at the Prehearing Conference.

On March 4, 2022, Aqua, OCA, I&E, OSBA and EWT submitted Prehearing Conference Memorandums.

A prehearing conference in this matter was held on March 8, 2022. Counsel for Aqua, I&E, OCA, OSBA, and EWT participated.

The procedural schedule discussed at the Prehearing Conference on March 8, 2022, was memorialized in Prehearing Order #1 dated March 16, 2022.

According to the procedural schedule approved at the prehearing conference, on March 11, 2022, OCA, I&E and OSBA served their direct testimony. Both the Company and East Whiteland Township served rebuttal testimony on March 18, 2022. I&E, OSBA, and OCA served surrebuttal testimony on March 25, 2022.

On March 22, 2022, one public input hearing was held telephonically. Six people presented on-the-record statements.

On March 31, 2022, the evidentiary hearing was held in this matter. The parties waived cross-examination of all witnesses and moved to have their pre-served testimony and exhibits entered into the record. As there were no objections, all documents and exhibits were entered into the record at the time of the hearing. At the time of the hearing, I requested that the parties who challenged the valuation of the East Whiteland Township wastewater assets to provide the Excel spreadsheets used to calculate those valuations. Aqua and OCA provided the spreadsheets from their respective experts on the same date and I provided the parties time to file objections to Aqua's spreadsheets (no later than April 4, 2022) because it did not appear that they were a prior part of the record.

On April 4, 2022, I issued a Briefing Order which outlined the briefing schedule and expectations that were discussed at the time of the hearing. No party submitted any objections to Aqua's Late Filed Spreadsheets.

On April 6, 2022, the parties provided a common outline for the Main Briefs.

Main Briefs were filed on April 8, 2022. Aqua, East Whiteland Township, I&E, OCA and OSBA filed briefs in this matter. Mr. Gage did not file a brief.

Reply Briefs were filed on April 15, 2022. Aqua, I&E, OCA and OSBA filed Reply Briefs. East Whiteland Township and Mr. Gage did not file a Reply Brief. On the same date, Aqua, I&E, OCA, OSBA and East Whiteland Township filed Joint Stipulations which covered certain issues if the Commission approved the Application that the parties agreed to as conditions of the approval.

The record closed on April 15, 2022, when the Reply Briefs were filed.

III. FINDINGS OF FACT

Parties

1. Aqua Pennsylvania Wastewater, Inc. is a certificated provider of wastewater service, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua St. No. 1 at 8-9 and Aqua Exhibit No. 1, Application ¶ 7.
2. Aqua operates 39 wastewater treatment plants throughout the Commonwealth of Pennsylvania serving approximately 45,000 customers in Chester and several other Pennsylvania Counties. Aqua St. No. 2 at 4-5.
3. Aqua operates 24 wastewater systems in its Southeast Division that are in proximity to East Whiteland Township. Aqua St. No. 2 at 5.
4. Aqua is a subsidiary of Aqua Pennsylvania, Inc. (Aqua PA). Aqua PA is the second largest investor-owned water utility in the Commonwealth of Pennsylvania, providing service to 488,000 water and wastewater customers. Aqua PA is a subsidiary of Essential Utilities, Inc. (Essential). Aqua St. No. 1 at 7.

5. East Whiteland Township is a duly organized and validly existing Pennsylvania township of the Second Class. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 7.

6. East Whiteland Township owns and operates a municipal sanitary wastewater collection system which provides sanitary wastewater service to 3,895 customers in East Whiteland Township, Chester County. Aqua Exhibit No. 1, Application ¶ 8 and Aqua St. No. 1 at 8.

7. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters and enforcing compliance with the Code and Commission Regulations and Orders. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Procedural Order entered Aug. 11, 2011). I&E's analysis in this proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interests of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1 p. 1.

8. OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

9. OSBA is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

Asset Purchase Agreement

10. Aqua and Township are parties to an Asset Purchase Agreement dated January 8, 2021 (Agreement). Aqua Exhibit 1, Application ¶ 5 and ¶ 21; *see also* Aqua Exhibit No. 1, Application Exhibit B.

11. The negotiated purchase price, which is based on an arms' length negotiation, is Fifty-Four Million Nine Hundred Thirty Thousand Dollars (\$54,930,000). Aqua and

East Whiteland are not affiliated with each other. Aqua Exhibit No. 1, Application ¶ 21 and ¶ 22 and Aqua St. No. 1 at 10.

12. Aqua will use short-term credit lines to fund the transaction. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. Aqua St. No. 1 at 11; *see also* Aqua Exhibit No. 1, Application ¶ 23.

Assets Being Transferred

13. The wastewater system assets to be transferred are the “Acquired Assets” and have the meaning specified in Section 2.01 of the Agreement. The Acquired 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. Aqua Exhibit No. 1, Application ¶ 24.

14. Acquired Assets also include the twenty-two contracts listed in Paragraph 25 of the Application to which Township is a party (Assigned Contracts).

15. Acquired Assets also include all Authorizations and Permits of or held by the Township (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 4.12 of the Agreement. Aqua Exhibit No. 1, Application ¶ 26.

16. “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, spray irrigation system associated with the Malvern Hunt WWTP, contracts that are not Assigned Contracts, cash and cash equivalents and the assets, properties and rights set forth in Schedule 2.02(h) of the Agreement. Aqua Exhibit No. 1, Application ¶ 27.

17. “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. Aqua Exhibit No. 1, Application ¶ 28.

SECTIONS 1102 AND 1103 APPROVALS

FITNESS

Legal Fitness

18. Aqua is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania. There are no pending legal proceedings challenging Aqua’s ability to provide safe and adequate service to customers. Aqua St. No. 1 at 10.

Financial Fitness

19. Aqua is a Class A, Pennsylvania wastewater utility with total net utility plant assets of \$350 million and annual revenues of \$32 million. Aqua St. No. 1 at 9. As a subsidiary of Aqua PA, Aqua has access to all of Aqua PA's financing capabilities. Aqua St. No. 1 at 10-11.

20. Aqua PA is a Class A water utility and the largest subsidiary of Essential, with total net utility plant assets of \$4.3 billion and annual revenues of \$509 million in 2020. In 2020, Aqua PA had operating income of approximately \$261 million and net income of \$187 million. Aqua PA's cash flow from operations were \$231 million in 2020. Aqua St. No. 1 at 10.

21. Aqua PA has a Standard and Poor’s Rating of A and has approximately \$1.825 billion in outstanding long-term debt at a weighted average interest rate of approximately

4.03%. Aqua PA also has a \$100 million short-term credit facility and access to equity capital as a subsidiary of Essential. Aqua St. No. 1 at 10-11.

22. Aqua will finance the acquisition of the East Whiteland wastewater system using the existing short-term credit lines. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating. Aqua St. No. 1 at 11.

Technical and Managerial Fitness

23. Management, customer service, regulatory compliance, engineering, financial and ancillary services will be provided seamlessly from the Southeastern Division Office in Bryn Mawr. Aqua plans to hire three additional operators to address the day-to-day operations of the East Whiteland system; however, these operators may be used in other Aqua systems in the area. Aqua St. No. 2 at 15-16; *see also* Aqua Exhibit No. 1, Application ¶ 42 and ¶ 49.

24. Aqua has 27 wastewater operators, many holding dual water and wastewater certifications, which may be called upon to assist in the operation of the system. Aqua St. No. 2 at 16. Aqua and Aqua PA have acquired many wastewater and water systems in the last three decades. Aqua St. No. 2 at 17.

25. Aqua strives to ensure that its treatment, collection, conveyance and pumping systems provide continuous, safe and reliable service. It has worked with the Commission and statutory advocates to acquire and improve troubled wastewater systems – the Washington Park Wastewater System, for example, Docket No. A-230550F2000. Aqua was appointed receiver for the North Heidelberg Sewer Company in March 2018 serving 274 customers. Aqua St. No. 2 at 17-18.

26. Aqua is in good standing with Pennsylvania Department of Environmental Protection (DEP). Aqua Exhibit No. 1, Application ¶ 45.

27. Aqua is not aware of any current environmental issues for the East Whiteland system. Aqua St. No. 2 at 13-14. The Township's 2019 Chapter 94 Report indicates that the system, however, did experience capacity related by-passing, Sanitary Sewer Overflows (SSOs) or surcharging during the 2019 reporting year. Aqua St. No. 2-R at 3. The Report also indicates that there is inflow and infiltration to be addressed within the system. Aqua St. No. 2-R at 3.

AFFIRMATIVE PUBLIC BENEFITS

28. As proposed, East Whiteland Township will receive \$54.93 million or 64% more than the net book value of the system. OCA St. 2 at 9.

29. The net book value of the Township's assets is \$33.4 million, which does not reflect an offset for contributed plant or capital. OCA St. 2 at 9.

30. Aqua anticipates spending \$16.92 million for capital improvements to the East Whiteland system during the next 10 years. OCA St. 2 at 6.

31. Aqua calculates that the acquisition would create an annual revenue deficiency of \$5.011 million that will be recovered from either East Whiteland customers, Aqua's existing customers, or both. OCA St. 2 at 3; Aqua St. 1, App. A.

32. Aqua estimates that recovering 50% of the East Whiteland revenue deficiency from East Whiteland's customers and 50% from Aqua wastewater customers would increase its wastewater customers' monthly rates by \$4.62 or 4.67%. OCA St. 2 at 3; Aqua St. 1, App. A.

33. Aqua also provides a calculation of an assignment to its water customers under Section 1311(c) and, under that scenario, the existing Aqua water customers would be

allocated about 87.61% of the \$2,505,500 revenue deficiency and subsidize 44% of the total revenue deficiency for East Whiteland. OCA St. 2 at 3; Aqua St. 1, App. A.

34. This would result in an estimated increase of \$0.33 per month or 0.41% for existing residential water customers. OCA St. 2 at 3; Aqua St. 1, App. A.

35. The Application includes a three-year rate freeze for Township customers in its application. OCA St. 2 at 4.

36. During the first three years post-acquisition, Aqua proposes to freeze rates for Township customers and continue to charge East Whiteland customers their present sewer rate of approximately \$33 per month. APA, ¶ 7.03(a); OCA St. 2 at 3.

37. At the conclusion of the rate freeze, Aqua projects that East Whiteland rates would need to be increased by an additional \$77.64 per month, or by 132.93%, if the entire revenue deficiency is applied to East Whiteland rates. OCA St. 2 at 3.

38. East Whiteland customers will experience significant rate increases if the system is acquired by Aqua. See Aqua St. 1, App. A.

39. Even if East Whiteland customers bear only 50% of the revenue requirement related to the Aqua-proposed ratemaking rate base, East Whiteland customers would see rates increased by 66.47%. See Aqua St. 1, App. A.

40. If the rate freeze extends beyond Aqua's next base rate proceeding, the East Whiteland rates will fall behind the increased rates for Aqua's existing water and wastewater customers, further exacerbating the amount of the subsidy going forward. OCA St. 2 at 4.

41. To catch up, Township customers will see higher rate increases than currently forecasted in order to move towards the rates of the main rate zone and their cost of service. OCA St. 2 at 5-6.

42. There has been no showing that rates would become more affordable in the long-term due to economies of scale. OCA St. 2 at 13.

43. The Company has not provided any showing of cost reductions or efficiencies that will be produced by the acquisition of the East Whiteland customers. OCA St. 2 at 8.

44. Aqua estimates capital investments in the East Whiteland system over 10 years, on a per customer basis, are lower than Aqua's and will decrease the future per customer cost of capital investments for Aqua from \$5,111 per customer to \$5,050, or by \$61. OCA St. 2 at 8.

45. For existing Aqua customers, this decrease in the future per customer cost of capital investments is small (\$61 over an entire decade) and fully negated by the rate increase of \$554.40 that Aqua projects for its wastewater customers for the same period. OCA St. 2 at 8.

46. For East Whiteland customers, acquisition means their per customer costs for capital investment will increase from \$4,344 to \$5,050 or by \$706. OCA St. 2 at 8.

47. Aqua calculates that the East Whiteland rate base per equivalent dwelling unit (EDU) is greater than the Aqua rate base per EDU. Aqua St. 1 at 17.

48. The cost of ownership is higher if the East Whiteland Township system is acquired by Aqua because those costs include nearly \$4 million for return to Aqua shareholders. OCA St. 2 at 8.

49. There is no cost of equity for East Whiteland Township as its cost of capital is limited to repaying debts at a lower interest rate (about 3.7%). OCA St. 2 at 8.

50. Aqua is required to pay taxes, whereas East Whiteland Township is not. OCA St. 2 at 9.

51. Sewer problems during normal business hours can be directed to the Township's sewer department directly, while outside of normal business hours the police department will direct calls to the Township's sewer department on-call staff. OCA St. 2 at 10.

52. The Township's system has the capacity to meet the demands of current and future customers. See Aqua St. 2 at 14; OCA St. 2 at 14.

53. The Township's system did not have any sanitary system overflows in 2020, and is not currently under a Corrective Action Plan or Connection Management Plan with DEP. See Aqua St. 2 at 14; OCA St. 2 at 14.

54. The Township can complete any necessary improvements and upgrades given that it has cash and cash equivalents exceeding \$29 million. OCA St. 2 at 6.

55. In the year 2020 alone, the Sewer Fund had an increase to cash and cash equivalents of more than \$500,000. OCA St. 2 at 6; Aqua Exh. J2 at 42.

56. The Township could make necessary improvements and upgrades to the system, equal to what Aqua has proposed. OCA St. 2 at 6.

57. If the East Whiteland rates increase to Aqua's current rate zone 1 rates, Township customers would see their rates go up by more than 60%. OCA St. 2 at 11.

58. The current monthly bill for an average Aqua residential wastewater customer using 3,020 gallons per month with a \$31 customer charge is \$53.95 (\$31 + (\$7.60*3.02)). Aqua Exh. I1 at 2; Aqua Tariff Sewer-Pa.P.U.C. No. 2, at 8.1 (rate zone 1).

59. Aqua has requested to increase its rates effective May 2022. Pa. PUC v. Aqua Pennsylvania Wastewater, Inc., Docket No. R-2021-3027386.

IV. PUBLIC INPUT HEARING

At the time of the prehearing conference, there was one customer protest that had been filed. However, there were multiple letters in opposition filed with the Secretary's Bureau and OCA indicated that there was public interest in the case. Based on the above, I determined there was sufficient public interest in Aqua's Application to acquire the East Whiteland Township wastewater system. Accordingly, one public input hearing was held telephonically during which six people offered testimony:

<u>Date/Time</u>	<u>Witnesses Testifying</u>
<u>Tuesday, March 22, 2022</u> <i>6:00 p.m.</i>	6

Julie Frissora testified that she is a water customer of Aqua. Ms. Frissora testified that she was concerned that her rates would increase due to the purchase of East Whiteland Township's wastewater assets. Ms. Frissora testified that she has received notice that her rates as an Aqua water customer would be affected by the purchase and the Company has already made approximately \$180 million worth of purchases of this kind. Ms. Frissora noted that East Whiteland Township's assets are already regionalized because the sewage is treated at the Valley Forge Sewer Authority.¹

¹ Tr. 45-47.

Stephen Gilbert testified that he is a customer of East Whiteland Township wastewater and Aqua for water service. Mr. Gilbert indicated that the East Whiteland Township system has operated without issues for decades and that the ratepayer were not asked if they wanted to sell the system. He is also concerned that rates will increase because of the purchase.²

Maria Elena Arranz testified that she is an Aqua water customer. She stated that she is concerned about rate increases and noted that Aqua is also moving to acquire the wastewater system of Willistown Township, where she lives and notes that she would have rate increases for both water and wastewater.³

Joseph Fasano also testified that he is both a customer of East Whiteland Township and Aqua. Mr. Fasano stated that if the acquisition goes through then customers will be billed monthly instead of quarterly which will allow for the collection of additional service fees. He noted that service fees for average usage are approximately \$22 per month or 44 percent of the total charges.⁴

Richard Gage testified that he is an Aqua water customer. Mr. Gage filed a formal Protest in this matter. Mr. Gage indicated that he is opposed to the acquisition of the East Whiteland Township wastewater assets. He stated that he agrees with the concerns of the other persons who testified at the public input hearing. He also noted that he disagrees that Aqua provided safe and reliable service to its customers and that he has had numerous problems with their water service over the years.⁵

² Tr. 50-52.

³ Tr. 54-55.

⁴ Tr. 58-59.

⁵ Tr. 63-71.

Colleen Nettle testified that she is an Aqua water customer and that she is opposed to the acquisition of East Whiteland Township wastewater assets. She agreed with the testimony of the other persons who testified at the public input hearing.⁶

V. STIPULATION OF ACTIVE PARTIES

Aqua, I&E, OCA, OSBA, Mr. Gage, and East Whiteland Township entered into a stipulation regarding certain issues if the Commission approves Aqua's acquisition of the Township's wastewater collection system and grants Aqua the right to begin to offer, render, furnish or supply wastewater service in the areas served by EWT. The stipulation included the following provisions.⁷

Tariff:

Aqua included proposed schedule of rates tariff pages with its Application. No party presented testimony in opposition to the proposed tariff pages.

Stipulated Resolution:

The pro forma tariff submitted with the Application, 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.

Easements and Other Property Rights

I&E recommended that the Commission require Aqua and EWT to (1) Identify all missing easements, including rights of way; (2) Take any and all actions to obtain the missing easements and rights of way so that they may be conveyed to Aqua at closing; and (3) EWT should bear all costs and expenses for obtaining the missing easements and rights of way. I&E also recommended that for situations beyond EWT's control where it is unable to transfer certain missing easements or other property rights at closing, Aqua and EWT may proceed to

⁶ Tr. 74-76.

⁷ See Stipulation, pp. 2-6.

closing provided that an escrow account is established of an appropriate portion of the purchase price to ensure the Township obtains any remaining missing easements or other property rights post-closing and delivers them to Aqua.

Stipulated Resolution

Aqua and the Township 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.

Legal Fees

Aqua anticipates that transaction and closing costs will be approximately \$308,300 including the Company’s UVE fees and proposed that the exact closing costs will be determined at closing.

Stipulated Resolution

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 EWT and specify amounts expended by Aqua on behalf of the Township. I&E, OCA and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.

Cost of Service Study (“COSS”)

I&E and OCA recommended that, in its next base rate case, Aqua provide a separate cost of service study for the EWT system.

Stipulated Resolution

In its first base rate case filing that includes the EWT system assets, Aqua will:

- a. Include a COSS that removes all costs and revenues associated with the operation of the EWT system; and
- b. Include a separate COSS for the EWT system.

These studies are in addition to any form of COSS directed by the Commission's final order in the Company's base rate case filing at Docket Nos. R-2021-3027385 and R-2021-3027386.

EWT Rates, Rate Freeze and Rate Stabilization

I&E, OCA and OSBA challenged the three-year rate freeze in Section 7.03 of the APA. I&E and OCA also contended that the rate freeze is a Section 1329 rate stabilization plan.

Stipulated Resolution

- a. The current average EWT residential rate is \$33.33 per month based on one equivalent dwelling unit ("EDU"). As set forth in the notice sent to EWT customers in this proceeding (Application Exhibit I2), Aqua provided a non-binding, estimated incremental rate effect of the proposed rate base addition on EWT wastewater customers of 132.93%.
- b. The Stipulating Parties acknowledge that the Commission retains ultimate authority to set rates including, but not limited to, the authority to allocate revenues to the EWT customers that are in excess of the restrictions contained in Section 7.03 of the Asset Purchase Agreement.
- c. Aqua and EWT agree that, at the time of Aqua's first base rate case that includes the EWT system, Aqua may propose an effective date for new rates for EWT wastewater customers that is different from the effective date of new rates for other customers, consistent with the terms of Section 7.03 of the Asset Purchase Agreement. All parties reserve their rights to address Aqua's proposal.
- d. If Aqua proposes to freeze EWT rates beyond the effective date of new rates in Aqua's first base rate case that includes the EWT system assets, (1) Aqua

shall propose a separate rate for EWT customers in its tariff that reflects the continuation of EWT's existing rates through the end of the rate freeze period, and (2) Aqua's compliance proof of revenue will be calculated using the new rate otherwise applicable to EWT customers at the conclusion of Aqua's base rate case, not EWT's frozen rate, such that existing ratepayers are not required to fund the revenue deficiency related to the rate freeze. Once the contractual rate freeze term expires, the customers acquired through the acquisition of the EWT system shall immediately become subject to the new rate applicable to EWT customers, as determined in Aqua's first base rate case that includes the EWT system assets.

- e. In the first base rate proceeding filed by Aqua that includes EWT's wastewater system assets, Aqua shall propose to move the EWT system to its full cost of service, based on a separate cost of service study for EWT's system; provided, however, that Aqua will not be obligated to propose EWT wastewater rates in excess of Aqua's proposed Rate Zone 1 system-average rates. The Stipulating Parties acknowledge, however, that Aqua may agree to rates other than those proposed for EWT customers in the context of a settlement of the base rate case. OCA, I&E, OSBA and EWT 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 EWT customers of the rate filing and the level of increase, if any, resulting from this provision.
- f. Aqua will send a welcome letter to EWT Wastewater customers within 30 days following Closing which will include information regarding the conversion to monthly billing for their sewer service.

Long Term Infrastructure Improvement Plan ("LTIP")

Aqua and OCA agreed that Aqua must file and receive approval of an amended LTIP that includes the EWT system prior to charging the Distribution System Improvement Charge ("DSIC") to EWT customers. OCA further recommended that any EWT improvement projects reflected in the amended LTIP

should be in addition to, and not reprioritize existing capital projects.

Stipulated Resolution:

- a. If Aqua proposes to modify its LTIP to include the EWT wastewater system, the projects added for EWT will be in addition to those that Aqua plans for its existing systems.
- b. In LTIPs or Annual Asset Optimization Plans that include the EWT 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.
- c. Upon approval of the Commission of a modification to Aqua's LTIP that includes the EWT wastewater system, Aqua shall be permitted to apply the DSIC to the EWT wastewater system prior to the first base rate case in which the EWT assets are incorporated into rate base.
- d. If Aqua is not already applying the DSIC to the EWT wastewater system, it will do so when rates for those customers are implemented in the first base rate proceeding that includes the EWT system assets.

Allowance for Funds Used During Construction ("AFUDC"), Deferral of Depreciation and Transaction Costs

OCA recommended that, if approved, the acquisition should be conditioned on a requirement that claims for AFUDC and deferred depreciation be made no later than Aqua's next base rate case.

Stipulated Resolution:

- a. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, will be addressed in Aqua's first base rate case which includes EWT wastewater system assets.

- b. Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, the Stipulating Parties 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. The pro forma tariff submitted with the Application, 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.

Section 507 and 2102 Approvals

Aqua asked the Commission to approve, if necessary, its acquisition agreement with EWT and the assignment of 22 contracts with municipalities under Section 507 of the Code and also to approve, under Section 2101 of the Code, the assignment of EWT's rights and responsibilities under an Agreement between Aqua Resources, an affiliate of Aqua, and various municipalities for conveyance of wastewater through the Valley Creek Trunk Line.

Stipulated Resolution

The Stipulating Parties agree that the Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. Section 507 and Section 2102.⁸

VI. LEGAL STANDARDS

In this case, the Applicant requests approval of: (1) the acquisition, by Aqua, of the wastewater system assets of East Whiteland Township; and (2) an order approving the acquisition that includes the ratemaking rate base of the East Whiteland Township wastewater system assets pursuant to Section 1329(c)(2) of the Code.⁹ Accordingly, Aqua has the burden of proof.¹⁰

⁸ OCA does not join in this paragraph but does not oppose it.

⁹ 66 Pa.C.S. § 1329(c)(2).

¹⁰ 66 Pa.C.S. § 332.

The acquisition of the East Whiteland Township facilities by Aqua requires the approval of the Commission as evidenced by its issuance of a certificate of public convenience.¹¹ Before the Commission may issue a certificate of public convenience it must find that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.¹² That is, Aqua must demonstrate that the proposed acquisition will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.”¹³ To determine that the acquisition or merger is in the public interest, our Supreme Court has explained:

[T]he 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.[¹⁴]

Even where the Commission finds sufficient public benefit to find that the granting of a certificate of public convenience is necessary or proper for the service, accommodation, convenience, or safety of the public without imposing any conditions, the Commission, nevertheless, has discretion to impose conditions which it deems to be just and reasonable. In an acquisition context, when the Commission considers the public interest it is contemplated that the benefits and detriments of the acquisition will be measured as they impact on all affected parties and not merely on one particular group or geographic subdivision.¹⁵

¹¹ 66 Pa.C.S. § 1102(a)(3).

¹² 66 Pa.C.S. § 1103(a).

¹³ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (Pa. 1972).

¹⁴ *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*); also see, 66 Pa.C.S. §1103(a).

¹⁵ *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674 (Pa. Cmwlth. 1984).

Additionally, pursuant to Section 1103 of the Code, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from East Whiteland Township.¹⁶ As a certificated public utility, there is a rebuttable presumption that Aqua possesses the requisite fitness.^{17, 18}

Section 1329 sets forth a procedure which permits a public utility to utilize fair market valuation for ratemaking purposes instead of the original cost of construction of the acquired facilities minus the accumulated depreciation. Section 1329 addresses the valuation of the assets of municipally-owned or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. The acquiring utility is authorized to collect a distribution system improvement charge (DSIC). Section 1329 also enables a public utility or other acquiring entity's post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. In sum, Section 1329 helps mitigate the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority.

If the parties agree to the Section 1329 process, an "acquiring public utility" and the seller of the municipal system each select a utility valuation expert (UVE) from a list of such experts established and maintained by the Commission. The selected UVEs perform independent appraisals of the system to establish its fair market value. Also, the acquiring public utility and the seller select one licensed engineer to conduct an assessment of the tangible assets of the seller which is incorporated into the valuations of the UVEs.

After receiving the valuations, the acquiring public utility must apply for a certificate of public convenience under Section 1102 of the Code and include the following as an attachment to the Section 1102 application: copies of the UVE appraisals; the agreed purchase price; the

¹⁶ *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A. 2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958).

¹⁷ *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308 (Pa. Cmwlth. 1992).

¹⁸ 66 Pa.C.S. § 1329 (Section 1329).

ratemaking rate base; the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base; and a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable.¹⁹ For applications involving an acquiring public entity under Section 1329(d)(1), the Commission has a six-month deadline for issuing a determination.

Aqua also seeks approval of an asset purchase agreement (APA) and other connected agreements pursuant to Section 507 of the Public Utility Code.²⁰ Section 507 requires that contracts between a public utility and a municipal corporation (except for contracts to furnish service at regular tariff rates) be filed with the Commission at least 30 days before the effective date of the contract. The Commission approves the contract by issuing a certificate of filing, unless it decides to institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. Should the Commission initiate proceedings, the contract or agreement is not effective until the Commission grants its approval. Section 2102 of the Code provides, inter alia, that no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the Commission.²¹ Section 507 is a filing requirement and does not require service of the filing on any potentially interested parties.

¹⁹ 66 Pa.C.S. §§ 1102, 1329(d)(1).

²⁰ 66 Pa.C.S. § 507.

²¹ 66 Pa.C.S. § 2102.

VII. DISCUSSION

A. **Sections 1102 and 1103 Approvals**

1. Fitness

No party disputed Aqua's technical, legal and financial fitness to render wastewater service. Indeed, as a certificated public utility, it enjoys a presumption of fitness.²² I&E, OSBA and OCA did not put forth any arguments that Aqua did not meet the fitness requirements under Sections 1102 and 1103 of the Public Utility Code. 66 Pa.C.S. §§ 1102, 1103. The findings of fact support this conclusion.

Aqua is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania. There are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service to customers.²³

Further, Aqua is a Class A, Pennsylvania wastewater utility with total net utility plant assets of \$350 million and annual revenues of \$32 million.²⁴ As a subsidiary of Aqua PA, Aqua has access to all of Aqua PA's financing capabilities.²⁵ Aqua PA is a Class A water utility and the largest subsidiary of Essential, with total net utility plant assets of \$4.3 billion and annual revenues of \$509 million in 2020. In 2020, Aqua PA had operating income of approximately \$261 million and net income of \$187 million. Aqua PA's cash flow from operations were \$231 million in 2020.²⁶ Aqua PA has a Standard and Poor's Rating of A and

²² *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, (Pa. Cmwlth. 1992). Similarly, Aqua enjoys a presumption of a continuing public need for service because public utility service is already being provided in the service territory. *Re Glenn Yeager et al.*, 49 Pa.P.U.C. 138 (1975). No party has contested the need for wastewater service in East Whiteland Township, Chester County.

²³ Aqua St. No. 1 at 10.

²⁴ Aqua St. No. 1 at 9.

²⁵ Aqua St. No. 1 at 10-11.

²⁶ Aqua St. No. 1 at 10.

has approximately \$1.825 billion in outstanding long-term debt at a weighted average interest rate of approximately 4.03%. Aqua PA also has a \$100 million short-term credit facility and access to equity capital as a subsidiary of Essential.²⁷

Moreover, Aqua will finance the acquisition of the East Whiteland wastewater system using existing short-term credit lines. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating.²⁸

Lastly, management, customer service, regulatory compliance, engineering, financial and ancillary services will be provided seamlessly from the Southeastern Division Office in Bryn Mawr. Aqua plans to hire three additional operators to address the day-to-day operations of the East Whiteland system; however, these operators may be used in other Aqua systems in the area.²⁹ Aqua has 27 wastewater operators, many holding dual water and wastewater certifications, which may be called upon to assist in the operation of the system.³⁰ Aqua and Aqua PA have acquired many wastewater and water systems in the last three decades.³¹ Aqua strives to ensure that its treatment, collection, conveyance and pumping systems provide continuous, safe and reliable service. Aqua has worked with the Commission and statutory advocates to acquire and improve troubled wastewater systems – the Washington Park Wastewater System, for example, Docket No. A-230550F2000. Aqua was appointed receiver for the North Heidelberg Sewer Company in March 2018 serving 274 customers.³² Aqua is in good standing with DEP.³³

²⁷ Aqua St. No. 1 at 10-11.

²⁸ Aqua St. No. 1 at 11.

²⁹ Aqua St. No. 2 at 15-16; *see also* Aqua Exhibit No. 1, Application ¶ 42 and ¶ 49.

³⁰ Aqua St. No. 2 at 16.

³¹ Aqua St. No. 2 at 17.

³² Aqua St. No. 2 at 17-18.

³³ Aqua Exhibit No. 1, Application ¶ 45.

2. Affirmative Public Benefits

a. Aqua PA's Position

Aqua asserts that the proposed transaction will provide many public benefits to both existing Aqua customers and the acquired East Whiteland customers.

Aqua's Record of Acquiring and Improving Wastewater Systems

Aqua notes that it provides utility service to approximately 45,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua states that it has the managerial, technical, and financial resources to continue to operate, maintain and improve the East Whiteland system.³⁴ Aqua Main Brief at 10.

Aqua also notes that it has acquired 16 wastewater systems over the past 10 years.³⁵ Many of these systems required significant investment to correct service and environmental issues. The inherent diversification of systems and customers provides a foundation of stability in that, they are all not requiring major capital investments at the same time. Thus, spreading the financial impacts over the long-term operations of the acquiring utility as a whole.³⁶ Aqua Main Brief at 10.

Aqua contends that if it were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers' rates and service. Both types of systems, viable and non-viable, are consistent with the Commission's policy statements regarding acquisitions. The acquisition of the East

³⁴ Aqua St. No. 1 at 14 and Aqua Exhibit No. 1, Application ¶52.d.

³⁵ New Garden, East Norriton (2020); Cheltenham (2019); East Bradford, Limerick (2018); Tobyhanna, Avon Grove (2017); Emlenton, Honeycroft (2016); Bunker Hill (2015); Penn Township (2014); Treasure Lake (2013); and Sage Hill, Kidder Township, Beech Mountain, Village at Valley Forge (2012).

³⁶ Aqua St. No. 1 at 14.

Whiteland System, a viable system, will continue to address the Commission’s supported policy of consolidation and regionalization.³⁷ Aqua Main Brief at 10-11.

Consolidation/Regionalization

Aqua maintains that the Commission has a long-standing record of support for consolidation/regionalization of water/wastewater systems. The Commission understands that in doing so, the utility industry will have a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits. The Commission has previously stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry.”³⁸ Aqua Main Brief at 11.

Aqua states that “. . . these types of acquisitions will also enhance the quality of ratepayers’ daily lives, promote community economic development, and provide environmental enhancements.”³⁹ Ultimately, Aqua maintains that the benefits of consolidation/regionalization inure to customers both existing and acquired. The proposed transaction with East Whiteland is no exception to these principles. Aqua PA indicates that it has successfully acquired numerous water/wastewater utilities over approximately 135 years of operation.⁴⁰ Aqua Main Brief at 11.

Benefits to East Whiteland Customers

Further, Aqua argues that the Township customers will become part of a larger scale, efficiently operated, wastewater utility. The Company is already the owner and operator of the East Whiteland water system. As such, the Company has key operations in nearby service

³⁷ Aqua St. No. 1 at 14-15.

³⁸ Aqua St. No. 1 at 13 and Aqua Exhibit No. 1, Application ¶52.c.

³⁹ Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, at 18 (Final Order entered Aug. 17, 2006).

⁴⁰ Aqua St. No. 1 at 13-14 and Aqua Exhibit No. 1, Application ¶52.c.

areas and will be able to assume the operations of the East Whiteland wastewater system, fold it into a larger scale, efficiently operated wastewater utility, which over time will likely yield further operating efficiencies and improve long term viability as envisioned in the Commission policy statement.⁴¹ Aqua Main Brief at 11.

The operational overlap between water and wastewater utility operations will provide the opportunity for better coordination of capital activities throughout the East Whiteland service area. Utility activities that involve road openings and restoration can be better aligned to result in less disturbance to the Township as the Company executes capital improvements.⁴² Aqua Main Brief at 12.

The Company is projecting less operation and maintenance (O&M) costs under Company ownership that will likely be realized through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing, and legal expenses, among others. Specifically, referencing the East Whiteland 2020 Financial Statements, Sewer Fund Operating Expenses were approximately \$2.8 million, whereas the Company is projecting annual expenses of approximately \$2.0 million.⁴³ Aqua Main Brief at 12.

Aqua estimates that it will invest approximately \$16.92 million in the system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Customers will benefit greatly from the Company's technical experience and fitness in deploying resources towards capital improvements.⁴⁴ Aqua Main Brief at 12.

⁴¹ Aqua St. No. 1 at 15-16.

⁴² Aqua St. No. 1 at 16.

⁴³ Aqua St. No. 1 at 16.

⁴⁴ Aqua St. No. 2 at 10-11 and Aqua St. No. 1 at 16.

Enhanced Customer Service for East Whiteland Township Customers

Aqua provides customer service through a toll-free number from 8:00 AM-5:00 PM EST for regular business. The same toll-free number houses the Company's 24/7/365 emergency response.⁴⁵ Aqua Main Brief at 12.

East Whiteland customers will benefit from expanded bill payment options including Aqua's online payment and payment by text message, as well as the ability to sign up for notifications and alerts to be sent to their email address or phone, allowing them to stay informed of events impacting their service. East Whiteland customers will also have access to Aqua's customer assistance programs.⁴⁶ Aqua Main Brief at 12.

Enhanced Customer Billing and Payment Protections

Aqua has procedures in place under Chapter 14 of the Code that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Aqua has customer care teams available to help resolve service and billing issues and has an established process/procedure for addressing formal and informal complaints.⁴⁷ Aqua Main Brief at 12.

Benefits to Existing Aqua Customers

The acquisition of the System will be an approximate 9% increase in Aqua's customer base. By virtue of the Company's larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers.⁴⁸ Aqua Main Brief at 12.

⁴⁵ Aqua St. No. 1 at 17.

⁴⁶ Aqua St. No. 1 at 17-18.

⁴⁷ Aqua St. No. 1 at 18.

⁴⁸ Aqua St. No. 1 at 17 and Aqua Exhibit No. 1, Application ¶56.f.

Based on Township records, East Whiteland serves approximately 7,658 EDUs,⁴⁹ which equates to approximately \$7,200 purchase price per EDU and is almost equal to the Company's existing rate base per EDU, projected at approximately \$7,000. Given the similarities in purchase price per connection to rate base per EDU, combined with meaningful lower operating cost, the East Whiteland system characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition.⁵⁰ Aqua Main Brief at 12-13.

No Adverse Effect

The acquisition will not have an adverse effect on the service provided to existing customers of Aqua.⁵¹ The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of East Whiteland.⁵² Consistent with Section 1329(d)(1)(v), Aqua will implement the existing Township base rates upon closing. Existing miscellaneous fees and charges in the Company's tariff, however, will be applied.⁵³ Aqua Main Brief at 13.

East Whiteland Township Wants to Sell Its Wastewater System

The Township has agreed to sell its system. The public interest will be served by allowing Aqua to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The East Whiteland system will benefit

⁴⁹ The Township renders the majority of its sewer rents on a per EDU basis and its system is comprised of single-family homes, but also multi-unit structures. Aqua St. No. 1 at 17.

⁵⁰ Aqua St. No. 1 at 17.

⁵¹ Aqua Exhibit No. 1, Application ¶56.a.

⁵² Aqua Exhibit No. 1, Application ¶56.g.

⁵³ Aqua St. No. 1 at 11-12.

from the support of wastewater professionals throughout Aqua’s organization.⁵⁴ Aqua Main Brief at 13.

Potential Rate Impact – Hypothetical Rate Impact Is Outweighed by Affirmative Public benefit

The current average monthly bill of an East Whiteland residential wastewater customer is approximately \$33.33 per month at one EDU. Applying 100% of the revenue deficiency of \$5,011,000 associated with the proposed rate base addition to the existing East Whiteland rates, the average East Whiteland bill would increase by approximately \$77.64 per month or an 132.93% increase.⁵⁵ The calculation and percentage increase is, however, a point in time estimate reflective of revenue deficiency upon year one ownership. While there is an expectation of increased rates going forward, Aqua is not proposing any change in rates to East Whiteland customers as part of this transaction. Proposed rate changes for East Whiteland customers will be presented in an Aqua post-Closing base rate proceeding. Aqua Main Brief at 13-14.

Hypothetical Rate Impact Is Outweighed by Other Positive Benefits

Aqua notes that while there is an expectation of increased rates as a result of the transaction, this is not unexpected. Aqua asserts that the positive factors from the transaction outweigh the possibility of increased rates.⁵⁶ Aqua Main Brief at 14.

Further, Aqua states that the rates of the East Whiteland system are reasonably expected to increase, either on their own, or whether acquired by the Company, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base. This benefits both existing and acquired customers alike.⁵⁷ Aqua points to Schedule –

⁵⁴ Aqua Exhibit No. 1, Application ¶ 56.b.

⁵⁵ Aqua St. No. 1 at 18-19 and Appendix A.

⁵⁶ Aqua St. No. 1 at 19.

⁵⁷ Aqua St. No. 1 at 19.

(WCP – R.1) to Mr. Packer’s rebuttal testimony which demonstrates this reality looking over the past five years of capital investments on the Company’s wastewater systems.⁵⁸ Aqua Main Brief at 14.

Aqua also asserts that the East Whiteland system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition. Given this fact and the fact that there are meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time.⁵⁹ Aqua Main Brief at 14.

As stated above, Aqua contends that the transaction furthers a recognized legislative objective and is consistent with the Commission’s consolidation/regionalization policy. There are demonstrated positive benefits, both tangible and intangible, identified above, that are likely realized as a result of the transaction, including capital improvements, expense efficiencies, and economies of scale – such benefits outweigh any potential increase in rates.⁶⁰ Aqua Main Brief at 14-15.

In sum, Aqua argues that the hypothetical impact on rates is outweighed by the recognized benefits of its 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. In addition, the Township will receive the benefit of sale proceeds of \$54,930,000. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission’s determination of substantial affirmative benefits. Aqua Main Brief at 15.

⁵⁸ Aqua St. No. 1-R at 16.

⁵⁹ Aqua St. No. 1 at 18-19.

⁶⁰ Aqua St. No. 1 at 19.

b. East Whiteland Township's Position

The Township argues that Aqua has presented substantial and, more significantly, sufficient evidence in support of the affirmative public benefits of the Proposed Transaction, including but not limited to, the following: (1) Aqua's sufficient operational expertise and enhanced ability to raise capital to improve the System in the short and long-term; and (2) the Proposed Transaction will promote the Commission's policy of regionalization of wastewater system assets that allows for increased maintenance, upgrades, and expansion of public wastewater facilities.⁶¹ East Whiteland Township Main Brief at 9.

Moreover, as detailed in the testimony of John Nagel, Township Manager, the Township indicates that the proposed transaction will provide specific additional benefits for East Whiteland and its customers.⁶² For example, Mr. Nagel states the following affirmative benefits of the proposed transaction for the Township and its residents generally: (1) the Township can exit the sanitary sewer business and instead focus its resources on other core government functions while ensuring the safe, reliable, and professional service at affordable rates for its residents; (2) the Township's customers will benefit from the expertise and experience of a regulated public utility like Aqua; and (3) the proceeds from the sale will enable East Whiteland to reduce its debt and fund various other important projects in the Township that would otherwise require an increase of taxes for its residents.⁶³ East Whiteland Township Main Brief at 9-10.

The Township admits that it currently provides adequate service to its residents; however, this safe and reliable service to its customers monopolizes a significant amount of time and attention of the Township's already lean staff. For example, the team dedicated to sewer service in East Whiteland is comprised of the Director of Public Works and three full-time

⁶¹ See, e.g., Aqua St. No. 1, pp. 15-19.

⁶² See generally Aqua Statement No. 3 pp. 10-12; Aqua Statement No. 3-R.

⁶³ See Aqua Statement No. 3-R, p. 3.

employees.⁶⁴ More significantly, the Director of Public Works currently dedicates approximately 50% of his time operating and managing the System – leaving only half of his time to tend to his various other responsibilities as Director of Public Works such as maintenance of East Whiteland’s roads, parks, and traffic.⁶⁵ Thus, if the Proposed Transaction is approved, the Director and the full-time employees could focus their time and efforts on other core functions in the Public Works Department while simultaneously ensuring East Whiteland customers continue to enjoy safe and reliable service under Aqua’s ownership.⁶⁶ East Whiteland Township Main Brief at 10.

c. OCA’s Position

OCA acknowledges that the Township’s balance sheet will benefit from the proposed transaction. As proposed, East Whiteland Township will receive \$54.93 million or 64% more than the net book value⁶⁷ of the system.⁶⁸ Aqua anticipates spending \$16.92 million for capital improvements to the East Whiteland system during the next 10 years.⁶⁹ OCA Main Brief at 11.

However, OCA contends that there is no support for concluding that existing Aqua wastewater and water customers will receive any net benefit or that the East Whiteland customers will see a net benefit after the East Whiteland rate freeze ends. To the contrary, the record shows that customers will experience substantial harm that is outweighed by any

⁶⁴ *Id.* at pp. 3–4.

⁶⁵ *Id.*

⁶⁶ *See id.* at p. 4.

⁶⁷ Book value under Section 1329 does not reflect an offset for contributed plant or capital as is done in ratemaking. 66 Pa. C.S. § 1329(d)(5). The net book value of the Township’s assets is \$33.4 million. OCA St. 2 at 9.

⁶⁸ OCA St. 2 at 9.

⁶⁹ *Id.* at 6.

purported benefits. As such, Aqua has failed to demonstrate the necessary public benefits required for approval of this Application. OCA Main Brief at 11.

Harm to Existing Aqua Wastewater and Water Customers

Aqua claims that its existing wastewater customers will benefit from the proposed transaction because, at some unknown time in the future, customers will benefit from regionalization and consolidation.⁷⁰ OCA maintains that Aqua has not provided any evidence that shows when, or if, existing customers will see the benefit that Aqua claims will arrive at some time in the future. OCA notes that what is certain is that the acquisition will increase rates for customers in the short term. OCA Main Brief at 11.

OCA also maintains that the proposed ratemaking rate base and planned system investment in conjunction with the current level of East Whiteland rates means the system will not generate revenue sufficient to cover its cost of service under Aqua ownership. OCA states that the acquisition would create an annual revenue deficiency of \$5.011 million that will be recovered from either Aqua's existing customers, East Whiteland customers, or both.⁷¹ As Aqua has structured the transaction, OCA notes that its existing water customers are also at risk for supporting the costs of acquiring the East Whiteland customers because Aqua will seek approval under 66 Pa. C.S. § 1311(c) to allocate a portion of its wastewater revenue requirement to the combined water and wastewater customer base. OCA asserts that every other Aqua water customer already must pay for wastewater disposal either to another provider, to Aqua, or with their individual wastewater system. OCA Main Brief at 11-12.

OCA indicates that recovering 50% of the East Whiteland revenue deficiency from Aqua wastewater customers, as Aqua proposes, would increase its wastewater customers' monthly rates by \$4.62 or 4.67%.⁷² OCA also notes that a calculation, provided by Aqua, of an

⁷⁰ OCA St. 2 at 2.

⁷¹ OCA St. 2 at 8-9; Aqua St. 1, App. A.

⁷² *Id.*

assignment to its water customers under Section 1311(c) and under that scenario, the existing water customers would be allocated about 44% of the total East Whiteland revenue deficiency.⁷³ OCA asserts that this would result in an estimated increase of \$0.33 per month or 0.41% for existing residential water customers.⁷⁴ OCA Main Brief at 12.

Regarding the certain rate increase to existing Aqua customers, OCA states that this proposed transaction is not occurring in a vacuum. Aqua has other Section 1329 acquisitions pending or approved since its last base rate case, like *Willistown Township*, *Lower Makefield Township* and *DELCORA*, for which it also projects revenue requirement deficiencies that would put upward pressure on rates for acquired or existing customers in the short term and push the timing for customers to realize any benefits from cost sharing further into the future.⁷⁵ OCA Main Brief at 12.

Further, OCA states that Aqua proposes a three-year rate freeze for Township customers in its application.⁷⁶ Under Section 1329, a rate stabilization plan is defined as “[a] plan that will hold rates constant or phase rates in over a period of time after the next base rate case.” 66 Pa.C.S. § 1329. OCA maintains that it is not known whether Aqua will file a base rate case within three years of closing. OCA contends that Aqua’s proposal to freeze rates for the East Whiteland customers for three years after closing is, thus, a rate stabilization plan because it has the potential to hold rates constant or phase rates in over a period of time after its next base rate case. OCA Main Brief at 12-13.

⁷³ *Id.*

⁷⁴ Here, Aqua assumed that, instead of Aqua wastewater customers paying \$2,505,000 of the revenue deficiency, about 88% of that amount would be shifted to Aqua water customers. OCA St. 2 at 3. The actual percentage of any shift of revenue requirement from wastewater to water customers will be determined in the next rate case. As such, the rates for existing wastewater or water customers could be different than estimated. *Id.* at 3-4. *See also* Aqua St. 1, App. A.

⁷⁵ *See Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3027268 (*Willistown Township*); *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3024267 (*Lower Makefield Township*); *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2019-3015173 (*DELCORA*).

⁷⁶ OCA St. 2 at 4.

OCA argues that the Commission has required that “if a rate stabilization is proposed, the applicant will be required to provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan.”⁷⁷ OCA asserts that no such plan was provided in this proceeding. OCA maintains that this has the effect of depriving the Commission and the parties the ability to fully evaluate the benefits and harms of the proposed transaction.⁷⁸ OCA notes that Aqua has provided this type of information in a previous Section 1329 application where a rate freeze was proposed.⁷⁹ Its failure to do so in this proceeding was not adequately explained by Aqua. OCA Main Brief at 13.

Whether or not the Commission finds that the rate freeze is a rate stabilization plan, OCA argues that the Commission should not approve a rate freeze that attempts to remove the Commission’s discretion in setting rates and should reject any rate freeze for East Whiteland customers that extends beyond the effective date of new rates in Aqua’s next base rate case. OCA asserts that this would help to protect existing Aqua customers from covering the revenue deficiency.⁸⁰ If the East Whiteland acquisition is approved, existing Aqua customers would already be at risk to cover the revenue requirement required to keep East Whiteland rates lower than cost. OCA maintains that existing Aqua customers should not also have to subsidize the revenue requirement required to keep East Whiteland rates lower than the new rates established for East Whiteland in a base rate case. OCA Main Brief at 13-14.

For all these reasons, based on the testimony of its witness, Mr. Eastman, OCA concludes that the proposed transaction is neither fair to customers nor consistent with principles of cost-based ratemaking. The terms of the transaction would harm Aqua’s existing customers

⁷⁷ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, at 27 (Final Implementation Order entered Oct. 27, 2016).

⁷⁸ OCA St. 2 at 5.

⁷⁹ *Id.*

⁸⁰ OCA St. 2 at 4.

and provide nothing other than speculative benefit at some unknown point in the future. OCA Main Brief at 14.

Harm to East Whiteland Customers

OCA argues that the record also demonstrates that East Whiteland customers will not affirmatively benefit from the proposed transaction. At the conclusion of the rate freeze, OCA asserts that, based on Aqua's projections, those rates would need to be increased by an additional \$77.64 per month, or by 132.93%, if the entire revenue deficiency is applied to East Whiteland rates.⁸¹ Thus, OCA contends that East Whiteland customers will experience significant rate increases if the system is acquired by Aqua. Even if East Whiteland customers bear only 50% of the revenue requirement related to the Aqua-proposed ratemaking rate base, East Whiteland customers would see rates increased by 66.47%.⁸² In that scenario, Aqua's existing wastewater and water customers would subsidize the remaining revenue requirement. OCA Main Brief at 14.

OCA noted that if the rate freeze extends beyond Aqua's next base rate proceeding, the East Whiteland rates will fall behind the increased rates for Aqua's existing water and wastewater customers, further exacerbating the amount of the subsidy going forward.⁸³ To catch up, Township customers will see higher rate increases than currently forecasted in order to move towards the rates of the main rate zone and their cost of service.⁸⁴ OCA Main Brief at 14-15.

OCA indicates that there has also been public opposition to the acquisition, as evidenced by the individuals who provided testimony at the public input hearing as to the harms that may occur. For example, Mr. Gilbert testified that East Whiteland has provided safe and

⁸¹ OCA St. 2 at 3.

⁸² *See* Aqua St. 1, App. A.

⁸³ OCA St. 2 at 4.

⁸⁴ *Id.* at 5-6.

adequate service for decades and that ratepayers were not asked if the wastewater system should be sold.⁸⁵ Mr. Fasano similarly expressed his concern that Aqua would significantly increase the cost of sewer management over time for East Whiteland homeowners.⁸⁶ Ms. Frissora, Ms. Arranz, and Mr. Gage testified as to their concerns as Aqua water customers that their water rates will increase because of the sale of East Whiteland’s wastewater system to Aqua.⁸⁷ Additionally, Ms. Frissora noted that East Whiteland is already regionalized as sewage from East Whiteland’s collection system is already treated at the Valley Forge Sewer Authority regional treatment plant.⁸⁸ OCA Main Brief at 15.

The Adverse Impacts on Aqua’s Existing Customers and the East Whiteland Customers Outweigh the Claimed Benefits of the Proposed Transaction

Although Aqua references economies of scale, OCA argues that the Company has not provided any showing of cost reductions or efficiencies that will be produced by the acquisition of the East Whiteland customers.⁸⁹ Additionally, the evidence of record shows that both Aqua’s existing customers and East Whiteland’s customers will likely experience rate increases if the proposed transaction is approved. Economies of scale exist “when a firm’s average cost curve decreases as output increases.”⁹⁰ This can also be understood as a reduction in cost per unit of output as that output increases.⁹¹ Generally, for utilities, acquisitions produce economies of scale because fixed costs can be spread to more customers. However, since East Whiteland customers will not even be covering their full cost of ownership at the proposed \$54.93 million rate base, OCA contends that they will not share the costs of infrastructure

⁸⁵ Tr. 50-52.

⁸⁶ Tr. 59.

⁸⁷ Tr. 45-48, 55, 65.

⁸⁸ Tr. 47.

⁸⁹ OCA St. 2 at 8.

⁹⁰ OCA St. 2 at 7 *citing* Charles F. Phillips, Jr., *The Regulation of Public Utilities: Theory and Practice*, p. 52.

⁹¹ OCA St. 2 at 7.

improvements for other parts of Aqua’s service territory until some unknown, speculative date in the future. Additionally, there has been no showing that economies of scale would make rates more affordable in the long-term.⁹² To the contrary, OCA notes that Aqua witness Packer calculates that the East Whiteland rate base per EDU is greater than the Aqua rate base per EDU.⁹³ Specifically, Aqua would pay \$200 more per EDU than its average cost per EDU of \$7,000, which means no reduction in total costs for providing service. OCA Main Brief at 16.

OCA also notes that, based on Aqua’s claims, the acquisition will reduce the cost of capital investment; however, closer review invalidates this claim. Aqua estimates that capital investments in the East Whiteland system over 10 years, on a per customer basis, will be lower than Aqua’s and will decrease the future per customer cost of capital investments for Aqua from \$5,111 per customer to \$5,050, or by \$61.⁹⁴ For existing Aqua customers, OCA asserts that this decrease is small (\$61 over an entire decade) and fully negated by the rate increase of \$554.40 that Aqua projects for its wastewater customers for the same period. For East Whiteland customers, OCA argues that it means the per customer costs for capital investment will increase from \$4,344 to \$5,050 or by \$706.⁹⁵ Again, either the existing Aqua customers or the acquired Township customers, or both, will pay increased rates because of this transaction. OCA Main Brief at 17.

Additionally, OCA contends, based on Aqua’s statements, the current operating expenses of the Township are approximately \$2.8 million, and the Company projects operating expenses of \$2.0 million (\$800,000 less) under Aqua ownership.⁹⁶ Viewed in isolation, this is a positive result for Township customers, but when coupled with the fact that the overall increase to costs under Aqua’s ownership that will produce an annual revenue deficiency of \$5.011

⁹² OCA St. 2 at 13.

⁹³ Aqua St. 1 at 17.

⁹⁴ *Id.* (citing Aqua response to OCA-IV-2).

⁹⁵ OCA St. 2 at 8.

⁹⁶ OCA St. 2 at 8.

million and increase rates for the acquired East Whiteland or existing Aqua customers, this positive result is completely negated.⁹⁷ OCA Main Brief at 17.

Further, OCA argues that the cost of ownership is significantly higher if the East Whiteland Township system is acquired by Aqua because those costs include nearly \$4 million for return to Aqua shareholders.⁹⁸ There is no cost of equity for East Whiteland Township as its cost of capital is limited to repaying debts at a much lower interest rate (about 3.7%).⁹⁹ Aqua is required to pay taxes, whereas East Whiteland Township is not.¹⁰⁰ Additionally, the acquisition of East Whiteland is a Section 1329 acquisition, and as such, the entirety of the purchase price can be incorporated into Aqua's rate base without recognizing offsets for contributed plant or capital, as is done in traditional ratemaking. OCA asserts that there is no evidence of substantial cost savings or quantified efficiencies for this proposed acquisition that would offset Aqua's higher cost of ownership. In combination with all the other adverse financial impacts of the proposed acquisition, the known harms outweigh the claimed long-term and unsubstantiated benefits. OCA Main Brief at 17-18.

Moreover, OCA maintains that the evidence does not support the short-term benefits, such as Aqua's claim that East Whiteland customers will benefit from Aqua's 24/7/365 customer service is also not supported by record evidence. Sewer problems during normal business hours can be directed to the sewer department directly, while outside of normal business hours the police department will direct calls to the sewer department on-call staff.¹⁰¹ Again, at the public input hearing there was no indication that ratepayers had any concerns with East Whiteland's customer service. OCA notes that the Township already has the ability to address emergencies. OCA Main Brief at 18.

⁹⁷ *Id.* at 9.

⁹⁸ OCA St. 2 at 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ OCA St. 2 at 10.

Aqua also argues that Chapter 14 of the Public Utility Code is an affirmative public benefit of the transaction.¹⁰² While the OCA acknowledges that protections provided by the Public Utility Code are a benefit, standing alone they are not sufficient to outweigh the harms. If the existence of Chapter 14 of the Public Utility Code were enough to satisfy the *City of York* standard for affirmative public benefits, any acquisition by an entity regulated by the Public Utility Commission would meet the standard.¹⁰³ OCA Main Brief at 18.

Further, OCA asserts that the Township's testimony on the alleged affirmative public benefits also does not meet the standards under Sections 1102 and 1103. 66 Pa.C.S. §§ 1102, 1103. OCA maintains that the proposed transaction, however, must affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. It must reflect benefits to the ratepayers of Pennsylvania that are substantial, and the various risks and harms that could result from the acquisition must be mitigated. There is no evidence that the sale would provide an affirmative public benefit by ensuring that East Whiteland customers have safe and reliable service any more so than they have under the current East Whiteland Township ownership. East Whiteland is not a troubled system. Indeed, based on the information provided by Aqua and the Township, the current service provided by the Township is safe and reliable.¹⁰⁴ OCA Main Brief at 19.

OCA notes that Aqua acknowledged the Township's system has the capacity to meet the demands of current and future customers, does not have any sanitary system overflows in 2020, and is not currently under a Corrective Action Plan or Connection Management Plan with DEP.¹⁰⁵ OCA contends that the Township is already providing service that is at least as safe and reliable as the service that Aqua provides, and the continuation of safe and reliable service is not an affirmative public benefit. OCA Main Brief at 19.

¹⁰² OCA St. 2 at 10.

¹⁰³ *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (Pa. 1972) (*City of York*).

¹⁰⁴ *See* East Whiteland St. 3R at 3; OCA St. 2SR at 9.

¹⁰⁵ *See* Aqua St. 2 at 14; OCA St. 2 at 14.

OCA maintains that the Township is financially fit to complete any necessary improvements and upgrades given that it has cash and cash equivalents exceeding \$29 million.¹⁰⁶ In the year 2020 alone, the Sewer Fund had an increase to cash and cash equivalents of more than \$500,000.¹⁰⁷ While Aqua currently estimates that it will invest approximately \$16.92 million in capital improvements over the next 10 years, OCA notes that the evidence regarding East Whiteland's financial position indicates the Township could make necessary improvements and upgrades to the system, equal to what Aqua has proposed, and it would not present an unreasonable financial burden for the Township.¹⁰⁸ Thus, OCA asserts there is no showing that acquisition by Aqua would improve current or future service received by East Whiteland customers or that the Township is not currently or would not in the future be able to continue its current level of service. OCA Main Brief at 19-20.

In summary, OCA argues that the record does not bear out Aqua's contention that East Whiteland customers will receive a benefit that outweighs the detriment of dramatically increased rates. OCA states that the proposed transaction would produce a revenue deficiency that would increase East Whiteland rates by more than 132% if applied to those customers, more than double their current sewer rates.¹⁰⁹ To the extent that East Whiteland rates are not increased to cover their cost of service, then existing Aqua customers will make up the difference in the rates they pay for service.¹¹⁰ Even if the East Whiteland customers were to simply experience rate increases that would bring them close to Aqua's current rate zone 1 rates, Township customers would see their rates go up by more than 60%.¹¹¹ OCA asserts that rates and overall

¹⁰⁶ OCA St. 2 at 6.

¹⁰⁷ *Id.*; Aqua Exh. J2 at 42.

¹⁰⁸ OCA St. 2 at 6.

¹⁰⁹ OCA St. 2 at 13.

¹¹⁰ *Id.*

¹¹¹ The current monthly bill for an average Aqua residential wastewater customer using 3,020 gallons per month (Aqua Exhibit I1, pg. 2) with a \$31 customer charge is \$53.95 (\$31 + (\$7.60*3.02)) (Aqua Tariff Sewer-Pa P.U.C. No. 2, pg. 8.1 (rate zone 1)). Aqua has requested to increase those rates effective May 2022 (R-2021-3027386). *See* OCA St. 2 at 11.

costs for existing Aqua customers would also increase.¹¹² Moreover, OCA contends that the evidence shows that East Whiteland customers will receive no meaningful change in service from the transfer of ownership. OCA Main Brief at 20.

d. Other Parties' Positions

OSBA took no position on whether there was an affirmative public benefit to the acquisition. OSBA Main Brief at 13.

In order to ensure that the benefits will materialize as alleged, I&E submits that any approval of Aqua's Application should be subject to certain conditions. In order to ensure that the transaction is in the public interest, and consistent with the Code, I&E recommends that it only be approved subject to the following three conditions:

- (1) Aqua should provide a separate cost of service study for the EWT system.¹¹³
- (2) Aqua and EWT's proposal for a three-year rate freeze should be rejected.¹¹⁴
- (3) Aqua should provide proof that it has identified all missing easements including public rights-of-way and other property rights, taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing, and assumed all costs and expenses for obtaining and conveying the missing easements and other property rights. However, if the above cannot occur, in order to close the transaction without the missing easements or other property rights, Aqua and EWT must establish an escrow account of an appropriate dollar amount from the purchase price to be used to obtain any post-closing

¹¹² OCA St. 2 at 11.

¹¹³ I&E St. No. 2, pp. 15-19.

¹¹⁴ I&E St. No. 2, pp. 14-15.

transfers of the easements and other real property rights.^[115]

Absent adoption of I&E's conditions, I&E asserts that there is no assurance that the alleged affirmative public benefits will materialize. I&E Main Brief at 7, 9-10.

Based on the Stipulation, I&E indicated that its concerns were resolved. Pursuant to the Stipulation, at the time of its next base rate case that includes EWT's wastewater system assets, Aqua has agreed to provide a cost of service study that removes all costs and revenues associated with the operations of the EWT system. At the same time, Aqua also agrees to provide a separate cost of service study for the EWT system.¹¹⁶ I&E fully supports this term which is consistent with protecting the public interest. I&E Reply Brief at 5.

I&E submits that the cost of service study will protect Aqua, its customers, the parties to this proceeding and the Commission. Specifically, the results of the cost of service study that Aqua has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit Aqua's ratepayers as well, because if Aqua's Application is approved, Aqua's existing customers will bear the rate impact. However, 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. Finally, 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-class and intra-class) and assist in determining the appropriate amount of revenue requirement that is reasonable to be shifted from the wastewater customers to the water customers. I&E Reply Brief at 5-6.

Per the Stipulation, however, in the first base rate case that includes EWT's wastewater assets, Aqua has agreed that it will propose to move the EWT system to its cost of

¹¹⁵ I&E St. No. 1, pp. 4-6.

¹¹⁶ Stipulation, at 3-4.

service so long as that cost of service does not exceed Rate Zone 1 rates. However, in the context of a settlement, in the next base rate case, Aqua may agree to rates other than those proposed for EWT customers. The stipulating parties reserve their rights to fully address this proposal, and to make other rate proposals in the base rate case. In addition, the Stipulation acknowledges that the Commission retains its full ratemaking authority. This term is within the public interest because it complies with Section 1329, but it also preserves I&E's ability to address rates in the future while correctly recognizing the Commission's ultimate authority to set rates. I&E Reply Brief at 6.

B. Recommendation

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service, and certain property transfers by public utilities or their affiliated interests. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. 66 Pa.C.S. §§ 1102, 1103. 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.” 66 Pa.C.S. § 1103(a). These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.

In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. *New Garden Twp. v. Pa. Pub. Util. Comm'n*, 244 A.3d 851 (Pa.Cmwlth. 2020) (quoting *Middletown Twp. V Pa. Pub. Util. Comm'n*, 482 A.2d 674, 682 (Pa.Cmwlth. 1984)). To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.

An applicant for a certificate of public convenience must demonstrate that it is technically, financially, and legally fit to own and operate the acquired public utility assets. *Seaboard Tank Lines v. Pa. Pub. Util. Comm'n*, 502 A.2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm'n*, 138 A.2d 240 (Pa. Super. 1958). An applicant for a certificate of public convenience must also demonstrate that the transaction will “affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972).

In *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007) (*Popowsky*), the Supreme Court explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

Popowsky further explains that demonstration of affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. 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, moreover, can, under Section 1103(a), impose conditions that it deems just and reasonable.

The Pennsylvania Supreme Court addressed the Commission’s review under Section 1103 in *City of York*, where it considered a proposed merger of three telephone companies. The Court specifically cited Section 203, the predecessor statute to Section 1103, and set forth the standard as follows:

Section [1103] of the Public Utility Law requires that those seeking approval of a utility merger demonstrate more than the mere absence of any adverse effect upon the public. Section [1103] requires that the proponents of a merger demonstrate that the merger will affirmatively promote the “service,

accommodation, convenience, or safety of the public” in some substantial way.^{117]}

OCA explains that, to approve the application, the Commission must determine that there are affirmative public benefits. As an integral part of that review the Commission must fully consider the harms of this acquisition on three specific groups with respect to the traditional *City of York* affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers, who may potentially bear costs of the East Whiteland Township system, if the Commission permits costs to be shifted under 66 Pa.C.S. § 1311(c), and (3) the existing East Whiteland Township customers who will be transferred to Aqua.¹¹⁸

This standard was addressed by the Commonwealth Court in *Middletown Township v. Pa. Pub. Util. Comm’n*, 482 A.2d 674 (Pa. Cmwlth. 1984) (*Middletown*). In *Middletown*, to acquire part of the facilities of the Newtown Artesian Water Company, Middletown Township filed an application for a Certificate of Public Convenience. The Commission concluded that the acquisition would be a benefit to some customers but would have an adverse impact on other customers and, thus, it denied the application. The Township appealed and, in hearing the appeal, the Commonwealth Court considered the *City of York* standard applicable through Section 1102 and Section 1103. The *Middletown* Court affirmed the Commission’s decision rejecting the application stating, *inter alia*, that “when the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely on one particular group or geographic subdivision as might have occurred in this case.”¹¹⁹ The Court added that “the primary objective of the law in this area is to serve the interests of the public.”¹²⁰

¹¹⁷ 295 A.2d at 828 (quoted in *Application of Pa.-Am. Water Co.*, Docket No. A-2016-2537209, at 11 (Opinion and Order entered Oct. 19, 2016)).

¹¹⁸ OCA Main Brief at 10.

¹¹⁹ 482 A.2d at 682.

¹²⁰ *Id.*; see also *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (Pa. 2007).

An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction.¹²¹ To determine whether benefits meet this standard, the Commission may consider: “(1) the legal and technical fitness of the purchasing entity to provide service; (2) the public need for service; (3) the inadequacy of the existing service; and (4) any other relevant evidence.”¹²²

The Public Interest

Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. In its *Tentative Supplemental Implementation Order* entered September 20, 2018, at Docket No. M-2016-2543193, page 6, the Commission explained that:

[t]he development of water and wastewater service throughout the Commonwealth over the years has led to the creation of large numbers of geographically dispersed water and wastewater systems owned by municipal corporations or authorities. For these systems, sale to a larger, well-capitalized and well-run regulated public utility or entity can be prudent because it can facilitate necessary infrastructure improvements and access to capital markets, and, ultimately, it can ensure the long-term provision of safe, reliable service to customers at reasonable rates.

The Commission further explained at page 7 of that Order how, prior to Section 1329, Section 1311(b) hampered long-term consolidation:

[p]rior to the enactment of Section 1329, however, the Public Utility Code worked to discourage the acquisition of these systems because Section 1311(b) requires, for rate setting purposes, that the Commission value acquired property at the

¹²¹ *Application of CMV Sewage Co., Inc.*, Docket No. A-230056F2002 (Opinion and Order entered December 18, 2008) (CMV).

¹²² *Application of N. Heidelberg Water Co.*, Docket No. A-2009-211724 (Order entered August 2, 2010).

original cost of construction less accumulated depreciation, in short, at depreciated original cost.

To approve the application, the Commission must determine that there are affirmative public benefits. As an integral part of that review the Commission must fully consider the harms of this acquisition on three specific groups with respect to the traditional *City of York* affirmative public benefits test: (1) the existing Aqua wastewater customers, (2) the existing Aqua water customers, who may potentially bear costs of the East Whiteland system, if the Commission permits costs to be shifted under 66 Pa. C.S. § 1311(c), and (3) the existing East Whiteland Township customers who will be transferred to Aqua.

Fitness

As a certificated provider of utility service, Aqua's fitness is presumed. The Commission addressed the fitness criteria in *Re Perry Hassman*,¹²³ As to legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission regulations.¹²⁴ As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service.¹²⁵ As to technical/managerial fitness, Aqua must have sufficient staff, facilities and operating skills to provide the proposed service.¹²⁶

No substantial challenge was presented to the fitness of Aqua to provide the proposed service. In its Main Brief, Aqua outlined in detail the evidence to support its claim that Aqua has demonstrated that it possesses the legal, financial, technical, and managerial fitness to provide the service proposed in its Application.

¹²³ 55 PA.P.U.C. 661 (1982).

¹²⁴ *Hassman*.

¹²⁵ *Hassman*.

¹²⁶ *Hassman*.

Substantial Affirmative Public Benefits

As discussed by the Parties, many of the benefits identified by Aqua are generalizations associated with acquisitions and do not address the corresponding harm or potential harm to existing Aqua wastewater and water customers, and to the East Whiteland Township customers as a result of this particular acquisition.

The General Assembly has recognized that the sale of certain systems to larger, well-capitalized and well-run regulated public utilities can be prudent as it can ensure the long-term provision of safe, reliable service to customers at the reasonable rates.

To approve the application the Commission must determine that the proposed transaction benefits the public by affirmatively promoting the service, accommodation, convenience or safety of the public in some substantial way, after considering the harms of the acquisition on existing Aqua wastewater customers, the existing Aqua water customers who may potentially bear costs of the acquired system and the existing Township customers who would be transferred to Aqua.

Affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. The primary objective is to serve the interests of the public.

An acquisition provides an affirmative benefit if the benefits of the transaction, outweigh the adverse impacts of that transaction, considering the technical and legal fitness of the purchasing entity to provide service, the public need for service; the inadequacy of the existing service; and any other relevant evidence. Aqua asserts, as discussed above, that the proposed transaction will benefit both existing Aqua customers and the acquired East Whiteland Township customers. Aqua submits, among other things, that it has a record of acquiring and improving wastewater systems and the general benefit of consolidation and regionalization.

Aqua asserts benefits to East Whiteland Township customers include being a part of a larger scale, efficiently operated wastewater utility; benefits from the overlap between water

and wastewater utility operations; projected decrease in O&M costs under Company ownership; the potential estimated investment of approximately \$16.92 million in upgrades to the system over the next ten years; enhanced customer service through toll-free telephone number from 8 AM to 5 PM, for regular business and a 24/7/365 toll-free emergency response; online bill payment options including payment by text messages and the ability to receive alerts of events impacting customer service; access to Aqua's customer assistance programs; and procedures in place under Chapter 14 of the Code to address payment, termination, reconnecting, payment arrangement and complain procedures.

Aqua submits that the acquisition will not have an adverse effect on the service provided to existing Aqua customers and will not have any immediate impact on the rates of existing customers of Aqua or East Whiteland Township.

In order to determine if the proposed transaction provides a substantial affirmative benefit, it is necessary to consider the fitness of the purchasing entity to provide the service, the adequacy of the existing service and any other relevant evidence. The evidence in this proceeding clearly establishes the public need for the service and Aqua's fitness to provide the proposed service. In addition, the record evidence clearly establishes the adequacy of the existing service provided by the Township.

Accordingly, it is necessary, in determining the existence of affirmative public benefit, to consider the harms of the acquisition on existing Aqua water and wastewater customers as well as the existing East Whiteland Township customers who would be transferred to Aqua.

Harm to Existing Aqua Wastewater and Water Customers

At least in the short term, Aqua's existing water customers are at risk for supporting the costs of acquiring the East Whiteland Township customers in this transaction. Currently, all Aqua water customers already must pay for wastewater disposal either to another provider, to Aqua, or with their individual wastewater system.

Although Aqua characterizes the anticipated rate increase as hypothetical, a rate increase to existing Aqua customers, at least in the short term, is a certainty. Aqua has other Section 1329 acquisitions pending or approved since its last base rate case, such as *Willistown Township*, *Lower Makefield Township* and *DELCORA*, for which it also projects revenue requirement deficiencies that would likely result in increased rates for acquired or existing customers in the short term and delay any potential benefits to customers from cost sharing further into the future. This is particularly so, as Aqua has proposed a 3-year rate freeze for East Whiteland Township customers. As Aqua has confirmed that it is uncertain whether or not it will file a base rate case within three years of closing, the result is that Aqua customers are at risk to cover the revenue requirement required to keep East Whiteland Township's rates lower than cost for the first three years following the closing of this transaction.

Harm to East Whiteland Township Customers

There was public opposition to the acquisition presented at the public input hearings in this proceeding, as six Aqua or East Whiteland customers testified regarding the harms that would occur should Aqua acquire East Whiteland's system. Existing East Whiteland customers testified that the Township's sewer system is operating well and does not have any issues providing service to its existing customers. Aqua customers also testified that Aqua's service to water customers had not been adequate. East Whiteland Township acknowledged that it has the means to service its existing and future customers and complete needed upgrades in the future.

The Adverse Impacts on Aqua's Existing Customers and the East Whiteland Township Customers Outweigh the Benefits of the Proposed Transaction

As noted above, during the first three years post-acquisition, Aqua proposes to freeze rates for Township customers and continue to charge East Whiteland customers their present sewer rate of approximately \$33 per month. At the conclusion of the rate freeze, however, Aqua projects those rates would need to be increased by an additional \$77.64 per month, or by 132.93%, if the entire revenue deficiency is applied to East Whiteland rates. Thus, East Whiteland customers will experience significant rate increases if the system is acquired by

Aqua. Even if East Whiteland customers bear only 50% of the revenue requirement related to the Aqua-proposed ratemaking rate base, East Whiteland customers would see rates increased by 66.47%.

Aqua argues the potential rate impact is outweighed by other positive benefits explaining that, while there is an expectation of increased rates as a result of the transaction, the positive factors from the transaction outweigh the possibility of increased rates; while the rates of the East Whiteland system are reasonably expected to increase, either on their own, or whether acquired by the Company, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base; the East Whiteland system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition; and that the transaction furthers a recognized legislative objective and is consistent with the Commission's consolidation/regionalization policy.

The evidence in this case, however, does not establish that the purported benefits of acquiring the East Whiteland system outweigh the adverse impacts of the proposed acquisition. Although Aqua references economies of scale, the Company has not established the existence of net cost reductions or efficiencies that will be produced by the acquisition of the East Whiteland customers. Since East Whiteland customers will not even be covering their full cost of ownership at the proposed \$54.93 million rate base, they will not share the costs of infrastructure improvements for other parts of Aqua's service territory until some unknown, speculative date in the future. Additionally, there has been no showing that economies of scale would make rates more affordable in the long-term. To the contrary, Aqua witness Packer calculates that the East Whiteland rate base per EDU is greater than the Aqua rate base per EDU. Specifically, Aqua would pay \$200 more per EDU than its average cost per EDU of \$7,000, which means no reduction in total costs for providing service.

Further, Aqua estimates that capital investments in the East Whiteland system over 10 years, on a per customer basis, will be lower than Aqua's and will decrease the future per customer cost of capital investments for Aqua from \$5,111 per customer to \$5,050, or by \$61. For existing Aqua customers, this decrease is small (\$61 over an entire decade) and fully negated

by the rate increase of \$554.40 that Aqua projects for its wastewater customers for the same period. For East Whiteland customers, it means the per customer costs for capital investment will increase from \$4,344 to \$5,050 or by \$706. Again, either the existing Aqua customers or the acquired Township customers, or both, will pay increased rates because of this transaction.

The record evidence in this case fails to establish that the acquisition would create economies of scale. OCA established that East Whiteland customers will not even be covering their full cost of ownership at the proposed \$54.93 million rate base, and accordingly, will not share the costs of infrastructure improvements for other parts of Aqua's service territory. Additionally, there was no showing in this case that rates would become more affordable in the long-term due to economies of scale.¹²⁷

Although Aqua argued that its size has the potential to create opportunities for volume discounts and for sharing costs among customers outside of East Whiteland Township, Aqua did not establish that any such discounts will be offset by Aqua's much higher cost of capital. Aqua did not establish that there would be net efficiencies in costs to run the system through Aqua's acquisition.

In addition, although Aqua's provides 24/7/365 customer service, emergency contact number, and bill payment options, the Township already has the ability to address emergencies. In addition, no evidence was presented to establish that Township customers have any issues with their current billing and payments to the Township. Here, any advantages realized by Aqua's billing system and Chapter 14 services and protections are outweighed by the costs that ratepayers will bear based on the proposed ratemaking rate base.

The record evidence does not establish that the sale would provide an affirmative public benefit by ensuring that East Whiteland customers have safe and reliable service any more than they have under the current East Whiteland Township ownership. East Whiteland is not a troubled system and based on the information provided by Aqua and the Township, the current

¹²⁷ OCA Main Brief at 18; OCA St. No. 2 at 14.

service provided by the Township is safe and reliable. Aqua acknowledged the Township's system has the capacity to meet the demands of current and future customers, does not have any sanitary system overflows in 2020, and is not currently under a Corrective Action Plan or Connection Management Plan with DEP.

The evidence does not establish that the transaction will enable East Whiteland customers to receive a benefit that outweighs the detriment of the estimated increased rates. The evidence establishes that the Township is financially fit to complete any necessary improvements and upgrades given that it has cash and cash equivalents exceeding \$29 million. In the year 2020 alone, the Sewer Fund had an increase to cash and cash equivalents of more than \$500,000. While Aqua currently estimates that it will invest approximately \$16.92 million in capital improvements over the next 10 years, the evidence regarding East Whitefield's financial position indicates the Township could make necessary improvements and upgrades to the system, equal to what Aqua has proposed, and it would not present an unreasonable financial burden for the Township.¹²⁸

The Commission supports regionalization because, in many cases, the acquisition of smaller systems by larger systems may improve the long-term viability of the water and wastewater industry, or otherwise enhance ratepayers' daily lives and communities. However, in this particular instance, when evaluating the East Whiteland system and circumstances, the proposed acquisition detrimentally impacts wastewater customers in East Whiteland Township due to increased rates without providing any substantial or necessary benefit to the Township customers. Here, the proposed acquisition also increases costs for Aqua's current customers until and unless the East Whiteland customers' rates increase to cover the \$5.011 million revenue deficiency estimated by Aqua.

In addition to the discussion set forth above, OCA correctly argued that individualized analysis of every system proposed to be acquired under Section 1329 is not only in the public interest, but also necessary to ensure that each acquisition complies with the Public Utility Code, particularly Section 1102. Although Aqua established that it has the technical,

¹²⁸ OCA St. 2 at 6.

managerial and financial ability, to acquire and operate the Township system, that alone does not establish that the acquisition will further the public interest. For each transaction, the acquiring entity must show that benefits will substantially outweigh the harms, which was not established with respect to the circumstances presented regarding the acquisition of the East Whiteland system.

Volume Discounts and Sharing Costs

Although Aqua's size creates the potential for volume discounts and cost sharing, in this case, it was not established that Aqua's higher cost of capital would not offset those savings. Even though the current operating expenses of the Township are approximately \$2.8 million, and the Company projects operating expenses of \$2.0 million (\$800,000 less) under Aqua ownership, the fact that the overall increase to costs under Aqua's ownership that will produce an annual revenue deficiency of \$5.011 million and increase rates for the acquired East Whiteland or existing Aqua customers, completely negates this positive result.

Many of the benefits claimed by Aqua are general benefits anticipated by an acquisition like the one proposed of the East Whiteland system and were not supported by any specific evidence relative to this particular acquisition. In contrast, the detrimental rate impacts resulting from the ultimate ratemaking rate base approved in this case will be realized in the short term, and in the next rate case when the East Whiteland system is included in Aqua's rate base. Aqua estimates that the rates of a typical residential ratepayer in the Township could increase nearly 132.93% because of Aqua ownership including the revenue requirement for the proposed ratemaking rate base. If East Whiteland customers pay less, other Aqua customers will subsidize this transaction. Under East Whiteland ownership, the Township has the ability to make any necessary improvements to the system at a much more attractive financing cost than Aqua could obtain and the Township would not have to raise rates for an equity return on a \$54.93 million purchase price because the Township already owns the system. Moreover, Township rates do not include dividends for shareholders, depreciation expense, Pennsylvania sales tax, or Pennsylvania or Federal taxes on revenues. There is no cost of equity for East Whiteland Township as its cost of capital is limited to repaying debts at a much lower interest

rate (about 3.7%). Aqua's higher user rates are a detriment and harmful to users, not a public benefit.

In addition, Aqua has not established that it can improve on the Township's quality of service, operations, convenience or safety. Aqua can also terminate water service for customers that are not able to stay current with wastewater service payment terms, subject to Commission regulations and protections, a result that cannot occur under Township ownership of the wastewater system. The evidence also failed to establish that Aqua's operation of the sewer system will be safer than the Township's operations as no real difference was demonstrated regarding Aqua or the Township's ability to bring skilled experienced resources to the operation of the Township's sewer system.

Based upon the record evidence, Aqua has failed to establish that the sewer system under Aqua's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public. In addition, the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current Aqua water and wastewater customers or existing East Whiteland Township wastewater customers.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 1102 and 1329.

2. The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3).

3. Aqua Pennsylvania Wastewater, Inc. is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa.C.S. § 102.

4. Aqua Pennsylvania Wastewater, Inc. has the burden of proof to show that its proposed acquisition of the East Whiteland Township system is adequate, efficient, safe, and reasonable under Section 315(c). 66 Pa.C.S. § 315(c).

5. Aqua Pennsylvania Wastewater, Inc. has the burden of proof to show that its proposed purchase of the East Whiteland Township wastewater system would provide substantial affirmative benefits under Section 1102 of the Public Utility Code. 66 Pa.C.S. § 1102.

6. Aqua Pennsylvania Wastewater, Inc. has not established that the proposed transaction would provide the required substantial affirmative benefits to existing Aqua customers or to the acquired East Whiteland Township customers under Section 1102. 66 Pa.C.S. § 1102.

7. The Commission has the authority to grant a certificate of public convenience to a utility only when doing so is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

8. Aqua Pennsylvania Wastewater, Inc. has not established that the proposed transaction is necessary or proper for the service, accommodation, convenience, or safety of the public. 66 Pa.C.S. § 1103(a).

9. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

10. The burden of proving entitlement to a certificate is upon the applicant as it is the applicant that is seeking a proposed rule or order. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950) (*Se-Ling Hosiery*); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery*. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. *Id.*

11. Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application.

66 Pa.C.S. § 332(a).

12. To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

13. Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102, 1329 of the Code. 66 Pa.C.S. § 315(c).

14. Aqua Pennsylvania Wastewater, Inc. has not established that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102, 1329 of the Code. 66 Pa.C.S. §§ 507, 1102, 1103, 2102, 1329.

15. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. v. Pa.P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Com. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Comm., Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

16. A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

17. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa.C.S. § 1102.

18. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. Under these Sections, 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.” 66 Pa.C.S. §§ 1102-1103.

19. To establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825 (Pa. 1972).

20. Under Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from East Whiteland Township. *Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A. 2d 762 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. Pub. Util. Comm’n*, 138 A.2d 240 (Pa. Super. 1958).

21. In assessing Aqua’s Application, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

22. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa.C.S. § 1103(a).

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

determinations (including predictive ones informed by expert judgment) concerning certification matters. *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040 (Pa. 2007).

24. An existing provider of public utility service is presumed fit. *See Re Pa.-Am. Water Co.*, 85 Pa.P.U.C. 548 (1995). The burden of proof to rebut the presumption is on Protestants. *Re: Byerly*, 270 A. 2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. Pub. Util. Comm'n*, 293 A.2d 895 (Pa. Cmwlth. 1972).

25. For ratemaking purposes, when valuing water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction, the rate base of the municipal system being purchased is allowed to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. 66 Pa.C.S. § 1329.

26. 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. 66 Pa.C.S. § 507.

27. No contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the Commission. 66 Pa.C.S. § 2102.

IX. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. The Application filed by Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329, 507, and 2102 of the Pennsylvania Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Whiteland Township, Chester County, filed at Docket No. A-2021-3026132, be denied.

2. The docket at No. A-2021-3026132 be marked closed.

Date: May 10, 2022

/s/
Marta Guhl
Administrative Law Judge