



VIA E-FILING

November 5, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**RE: Comments of Aqua Pennsylvania, Inc.
Implementation of Section 1329 of the Public Utility Code
Tentative Supplemental Implementation Order
Docket No. M-2016-2543193**

Dear Secretary Chiavetta:

Enclosed please find the Comments of Aqua Pennsylvania, Inc. to the Pennsylvania Public Utility Commission's September 20, 2018 Tentative Supplemental Implementation Order concerning the implementation of Section 1329 of the Public Utility Code.

If you have any questions regarding this filing, please contact me at 610-645-1130.

Sincerely,

A handwritten signature in blue ink, appearing to read "Alex Stahl".

Alexander R. Stahl
Regulatory Counsel

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Implementation of Section 1329 of the : Docket No. M-2016-2543193
Public Utility Code :

Comments of
Aqua Pennsylvania, Inc.

Dated: November 5, 2018

with the Commission. As such, for applications to the Commission under Act 12, the Commission is now required to use fair market value in setting the ratemaking rate base. Aqua has completed three Fair Market Value Applications before the Commission.¹

The Commission convened informal workgroup sessions, which Aqua participated in, to receive input from interested parties concerning the process of Section 1329 applications and determine what improvements could be made. Aqua commends the Commission for its continued initiatives to make improvements to water and wastewater infrastructure in the Commonwealth, and appreciates the effort of the interested parties through the workgroup sessions. It is with this background that Aqua provides the following suggestions and clarifying comments for the Commission's consideration.

As a general matter, the Company agrees that the Commonwealth of Pennsylvania has a large number of geographically dispersed water and wastewater systems owned by municipal corporations or authorities, and that sales of these systems to well-run public utilities can be prudent. Public utilities, such as Aqua, can ensure necessary capital improvements to these systems through greater access to capital markets and ensure long-term provision of quality of service at reasonable rates.

In addition, the Company agrees that Section 1329 has sought to remove the roadblocks previously in place for the sale of municipal and authority owned systems. The Company agrees that no reasoned argument could be made that the assets of a municipal system have marginal or

¹ *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Section 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township and the New Garden Township Sewer Authority*, Docket No. A-2016-2580061 (Jun. 29, 2017); *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Limerick Township*, Docket No. A-2017-2605434 (Nov. 29, 2017); and *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of East Bradford Township*, Docket No. A-2018-3001582 (Sep. 20, 2018).

no value simply because the book value and the Commission’s traditional rate setting methodology would value them as such. Section 1329 allows for determining the fair market value of these systems through the average of Utility Valuation Experts (“UVE”) appraisals. The UVEs are independent experts approved as qualified by the Commission and their appraisals should be relied upon by the Commission in protecting the public interest.

The Company agrees with the Commission and stresses the need to find the appropriate balance between providing necessary information and avoiding turning Section 1329 proceedings into a base rate case filing, which was not the intention of Act 12.

II. COMMENTS TO THE TSIO

A. Checklist for Applications Requesting Section 1329 Approval

In the initial Final Implementation Order of Section 1329², the Commission established a checklist of information to be provided with applications filed under Section 1329. In the TSIO, the Commission included as Appendix A an updated checklist for Section 1329 applications, which provided formatting changes to the checklist along with reordering of certain checklist items. In addition, the updated checklist includes a number of revised items for interested parties’ review. Aqua will limit its comments to the specific revised checklist items.

Item 2: Verification form that is signed by an officer or authorized employee of the company, is dated and accurately references the case.

The Company agrees that an authorized employee of the Company may sign the verification form for the application.

Item 3: Certificate of Service indicating that a complete copy of the application with exhibits was served by registered or certified mail, return receipt requested, or by hand delivery, upon the statutory advocates (OCA, OSBA) and the Bureau of Investigation and Enforcement.

² *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Oct. 27, 2016).

The Company does not object to providing service via hand delivery as a courtesy to the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), and the Bureau of Investigation and Enforcement (“I&E”).

Item 4: Provide responses to Section 1329 Application Standard Data Requests.

The Company does not oppose this revised item as a checklist item, however, the Company provides comments to specific Standard Data Requests in Section II.D., below. Additionally, the Company requests that the Commission make clear, as it stated in the TSIO, that a rejection or acceptance of an application shall not hinge on a substantive review of the Standard Data Requests.

Item 7: State the total fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation, i.e., the valuation service agreement and all associated invoices, supporting the subject fee amounts.

The Company does not oppose this revised item. Utilities should submit the fees and supporting documentation for the fee amounts. Supporting documentation that includes the service agreements and invoices should be sufficient.

Item 8: Provide a verification statement that one utility valuation expert was selected by the buyer and the other utility valuation expert was selected by the seller.

The Company does not oppose this revised item, however, the Company would clarify that this statement may be made in the application verified by an officer or authorized employee of the Company. Additionally, the Company, in its previous Section 1329 applications has included verifications from the utility valuation experts (“UVE”) that state each was selected by either buyer or seller.

Item 9: Utility Valuation Expert Verification Statements:

- a. Buyer Utility Valuation Expert has no affiliation with the buyer or seller
- b. Buyer Utility Valuation Expert determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of the report employing the cost, market, and income approaches.
- c. Buyer Utility Valuation Expert applied applicable jurisdictional exceptions to the submitted appraisal.
- d. Seller Utility Valuation Expert has no affiliation with the buyer or seller.
- e. Seller Utility Valuation Expert determined fair market value in compliance with the most recent edition of the Uniform Standards of Professional Appraisal Practice as of the date of the report employing the cost, market, and income approaches.
- f. Seller Utility Valuation Expert applied applicable jurisdictional exceptions to the submitted appraisal.

The Company does not oppose this revised item, however, the Company would clarify that the above items may be incorporated into two overall verifications from buyer's and seller's respective UVEs, rather than a separate verification statement for each item listed in Item 9.

Item 10: Estimated or, if available, actual transaction and closing costs incurred by the buyer that will be included in its rate base.

The Company does not oppose this revised item. Final transaction and closing costs will not be known at the time of the application filing date, and as such, the Company will estimate its transaction and closing costs to the best of its ability.

Item 13: Provide seller direct testimony supporting the application including seller UVE direct testimony.

The Company does not oppose this revised item. The Company may choose to file the seller's direct testimony and the seller's UVE direct testimony along with the Company's application for administrative ease.

Item 14: Provide buyer direct testimony supporting the application including buyer UVE direct testimony.

The Company does not oppose this revised item.

Item 17: Customers:

- a. State the seller's actual number of customers by class and quantify the related consumption or gallons treated in the current calendar year and future number of connections anticipated for the next 5 years and, if available, the next 10 years.

The Company does not oppose this revised item. Municipalities Act 537 planning processes and Chapter 94 Reports include projections for expansion of its wastewater systems for the upcoming five years. Municipalities may project beyond the upcoming five years. Therefore, the Company agrees that five-year projections for customers is appropriate, and ten-year projections will be provided, if available.

Item 18: Rates:

- d. Provide a copy of the notification sent, or which will be sent, to affected customers describing the filing and the anticipated effect on rates.

The Company does not agree with this revised item. It is unclear from the Commission's TSIO whether the Commission is proposing notice to be provided to existing or acquired customers, or both. The Commission's TSIO stated "[i]tem 18 is revised to make clear that Section 1329 applicants are to provide notice to affected customers contemporaneously with the proposed application, not after closing, such that affected customers receive adequate notice of the proposed transaction and have the opportunity to participate in the proceeding."³ Aqua will provide the draft customer letter to the Commission that will be sent to acquired customers upon

³ *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, Tentative Supplemental Implementation Order at 11 (Sep. 20, 2018) (hereinafter "TSIO").

closing, as it has done in previous applications. Aqua will also provide any notice sent by the municipality to its customers, however, only if the municipality sent such notice.

The Company does not agree with expanding the current notice requirements to all customers, both existing and acquired. Notice requirements for an application filed before the Commission are set forth in the Commission's regulations:

- (a) *General rule.* Notice of applications to the Commission for authority under the act must be published in the *Pennsylvania Bulletin* and as may otherwise be required by the Commission.
- (b) *Supplemental requirements.* The Secretary may require additional publication or notification in one or more of the following way:
 - (1) Publication in a newspaper of general circulation serving the geographical territory affected by the application.
 - (2) Actual notification to the parties affected by the application.
 - (3) Another form of actual or constructive notification, including service of the application on interested persons.

52 Pa. Code § 5.14. The Company has provided supplemental notice as required by the Commission through publication of notice in newspapers of general circulation for the acquired customers.

The Company interprets this proposed language as requiring direct mailing, as opposed to a bill insert, because customers across the Company's service territory have different billing cycles within a month and some have quarterly billing cycles. Therefore, if notice is provided by bill insert customers may get 30 days' notice between the application date and the protest period, some may get less than 30 days' notice, and some customers will not receive notice until weeks or months after the protest period has passed.

The requirements of direct mailing notice to customers are impractical for an application filing under Section 1329, and moreover, such direct notice is not required unless it constitutes a

general rate increase under the Public Utility Code and Commission regulations. Section 53.45 of the Commission regulations, 52 Pa. Code § 53.45, states that “[u]pon the filing of a new tariff, tariff supplement, or tariff revision that constitutes a general rate increase within the meaning of 66 Pa. C.S. § 1308(d), notice shall be given by each of the following methods:” posting in offices, written or printed notice, by news release, or in lieu of written or printed notice “a public utility on a 1-month billing cycle filing a proposed general increase may notify its customers by means of a bill insert.” 52 Pa. Code § 53.45.

The requirements of such direct notice are based on whether the public utility is filing a tariff change constituting a general rate increase under Section 1308(d), 66 Pa. C.S. § 1308(d). In Section 1329 applications, neither a general increase nor an increase in rates is proposed to existing or acquired customers. Section 1329 states that the utility shall file “[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 to the acquisition.” 66 Pa. C.S. § 1329(d)(1)(v). As no general rate increase is proposed, notice should be provided as the Commission has historically directed under 52 Pa. Code § 5.14, through newspaper notification in a paper of general circulation in the acquired customers’ service territory.

The proposed revised checklist item requiring a description of the filing and the anticipated impact on rates will only add possible confusion to the proceeding. Under the proposed revised checklist item, customers in the acquired territory will be noticed a rate that may not ultimately come to fruition in a future rate case, and further, there is no proposed tariff filed requesting implementation of such future rate, because the Company files the existing rates of the municipality with the application. Moreover, the timing of any future base rate case is subject to change based on other contributing factors. This notice requirement, as stated in the

TSIO, would require that the Company state that rates could increase to the acquired customers to an uncertain rate, and could increase at an uncertain time in the future. Further, the Company's experience in Section 1329 transactions have been that the selling municipality has taken significant measures to analyze both the pros and cons of a sale on their constituents. These discussions have been at public meetings and other open settings so that full transparency and notice of the sale is relayed.

For existing customers, they may receive multiple notices in a year, for several years indicating that their rates may go up. A notice to existing customers would be highly speculative as to the effect of the acquisition on their existing rates. The Company may propose any number of rate design scenarios in its base rate case, which the Company will not be able to predict accurately at the time of a particular application filing. Asking the Company to predict its rate design, possibly several years out from filing a base rate case, and state the impact of an acquisition on an existing customer's rates (of which there can be several rate zones or divisions) would be impractical and only add confusion to when rates would increase, and to what level. Finally, a direct notice to all of the Company's customers would add approximately \$200,000 per application that would be included in transaction and closing costs of the acquisition. Therefore, because a direct notice to existing or acquired customers would only add additional cost and confusion to the proceeding, the Company respectfully opposes this proposed revised checklist item.

Item 19: Cost of Service

- a. Provide a copy of the seller's two most recent audited financial statements
- b. Provide a copy of the seller's two most recent adopted budgets.

- c. Provide a copy of the seller's most recent annual report filed with the Commonwealth's Department of Community and Economic Development.

The Company does not oppose this revised item.

Item 20: Proof of Compliance - provide proof of compliance with applicable design, construction and operation standards of DEP or of the county health department, or both, including:

- f. Provide documentation of all Notices of Violation issued to seller by DEP for the last 5 years, an explanation of each, including a description of any corrective or compliance measures taken.

The Company does not oppose this revised item, however, the Company would make clear that this request will come to the selling municipality and the Company will provide what information the seller has to the best of its abilities. The Company should not have to utilize its limited resources to track down information from the DEP during the due diligence process that may or may not confirm prior notices of violation.

Item 22: Other requirements - demonstrate compliance with the following:

- e. Provide evidence the filing is consistent with the affected municipality and county comprehensive plans if the filing proposes to expand service beyond the existing plant footprint.

The Company does not oppose this revised item. When the Company acquires the existing water or wastewater system, there would be no change to the municipal or county comprehensive plan. Further, the Company has only been able to provide a draft of the application and service territory maps to the planning offices to get approval that the application is in compliance in advance of filing. The Company agrees that if an acquisition is seeking to expand beyond the current water or wastewater service area of the municipality, the utility should provide a communication from the planning offices stating that such expansion is consistent with their comprehensive plans.

Item 25: Provide a copy of all municipal and affiliate contracts to be assumed by buyer as part of the acquisition and a list and annual dollar value of other contracts.

The Company does not oppose this revised item.

B. Public Meetings and the Section 1329(d)(2) Six-Month Consideration Period

Section 1329 provides that a final order shall be issued within six months of the filing of an application. The six-month period may be shortened due to the public meeting schedule and the filing dates of the application. The Commission proposed three options to ensure that the parties will have the full six-month timeframe for consideration of a 1329 application. The Company notes that a number of applications have been filed under Section 1329, and it is fairly simple to back in to a public meeting date which will allow all the parties the most amount of time for processing the application. Aqua commits to filing in this manner, unless there are extraordinary circumstances. Therefore, the timing issue should be alleviated for those utilities that have been through the process.

First, the Commission proposed that applicants take into consideration the filing date, along with the ten business day review period, and to avoid filing in the latter half of the week to accommodate publication in the Pennsylvania Bulletin. The Company agrees with this proposal. Following its initial applications, the Company reviewed the filing timelines, and in its most recent application, sought a filing date that would maximize, to the extent possible, the consideration period for all the parties. The Company has reviewed, and will continue to review, its filing dates with the assumption that the full ten business day consideration period will be used by the Commission in arriving at filing dates, to the best of its ability and as practicable, that will allow use of the full six-month period by the parties. The Company will also take into consideration the publication timelines for the Pennsylvania Bulletin, however, in order to make

a public meeting date and have the six-month period available, the Company may, from time to time, file in the latter part of a week. Concerning the proposal to extend the ten business day review period, the Company opposes extension of the ten business day review period.

Second, the Commission proposed that it will permit the Bureau of Technical Utility Services (“TUS”) to hold accepting an application for up to an additional five (5) calendar days if doing so would avoid the problem of establishing a consideration period of 170 days or less. The Company, as stated above, will make its best efforts to avoid filing an application that would impact the consideration period for 1329 applications. The Company does not agree that the Commission should permit TUS to hold applications for an additional five calendar days.

Third, the Commission proposed that the interested parties comment on the use of planned notational voting if the above measures will not produce a schedule in excess of 170 days. The Company does not oppose the use of notational voting to the extent it would maximize the consideration period.

C. Public Notice of Accepted Section 1329 Applications

The Commission described the issue surrounding the acceptance of a Section 1329 application and the possible delay in the parties receiving notice that the application has been accepted by the Commission. The Commission provides information on ways that an interested party may create an e-filing subscription to receive notice of when a 1329 application is accepted. The Company does not oppose this section of the Commission’s TSIO.

D. Standard Data Requests for Applications Seeking Section 1329 Valuation

The Commission explained that standard data request (“SDR”) information provided up front with the filing will assist in providing the interested parties with more information at the outset of the application, and thereby facilitate the application process and reduce overall

discovery necessary during the application. The Company agrees that certain information can be provided in the SDRs that will assist the application process. The Company also agrees with the Commission's statement that TUS does not review the veracity or substantive quality of information submitted in the SDRs, and that TUS shall not refuse to perfect an application based on the quality of the information provided in the SDRs. Additionally, the Company agrees that TUS may serve data requests on an applicant, provided that no protest or opposition filing has been made in the docket. Finally, the Company will work with the parties once the application is accepted as complete to establish mutually agreeable discovery schedules and enter stipulated discovery schedule agreements so the parties will not have to wait for a prehearing order.

In regard to the specific SDRs included in the Commission's TSIO, the Company provides the below comments:

Rates/Ratemaking

1. Estimate the potential range of monthly cost impact on existing and acquired customers following the Buyer's next base rate case, utilizing (a) a scenario in which the acquired system's cost of service is fully allocated to the acquired customers and (b) a scenario in which any anticipated cost of service revenue deficiency associated with the acquired system is shared equally by acquired customers and existing customers. In the case of a wastewater acquisition, assume no combined water and wastewater revenue requirement.

The Company does not oppose this SDR under the following conditions that should be included in the Final Supplemental Implementation Order. The Company submits that the Commission should be very clear that the estimates in the applications are just that – estimates.

This particular question has the potential of turning each Section 1329 proceeding into a full base rate inquiry, which is not the intent of Act 12. The Company cannot be held to these estimates in the next base rate case which could be multiple years away at the time of this estimate. The Commission should very clearly state the answers to this question are simply to provide transparency and data points to the parties on what rates could be in the future. Data requests

related to the assumptions in these estimates should not require additional information other than the straightforward assumptions included in making the estimates.

2. If the Buyer has a present intention to increase the acquired system's rates to a certain level, please state the basis for the targeted rate.

The Company does not oppose this SDR.

3. Provide the annual depreciation expense using the purchase price/proposed rate base. If the exact depreciation expense is not available, provide the best estimate of the annual depreciation expense. Show how the depreciation expense is calculated.

The Company does not oppose this SDR. Furthermore, unless an unusual response is given, additional discovery on this SDR should not be warranted.

4. Provide an estimate of the annual revenue requirement of the municipal system under the Buyer's ownership. Provide the assumptions for the annual revenue requirement, including expected rate of return, expected depreciation expense, O&M expenses, etc.

The Company opposes this SDR, in that it is asking for a cost of service study provided up front with the application. The Company opposes being required to perform a cost of service study prior to filing its 1329 application. The Company has agreed in its previous applications to provide cost of service information in the Company's next rate case, as that is the more appropriate setting to consider overall revenue requirement. With that said, the Company notes that rate estimates in SDR No. 1 and revenue requirement estimates are linked. The Company would again clarify that estimates as to the annual revenues requirement, similar to the rates SDR as explained above, are just that – an estimate. The estimated revenue requirement as stated in the application is subject to change and may be impacted by factors not known at the time of the application filing. The Company again reiterates that a Section 1329 proceeding is not a base rate case proceeding. The Company cannot be held to these estimates in the next base rate case which could be multiple years away at the time of this estimate. The Commission should very clearly state the answers to this question are simply to provide transparency and data points.

Data requests related to the assumptions in these estimates should not require additional information other than the straightforward assumptions included in making the estimates.

5. Other than the STAS, does Buyer's current water/wastewater tariff include any provisions that would fall under "pass-through costs or charges imposed by the Commonwealth of Pennsylvania"?

The Company does not oppose this SDR.

6. Provide a listing of any entities that currently receive free service from the Seller.

The Company does not oppose this SDR.

7. In the next rate case, does buyer anticipate include the acquired system in a combined revenue requirement?

The Company opposes this SDR. The SDR is requesting the Company to make forward looking statements in the application concerning whether the Company would propose the acquired system to be a stand-alone system, or included with a combined revenue requirement. The Company asserts that requiring the Company to make this determination at the time of an application filing is speculative as the development of the Company's rate design will not occur at the time of the application filing.

8. If Seller has increased rates in the last year, please state the date of the increase and provide a copy of the new rate schedule and the total annual revenues produced under the new rates.

The Company does not oppose this SDR.

9. Are there any leases, easements, and access to public rights-of-way that Buyer will need in order to provide service which will not be conveyed at closing? If yes, identify when the conveyance will take place and whether there will be additional costs involved.

The Company opposes this SDR, to the extent that the buying utility may not have received a completed title report from its title agent by the application date. As such, the Company would propose that this SDR be removed from the list and issued in discovery by the parties.

Costs/Benefits

10. Provide a breakdown of the estimated transaction and closing costs. Provide invoices to support any transaction and closing costs that have already been incurred.

The Company does not oppose this SDR, but would clarify that the breakdown will be provided in general categories, i.e., legal expense incurred and projected, UVE fees incurred and projected, and projected settlement costs to close the transaction. The Company reiterates that the final costs may vary from what is stated in the SDR at the time of the application filing date.

11. Please describe general expense savings and efficiencies under Buyer's ownership. State the basis for all assumptions used in developing these costs and provide all supporting documentation for the assumptions, if available.

The Company opposes this SDR. The Company would note that this SDR is requesting speculative information and many efficiencies are realized through operation of the system.

12. Please provide a copy of the Seller's request for proposals (if there was one) and any accompanying exhibits with respect to the proposed sale of the system.

The Company does not oppose this SDR.

13. Please provide a copy of all proposals received by Seller and any accompanying exhibits with respect to the proposed sale of the system.

The Company opposes this SDR. The proposals received by seller may not be public information, protected by confidentiality, and could create competitive disadvantage between competing utilities. Moreover, these documents are in the possession of the seller and may not be available to the buyer at the time of filing the application.

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14. Please provide a copy of any proposals or exhibits made by Buyer for the purchase of Seller that have not already been provided.

The Company opposes this SDR. The Company has agreed to provide its request for proposal. The request for proposal is the document that was considered by the Seller for the sale

of the system. The SDR as written is overly broad and could encompass a number of documents that are highly confidential, protected by attorney client privilege, or competitive in nature.

15. Has Buyer made any previous offer to purchase the Seller wastewater system? If yes, provide a copy of the offer and relevant communications.

The Company opposes this SDR in respect to any “relevant communications”. The SDR, as written, is overly broad and should be limited to the offer of the buyer and the response of the seller to that offer.

Appraisals

16. For each UVE in this case, please provide the following:
- a. A list of valuations of utility property performed by the UVE;
 - b. A list of appraisals of utility property performed by the UVE
 - c. A list of all dockets in which the UVE submitted testimony to a public utility commission related to the appraisal of utility property; and
 - d. An electronic copy of any testimony in which the UVE testified on fair value acquisitions.

Regarding 16(a) through (d), the Company opposes this SDR. The Company notes that valuations and appraisals of utility property are a private engagements and public disclosure may not be acceptable. For 1329 applications before the Commission, a listing of the docket numbers should be sufficient. For other valuations/appraisals not before the Commission, the Company can provide docket numbers of the relevant proceedings. The Company would also clarify that if testimony is provided orally in a proceeding, the Company and the UVE may not have access to the relevant transcript.

17. Please explain each discount rate used in the appraisals, including explanations of the capital structure, cost of equity and cost of debt. State the basis for each input. Provide all sources, documentation, calculations and/or workpapers used in determining the inputs.

The Company does not oppose this SDR.

18. Please explain whether the UVE used replacement cost or reproduction cost and why that methodology was chosen.

The Company does not oppose this SDR.

19. Please provide a copy of the source for the purchase price and number of customers for each comparable acquisition used in the appraisals.

The Company does not oppose this SDR.

20. Have Buyer's and Seller's UVE corresponded with regard to their respective fair market value appraisals of the assets at issue in this case? If yes, provide the following information:

- a. Identify the nature and date(s) of correspondence;
- b. Identify the type(s) of correspondence (i.e. written, verbal, etc); and,
- c. Provide copies of any written correspondence exchanged between the UVEs

Regarding 20(a) through (c), the Company does not oppose this SDR.

Miscellaneous⁴

26. Are there any outstanding compliance issues that the Seller's system has pending with the PA Department of Environmental Protection. If yes, provide the following information:

- a. Identify the compliance issue(s);
- b. Provide an estimated date of compliance;
- c. Explain Buyer's plan for remediation;
- d. Provide Buyer's estimated costs for remediation; and
- e. Indicate whether the cost of remediation was factored into either or both fair market valuation appraisals offered in this proceeding.

Regarding 26(a) through (e), the Company does not oppose this SDR in regard to providing a general description of the potential compliance issues of the system, and a general

⁴ The Company notes that the numbering in Appendix B goes from 20 to 26. The Company is providing comments consistent with the numbering in Appendix B.

outline of any plans that the Company may have for fixing the compliance issues. Due diligence investigations and ownership requirements are very different. The Company opposes providing estimated dates of compliance, plans for remediation, estimated cost for remediation, and if those costs were factored in the appraisals. The Company will not have incurred the expense at the time of filing the application to have an engineer develop an engineering study on the compliance issue and provide options and alternatives to remediating the compliance issues along with the associated costs. While compliance issues can be generally discussed, the specifics requested here will not be known at the time of the application.

27. Are there any outstanding compliance issues that the Seller's system has pending with the US Environmental Protection Agency. If yes, provide the following information:
- a. Identify the compliance issue(s);
 - b. Provide an estimated date of compliance;
 - c. Explain Buyer's plan for remediation;
 - d. Provide Buyer's estimated costs for remediation; and
 - e. Indicate whether the cost of remediation was factored into either or both fair market valuation appraisals offered in this proceeding.

Regarding 27(a) through (e), the Company does not oppose this SDR in regard to providing a general description of the potential compliance issues of the system, and a general outline of any plans that the Company may have for fixing the compliance issues. Due diligence investigations and ownership requirements are very different. The Company opposes providing estimated dates of compliance, plans for remediation, estimated cost for remediation, and if those costs were factored in the appraisals. The Company will not have incurred the expense at the time of filing the application to have an engineer develop an engineering study on the compliance issue and provide options and alternatives to remediating the compliance issues

along with the associated costs. While compliance issues can be generally discussed, the specifics requested here will not be known at the time of the application.

E. The Uniform Standards of Professional Appraisal Practice

The Commission stated that fair market value is defined as the lesser of the purchase price negotiated by the buyer and seller, and the average of the two appraisals (one performed by the buyer's UVE and one performed by the seller's UVE). The Company agrees with the Commission's statement that the buyers should use UVE valuations to serve as a confirmation of sound business judgment. Regarding the Commission's statement that appraisals have resulted in substantial variances, the Company agrees that the by using similar assumptions these variances can be reduced. The Commission stated that the two independent UVEs appraise the seller's business through three approaches – cost, market, and income – as set forth in the Uniform Standards of Professional Appraisal Practice ("USPAP"), and that the UVEs should comply with the most recent version of USPAP. The Company agrees with the Commission concerning use of the most recent version of USPAP.

Range of Values Discussion

The Company submits that an important point of reference that should be considered when the Commission is reviewing the reasonableness of a transaction, and related to that discussion of whether the transaction is in the public interest, is the requested ratemaking rate base and its comparison to the average cost per customer of the acquiring utility. While the average cost per customer is just one data point, this information can be helpful in guiding the acquiring utilities, selling municipalities, and the Commission. The Company proposes that ratemaking rate base requests that exceed \$15,000 net plant per customer (or equivalent customer unit) should be more thoroughly reviewed by the Commission for whether such a transaction

would be in the public interest. Ratemaking rate base requests that fall between \$7,500 and \$15,000 net plant per customer (or equivalent customer unit) the Commission should require documentation of the stand-alone rate impact of such a request on the acquired customers.

Finally, a ratemaking rate base request that is \$7,500 and below should garner less scrutiny from the Commission and should provide an additional data point that such a transaction is more likely to be in the public interest. The Company supports adding this additional language in the Commission's Final Supplemental Implementation Order. The Commission may revisit such guidance based on inflation, other market factors, or future understanding as more 1329 applications are processed.

F. Jurisdictional Exceptions

The Commission proposed to establish jurisdictional exceptions through the TSIO under the USPAP jurisdictional exception rule. The Company provides the following comments to the Commission's guidance to UVEs set forth in Appendix C to the TSIO:

General

1. 66 Pa. C.S. § 1329(a) requires the use of the current biennial edition of the Uniform Standards for Professional Appraisal Practice (USPAP) to develop cost, market, and income valuations of the Selling Utility. Valuations developed from outdated or expired editions of the USPAP do not constitute competent evidence and will not be accepted by the Commission as satisfying the Application Checklist.

The Company does not oppose this jurisdictional exception.

2. By Order, the Commission recognizes the use of the Jurisdictional Exception Rule of the USPAP. Materials submitted in support of a request for Section 1329 fair market valuation pursuant to the USPAP must conform to applicable Pennsylvania law even if in conflict with USPAP. For purposes of Section 1329, Pennsylvania law includes the Pennsylvania Constitution, statutes, regulations, court precedent, and administrative rules and orders issued by administrative agencies.

The Company does not oppose this jurisdictional exception.

3. UVEs, along with Seller and Buyer, must establish that a UVE:

- a. is a Commission registered UVE

The Company does not oppose this jurisdictional exception.

- b. has no conflict of interest pursuant to the USPAP

The Company does not oppose this jurisdictional exception.

- c. fee is limited to 2.5% of fair market value

The Company does not oppose this jurisdictional exception. However, for clarity the Company notes that the fee, limited to 2.5%, should be for each UVE, totaling 5% to be consistent with Section 1329(b)(3).

- d. incorporated the licensed engineer's assessment of the tangible assets of the Selling Utility into the UVE appraisal as required by Section 1329(a)(4)

The Company does not oppose this jurisdictional exception.

- e. has verified that valuation methods used (cost, income and market) comply with the current edition of the USPAP

The Company does not oppose this jurisdictional exception.

4. UVE materials submitted in support of a request for Section 1329 fair market valuation must:

- a. explain the basis of the individual weight given to the cost, market, and income approach

The Company does not oppose this jurisdictional exception.

- b. use the Commission's quarterly earnings report for capital structure, cost of debt, cost of equity and weighted average cost of capital. The quarterly earnings report used must be contemporaneous with the production of the valuation.

The Company does not oppose this jurisdictional exception.

5. Both the Seller and Buyer UVE will support their respective appraisals with data and written direct testimony at the time a request for Section 1329 valuation is filed with the Commission. The Commission will not accept untimely direct testimony, or untimely testimony in the nature of direct, regarding a UVE appraisal.

The Company does not oppose this jurisdictional exception.

Cost Approach

1. Cost approach may measure value by:

- a. determining investment required to replace or reproduce future service capability

The Company does not oppose this jurisdictional exception.

- b. developing total cost less accrued depreciation for Selling Utility assets

The Company does not oppose this jurisdictional exception, provided that it is clear that total cost less accrued depreciation is not the only value to establish the cost approach.

- c. determining the original cost of the system

The Company does not oppose this jurisdictional exception, provided that it is clear that original cost is not the only value to establish the cost approach.

2. Cost approach materials shall:

- a. explain choice of reproduction cost vs. replacement cost

The Company does not oppose this jurisdictional exception.

- b. not adjust the cost of land by the ENR index

The Company does not oppose this jurisdictional exception.

- c. exclude overhead costs, future capital improvements, and going concern value

The Company does not oppose this jurisdictional exception.

- d. use consistent rate of inflation for all classes of assets, unless reasonably justified

The Company does not oppose this jurisdictional exception.

Income Approach

1. Income approach may measure value by:

- a. Capitalization of earnings or cash flow

The Company does not oppose this jurisdictional exception.

- b. Discounted cash flow (DCF) method

The Company does not oppose this jurisdictional exception.

- 2. Income approach materials shall exclude:

- a. Going concern value

The Company does not oppose this jurisdictional exception.

- b. Future capital improvements

The Company opposes this jurisdictional exception. Future capital improvements are used in the development of the DCF method of the income approach. These capital improvements are considered and subtracted out in the development of the Debt Free Net Cash Flows. Excluding future capital improvements from consideration in developing the DCF method will work to artificially increase the overall income approach value. For that reason, the Company opposes this jurisdictional exception.

- c. Erosion of cash flow

The Company does not oppose this jurisdictional exception.

- d. Rate base/rate of return estimates

The Company does not oppose this jurisdictional exception.

Market Approach

- 1. Market approach shall use the current customer count of the Selling Utility

The Company does not oppose this jurisdictional exception.

- 2. Market approach shall exclude:

- a. Future capital improvements

The Company does not oppose this jurisdictional exception.

b. Any type of adjustment or adder in the nature of “going concern” or goodwill

The Company does not oppose this jurisdictional exception.

The Commission also notes that certain other minor jurisdictional exceptions are present in Pennsylvania, including 66 Pa. C.S. § 1328, concerning the recovery of public fire hydrant costs in utility rates. The Company agrees that UVEs should be made aware of such rules, however, the Company wants to make clear if minor jurisdictional exceptions are missed by a UVE, it does not invalidate the UVE’s report.

G. UVE Direct Testimony

The Commission stated in the TSIO that UVEs must provide direct testimony with the application filing in support of their appraisal, and provide detail on the data used and conclusions reached by the UVE. The Commission also commented that a UVE who weighted any approach at greater than 50% should provide justification for such a weighting. The Commission included a sample minimum requirement guide for UVEs in Appendix D of its TSIO. The Commission stated that if items from the checklist or SDRs are included in the UVEs direct testimony, reference should be made to where that information can be found in the testimony.

The Company does not oppose providing direct testimony of the UVEs with the application. The Company comments that the sample UVE direct testimony included as Appendix D to the TSIO is a guide for the UVEs, and that testimony provided by the UVEs that does not exactly mirror the question and answer in that sample should not be considered deficient in determining whether an application is complete.

III. CONCLUSION

Aqua appreciates the opportunity to comment on the Tentative Supplemental Implementation Order and asks that the Commission consider its comments. Aqua looks forward to continuing to work with the Commission on these issues. Please direct any questions with regard to these comments to the undersigned.

Respectfully submitted,



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