



VIA FEDEX MAIL

August 10, 2016

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

RECEIVED

AUG 10 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Secretary Chiavetta:

Enclosed please find the Comments of Aqua Pennsylvania, Inc. to the Commission's July 21, 2016 Tentative 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) 645-1077.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly A. Joyce".

Kimberly A. Joyce
Director of Legislative and Public Affairs
and 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.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**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.
TO THE
JULY 21, 2016 TENTATIVE IMPLEMENTATION ORDER**

I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) appreciates the opportunity to comment on the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) Tentative Implementation Order (“Order”) entered July 21, 2016, regarding the implementation of Section 1329 of the Public Utility Code. Aqua serves approximately 1.4 million water customers in Pennsylvania. Aqua’s water system includes over 5,600 miles of main. Aqua’s wastewater subsidiary, Aqua Pennsylvania Wastewater, Inc., serves approximately 20,000 connections in Pennsylvania. Aqua’s water and wastewater systems serve both rural and urban areas.

On April 14, 2016, Governor Wolf signed into law Act 12 of 2016 (the “Act” or “Act 12”), which amended Chapter 13 of the Pennsylvania Public Utility Code (“Code”) by adding a new Section 1329 which became effective June 13, 2016. 66 Pa. Cons. Stat. § 1329. Act 12 was enacted to encourage the consolidation of the highly fragmented water and wastewater industry and benefits the selling municipality that may be struggling financially, the environment, the acquiring utility, and customers. When a municipality decides to sell its water or wastewater assets, as done in the past for water and wastewater acquisitions, a municipality and acquiring utility mutually agree to a purchase price. Act 12 provides for a new methodology for setting the ratemaking rate base when the application for the acquisition’s approval is filed with the PUC.

Under Act 12, the Commission is now required to use fair market value in setting the ratemaking rate base.

Aqua commends the General Assembly and the Commission for their continued initiatives to make improvements to water and wastewater infrastructure in the Commonwealth. It is with this background that Aqua provides the following suggestions and clarifying comments for the Commission's consideration.

II. GENERAL COMMENT TO THE ORDER

The General Assembly, through Section 1329, established a new methodology for setting ratemaking rate base for municipal corporations or municipal authority acquisitions¹ at the Commission. This new methodology will encourage consolidation, provide greater certainty in the regulatory approval process, and allow acquiring systems to begin operating these systems thereby increasing infrastructure improvements and gaining the acquiring utility's technical and managerial experience.

Aqua respectfully submits that the Commission should reconsider and reduce portions of the new filing requirement detail that is proposed in the Order. There is nothing in the Act that suggests that the General Assembly intended to expand filing requirements. The Company acknowledges that certain information is needed in the application. However, a more streamlined checklist which includes items that fall under Commission's jurisdiction and are relevant to the application approval process should be created. In addition, the checklist includes redundant information that will already be provided in the appraisals filed with the application.

For acquisitions by existing public utilities operating in the state, Section 1329(d)(1) of the Act is limited to five attachments that "shall" be included with the utility's Section 1102

¹ The Company may refer to both municipal corporations and municipal authorities herein generally as "municipals" or "municipalities".

application. The five attachments are the two appraisals performed by utility valuation experts, the agreed upon purchase price of the selling utility, the ratemaking rate base determined pursuant to Section 1329(c), the transaction and closing costs that will be included in rate base and a tariff containing a rate equal to the existing rates of the selling utility and a rate stabilization plan, if applicable.

Aqua PA respectfully notes however, that the Order goes beyond the limited filing requirements found in the Act. Where the Act identifies just five attachments that “shall” be included with a Section 1102 application, the Order presents an “Application Filing Checklist” that lists 23 separate application filing requirements, many of which include multiple subparts and require various detailed descriptions subject to interpretation. All in all, the checklist requests approximately 65 individual new pieces of information for inclusion in the application.

Several of the “Application Filing Checklist” requirements are patterned after the requirements found in 52 Pa. Code § 3.501. Section 3.501, however, does not apply to Section 1102 applications by certificated public utilities to acquire used or useful property and expand their authorized service territory. The Section, rather, by its clear language, applies only to “proposed” utilities or to de facto utilities (those utilities that have been providing service without a certificate).

Aqua submits that the Order, in certain parts, unnecessarily complicates the application process for a Section 1329 transaction. This is especially so where the buying utility is already operating under a certificate of public convenience and necessity (“CPC” or “certificate”). A certificated public utility is presumed to be fit. Applications of Pennsylvania-American Water Co., Docket Nos. A-212285F019, A-212285F020, A-212285F021, Opinion and Order (Oct. 26, 1995) (confirming the Administrative Law Judge’s Conclusion of Law that “[w]hen an existing

utility is seeking to enlarge its service territory, there is a rebuttable presumption that the utility is fit to render the additional service”). The Order would create filing detail that has never been required of a certificated utility to proceed with a Section 1102 acquisition and territory expansion. It should not be required now and doing so could frustrate the objectives of the General Assembly in enacting the Act. One of the purposes of the Act, after all, was to assure that these transactions would help municipalities in a timely and efficient manner. Again, while Aqua recognizes that it has the burden of proof, creating a process whereby 65 new questions are answered by a utility already deemed “fit” by the Commission to operate will create additional costs. It should be noted that typical rate filings have approximately 300 discovery questions asked in the entire proceeding. In these applications, there is no change in customer rates and the General Assembly has now defined how ratemaking rate base is set (the lower of the purchase price or the average of the two appraisals pursuant to Section 1329(c)(2)). The Company respectfully suggests that for those utilities that already are operating in the state, under Commission granted certificates, that a better balance can be reached.

Aqua submits that the Commission should reconsider and reduce portions of the additional filing requirement detail that is proposed in the Order. There is nothing in the Act that suggests that the General Assembly intended to expand filing requirements. There is, also, nothing in the Act that suggests that the General Assembly contemplated or, in any way, intended to encourage litigation of a Section 1329 application. In fact, the General Assembly was very specific as to how to calculate ratemaking rate base (the lower of the purchase price or the average of the appraisals pursuant to Section 1329(c)(2)). Specific suggestions of how the Commission might consider simplifying the regulatory process for a Section 1329 transaction are discussed in the specific comments that follow.

As the Commission reviews the proposed checklist items, the Company requests that the Commission consider (1) whether the checklist items are necessary or are simply additional information to have that may or may not be used in the future, (2) whether these items fall under Commission jurisdiction and general review, and (3) if this information is already being provided to other agencies and will now be reviewed by multiple staff in multiple agencies.

III. SPECIFIC COMMENTS TO THE ORDER

A. Section 1329(a) – Process to establish fair market value of selling utility

1. Qualifications of the Utility Valuation Experts

The Commission, in its Order, stated that any utility valuation expert (“UVE”) that seeks to be included in the list maintained by the Commission from which the buyer and seller will select qualified UVE’s, must demonstrate that they have the education and experience necessary, and must acknowledge a fiduciary duty to provide an objective and fair valuation. Order at 4. Aqua agrees with the Commission that such information must be presented in order for the Commission to maintain a list of qualified UVEs. The Company requests, however, that the Commission further clarify that applicants to be included on the UVE list maintained by the Commission must have adequate utility valuation and appraisal experience. The UVE list should not include individuals or firms that may have expertise in appraisals of other types of property, for example, real estate, but no experience in utility appraisal.

2. The Role and Responsibility of the Licensed Engineer

Aqua respectfully disagrees with the proposed language concerning what information the licensed engineer is responsible for and asserts that as drafted, the same work will be done twice. The Company generally notes throughout its comments that there are instances when the prior methodology and typical approval process for acquisitions do not coincide with the General

Assembly's new methodology. For example, an engineer should not be doing an original cost study for the purpose of Act 12. Moreover, in Act 12, the purpose of the licensed engineer is to simply streamline the process so that the UVEs are given the same list of assets to begin their work. The Commission provided additional requirements that a licensed engineer who is engaged to perform an assessment of the selling utility's assets under Section 1329(4) must now include original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations pursuant to 66 Pa. Cons. Stat. § 1311. Order at 5. Further, the engineer's assessment must conform to Commission practices and procedures and NARUC system of accounts. Order at 5. The Commission also listed out criteria that should be used in establishing the cost assessment. Order at 5-6.

Aqua agrees with the Commission that the licensed engineer should follow Commission practices and procedures and NARUC system of accounts. However, requiring the use of original cost goes beyond the purpose of the licensed engineer and creates unnecessary cost and information that will already be incorporated into the work done by the UVE. The Company submits that the engineer's assessment is not required to conform to 66 Pa. Cons. Stat. § 1311. The statutory language of the Section 1329(a)(4) provides that "[t]he acquiring public utility or entity and selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. The assessment shall be incorporated into the appraisal under the cost approach required under paragraph (3)." 66 Pa. Cons. Stat. § 1329(a)(4). The language of the statute does not reference the use of original cost valuation, but merely an "assessment of the tangible assets".

The Company asserts that this assessment to be performed by the engineer is an inventory of the tangible assets of the selling utility that the UVEs will use to complete their appraisal of

the value of the selling utility's assets. The UVEs are better situated and have experience in completing trended original cost studies and making accrued depreciation calculations necessary to arrive at the value of the assets. The engineer, on the other hand, is better situated to provide what the physical tangible assets of the utility are. Therefore, the Company asserts that Section 1329(a)(4) does not require the engineer's assessment to be completed under Section 1311, and the assessment should be an inventory of the selling utility's assets that will be used as the common list for the UVEs to develop their appraisals of the system. To interpret otherwise, would require essentially duplicative work of the engineer and the UVE.

3. Information to Establish the Cost Assessment

As mentioned earlier, the General Assembly has set forth a new method for calculating ratemaking rate base. The Company proposes that the fourth, fifth, sixth, seventh, and eighth bullet point on page 6 of the Order be removed. As discussed above, the engineer is not required to calculate cost or the accrued depreciation as this will fall to the UVEs. The licensed engineer will be providing an inventory to be used by the UVE's and the fifth, sixth, seventh, and eighth bullets on page 6 will be covered by the UVEs in their appraisals. Also, the Company proposes that the first bullet point on page 6 will be amended to include portions of the fourth bullet point and read as follows: "An inventory of the used and useful utility plant assets to be transferred compiled by year and account. Identify separately any utility plant that is being held for future use."

Next, the Company submits that in many cases the selling utility, prior to submitting a request for proposal, has already conducted an engineering assessment and appraisal of their own system. In those instances the Company proposes that if the acquiring utility and seller agree, and with a verification signed by the licensed engineer, that the agreed to engineer's assessment

will be the asset inventory to be used in the cost approach and is complete and accurate and thereby serve as the basis for both acquiring utility's and seller's valuation as well as the independent engineer's assessment. This will save both time and resources, and remove the need for duplicative work.

Finally, concerning the suggested criteria that the engineer should consider in establishing the cost assessment, the Company submits that it is necessary to caveat these criteria with the statement that the engineer shall consider those points "to the extent those records are available". As a general theme to our comments, many systems that are seeking to exit the water and wastewater business are troubled systems. These troubled systems generally do not have adequate business records concerning accounting of assets, bills or consumption data, etc., that the Commission is seeking in its Order. For these reasons, the Commission should recognize that the Company will provide information where available and when provided by the selling system.

B. Section 1329(b) – Utility Valuation Experts

Under Section 1329(b) the UVE's fees can be included in the transaction and closing costs, if they do not exceed 5% of the fair market value of the system, or are a fee approved by the Commission. 66 Pa. Cons. Stat. § 1329(b). The Commission stated that the public utility or entity must provide "ample justification both within the application itself as well as the direct testimony accompanying the application regarding how the UVE's fee was derived." Order at 7. Aqua agrees that a public utility should be required to provide justification for the fees to be included in the transaction and closing costs of the public utility.

The Company also proposes that there should be a presumption of reasonableness, thus, allowing inclusion of the fees in the transaction and closing costs, if the fees are under 5% of the

fair market value of the selling utility and the method of valuation used by the UVEs conforms to industry standards. The Company proposes that the justification of the UVE fees will be satisfied by a review of the UVEs' invoices.

C. Section 1329(c) – Ratemaking Rate Base

Under Section 1329(c), the rate base for the selling utility will be incorporated into the rate base of the acquiring utility in the acquiring utility's next base rate case or initial tariff filing. 66 Pa. Cons. Stat. § 1329(c)(1). The selling utility's rate base will be the lesser of the purchase price or the fair market value. *Id.* at § 1329(c)(2). Aqua respectfully notes that this section is not a "guideline" as the comments suggests – it is the law. The Company notes that larger water companies have been filing acquisition applications without controversy for many years, and that while Act 12 is new, over time and with experience, there will likely be instances where there are no protests filed. The General Assembly envisioned such a process based on the streamlined timeline.

Lastly, the Commission stated that the acquiring entity does not need to be a public utility, but the entity or its affiliate must file an application for a certificate. Order at 8. The Commission notes that the CPC application can be filed simultaneously with the 1329 application, but due to the condensed review period, the Commission recommends that the CPC application be filed in advance of the 1329 application. Order at 8. The Company agrees with the Commission, that if a CPC is required, the application for the CPC should be filed before the 1329 application.

D. Section 1329(d) – Acquisitions by Public Utility

Section 1329(d) states that a final order on an application submitted under Section 1329 shall be issued by the Commission within six months of the filing date of the application. Due to

the condensed timeframe, the Commission has provided guidance through an example of the proposed timeline and a proposed checklist to aid applicants in providing a complete application. The Commission has also emphasized that applications will not be accepted until they are deemed complete, which will then start the six month time line. The Company will provide specific comments on the checklist in Section (III)(I) of these comments below.

1. Ten Day Time Limit for Commission Checklist Review

The Company proposes clarification and suggestions on the submission of the application. The Company first notes that there is no time limit from when a public utility submits an application and when the Commission deems it satisfactory. Without a defined time limit, the Company may be faced with a situation where it waits indefinitely to hear that the application is accepted, thereby delaying the acquisition process and putting the acquisition at significant risk. In many cases, municipalities are struggling financially and will have difficulty with an extended time line. Therefore, the Company respectfully proposes that the Commission should have ten (10) days from the filing of the application to provide notice of, and reason for, rejection to the applicant. If no notice of rejection is received in those ten days following the filing, the application will be deemed satisfactory and accepted, and the six month time line will begin.

2. Cost of Service

Section 1329(d)(5) provides in part that “[t]he selling utility’s cost of service shall be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility’s next base rate case proceeding.” 66 Pa. Cons. Stat. § 1329(d)(5). However, the Commission commented that “[a]pplications must address cost of service, including the seller’s most recently audited financial statements.” Order at 10. This is an example of the need to

reconcile the old approval process with the new Act 12. The Company wants to clarify that Section 1329 does not require a cost of service study to be included in the application. That always has and should continue to be a matter for the utility's next general base rate case. It has been the longstanding policy of the Commission that cost of service studies are filed at least four months prior to the next base rate case. 52 Pa. Code § 69.721(f). The Company comments, as the statutory language indicates, that determination of cost of service will be a matter for the next base rate case, as the acquiring utility will be adopting the current rates of the selling utility as per Section 1329(d)(1)(v). The Company will provide the seller's most recently available audited financial statements.

3. Review Process

While the Company recognizes that it has the burden to satisfy the regulatory requirements, the Company also wants to reiterate that the General Assembly required five items to be included in the application, whereas the Commission is asking for 65 new pieces of information. As stated above, the 65 items are mainly drawn from Section 3.501 which does not apply to utilities that have been deemed fit and are already operating under Commission granted certificates. The Commission should not reject an application simply because information may not be available or checklist item provided could be interpreted as not sufficient or as not detailed enough. As in the past, the Commission and the applicant should work together through open dialogue to ensure that the application is complete rather than simply rejecting the application.

4. New Notice Requirements for Non-Regulated Entities

The Commission has stated that due process requires notification to the affected customers. The Commission provided that "within seven days of filing the application, the

applicant shall file with the Commission: (1) proof of newspaper publication of the notification of the filing; and (2) a copy of the bill insert notifying the selling utility's customers of the proposed acquisition." Order at 11. The Company agrees with providing newspaper notice of the filing but disagrees with the requirement of bill insert notification. First, this is a new requirement that has never been required before. The Commission has never required an acquiring public utility to provide a bill insert – individual customer notice of a Section 1102 application. The acquiring company does not have access to customer billing information until after closing nor will it be billing customers until after the closing. There are a number of issues (customer account confidentiality, billing and legal) that make this new requirement problematic.

In addition, the Commission does not have jurisdiction over the municipality. Act 12 is strictly limited to the Public Utility Code, and does not reference or change the municipal code. The municipality controls how it notifies its customers and it is the elected officials who are charged with providing notice to their constituents whether it is through public hearings, customer notice, or other means. A bill insert by the selling municipal corporation or authority would be discretionary on the part of the selling entity, and the Commission cannot require the selling municipal corporation or authority to include a bill insert as they are not subject to Commission jurisdiction. Further, this will be an added cost to the municipality that it may not be able to afford.

The Company proposes that due process is served by the acquiring utility providing newspaper notification of the proposed acquisition, and the selling system may, but is not required to, provide a bill insert to its customers. The Company, moreover, assumes that the Commission will publish a notice of the filing of a Section 1329 application in the Pennsylvania Bulletin. The Company also notes that once approved, many acquiring utilities will send a

welcome kit to all new customers. It is the selling entity's role to determine how its customers should be notified. Again, this new requirement is outside the scope of what the General Assembly put forth in the statute, and falls outside the Commission's jurisdiction.

E. Section 1329(e) – Acquisitions by Entity

Section 1329(e) relates to acquisitions by an entity, and the Commission provided guidance that the entity should file its Section 1102 application before it files the Section 1329 application. Order at 11-12. Further, that the entity's initial tariff filing should contain rates equal to the existing rates of the selling utility at the time of the acquisition. Order at 12. The Commission also clarified that the applicant has the burden of proving that it is entitled to have the acquisition approved and must do so by the preponderance of the evidence. Order at 12. The Company agrees with the Commission's guidance in this section.

F. Section 1329(f) – Post-acquisition Projects

The Commission stated that any of the acquiring utility's post-acquisition improvements that are not recovered through the Distribution System Improvement Charge ("DSIC") will be eligible for inclusion through an allowance for funds used during construction ("AFUDC"). Order at 13. The acquiring utility can accrue AFUDC until the asset has been in service for four years or until the asset is included in the acquiring utility's next base rate case, whichever is earlier. Order at 13. Depreciation on the acquiring utility's post-acquisition improvements that has not been included in the calculation of DSIC will be deferred for book and ratemaking purposes. Order at 13. Finally, the acquiring utility will be required to keep proper accounting business. Order at 13. The Company agrees with the Commission's statements in this section.

G. Section 1329(g) – Definitions

The Commission included the definitions from Section 1329 in the Order. Order at 13-14. The Company has no comments on the definitions.

H. Six Month Approval Time Line

The Commission provided a proposed time line for the six month application process. Order at 15. The Commission noted that actual time required may be slightly more or less depending on the circumstances surrounding the application. Order at 14. The Company suggests that the Commission should have a plan or a separate time line prepared for instances where no protest is filed, thereby obviating the need for a litigation schedule. Additionally, the Company proposes that because the applicant carries the burden of proof in these proceedings, the time line should provide the opportunity to file rejoinder testimony. The Company comments that because the applicant carries the burden of proof the applicant should have the last word in testimony. Finally, as explained above regarding the acceptance of the application, the time line should be amended to state that the date for when the "Application Accepted as Complete" should be ten (10) business days after the filing of the application unless a rejection is sent within those ten (10) days.

I. Checklist

The Commission proposed a checklist of additional items to include in the Section 1329 application, all of which must be included or the application will be deemed incomplete, and, therefore, not accepted. The Company first provides general comments on the checklist and will then provide specific comments to checklist items below. Also, attached to these comments as Exhibit A, is a revised checklist for illustrative purposes based on the specific comments to the checklist items below. The Company reiterates that while the General Assembly included five pieces of information to be included in the application, the checklist seeks to include 65

individual pieces of new information. The new information is more similar to minimum filing requirements required for a general base rate case than a streamlined checklist. Again, the Company understands it has the burden of proof in the application, but asks the Commission to carefully review what information is essential to approving the acquisition of a willing seller and buyer for an already deemed fit utility.

As stated above, several of the items in the checklist are taken from 52 Pa. Code § 3.501. The Company asserts that Section 3.501 applies to applications for initial service authority by a water or wastewater company, or to applications by a de facto utility, and not to a Section 1102 acquisition application. While Aqua does not object to utilizing Section 3.501 as a guide for some of the information to include in the checklist, not all of the items in Section 3.501 need to be included and a more balanced approach is suggested, particularly regarding the items that refer to cost of service, and items that are already filed at other agencies.

The Company also notes that the information required in the checklist would exclude many small or troubled municipal systems from this process. Many of these small and troubled municipal systems do not have the information requested in the checklist, and by the Commission's guidance, an application without this information would be deemed incomplete. Many municipal systems for example, are not in compliance with applicable design, construction and operations standards of the Department of Environmental Protection's ("DEP"). Many of these items fall under the jurisdiction of the DEP and should be left to the buyer to address with the DEP. There are other examples of when information may not be available. For example, many small municipalities do not have water and wastewater rules or regulations.

As such, the Company proposes that the checklist should include, along with "Yes" and "No", a "Not Available" option due to incomplete or missing information of the selling system.

For those that have long participated in water and wastewater acquisition applications, there are countless stories about water and wastewater compliance issues and creating regulatory filing requirements that block or slow down the approval process only adds additional costs.

Specific Comments on the Checklist:

Below, the Company will restate each checklist item and provide comments in *italic* font below each checklist item. The changes proposed by the Company below are reflected in the revised checklist attached as Exhibit A.

1. Transmittal letter with caption and statement that filing is pursuant to 66 Pa. C.S. § 1329.

The Company has no comment on this checklist item.

2. Verification form that is signed by an officer of the company, dated, and accurately references the case.

The Company has no comment on this checklist 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, upon the following:

- a. each city, borough, town, township, county and related planning office which is included whole or in part in the proposed service area;

The Company has no comment on this checklist item.

- b. a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application;

The Company has no comment on this checklist item.

- c. the statutory advocates and

The Company has no comment on this checklist item.

- d. the Department of Environmental Protection's central and regional offices.

The Company proposes to delete "central and regional offices" and replace it with "applicable regional office". The Company notes that it has not been required to notify the DEP central office of acquisitions. This new checklist item seems redundant and should only require the public utility to notify the DEP regional office and let that agency decide what is necessary for distribution within its offices. As such, the Company proposes to have notification to the DEP be to the applicable regional office.

4. Provide copies of two appraisals performed by separate utility valuation experts establishing the system's fair market value.

The Company has no comment on this checklist item.

5. State the purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.

The Company has no comment on this checklist item.

6. Provide a verification statement that one utility valuation expert was selected by the acquiring public utility and the other utility valuation expert was selected by the selling utility.

The Company has no comment on this checklist item.

7. State the fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide documentation justifying the subject fee amounts.

The Company proposes that adequate justification for the fees will be the submission and review of the UVEs invoices for the services provided.

8. Provide a verification statement that the utility valuation expert has no affiliation with the buyer or seller as specified in 66 Pa. C.S. § 1329.

The Company has no comment on this checklist item.

9. Provide a verification statement that the appraisals performed by the utility valuation experts determined fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.

The Company has no comment on this checklist item.

10. State the ratemaking rate base as required in 66 Pa. C.S. § 1329 and specify whether it is based on either the fair market value determined by the valuation experts or the asset purchase price.

The Company has no comment on this checklist item.

11. Quantify the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base shown.

The Company has no comment on this checklist item.

12. Provide a proposed 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.

The Company has no comment on this checklist item.

13. Provide direct testimony for the application.

The Company has no comment on this checklist item.

14. Plant in Service.

The Company clarifies that the information requested in this checklist item 14 pertains to the selling utility only. Please see Exhibit A. attached to these comments.

- a. State the original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations.

This is an example of the need to move from the old process to the new process under Act 12. This item will already be provided in the UVEs' appraisals and the engineering assessment. Separately stating such information here is duplicative and unnecessary. Therefore the Company suggests deleting this checklist item.

- b. State the DEP-permitted productive or treatment capacity of sources or treatment facility and the pipe sizes and material used for construction for all transmission and distribution or collection facilities.

The Company questions first if the word "productive" is supposed to be "production". And, if not, the Company requests further explanation on the intent of using "productive". This checklist item is overly broad and can be subject to different interpretations for completion. Aqua suggests that the information requested here is part of the engineering assessment. In addition the Company proposes that it provide the DEP construction and operating permits, which contain information relevant to the facilities and their operation. The other information requested may not be available in all cases. Therefore, the Company proposes that submission

of the DEP construction and operating permits should satisfy this checklist item.

- c. State the elevations of major facilities and service areas.

The Company proposes to delete this checklist item. This new requirement is overly broad and subject to varying interpretations. The Company respectfully does not agree that the elevations of the major facilities and service areas provide any pertinent information for approval of an acquisition. Furthermore, this information is unknown by many municipalities.

- d. State the approximate time schedule for installation of the various component facilities.

The Company submits that it will state the approximate time schedule for known and planned installation of component facilities at the time the Company files the application.

- e. State the tentative journal entries for booking the acquisition.

The Company has no comment on this checklist item.

15. Map of Service Area. Provide a scalable map or plan of suitable scale highlighting the boundaries of the proposed service area, that includes:

- a. The extent of the proposed service area with any existing adjoining service area identified.

The Company has no comment on this checklist item.

- b. A north arrow depicting map orientation.

The Company has no comment on this checklist item.

- c. A graphic scale.

The Company has no comment on this checklist item.

- d. A written description of the boundaries for the service territory utilizing bearing angles and distances.

The Company suggests deleting this new checklist item. The Company does not see the public policy reason for providing bearing angles and distances. Surveying and different modeling is an added expense that has

not been required in the past, and does not, in the Company's opinion, provide information necessary for the approval of an application.

- e. Size of the service territory area in terms of acres or square miles.

The Company has no comment on this checklist item.

- f. Identification and depiction of all municipal boundaries relative to the service area.

The Company has no comment on this checklist item.

- g. Identification and depiction of all private and public roads relative to the service area.

Regarding this new requirement, while the Company supports identifying roads relative to the service area, the Company will reiterate an earlier point that an application should not be rejected for lack of completeness if the Company does not mark a private road. The Company wants to promote dialogue with the Commission to work to get the information necessary for approval of the application, but does not want to see applications get rejected outright because a road may have been unmarked or mismarked.

- h. Depiction of the location or route of the proposed waterworks or wastewater collection, treatment or disposal facilities.

The Company is not clear on this new requirement. Is the Commission asking for depiction of proposed waterworks to be built as later improvements? The Company would object to this as unnecessary, as any improvements would be reviewed in the next base rate case. The Company is responsible for making prudent investments that are reviewed in its base rate case by Commission Staff. This checklist item appears to seeking pre-approval of improvements to be made to the system, all of which will be reviewed for prudence in the next rate case.

16. Customers.

- a. State the utility'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 10 years.

The Company has no objection to providing current customers of the selling utility, as this would be in the application. However, determining anticipated customers for the next 10 years goes beyond the scope of the application and is simply a prediction. Additionally, concerning

consumption, some utilities may not have consumption or gallons treated if they bill a flat rate. Therefore, the Company proposes to delete the future number of customers anticipated for the next 10 years and associated consumption or gallons treated for that period. The Company suggests providing current number of customers and consumption or gallons treated where available and when provided by the selling system.

- b. Each utility shall demonstrate its ability to provide adequate water supply, treatment, storage and distribution or adequate wastewater collection, treatment or disposal capacity to meet present and future customer demands.

The Company submits that this new requirement is overly broad, vague, and subject to varying degrees of required detail. First, it is unclear whether this requirement applies to the selling entity, the buying entity, or both. If it applies to the selling entity, why is this required? Many times, the selling entity cannot provide adequate storage or distribution, and if it cannot, does this mean the application will be rejected? If it applies to the acquiring utility, a utility like Aqua already has a certificate of public convenience and is deemed fit to serve. Therefore, the Company proposes to delete this checklist item.

- c. For **water** system acquisitions, quantify the number of public and private fire hydrants.

For this new requirement, the Company submits that in many cases the Company will not know which hydrants are public and which are private until it bills the customers. The Company will be able to provide a total hydrant count, but it will not be able to break out that count by public vs. private. Therefore, the Company proposes to provide a total hydrant count without identifying public vs. private hydrants.

17. Rates.

- a. State the current rates of the selling entity.

The Company has no comment on this checklist item.

- b. Provide a copy of the selling entity's current rules and regulations for service.

The Company submits that it will provide the current rules and regulations approved in an ordinance if a selling entity has them. In some instances, small municipalities do not have rules and regulations.

- c. Provide a proposed tariff or tariff supplement showing the rates, proposed rules, and conditions of service.

The Company has no comment on this checklist item.

- d. Provide a copy of the notification sent to affected customers describing the filing and the proposed rates.

The Company suggests that while acquiring entities will provide newspaper notification, the Company submits that it is not required to provide bill inserts to customers, and that it is beyond the Commission's jurisdiction to require a municipality to do so. Therefore, the Company proposes that the newspaper notification will satisfy this checklist item.

18. Cost of Service.

Section 1329(d)(5) provides in part that "[t]he selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility's next base rate case proceeding." 66 Pa. Cons. Stat. § 1329(d)(5). However, the Commission commented that "[a]pplications must address cost of service, including the seller's most recently audited financial statements." Order at 10. This is an example of the need to reconcile the old approval process with the new Act 12. The Company wants to clarify that Section 1329 does not require a cost of service study to be included in the application. It has been the longstanding policy of the Commission that cost of service studies are filed at least four months prior to the next base rate case. 52 Pa. Code § 69.721(f). The Company comments, as the statutory language indicates, that determination of cost of service will be a matter for the next base rate case, as the acquiring utility will be adopting the current rates of the selling utility as per Section 1329(d)(1)(v). The Company will provide the seller's most recently available audited financial statements. However, if the Commission determines that this section is necessary, the Company proposes to rename it to be "Publicly Available Financial Information", and provides the following comments.

- a. Provide a copy of the seller's audited financial statement for the previous two years.

The Company suggests that the most recent two (2) years of audited financial statements that are available be filed with the application.

- b. Provide a copy of the seller's adopted budget from the previous two years.

The Company has no comment on this checklist item.

- c. If the seller is a municipal authority, provide a copy of the most recent annual report filed with the Commonwealth's Department of Community and Economic Development.

The Company is unclear on why this new requirement is needed. The Company submits that this outside agency report is unnecessary for inclusion in the application, as it is another state agency's responsibility to review these reports.

- d. Provide calculations quantifying the projected revenues and expenses for the acquisition.

The Company submits that this new requirement is unnecessary for inclusion in the application. Revenues and expenses of the selling system are quantified in the audited financial statements, and serve the baseline for future projections.

- e. State whether there are any outstanding loans on the utility plant and identify the nature, terms, and payment history.

The Company submits that this new requirement is unnecessary for inclusion in the application. Outstanding loans and terms are usually a component of audited financial statements and usually not acquired in the context of an asset sale.

19. 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:

The Company respectfully proposes that portions of this checklist item be deleted. Generally, all of the information requested in this checklist item, with the exception of (19)(g), (h), (i), and (j) as will be discussed below, is not under the purview or the jurisdiction of the Public Utility Commission and creates redundant filing and unnecessary review work. The DEP has been given jurisdiction concerning these areas of compliance, and would have this information available to it. As such, this information should not be required in the application and the Company proposes deleting checklist item 19 and moving and renaming checklist items (19)(g) through (j) to a new section titled "Relationship to the Acquiring Utility or Entity", as will be discussed below.

- a. For **water** system acquisitions, provide copies of the public water supply/water quality management permits for the utility plant.

Please see the general comment in checklist item 19 above.

- b. For **wastewater** system acquisitions, provide copies of the National Pollution Discharge Elimination System (NPDES) permits for the utility plant.

Please see the general comment in checklist item 19 above.

- c. For **wastewater** system acquisitions, provide a copy of the Chapter 94 Municipal Wasteload Management Report that was most recently submitted to DEP.

Please see the general comment in checklist item 19 above.

- d. Valid certified operators' certificates appropriate to the facilities being operated.

Please see the general comment in checklist item 19 above.

- e. Provide documentation evidencing a 5-year compliance history with DEP with an explanation of each violation for utilities that have been providing service.

Please see the general comment in checklist item 19 above.

- f. Provide documentation evidencing a 5-year compliance history with DEP of other utilities owned or operated, or both, by the buyer, including affiliates, and their officers and parent corporations with regard to the provision of utility service.

Please see the general comment in checklist item 19 above.

- g. Provide statement clarifying whether the acquired plant will be physically interconnected to the buyer's system or be operated as a standalone system.

The Company proposes that it will provide the information for checklist items (19)(g), (h), (i), and (j), however, these items should be put into a new section titled "Relationship to Acquiring Utility or Entity" and the Company will provide statements generally describing these items.

- h. Provide a statement that explains how the acquisition will fit into the current operations of the buyer.

Please see the comment in checklist item (19)(g).

- i. Provide a statement that identifies the staff, district or division of the buyer that will operate and manage the acquisition.

Please see the comment in checklist item (19)(g).

- j. Provide a statement quantifying the distance in miles the acquisition is from the buyer's existing system or facilities.

Please see the comment in checklist item (19)(g).

- k. Provide a statement that identifies all planned physical, operational and managerial changes of the buyer that will occur after closing and state the timeframe and cost for each.

The Company comments that this new requirement is very broad and subject to varying types of detail. That being said, the Company submits that the application include general statements of the known or planned improvements at the time the Company files the application along with the general timeframe and cost of those improvements.

20. Affected Persons. State the identity of all public utilities, municipalities, municipal authorities, cooperatives and associations which provide public water service or wastewater collection, treatment or disposal service within each municipality, or a municipality directly adjacent to the municipality(ies), in which the applicant seeks to provide service that abuts or is situated within one mile of the applicant's proposed facilities.

The Company proposes deleting this checklist item. This information will be provided in the certificate of service as required in checklist item 3. Separately stating this information is duplicative and unnecessary, and, therefore, the Company proposes deleting this checklist item.

21. Other requirements. Demonstrate compliance with the following:

The Company respectfully submits that this section should be deleted. Generally, all of the information requested in this section, is not under the purview or the jurisdiction of the Public Utility Commission and creates redundant filing and unnecessary review work. The DEP has been given jurisdiction concerning these areas of compliance, and would have this information available to it. As such, this information should not be required in the application and the Company proposes deleting checklist item 21.

- a. For **wastewater** system acquisitions, demonstrate compliance with the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities (including the extent of the requested service territory).

Please see the general comment in checklist item 21 above.

- b. For **wastewater** system acquisitions, provide a copy of the DEP-approved Act 537 Official Sewage Facilities Plans for the affected municipalities.

Please see the general comment in checklist item 21 above.

- c. For **wastewater** system acquisitions, state the method of water service being provided in the requested territory (i.e., public water or private wells) and identify the name of water utility, if applicable.

Please see the general comment in checklist item 21 above.

- d. For **water** system acquisitions, state the method of wastewater service being provided in the requested territory (i.e., public wastewater or private on-lot) and identify the name of wastewater utility, if applicable.

Please see the general comment in checklist item 21 above.

- e. Provide a copy of the affected municipality and county's comprehensive plans or provide evidence the application complies with the subject plans.

Please see the general comment in checklist item 21 above.

22. Verification

- a. For **water** system acquisitions, provide a verification that the water sources and customers are metered in accordance with 52 Pa. Code § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.

The Company has no comment on this checklist item.

- b. Include a statement that there is no affiliation between the buyer and seller.

The Company has no comment on this checklist item.

- c. Include a statement that the agreement was conducted at arm's length.

The Company has no comment on this checklist item.

- d. Include a statement explaining how the customers will benefit from the ownership.

The Company submits that this checklist item requests that the Company provide a statement explaining how the acquired customers will benefit from the acquisition.

23. Asset Purchase Agreement (APA).

The Company has no comment on this checklist item.

- a. Provide a copy of the APA provided that is signed by all parties.

The Company has no comment on this checklist item.

- b. APA clearly states the purchase price and terms.

The Company has no comment on this checklist item.

- c. APA clearly states whether all assets or only a portion of the assets are to be purchased (e.g., water treatment and distribution or wastewater collection and treatment).

The Company has no comment on this checklist item.

- d. APA adequately describes the assets to be acquired.

The Company has no comment on this checklist item.

- e. APA adequately describes the assets to be excluded.

The Company has no comment on this checklist item.


- f. APA contains a copy of all agreements to be assumed by the buyer as part of the acquisition.

The Company has no comment on this checklist item.

IV. CONCLUSION

Aqua appreciates the opportunity to comment on the Tentative 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,



Kimberly A. Joyce
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Dated: August 10, 2016

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pennsylvania Public Utility Commission
66 Pa. C.S. § 1329 Application Filing Checklist – Water/Wastewater

Circle No, Yes, or N/A. If yes, identify the application’s page number containing the item.

1. Transmittal letter with caption and statement that filing is pursuant to 66 Pa. C.S. § 1329.	No	Yes	N/A	Page No. _____
2. Verification form that is signed by an officer of the company, dated, and accurately references the case.	No	Yes	N/A	Page No. _____
3. Certificate of Service indicating that a complete copy of the application with exhibits was served by registered or certified mail, return receipt requested, upon the following:	No	Yes	N/A	Page No. _____
a. each city, borough, town, township, county and related planning office which is included whole or in part in the proposed service area;	No	Yes	N/A	Page No. _____
b. a water or wastewater utility, municipal corporation or authority which provides water or wastewater collection, treatment or disposal service to the public and whose service area abuts or is within 1 mile of the service area proposed in the application;	No	Yes	N/A	Page No. _____
c. the statutory advocates and	No	Yes	N/A	Page No. _____
d. the Department of Environmental Protection’s regional office.	No	Yes	N/A	Page No. _____
4. Provide copies of two appraisals performed by separate utility valuation experts establishing the system’s fair market value.	No	Yes	N/A	Page No. _____
5. State the purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.	No	Yes	N/A	Page No. _____
6. Provide a verification statement that one utility valuation expert was selected by the acquiring public utility and the other utility valuation expert was selected by the selling utility.	No	Yes	N/A	Page No. _____
7. State the fees paid to the utility valuation experts for providing the completed appraisals for the acquisition and provide invoices justifying the subject fee amounts.	No	Yes	N/A	Page No. _____
8. Provide a verification statement that the utility valuation expert has no affiliation with the buyer or seller as specified in 66 Pa. C.S. § 1329.	No	Yes	N/A	Page No. _____

Pennsylvania Public Utility Commission
66 Pa. C.S. § 1329 Application Filing Checklist – Water/Wastewater

9. Provide a verification statement that the appraisals performed by the utility valuation experts determined fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.	No	Yes	N/A	Page No. _____
10. State the ratemaking rate base as required in 66 Pa. C.S. § 1329 and specify whether it is based on either the fair market value determined by the valuation experts or the asset purchase price.	No	Yes	N/A	Page No. _____
11. Quantify the transaction and closing costs incurred by the acquiring public utility that will be included in its rate base shown.	No	Yes	N/A	Page No. _____
12. Provide a proposed 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.	No	Yes	N/A	Page No. _____
13. Provide direct testimony for the application.	No	Yes	N/A	Page No. _____
14. Selling entity plant in service.	No	Yes	N/A	Page No. _____
a. Provide DEP construction and operating permits	No	Yes	N/A	Page No. _____
b. State the approximate time schedule for installation of the known and planned component facilities.	No	Yes	N/A	Page No. _____
c. State the tentative journal entries for booking the acquisition.	No	Yes	N/A	Page No. _____
15. Map of Service Area. Provide a scalable map or plan of suitable scale highlighting the boundaries of the proposed service area, that includes:	No	Yes	N/A	Page No. _____
a. The extent of the proposed service area with any existing adjoining service area identified.	No	Yes	N/A	Page No. _____
b. A north arrow depicting map orientation.	No	Yes	N/A	Page No. _____
c. A graphic scale.	No	Yes	N/A	Page No. _____
d. Size of the service territory area in terms of acres or square miles.	No	Yes	N/A	Page No. _____
e. Identification and depiction of all municipal boundaries relative to the service area.	No	Yes	N/A	Page No. _____
f. Identification and depiction of all private and public roads relative to the service area.	No	Yes	N/A	Page No. _____

Pennsylvania Public Utility Commission
 66 Pa. C.S. § 1329 Application Filing Checklist – Water/Wastewater

16. Customers.				
a. State the utility's actual number of customers by class and quantify the related consumption or gallons treated in the current calendar year.	No	Yes	N/A	Page No. _____
b. For water system acquisitions, quantify the total number of fire hydrants.	No	Yes	N/A	Page No. _____
17. Rates.				
a. State the current rates of the selling entity.	No	Yes	N/A	Page No. _____
b. Provide a copy of the selling entity's current rules and regulations for service.	No	Yes	N/A	Page No. _____
c. Provide a proposed tariff or tariff supplement showing the rates, proposed rules, and conditions of service.	No	Yes	N/A	Page No. _____
d. Provide a copy of the newspaper notification describing the filing and the proposed rates.	No	Yes	N/A	Page No. _____
18. Financial Information.				
a. Provide a copy of the seller's audited financial statement for the previous two years.	No	Yes	N/A	Page No. _____
b. Provide a copy of the seller's adopted budget from the previous two years.	No	Yes	N/A	Page No. _____
19. Relationship to Acquiring Utility or Entity				
a. Provide statement clarifying whether the acquired plant will be physically interconnected to the buyer's system or be operated as a standalone system.	No	Yes	N/A	Page No. _____
b. Provide a statement that explains how the acquisition will fit into the current operations of the buyer.	No	Yes	N/A	Page No. _____
c. Provide a statement that identifies the staff, district or division of the buyer that will operate and manage the acquisition.	No	Yes	N/A	Page No. _____
d. Provide a statement quantifying the distance in miles the acquisition is from the buyer's existing system or facilities.	No	Yes	N/A	Page No. _____

Pennsylvania Public Utility Commission
66 Pa. C.S. § 1329 Application Filing Checklist – Water/Wastewater

20. Verification.				
a. For water system acquisitions, provide a verification that the water sources and customers are metered in accordance with 52 Pa. Code § 65.7 (relating to metered service). If unmetered water service is currently provided, the applicant shall provide a metering plan to the Commission.	No	Yes	N/A	Page No. _____
b. Include a statement that there is no affiliation between the buyer and seller.	No	Yes	N/A	Page No. _____
c. Include a statement that the agreement was conducted at arm's length.	No	Yes	N/A	Page No. _____
d. Include a statement explaining how the selling utility's customers will benefit from the ownership.	No	Yes	N/A	Page No. _____
21. Asset Purchase Agreement (APA).				
a. Provide a copy of the APA provided that is signed by all parties.	No	Yes	N/A	Page No. _____
b. APA clearly states the purchase price and terms.	No	Yes	N/A	Page No. _____
c. APA clearly states whether all assets or only a portion of the assets are to be purchased (e.g., water treatment and distribution or wastewater collection and treatment).	No	Yes	N/A	Page No. _____
d. APA describes the assets to be acquired.	No	Yes	N/A	Page No. _____
e. APA describes the assets to be excluded.	No	Yes	N/A	Page No. _____
f. APA contains a copy of all agreements to be assumed by the buyer as part of the acquisition.	No	Yes	N/A	Page No. _____

*All information disclosed within this application is considered public information unless specifically labeled confidential. Applicants are responsible for disclosing to the Secretary's Bureau that which is privileged or confidential information and not otherwise available to the public. **Submit one copy of all confidential information, on documents stamped CONFIDENTIAL at the top in clear and conspicuous letters, in a separate envelope (but still attached to the application) to the Secretary's Office along with the Application.***

If you e-file your application, separately mail in any confidential information specifically identifying that you have e-filed the application. Be sure to specify the Applicant's name, and provide the e-filing confirmation page.

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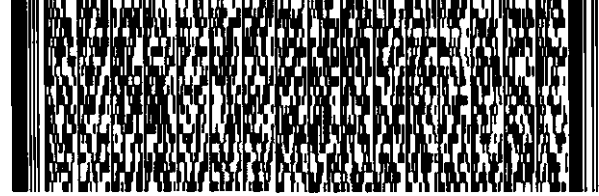
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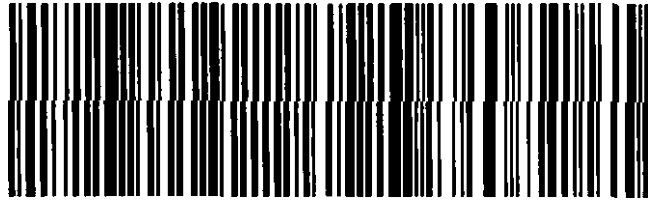
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