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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held October 27, 2016 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman | |  | |
| Andrew G. Place, Vice Chairman | |  | |
| John F. Coleman, Jr. |  | |
| Robert F. Powelson |  | |
| David W. Sweet |  | |
| Implementation of Section 1329  of the Public Utility Code | M-2016-2543193 | |

**FINAL IMPLEMENTATION ORDER**

**BY THE COMMISSION:**

On April 14, 2016, Governor Wolf signed into law Act 12 of 2016, which amended Chapter 13 of the Pennsylvania Public Utility Code (Code) by adding a new Section 1329 to the Code, which became effective June 13, 2016. 66 Pa. C.S. § 1329.

In particular, Section 1329 of the Code addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. Section 1329 also allows the acquiring entity’s post-acquisition improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes.

**Background**

Throughout the Commonwealth, there are a number of water and wastewater systems owned by municipal corporations or authorities.  For these systems, sale to an investor-owned public utility or entity can facilitate necessary infrastructure improvements and ensure the continued provision of safe, reliable service to customers at reasonable rates.  However, current law dictated by 66 Pa. C.S. § 1311(b) of the Code relating to the valuation of utility property discourages these acquisitions because the value of the property is defined as the original cost of construction less accumulated depreciation rather than the acquisition cost. Systems that are greatly depreciated or that were constructed using grants or contributions in aid of construction could have valuations so low that sales of the systems would be less advantageous or could cause financial hardships to the municipal corporations and authorities.  
  
 To remedy this situation, Section 1329 establishes an alternative process for valuating certain water or wastewater systems for ratemaking purposes. Section 1329 provides a process to determine the fair market value of a water or wastewater system of a municipality or authority that is to be acquired by a public utility or entity.

On July 21, 2016, the Commission entered a Tentative Implementation Order that proposed the procedures and guidelines necessary to begin the implementation of Section 1329. In the July 21st Tentative Implementation Order, we invited interested parties to provide comments on our tentative proposals and to offer additional recommendations worth consideration. Comments have been received from the following entities: Aqua Pennsylvania Inc. (Aqua); Pennsylvania-American Water Company (PAWC); York Water Company (York Water); and the Office of Consumer Advocate (OCA).

Having reviewed the comments to our July 21st Tentative Implementation Order, we shall establish in this Order procedures and guidelines to carry out the ratemaking provisions of Section 1329.

**Discussion**

Section 1329 mitigates the risk that a utility will not be able to fully recover its investment when water or wastewater assets are acquired from a municipality or authority. Section 1329 enables a public utility or entity to utilize fair market valuation when acquiring water or wastewater systems located in the Commonwealth that are owned by a municipal corporation or authority. A fair market valuation is not tied to the original cost of construction minus the accumulated depreciation. Rather, a fair market valuation allows consideration of cost, market, and income approaches in valuing the system. 66 Pa. C.S. § 1329(a)(3). Section 1329 also allows the acquiring public utility’s post-acquisition improvement costs not recovered through a distribution system improvement charge (DSIC) to be deferred for book and ratemaking purposes. In sum, Section 1329 allows enhanced rate base adjustments based upon the lesser of fair market value of the acquired assets or the negotiated purchase price and deferral of post-acquisition improvement costs.

After considering the comments filed in response to the Tentative Implementation Order, we believe that we have improved our approach to meet the statutory goals of Section 1329 and have established specific and reasonable procedures for the implementation of Section 1329.

For purposes of this Final Implementation Order, we will proceed section by section, abbreviating the discussion laid out in the Tentative Implementation Order. This discussion section has been drawn from the Tentative Implementation Order without further specific attribution or citation. Provisions from the Tentative Implementation Order which did not generate comments are recapped herein without further substantive change. To the extent that we have not addressed a particular comment, it has been considered and rejected.

**Tentative Order On Section 1329(a) – Process To Establish Fair Market Value Of Selling Utility**

Section 1329(a) establishes a voluntary process whereby the acquiring public utility or entity (buyer) and the selling municipal corporation or authority (seller) may choose to have the fair market value of the assets established through independent appraisals conducted by a utility valuation expert (UVE).  Section 1329(g) limits the term “selling utility” to a Pennsylvania water or wastewater company owned by a municipal corporation or authority.

Both the seller and buyer must agree to the fair market valuation procedure before it can be utilized. The Commission is directed to maintain a list of UVEs to be utilized by the buyer and the seller. The UVEs will each prepare an appraisal of the assets, and the average of those appraisals will be used as the fair market value of the asset. To this end, the Commission invited interested persons and entities to file for consideration as a UVE, similar to our process for Conservation Service Providers.[[1]](#footnote-1) Via Secretarial Letter dated July 21, 2016, at this docket number, prospective UVEs were directed to complete the Application Form for Registration as a Utility Valuation Expert, which was attached to the Tentative Implementation Order and is available on the Commission’s website.

To be included on the registry, the Commission tentatively determined that UVEs must establish their qualifications. Applicants were to: (1) demonstrate the education and experience necessary for providing utility valuations: (2) acknowledge a fiduciary duty to provide a thorough, objective, and fair valuation; (3) demonstrate compliance with Pennsylvania laws; (4) demonstrate financial and technical fitness, such as professional licenses, technical certifications, and/or names of current or past clients with a description of dates and types of services provided. In order to maintain a list of UVEs in good standing, the Commission proposed requiring applicants to renew their applications biennially. Using our registry of Conservation Service Providers as a model, we tentatively established a fee of $125 for initial UVE applications and a fee of $25 for renewal and/or updates.

The two UVEs were to perform two separate appraisals of the selling utility for the purpose of establishing its fair market value. Each UVE was to determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), employing the cost, market and income approaches.

In addition, the buyer and seller were to engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. Section 1329(a)(4). The assessment was to be incorporated into the appraisal under the cost approach. The engineer’s assessment was to include the original cost, by year and major plant category, of used and useful plant in service and related accrued depreciation calculations pursuant to 66 Pa. C.S. § 1311.

The engineer’s assessment was to be developed in accordance with Commission procedures and practices that conform with the National Association of Regulatory Utility Commissioners (NARUC) System of Accounts for water and wastewater systems. We directed that the approach must consider the following:

* An inventory of the used and useful utility plant assets to be transferred.  Identify separately any utility plant that is held for future use.
* A list of all non-depreciable property such as land and rights-of-way.
* The inventory is to be developed from available records, maps, work orders, debt issue closing documents funding construction projects, and other sources to ensure an accurate listing of utility plant inventory by utility account.
* An estimate of years of construction or acquisition for the utility plant by year and account.
* The use of current prices restated as costs to the Original Cost price level including related accrued depreciation. Where cost data is not available, the use of appropriate cost trend indices in accordance with recognized industry practices.
* Costs for utility plant compiled by utility account by year of installation.
* A calculation of accumulated depreciation by estimated service life applicable for comparable utility plant.
* A report explaining the process for developing the cost assessment.

**Comments: Aqua**

In response to the qualifications set forth by the Commission for the UVEs, Aqua agrees with the Commission that the UVEs must demonstrate that they have the education and experience necessary to be included on the Commission’s list of qualified UVEs and that the UVEs must acknowledge a fiduciary duty to provide an objective and fair valuation. However, Aqua submits that the Commission should further clarify that applicants to be included on the UVE list must have adequate utility valuation and appraisal experience. According to Aqua, 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. Aqua at 6.

As to the role and responsibility of the licensed engineer, Aqua 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. Aqua 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, Aqua states that an engineer should not be doing an original cost study for the purpose of Section 1329. While Aqua agrees with the Commission that the licensed engineer should follow Commission practices and procedures and the NARUC system of accounts, 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. Therefore, Aqua 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. Aqua at 7-8.

As to the information set forth by the Commission to establish the cost assessment, Aqua proposes that the fourth, fifth, sixth, seventh, and eighth bullet point above should be removed. According to Aqua, the licensed engineer will be providing an inventory to be used by the UVEs and the fifth, sixth, seventh, and eighth bullets above will be covered by the UVEs in their appraisals. Also, Aqua proposes that the first bullet point should be amended to include portions of the fourth bullet point and should 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.” Aqua at 8.

Finally, Aqua submits that, if the selling utility, prior to submitting a request for proposal, has already conducted an engineering assessment and appraisal of their own system, that single assessment could serve as the basis for both the seller’s and the buyer’s valuation, as well as the independent engineer’s assessment. Aqua proposes the single assessment in situations where the buyer and the seller both agree to the engineer’s assessment. According to Aqua, this will save both time and resources, and remove the need for duplicative work.[[2]](#footnote-2) Aqua at 8-9.

**PAWC**

As to the Commission-proposed information to establish the cost assessment, PAWC submits that the last four bullets above, which PAWC notes relate to a valuation of the assets per Section 1311(b) of the Public Utility Code based on the depreciated original cost of such assets, should be deleted. According to PAWC, the UVEs, not the engineer, are tasked with the responsibility of valuing the acquired assets under the USPAP standards, employing the cost, market and income approaches. Thus, PAWC questions the purpose served by the licensed engineer performing a depreciated original cost valuation of the acquired assets. Moreover, PAWC asserts that the Commission-proposed requirements set forth in the last four bullets will likely create a conflict between the engineer’s assessment and the valuation to be performed by the UVEs under the cost approach of the USPAP. Thus, to save on duplicative and unnecessary work, PAWC recommends striking the fifth, sixth, seventh and eighth bullets above. PAWC at 10.

**OCA**

OCA initially notes in its comments that, in order for the statutory process to be seen as fair, it will be important for the Commission and the applicants to find and use well-qualified UVEs who have relevant training and experience and who do not have conflicts of interest. OCA at 1. As to the UVEs qualifications, OCA submits that the Commission should establish minimum qualifications, such as a bachelor’s degree in a related field and a certain amount of relevant professional experience. OCA also submits that the Commission should establish more specific standards for establishing financial and technical fitness such as specifying what licenses are required to be a UVE and what sorts of technical certifications are available and would be considered necessary for qualification. OCA at 2.

Similarly, OCA submits that the Commission should clarify the fiduciary duty of the UVE, i.e., who is owed the fiduciary duty, and that the Commission should ensure that there are no other standards that are specifically related to utility valuation as opposed to the USPAP standards, which apply to real estate and personal property. OCA at 3.

Finally, OCA submits that it is critically important that there not be any affiliation between a UVE and a buyer/seller in the underlying transaction or affiliates of the buyer and seller. Thus, the Commission should require a list of current **and** past clients, rather than current **or** past clients as provided in the Tentative Implementation Order. On the issue of conflicts of interest, OCA points out that, while it is mentioned in the instructions for an application for registration as a UVE, it should be further addressed in the Final Implementation Order. Thus, OCA submits that the prohibition found in the instructions should be expanded to include UVEs that worked for or consulted for any utility or municipality or municipal authority, or entity as defined in Section 1329 in the last five years.[[3]](#footnote-3) OCA at 3-4. As to the licensed engineer hired to conduct the assessment report, OCA recommends similar guidelines and prohibitions to avoid a conflict of interest. OCA at 5.

**Resolution**

To be included on the registry, the UVEs must establish their qualifications. UVE applicants must: (1) demonstrate the education and experience necessary for providing utility valuations: (2) acknowledge a fiduciary duty to provide a thorough, objective, and fair valuation; (3) demonstrate compliance with Pennsylvania laws; (4) demonstrate financial and technical fitness, such as professional licenses, technical certifications, and/or names of current or past clients with a description of dates and types of services provided. In additions, as to the qualifications for the UVE, we agree with Aqua that, for applicants to be included on the Commission’s UVE list, they must have adequate utility valuation and appraisal experience. In our review of the qualifications, we shall ensure that the UVEs have adequate utility valuation and appraisal experience as opposed to just expertise in appraisals of other types of property. We also will require that the UVE have a bachelor’s degree in a related field and relevant professional experience. As to OCA’s request for more specific standards for establishing financial and technical fitness of the UVE applicant, we shall closely review the UVE applications submitted and revise, as necessary, those standards in the future.

As to the role and responsibility of the licensed engineer, we also agree with Aqua that the engineer should not be doing an original cost study for the purpose of Section 1329. The licensed engineer should follow Commission practices and procedures and the NARUC system of accounts and their 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 appraisal of the system. Accordingly, as to the information to establish the cost assessment, we shall remove the fourth, fifth, sixth, seventh, and eighth bullets above and we shall revise the first bullet 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.
* A list of all non-depreciable property such as land and rights-of-way.
* The inventory is to be developed from available records, maps, work orders, debt issue closing documents funding construction projects, and other sources to ensure an accurate listing of utility plant inventory by utility account.

Regarding Aqua’s suggestion concerning a selling utility that has already conducted an engineering assessment and appraisal of their system prior to submitting a request for proposal, we will accept a verification signed by the responsible parties for the buyer and seller agreeing that the engineer assessment previously conducted is complete and accurate. Accordingly, the engineering assessment and appraisal may serve as the basis for both the buyer and seller’s valuation as well as the independent engineer’s assessment. As noted by Aqua, this will save both time and resources, and remove the need for duplicative work. We will however require that the engineering assessment and appraisal be done within 90 days of the request for proposal.

As pointed out by OCA, it is critical for the Commission to be able to determine that there will not be any affiliation between a UVE and a buyer/seller in the underlying transaction or affiliates of the buyer and seller. Therefore, the Commission will require a list of current **and** past clients, rather than current **or** past clients as provided in the Tentative Implementation Order. As to OCA’s comment concerning the UVEs fiduciary duty, we would note that a fiduciary duty is the highest standard of care and the fiduciary must not have a conflict of interest. Similarly, the fiduciary must not profit from his position as a fiduciary. Therefore, we shall also require the UVE to verify that neither the UVE nor the UVE’s firm, including affiliates, have a conflict of interest that would compromise, or have the appearance of compromising, the UVE’s professional judgment and ability to perform the valuation in an unbiased manner.[[4]](#footnote-4)

Finally, we shall modify the UVE application fee for renewal to address some cumbersome internal administrative issues. While the UVE initial application fee shall remain at $125 as suggested in the Tentative Implementation Order, we will require a uniform annual recertification. Each UVE on the Commission’s registry must submit a petition/request/letter/application for renewal by January 1, 2018, and each January 1st thereafter. The annual renewal fee will be $125.[[5]](#footnote-5)

**Tentative Order On Section 1329(b) – Utility Valuation Experts**

Section 1329(b) provides guidelines for the selection and fees to be paid to the aforementioned UVEs. Important in this subsection is the UVEs’ fee limitation of 5% of the fair market value of the selling utility or a fee approved by the Commission. We determined that applications and direct testimony should contain ample justification for the UVEs’ fee.

**Comments: Aqua**

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. Aqua at 9. However, Aqua proposes that there should be a presumption of reasonableness 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. Aqua at 9-10.

**PAWC**

PAWC recommends that the Commission should remove the proposal that the utilities be required to provide “ample justification” in their applications and replace it with a discussion regarding the utility’s burden of proof. To meet this burden, PAWC submits that the applicant must show it is entitled to have the acquisition approved under the applicable legal standards by a preponderance of the evidence. That is, the applicant’s evidence must be more convincing, by even the smallest amount, than that presented by the other parties. On this issue, PAWC comments that the Commission should refrain from creating or applying a new or different evidentiary standard with respect to the approval of the application or any component piece of the application. PAWC at 11-12. Finally, PAWC suggests that there should be presumption in favor of UVE fees that are within the 5% fair market value fee cap since such fees are clearly permitted for recovery by the public utility under Section 1329(b)(3). PAWC at 12.

**OCA**

OCA submits that the specific statutory restrictions found in Section 1329(b)(2) for UVEs should be included in the UVE application instructions and provided as part of the application so that Commission staff will have full and complete information to review the application. According to OCA, the selection process will require certain disclosures about the UVE and the information about the UVE should be publicly available. However, OCA continues that, if a UVE requests that certain relevant information be labeled as confidential, it should be very limited due to the necessity of keeping this process as transparent as possible. Without keeping the information regarding experience, affiliates, and conflicts public, OCA proclaims that the Section 1329 process will be undermined. OCA at 7.

As to the fees to be paid to UVEs, OCA has a number of concerns. First, OCA agrees that full supporting documentation should be included in the application and the testimony. According to OCA, that should include, at a minimum, the contract engaging the UVE and invoices that describe the work performed.[[6]](#footnote-6) OCA at 7. However, because of the potential of an inflated fair market value by appraisers to increase their fee, OCA asserts that the Commission should make it clear that the fee will be reviewed for reasonableness and that it is not expected to always be at the cap of 5% of the fair market value. OCA at 8. Finally, OCA comments that the Commission should further clarify whether the seller is required to pay for its own UVE or if the buyer is permitted to pay the seller’s cost. According to OCA, the buyer paying for both fair market appraisals would appear to be a conflict and would certainly undercut the requirement of two separate appraisals. OCA at 8.

As to transaction and closing costs, OCA notes that there is no definition in the Tentative Implementation Order as to what constitutes “transaction and closing cost.” OCA submits that transaction and closing costs should be defined as the UVE’s appraisal fee, and buyers’ closing costs, including reasonable attorney fees. According to OCA, it is important that these costs not be a catch all for costs that would not normally be associated with transaction and closing costs. OCA at 8.

Finally, OCA submits that it should be made clear that there is no preapproval of the reasonableness or recovery of these costs as part of the Section 1329 application. OCA at 8.

**Resolution**

We agree with OCA that the specific statutory restrictions found in Section 1329(b)(2) for UVEs should be included in the UVE application instructions and provided as part of the application.

As to the fees to be paid to UVEs, we will require full documentation of the fee that includes, at a minimum, the contract engaging the UVE and the invoices that describe the work performed. We agree with OCA that the contract and invoices should be attached to the testimony given the short time frame for Section 1329 proceedings. We also agree with OCA that to avoid a potential conflict of interest, the seller is required to pay for its own UVE. As a method to safeguard against inflated fees, the Commission will review the fees to be paid to UVEs.

Finally, as suggested by OCA, we shall define transaction and closing costs as the UVE’s appraisal fee, and buyers’ closing costs, including reasonable attorney fees. We also shall clarify that there will be no Commission preapproval of the reasonableness of recovery of these costs in the Section 1329 proceeding. As noted by OCA, Section 1329 states that these UVE costs “may be included” in the transaction and closing costs for the acquiring utility. 66 Pa. C.S. § 1329(b)(3). Therefore, UVE fees and the other transaction and closing costs will be reviewed by the Commission as part of the next base rate case following the closing of the transaction, which is the time when the acquired company’s rate base will first be included in rates. 66 Pa. C.S. § 1329(c)(1)(i). Although there will not be a presumption of reasonableness if the fee is less than 5% of the fair market value, the standard of review will be a preponderance of the evidence.

**Tentative Order On Section 1329(c) – Ratemaking Rate Base**

Section 1329(c) provides guidelines regarding the rate base of the selling utility and the acquiring utility/entity for ratemaking purposes. Generally, Section 1329(c) allows for the rate base of the selling utility to be incorporated into the rate base of the acquiring utility during the acquiring utility’s next rate base rate case or the initial tariff filing of an entity. The rate base to be incorporated will be the lesser of the purchase price or the fair market value of the seller.

Because the acquiring entity need not be a public utility, the entity may need to file an application for a certificate of public convenience (CPC) with the Commission. We considered allowing an application for a CPC to be filed simultaneously but no later than the same day as the application for Section 1329 acquisition, but encouraged an earlier filing.[[7]](#footnote-7)

**Comments: Aqua**

Aqua objected to our use of the term “guideline” in the Tentative Implementation Order. Aqua agrees with the Commission that, if a CPC is required by an entity, the Section 1102 application should be filed before the Section 1329 application.

**PAWC**

PAWC similarly notes that reference to “guidelines” is inappropriate for statutory requirements. PAWC at 38.

**OCA**

OCA submits that clarifications are needed regarding the use of fair market value of the selling utility. According to OCA, since the assets may be included in different plant accounts, it will be important to determine the components of fair market value that are included in each plant account. Thus, OCA states that the Commission should direct the buying utility or entity to provide utility plant in service schedules by plant account, under the fair market valuation and original cost, from the engineer’s assessment report. OCA at 9.

As to a Section 1102 application for a CPC by an entity, OCA asserts that the Commission should make it clear that it will not undertake consideration of a Section 1102 application in the expedited time period for applications claiming Section 1329(d) treatment. OCA explains that an application for an initial CPC involves developing a record regarding the technical, financial, and managerial fitness of the applicant, as well as determining the initial rates and tariffs. OCA at 10. Thus, OCA avers that, even if an entity is seeking Section 1329 ratemaking treatment of an acquisition of a municipal system, it still must meet the legal standards under Section 1102 first, before consideration can be given to whether it meets the requirements under Section 1329. OCA at 12.

**Resolution**

We agree with both Aqua and PAWC that the Commission’s reference to certain provisions as providing “guidelines” is inaccurate. Section 1329(c) provides language regarding the ratemaking rate base of the selling utility to be utilized by the acquiring utility/entity for ratemaking purposes.

We also agree that it is important to determine the components of fair market that are included in each plant account. Therefore, the buying utility or entity shall provide utility plant in service schedules by plant account, under the fair market valuation and original cost, if available.

As to a Section 1102 application for a CPC by an entity, while we shall still encourage that it be filed in advance of the Section 1329 application to the extent possible, we will clarify that consideration of a Section 1102 application will not be restricted to the expedited time period for applications claiming Section 1329 treatment. As noted by OCA, Section 1102 applications, which require the development of a record regarding the technical, financial, and managerial fitness of the entity and a review of an initial tariff, still must meet the legal standards under Section 1102 first, before consideration can be given to whether it meets the requirements under Section 1329. Entities without a valid CPC will be unable to impose a tariff or collect revenue on the acquired systems until a CPC is issued.

**Tentative Order On Section 1329(d) –** **Acquisitions By Public Utility**

Section 1329(d) provides direction on acquisitions by public utilities as well as direction on the critical attachment to the Section 1102 application.[[8]](#footnote-8) Once again, the acquiring public utility and the selling utility must agree to utilize the process outlined in the aforementioned Section 1329(a).

Section 1329(d)(2) requires the Commission to issue a final order on an application submitted under Section 1329 within six months of the filing date of an application meeting the requirements of subsection (d)(1). For the Commission to meet the six-month deadline, normal time lines must be compressed. A table establishing the necessarily compressed time line was provided.

Applications would not be accepted until they are shown to be complete. To assist applicants in the preparation of a full and complete filing, an Application Filing Checklist, which would be attached to the completed application, may be found at the Commission’s website and was attached to the Tentative Implementation Order.[[9]](#footnote-9) Applications were to be verified by an officer of the filing entity or entities pursuant to 52 Pa. Code § 1.36. Both the Application Filing Checklist and the previously discussed Application Form for Registration as a Utility Valuation Expert would be changed as the Commission deems necessary.

As noted on the Application Filing Checklist, applications were to contain the required two appraisals performed by separate UVEs and quantification of transaction and closing costs incurred by the acquiring public utility to be included in the rate base of the acquiring public utility. Section 1329(d)(1)(iv). Applications were to address the plant in service and include a map of the service area. Applications were to include information about the customers, utility plant in service, and the current safety, adequacy, reasonableness and efficiency of the system in accordance with the statutory requirements of Section 1501. 66 Pa. C.S. § 1501.

Applications were to address rates and provide a proposed tariff. Applications were to address cost of service, including copies of the seller’s most recently audited financial statements. Applications were to include proof of compliance with applicable design, construction, and operation standards of the Department of Environmental Protection and/or the county health department. Applications also were to include a copy of the signed Asset Purchase Agreement. Each of these items were deemed necessary to enable the Commission to make an informed decision regarding the merits of the application.

In addition, due to the compressed six-month time frame for ruling on the application, written direct testimony was to accompany the application. The testimony was to address and support the acquisition, the UVEs’ appraisals, the UVEs’ fee, and the purchase price. The testimony also was to describe the acquired system, explain the public interest served by the acquisition, and provide such other facts as may be relevant to the Commission’s consideration of the application.

Upon review of the Section 1329 application and staff’s determination that the filing is perfected and in full compliance with all items on the Application Filing Checklist, the Commission would notify the applicants of the actual accepted filing date, which would then commence the six-month time frame for the proceeding. Due process considerations require notification to the affected customers. When the application was published in a newspaper, the publication was to note that the period for filing protests shall be as soon as possible but no later than the last day of the protest period set forth in the *Pennsylvania Bulletin*. Accordingly, within seven (7) days of filing the application, the applicant was to 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. The Secretary may impose additional notice requirements as may be warranted.

**Comments: Aqua**

Aqua first notes that there is no time limit from when a public utility submits an application and when the Commission deems it satisfactory. Aqua explains that without a defined time limit, an applicant 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. Therefore, Aqua 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.[[10]](#footnote-10) Aqua at 11.

Next, Aqua responds to the Commission’s comment that “applications must address cost of service, including the seller’s most recently audited financial statements.” Tentative Implementation Order at 10. Aqua submits that Section 1329 does not require a cost of service study to be included in the application and that the Commission should continue its longstanding policy of requiring cost of service studies to be filed at least four months prior to the utility’s next base rate case. 52 Pa. Code § 69.721(f). Aqua, however, does agree that the seller’s most recently audited financial statement should be provided in the application, if available. Aqua at 12.

As to the Commission’s review process, Aqua submits that, while the General Assembly has required only five items to be included in the application, the Commission is requesting 65 new pieces of information, many of which are mainly drawn from 52 Pa. Code § 3.501, which Aqua asserts does not apply to utilities that have been deemed fit and are already operating under Commission granted certificates. Aqua at 12. Aqua states that Commission staff and the applicant should work together through open dialogue to ensure that the application is complete rather than simply rejecting the application. Aqua at 12.

Finally, Aqua agrees with the Commission that the applicant shall provide newspaper notice of the filing but disagrees with the requirement of bill insert notification. According to Aqua, this is a new requirement that has never been required before and the acquiring company does not have access to customer billing information until after closing. Therefore, Aqua proposes that the acquiring utility should be required to provide newspaper notification of the proposed acquisition, and the selling system may, but is not required, to provide a bill insert to its customers.[[11]](#footnote-11) Aqua at 13.

**PAWC**

In response to the commencement of the six-month statutory deadline, PAWC submits that the statute is clear that the six month deadline for a final Commission Order begins on the date the Section 1102 application containing the five attachments in Section 1329(d)(1) is filed. PAWC at 24. Thus, PAWC states that if a Section 1102 application contains all of the five attachments required under Section 1329(d)(1) but is otherwise missing some of the items listed in the Commission’s proposed Checklist, the application should not be rejected for processing under the six month deadline dictated by Section 1329(d)(2). Instead, PAWC suggests that any missing information should be taken into consideration by the parties in testimony and briefs, as well as the ALJ in its recommended decision, and by the Commission in its final order in determining whether there has been a demonstration by the applicant, by a preponderance of the evidence, in meeting applicable public interest standard. PAWC at 25.

Thus, PAWC recommends: (1) that the filing date of the application should commence the six-month statutory deadline; (2) that the Commission should issue a detailed notice within five days of the filing date indicating whether the application is accepted or rejected for failure to attach one or more of the requirements under Section 1329(d)(1); and (3) that a failure by the Commission to provide a notice within five days will result in the application being “deemed” accepted as complete for processing under the six-month statutory deadline. PAWC at 25 and 26.

As to the Commission’s due process concerns for affected customers, PAWC recommends that the proof of newspaper publication be required within 22 days of the filing of the application. PAWC explains that this recommendation is based on the requirement to publish in a newspaper of general circulation for two consecutive weeks and the time for Commission’s Secretary Bureau to issue a Secretarial Letter assigning a docket number to the case. PAWC at 27. As to the Commission’s proposal that the acquiring public utility submit a copy of a bill insert notifying the selling utility’s customers of the proposed acquisition, PAWC opposes this proposal on jurisdictional grounds but would support a requirement that a bill insert be sent to affected customers after the transaction closes.[[12]](#footnote-12) PAWC at 28.

As to the Commission’s proposed model timeline, PAWC generally supports the Commission’s proposed model timeline noting that the proposed model timeline should serve only as a guideline for achieving a final Commission order within the six-month deadline. PAWC also notes that the Commission’s proposed model timeline applies in the instance where an application is protested. PAWC submits that not all applications will be contested and adjudicated before an ALJ, thus, a shorter timeframe is possible for unprotested applications. [[13]](#footnote-13) PAWC at 30.

In response to the Commission’s proposals with respect to service of the application on affected parties, PAWC comments that service of the application should be after receipt of the Commission’s Secretarial Letter assigning a docket number. PAWC also suggests that instead of service of the application on water and wastewater providers within 1 mile of the service area proposed in the application, service should be required on providers that abut the service area proposed in the application. PAWC at 32.

Finally, PAWC recommends that the Commission’s requirement to file a request for a protective order in advance of the filing of the application should instead be no later than Day 2 following the issuance of the Secretarial Letter assigning a docket number. According to PAWC, the Commission’s requirement to file for a protective order prior to the filing of the application will potentially create confusion among the Secretary’s Bureau, ALJ, and parties as to which application the motion for protective order belongs and could present due process considerations. PAWC at 33.

**OCA**

OCA raises an issue with Section 1329(d)(1)(v) which includes the phrase “rate stabilization plan.” Because there will be no cost of service study performed and the rates for the selling customers could be in effect for a substantial period of time after the next base rate case, OCA submits that the Commission should make it clear that rate stabilization plans are subject to review in each rate case for reasonableness and should not place long term burdens on the acquiring utility’s existing ratepayers. OCA also suggest that if a rate stabilization plan is proposed, the applicant should provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan. OCA at 12 and 13.

As to commencement of the six month statutory deadline, OCA agrees with the Commission that the six month deadline should not begin until there is a staff determination that the “filing is perfected and in full compliance with all items on the Application Filing Checklist ….” Tentative Implementation Order at 11. On this issue, OCA asserts that no application should be deemed perfected without the filing of all schedules, studies and work papers in a working electronic format and confirmation that all required to be served have the working electronic format. OCA at 19. OCA supports notification to the applicants of the actual accepted date and proposes that the notification expressly include the statutory advocates and the entities that are required to be served with the application so that all parties or potential parties are aware of the acceptance of the filing. OCA at 13.

As to the Commission’s due process concerns for affected customers, OCA agrees that the newspaper publication should be done promptly and does not object to the requirement that the proof of publication be filed within 7 days of the filing. OCA proposes that the notice contain specific information about the timing of the proceeding, including that it is an expedited timeline and that testimony of a protestant may be due within four days of the protest deadline. OCA also proposes that the publication should be done in a newspaper of general circulation in both the selling utility’s service area as well as the buying utility’s service area.

As to individual customer notice, OCA submits that customer notice should be given directly to each customer as a separate mailing to ensure that customers receive timely notice of the expedited proceeding.[[14]](#footnote-14) OCA at 14. In sum, OCA proposes that the notice requirement be extended to the buying utility’s customers because Section 1329 changes long-standing ratemaking principles such as original cost, AFUDC treatment, and depreciation, and will have an impact not only on the selling utility’s customers but also customers of the buying utility.[[15]](#footnote-15) OCA at 14.

**Resolution**

We agree with Aqua, PAWC and York Water that there should be a time limit from when a public utility submits an application and when the Commission deems it satisfactory. Therefore, the Commission will have ten (10) business days from the filing of the application to provide notice of, and reason for, rejection to the applicant. If no notice is provided within ten (10) business days, the application will be deemed satisfactory and accepted.[[16]](#footnote-16) The notification, in the form of a Secretarial Letter, shall be provided to the statutory advocates, the entities required to be served with the application, and anyone else on the application’s certificate of service so that all parties or potential parties are aware of the acceptance or rejection of the filing.[[17]](#footnote-17)

As to Aqua’s comment that Section 1329 does not require a cost of service study to be included in the application and that the Commission should continue its longstanding policy of requiring cost of service studies to be filed at least four months prior to the utility’s next base rate case, we note that 52 Pa. Code § 69.721(f), as cited by Aqua, requires the submission of an *original cost study,* not a *cost of service study.* Section 69.721(f) requires the submission of an *Original Cost Study* four months prior to the utility filing a rate case to include the acquired assets in their rate base. The *cost of service study* is a requirement under 52 Pa Code § 53.53, regarding rate cases in excess of $1 million. We are not requiring the utility to prepare and file a cost of service study with the application. Instead, we are merely directing that the application “address cost of service, including the seller’s most recently audited financial statements.” Simply stated, the utility does not have to prepare and file a cost of service study to address cost of service. Section 1329(d)(5) states that the 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. C.S. § 1329(d)(5).

In response to the comments from Aqua, PAWC and York Water that the General Assembly has required only five items to be included in the Section 1329 application, we conclude that the Public Utility Code allows the Commission to request additional information in valuing property. Specifically, 66 Pa. C.S. § 505 states:

**Duty to furnish information to commission; cooperation in valuing property.**

Every public utility shall furnish to the commission, from time to time, and as the commission may require, all accounts, inventories, appraisals, valuations, maps, profiles, reports of engineers, books, papers, records, and other documents or memoranda, or copies of any and all of them, in aid of any inspection, examination, inquiry, investigation, or hearing, or in aid of any determination of the value of its property, or any portion thereof, and shall cooperate with the commission in the work of the valuation of its property, or any portion thereof, and shall furnish any and all other information to the commission, as the commission may require, in any inspection, examination, inquiry, investigation, hearing, or determination of such value of its property, or any portion thereof.

On this point, we reiterate our expectation that during the Commission’s ten (10) day review period, the applicant will work with the Commission staff to ensure that the application is complete and contains the information necessary to perfect the filing.

As to the Commission’s requirement that the applicant provide newspaper notice of the filing and bill insert notification, we conclude that the acquiring utility will still be required to provide newspaper notification of the proposed acquisition in the proposed service area, however, the selling system may, but is not required, to provide a bill insert to its customers.[[18]](#footnote-18) We will however require the acquiring utility to send a bill insert to the affected customers after the transaction closes.[[19]](#footnote-19)

In response to PAWC’s suggestion that service of the application should be on water and wastewater providers that abut the proposed service area as opposed to being within 1 mile of the proposed service area, we note that 52 Pa. Code § 3.501(f) states that service of the application shall be on providers that abut the proposed service area or are within 1 mile of the proposed service area. Service must be made pursuant to Section 3.501(f).

As to the Commission’s requirement to file a request for a protective order in advance of the filing of the application, we agree with PAWC’s comment that the request for a protective order should be no later than Day 2 following the issuance of the Commission’s Secretarial Letter that accepts the application and assigns a docket number for the proceeding.

With regard to an acquiring utility that files a rate stabilization plan, which is defined as “A plan that will hold rates constant or phase rates in over a period of time after the next base rate case” 66 Pa. C.S. § 1329(g), we conclude that the rate stabilization plans will be subject to review in each rate case for reasonableness and should not place long term burdens on the acquiring utility’s existing ratepayers. As submitted by OCA, we also conclude that if a rate stabilization is proposed, the applicant will be required to provide testimony, schedules, and work papers that establish the basis for the plan and its impact on existing customers who need to cover the revenue requirement that would be shifted to them under the plan.

Finally, Section 1329(d)(4) allows a public utility’s existing DSIC to be applied immediately to the selling utility customer’s bills. OCA correctly notes and we agree that this is a change from the current practice reflected in the Implementation Order of Act 11, *Re Implementation of Act 11 of 2012*, 299 PURth 367 (Pa. PUC 2012) (*Act 11 Implementation Order*), wherein the Commission determined that a DSIC would not be charged to customers acquired through acquisitions until the rates were established by a base rate proceeding including the acquired customers. *Act 11 Implementation Order*, 299 PUR4th at 395. Therefore, a public utility that seeks approval to apply the DSIC to the customers acquired through acquisitions under Section 1329 will have to change its existing DSIC tariffs to reflect language consistent with the *Act 11 Implementation Order*. In conjunction, the public utility would also need to amend its LTIIP (Long Term Infrastructure Improvement Plan). Similarly, the revenues from those customers will need to be included in the DSIC calculation as well as the costs of the projects.

**Tentative Order On Section 1329(e) – Acquisitions By Entity**

Section 1329(e) relates to acquisitions by an entity. An entity, defined as a person, partnership or corporation, can acquire a selling utility if it has requested from the Commission public utility status pursuant to Section 1102. An affiliate of an entity can also request public utility status pursuant to Section 1102. The entity or its affiliate must file the Section 1329 application as an attachment to a Section 1102 application seeking public utility status. Acquisition applications filed by entities that have not yet filed a Section 1102 application for public utility status will be considered incomplete and will not be accepted until a complete Section 1102 application has been received and accepted. If a Section 1102 application is required, we strongly encouraged that it be filed in advance of the Section 1329 application to the extent possible, and consolidated consideration would be given to the extent possible. We also clarified that 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” consistent with Section 1329(d)(1)(v) and Section 1329(e).

We acknowledged that there is some ambiguity in Section 1329.  First, subsection (c)(1)(ii) could be construed to require that the “ratemaking rate base” be immediately incorporated into the entity’s initial rates.  However, subsections (e) and (d)(1)(v) could be construed together to require entities to file a tariff with rates equal to the existing rates of the selling utility. In the interest of equity, the Commission tentatively proposed that entities be required to file tariffs consistent with (d)(1)(v). This was in no way to inhibit the right of a newly certificated utility to incorporate the ratemaking rate base into its tariff via a Section 1308 proceeding.

The proponent of a rule or order in any Commission proceeding has the burden of proof, 66 Pa. C.S. § 332, and therefore, the applicant has the burden of proving that it is entitled to have the acquisition approved and must do so by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990).

**Comments: Aqua, OCA**

While Aqua agrees that the applicant should file the Section 1102 application before it files a Section 1329 application and 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, Aqua at 14, OCA notes that Section 1329(e) does not include the six month time deadline and must accordingly be treated just as any other Section 1102 application. OCA does not agree that a Section 1329(e) application should be consolidated with a Section 1102 application, thus, OCA submits that the Commission should not attempt to consolidate the applications. OCA at 16.

**Resolution**

As previously stated, while we still encourage that the Section 1102 application be filed in advance of the Section 1329 application to the extent possible, the Section 1102 application will not be restricted to the expedited time period for applications claiming Section 1329 treatment. Section 1102 applications, which require the development of a record regarding the technical, financial, and managerial fitness of the entity and a review of an initial tariff, must meet the legal standards under Section 1102 first, before consideration can be given to whether it meets the requirements under Section 1329.[[20]](#footnote-20)

**Tentative Order On Section 1329(f) – Post-Acquisition Projects**

Section 1329(f) addresses the parameters of post-acquisition project accounting for ratemaking purposes. Any of the acquiring utility’s post-acquisition improvements not recovered through the DSIC would be eligible for inclusion through an allowance for funds used during construction (AFUDC). The acquiring utility may accrue AFUDC until the asset has been in service for four years or until the asset is included in the acquiring utility’s next rate base case, whichever is earlier.[[21]](#footnote-21) Additionally, depreciation on the acquiring utility’s post-acquisition improvements that has not been included in the calculation of a DSIC would be deferred for book and ratemaking purposes. The acquiring utility would be required to keep proper accounting, separately and appropriately recording these amounts in its business records.

**Comments: Aqua, PAWC And OCA**

Both Aqua and PAWC agree with the Commission that Section 1329(f) permits the acquiring public utility’s post-acquisition improvements that are not recovered through the DSIC to accrue through an AFUDC until the asset has been in service for four years or until the asset is included in the utility’s next rate base case. Aqua at 14, PAWC at 34. OCA comments that Section 1329(f) is a major change to the book and ratemaking treatment of AFUDC and depreciation for the post acquisition projects. Accordingly, OCA submits that there should be more specificity regarding the separate accounting that the Commission is requiring and that the Commission should specify how the post in service AFUDC will be calculated. OCA suggests that there should be a calculation of AFUDC that is agreed to by stakeholders and the Commission. OCA at 17.

OCA further comments that the Commission should address the deferral of depreciation for book and ratemaking purposes. Specifically, OCA states that the Commission must address how deferred depreciation will work if the utility uses accelerated depreciation for tax purposes and must address the impact that deferred depreciation has on the determination of the useful life of each item of utility plant. OCA at 17.

Finally, OCA submits that the utilities should be required to provide an annual report showing how these specific post-acquisition projects, that are not included in DSIC, are being recorded on the books and for ratemaking purposes. According to OCA, without such a report, it may be difficult to follow if the only time that these additional accounting books are seen is in rate cases. OCA at 17.

**Resolution**

As stated in the Tentative Implementation Order, the acquiring utility will be required to keep separate accounting and appropriate business records of these post-acquisition projects. While the AFUDC and depreciation for these post-acquisition projects will be initially calculated by the acquiring utility using generally accepted accounting principles, it will be easily identifiable in the next rate case by our requirement that the acquiring utilities shall keep separate books for the post-acquisition projects. We do not believe it will be necessary for the acquiring utilities to provide an annual report for these post-acquisition projects.

**Tentative Order On Section 1329(g) – Definitions**

Section 1329(g) provides definitions for the section, including:

**“Selling utility.”** A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm’s-length transaction between the buyer and seller.

**Comments: OCA**

OCA comments that, in the Tentative Implementation Order, the Commission uses the word “system” rather than company when referring to the selling utility. Tentative Implementation Order at 1,2,3,10,11, and 16. OCA notes that when a municipal corporation owns utility assets, it is not a company. OCA has requested clarification on the phrase “water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority….” OCA at 18.

**Resolution**

We agree with OCA that, when a municipal corporation or authority owns utility assets, it is not a company. While Section 1329(g) uses the word “company” in its definition of a “selling utility,” it should be understood to be a water or wastewater system, owned by a municipal corporation or authority.

**Tentative Order On The Timeline**

Due to the six-month time line required by Section 1329, normal time lines must be compressed. In an effort to allow more time for drafting briefs, the exception period necessarily must be shortened. The table provided In the Tentative Implementation Order was intended to be used as a guideline and assumed that the last public meeting before the six-month deadline would be 15 days prior to that deadline. Actual time required may be slightly more or less depending upon applicable circumstances, such as the proximity of the filing date of the application and prehearing conference notice in the *Pennsylvania Bulletin*, the availability of hearing dates, the complexity/length of the hearing, the intervention of weekends and holidays, the availability of scheduled public meetings, and any unforeseen or other events that impact due consideration of the application within the six-month period.

**Comments: Aqua**

Aqua suggests that the Commission should have a plan or separate time line prepared for instances where no protest is filed, thereby obviating the need for a litigation schedule. Additionally, Aqua proposes that, because the applicant carries the burden of proof in these proceedings, the time line should provide the opportunity to file rejoinder testimony. Finally, as stated previously, Aqua submits that 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. Aqua at 15.

**PAWC**

PAWC supports the Commission’s proposed model timeline to compress the interim deadlines for accomplishing the six-month deadline required under Section 1329(d)(2) of the Code. However, PAWC notes that the Commission’s proposed model timeline should serve only as a guideline for achieving a final Commission order within the six-month deadline. PAWC has presented specific proposed revisions to the proposed timeline, which increase the deadlines for rebuttal and surrebuttal testimony by five days each to ensure parties the ability to develop a complete record and also proposes subsequent revisions in the timeline to address the impact of increasing the time for prepared testimony. PAWC at 30.

**York Water**

As stated previously, York Water proposes a ten (10) day time limit for the Commission to accept or reject the application, and if no action is taken, the application should be deemed accepted. York Water at 1.

**OCA**

The OCA also has a number of proposed modifications to the timeline that would assist the stakeholders in having sufficient time to prepare testimony and prepare for hearings on the proposed application. The OCA proposes at least the following:

Buyer Utility or Entity and Selling Utility should be required to notify the Commission and the statutory advocates when they enter into the service contracts for the UVEs and the licensed engineer so that the Commission and the statutory advocates can prepare for the filing of the application.

Protective Orders: A standard protective order should be in place prior to the filing of the application (Tentative Implementation Order at 16) and should cover discovery and testimony. This would eliminate the possibility of an application being filed that would include proprietary information and the attendant delay in receiving a full and complete copy while a protective agreement is worked out among the parties. There is no time for that to occur with the shortened time frame.

All discovery deadlines for a Section 1329(d) request should be shortened from 20 days for responses to 5 days. Similarly, the time period for objections should be shortened to 2 days.

No discovery should be permitted to be propounded on protestants until the protestants file direct testimony.

Standard data, in addition to what is included in the checklist, should be provided with the filing of the application in which Section 1329(d) relief is requested. The OCA has provided suggested additional data above.

OCA at 22.

**Resolution**

Initially**,** we emphasize that the Commission’s proposed model timeline was only a guideline for achieving a Commission final order within the six-month deadline. As such, this Final Implementation Order will not go into great detail about the due dates within the proposed timeline because, in our opinion, the parties are free to propose modifications to the presiding Administrative Law Judge within the context of a specific Section 1329 proceeding. We would expect the proposed modifications to recognize the requirements of due process in a particular proceeding and, at the same time, be tailored to the development of a full and complete record for the Commission’s review. We will, however, reiterate that, within ten (10) business days from the filing of the application, the Commission will provide notice of, and reason for, a rejection of the application.

As to OCA’s specific comments, we agree with OCA that the buying utility or entity should notify the Commission and the statutory advocates when they enter the service contracts for the UVEs and the licensed engineer and that there should be no discovery on the protestants until the protestants file direct testimony.

**Tentative Order On The Checklist**

As stated in the Tentative Implementation Order, Section 1329 applications would not be accepted until they are shown to be complete. To assist applicants in the preparation of a full and complete filing, an Application Filing Checklist, which would be attached to the completed application, was provided. As noted on the Application Filing Checklist, applications were to contain the required two appraisals performed by separate UVEs and quantification of transaction and closing costs incurred by the acquiring public utility to be included in the rate base of the acquiring public utility. Section 1329(d)(1)(iv). Applications were to address the plant in service and include a map of the service area. Applications were to include information about the customers, utility plant in service, and the current safety, adequacy, reasonableness and efficiency of the system in accordance with the statutory requirements of Section 1501. 66 Pa. C.S. § 1501.

**Comments: Aqua**

Aqua reiterates that while the General Assembly included five pieces of information to be included in the application, the checklist seeks to include “65 individual new pieces of information.” Aqua at 4. According to Aqua, the new information is more akin to minimum filing requirements for a general base rate case than a streamlined checklist. While Aqua understands that it has the burden of proof in the application, Aqua suggests the Commission carefully review what information is essential to approving the acquisition of a willing seller and buyer for an already deemed fit utility. Aqua at 16.

Aqua points out that several of the items in the checklist are taken from 52 Pa. Code § 3.501. According to Aqua, 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. As such, Aqua 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.[[22]](#footnote-22) Aqua at 16. Aqua has submitted a revised checklist attached as **Exhibit A** to it comments.

Several of Aqua’s comments state that the information sought from the applicant will be provided in the UVE appraisals and the engineering assessments and that separately stating such information would be duplicative.

**PAWC**

PAWC recommends that the Commission develop a separate checklist applicable to an application filed by an “entity” given that the entity must meet additional fitness requirements in its Section 1102 application. Next, PAWC recommends grouping certain checklist items together to better identify the enabling authority for each item listed in the checklist. Specifically, PAWC submits that the items should be grouped based on the specific items required to be filed under Section 1329(d)(1)(i)-(v), the items identified by the Commission to further assist with the Commission’s review of the application under the other parts of Section 1329, and the items identified by the Commission to assist with the Commission’s review of the application under 66 Pa. C.S. § 1102, with regard to the utility’s request for approval of the acquisition and expansion of service territory. PAWC at 14. PAWC has submitted a revised checklist attached as **Appendix A, Parts A, B, C and D.**

**York Water**

York Water comments that the Application Filing Checklist with approximately 68 specific items is onerous, with many of the items regarding cost, values, and environmental issues either unnecessary or redundant with other necessary filings. York Water believes that Commission staff could save a considerable amount of time and resources, and streamline the process, by merely ascertaining that: (1) no conflicts arise and (2) the acquisition does not adversely impact the acquiring utility. According to York Water, the Commission should not ask any environmental questionsbecause those are coordinated and resolved between the acquiring utility and the environmental regulator (DEP) when the acquiring utility transfers permits. York Water submits that most of the items on the Application Filing Checklist should be eliminated. York Water at 2-3.

**OCA**

TheOCA supports the need for the Application Filing Checklist. However, the OCA proposes that all schedules, studies and work papers should be provided in a working electronic format with the filing and testimony. OCA at 19.

The OCA also proposes: (1) that the two appraisals include all work papers, schedules and any material relied upon to perform the appraisals; (2) that the documentation of the UVEs fee should include the contract or agreement between the buying utility, or entity and the UVE and all invoices provided pursuant to the contract or agreement; (3) at least one year of full data regarding gallons pumped and gallons sold (or gallons treated for a wastewater system); (4) in addition to copies of budgets, actual expenditures for at least one year; (5) additional information such as recent inspection reports of the paint condition of all painted steel storage tanks, dam safety information, the latest annual Chapter 94 and Chapter 110 submission to DEP for wastewater systems and water systems, recent system wide leak detection survey with estimated costs and time frame to reduce UFW to less than 20%, average age of customer meters, and the dates that each treatment tank has been drained, inspected and repaired; and (6) information that would support the entity or public utility’s claim that it is technically, financially and managerially fit. OCA at 20, 21.

Finally, the OCA submits that the Commission should require in the Application Filing Checklist detailed information to ensure that the purchase price is limited to the price associated with the assets used to provide public utility service. OCA at 21.

**Resolution**

As stated previously, 66 Pa. C.S. § 505 allows the Commission to request the information it deems necessary in order to make an informed decision regarding the valuation of property and its inclusion in the utility’s rate base. Specifically, and in response to the numerous assertions that Section 1329 limits the Commission in its request for information, we reiterate that every public utility has a duty to furnish information to the Commission in accordance with 66 Pa. C.S. § 505. On this point, we shall specifically note that, if any of the information requested in the Checklist is unavailable after a reasonable search or simply does not exist, the applicant is expected to include with its application a verified statement to that affect. The Commission will consider the verified statement in its review of the completeness of the application. However, all parties should be aware that failure to include information may result in the application being rejected as incomplete.

Regarding Aqua’s reference to information that may be found in the UVE appraisals or engineering assessment, the Commission clarifies that the checklist is to be all inclusive. As such, the applicant is expected to provide the response (Yes or No) and reference the location of the information within the filing. To avoid confusion, the Commission will revise the heading on the checklist to state: Circle No or Yes. If yes, identify the document, section, and page number containing the item as found within the filing.

It is important to note that, while the Commission will not go into great detail in this Final Implementation Order about the applicability of Section 3.501 to existing public utilities, we clearly are of the opinion that the information required in Section 3.501 is necessary for the Commission to thoroughly review and process the Section 1329 application within the compressed statutorily-required six month time frame.

Finally, while we will not expand the Checklist at this time to include all of the aforementioned information suggested by OCA, we will require: (1) that all schedules, studies, and work papers be provided in a working electronic format with the filing and testimony; (2) that the two appraisals include all work papers, schedules, and any material relied upon to perform the appraisals; and (3) that the documentation of a UVE’s fee should include the contract or agreement between the buying utility, or entity, and the UVE and all invoices provided pursuant to the contract or agreement.[[23]](#footnote-23)

**Conclusion**

Section 1329 of the Code addresses the valuation of the assets of the water and wastewater systems of municipalities or authorities that are to be acquired by investor-owned water and wastewater utilities and included in the utilities’ rate base. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. Section 1329 also allows the acquiring public utility’s post-acquisition improvement costs not recovered through a DSIC to be deferred for book and ratemaking purposes. This Final Implementation Order sets forth the procedures and guidelines necessary to implement Section 1329; **THEREFORE,**

**IT IS ORDERED:**

1. That the Commission hereby adopts the procedures, guidelines, and the Application Filing Checklist for implementation of Section 1329, as set forth herein.

2. That the Law Bureau is directed to undertake a rulemaking to incorporate Section 1329 and its implementation into our regulations.

3. That a copy of this Final Implementation Order shall be published in the *Pennsylvania Bulletin* and posted on the Commission’s website at [www.puc.pa.](http://www.puc.pa.)gov.

4. That a copy of this Final Implementation Order be served on all jurisdictional water and wastewater companies, the National Association of Water Companies – Pennsylvania Chapter, the Pennsylvania State Association of Township Supervisors, the Pennsylvania State Association of Boroughs, the Pennsylvania Municipal Authorities Association, the Pennsylvania Rural Water Association, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.

5. That this docket shall be marked closed.

 **BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 27, 2016

ORDER ENTERED: October 27, 2016

1. *See Implementation of Act 129 of 2008 Phase 2 – Registry of Conservation Service Providers*, Docket No. M-2008-2074154 (Tentative Order entered April 9, 2015) (Final Order entered May 8, 2015). [↑](#footnote-ref-1)
2. Aqua also suggest that the Commission should recognize that many systems that exit the water and wastewater business are troubled systems, and as such, these troubled systems generally do not have adequate business records concerning accounting of assets, bills or consumption data, etc. Aqua at 9. [↑](#footnote-ref-2)
3. OCA suggests that both TUS and Law Bureau should also review the UVE applications for potential conflicts of interest and a Secretarial Letter should be issued for each UVE application stating either that the application meets the criteria and does not contain any conflicts of interest or that the application is denied. [↑](#footnote-ref-3)
4. *See* 52 Pa. Code § 1.36. [↑](#footnote-ref-4)
5. A Secretarial Letter will be issued and posted on our website at this docket number for each UVE application stating either that the application meets the criteria and does not contain any conflicts of interest or that the application is denied. [↑](#footnote-ref-5)
6. OCA suggests that the contract and invoices should be attached to the testimony given the short time frame for Section 1329 proceedings. OCA at 7. [↑](#footnote-ref-6)
7. *See*, 66 Pa. C.S. § 1329(e). Filing requirements for obtaining a CPC as a water or wastewater public utility can be found at 52 Pa. Code § 3.501. The Commission has the necessary latitude to consolidate and concurrently adjudicate the Section 1102 CPC and Section 1329 Applications. *See also* 52 Pa. Code § 5.81 (consolidation of proceedings involving common question of law or fact). [↑](#footnote-ref-7)
8. A Section 1102 application is addressed under Section 1102 of the Code, 66 Pa. C.S. § 1102, and pertains to the enumeration of acts requiring a certificate. [↑](#footnote-ref-8)
9. The Application Filing Checklist – Water/Wastewater may be accessed from the Commissions website at <http://www.puc.state.pa.us/filing_resources/water_online_forms.aspx> and <http://www.puc.pa.gov/filing_resources/issues_laws_regulations/section1329_applications.aspx> as well as at this docket number. [↑](#footnote-ref-9)
10. York Water has also commented that the Commission should have 10 days to accept or reject the application, and if no action is taken the application should be deemed accepted. York Water at 1. [↑](#footnote-ref-10)
11. On this point, Aqua notes that the Commission does not have jurisdiction over the municipality and that nothing in section 1329 changes the municipal code. Aqua at 13. [↑](#footnote-ref-11)
12. PAWC points out that municipalities and authorities are not subject to the Public Utility Code thus PAWC questions whether the Commission may direct a non-jurisdictional municipality or authority to provide notice via bill insert to its customers. PAWC at 27. [↑](#footnote-ref-12)
13. PAWC has submitted as an attachment to its comments a proposed model timeline for protested and unprotested applications. PAWC Comments, Appendix B. [↑](#footnote-ref-13)
14. OCA points out that a bill insert will take up to 30 days for all customers to receive notice of the transaction, which means that the protest period will be concluded about the time that the Commission schedule proposes for intervenor/protestant testimony. OCA at 14. [↑](#footnote-ref-14)
15. OCA also proposes that the stakeholders, including the Commission, the utilities, and the statutory advocates work together to develop standard newspaper and bill insert notices that will be used when a Section 1102 application is filed and requests Section 1329 ratemaking treatment. OCA at 14 and 15. [↑](#footnote-ref-15)
16. No application will be considered perfected without the filing of all schedules, studies and work papers in a working electronic format and confirmation that all required to be served have the working electronic format. [↑](#footnote-ref-16)
17. The filing date is the date a Secretarial Letter is issued accepting the application, or, the date when the ten (10) business day review for application completeness expires if no approval/rejection action is taken by the Commission. [↑](#footnote-ref-17)
18. We agree with OCA that the stakeholders and the Commission should work together to develop standard newspaper and bill insert notices that will be used when a Section 1102 application is filed and requests Section 1329 ratemaking treatment. [↑](#footnote-ref-18)
19. While we agree with OCA that Section 1329 changes long-standing ratemaking principles such as original cost, AFUDC treatment, and depreciation, we do not find it necessary to extend the notice requirements to the buying utility’s existing customers. [↑](#footnote-ref-19)
20. A Section 1329 filing may be consolidated with the Section 1102 filing at the discretion of the ALJ or the Commission. [↑](#footnote-ref-20)
21. We note that, upon issuance of a certificate of public convenience following a Section 1102 application, the “entity” will become a “public utility.” Therefore, the Commission believes that the same subsequent rate treatment applicable to an acquiring public utility in this section should apply to acquiring entities. [↑](#footnote-ref-21)
22. Aqua notes that many of the 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. Aqua at 16. [↑](#footnote-ref-22)
23. We will review the Checklist and other aspects of this Final Implementation Order on a regular basis to ensure that it meets the needs of the Commission and the stakeholders in the implementation of Section 1329. [↑](#footnote-ref-23)