

COMMONWEALTH OF PENNSYLVANIA



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September 5, 2017

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

Re: Application of Pennsylvania American  
Water Company under Sections 1102 and  
1329 of the Public Utility Code for Approval  
of its Acquisition of the Wastewater System  
Assets of the Municipal Authority of the  
City of McKeesport  
Docket No. A-2017-2606103

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Very truly yours,

A handwritten signature in cursive script that reads "Christ Maloni Hoover".

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Attachment

cc: Honorable Mark Hoyer  
Honorable Mary Long  
Certificate of Service  
\*239308

CERTIFICATE OF SERVICE

Application of Pennsylvania-American Water :  
Company under Sections 1102 and 1329 of the :  
Public Utility Code for Approval of its :  
Acquisition of the Wastewater System Assets of : Docket No. A-2017-2606103  
The Municipal Authority of the City of :  
McKeesport :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Pennsylvanian-American :  
Water Company Pursuant to Sections 1102 :  
and 1329 of the Public Utility Code for : Docket No. A-2017-2606103  
Approval of its Acquisition of the :  
Wastewater System Assets of the Municipal :  
Authority of the City of McKeesport :

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REPLY BRIEF OF  
THE OFFICE OF CONSUMER ADVOCATE

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## I. INTRODUCTION

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Briefs of Pennsylvania-American Water Company (PAWC or Company) and the Municipal Authority of the City of McKeesport (MACM). The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on all issues. Thus, in this Reply Brief, the OCA will respond to only those matters raised by PAWC and MACM that were not previously addressed or that require clarification.

### A. Procedural History

The procedural history in this matter is addressed in detail in the OCA's Main Brief. OCA M.B. at 1-2. On August 22, 2017, the OCA, I&E, PAWC, and MACM filed Briefs. Pursuant to the schedule, the OCA files this Reply Brief on September 1, 2017.

### B. Overview of the Proposed Transaction

The proposed transaction between PAWC and MACM is addressed in detail in the OCA's Main Brief. OCA M.B. at 2.

II. STATEMENT OF QUESTIONS PRESENTED

The OCA's statement of questions presented is contained in the OCA's Main Brief.

OCA M.B. at 4.

### III. LEGAL STANDARDS

#### A. Burden of Proof

The burden of proof applicable in this matter is addressed in detail in the OCA's Main Brief. OCA M.B. at 5-6.

#### B. Legal Standard for Section 1102 Approvals

The benefits of acquisitions by Pennsylvania utility companies proposed under Section 1102 are measured by the standards set forth in City of York v. Pa. PUC, 295 A.2d 825, 828 (Pa. 1972). 66 Pa. C.S. § 1102, 1103; OCA M.B. at 7. The Pennsylvania Supreme Court provided that the transaction must "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." 295 A.2d at 828; OCA M.B. at 6.

The OCA applies the City of York standard in its analysis of PAWC's acquisition of the MACM system, although MACM argues that the OCA relies on a changing definition of public and fails to weigh negative consequences against positive consequences for all constituencies. MACM M.B. at 18. The Commonwealth Court provided that, pursuant to the City of York standard, which is applicable through Section 1102 and 1103, "when the 'public interest' is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely one particular group or geographic subdivision." See Middletown v. Pa. PUC, 482 A.2d 674 (Pa. Commw. 1984) (Middletown); OCA M.B. at 7. The primary objective of the law is to serve the interests of the public.<sup>1</sup> Id.; Popowsky v. Pa. PUC, 937 A.2d 1040 (Pa. 2007).

Pursuant to Middletown, the OCA considers the benefits and harms to (1) existing PAWC customers, (2) existing PAWC water customers, and (3) existing MACM customers who

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<sup>1</sup> In Middletown, the ALJ determined that the acquisition would benefit some customers, but harm others. 482 A.2d at 679.; OCA M.B. at 12. Therefore, the ALJ denied the application and the Commission adopted the decision, which the Court affirmed. Id.

will be transferred to PAWC, whereas PAWC and MACM ignore the negative impacts on existing PAWC customers and MACM customers after the one year rate freeze. OCA M.B. at 13-14. The OCA's comprehensive analysis demonstrates and the record supports that customers will experience substantial harm that is outweighed by any purported benefits. OCA M.B. at 14-25.

C. Legal Standard for Section 1329 Approvals

Section 1329 sets forth a voluntary process by which to determine fair market value using the average of two separate appraisals performed by Utility Valuation Experts (UVE) according to the USPAP standards and selecting the lesser of that average or the purchase price of the facility as the ratemaking rate base. OCA M.B. at 7-8, 66 Pa. C.S. § 1329. Despite PAWC's arguments to the contrary, Section 1329 does not divest the Commission of its authority to assess the reasonableness of UVE appraisals and make adjustments in an effort to fulfill its obligation to ensure just and reasonable rates under Section 1301. OCA M.B. at 28; 66 Pa. C.S. §, 1301; 1 Pa. C.S. 1932.

PAWC points to no language in Section 1329 or elsewhere to support its position that the judgment of the UVEs and the UVE appraisals are entitled to a presumption of validity. Rather, the Commission has the expertise to evaluate ratemaking issues and the discretion to make adjustments to rate base. See West Penn Power Co. v. Pa. PUC, 607 A.2d 1132, 1135 (Pa. Commw. 1992) (West Penn). It would be fundamentally inconsistent with the requirements of the Public Utility Code to permit the acquiring utility to simply present a rate base number, demonstrate that the UVEs selected imprecise numbers to fill in the formulas, and disallow any review or challenge of the inputs. OCA M.B. at 28.

The Commission previously determined that Section 1329 does not restrict the ability of parties to review and recommend adjustments to UVE appraisals.<sup>2</sup> See Application of Aqua Pennsylvania Wastewater, Inc., Docket. No. A-2016-258-0061 at 53 (Order entered June 29, 2017) *reconsideration pending* (July 20, 2017) (New Garden). The Commission has also stated that “the ALJ was correct in considering the analysis presented by the OCA.” Id. Section 1329 must continue to be implemented in a way that promotes a complete record and allows meaningful participation by statutory advocates.

As it pertains to the review of Section 1329 approvals, not only is the Commission permitted to consider the testimony of the parties, but it is obligated to evaluate whether the transaction provides substantial affirmative benefits to customers under Section 1102 and results in just and reasonable rates under Section 1301. OCA M.B. at 6-8, 27-28; 66 Pa. C.S. §§ 1102, 1301. The Commission may not delegate this authority and its ratemaking discretion to the UVEs. OCA M.B. at 31; Pa. Const. Art. II, §1.

The OCA further addresses the legal standard for Section 1329 approvals as it pertains to the Commission’s authority to determine rate base and consider the OCA’s testimony in Section IV.B.1.a. of this Reply Brief.

D. Legal Standard for Section 507 Approvals

The legal standard for Section 507 approvals is addressed in detail in the OCA’s Main Brief. OCA M.B. at 8.

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<sup>2</sup> PAWC recognizes that that “there are no limits to the adjustments that a party may propose to the UVE’s appraisals.” PAWC M.B. at 36.

#### IV. SUMMARY OF ARGUMENT

PAWC and MACM argue that Section 1329 limits the Commission's authority and discretion to determine ratemaking rate base and assigns that role to the UVEs. To the extent the OCA's testimony is considered, PAWC and MACM ask the Commission to assign it no weight. PAWC's and MACM's arguments are inconsistent with the plain language of Section 1329 and should be rejected. Divesting the Commission of its ability to investigate the reasonableness of the appraisals and make adjustments necessary to determine fair market value would prevent the Commission from carrying out its obligation to ensure that rates are just and reasonable and would deny due process to the statutory advocates. In addition, the OCA presents credible and persuasive testimony that identifies several adjustments to the appraisals that are required to correct errors and remove unsupported adjustments. The OCA's testimony should be given full weight and its calculation of a rate base of \$151,949,698 pursuant to the statutory fair market value process should be adopted.

Further, PAWC has not shown that the proposed acquisition of the MACM wastewater system will provide substantial affirmative public benefits. PAWC does not meet its burden of proof by stating that there are benefits from regionalization and consolidation because the acquisition price and other ratemaking impacts of this acquisition have a substantial negative impact on the rates of both the existing PAWC customers and the MACM customers. Those impacts change the timing and even existence of any purported ratemaking benefits related to regionalization and consolidation. PAWC's current average wastewater rate base is \$6,603 per customer, while the average rate base per MACM customer will be \$12,676 per customer, or nearly double the current average wastewater requirement.<sup>3</sup> OCA St. 1S at 11. Ms. Everette calculated a \$31 million annual revenue requirement associated with PAWC's ownership and

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<sup>3</sup> This estimate is based on the purchase price of \$162 million for 12,780 customers. OCA St. 1 at 16, 20-21.

operation of the MACM system. OCA St. 1 at 11; OCA M.B. at 9, 30. If the costs are applied to both PAWC wastewater and MACM customers, it would require a 51% increase in revenues from PAWC wastewater customers. Id. If the costs are recovered only from MACM customers, it would be equivalent to a 137% rate increase. OCA St. 1 at 11, 13; OCA M.B. at 17. If PAWC is permitted to use special ratemaking under Section 1329(f)(2) for its projected \$62.7 million in post-acquisition improvements over 10 years, the shortfall in the MACM customers' rates relative to their actual cost of service will increase. OCA M.B. at 63. The substantial harms of this transaction outweigh any alleged benefit provided by the agreement between PAWC and MACM.

The OCA submits that the Commission should deny the Application because it is not in the public interest. If the Commission disagrees and determines that the proposed transaction provides substantial affirmative benefits, the OCA submits that it must condition its approval to prevent harm to PAWC's and MACM's customers.

V. ARGUMENT

A. Section 1102 Approvals

1. Fitness

As specified in the OCA's Main Brief, the OCA does not present any evidence regarding PAWC's fitness and does not contest PAWC's fitness. OCA M.B. at 11.

2. Public Benefits

a. The Commission Cannot Approve an Acquisition That Is Not In the Public Interest.

Under Sections 1102 and 1103 of the Public Utility Code, the standard for reviewing the benefits of an application is whether the transaction will provide substantial, affirmative benefits to the public. See City of York, 295 A.2d at 828; 66 Pa.C.S. §§ 1102, 1103. The transaction must affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way; mere absence of any adverse effect is not sufficient. 295 A.2d at 828. An acquisition provides an affirmative benefit if the benefits of the transaction outweigh the adverse impacts of that transaction. Application of CMV Sewage Co., Inc., 2008 Pa. PUC LEXIS 950, \*30 (December 23, 2008) (CMV). Further, when the "public interest" is considered, the benefits and detriments to all affected parties must be considered. See Middletown, 482 A.2d at 682.

In this proceeding, it is undisputed that MACM and the City of McKeesport would benefit from the proposed transaction. OCA St. 1 at 7-8; OCA M.B. at 13. MACM will receive \$162 million or 102% more than the net book value of the system. APA, Article III; OCA M.B. at 13. PAWC is planning capital investment projects over the next ten years, which it estimates will cost \$62.7 million. OCA St. 1 at 21; OCA M.B. at 14. In addition, the forty-six existing union and non-union MACM employees will be hired by PAWC to continue operating the MACM system. PAWC App. A-24, Sch. 7.03(a); OCA M.B. at 14. The benefits that PAWC



and MACM ascribe to the proposed transaction, however, do not outweigh the harms to PAWC's existing customers and the MACM customers. OCA M.B. at 13-25. As explained in the OCA's testimony and Main Brief, the MACM customers may see large rate increases after future PAWC base rate cases. To the extent that MACM customers are not paying full cost of service, PAWC's existing water and wastewater customers will bear the difference between the MACM rates and the MACM cost of service.

b. There is No Affirmative Benefit for Existing PAWC Customers and Harm Will Result to MACM Customers After One Year.

PAWC and MACM contend that PAWC's existing wastewater customers will benefit from the addition of MACM customers through cost sharing and economies of scale. PAWC M.B. at 17, 21, 26, 29; MACM M.B. at 16. PAWC has not, however, provided any showing of cost reductions or efficiencies produced by the acquisition of the MACM customers.<sup>4</sup> OCA St. IS at 9; OCA M.B. at 24. Economies of scale require cost savings through an increase in customers. Id. Economies of scale are not created by simply having more customers or having PAWC's existing customers pay for improvements to the MACM system. Id.

Even in the long-term, no affirmative public benefits that outweigh the harms to existing customers are present in this transaction. PAWC claims that the rates for its existing customers will not increase in the short term due to the transaction because MACM's assets are not included in the current rate case. PAWC M.B. at 28. PAWC ignores the negative impacts on existing customers in the interim. MACM customers will not be paying the full cost of the acquired system until possibly many rate cases and years into the future, which means that existing water and wastewater customers will bear the risk and cost of the shortfall as well as

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<sup>4</sup> In CMV, the Commission was not persuaded that potential economies of scale provided a benefit that outweighed the known adverse impacts of the transaction. CMV at \*30. As the OCA pointed out in CMV, there is no guarantee that savings resulting from any economies of scale will be reflected in the rates charged to customers. Id. at \*29-30. In this case, there are no savings because all employees will be transferred to PAWC and no other specific cost savings have been identified. OCA M.B. at 23-24.

experience increased rates starting after the next rate case and continuing until MACM customers pay their cost of service. OCA St. 1S at 13; OCA M.B. at 21, 24. PAWC even admits that MACM customers may never pay their cost of service because PAWC intends to use Section 1311(c) to spread MACM costs among its water customers. PAWC M.B. at 30; 66 Pa. C.S. § 1311(c).

PAWC argues that very little weight should be given to Ms. Everette's testimony regarding the net plant per customer increase in this case. PAWC M.B. at 29-30. PAWC's argument relies in part on creating a mismatch of customer counts and in part on an irrelevant comparison with another utility's net plant per customer. OCA St. 1 at 15-18; OCA M.B. at 20-21. Ms. Everette explained that PAWC's claims that the additional MACM customers will lower or slow the increase in costs and will mitigate the level of net plant investment are completely unsupported. Id. The current PAWC average wastewater rate base per customer is \$6,603 and it will increase to \$7,754 when MACM customers are added along with the \$162 million of MACM rate base. OCA St. 1S at 11. That represents an increase of \$1,150 or 17%. Id.

Despite the Company's claim to the contrary, acquiring 12,780 customers for \$162 million, a purchase price 102% over net book value, will increase costs substantially. OCA M.B. at 4. The average rate base cost of each MACM customer, \$12,676, would be nearly two times that of an existing PAWC wastewater customer. OCA St. 1 at 15-18; OCA M.B. at 20-21. In other words, the number of customers would increase by 23%, while PAWC's average wastewater rate base cost would increase by 17% per customer.<sup>5</sup> OCA St. 1S at 11.

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<sup>5</sup> PAWC has 54,691 existing customers and 12,780 MACM customers will be added to PAWC's customer base. PAWC M.B. at 28-29; OCA St. 1 at 20. This is an increase of 23% (12,780/ 54,691). PAWC argues that the transaction will result in an "increase of approximately 41% in PAWC's existing wastewater customer base of 54,691." PAWC M.B. at 28-29. PAWC uses 22,000 as the number of MACM customers that will be added to PAWC's customer base. Id. Because 54,691 is the direct number of PAWC's existing wastewater customers, however, the calculation can use only the direct number of MACM customers, which is 12,780. OCA St. 1 at 20.

Additionally, the revenue requirement for the MACM customers will be \$18 million higher under PAWC ownership than the current revenues from MACM customers.<sup>6</sup> OCA St. 1 at 11; OCA M.B. at 16. This is before the additional \$62.7 million in capital additions that PAWC has agreed to make to the MACM system.

Under Section 1329(f)(2), PAWC is seeking permission to use special ratemaking treatment for its projected \$62.7 million of capital improvements. OCA M.B. at 63; 66 Pa. C.S. § 1329(f)(2). Specifically, PAWC seeks permission to use the additional accrual of Allowance for Funds Used During Construction (AFUDC) and deferred depreciation on those post-acquisition improvements. 66 Pa. C.S. § 1329(f)(2). If the Company makes those claims in future rate cases, the shortfall in the MACM customers' rates relative to their actual cost of service will increase even more because deferring depreciation and accruing AFUDC after the plant improvements go into service will result in a higher rate base and thus, an increased revenue requirement. OCA M.B. at 62.

PAWC's argument in support of ongoing subsidies for MACM customers for decades represents an unacceptable level of intergenerational inequity. Due to the high cost of acquisition, the current annual \$18 million shortfall in revenue requirement, which will only grow as the post-acquisition improvements are made, and the special ratemaking treatment that will further increase costs for existing customers, it is possible that MACM customers will not bear their full cost of service for decades. PAWC St. 1R at 5, OCA St. 1S at 13. Such a long time frame is not reasonable because it would create extreme intergenerational inequity. As a general rule, it is inequitable and economically unsound to ask one "generation" of captive

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The addition of 12,780 customers is an increase of 23%. Further, even using PAWC's calculations, the increase would be 40%, rather than 41% as PAWC claims.

<sup>6</sup> Ms. Everette calculated a \$31 million annual revenue requirement to support the MACM system with the \$162 million rate base. OCA St. 1 at 11. MACM has current revenues of \$13 million. Accordingly, revenues would have to be increased by approximately \$18 million for PAWC to recover the cost of service for MACM. Id.

ratepayers to bear the cost of providing service to another. See Re Minnegasco, Inc., 143 PUR4th 416, 426 (Minn. 1993); see also Barasch v. Pa. P.U.C., 491 A.2d 94, 98, 104 (Pa. 1985). The benefits of consolidation, if any, should accrue to the existing customers in some reasonably close time compared to the costs that are being expended so that existing ratepayers see some benefits from the acquisition and consolidation.<sup>7</sup>

Moreover, MACM received a \$17,239,375 grant from Pennvest in 2011 with a loan in an equal amount at 1% interest.<sup>8</sup> OCA St. 1 at 9. PAWC acknowledges that it cannot assume MACM's Pennvest loan. PAWC M.B. at 25. PAWC also recognizes that ratepayers benefited from Pennvest funding from 2011-2017 through improvements in the wastewater system by MACM. Id. The Company ignores, however, that MACM ratepayers will no longer benefit from these funding mechanisms throughout the life of the plant financed with the Pennvest funding. Id. Debt costs will also be higher after acquisition because PAWC does not have access to low cost grants or loans. OCA St. 1 at 9-10.

MAMC asserts that Ms. Everette has a "preference for public ownership" of wastewater systems. MACM M.B. at 16. As Ms. Everette explained, however, her testimony "demonstrated that the acquisition of MACM by PAWC for \$162 million is *not* in the public interest," which is "not the same as suggesting that public ownership is or will always be superior to an acquisition by a private company." OCA St. 1S at 3; OCA M.B. at 18-19. The OCA is not debating public

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<sup>7</sup> In the context of discussing acquisition policy for nonviable systems, the Commission has stated its expectation that "every ratepayer in the Commonwealth" will benefit from sharing the impact of major capital additions over a larger rate base. Policy Statement Re: Incentives for the Acquisition and Merger of Small, Nonviable Water and Waste Water Systems, 168 PUR4th 45 (Pa. 1996). The Commission has rejected normalization where it threatened to deny ratepayers a chance to reap the benefit of normalization for 22 years. Pa. PUC v. Duquesne Light Co., 43 PUR4th 27, 69 (1982).

<sup>8</sup> In determining the interest rate and whether to award grant funding, Pennvest uses an affordability methodology to make otherwise prohibitively expensive projects affordable to users. OCA St. 1 at 9-10; See also Clean Water State Revolving Fund Intended Use Plan, FY 2009 at 8-10. If the user rates would become unaffordable when the system acquires a Pennvest loan, Pennvest can reduce the interest rate to as low as 1% and provide grants for a portion of the project cost. OCA St. 1 at 9-10.

versus private ownership of all utility systems. Rather, the focus is the issue raised by PAWC's ownership of the MACM system and whether it meets the standards for approval under the Public Utility Code. OCA St. 1S at 2-3, 5; OCA M.B. at 18.

With regard to Dravosburg and Duquesne residents, PAWC claims that these customers "will still receive many benefits from the transaction because those residents, like the residents of the City [of McKeesport], are customers of the system." PAWC M.B. at 22-23. To the contrary, Dravosburg and Duquesne residents will see increased costs, but will not benefit from the \$162 million sales price. OCA St. 1 at 26; OCA M.B. at 19. Benefits to McKeesport residents, such as proceeds from the sale helping to balance the City's budget, will have no impact on Dravosburg and Duquesne residents. OCA St. 1 at 14-15. These customers will not see any share of the sale proceeds. OCA St. 1 at 14-15; OCA M.B. at 19.

For all of these reasons, PAWC has not established, under Section 1102 and 1103, that the transaction provides any substantial, affirmative public benefit to the existing PAWC customers. The record shows instead that both PAWC's current customers and MACM customers could suffer considerable harm. Therefore, the OCA submits that the Commission must deny the Application.

### 3. Cost of Service Studies

As stated in the OCA's Main Brief, the OCA supports I&E's recommendation that a separate MACM cost of service study, which separates capital expenses and operating costs for the sanitary and storm water functions, should be provided by PAWC in its next base rate case if the transaction is approved. I&E St. 2 at 20-22; I&E St. 2S at 14-18; OCA M.B. at 26.

B. Section 1329 Approvals

1. Ratemaking Rate Base

a. Section 1329 Does Not Eliminate the Commission's Authority to Determine Rate Base or Prohibit the Consideration of the OCA's Testimony on Fair Market Value.

PAWC argues that the Commission should adopt a limited standard of review providing that “[a]bsent clear and convincing evidence of factual error or abuse of discretion, or that bad faith, fraud or illegality tainted the UVE appraisals, neither the parties nor the Commission may go behind the appraisals and supplant the professional judgment of the UVEs.” PAWC M.B. at 36-37. The Company claims that the Commission does not have the discretion to review the fair market value determinations. PAWC M.B. at 37. PAWC and MACM claim that the Commission may not consider the OCA’s testimony pertaining to any aspect of the UVE appraisals other than whether the USPAP standards were met. *Id.*; MACM M.B. at 22-23. Following this logic, even when there are errors and bias in the UVE appraisal calculations, as the OCA has demonstrated here, there can be no challenge. PAWC M.B. at 38.

PAWC’s and MACM’s positions must be rejected. Section 1329 creates a valuation process, which begins with two UVEs providing individual appraisals of “fair market value.” 66 Pa. C.S. § 1329(a)(3). The statute anticipates that these appraisals will differ and provides for the appraisals to be averaged. 66 Pa. C.S. § 1329(g). The fact that two UVEs, who both must comply with the USPAP and employ the cost, market, and income approaches, may recommend different fair market values establishes that the appraisal process is not simply a “formulaic” mathematical exercise. The UVEs are required to make judgments in each type of analysis and in how much weight is given to each approach. OCA M.B. at 9, 26. Thus, the consumer interest

can only be protected if the Commission may consider evidence regarding errors and unsupported adjustments in the UVE appraisals.<sup>9</sup>

The OCA's position is consistent with the plain language of Section 1329 and the rules of statutory construction, which dictate that all provisions of a statute should be given effect. 1 Pa. C.S. § 1921(a). Section 1329 was established within Chapter 13 of the Public Utility Code and must be implemented consistent with its mandate that all rates be just and reasonable. 66 Pa. C.S. § 1301; 1 Pa. C.S. § 1932 ("The rules of statutory construction provide that statutes are to be construed in harmony with existing law and as part of a general and uniform system of jurisprudence"). Divesting the Commission of its ability to investigate the reasonableness of the appraisals and make adjustments necessary to determine fair market value would prevent the Commission from carrying out its obligation to ensure that rates are just and reasonable.

PAWC argues that "[t]he General Assembly has decided that the fair market value determination should be based on the professional discretion of the UVEs and not subject to the non-expert discretion of . . . the Commission." PAWC M.B. at 37. The Commission, however, has particular expertise in interpreting issues involving utilities and the Public Utility Code. See e.g. Popowsky v. Pa. PUC, 706 A.2d 1197, 1203 (Pa. 1997) (quoting West Penn, 607 A.2d at 1132). Moreover, "[t]he PUC is granted a wide range of discretion as to the extent and type of adjustments it makes to a utilities rate base." See West Penn, 607 A.2d at 1135.

PAWC further argues that "rather than undermining the Legislature's policy decision set forth in Section 1329, the Commission should effectuate the policy." PAWC M.B. at 27. PAWC and MACM claim that the General Assembly's intent was to restrict Commission review

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<sup>9</sup> The OCA may intervene in all matters properly before the Commission. 71 P.S. § 309-4. Under Section 5.72 of the Commission's regulations, "[t]he Commonwealth or an officer or agency thereof may intervene as of right" in a proceeding involving an "interest which may be directly affected and which is not adequately represented" or "another interest of such nature that participation of the petition may be in the public interest." 52 Pa. Code § 5.72. The Commission has stated that "[t]he OCA. . . of course, may intervene as of right." See Petition of Pennsylvania Electric Company Requesting Approval of Rate Recovery, 1997 Pa. PUC LEXIS 145 at 6\* (April 21, 1997).

of UVE appraisals. PAWC M.B. at 27-28, 37; MACM M.B. at 6-7. Upon introducing this legislation, however, Representative Robert Godshall explained that the “Commission must . . . approve all public utility acquisitions and will review the utility valuation expert appraisals and the proposed post-acquisition rates as part of this process.” See Memorandum from Robert W. Godshall, Pennsylvania House of Representatives, to All House Members (May 26, 2015). Representative Godshall further stated that the “PUC may reduce the established fair market value.” Id. Moreover, upon consideration by the House of Representatives, when asked what consumer protections are included in the legislation, Representative Godshall replied that “the PUC determines if the acquisition is in the best public interest, and the rates stay in place until all PUC rate cases are heard.” See H. Journal. 199<sup>th</sup> Leg. - No. 71 at 1775 (Pa. 2015). It is the clear intent of the Legislature to permit Commission review and adjustment.

PAWC and MACM also ignore that “the PUC’s interpretations of the [Public Utility] Code, the statute for which it has enforcement responsibility . . . are entitled to great deference.” See Energy Conservation Council of Pa. v. Pa. PUC, 995 A.2d 465, 478 (Pa. Commw. 2010). The Commission has stated that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals and make arguments as to their reasonableness and to recommend adjustments.” See New Garden at 53. The Commission may use its expertise, as it did in New Garden, to interpret Section 1329 as permitting the review of UVE appraisals. In addition, the Commission must evaluate the transaction under Section 1102 and 1301.

The law is clear that the Commission has the authority to make corrections to the appraisal results of the UVEs in order to establish the fair market value. PAWC’s arguments to the contrary are untenable. If Section 1329 serves to remove all authority from the Commission to determine rate base and delegate that authority to the UVEs, it would render the statute unconstitutional. Article II, Section 1 of the Pennsylvania Constitution vests legislative power in



a General Assembly.<sup>10</sup> Pa. Const. Art. II, §1. The General Assembly may delegate authority and discretion in connection with the execution and administration of a law to an independent agency. See Blackwell v. Commonwealth, State Ethics Comm'n, 567 A.2d 630 (Pa. 1989). The legislative power over prices, rates or wages, or that authority as vested within a particular commission, may not be delegated to a private party. See Carter v. Carter Coal Co., 298 U.S. 238, 310-11 (1936); A.L.A. Schecter Poultry Corp. v. United States, 295 U.S. 495, 537, 541-42 (1935). Accordingly, the Commission cannot delegate its authority to determine ratemaking rate base to the UVEs.<sup>11</sup>

The importance of Commission review is underscored where, as here, the impact of approving the proposed \$162 million ratemaking rate base may constitute a general rate increase of 137% for MACM customers if the revenue requirement is recovered from only MACM customers and up to 51% for existing PAWC wastewater customers.<sup>12</sup> OCA M.B. at 9, 17, 30; 66 Pa. C.S. § 1311(c). The premise that any review or challenge to the UVE appraisals is not permitted, would be inconsistent with the just and reasonable rate requirement and the Commission's authority thereunder. 66 Pa. C.S. §§ 501(a), 1301.

The OCA submits that adhering to PAWC's position would also violate due process. In Milesburg, the Court determined that customers are entitled to notice and opportunity to be heard

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<sup>10</sup> "The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives." Pa. Const. Art. II, §1.

<sup>11</sup> Arguably, under MCI Telecomm. Corp. v. American Telephone and Telegraph Co., the Commission has no authority to adopt such interpretation. 512 U.S. 218 (1994) (After finding that rate filings are an essential characteristic of rate-regulated industry, the Supreme Court held that the FCC's detariffing policy which exempted certain telephone carriers from tariff filing requirements, exceeded that Commission's authority).

<sup>12</sup> Ms. Everette calculated a \$31 million annual revenue requirement to support the MACM system if the \$162 million rate base is approved. OCA St. 1 at 11. MACM currently has revenues of \$13 million and, in order for PAWC to recover the cost of service for MACM, revenues would have to be increased by approximately \$18 million for an increase of 137%. Id. Total operating revenues for PAWC Wastewater on its 12/31/16 income statement were \$22.3 million. Adding the MACM revenues of \$13 million would mean total revenues of \$35.3 million. OCA St. 1 at 11. The estimated increase for MACM customers and existing PAWC customers is at least 51% (\$18 million ÷ \$35.3 million). Id.

before the Commission is permitted to make binding decisions likely to increase customers' rates in a subsequent rate proceeding. See Barasch v. Pa. PUC, 546 A.2d 1296, 1306 (Pa. Commw. 1988) (Milesburg). The Court stated:

In our view, due process requires that, before the PUC may issue a declaration approving the legality of the terms and conditions of a contract for a utility's purchase of power from a QF that includes payments for capacity, the utility's customers must be provided with notice of the proceedings and an opportunity to be heard to challenge the proposed action.

Id. As the determination of ratemaking rate base will impact the calculation of revenue requirement, that determination can only be made by giving due notice<sup>13</sup> and a meaningful opportunity to challenge the UVE appraisals.

With regard to an opportunity to be heard, in Milesburg, the Commonwealth Court found that the Commission's order was an adjudication because:

[F]inal affirmative approval is precisely what West Penn sought, and received, from the PUC. If the commission's order is affirmed by the courts, then the propriety of the contract's capacity cost credit rate will not be subject to later challenge in a complaint proceeding before the commission under section 701; that issue will have been fully adjudicated already in these proceedings.

See Milesburg, 546 A.2d at 1306. An adjudication is defined as:

Any final order, decree, decision, determination or ruling by an agency affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any or all of the parties to the proceeding in which the adjudication is made.

2 Pa. C.S. § 101. In this case, the Commission's order regarding the valuation is a final order, which affects the property interests and rights of the ratepayers. Specifically, the rates of the PAWC customers will be based, in part, on this final order for decades throughout the future.

As the Commonwealth Court stated, the question is what process is due. See Milesburg, 546 A.2d at 1307. In this case, the Commission's use of a hearing is appropriate. See Id. A hearing must be a **meaningful** opportunity to be heard, not just an opportunity for PAWC to

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<sup>13</sup> The OCA notes that direct notice was not provided to PAWC's existing customers.

submit its appraisals. See Barasch v. Pa. PUC, 568 A.2d 276, 279 (Pa. Commw. 1989) (Rivercrest) (there can be no doubt that an opportunity to be heard after due notice must be given to the affected parties before the PUC may enter an order fixing general rates.) The determination of rate base under Section 1329 may, as in the present case, increase future rates of PAWC's wastewater customers up to 51%. OCA M.B. at 9, 30. Therefore, the opportunity to "challenge" and "be heard" in a Section 1329 proceeding logically includes the submission of testimony relating to the valuation.

Further, PAWC claims that the transaction is consistent with the "Commission's obligation under the Environmental Rights Amendment" (ERA) because "PAWC is better capable of making the necessary improvements in the system." PAWC M.B. at 19-20. This argument is wholly without merit. First, there is no evidence that MACM would not be able to make any necessary improvements. Second, the evidence shows that the cost to have PAWC make any necessary improvements is a much greater cost than if MACM made the same improvements.

Finally, the ERA provides that the Commonwealth shall conserve and maintain Pennsylvania's public natural resources for the benefit of all people. PA. Const. Art. I, § 27.

With regard to the ERA, however:

"Because it is the Commonwealth, not individual agencies or departments, that is the trustee of public natural resources under the ERA . . . the ERA must be understood in the context of the structure of government and principles of separation of powers. In most instances, the balance between environmental and other societal concerns is primarily struck by the General Assembly . . . through legislative action. While executive branch agencies and departments are, from time to time, put in the position of striking the balance themselves, they do so only after the General Assembly makes 'basic policy choices' and imposes upon the agencies or departments 'the duty to carry out the declared legislative policy in accordance with the general provisions of the statute.'"

See Funk v. Wolf, 144 A.3d 228, 235 (Pa. Commw. 2016). Therefore, agencies must act according to "the balance the General Assembly . . . already struck between environmental and

societal concerns in an agency or department’s enabling act.” Id. The Commission’s enabling act, the Public Utility Code, provides that the Commission will grant a certificate of public convenience only when it is “necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). In doing so, the Commission may “impose such conditions as it may deem to be just and reasonable.” 66 Pa. C.S. §1103(a). The Code also mandates that “[e]very rate. . . shall be just and reasonable.” 66 Pa. C.S. § 1301.

PAWC’s and MACM’s restrictive interpretations of Section 1329 are not supported by the plain language of Section 1329 or the rules of statutory interpretation. The Commission has authority and discretion to review the UVE appraisals under Section 1329 and ensure that the ratemaking rate base of the acquired utility will result in just and reasonable rates. Section 1329 contains no language that entitles the UVE appraisals to a presumption of accuracy. The Commission must give affected parties a meaningful opportunity to be heard, which includes the consideration of testimony regarding errors and bias in appraisals.

b. The OCA’s Corrections to the UVE Appraisals are Supported by the Record.

The OCA’s testimony demonstrates that PAWC’s proposed rate base is overstated due to errors in the appraisals and that the correct rate base number is \$151,949,698 under the Section 1329 methodology. Ms. Everette’s and Mr. Watkins’ corrections to the UVE appraisals are addressed in detail in the OCA’s Main Brief. OCA M.B. at 35-61, 64.

PAWC and MACM argue that the appraisal adjustments of Ms. Everette and Mr. Watkins should not be considered because they are not based on USPAP standards. PAWC M.B. at 39; MACM at 22-23. As previously mentioned, the Commission has stated that “Section 1329 contains no prohibitions on the ability of the Parties to review the UVE appraisals as to their reasonableness.” See New Garden. Here, Ms. Everette and Mr. Watkins employed standard

financial and business models to make recommendations as to how to correct assumptions within the UVE appraisals that are unreasonable or inconsistent with utility practice.

PAWC and MACM argue that Ms. Everette's and Mr. Watkins' recommendations should be given no weight because they are not registered UVEs or licensed appraisers. PAWC M.B. at 39-40; MAMC M.B. at 24. The appraisals of two UVEs are required for purposes of determining fair market value under Section 1329, but nowhere is it provided that only UVEs may criticize already calculated fair market value for purposes of litigation before the Commission. The analyses of the UVE appraisals conducted by Ms. Everette and Mr. Watkins are derived from standard financial and business concepts and properly based on their financial and utility ratemaking expertise.<sup>14</sup> OCA M.B. at 2.

Similarly, MACM claims that the "several of the OCA's recommended adjustments would require the UVE[s] to violate USPAP." MACM M.B. at 22 (referring to discussion of cost approach and income approach). The OCA's recommendations do not "require the UVEs to violate USPAP." In fact, the OCA's recommendations do not require the UVEs to take any action. Rather, the OCA identified errors and bias in the UVE appraisals for the Commission's consideration and requested that the Commission adopt the OCA's adjustments, resulting in an overall ratemaking rate base of \$151,949,968. OCA M.B. at 35-61; 64.

PAWC further argues that the Commission should reject Ms. Everette's adjustments to the HRG appraisal because "HRG is more credible." PAWC M.B. at 39. As MACM recognizes, however, Ms. Everette properly identified incorrect information included in the HRG appraisal. MACM M.B. at 25. Specifically, MACM witness Vicari originally assumed that the plant was

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<sup>14</sup>Mr. Watkins noted that he reviewed the USPAP and found that the standards are consistent with accepted financial theory. Tr. 141. Thus, Mr. Watkins and Ms. Everette, as public utility ratemaking and financial experts are qualified to review and propose adjustments to the appraisals.

placed in service in 2008, although the schedules attached to her initial appraisal report show service dates in the 1950s, 1960s, and 1970s. OCA St. 1R at 6; OCA M.B. at 36-37.

As Ms. Everette explained, “Under [MACM witness] Vicari’s initial position that the plant has a 50 year service life, the plant would have been 86% depreciated . . . which would have significantly decreased the reproduction cost result. By increasing the service life to 85 years, the plant is now only 51% depreciated.” OCA St. 1R at 6-7; OCA M.B. at 36-37. Both initially and after learning of the actual age of the plant, MACM witness Vicari claimed that the plant has a remaining life of 42 years. OCA St. 1R at 6; OCA M.B. at 37. Her assumption that the remaining life is not related to the age of the plant is “faulty logic and renders the analysis unreliable.” Id. In addition, MACM witness Vicari’s use of a longer service life dramatically increases the value of her appraisal result. Id.

In response to Ms. Everette’s identification of the above-mentioned issue, HRG made changes and MACM acknowledges that these changes affected the cost approach and income approach analysis. MACM M.B. at 26. The fact that a UVE in the present case included incorrect information in its appraisal demonstrates precisely why the Commission must reject PAWC’s claim that it should consider the professional judgment of the UVEs presumptively valid. The OCA must be able to review the UVE appraisals and make adjustments so errors that will impact ratepayers are not embedded in the ratemaking rate base determination.

Finally, the OCA notes that Mr. Watkins and Ms. Everette are both well-qualified experts in areas of ratemaking and financial issues related to utilities. MACM witness and PAWC witness Weinert are not similarly qualified in utility ratemaking.

For the foregoing reasons, the OCA submits that the Commission should reject PAWC’s and MACM’s arguments that the OCA’s valuation testimony should be given no weight. The

OCA's testimony regarding errors and unsupported adjustments in the UVE appraisals are fully supported by the record, warrant consideration by the Commission, and should be adopted.

- c. The Fair Market Value of the MACM System Pursuant to Section 1329 Methodology is \$151,949,698.

Ms. Everette provided testimony supporting one adjustment to HRG's cost approach results and two adjustments to HRG's market approach analysis.<sup>15</sup> OCA St. 1 at 19-24; OCA St. 1R at 1-11; OCA M.B. at 34. Mr. Watkins adjusted AUS' income approach and HRG's income approach, including corrections to the calculation of income tax expense and the discount rate in the discounted cash flow analysis under the HRG's income approach. He recommended that adders for "going value" and "erosion of cash flow" be denied for all of the appraisal methodologies. OCA St. 2 at 8-18; OCA M.B. at 34. Mr. Watkins also recommended that no consideration be given to HRG's rate base/ rate of return analysis in its income approach. OCA St. 2 at 18-21; OCA M.B. at 34. Further, he suggested adjustments to the terminal value and discount rates used in AUS' DCF model in the income approach analysis. OCA St. 2 at 22-28; OCA M.B. at 34. After incorporating these adjustments, Ms. Everette calculated that the HRG appraisal result would be \$153,794,190, while the AUS appraisal result would be \$150,105,207. OCA St. 1R at 10-11; OCA Exh. AEE-1R (Revised); OCA M.B. at 34. The recalculated average of the two appraisal results under Section 1329 is \$151,949,698. Id.

(1) HRG Valuation

Ms. Everette originally adjusted the customer count used by MACM witness Vicari in calculating the market approach because the customer count used for MACM (21,953 includes customers served by bulk customers rather than 12,780, the actual customers served by MACM) was not comparable to the customer counts used for the other acquisitions reviewed by

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<sup>15</sup> In her direct testimony, Ms. Everette recommended additional adjustments to HRG's cost approach analysis. MACM witness Vicari revised her analysis in her direct testimony, which was filed on the same day as Ms. Everette's direct, July 17, 2017. Therefore, Ms. Everette updated her adjustments in her rebuttal testimony.

Ms. Vicari. OCA St. 1 at 20-21; OCA M.B. at 59-60. For the other acquisitions, MACM witness Vicari used the customer counts for direct customers only. Id. In its Main Brief, MACM claims that the OCA “no longer disputes that approximately 21,953 customers are served” by MACM. MACM M.B. at 28-29. Although MACM acknowledges that the system has 12,780 customers and eight bulk connections, it states “[t]he 21,953 number reflects that the small number of bulk connections actually reflect thousands of individuals receiving wastewater service from the system.” MACM M.B. at 29, n. 93. As stated in the OCA’s Main Brief, Appendix A-17-a provides that MACM has 12,780 customers. OCA St. 1 at 20; OCA M.B. at 60. MACM witness Vicari never provided any calculation showing that the addition of bulk customers produces a total of 21,953 customers for MACM. OCA St. 1 at 21; OCA M.B. at 60. Therefore, Ms. Everette was not able to confirm the accuracy of this number and used the 21,953 number, noting that it was not necessarily correct. Id. The critical point, though, is that the 21,953 customer count is done on a different basis than what MACM witness Vicari used for other acquisitions in her analysis.

Also, in terms of the HRG market approach and MACM witness Vicari’s inclusion of planned capital improvements, MACM disagrees with Ms. Everette’s criticism that capital additions should not be included because such inclusion did not result in an apples-to-apples comparison. MACM M.B. at 28. For determining the value of the comparative acquisitions, MACM witness Vicari considered the purchase price plus the value of capital improvements. OCA St. 1 at 21; OCA M.B. at 60-61. For MACM, however, she considered only the purchase price and did not add the \$62.7 million of capital investments. Id. Consequently, the HRG market analysis is not an apples-to-apples comparison. Using the capital improvements for sample acquisitions and not the current transaction distorts the results, making the market value analysis unreliable. OCA St. 1 at 21. Without adding in capital improvements for each



comparative acquisition, the estimated market value is \$160,630,101, rather than \$190,000,000 as calculated by MACM witness Vicari.<sup>16</sup> OCA St. 1 at 22; OCA M.B. at 61.

As it pertains to the HRG cost approach, MACM attempts to support the addition of a 20% overhead by claiming that MACM witness Vicari “used her experience as a professional engineer and UVE to arrive at a reasonable estimate of overhead costs.” MACM M.B. at 30. The OCA requested documentation supporting the amounts MACM witness Vicari claimed for overhead and received none. OCA St. 1R at 8; OCA V-3; OCA M.B. at 37. MACM witness Vicari provided only a list of general cost categories without establishing how she derived the 20% overhead. *Id.* The reproduction cost must be based on reasonable information. It is not sufficient for MACM to claim that the overhead estimate is correct simply because MACM witness Vicari is a professional engineer and UVE. OCA St. 1R at 8; OCA M.B. at 37.

As for the HRG income approach, Mr. Watkins identified several conceptual and computational errors in the valuation. OCA St. 2 at 4-21; OCA M.B. at 43. In particular, MACM witness Vicari’s discount rate of 2.50% is not within a reasonable range and her treatment and calculation of income taxes do not comport with accepted financial theory. OCA St. 2 at 6, OCA M.B. at 44. Mr. Watkins recommended that MACM witness Vicari’s additional rate base/rate of return analysis be given no consideration because it contains numerous flaws and unreasonable assumptions. OCA St. 2 at 18-19; OCA M.B. at 48. Mr. Watkins corrections to the HRG income approach result in a more appropriate valuation of \$165,550,000, which is the mid-point of the DCF valuation range of \$122,420,000 and \$208,690,000 compared to MACM witness Vicari’s \$212,360,000. OCA St. 2 at 13; OCA St. 2S at 1-3; OCA Exh. AEE-1R (Revised); OCA M.B. at 43.

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<sup>16</sup> Ms. Everette calculated the estimated market value using the number of customers that MACM witness Vicari utilized (\$7,317 x 21,953), although, as mentioned the correct number of customers may be lower. OCA St. 1 at 22; OCA M.B. at 60.

## (2) AUS Valuation

PAWC argues that, with regard to the AUS income approach, Mr. Watkins improperly recommended adjustments to the AUS appraisal related to the terminal value. PAWC M.B. at 41. As Mr. Watkins explained, however, “[t]he AUS analysis contains an unreasonable assumption (if not an error) that significantly overstates the terminal value.” OCA St. 2 at 23; OCA M.B. at 54. The DCF calculation must recognize that the plant will wear out and need to be replaced at some future time. OCA St. 2 at 25; OCA M.B. at 54. The AUS analysis, however, does not reflect a reasonable level of capital expenditures. AUS’ assumed level of real capital investment is only 0.28% of the cost of replacing the total plant in year 20, which implies a clearly unreasonable service life of new plant of 362 years.<sup>17</sup> OCA St. 2 at 26-27; OCA M.B. at 55. Mr. Watkins properly concluded that MACM “cannot possibly operate in perpetuity with such minimal levels of reinvestment,” yet “this is exactly what AUS’ terminal value and estimation of value in perpetuity assumes and utilizes in its model.” OCA St. 2 at 27; OCA M.B. at 55-56. Accordingly, in his DCF analysis, Mr. Watkins utilized a 50-year model with no terminal value, which resulted in a valuation of \$134.359 million.<sup>18</sup> OCA St. 2 at 28; Schedule GAW-5; OCA M.B. at 56.

## (3) Conclusion

PAWC’s and MACM’s criticisms of Ms. Everette and Mr. Watkins identified above and in the OCA’s Main Brief are without merit. Both experts corrected errors and removed

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<sup>17</sup> AUS’ assumed nominal capital expenditures in year 20 is \$1.638 million. OCA St. 2 at 24; OCA M.B. at 54-55. The cumulative expenditures only amount to \$22.119 million (inflation-adjusted) during the first 20 years of the AUS model. Id. AUS estimates that the cost of reproduction of the system is \$330.965 million in today’s dollars, while the cost in year 20 is \$593.331 million. Id. The capital expenditures of \$22.119 million, invested to replace plant during the first 20 years, represent only 6.68% of the plant that will need to be replaced. OCA St. 2 at 26; OCA M.B. at 55. The system has 48% of its useful life remaining. Id.

<sup>18</sup> Mr. Watkins accepted all annual revenue, expense, capital expenditures, and changes in working capital used by AUS for the first 20 years. OCA St. 2 at 27. For years 21 through 50, he increased net cash flow using AUS’ assumed rate of inflation, 3.12%. Id. Mr. Watkins also used the same 7% discount rate and annual growth in net cash flows of 3.12% for these years. OCA St. 2 at 28.

unsupported adjustments in the UVE appraisals. As Section 1329 does not delegate or otherwise eliminate the Commission's authority to determine rate base for ratemaking purposes and to consider testimony by statutory advocates regarding fair market valuation, the OCA respectfully submits that, if the transaction is approved, the Commission should establish a rate base under the Section 1329 methodology of \$151,949,698 for the MACM system, rather than a rate base of \$162 million as proposed by PAWC. OCA St. 1R at 11; OCA Exh. AEE-1R (Revised); OCA M.B. at 34.

2. DSIC, AFUDC and Deferred Depreciation

As specified in the OCA's Main Brief, if PAWC seeks to charge a DSIC to MACM customers prior to the base rate proceeding for those customers, it must file a revised tariff and a revised Long Term Infrastructure Improvement Plan (LTIIP). OCA M.B. at 62. The Commission should condition its approval of the transaction such that PAWC is required to file the revised tariff and LTIIP within 30 days of the entry of an order in this proceeding. Id. In addition, the revised LTIIP must be approved prior to PAWC charging the DSIC to the acquired customers. The Commission should ensure that the proposed projects reflected in the revised LTIIP will be in addition to, and will not reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers.

3. Rate Freeze/ No Rate Stabilization Plan

PAWC argues that the proposed transaction does not include a rate stabilization plan. PAWC M.B. at 47-48. The APA, however, contains a provision for a one year rate freeze. APA, ¶7.05(b). If the Commission approves the transaction, it should adopt language clarifying its authority and discretion to mitigate the rate impact for customers regardless of whether the rate freeze is in place at the time of the base rate proceeding seeking to reflect this acquisition in rate base. OCA M.B. at 63.

4. Revised *pro forma* Tarriff Supplement

As specified in the OCA's Main Brief, the OCA does not oppose the revised tariff supplement except to the extent that it is inconsistent with the requirements related to charging a DSIC to MACM customers. OCA M.B. at 63.

C. Section 507 Approvals

As specified in the OCA's Main Brief, the OCA does not oppose the Commission's approval of the APA provided that it is clear that the approval is not binding on any party in future cases. OCA M.B. at 64. The OCA does not take any position on whether the Commission should approve PAWC's remaining agreements in Appendices A-24 and B-1 through B-18. Id.

D. Summary of OCA's Recommendations

As set forth above, the OCA recommends that the Commission deny the relief requested in the Application. OCA M.B. at 25, 64. If, however, the Commission declines to do so, the OCA recommends that the Commission include in its approval conditions to avoid the substantial adverse impact on PAWC's existing customers and MACM's customers under PAWC ownership after the one year rate freeze:

- The OCA's proposed adjustments to the appraisals should be adopted, resulting in an overall ratemaking rate base of \$151,949,698 (prior to closing and transaction costs).
- If PAWC seeks to have MACM customers begin paying a DSIC prior to the effective date of rates established in PAWC's next base rate case, PAWC must file the required tariff changes and revised LTIP no later than 30 days after entry of the Commission order in this proceeding. The revised LTIP must be approved prior to PAWC charging the DSIC to the acquired customers. The proposed projects reflected in the revised LTIP will be in addition to, and will not reprioritize, any capital improvements that PAWC was already committed to undertake for existing customers.
- PAWC must file a separate MACM cost of service study that separates capital expenses and operating costs of the sanitary and storm water functions in its next base rate case.
- Rate claims related to the accrual of Allowance for Funds Used During Construction (AFUDC) for non-DSIC eligible, post-acquisition

improvements will be made in the next PAWC base rate case following the plant additions.


- Deferral of depreciation for book and ratemaking purposes on non-DSIC eligible post-acquisition improvements will be made in the next PAWC base rate case following the plant additions.
- The Commission retains the authority and discretion to mitigate the rate impact for PAWC's existing customer by potential increasing rate for MACM customers, whether or not the rare freeze is in place at the time of the base rate case seeking to reflect this acquisition rate base.

OCA St. 1R at 11; I&E St. 2 at 20-22; I&E St. 2-SR at 14-18; OCA M.B. at 64-65.

## VI. CONCLUSION

For the reasons set forth above and in the OCA's Main Brief, the Office of Consumer Advocate respectfully requests that the Commission deny PAWC's Application for a Certificate of Public Convenience to purchase the MACM wastewater assets and provide wastewater service. In the alternative, the Certificate should be conditioned such that PAWC's existing wastewater and water customers are not penalized by bearing the costs of a transaction that does not provide affirmative benefits that outweigh the harms to customers. The OCA requests that, in order to provide the necessary protection to customers, the Commission adopt the OCA's proposed conditions and approve a fair market value of \$151,949,968 for ratemaking rate base.

Respectfully Submitted,



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