**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held July 12, 2018 | |
| Commissioners Present:  Gladys M. Brown, Chairman  Andrew G. Place, Vice Chairman, Statement, dissenting  Norman J. Kennard, Statements  David W. Sweet  John F. Coleman, Jr., Statement | | |
| Application of Aqua Pennsylvania Wastewater, Inc. | | A-2017-2605434 |
| Pursuant to Sections 1102 and 1329 of the | |  |
| Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Limerick Township | |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Resolution of Proceedings and Amendment of the Opinions and Orders Entered November 29, 2017, and April 19, 2018 (Petition or Settlement) of Aqua Pennsylvania Wastewater, Inc. (Aqua or the Company), Limerick Township (Limerick), and the Office of Consumer Advocate (OCA) (collectively, Joint Petitioners) filed on June 7, 2018, relative to the above-captioned proceeding. In the Petition, the Joint Petitioners propose a final resolution of the remaining issues in this proceeding and request that the Commission amend the Orders entered at this Docket on November 29, 2017 (*November 2017 Order*) and April 19, 2018 (*April 2018 Order*). On June 18, 2018, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Letter opposing the Petition. For the reasons stated below, we shall conditionally grant the Petition, consistent with this Opinion and Order.

**History of the Proceeding**

On May 19, 2017, Aqua filed an Application seeking approval of: (1) the acquisition, by Aqua, of the wastewater system assets of Limerick, (2) the right of Aqua to begin to offer, render, furnish and supply wastewater service to the public in portions of Limerick, and (3) an order approving the acquisition that includes the ratemaking rate base of Limerick’s wastewater system assets pursuant to Section 1329(c)(2) of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. § 1329(c)(2). By Secretarial Letter dated May 31, 2017, the Commission acknowledged receipt of the completed Application.

On June 9, 2017, I&E filed a notice of appearance and the OCA filed a protest to the Application. The Commission published a notice of the Application in the *Pennsylvania Bulletin* on June 10, 2017. 47 *Pa. B.* 3324. On June 21, 2017, Limerick filed a Petition to Intervene. By Order issued June 28, 2017, the ALJ granted the Limerick’s Petition and established a litigation schedule.

The ALJ conducted an evidentiary hearing on July 20-21, 2017, at which each Party was represented by counsel. During the hearing, testimony and exhibits were presented and cross examination was conducted. Aqua offered five statements and seven exhibits, which were admitted into the record. I&E presented four statements and two exhibits that were admitted into the record. The OCA presented four statements and one exhibit, all of which were admitted into the record.

The Parties filed Main Briefs on August 11, 2017, and Reply Briefs on August 18, 2017. On August 18, 2017, the record was closed upon receipt of the Reply Briefs.

In the Recommended Decision issued on September 18, 2017, the ALJ recommended approving the Application with an adjustment to the proposed rate base value and with certain conditions. Aqua, I&E, and the OCA filed Exceptions on October 3, 2017. On October 10, 2017, Aqua, I&E and the OCA filed Replies to Exceptions.

In our *November 2017 Order*, we denied the Exceptions of Aqua, I&E and the OCA and adopted the Recommended Decision. Aqua filed a Petition for Reconsideration of the *November 2017 Order* on December 14, 2017. By Order entered December 21, 2017, we granted the Petition for Reconsideration, pending further review of, and consideration on, the merits. On December 22, 2017, and December 29, 2017, the OCA and I&E filed their respective Answers to the Petition for Reconsideration.

In our *April 2018 Order*, we denied Aqua’s Petition for Reconsideration. Thereafter, by letter dated May 2, 2018, Aqua filed a First Amendment to the Asset Purchase Agreement (First Amendment to the APA), dated March 29, 2018, between the Company and Limerick.[[1]](#footnote-1) On May 18, 2018, the OCA filed a Petition for Review seeking reversal of the *November 2017 Order*, as subsequently upheld by the *April 2018 Order*. *McCloskey v. Pa. PUC*, Docket No. 682 C.D. 2018 (Pa. Cmwlth. filed May 18, 2018). As noted above, the Joint Petitioners filed the instant Petition on June 7, 2018. Thereafter, I&E filed its Letter opposing the Petition.

**Discussion**

**Legal Standard**

Before addressing the Petition, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993).

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

As part of the settlement terms, the Joint Petitioners request the amendment of the *November 2017 Order* and the *April 2018 Order*. The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior decision, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

**Petition and Settlement Terms**

The Joint Petitioners request, pursuant to 52 Pa. Code § 5.572, that the Commission amend the *November 2017 Order* and the *April 2018 Order* according to the following settlement terms contained in paragraph 11 of the Petition, which would appear as additional ordering paragraphs in an amended Opinion and Order:

a. Ratemaking rate base remains at $64,373,378 consistent with the November 29 Order.

b. Aqua will not include Limerick in its base rate case anticipated to be filed in summer 2018.

c. Aqua may file a separate rate case for Limerick which will not be filed prior to June 30, 2020. In this base rate case, Aqua will propose:

i. to move Limerick to its cost of service or 2.0 x the current Limerick rate, whichever is lower, based on a separate cost of service study for Limerick. This provision is between OCA, Aqua, and Limerick.

ii. Current average Limerick rate is $38.00 based on 4,000 gallons of usage.

d. Limerick may be included in the next full consolidated water and wastewater rate case after Aqua Pennsylvania's summer 2018 filing. In the first full consolidated water and wastewater base rate case in which Limerick is included, whether or not there has been a preceding separate Limerick rate case, Aqua agrees that it will prepare a separate cost of service study and revenue requirement for Limerick. Aqua will propose the use of 66 Pa. C.S. § 1311(c) in the first full consolidated water and wastewater base rate case after Aqua Pennsylvania's summer 2018 filing. The OCA reserves the right to challenge such proposal under Section 1311(c).

e. The parties agree to amend the asset purchase agreement (“APA”) in Section 7.05(b) so that a separate rate case can be filed after June 30, 2020. Notwithstanding the agreement to amend the APA, the parties reserve all rights to review and challenge any ratemaking claims regarding the financial commitments contained in the APA, except as specifically set forth herein. The parties further agree to the following:

i. Referencing First Amendment to APA, paragraph 4(c): If Aqua seeks to recover any costs associated with the monetary commitments by Aqua Wastewater and Aqua PA related to reimbursement of capital projects, it will make a claim for such recovery in a base rate case and specifically identify the claim in that filing. The parties reserve all rights to review and challenge such claim.

1. Aqua will not claim [allowance for funds used during construction (AFUDC)] or deferred depreciation on any projects undertaken by Seller.

ii. Referencing First Amendment to APA, paragraphs 4(a) and (b): The commitments by Aqua Wastewater and Aqua PA related to the repayment of the General Obligation note for the Township Building and the anticipated loss of income will not be claimed or reflected in rates charged to water and wastewater customers.

iii. Referencing First Amendment to APA, paragraph 10(b): Any termination fee paid by Buyer to Seller is not recoverable in rates charged to water and wastewater customers.

f. Limerick agrees to be a signatory to settlement.

g. Aqua acknowledges that the OCA made adjustments to the Limerick appraisal and that the Commission adopted certain adjustments to the appraisals. Aqua agrees that in future Section 1329 filings, Aqua will support the following positions:

i. Market Approach:

1. If “comparable acquisitions” are used as a factor in determining market value, the purchase price for each “comparable acquisition” shall be based on the actual amount paid for the assets at the time of purchase and future capital improvements shall not be included;

1. If the number of customers is used as a factor in determining market value, the actual, unadjusted number of customers shall be used rather than projected future number of customers. This applies to the number of customers for both the system being acquired and any “comparable acquisitions” being used in the determination.

ii. Income Approach: the rate base/rate of return methodology is not an appropriate methodology for calculating fair market value.

iii. Cost approach:

1. If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified;

2. Future capital projects shall not be considered in determining the cost approach result;

3. The cost of land, if included, shall not be adjusted by the ENR index.

iv. The “going value,” “provision for erosion on return,” and “overhead cost” add-ons will not be adopted or included in the appraisals.

Aqua and the OCA reserve the right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings, including methodologies, inputs and assumptions that were present in this case but not challenged by the OCA or that were accepted by the Commission.

h. The OCA will withdraw its appeal of the Order entered November 29 within 5 business days after entry of a Commission order approving this settlement.

i. Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, the parties reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. The OCA's assent to this agreement should not be construed to operate as its preapproval of Aqua's requests.

j. The Joint Petitioners acknowledge that the Commission retains ultimate authority as to setting rates.

Petition at 4-6, ¶ 11.

The Joint Petitioners submit that the proposed settlement of this proceeding and the amendment of the prior Commission Orders are in the public interest. According to the Joint Petitioners, the terms establish a framework for considering the costs of the Limerick wastewater system and determining Limerick system rates in a future Aqua rate proceeding, including a possible separate Limerick rate filing and a presentation of a separate cost of service study for the Limerick system. Additionally, the Joint Petitioners submit that the terms address the OCA’s concerns with the possible rate impact of the First Amendment of the APA pending before the Commission for Section 507 review at Docket No. U-2017-2635888. Petition at 7-8.

The Joint Petitioners also contend that the public interest is supported by Aqua’s agreement not to support certain identified valuation approaches in future Section 1329 filings. The Joint Petitioners explain that the identified approaches were those challenged by the OCA in this proceeding and adopted by the Commission in the *November 2017 Order* and the *April 2018 Order*. Although Aqua will not support these approaches in future filings, the Joint Petitioners contend that the terms allow Aqua and the OCA to “present adjustments and oppose methodologies, inputs and assumptions in future proceedings, including methodologies, inputs and assumptions that were part of this proceeding but not challenged by the OCA or that were accepted by the Commission.” Petition at 8.

Recognizing that the *November 2017 Order* and the *April 2018 Order* are on appeal by the OCA to the Commonwealth Court at Docket No. 682 C.D. 2018, the Joint Petitioners propose that the Commission amend the prior Orders contingent upon the OCA’s withdrawal of its appeal. According to the Joint Petitioners, this procedure would avoid conflict with Pa. R.A.P. 1701 and be consistent with the procedure recognized in *Tripps Park Civic Association v. Pa. PUC*, 415 A.2d 967 (Pa. Cmwlth. 1980) (*Tripps Park*). The modifications requested by the Joint Petitioners would only become effective after the withdrawal of the OCA appeal. Petition at 8.

The Joint Petitioners assert that the settlement is conditioned on the Commission’s approval of all the terms and conditions contained in the Petition and, in the absence of such approval, the Joint Petitioners may withdraw the Petition within three business days of the Commission’s action. *Id.* at 9.

**I&E Response**

On June 18, 2018, I&E filed a letter in response to the Petition noting its prior position in this proceeding that the acquisition does not meet the requirements under 66 Pa. C.S. § 1102. I&E argues that it opposes the settlement terms because the requisite affirmative public benefits are not present in this acquisition. Thus, I&E submits that it is unable to be a signatory to the Petition. I&E Letter at 1.

**Disposition**

Initially, we note that although the November 2017 Order and April 2018 Order are on appeal before the Commonwealth Court, we have the authority to evaluate the Petition, as submitted, at this stage of the proceeding.

The Joint Petitioners acknowledge that the *November 2017 Order* and the *April 2018 Order* are before the Commonwealth Court on appeal at Docket No. 682 C.D. 2018. Because the appeal is pending in the Commonwealth Court, Pa. R.A.P. 1701 is applicable. In *Tripps Park*, *supra*, the Commonwealth Court stated, “As applied to the determination of government agencies, [Pa. R.A.P. 1701] precludes, with certain exceptions, further action on a particular matter after filing for appellate review.” *Tripps Park*, 415 A.2d at 972.

However, the Court held that the Commission’s modification of a prior Order after a party had filed an appeal was not prohibited by Pa. R.A.P. 1701 where the modification was made expressly contingent upon the withdrawal of the appeal and the modified Order did not become effective until after the appeal was withdrawn. *Id*. Because these circumstances exist in the present case, we determine that we may consider the Joint Petitioners’ request to amend our prior Orders in this proceeding. Furthermore, as the Joint Petitioners have reached a settlement in this matter, and the procedural posture of this case has changed since our prior determinations, we find that the standards for considering the rescission or amendment of our prior Orders, as set forth in *Duick*, *supra*, have been satisfied.

Moving to the evaluation of the Petition, we find that the settlement terms are in the public interest. There are four main components to the settlement terms: (1) Aqua would exclude the ratemaking rate base for the Limerick system from its next base rate case anticipated for the summer of 2018; (2) Aqua would file a separate rate case for the Limerick system after June 30, 2020, which may include a consolidated water and wastewater base rate case pursuant to 66 Pa. C.S. § 1311(c); (3) parameters would be set for the types of expenses or costs that Aqua may claim for recovery in the separate rate case for the Limerick system; and (4) Aqua would agree to support certain adjustments to the utility valuation expert (UVE) appraisals in future Section 1329 proceedings.

Regarding the first two components of the settlement terms, the exclusion of the Limerick rate base from the Company’s next base rate case and the two-year stay out provision for the inclusion of the Limerick system assets provide important time for Aqua to prepare the required cost of service study and revenue requirement related to the Limerick assets. Moreover, the provisions pertaining to the third component of the settlement terms help provide clarity for the parties as to the types of repayment claims Aqua may seek in a future rate base case. Such provisions would tend to reduce or eliminate litigation and administrative expenses related to resolving peripheral issues and would help to focus the matters that may be raised in Aqua’s rate case to be filed after June 30, 2020. The fourth component is essentially an agreement by Aqua to refrain from challenging the adjustments to the UVE appraisals adopted by the Commission in this proceeding in future Section 1329 proceedings. To the extent that Aqua refrains from relitigating issues previously resolved by the Commission, such action would tend to reduce unnecessary litigation expenses and help preserve administrative resources.

The settlement terms in the Petition would not diminish or weaken any of the Ordering Paragraphs set forth in our *November 2017 Order* which are designed to protect the public interest and to help prevent harm to existing Aqua customers. For example, Ordering Paragraph No. 11 of our *November 2017 Order* provides:

11. That the Commission retains the authority to allocate revenues, if appropriate, to the Limerick Township customers that are in excess of the restrictions outlined in the Asset Purchase Agreement. Aqua Pennsylvania Wastewater, Inc., and its shareholders should bear all risk of a shortfall between revenues it is permitted to recover under its Asset Purchase Agreement with Limerick Township and the costs that Aqua Pennsylvania Wastewater, Inc., will incur with respect to the acquired system. To the extent that Aqua Pennsylvania Wastewater, Inc., is unwilling or unable to charge costs in excess of the limitations provided in the Asset Purchase Agreement, the excess costs should be borne by its shareholders and not spread to other ratepayers.

This provision would remain in full force and effect. Additionally, Ordering Paragraph Nos. 9 and 10 of the *November 2017 Order*, pertaining to the filing of Aqua’s next base rate case, would remain with minor references to the stay-out date for the future rate case consistent with the settlement terms as follows:

9. That at the time of filing ~~its next~~ of any base rate case filed after June 30, 2020, Aqua Pennsylvania Wastewater, Inc., shall submit a cost-of-service study or analysis that separates the costs, capital, and operating expenses of providing wastewater service to the customers of Limerick Township as a separate rate class.

10. That at the time of filing ~~its next~~ of any base rate case filed after June 30, 2020, Aqua Pennsylvania Wastewater, Inc., shall submit an analysis that addresses the effects of designing rates for the customers of Limerick Township rates as a separate, stand-alone rate zone.

To the extent that the settlement terms also reference a separate cost of service study and revenue requirement for Limerick’s customers, we shall incorporate the provisions contained in the prior Ordering Paragraphs from our *November 2017 Order* with those contained herein. Such edits, in our view, would be consistent with the terms expressed in the Petition and would not constitute a modification of the provisions in the Settlement. We shall also clarify the language contained in Paragraph 11(c)(ii) in the Petition pertaining to the current average Limerick rate as follows: “Current average Limerick rate is $38.00 based on 4,000 gallons of usage per month.” Failure to include the “per month” reference was an apparent oversight.

Regarding Aqua’s agreement not to challenge certain UVE appraisal adjustments approved in the *November 2017 Order* and the *April 2018 Order*, we note one discrepancy under the proposed application of the cost approach. Under the settlement terms, the Joint Petitioners aver that Aqua agrees to support the following statement: “The cost of land, if included, shall not be adjusted by the ENR index.” [[2]](#footnote-2) The OCA advocated this approach in its Exceptions which would have lowered the UVE’s reproduction cost appraisal by $756,159 by using the land’s original cost. *See November 2017 Order* at 61. We denied that Exception and agreed with the ALJ’s finding that, consistent with all other utility plant, the ENR index should be used. *Id.* at 62. Notwithstanding the provision in the Settlement that Aqua will not support adjustments to the cost of land by the ENR index in future Section 1329 filings, this language does not affect future Commission rulings as to whether adjustments to the cost of land in future Section 1329 cases should or should not be adjusted by the ENR index.

Finally, in its letter objecting to the Petition, I&E reiterates, in a summary manner, the arguments it raised during the proceeding as well as the arguments raised in the OCA’s and its Exceptions regarding the omission in the Company’s Application to identify any affirmative benefits for existing customers. We rejected those arguments in our *November 2017 Order* when we concluded that the transaction is in the public interest and that the public at large, including Aqua’s existing customers, will realize affirmative public benefits. *See November 2017 Order* at 68. Thus, we hereby decline to address those same issues.

Based upon our review of the Petition, we find that the terms of the Settlement are reasonable, in the public interest and would expedite the resolution of the contested matters and result in the withdrawal of the OCA’s petition for review. Thus, we believe it is prudent to grant the Petition to effectuate the terms of the Settlement. Accordingly, subject to the condition expressed below, we shall amend our prior Orders, consistent with the Settlement and as clarified by this Opinion and Order. We emphasize that the amendments to the *April 2017 Order* and *November 2017 Order* herein are conditioned upon the OCA’s withdrawal of the appeal pending before the Commonwealth Court at No. 682 C.D. 2018.

**Conclusion**

Based on the foregoing discussion, we shall conditionally grant the Petition consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for Resolution of Proceedings and Amendment of the Opinions and Orders Entered November 29, 2017, and April 19, 2018 of Aqua Pennsylvania Wastewater, Inc., Limerick Township, and the Office of Consumer Advocate, filed on June 7, 2018, is conditionally granted, consistent with this Opinion and Order.

2. That subject to Ordering Paragraph No. 4 below, Ordering Paragraph Nos. 9 and 10 of the Order entered at this Docket Number on November 29, 2017, are amended to read as set forth below. In all other respects, that Order shall remain in full force and effect.

9. That at the time of filing of any base rate case filed after June 30, 2020, Aqua Pennsylvania Wastewater, Inc., shall submit a cost-of-service study or analysis that separates the costs, capital, and operating expenses of providing wastewater service to the customers of Limerick Township as a separate rate class.

10. That at the time of filing of any base rate case filed after June 30, 2020, Aqua Pennsylvania Wastewater, Inc., shall submit an analysis that addresses the effects of designing rates for the customers of Limerick Township rates as a separate, stand-alone rate zone.

3. That subject to Ordering Paragraph No. 4 below, the following provisions are approved and shall constitute amendments to the Orders entered at this Docket Number on November 29, 2017, and on April 19, 2018:

a. That Aqua Pennsylvania Wastewater, Inc., will not include the assets acquired from Limerick Township in its base rate case anticipated to be filed in the summer of 2018.

b. That Aqua Pennsylvania Wastewater, Inc., may file a separate rate case that includes the assets acquired from Limerick Township which will not be filed prior to June 30, 2020. In that base rate case, Aqua Pennsylvania Wastewater, Inc., will propose:

i. to move the assets pertaining to Limerick Township to its cost of service or 2.0x the current Limerick rate, whichever is lower, based on a separate cost of service study for Limerick.

ii. the current average Limerick Township rate is $38.00 based on 4,000 gallons of usage per month.

c. That the assets acquired from Limerick Township may be included in the next full consolidated water and wastewater rate case after Aqua Pennsylvania Wastewater, Inc.’s proposed rate case for the summer of 2018. In the first full consolidated water and wastewater base rate case in which the assets of Limerick Township are included, whether or not there has been a preceding separate rate case, Aqua Pennsylvania Wastewater, Inc., agrees that it will prepare a separate cost of service study and revenue requirement pursuant to Ordering Paragraph No. 9 of the Order entered at this Docket Number on November 29, 2017, and as amended by this Opinion and Order. Aqua Pennsylvania Wastewater, Inc., will propose to use 66 Pa. C.S. § 1311(c) in the first full consolidated water and wastewater base rate case after Aqua Pennsylvania Wastewater, Inc.'s summer 2018 filing. Parties to the proceeding reserve the right to challenge such a proposal under 66 Pa. C.S. § 1311(c).

d. That the asset purchase agreement (APA) in Section 7.05(b) shall be amended so that a separate rate case can be filed after June 30, 2020. Notwithstanding the agreement to amend the APA, Aqua Pennsylvania Wastewater, Inc., Limerick Township and the Office of Consumer Advocate reserve all rights to review and challenge any ratemaking claims regarding the financial commitments contained in the APA, except as specifically set forth herein. The following shall also apply to the separate rate case proceeding:

i. Referencing the First Amendment to the APA, paragraph 4(c): If Aqua Pennsylvania Wastewater, Inc., seeks to recover any costs associated with the monetary commitments by Aqua Pennsylvania Wastewater, Inc., and Aqua Pennsylvania, Inc. related to reimbursement of capital projects, it will make a claim for such recovery in a base rate case and specifically identify the claim in that filing. The parties to that base rate case reserve all rights to review and challenge such claim.

1. Aqua Pennsylvania Wastewater, Inc. will not claim allowance for funds used during construction or deferred depreciation on any projects undertaken by Aqua Pennsylvania Wastewater, Inc.

ii. Referencing the First Amendment to the APA, paragraphs 4(a) and (b): The commitments by Aqua Pennsylvania Wastewater, Inc., and Aqua Pennsylvania, Inc., related to the repayment of the General Obligation note for the Township Building and the anticipated loss of income will not be claimed or reflected in rates charged to water and wastewater customers.

iii. Referencing the First Amendment to the APA, paragraph 10(b): Any termination fee paid by Aqua Pennsylvania Wastewater, Inc., to Limerick Township is not recoverable in rates charged to water and wastewater customers.

e. That in future filings under 66 Pa. C.S. § 1329, Aqua Pennsylvania Wastewater, Inc., will support the following positions pertaining to the appraisals of utility valuation experts:

i. Market Approach:

1. If “comparable acquisitions” are used as a factor in determining market value, the purchase price for each “comparable acquisition” shall be based on the actual amount paid for the assets at the time of purchase and future capital improvements shall not be included;

2. If the number of customers is used as a factor in determining market value, the actual, unadjusted number of customers shall be used rather than projected future number of customers. This applies to the number of customers for both the system being acquired and any “comparable acquisitions” being used in the determination.

ii. Income Approach: the rate base/rate of return methodology is not an appropriate methodology for calculating fair market value.

iii. Cost approach:

1. If the reproduction cost methodology is used, valuation of the collection mains will not be treated differently or as a special circumstance unless reasonably justified;

2. Future capital projects shall not be considered in determining the cost approach result;

3. The cost of land, if included, shall not be adjusted by the ENR index.

iv. That the “going value,” “provision for erosion on return,” and “overhead cost” add-ons will not be adopted or included in the appraisals.

v. That Aqua Pennsylvania Wastewater, Inc., and the Office of Consumer Advocate reserve the right to present adjustments and oppose other methodologies, inputs and assumptions in appraisals in future cases and proceedings, including methodologies, inputs and assumptions that were present in this case but not challenged by the Office of Consumer Advocate or that were accepted by the Commission.

vi. That regarding future claims for allowance for funds used during construction, deferral of depreciation, and transaction costs related to this acquisition, the Aqua Pennsylvania Wastewater, Inc., and the Office of Consumer Advocate reserve the right to litigate their positions fully in future rate cases when these issues are ripe for review. That the Office of Consumer Advocate 's assent to these provisions shall not be construed to operate as its preapproval of Aqua Pennsylvania Wastewater, Inc.'s requests.

f. That the Commission retains ultimate authority as to setting rates.

4. That Ordering Paragraph Nos. 2 and 3, above, are conditioned on the Office of Consumer Advocate’s withdrawal of its appeal filed with the Commonwealth Court at Docket No. 682 C.D. 2018. Ordering Paragraph Nos. 2 and 3, above, shall become effective without further action by the Commission upon notice of the Office of Consumer Advocate’s withdrawal of its appeal filed with the Commission’s Secretary’s Bureau.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 12, 2018

ORDER ENTERED: July 12, 2018

1. Aqua submitted the First Amendment to the APA pursuant to Section 507 of the Code, 66 Pa. C.S. § 507, which is currently pending with the Commission under Docket No. U-2017-2635888. According to Aqua, the First Amendment to the APA extends the outside date for closing originally set forth in the APA and sets various terms and conditions pertaining to operation and management of the Township’s system, reimbursement by Aqua of certain expenses of the Township and a limited joinder and guaranty of Aqua Pennsylvania, Inc. Aqua Letter dated May 2, 2018. [↑](#footnote-ref-1)
2. In the *November 2017 Order*, we explained that the ENR (Engineering News-Record) is a company that publishes both a Construction Cost Index (CCI) and a Building Cost index (BCI) that are widely used in the construction industry. According to its website, “[b]oth indexes have a materials and labor component. In the second issue of each month ENR publishes the CCI, BCI, materials index, skilled labor index and common labor index for 20 cities and the national average. The first issue also contains an index review of all five national indexes for the latest 14 month period.” *See* https://www.enr.com/economics. [↑](#footnote-ref-2)