

COMMONWEALTH OF PENNSYLVANIA



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March 29, 2024

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

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

Dear Secretary Chiavetta:

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

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Certificate of Service

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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Reply Comments, 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:

Dated this 29<sup>th</sup> day of March 2024.

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Dated: March 29, 2024

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Valuation of Acquired Municipal Water and :  
Wastewater Systems – Act 12 of 2016 : Docket No. M-2016-2543193  
Implementation of Section 1329 :  
of the Public Utility Code :

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**REPLY COMMENTS OF  
THE OFFICE OF CONSUMER ADVOCATE  
TO THE TENTATIVE SUPPLEMENTAL  
IMPLEMENTATION ORDER**

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DATED: March 29, 2024

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## **I. Introduction**

The OCA provided comments to the Public Utility Commission's (Commission) Tentative Supplemental Implementation Order (TSIO) on March 18, 2024. Comments were filed by twenty-eight filers. The OCA appreciates the opportunity to file reply comments to address areas where there is agreement and areas where there is disagreement with other participants.

## **II. Reply to Comments**

### **A. Introduction**

The Comments filed in this docket present two different pictures. From the investor-owned utilities and some municipalities, the unfettered use of fair market value is a success story, at least for the shareholders. The ability for municipalities to conduct negotiations without an opportunity for meaningful input from their residents means a smoother path to the conclusion of a sale. In contrast, the comments from consumers, low income advocates, and some other stakeholders show the reality: the fiction that value can only be found at extremely high multiples of depreciated original cost, the rate impact that this has had already on existing customers of the buyer and seller, and the impact on bloating the investor-owned utilities' rate bases, all of which benefits shareholders who bear no negative consequences of the high purchase prices.

The OCA urges the Commission to adopt the modifications proposed by our office and other consumer interests so as to ensure that the needed balance is restored in the process of adjudicating applications seeking a 1329 ratemaking rate base.

## **B. Public Hearings**

### **1. The structure and process for the public meetings.**

#### **a. Existing Public Meetings**

PAWC takes the position that a municipality's existing public meetings are adequate to satisfy this requirement. *See* PAWC Comments at 19. The OCA disagrees. The use of existing public meetings that are held in the normal course of business would not have the same notice requirements as envisioned in the Commission's TSIO and as set out in the OCA's Comments at 3-4. Also, existing public meetings would limit the discussion of the possible sale of the water and/or wastewater assets to one item on an agenda and would limit the opportunity for a full discussion of the questions that the residents may have. CAUSE-PA also supports the use of stand alone public hearings and recommends eliminating the option that hearing requirements could be fulfilled by including the topic on a regular public meeting of the municipality or through open houses hosted by the buyer or seller utilities. CAUSE-PA Comments at 8-9. CAUSE-PA explained that the standalone meetings should provide "all impacted consumers (*both of the acquired and acquiring utility's customer base*) with a meaningful opportunity to learn about the proposed sale, ask clarifying questions, and provide comments and/or testimony." *Id.* at 9 (emphasis in the original). CAUSE-PA raises another important point if the potential sale eventually becomes an application filed at the Commission. It notes that the acquired and acquiring entities should be required to demonstrate in their application how the terms and conditions of a proposed sale are responsive to the input gathered through the public hearing process." *Id.* The OCA agrees. The Commission should consider adding a requirement that the application include information about when the public meetings were held and how the buyer and seller were responsive to the concerns of affected customers of both the buying and selling utility.

b. Notice, Transparency, Timing

The OCA agrees with the recommendations that many parties proposed to ensure that the public's voice is heard and to encourage discussion: hold a public hearing before the system is put out for bid (Stop Predatory Water System Pricing Group Comments at 1) and at each point in the process, *i.e.*, after bids are received (Keep Water Affordable (Ferguson) Comments at 3), provide minimum notification times to ensure data can be reviewed before the meeting (Keep Water Affordable (Ferguson) Comments at 3; Bucks County Association of Township Officials' Comments at 2); provide 90 days' notice before the public hearings, ensure there is time for everyone to speak and analyze the information (Yordan, Frissora & Swift Comments, at 5-7; PMAA Comments at 2); provide transparency and do not permit non-disclosure agreements to restrict the information the public has available to it. (PMAA Comments at 2; Keep Water Affordable (Ferguson) Comments at 2).

The OCA agrees with PAWC's proposed clarification that the public hearings need not be judicial or formal evidentiary hearings (PAWC Comments at 19) however the proposal of some commenters that the hearing be transcribed is valuable. The opportunity for the public and those that oppose the sale to speak, ask questions, and fully examine the facts should not be constrained by the formality of a legal proceeding and rules of evidence. The meetings should be structured so as to permit a full discussion of the issues and a dialogue between the participants and the municipality. *See e.g.*, Keep Water Affordable (Ferguson) Comments at 3. The timing of the meetings is important, as addressed by Mr. Mrozinski, co-founder of Keep Water Affordable. Mr. Mrozinski identified that the public should be notified, and a public meeting should be held, when the municipality decides to seek buyers for the utility, then when bids have been received, and when a bid is chosen. Keep Water Affordable (Mrozinski) Comments at 2. Mr. Mrozinski also recommends that before an application is filed with the Commission at least two public hearings

be held with detailed quantitative information and data concerning the rate impact of the sale being provided at least 30 days prior to the first hearing. *Id.* at 3. These are valuable additions to the Commission’s proposed process.

The OCA supports the comment filed by Representative Bryan Cutler that the public interest is best served by ensuring the public meetings are publicized in multiple clear and conspicuous manners so that community participation is meaningful. Rep. Cutler Comments at 1. The OCA also supports the comments of Senator Carolyn Comitta who supported revisions to the public meeting section and emphasized requiring notice that was timely, that hearings are not held immediately before a sale was announced, that more than two meetings be held, and that the meetings should be structured to allow “ample opportunity for review and comment for all members of the public.” Sen. Comitta Comments at 1. Mr. Mrozinski commented that the structure of the meetings should be to allow and encourage open public discussion. He explained the format to date, as follows:

The standard public meeting format to date consists of the purchasing utility and the selling municipality presenting the reasons of the sale, with ratepayers given strict time limits on input. This process is further complicated by the timing of the release of relevant information to ratepayers. Too often the ratepayer sees the details for the first time at the public meeting, allowing no time to understand the details and issues. This prevents any meaningful public input.

Keep Water Affordable (Mrozinski) Comments at 4. Former PUC Chairman Cawley noted that public hearings were sensible additions designed to make municipal customers fully aware of the rate impacts, and that is what should be uppermost in the Commission’s approach through the enactment of this provision of the *2024 TSIO*. Representative John Lawrence provided specific recommendations regarding the structure of the meeting and the methods of providing notice (effective notice include at least an advertisement in a newspaper of general circulation, a notice on the website of the affected municipality, and a mailing to affected ratepayers), which the OCA



supports. Representative Lawrence Comments at 1-3. Representative Lawrence suggested that the OCA “be required to attend and present to the gathered audience” and that with regard to the rate impact notice that the “OCA would likely be able to calculate” an analysis of the rate impact associated with the transaction.<sup>1</sup> *Id.* While the OCA appreciates the faith that Representative Lawrence has in our office, we do not currently have the resources to be required to attend multiple meetings for every proposed sale and to do the complex calculations required before a filing is made at the Commission.. The OCA supports a requirement that it be *notified* of the meetings and *invited* to attend but does not believe that the Commission can or should require the OCA to attend and present at each meeting. The OCA further addresses the suggestion by Representative Lawrence regarding the rate impact notice below.

In its comments, Aqua anticipates that commenters may ask for more specific language and directives regarding the public meetings. Aqua Comments at 3-4. Aqua recommends waiting to see if there are issues in the future. *Id.* at 4. The OCA disagrees. The comments filed by a number of customers who have experienced the lack of transparency, inaccurate information, and meetings that present only one side of the issues provide sufficient experience over the last eight years to move forward with specific minimum requirements.

Aqua also suggests:

**that the Commission clarify that the current formal notice to customers for the PUC proceeding remains unchanged and that the affidavit related to the second bullet point on notice occur after conditional acceptance, but before final acceptance of an application.**

Aqua Comments at 5 (emphasis in original). The OCA disagrees with Aqua’s suggestion. The content of the current formal notice should be revised, consistent with the OCA’s comments, to

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<sup>1</sup> PMAA similarly recommended that OCA “should be bolstered to include ratepayer advocates assigned to specific transactions to help guide impacted customers through the process. PMAA Comments at 4.

provide a full and complete picture of the rate impact of the proposed transaction. OCA Comments at 5-9. The timing of the notice in an application case should move to when the application case is filed so that all customers are made aware from the start that the application has been filed.

Borough of Brentwood stated that the public hearing requirement<sup>2</sup> in the *2024 TSIO* undercuts “what has been the norm for municipalities: complete and total transparency as to all potential benefits and harms ancillary to a proposed transaction.” Borough of Brentwood Comments at 2. Based on the comments at this docket, it is clear the public disagrees with the Borough of Brentwood. Residents of municipalities who have either entered into asset purchase agreements, or have completed a sale, and have been subject to large rate increases in subsequent rate cases filed by the buyers, have not experienced the complete and total transparency about the harms that the Borough of Brentwood asserts as the “norm” for municipalities.

## **2. Rate Impact**

The OCA’s Comments addressed components of the rate impact disclosure that are vital to providing a full and complete picture of a possible sale to the municipal residents. OCA Comments at 4-8. Many commenters addressed the rate impact issues.

PAWC proposes that the rate impact information discussed in the *2024 TSIO* should be the same as the current notice used in its Section 1329 applications. PAWC Comments at 20-21. The OCA disagrees. As PAWC notes, Section 1329 notices do not reflect the impact of a sale on the “stand-alone” rates that would result from the sale. PAWC Comments at 20. PAWC proposes that the rate impact information to be used at the public hearings conform to the notices used in the

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<sup>2</sup> Brentwood posits that the Commission lacks authority to order municipal governments to hold public meetings or proscribe any predetermined process that a municipality must take prior to the filing of an application with the Commission. Borough of Brentwood Comments at 2. OCA disagrees with the Borough’s characterization of what the Commission would be requiring.

Section 1329 proceeding.<sup>3</sup> The OCA disagrees with PAWC's proposal. The Commission addressed notices in in a 2019 Final Supplementation Order entered September 20, 2019 (*2019 FSIO*). The notices used in an application that includes Section 1329 valuation were implemented five years ago and were put in place for notice of an application filed with the Commission to seek approval to acquire a municipal system. The notices were not designed to provide a full and complete picture of the impacts of a **potential** transaction, before any asset purchase agreement has been negotiated.<sup>4</sup> The rate impact materials should provide more information in clear, non-legal, language. *See* OCA Comments at 4-8.

Other commenters addressed what rate impact information should be included and provided before the hearing and made available at the public hearing and the OCA agrees with the comments. Representative John Lawrence recommends that the information clearly state that rate freezes are unenforceable, the rate impact notice should include a number of potential outcomes including if the municipality makes all investments, if the municipality sells and an investor-owned utility makes all of the investments. In addition, Representative Lawrence suggests that the OCA would likely be able to support the Rate Impact Notice calculation that he suggests in his comments. Rep. Lawrence Comments at 3. The OCA supports the elements of the Rate Impact Notice that Representative Lawrence suggests, along with those discussed in the OCA's comments and herein, but does not believe that it will be positioned to appropriately notify the public about the rate impact at such an early stage of the process. While the buying utility's rates would be

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<sup>3</sup> For PAWC, the notice used in applications filed using Section 1329 was developed in a settlement in a 2019 acquisition of Steelton Borough Authority's water system assets. *Application of Pennsylvania-American Water Company for Approval of its Acquisition of the Water System Assets of the Steelton Borough Authority*, Docket No. A-2019-3006880 (Order Oct. 3, 2019) (*Steelton*).

<sup>4</sup> Aqua states that the Commission should clarify that the current formal notices for the Commission proceedings will remain unchanged. The OCA supports a review of the notices used in the Commission application proceedings as well, for all of the reasons set forth in the OCA's comments regarding providing customers of the buyer and seller with meaningful, clear information about the transaction presented in the application.

relatively straightforward, the OCA would have insufficient information at a preliminary stage of the process to appropriately calculate the rate impact prior to a filing and the OCA's participation in a proceeding. The OCA submits that it is incumbent upon the buying and selling utilities to appropriately analyze and present the impact of the transaction on consumers' rates in a fair, transparent, and clear manner.

CAUSE-PA recommends that the rate impact statement and chart be provided with the plain language notice that is provided directly to consumers "*both before and after the expiration of any contractual terms which may delay a rate increase on the acquired utility's customers.*" CAUSE-PA Comments at 13 (emphasis in original). The OCA supports this proposal as well.

The importance of the information being accurate cannot be emphasized enough. As Ruth and William Carl stated, seeing estimates of rate impacts that turn out to be inaccurate and are much larger in a subsequent rate case is not a reasonable approach. Carl Comments at 1. Richard Young provided the example of Valley Township, sold to PAWC in 2021, where the original rate was low for the first year and is now \$88 per *month*, or similar to what was paid each *quarter* before the acquisition. Young Comments at 1. The PA State Association of Boroughs (PSAB) commented that transparency and accurate information is vital to the process and supports the notice to current ratepayers, even at an additional expense, because it will help provide needed information to those ratepayers. PSAB Comments at 2. Mr. Ferguson, co-founder of Keep Water Affordable recommended that the rate impact be a "not to be exceeded guarantee" that was in place through the first rate case following the acquisition. Keep Water Affordable (Ferguson) Comments at 3. He also recommended that if the increase needed to be higher than the guarantee, that it be phased in over the next three rate increases. *Id.* He stated that this information is important because

the public must have reliable information and the non-binding estimates are “always low, usually substantially low.” *Id.*

Residents of New Garden Township filed comments that provide a bleak picture of what can happen when the rate impact information is not accurate or is obfuscated to discourage opposition to a sale. They commented that:

Act 12 has encouraged local municipalities to sell healthy, well-run utilities purely to get an influx of money. Offers far exceeding a municipalities annual budget become very tempting, and the sale is then too often justified by vague and misleading claims, leaving the ratepayers to pay the bill for no real benefits.

Residents of New Garden Township Comments at 1. They provide a specific example of the impact that the sale of their Township system has had on their rates:

New Garden Township is a textbook example of how Act 12 is being abused. Aqua PA purchased our sewer system for \$29.5 million, 60% above the depreciated value, and six times New Garden’s annual budget at the time. We were warned that without the sale a 78% rate increase was needed to pay for the \$12 million investment deemed necessary. Before sale closure NGT raised sewer rates 30%. After closure Aqua raised our rates an additional 85%, resulting in a total increase of over 149%. To date Aqua has invested less than \$4 million in the sewer system. Yet the 149% increase does not fund any system improvements. The Township’s 30% increase covered no capital investment, and Aqua’s 85% increase went solely to cover its costs in buying the system. The cost of system improvements will be included in future rate increases.

*Id.* They conclude the description of their situation stating:

The sale of a municipal utility must be based on the true needs of the system and the community, not on the influx of money. The residents must be fully involved in the sale, with complete access to all information.

*Id.*

CAUSE-PA provided additional recommendations including the methods of notifications of the public hearings, the availability of the information on websites, and the accessibility of public hearings for all impacted customers that the OCA supports. CAUSE-PA Comments at 7-14.

CAUSE-PA recommends that the Commission require an analysis of the impact of a proposed acquisition on low income customers of **both** the acquiring utility and the acquired utility. *Id.* at 14-15. The information provided by the buyer may address the acquired utility’s low

income customers in a general manner if the seller does not have a bill discount program or other customer assistance programs. However, the impact of the increasing bills for the buyer's customers, including the buyer's low income customers, is often glossed over by the buyer. CAUSE-PA discusses the increasing unaffordability of water and wastewater rates across the Commonwealth. CAUSE-PA Comments at 5-6. A significant contributing factor to the increasing unaffordability of water and wastewater rates is due to the full recovery of Section 1329 acquisition costs through rates. *Id.* at 5.

The Borough of Brentwood opposes the concept of a rate impact notice requirement. The Borough of Brentwood opposes the requirement because it “undercuts transparency and harms municipalities.” Borough of Brentwood Comments at 7-8 (D.ii). It is unclear how being transparent about rate impacts hurts transparency. Moreover, Brentwood presumes that the rate impact information is the only information that can be provided regarding the potential transaction. Borough of Brentwood Comments at 8. The *2024 TSIO* would not prohibit additional information being provided regarding a potential sale of the water and/or wastewater assets. However, the information should be accurate and factual, not aspirational or general. Making a list of unsupported generalizations would not provide meaningful information to customers about the impact that a potential sale may have on their service and bills. Similarly, stating that the costs resulting from the fair market value purchase price will be borne by the buyer's water customers is one-sided and inconsistent with the Public Utility Code. The importance of full and complete information being provided well in advance of the public hearings cannot be understated.

Recognizing that being transparent about all of the information provided would be an important step forward. The Comments filed by Henry Yordan, Julie Frissora, and Rober Swift (Yordan, Frissora & Swift), resident intervenors in the 2021 Application by Aqua to purchase

Willistown Township’s wastewater system provide an important counterpoint to the Borough of Brentwood’s position that essentially is that the municipality knows best. Yordan, Frissora & Swift point out that the presentation at the Willistown Township public meeting was delivered by financial firm that was hired by Willistown Township. They explain what they encountered:

Their bias was evident in the original presentation that contained a series of false claims and misleading analysis, designed to steer an uninformed public into trusting that the acquisition was in the best interests of ratepayers. Importantly, no rate impact notice was provided at the time of the public meeting. A segment of the public who opposed the transaction used the next two regularly scheduled meetings to voice opposition during Public Comment, thereby slowing approval of the ordinance by a few weeks. However, the compressed timeframe prevented community awareness and organizing efforts and the supervisors voted to approve the ordinance on December 14 after denying a citizen request to extend debate by 30 days.

Yordan, Frissora & Swift Comments at 5-6

Yordan, Frissora & Swift state that an administrative order “is unlikely to meaningfully protect the citizens of Pennsylvania from the ravages of Section 1329 acquisitions by investor-owned utilities of healthy municipal water and wastewater systems.” Yordan, Frissora & Swift Comments at 1. They continue, stating:

*Most local officials of financially healthy communities choose to sell the municipal water and wastewater assets not because the sale is beneficial to ratepayers or because the municipality is incapable of operating the assets, but because **the 1329 statute provides an irresistible incentive to raise revenue for the municipality without having to transparently raise taxes, while leaving the ratepayers to pay for the funds received by the municipal government through significantly higher water and sewer rates.** No implementation order can curb the powerful incentive of local officials acting against the interests of ratepayers in order to satisfy an insatiable desire for cash.<sup>2</sup> Only repeal of 1329 can do that.*

<sup>2</sup> In Willistown, only half of residents are connected to the sewer. The sale of the sewer, therefore, had the effect of leaving half of residents to foot the bill while the other half collected on the benefit of the revenue raised by the politicians for other projects.

Yordan, Frissora & Swift Comments at 2 (emphasis in original).

Public hearings, the timing of those hearings, the notice, and the information presented are critical steps for the residents and those impacted by the possible sale of the water and/or wastewater assets. Transparency, including the banning of nondisclosure agreements, requiring public bidding and ensuring the public is involved before seeking bids were issues raised by 415 Pennsylvanian residents in its Comments. They state,

Privatization deals are often done in the dark and behind closed doors. Local officials are often forced to sign nondisclosure agreements that keep a privatization deal hidden from the public until contract language has been finalized. This has eroded public trust and it must stop. The public must be notified and engaged at every stage of the process.

415 Pennsylvanian Residents Comments at 1.

**C. Rate Impact Notice**

The OCA addressed its proposed changes to the notice that is provided directly to the customers of the buyer and seller when the application is conditionally approved by the Commission. OCA Comments at 8-9.

**D. Default Weights for Appraisals**

The OCA agreed with the proposed default weight for the appraisals proposed in the *2024 TSIO*, along with OCA's recommendation regarding the analysis to be used for the cost approach. OCA Comments at 9-17.

**E. Reasonableness Review Ratio**

The OCA's comments raised a number of concerns about the reasonableness review ratio (RRR) including that it is not a fixed number<sup>5</sup> and that it cannot be the determining factor as to whether a proposed transaction meets the affirmative public benefits standard and should be

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<sup>5</sup> Regarding the variability of the RRR, in its Comments, Aqua stated that using a 10-year average for the RRR would reduce the overall RRR compared to the data through the third quarter 2023. Aqua Comments at 7.



viewed as one factor among many in determining whether a proposed acquisition meets the legal standard set out in Section 1103 of the Public Utility Code. OCA Comments at 17-26.

Numerous commenters recommended the RRR be set at 1 (PMAA Comments at 1) or that the RRR was unnecessary because the depreciated original cost should be used. Stop Predatory Water System Pricing Group Comments at 1; Yordan, Frissora & Swift Comments at 2-3. The OCA shares the concern that the ratemaking rate base allowed should have a limit if fair market valuation continues.<sup>6</sup> In OCA's Comments, the revenue requirement impact of the initial fair market valuation for the twenty acquisitions that have closed to date is **more than \$85 million per year**. OCA Comments at 18-19.

Aqua PA commented that the RRR should address ratemaking rate base but not the purchase price. Aqua PA Comments at 7-8. The OCA agrees. As the OCA stated, "the OCA takes no position on the price a buyer can or should pay or a seller can or should sell its utility plant. The issue is what amount can be put into rate base and paid for by customers versus what amount should be paid for by the acquiring utility." OCA Comments at 23 (footnote omitted). Utilities have often paid more than book value to acquire systems. For example, when Essential Utilities, the parent company of Aqua Pennsylvania purchased Peoples Gas in March 2020 (PUC Order entered January 24, 2020), it paid \$2 billion over book value, or 87% over the net book value of the company at the time, but it was only allowed to put into ratemaking rate base the net book value of the Company. It did not get to recover from ratepayers that amount above net book value.

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<sup>6</sup> In testimony before the House Committee on Consumer Protection, Technology and Utilities, Consumer Advocate Patrick Cicero testified that Section 1329 should be repealed. He also provided specific testimony regarding House Bills 1862, 1863, 1864 and 1865 which address proposed amendments to Sections 1327 and 1329 of the Public Utility Code. <https://www.oca.pa.gov/wp-content/uploads/Testimony-of-Patrick-Cicero-Re-Section-1329-of-the-Public-Utility-Code-HBs-1862.-1863-1864-1865.pdf>

PAWC sought assurances that the RRR was not a binding norm and that the Commission was not “predisposed” to deny applications where the fair market value, as defined in Section 1329 as the average of the two appraisals, exceeds the value calculated using the RRR. PAWC Comments at 13-17, 21-25. PAWC also recommends the Commission modify its RRR formula and use a rate base proxy rather than net property, plant and equipment (PP&E) as the denominator in the calculation of the RRR. PAWC Comments at 23-24, App. A. The Rate Base Proxy would add material adjustments to the Net PP&E calculation by subtracting deferred taxes, regulatory liabilities, contributions in aid of construction (CIAC) and customer advances, while adding regulatory assets. *Id.* The effect of PAWC’s proposed modification would be to increase the RRR (by using a smaller denominator, the RRR would be a higher number, other things being equal). PAWC justifies this because it claims the RRR is artificially low. (PAWC Comments at 23). The OCA maintains that the guidepost should be a fixed multiple, not a calculation that can be modified to reach a specific result. OCA Comments at 25-26. A fixed guidepost also addresses all of the timing issues that have been raised regarding which RRR should be used and when that determination is made.

PAWC claims that the rate base proxy would be closer to the legislative intent of Section 1329 and would allow municipal entities to realize an amount closer to the fair market value of their assets in order to address financial challenges. *Id.* The OCA does not agree and PAWC cites to no record to support its assertion. Section 1329 is a valuation tool but it did not amend the legal requirements contained in Sections 1102 and 1103 of the Public Utility Code.

Until the 2016 enactment of Section 1329 for municipal water and wastewater acquisitions, depreciated original cost has been the method of valuing utility plant in service and acquisitions for more than 35 years. The only exception, enacted in 1990, was for the acquisition of troubled

water and wastewater systems but only if specific statutory criteria is met. 66 Pa. C.S. § 1327.

Former Commission Chairman James Cawley provided a succinct explanation of the departure that Section 1329 represents:

The other two proposals are commendable attempts to bring rationality and fairness to an irredeemably unconstitutional law designed to usurp the Commission's fundamental authority and to end-run the Commission's statutory duty to ensure that *every* public utility rate is just and reasonable.<sup>3</sup> They suffer, however, from needless complexity caused by the statute's unprecedented switch from depreciated original cost valuation to fair market valuation for water companies' acquisitions of municipal water and sewer systems.

Cawley Comments at 2-3.

PAWC comments that investor-owned public utilities "simply cannot overbid on systems and have their shareholders absorb a substantial premium between the allowed ratemaking rate base and the purchase price." PAWC Comments at 24. Yet, by implication, PAWC does not have any issue having its customers pay the substantial premium that the purchase price reflects. PAWC's position, that rejects its investors shouldering any of the substantial premium that its investors determined to pay, is tone deaf to the consequence of that decision. The rate impacts of the more than \$85 million annual revenue shortfall from Section 1329 acquisitions to date have resulted in substantial rate increases for existing and acquired customers, while PAWC's shareholders have received a return of and on that inflated rate base. OCA Comments at 18-23. The ratemaking rate base for all 1329 valuations has been 2.04x the \$538 million depreciated original cost of the acquired assets. *Id.* at 19. Looking specifically at the PAWC's acquisitions listed at Table 1 in OCA's Comments, the ratemaking rate base approved for PAWC is \$803,885,000, or 2.16x the depreciated original cost as shown below.

Table 8: Summary of PAWC Section 1329 Valuation (Ratemaking Rate Base vs. Depreciated Original Cost)				
Seller	Buyer	Type of System	Ratemaking Rate Base	Depreciated Original Cost
McKeesport	PAWC	Wastewater	\$ 158,000,000	\$ 80,085,602
Sadsbury	PAWC	Wastewater	\$ 8,300,000	\$ 7,480,573
Exeter	PAWC	Wastewater	\$ 92,000,000	\$ 40,057,634
Steelton	PAWC	Water	\$ 20,500,000	\$ 14,433,435
Kane	PAWC	Wastewater	\$ 17,560,000	\$ 12,070,455
Royersford	PAWC	Wastewater	\$ 13,000,000	\$ 5,173,559
Valley	PAWC	Water	\$ 7,325,000	\$ 5,370,438
Valley	PAWC	Wastewater	\$ 13,950,000	\$ 9,214,738
Upper Pottsgrove	PAWC	Wastewater	\$ 13,750,000	\$ 8,970,325
City of York	PAWC	Wastewater	\$ 231,500,000	\$ 97,106,105
Butler Area Sewer	PAWC	Wastewater	\$ 228,000,000	\$ 93,409,083
<b>TOTAL</b>			<b>\$ 803,885,000</b>	<b>\$ 373,371,947</b>

<sup>1</sup>Depreciated original cost is shown without considering the "original source of funding" pursuant to Section 1329; i.e. contributions have not been deducted.

As a counterpoint to PAWC’s position it is instructive to review the comments filed by Yordan, Frissora & Swift regarding the concept of the RRR. They point out that the RRR concept implies that paying a market multiple to purchase a municipal system is “reasonable and not harmful to the ratepaying public.” Yordan, Frissora & Swift Comments at 2. They explain that the seller’s customers have already paid, and now the buyer will add the price paid to its rate base, and rates will increase to pay for that, including a rate of return. *Id.* at 3. They provide the example from Willistown (approved by the Commission, appealed by OCA and Mr. Swift, and did not close) where the expected 86% increase was almost entirely attributable to the initial price paid and that over the first 30 years, customers would have had to pay \$52 million, or 3x the purchase price, for a system that had already been paid for. *Id.* They also point out that if the ratemaking rate base multiple were lower it would have reduced the numbers discussed above, but that reduced amount “still constitutes a substantial amount paid for assets that selling utility ratepayers had previously paid for.” Yordan, Frissora & Swift Comments at 3. They state, “There is nothing reasonable about paying for the same asset a second time, even if the amount ‘could have been

worse””. *Id.* Their conclusion is that the RRR should not be implemented and the only barometer to judge reasonableness should be Section 1102 of the Public Utility Code. Yordan, Frissora & Swift Comments at 4-5.

There were commenters who oppose the RRR because they do not want any limit on the negotiated purchase price. PSAB opposes the RRR, stating:

We are opposed to the implementation of the Reasonableness Review Ratio (RRR) as it will lead to undermining the fair market valuation found in Act 12. Additionally, the RRR would provide the Commission with a guideline to reject a locally negotiated sale price based on the fair market valuation appraisal process. We understand that it is not a mandatory factor, however, we are concerned that the RRR will erode the local decision-making process and reduce the benefits received by selling communities.

PSAB Comments at 2; *see also* Borough of Brentwood Comments at 8-9. PSAB’s comments regarding the erosion of the local decision-making process are not well-founded. It is accurate that the decision to sell water and/or wastewater assets is made at the local level and the benefits remain at the local level. However, the consequences (rate increases tied to the locally negotiated sale price creates a revenue requirement shortfall that the local municipality does not want its customers to bear) are paid for by the buyer’s existing customers who reside throughout the Commonwealth. *See* 415 Pennsylvanian Residents Comments at 1 (“You should not allow large corporations to increase water and sewer prices on households to cover the cost of excessively priced privatization deals.”)

PSAB equates the RRR with a potential veto of the individual borough’s choice to sell the water and/or wastewater system assets. As described in OCA’s Comments, the OCA sought to clarify that the RRR would be *one of many factors* that would be used by the Commission in determining whether the ratemaking rate base proposed by the buyer is reasonable, but it would

not be determinative of whether the transaction provides substantial affirmative benefits pursuant to the Public Utility Code.

**F. Timing to Effectuate Proposed Changes**

The OCA generally agreed with the Commission's proposed timing contained in the 2024 *TSIO*. OCA Comments at 26-27.

**G. Other Issues**

Aqua and PAWC each propose that the Commission add a list of public benefits to its final order in this proceeding. Aqua Comments at 8-9; PAWC Comments at 15-17. The OCA disagrees with these proposals. First, the list of benefits are general in nature and what each company proposes in their applications, without regard to whether there is any specific evidence to support each claimed benefit. It is clear that simply providing a long list does not equate to establishing the benefits or that those benefits outweigh the harms identified in the application. *Cicero v. Pa. PUC*, 300 A.3d 1106, 1119-20 (Pa. Cmwlth. Ct. 2023), *reh'g denied*, *Cicero v. Pa. PUC*, 2023 Pa. Commw. LEXIS 150 (Sept. 26, 2023). The record evidence in each proceeding must be developed based on the specific circumstances in each case.

### III. Conclusion

The OCA appreciates this opportunity to provide reply comments in this proceeding. The OCA respectfully requests that the Commission carefully consider the points and issues raised in the OCA's comments and in these reply comments, and respectfully requests that the Commission adopt the OCA's recommendations in its final supplemental implementation order. The OCA looks forward to continuing to work with the Commission, Staff, and stakeholders on these important issues.

Respectfully Submitted,

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