

**BEFORE THE  
SENATE DEMOCRATIC POLICY COMMITTEE**

**Testimony Of**

**PATRICK M. CICERO  
CONSUMER ADVOCATE**

**Regarding**

**Act 12 of 2016  
(Section 1329 of the Public Utility Code)**

**West Whitehall Township  
(VIA TEAMS)  
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## **Members of the Pennsylvania Senate Democratic Policy Committee**

My name is Patrick Cicero and I have the privilege of serving as Pennsylvania's Consumer Advocate. Thank you for the opportunity to provide testimony this morning about the effect that Act 12 of 2016 has had on water and wastewater rates in Pennsylvania. My office, the Pennsylvania Office of Consumer Advocate (OCA), was created in 1976 to serve as an advocate for Pennsylvania consumers before the Public Utility Commission (PUC).

### **Background**

Act 12 of 2016 added Section 1329 of the Public Utility Code (66 Pa. C.S. § 1329) and changed the method and timing for calculating the value of what is included in utility rates for specific acquisitions of municipal water and wastewater systems by regulated public utilities. The result has been a significant increase in rates for customers of both the acquired and acquiring systems.

In fact, water and wastewater rates have increased at the fastest pace of all utility rates over the past several years and these increases have been driven, in no small part, by acquisitions filed seeking a valuation under Section 1329. Water rates for the two largest companies in Pennsylvania are between \$880 - \$1,100 per year for households using between 3,600 – 5,000 gallons each month and if the customer is also a wastewater customer of the utility, they would be paying an additional \$1,070 - \$1,590 per year. This means that combined water and wastewater customers of each of the largest two utilities are paying \$1,950 - \$2,690 per year for water and wastewater at relatively modest usage levels of 3,600-5,000 gallons per month. Of course, if a household uses more than this each month their bills would be substantially higher. Customers of regulated water

and wastewater utilities often pay as much or more each year for those utilities than they pay for electricity and natural gas.

When the General Assembly passed Act 12 many of the municipal owners of water and wastewater systems faced the same state and federal regulatory requirements and aging infrastructure that the investor-owned utilities faced. They both face these challenges today. Even though municipal entities and municipal authorities can finance infrastructure at a lower cost to ratepayers than investor-owned utilities,<sup>1</sup> there was a concern expressed about municipalities facing large costs to maintain and upgrade their water and wastewater systems. H. Journal, 199<sup>th</sup> Leg. – No. 71 at 1773 (Oct. 19, 2015). However, there was no provision contained within Act 12 that provided for any limitation on municipal acquisitions either in terms of the costs that could be assessed to ratepayers or any limitation that only troubled systems could be acquired.

My office did not support Act 12 when it passed, and I do not support Section 1329 today. Let me be clear, my office is opposed to acquisitions that have no net affirmative public benefit to consumers and the public, but we do not have an abstract or principled opposition to the consolidation of water and wastewater utilities or the acquisition of municipal systems by investor-owned utilities. We are not anti-privatization, and we are not against well thought out consolidation or regionalization. What we oppose is privatization for its own sake and privatization and consolidation regardless of the cost or benefit to consumers. Systems bought at reasonable prices that are reflective of depreciated original cost and that are designed with economic efficiency and regulatory compliance in mind can provide a benefit to existing and acquired ratepayers, as well

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<sup>1</sup> Municipalities or municipal authorities, as government-owned utilities, do not pay income taxes and can usually issue bonds at a lower interest rate than for profit companies. As a result, most municipalities and municipal authorities have lower rates than investor-owned utilities.

as provide important environmental benefits that ensure clean and potable water for all. Also, the acquisition of troubled, small systems that has occurred in Pennsylvania since 1990 pursuant to Section 1327 of the Public Utility Code has successfully brought many small systems under the professional management of our large investor-owned utilities and improved the safety and reliability of water service to thousands of Pennsylvania residents.

Since Section 1329 was added to the Public Utility Code there have been twenty-one (21) approved acquisitions that have been or will soon close. In our view, none of these approved acquisitions have been for troubled or non-viable systems. As shown below, the twenty-one acquisitions have a combined ratemaking rate base of more than \$1 billion, which is 2x the depreciated original cost of the acquired systems' assets of approximately \$538 million.

**Table 1: Summary of Section 1329 (Ratemaking Rate Base vs. Depreciated Original Cost)**

Seller	Buyer	Type of System	Ratemaking Rate Base	Depreciated Original Cost
New Garden	Aqua PA	Wastewater	\$ 29,500,000	\$ 18,567,728
Limerick	Aqua PA	Wastewater	\$ 64,373,378	\$ 46,153,867
McKeesport	PAWC	Wastewater	\$ 158,000,000	\$ 80,085,602
East Bradford	Aqua PA	Wastewater	\$ 5,000,000	\$ 5,473,948
Sadsbury	PAWC	Wastewater	\$ 8,300,000	\$ 7,480,573
Mahoning	SUEZ	Water	\$ 4,734,800	\$ 3,507,138
Mahoning	SUEZ	Wastewater	\$ 4,765,200	\$ 3,234,859
Exeter	PAWC	Wastewater	\$ 92,000,000	\$ 40,057,634
Steelton	PAWC	Water	\$ 20,500,000	\$ 14,433,435
Cheltenham	Aqua PA	Wastewater	\$ 44,558,259	\$ 15,408,458
East Norriton	Aqua PA	Wastewater	\$ 20,750,000	\$ 8,407,007
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
Lower Makefield	Aqua PA	Wastewater	\$ 53,000,000	\$ 19,808,274
East Whiteland	Aqua PA	Wastewater	\$ 54,413,635	\$ 33,403,972
City of York	PAWC	Wastewater	\$ 231,500,000	\$ 97,106,105
Shenandoah	Aqua PA	Water	\$ 12,000,000	\$ 10,784,743
Butler Area Sewer	PAWC	Wastewater	\$ 228,000,000	\$ 93,409,083
<b>TOTAL</b>			<b>\$ 1,096,980,272</b>	<b>\$ 538,121,941</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.				

By our office’s conservative estimate, because of these acquisitions and directly due to the fair market value embedded into Section 1329, consumers are or will be required to pay at least **\$85 million more each year for water and wastewater service than they would have without Section 1329**. This amount will only increase because as of the filing of this testimony, there are five more acquisitions that have started the process of Public Utility Commission (PUC) review which if approved as filed would add an additional \$19.4 million in added annual costs.

**Table 2. Annual Revenue Requirement Deficiency of Approved and Pending Acquisitions**

ANNUAL REVENUE REQUIREMENT DEFICIENCY					
Aqua	New Garden	\$ 1,662,142	PAWC	McKeesport	\$ 16,737,759
Aqua	Limerick	\$ 7,778,000	PAWC	Sadsbury	\$ 94,062
Aqua	East Bradford	\$ 0	PAWC	Exeter	\$ 5,378,000
Aqua	Cheltenham	\$ 2,772,000	PAWC	Steelton	\$ 1,117,000
Aqua	East Norriton	\$ 1,155,000	PAWC	Kane	\$ 1,265,000
Aqua	Lower Makefield	\$ 2,828,000	PAWC	Royersford	\$ 1,210,343
Aqua	East Whiteland	\$ 5,011,000	PAWC	Upper Pottsgrove	\$ 1,002,000
Aqua	Shenandoah W	\$ 865,031	PAWC	Valley W	\$ 1,697,000
Veolia	Mahoning W	\$ 492,666	PAWC	Valley WW	\$ (1,413,000)
Veolia	Mahoning WW	\$ 114,651	PAWC	City of York	\$ 17,557,000
			PAWC	BASA	\$ 17,895,000
<b>TOTAL ANNUAL REVENUE DEFICIENCY</b>					<b>\$ 85,218,654</b>
PENDING CASES					
Aqua	DELCORA	\$ 4,553,000	PAWC	Brentwood	\$ 664,000
Aqua	Beaver Falls	\$ 4,288,000	PAWC	Towamencin	\$ 7,731,000
Aqua	Greenville Sewer	\$ 2,230,000	PAWC		
<b>TOTAL PENDING ANNUAL REVENUE DEFICIENCY</b>					<b>\$ 19,466,000</b>

Another measure of the financial impact of these acquisitions on customers is to assess the average plant cost per customer for the acquired system as compared to the utilities' average plant cost per customer before the acquisitions began. For example, the average rate base per customer for both Aqua Pennsylvania (Aqua) and for Pennsylvania American Water Company (PAWC) have grown significantly since 2016 as reflected in the tables below.

**Table 3: Aqua's Average Rate Base Per Customer**

Average Rate Base per Customer 2016		Average Rate Base per Customer 2022		Percentage Increase 2016 to 2022
Aqua Pa Wastewater:	\$3,795	Aqua Pa Wastewater	\$9,449	249%
Aqua Pa Water:	\$7,177	Aqua Pa Water:	\$9,812	137%

**Table 4: PAWC's Average Rate Base Per Customer**

Average Rate Base per Customer 2016		Average Rate Base per Customer 2022		Percentage Increase 2016 to 2022
PAWC Wastewater:	\$7,162	PAWC Wastewater:	\$12,458	174%
PAWC Water:	\$5,565	PAWC Water:	\$7,423	133%

The average rate base per customer for Section 1329 acquisitions approved to date is shown in

**Table 5**, below.

<b>Average Rate Base per Customer</b>				
	<b>Acquired Utility</b>	<b>1329 Allowed Rate Base</b>	<b>Number of Customers</b>	<b>Average Rate Base per Customer</b>
<b>Aqua Purchases</b>	New Garden A-2016-2580061	\$29,500,000	2,106	\$14,008
	Limerick A-2017-2605434	\$64,373,378	5,434	\$11,846
	East Bradford A-2018-3001582	\$5,000,000	1,248	\$4,006
	Cheltenham A-2019-3008491	\$44,558,259	10,219	\$4,360
	East Norriton A-2019-3009052	\$20,750,000	4,966	\$4,178
	Lower Makefield A-2021-3024267	\$53,000,000	11,151	\$4,753
	East Whiteland A-2021-3026131	\$54,413,635	3,895	\$13,970
	Shenandoah A-2022-3034143	\$12,000,000	2,899	\$4,139
	<b>Total</b>	<b>\$283,595,272</b>	<b>41,918</b>	<b>\$7,658</b>
<b>PAWC Purchases</b>	McKeesport A-2017-2606103	\$158,000,000	12,780	\$12,363
	Sadsbury A-2018-3002437	\$8,300,000	998	\$8,317
	Exeter A-2017-3004933	\$92,000,000	9,015	\$10,205
	Steelton (Water) A-2019-3006880	\$20,500,000	2,415	\$8,489
	Kane A-2019-3014248	\$17,560,000	2,019	\$8,697
	Royersford A-2020-3019634	\$13,000,000	1,620	\$8,025
	Upper Pottsgrove A-2020-3021460	\$13,750,000	1,447	\$9,502
	Valley (Water) A-2020-3019859	\$7,325,000	1,670	\$4,386
	Valley (Wastewater) A-2020-3020178	\$13,950,000	3,125	\$4,464
	City of York A-2021-3024681	\$231,500,000	13,747	\$16,840
	Butler Area Sewer A-2022-3037047	\$228,000,000	14,792	\$15,414
		<b>Total</b>	<b>\$575,885,000</b>	<b>63,628</b>

The higher the average rate base cost per customer, the higher rates will need to go to support these acquisitions.

All the data paints an increasingly grim picture that Section 1329 created an incentive for investor-owned water and wastewater utilities to purchase municipal utilities at significantly inflated prices to the detriment of consumers. In short, Act 12 has been a financial disaster for customers and has not materially or substantially improved service. In my view, the best path forward would be to halt municipal acquisitions at fair market value and arrive at a more targeted approach to these acquisitions that is more equitable to current ratepayers and the ratepayers of the communities seeking to sell their systems.

**OCA Primary Recommendation: Repeal Section 1329**

Given the other mechanisms available for utilities to increase their rate base and profits by acquiring systems and replacing and repairing infrastructure and due to the inherent problems with Section 1329, the OCA recommends Section 1329 be repealed. In my view, Section 1329 is not necessary because other provisions of the Public Utility Code exist to incentivize and reward utilities for acquisitions of small or non-viable systems that are not maintaining adequate, safe, reliable or efficient service.

For example, Section 1327(a) of the Public Utility Code allows a utility that acquires a small or troubled water or wastewater system to request a return on and a return of the excess of acquisition costs over the depreciated original cost of the acquired system if specified criteria are satisfied. Section 523 authorizes the PUC to increase the allowed return on equity by additional basis points as a reward or incentive for utility acquisitions. This premium is available for an acquisition that does not meet the criteria of Section 1327(a). In addition, existing provisions of



the Public Utility Code incentivize and reward utilities for replacing and repairing infrastructure. Section 315(e) was revised in 2012 to create an exception to test year requirements to allow utilities to set base rates to recover in advance investment that will not be made for up to one year after rates take effect. The Distribution System Improvement Charge (DSIC) has been available to water utilities since 1999 and expanded to wastewater utilities in 2012. The DSIC allows water and wastewater utilities to recover a return of and on their investment in distribution system improvement projects through a surcharge on utility bills (5% or 7.5% of the total bill). *See* 66 Pa. C.S. §§ 1350-1360. Section 1311(b) was added in 2018 and allows utilities to add to rate base and earn a profit on investment in replacing certain customer-owned lead water service lines or damaged wastewater laterals.

The framework of Section 1329 is simply not necessary for either the protection of the public or for well-coordinated or regionalized systems.

#### **Secondary OCA Recommendation: Sunset and Review**

If the General Assembly does not believe that it has sufficient information to repeal Act 12 at this stage, it should add a sunset provision to Section 1329 and a legislative review by the Legislative Budget and Finance Committee (LBFC) about the impact that Act 12 of 2016 has had on consumer rates as well as whether it has produced a substantial affirmative benefit to the public. Act 12 has been in place since 2016 and has not been thoroughly reexamined considering the full impact of the acquisitions since that time. If the General Assembly needs more information about whether it should be repealed or amended, it should add a sunset provision and a required review by the LBFC. The OCA suggests a bill with the following language could be added:

1329.1 - Legislative Review and Expiration.

Section 1329 shall expire on December 31, 2026. By no later than June 30, 2025, the Legislative Budget and Finance Committee shall prepare a comprehensive report concerning the impact that Section 1329 has had on the utility rates paid by water and wastewater customers across the Commonwealth.

The OCA's primary and secondary recommendations above are its highest priorities regarding Act 12. However, if repeal or review and sunset is not politically viable, then I urge the Committee to consider legislation similar to House Bills 1863, 1864 and 1865. These bills would: (1) remove the 6-month statutory deadline (HB 1863); (2) spread the amount above depreciated original cost that would be allowed to be collected from ratepayers over several rate cases (HB 1864); and (3) would amend § 1329(c) and would add an additional protection for ratepayers that would constrain the amount ratepayers would have to pay above depreciated original cost for non-troubled systems (HB 1865). These bills, while not fully addressing the OCA's concerns about Section 1329, would help constrain the excessive purchase prices that have a direct, material, and detrimental impact on rates paid by consumers for essential water and wastewater services.

## **Conclusion**

Thank you for the opportunity to testify today about these important issues. As indicated throughout, it is my view that the General Assembly should consider a bill that would repeal Section 1329 in its entirety. Section 1329 is neither necessary nor in my judgment good public policy for the Commonwealth or its ratepayers. In the absence of full repeal, the General Assembly could insert a sunset into its provisions with an opportunity to study the impact of Act 12. If, after this study, the General Assembly believed that the legislation continued to have merit then it could amend Section 1329. If it does not have merit, it could allow Act 12 to fade into the sunset.

In the absence of a full repeal or sunset, the OCA supports changes like those currently in the House that would add needed protections and constrain the excesses that have materialized because of Act 12.

Thank you for the opportunity to present this testimony. I am happy to answer any questions that the Committee may have about my testimony, or the information presented today.