

Prepared Testimony of  
*Stephen M. DeFrank*  
Chairman, Pennsylvania Public Utility Commission  
*before a public hearing of the*  
Pennsylvania Senate Democratic Policy Committee

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## **Introduction**

Greetings Chairman Muth, Senators Kane, Comitta, Kearney and Schwank as co-hosts and other members of the Committee. I am Stephen M. DeFrank, Chairman of the Public Utility Commission (Commission or PUC). On behalf of the Commission, I would like to thank the Committee for requesting input from the PUC regarding utility acquisitions under Section 1329 of the Public Utility Code. Water and wastewater services are essential to the health and wellbeing of the Commonwealth, and the consideration of our experience to date under Act 12 of 2016 along with any possible revisions to improve the Act are worthy endeavors.

## **Act 12 of 2016 and Title 66**

On April 14, 2016, former Governor Tom Wolf signed Act 12 of 2016 (Act 12) into law. Act 12 amended Chapter 13 of the Public Utility Code by adding Section 1329, 66 Pa.C.S. § 1329, which provides additional options for the valuation of assets of municipally-owned and authority-owned water and wastewater systems, or a “selling utility,” acquired by investor-owned water and wastewater public utilities, or an “acquiring public utility,” as those terms are defined in Section 1329(g).

Prior law, specifically Section 1311(b), 66 Pa.C.S. § 1311(b), discouraged such sales because the value of the acquired property was defined as the original cost of construction less accumulated depreciation, rather than the acquisition cost. Act 12 created a process to determine the fair market value (FMV) of a selling utility that is to be acquired by an acquiring utility. Under Section 1329, for ratemaking purposes, the valuation is the lesser of the FMV or the negotiated purchase price. Thus, Section 1329 mitigates the risk that an acquiring utility will not be able to fully recover its investment when water or wastewater assets are acquired from a selling utility. The FMV is not tied to the original cost of construction minus the accumulated depreciation (also known as the “depreciated original cost”); rather, the FMV allows consideration of cost, market, and income approaches in valuing the system and in establishing future rates reflecting the system acquisition. Section 1329 also allows the acquiring public utility’s post-acquisition-improvement costs not recovered through a distribution system improvement charge to be deferred for book and ratemaking purposes. Overall, Act 12 provides for deferral of post-acquisition improvement costs and also enhanced rate base treatment based on the lesser of the FMV of the acquired assets or the negotiated purchase price.<sup>1</sup>

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<sup>1</sup> *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193, at 2-3 (Final Implementation Order entered October 27, 2016) (FIO).

Act 12 became effective on June 13, 2016, and was implemented by a series of Commission orders. The Commission's implementation orders (IOs) set forth a comprehensive process for applications filed with the Commission under Section 1329 and provide acquiring utilities under Section 1329 with an application filing checklist, standard data requests, a direct testimony template, and guidelines for utility valuation experts (UVEs).<sup>2</sup>

Section 1329 applications are filed in conjunction with applications under Section 1102, 66 Pa.C.S. § 1102, which require a determination of substantial affirmative benefits for Commission approval. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*). Aqua Pennsylvania Wastewater, Inc.'s (APW's) 2016 application to acquire the wastewater system assets of New Garden Township was the first Section 1329 proceeding to be reviewed by the Commonwealth Court and, in that case, the Court addressed ratepayer impact relative to Section 1329. The Commonwealth Court stated that the Commission is charged with deciding whether the impact of a transaction on rates is outweighed by other positive factors that provide a substantial affirmative benefit and warrant approval.<sup>3</sup> The Court also held that notice to all ratepayers of the proposed sale as well as an opportunity for them to participate in the Section 1329 proceeding is required.<sup>4</sup>

### **Section 1329 Acquisitions as of December 2023**

The Commission has received 27 applications under Section 1329 since Act 12 was enacted and 22 of those applications have been approved. Note that the Commission's approval of one of the applications, APW's acquisition of East Whiteland Township's wastewater system (East Whiteland), was overturned by a Commonwealth Court decision. *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlth. 2023)(East Whiteland). The Commission, Aqua, and East Whiteland have filed Petitions for Allowance of Appeal of this Commonwealth Court decision to the Pennsylvania Supreme Court and are awaiting the Court's decision on whether it will accept the appeal.

The Commission currently has five Section 1329 applications filed with one, APW's acquisition of the Delaware County Regional Water Control Authority (DELCORA), that has been officially accepted. As noted above, applications under Section 1329 must meet the Commission's application filing checklist before they are officially accepted after which the statutory six-month timeframe for Commission

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<sup>2</sup> *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Supplemental Implementation Order entered February 28, 2019).

<sup>3</sup> *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055, 1067 (Pa. Cmwlth. 2018) (*New Garden*).

<sup>4</sup> *Id.* at 1069.

review and action begins. The other four Section 1329 applications are in varying stages of checklist review.

Once a Section 1329 application is approved, the legislation requires the acquiring utility to incorporate the ratemaking rate base, as defined by the statute, into its rate base in its next base rate case or initial tariff. The approved rate base amount is the lesser of the purchase price negotiated by the acquiring utility and the selling utility, or the FMV of the selling utility. In plain language, the acquiring utility may add the rate base dollar amount to its total rate base, which is used to calculate overall rates to customers. In theory, the larger the rate base, the larger the revenue requirement of the acquiring utility used to set the rates that it charges customers. Now, some of that increased revenue requirement is offset by the additional customers from the selling utility. On balance, whether overall rates for all of the acquiring utilities' customers will increase over time due to 1329 acquisitions depends on that balance of approved rate base amounts and the acquiring utility's other costs to serve acquired customers. As can be seen in Table 1 of the Appendix to this testimony, the approximate rate base per customer (RBPC) varies from a low of \$2,942 (Mahoning Township Wastewater) to a high of \$16,840 (York City Sewer Authority). For comparison, the current RBPC for water customers of Aqua Pennsylvania, Inc. and Pennsylvania-American Water Company (PAWC) are approximately \$8,745 and \$5,559, respectively. The RBPC for wastewater customers of APW and PAWC Wastewater Division are approximately \$9,011 and \$10,268, respectively.

Rates for customers that are acquired under Section 1329 are likely to increase. This is due to a number of factors, such as that the selling utility may have deferred maintenance and capital projects and charged rates that were less than required by the cost of service. Also, the selling utility's customers are often not charged rates which include a return on investment as the selling utility is not investor-owned. In prior cases, the Commission has considered the evidence of the following benefits introduced by the acquiring public utility: commitments to improve service, to undertake necessary maintenance projects, and make capital improvements that benefit acquired customers, local communities and the environment. Additionally, the Commission has considered evidence entered related to the benefit of regionalization brought by these transactions. Finally, we note that the Commission has determined that the acquiring utilities' access to more robust income challenged assistance programs can often be a benefit. As stated above, the Commission is charged with deciding whether the impact of a transaction on rates is outweighed by other positive factors that provide a substantial affirmative benefit and warrant approval.

Table 2 of the Appendix to this testimony details the approximate rate impacts for the residential customers in those acquired systems under Section 1329. The

Commission-approved rate increases range from a low of 44.9% (East Bradford Township) to a high of 166.6% (Exeter Township). Note this table assumes the selling utility would have kept its rates static. Further, note that some rates have not changed yet due to the acquiring utility not including those systems in base rate cases as of this time. The rates in Table 2 are only for residential customers using 3,500 gallons of water per month, which is a general rule of thumb for average residential usage. The rates are also purely base rates and do not include any surcharges or riders such as a distribution system improvement charge or state tax adjustment surcharge. Adding the riders would complicate the calculation and add little in terms of comparison. We did not include commercial or industrial customers as those are much more difficult customer classes to devise an “average” user due to varying usage patterns.

### **Proposed Legislative Initiatives to the Public Utility Code and changes to Water/Wastewater Acquisitions**

Now we wanted to take the opportunity to mention a few legislative proposals to Title 66 of the Consolidated Statutes which specifically seek to alter this section of the Statute.

Senate Bill 432, sponsored by Senator Kane and co-sponsored by several members here today, seeks to add a mechanism to 66 Pa.C.S. § 1329 by adding a conditional mechanism to require a referendum to be held in the acquired municipality, and prior to the PUC formally approving or disapproving the application. Additionally, the legislation seeks to add a new Chapter 20 to the Public Utility Code. Among the provisions included within this new chapter are annual reports by public utilities on ratepayer impacts of privatization and drinking water sources, expansion of rights to obtain certain information, rights to previously public land access post-acquisition by a utility and new customer rights.

Senate Bill 866, also sponsored by Senator Kane and co-sponsored by several members here today, seeks to repeal all of 66 Pa.C.S. § 1329. While this initiative would remove 1329 applications, it would likely carry little to no impact on approved acquisitions.

Several other initiatives introduced in the State Senate address acquisitions, including Senator Mastriano’s Senate Bills 134 and 820 requiring public notice and public meetings prior to the sale of municipal assets, and also Senate Resolution 141 by Senator Brooks, directing the Joint State Government Commission to conduct a study and report on Act 12 acquisitions and ratepayer impacts.

The Commission also testified in December before the House Consumer Protection, Technology and Utilities Committee on a package of bills introduced by Committee Chairman Rob Matzie (D-Beaver) aimed at water and wastewater system

acquisitions by public utilities. The Commission testified in support of House Bill 1863, which would remove the six-month limitation on Commission consideration of an application that has been accepted by the Commission. We would support this change as it would lessen the burden of Section 1329 applications on the Commission's staff and allow for the statutory advocates and other dissenters to perform a more thorough review of the merits of the application and provide ample opportunity for ratepayers and impacted customers to weigh in.

The Commission also provided feedback on House Bills 1862, 1864 and 1865 – all part of Chairman Matzie's proposals to place in his words 'guidrails' on these acquisitions and processes.

## **Conclusion**

In conclusion, the Commission appreciates the opportunity to discuss this topic: Act 12 and rising costs for water and wastewater customers. Interested parties often discuss a perception that the Act is limited to distressed systems only. The Commission understands that no such qualifier exists in the statute and has adjudicated 1329 applications accordingly. Furthermore, the Commission notes the interplay between Act 12 and Act 11 of 2012. Act 11 permits the cross subsidization of wastewater rates on water customers. With the majority of 1329 acquisitions being made up of wastewater utilities, this cross-subsidization tool has become increasingly utilized. The Commission stands ready to facilitate any discussion the General Assembly may have on this issue, particularly given the rising costs realized by water utility customers in recent years under the paradigm created between Act 12 and Act 11.

Given the years of experience realized by the Commission, and all stakeholders involved, we find it reasonable, prudent and appropriate to consider possible revisions to the statute. Similarly, the Commission has begun to consider what options may be available within our purview to improve our administration of the Act.

We thank the Committee Chair, Co-Hosts and members for the opportunity to testify and look forward to your questions and further discussion.

## Appendix

**Table 1: Filed Section 1329 Application Information**

#	Docket No.	Buyer	Seller	County	Industry	Date Submitted for Filing	Date Accepted for Filing2	PUC Decision	Order Entry	Purchase Price (\$)	Approved Rate Base (\$)	Customer Count	Rate Base per Customer (\$)
1	A-2016-2580061	APW	New Garden Township Municipal Authority	Chester	Wastewater	12/19/16	12/30/16	Approved	12/03/20	29,500,000	29,500,000	2,106	14,007.60
2	A-2017-2605434	APW	Limerick Township	Montgomery	Wastewater	05/22/17	05/31/17	Approved	11/29/17	75,100,000	64,373,378	5,434	11,846.41
3	A-2017-2606103	PAWC-WD	Municipal Authority of the City of McKeesport	Allegheny	Wastewater	05/25/17	06/14/17	Approved	10/26/17	159,000,000	158,000,000	12,780	12,363.07
4	A-2018-3001582	APW	East Bradford Township	Chester	Wastewater	05/02/18	05/15/18	Approved	09/20/18	5,000,000	5,000,000	1,248	4,006.41
5	A-2018-3002437	PAWC-WD	Sadsbury Township	Chester	Wastewater	06/07/18	06/19/18	Approved	10/25/18	8,600,000	8,300,000	998	8,316.63
6	A-2018-3003517	Veolia-WD	Mahoning Township	Montour	Wastewater	07/24/18	08/08/18	Approved	12/20/18	4,765,200	4,765,200	1,620	2,941.48
7	A-2018-3003519	Veolia	Mahoning Township	Montour	Water	07/24/18	08/08/18	Approved	12/20/18	4,734,800	4,734,800	1,186	3,992.24
8	A-2018-3004933	PAWC-WD	Exeter Township	Berks	Wastewater	09/26/18	04/16/19	Approved	10/03/19	93,500,000	92,000,000	9,015	10,205.21
9	A-2019-3006880	PAWC	Steelton Borough Authority	Dauphin	Water	01/02/19	04/16/19	Approved	10/03/19	21,750,000	20,500,000	2,472	8,292.88
10	A-2019-3008491	APW	Cheltenham Township	Montgomery	Wastewater	03/13/19	05/06/19	Approved	11/05/19	50,250,000	44,558,258	10,219	4,360.33
11	A-2019-3009052	APW	East Norriton Township	Montgomery	Wastewater	07/30/19	11/26/19	Approved	05/21/20	21,000,000	20,750,000	4,966	4,178.41
12	A-2019-3014248	PAWC-WD	Kane Borough Municipal Authority	McKean	Wastewater	12/02/19	02/06/20	Approved	06/18/20	17,560,000	17,560,000	2,019	8,697.37
13	A-2019-3015173	APW	Delaware County Reg. (DELCORA)	Delaware & Chester	Wastewater	03/03/20	07/27/20	Pending		276,500,000		16,328	-
14	A-2020-3019634	PAWC-WD	Royersford Borough	Montgomery	Wastewater	07/14/20	11/09/20	Approved	05/07/21	13,000,000	13,000,000	1,620	8,024.69
15	A-2020-3019859	PAWC	Valley Township	Chester	Water	10/09/20	05/18/21	Approved	10/28/21	7,325,000	7,325,000	1,670	4,386.23
16	A-2020-3020178	PAWC-WD	Valley Township	Chester	Wastewater	10/09/20	05/18/21	Approved	10/28/21	13,950,000	13,950,000	3,125	4,464.00
17	A-2020-3021460	PAWC-WD	Upper Pottsgrove Township	Montgomery	Wastewater	11/24/20	04/14/21	Approved	09/15/21	13,750,000	13,750,000	1,600	8,593.75
18	A-2021-3024267	APW	Lower Makefield Township Sewer Authority	Bucks	Wastewater	05/14/21	08/05/21	Approved	01/13/22	53,000,000	53,000,000	11,800	4,491.53
19	A-2021-3024681	PAWC-WD	York City Sewer Authority	York	Wastewater	07/01/21	10/29/21	Approved	04/14/22	235,000,000	231,500,000	13,747	16,840.04
20	A-2021-3026132	APW	East Whiteland Township	Chester	Wastewater	07/26/21	02/04/22	Approved	07/29/22	54,930,000	54,413,635	3,895	13,970.12
21	A-2021-3027268	APW	Willistown Township	Chester	Wastewater	08/04/21	01/14/22	Approved	07/08/22	17,500,000	17,500,000	2,294	7,628.60
22	A-2022-3034143	Aqua	Shenandoah Borough Municipal Authority	Schuylkill	Water	10/06/22	02/03/23	Approved	07/13/23	12,000,000	12,000,000	2,899	4,139.36
23	A-2022-3037047	PAWC-WD	Butler Area Sewer Authority	Butler	Wastewater	02/14/23	05/23/23	Approved	11/09/23	231,500,000	228,000,000	14,792	15,413.74
24	A-2022-3033138	APW	City of Beaver Falls	Beaver	Wastewater	02/17/23		Pending		41,250,000		3,197	
25	A-2021-3024058	PAWC-WD	Brentwood Borough	Allegheny	Wastewater	03/31/23		Pending		19,200,000		3,974	
26	A-2023-3039900	PAWC-WD	Towamencin Township	Montgomery	Wastewater	05/15/23		Pending		104,000,000		5,886	
27	A-2023-3041695	APW	Greenville Sewer Authority	Mercer	Wastewater	11/17/23		Pending		18,000,000		4,000	

Acronyms:  
Aqua = Aqua Pennsylvania, Inc.  
APW = Aqua Pennsylvania Wastewater, Inc.  
PAWC = Pennsylvania-American Water Company  
PAWC-WD = Pennsylvania-American Water Company - Wastewater Division  
Veolia = Veolia Water Pennsylvania, Inc., formerly SUEZ Water Pennsylvania Inc.  
Veolia-WD = Veolia Water Pennsylvania, Inc. - Wastewater Division, formerly SUEZ Water Pennsylvania Inc. - Wastewater Division

**Table 2: Section 1329 Application Bill Analysis**

Section 1329 Application Residential Bill Analysis - Base Rates Only - Assuming 3,500 Gallons of Monthly Usage/Residential Customer 12/5/2023 Total Bill (Customer Charge + Usage Charge)									
#	Docket No.	Buyer	System Acquisition/Rate Zone	Sale Complete?	Initial Bill	Current Bill	Difference Bill \$	Difference Bill %	Notes
1	A-2016-2580061	APW	New Garden Township Municipal Authority	Yes	65.45	126.87	61.42	93.8%	
2	A-2017-2605434	APW	Limerick Township	Yes	34.61	73.98	39.37	113.8%	
3	A-2017-2606103	PAWC-WD	Municipal Authority of the City of McKeesport	Yes	49.83	114.93	65.10	130.6%	
4	A-2018-3001582	APW	East Bradford Township	Yes	68.09	98.69	30.60	44.9%	(3)
5	A-2018-3002437	PAWC-WD	Sadsbury Township	Yes	74.63	114.93	40.30	54.0%	
6	A-2018-3003517	Veolia-WD	Mahoning Township Wastewater	Yes	56.20	56.20	-	0.0%	(4)
7	A-2018-3003519	Veolia	Mahoning Township Water	Yes	28.12	28.12	-	0.0%	(4)
8	A-2018-3004933	PAWC-WD	Exeter Township	Yes	43.11	114.93	71.82	166.6%	
9	A-2019-3006880	PAWC	Steelton Borough Authority	Yes	29.65	73.88	44.23	149.2%	
10	A-2019-3008491	APW	Cheltenham Township	Yes	34.58	58.15	23.57	68.2%	
11	A-2019-3009052	APW	East Norriton Township	Yes	35.25	62.61	27.36	77.6%	
12	A-2019-3014248	PAWC-WD	Kane Borough Municipal Authority	Yes	51.01	113.50	62.49	122.5%	
13	A-2019-3015173	APW	Delaware County Regional Water Control Authority	No					(5)
14	A-2020-3019634	PAWC-WD	Royersford Borough	Yes	30.00	52.70	22.70	75.7%	
15	A-2020-3019859	PAWC	Valley Township	Yes	28.96	56.00	27.04	93.4%	
16	A-2020-3020178	PAWC-WD	Valley Township	Yes	60.79	114.93	54.14	89.1%	
17	A-2020-3021460	PAWC-WD	Upper Pottsgrove Township	Yes	65.00	106.00	41.00	63.1%	
18	A-2021-3024267	APW	Lower Makefield Township Sewer Authority	Yes	68.83	68.83	-	0.0%	(4)
19	A-2021-3024681	PAWC-WD	York City Sewer Authority	Yes	32.06	59.06	27.00	84.2%	
20	A-2021-3026132	APW	East Whiteland Township	Yes	33.33	33.33	-	0.0%	(4) (6)
21	A-2021-3027268	APW	Willistown Township	No					(5)
22	A-2022-3034143	Aqua	Shenandoah Borough Municipal Authority	Yes	54.36	54.36	-	0.0%	(4)
23	A-2022-3037047	PAWC-WD	Butler Area Sewer Authority	No					(5)
24	A-2022-3033138	APW	City of Beaver Falls	No					(5)
25	A-2021-3024058	PAWC-WD	Brentwood Borough	No					(5)
26	A-2023-3039900	PAWC-WD	Towamencin Township	No					(5)
27	A-2023-3041695	APW	Greenville Sewer Authority	No					(5)

Notes and Sources:

- (1) Initial bills were calculated using the compliance tariffs filed at the end of each docketed proceeding. Current bills were calculated using tariffs on each Company's website on 11/29/2023. Bills calculations include customer and usage charges only, excluding surcharges (i.e., DSIC, STAS, TCJA, etc.).
- (2) Certain rate zones use, or used, minimum or flat rates, where customer charges include a usage allowance of either a designated usage amount or unlimited usage, and which may result in \$0 in billed usage charges. Usage allowance reductions typically result in customer charge decreases that are offset by usage charge increases.
- (3) This is the rate for residential single-family homes only, excluding residential townhomes.
- (4) This rate zone hasn't been included in a base rate case proceeding filed with the Commission.
- (5) Bill analyses aren't available for these rate zones since these transactions haven't closed.
- (6) This is the rate for APW's East Whiteland Township Rate Districts A & B only, excluding APW's East Whiteland Township Rate Districts C, D, and E.

Aqua = Aqua Pennsylvania, Inc.  
 APW = Aqua Pennsylvania Wastewater, Inc. PAWC = Pennsylvania-American Water Company  
 PAWC-WD = Pennsylvania-American Water Company - Wastewater Division Veolia = Veolia Water Pennsylvania, Inc., formerly SUEZ Water Pennsylvania Inc.  
 Veolia-WD = Veolia Water Pennsylvania, Inc. - Wastewater Division, formerly SUEZ Water Pennsylvania Inc. - Wastewater Division