

**BEFORE THE  
PENNSYLVANIA HOUSE OF REPRESENTATIVES  
COMMITTEE ON CONSUMER PROTECTION,  
TECHNOLOGY AND UTILITIES**

**Testimony Of**

**PATRICK M. CICERO  
CONSUMER ADVOCATE**

**Regarding**

**House Bills 1862, 1863, 1864, and 1865 amending  
Sections 1327 and 1329 of the Public Utility Code**

**Harrisburg, Pennsylvania  
December 12, 2023**

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**Members of the Pennsylvania House of Representatives  
Committee on Consumer Protection, Technology and Utilities**

My name is Patrick Cicero and I have the privilege of serving as Pennsylvania's Consumer Advocate. Thank you for the opportunity to provide feedback and comments this morning about House Bills 1862, 1863, 1864, and 1865 and the necessary changes to Section 1329 of the Public Utility Code. 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). At the outset, I want to add that I support each of the bills that will be discussed at today's meeting. In total, they would help to mitigate the harms that have occurred because of Act 12 of 2016 which added Section 1329 to the Public Utility Code. I will discuss the particulars of each bill in this written testimony, but before I do so, I will provide an overview of the harm that has occurred to consumers and ratepayers since Act 12's enactment. I will also urge the Committee and the General Assembly to consider a full repeal of Act 12. As I will outline, it has wrought significant harm, little to no benefit to consumers or the public, and should be repealed.

**Background**

Section 1329 of the Public Utility Code (66 Pa. C.S. § 1329) was added through Act 12 of 2016 and changed the method and timing for calculating what is included in utility rates for specific acquisitions of municipal water and wastewater acquisitions 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 dollars 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. Many households use considerably more and, thus, 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.

Since Section 1329 was added to the Public Utility Code there have been twenty (21) approved acquisitions that have proceeded to closing. In our view, none of these approved acquisitions have been 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 approximately 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>     |

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 in excess of **\$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> |

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 all 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, neither I nor my office is and has ever been against the consolidation of water and wastewater utilities or the acquisition of municipal systems by investor-owned utilities in the abstract or in principle. 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 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 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

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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.

professional management of our large investor-owned utilities and improved the safety and reliability of water service to thousands of Pennsylvania residents.

Another measure of the 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 table 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<br>A-2016-2580061          | \$29,500,000                  | 2,106                      | \$14,008                              |
|                                       | Limerick<br>A-2017-2605434            | \$64,373,378                  | 5,434                      | \$11,846                              |
|                                       | East Bradford<br>A-2018-3001582       | \$5,000,000                   | 1,248                      | \$4,006                               |
|                                       | Cheltenham<br>A-2019-3008491          | \$44,558,259                  | 10,219                     | \$4,360                               |
|                                       | East Norriton<br>A-2019-3009052       | \$20,750,000                  | 4,966                      | \$4,178                               |
|                                       | Lower Makefield<br>A-2021-3024267     | \$53,000,000                  | 11,151                     | \$4,753                               |
|                                       | East Whiteland<br>A-2021-3026131      | \$54,413,635                  | 3,895                      | \$13,970                              |
|                                       | Shenandoah<br>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<br>A-2017-2606103          | \$158,000,000                 | 12,780                     | \$12,363                              |
|                                       | Sadsbury<br>A-2018-3002437            | \$8,300,000                   | 998                        | \$8,317                               |
|                                       | Exeter<br>A-2017-3004933              | \$92,000,000                  | 9,015                      | \$10,205                              |
|                                       | Steelton (Water)<br>A-2019-3006880    | \$20,500,000                  | 2,415                      | \$8,489                               |
|                                       | Kane<br>A-2019-3014248                | \$17,560,000                  | 2,019                      | \$8,697                               |
|                                       | Royersford<br>A-2020-3019634          | \$13,000,000                  | 1,620                      | \$8,025                               |
|                                       | Upper Pottsgrove<br>A-2020-3021460    | \$13,750,000                  | 1,447                      | \$9,502                               |
|                                       | Valley (Water)<br>A-2020-3019859      | \$7,325,000                   | 1,670                      | \$4,386                               |
|                                       | Valley (Wastewater)<br>A-2020-3020178 | \$13,950,000                  | 3,125                      | \$4,464                               |
|                                       | City of York<br>A-2021-3024681        | \$231,500,000                 | 13,747                     | \$16,840                              |
|                                       | Butler Area Sewer<br>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 of the data that I presented above paints an increasingly grim and accurate 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 put a halt to municipal acquisitions at fair market value and arrive at a more targeted approach to these acquisitions that is fair to ratepayers and the communities seeking to sell the assets.

**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. I recognize that there is currently no repeal bill before this Committee, but I would urge the Committee to consider such as bill. 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 completely repeal Act 12 at this stage, it should consider adding 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 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.

Discussion of Bills before the Committee

While the OCA's primary and secondary recommendations above address issues that are not currently before the Committee, the OCA supports the bills that are currently before the Committee as they would seek to restrain the excesses of the current paradigm. I will discuss each bill in turn except that I will discuss HB 1862 last as it deals with a separate set of issues than the other three bills.

**House Bill 1863**

House Bill 1863 would remove the 6-month statutory requirement that the Commission issue a final order from the date an application is submitted that meets the requirements of Section 1329. The OCA fully supports this bill as drafted. The current process whereby the Commission must issue an order within 6 months of acceptance of an application has produced ridiculously short litigation time frames for the parties. This is because of the 6-month time frame, the Commission itself (between the Office of Administrative Law Judge, the other advisory bureaus of the Commission and the Commissioners' offices) take 2 ½ - 3 months from the date the Reply Briefs are due by the parties, leaving the parties very little time to develop a record. It is the typical pattern in cases where valuation is established under Section 1329, for the direct testimony of parties to be due a mere few days after the pre-hearing conference and parties often litigate the

case and close the record within 45 days of a prehearing conference. This is simply not enough time to allow for proper litigation. Furthermore, the 6-month clock has required the Commission to hold final acceptance of applications until its Bureau of Technical Utility Services completes its initial review. During this liminal time, after the utility files and before the Commission finally accepts, other parties, including my office, cannot conduct formal discovery and we cannot compel the utilities to cooperate in sending our office any information. While the utilities have in the past voluntarily provided informal discovery, their cooperativeness in doing so is at their whim and pleasure rather than a requirement afforded to parties to a case. Furthermore, to the extent that disputes arise during this time the Commission has not adjudicated those disputes based on the assertion that the docket is not active until they finally accept. Each of these machinations is the result of a 6-month clock that does not leave appropriate time for a full and proper review.

It is important to note that when electing to proceed under Section 1329, a utility is required to file an application for approval of an acquisition pursuant to Sections 1102 and 1103 of the Public Utility Code. Those sections require that the Commission can only approve the acquisition if it will “affirmatively promote the ‘service, accommodation, convenience, or safety of the public’ in some substantial way.” *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1972). This is the same test and standard that is used for all applications for service in a new service territory, to expand a service territory, for applications for one utility to acquire another, and for applications that would result in mergers or internal reorganizations. None of those other proceedings where Section 1329 valuation is not in play has any statutory deadline and the Commission evaluates the case on its merits.

The OCA submits that there is no reason for there to be any statutory deadline on any application brought under Section 1329, and, in fact, Section 1329 applications are particularly

problematic cases to impose a short adjudicatory time period. Under normal circumstances, when one utility is buying another utility, the parties to that proceeding have the right in a future rate case to challenge the amount of rate making rate base that is put into the acquiring utilities final rate base. This is not the case under Section 1329 because the statute defines that the rate making rate base for purposes of ratemaking is the lesser of the purchase price or the average of the two fair market value appraisals. 66 Pa. C.S. § 1329(c)(2). In my view, the Commission's balancing act is more challenging in these cases not less and, thus, it makes little sense to constrain the time frame in which the Commission and the parties must litigate the case. The OCA fully supports HB 1863. It would improve the administrative processes at the Commission, it would provide a more realistic framework for the adjudication of these critical issues, and it would not harm either the buying or selling utilities. There is simply no urgency to these cases other than the false sense of urgency that may be created by utilities.

#### **House Bill 1864**

House Bill 1864 would, working in conjunction or in isolation with the changes proposed by House Bill 1865, constrain the excesses of these purchases that would have to be paid by ratepayers. If enacted, HB 1864 would spread out the total dollar amount that could be put into rate base during the first rate case post-closing. It would in essence allow a utility to put into rate base the depreciated original cost of the acquisition immediately in the first case. It is important to remember that in this context, as used in Section 1329, the term "depreciated original cost" does not take into consideration the original source of funding for the utility plant which means that grants or other contributions are treated the same as if it was paid for even where the contribution did not cost the selling utility anything. Contributed plant is not deducted. This has the effect of increasing depreciated original cost from what it has been traditionally. This in and of itself is a

benefit to both the selling and buying utility because the seller can sell it at a higher dollar amount and the buyer can put a higher amount into rates and earn a return on and of plant that was built/constructed by the seller at no cost. This is a statutory ratemaking fiction that increases costs to consumers, but it is a part of Section 1329.

House Bill 1864 would retain this fiction and allow the full amount of the depreciated original cost to be put into rates in the first case. Anything above that amount – the difference between the approved 1329 ratemaking rate base amount and 1329 depreciated original cost – would have to be spread out over the next three rate cases of the utility. An example may prove illustrative. In the recently approved acquisition by PAWC of the Butler Area Sewer Authority, the Commission approved a ratemaking rate base of \$228,000,000. The depreciated original cost under 1329 of that system was \$93,409,083. The difference between these two is \$116,761,353. If House Bill 1864 were enacted prior to the Butler acquisition, PAWC would have been able to put into rate base and earn a return on and of the \$93,409,083 in its first-rate case post-closing but it would be required to add the remaining \$116,761,353 into rate base equally over the next three rate cases. This would require PAWC and its shareholders to carry the cost of this additional amount above the depreciated original cost for longer than they do currently and would help ratepayers by spreading out premium purchase price above depreciated original cost over a longer period. It would constrain rate shock from these acquisitions. In the OCA's view, over the long run this will likely shrink the delta between purchase prices and depreciated original costs because the utilities are not going to want to carry significant amounts of excessive purchase prices for longer periods of time. This would be a net benefit to ratepayers but would still provide significant value to the utilities because they could put into rate base a higher amount than they could pre-1329 and would be assured, over the long term, a return of and on their investment.

I think it is important to clarify that 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. 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. The changes proposed by HB 1864 would still allow the utility to recover more than its depreciated original cost amount, it would just spread it out over a longer period. The OCA supports that approach especially if twinned with the changes proposed in House Bill 1865.

#### **House Bill 1865**

House Bill 1865 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. Like HB 1864, this bill would maintain the higher calculation for determining depreciated original cost that is currently in § 1329(d)(5), but it would cap the amount that a utility could put into ratemaking rate base as the lesser of: (1) the purchase price negotiated by the acquiring public utility and selling utility; (2) the fair market value of the selling utility; or (3) 125% of the depreciated original cost as calculated under subsection (d)(5) if the acquisition does not meet the requirements of Section 1327(a)(2) or (3). In effect, this would continue to encourage the acquisition of troubled systems that meet the defined statutory criteria outlined in Section 1327(a)(2) and (3) by not imposing the 125% cap on those systems. Systems that are not troubled would still be able to be bought at a premium, but the amount that could be

put into rate base would be capped. This change would make a significant difference to consumers but would not otherwise disincentivize the acquisition of troubled systems. Below is a table that shows (1) what was added to ratemaking rate base (Column A) because of the approval of the application (2) the amount of the 125% of depreciated original cost (Column C), and (3) the amount that would be added to ratemaking rate base had HB 1865 been in place (Column D).

**Table 6 - Ratemaking Rate Base vs. Dep. Orig. Cost vs. 125% of Dep. Orig. Cost**

| Seller            | Buyer   | Type of System | A                       | B                         | C                              | D                       |
|-------------------|---------|----------------|-------------------------|---------------------------|--------------------------------|-------------------------|
|                   |         |                | Ratemaking Rate Base    | Depreciated Original Cost | 125% Depreciated Original Cost | Lesser of Column A or C |
| New Garden        | Aqua PA | Wastewater     | \$ 29,500,000           | \$ 18,567,728             | \$ 23,209,660                  | \$ 23,209,660           |
| Limerick          | Aqua PA | Wastewater     | \$ 64,373,378           | \$ 46,153,867             | \$ 57,692,334                  | \$ 57,692,334           |
| McKeesport        | PAWC    | Wastewater     | \$ 158,000,000          | \$ 80,085,602             | \$ 100,107,003                 | \$ 100,107,003          |
| East Bradford     | Aqua PA | Wastewater     | \$ 5,000,000            | \$ 5,473,948              | \$ 6,842,435                   | \$ 5,000,000            |
| Sadsbury          | PAWC    | Wastewater     | \$ 8,300,000            | \$ 7,480,573              | \$ 9,350,716                   | \$ 8,300,000            |
| Mahoning          | SUEZ    | Water          | \$ 4,734,800            | \$ 3,507,138              | \$ 4,383,923                   | \$ 4,383,923            |
| Mahoning          | SUEZ    | Wastewater     | \$ 4,765,200            | \$ 3,234,859              | \$ 4,043,574                   | \$ 4,043,574            |
| Exeter            | PAWC    | Wastewater     | \$ 92,000,000           | \$ 40,057,634             | \$ 50,072,043                  | \$ 50,072,043           |
| Stelton           | PAWC    | Water          | \$ 20,500,000           | \$ 14,433,435             | \$ 18,041,794                  | \$ 18,041,794           |
| Cheltenham        | Aqua PA | Wastewater     | \$ 44,558,259           | \$ 15,408,458             | \$ 19,260,573                  | \$ 19,260,573           |
| East Norriton     | Aqua PA | Wastewater     | \$ 20,750,000           | \$ 8,407,007              | \$ 10,508,759                  | \$ 10,508,759           |
| Kane              | PAWC    | Wastewater     | \$ 17,560,000           | \$ 12,070,455             | \$ 15,088,069                  | \$ 15,088,069           |
| Royersford        | PAWC    | Wastewater     | \$ 13,000,000           | \$ 5,173,559              | \$ 6,466,949                   | \$ 6,466,949            |
| Valley            | PAWC    | Water          | \$ 7,325,000            | \$ 5,370,438              | \$ 6,713,048                   | \$ 6,713,048            |
| Valley            | PAWC    | Wastewater     | \$ 13,950,000           | \$ 9,214,738              | \$ 11,518,423                  | \$ 11,518,423           |
| Upper Pottsgrove  | PAWC    | Wastewater     | \$ 13,750,000           | \$ 8,970,325              | \$ 11,212,906                  | \$ 11,212,906           |
| Lower Makefield   | Aqua PA | Wastewater     | \$ 53,000,000           | \$ 19,808,274             | \$ 24,760,343                  | \$ 24,760,343           |
| East Whiteland    | Aqua PA | Wastewater     | \$ 54,413,635           | \$ 33,403,972             | \$ 41,754,965                  | \$ 41,754,965           |
| City of York      | PAWC    | Wastewater     | \$ 231,500,000          | \$ 97,106,105             | \$ 121,382,631                 | \$ 121,382,631          |
| Shenandoah        | Aqua PA | Water          | \$ 12,000,000           | \$ 10,784,743             | \$ 13,480,929                  | \$ 12,000,000           |
| Butler Area Sewer | PAWC    | Wastewater     | \$ 228,000,000          | \$ 93,409,083             | \$ 116,761,354                 | \$ 116,761,354          |
| <b>TOTAL</b>      |         |                | <b>\$ 1,096,980,272</b> | <b>\$ 538,121,941</b>     | <b>\$ 672,652,436</b>          | <b>\$ 668,278,346</b>   |

None of the acquisitions approved so far would have likely met the § 1327(a)(2) or (3) criteria because none were troubled systems, thus all of them – except a few where the purchase price was less than 125% of the depreciated original cost – would have been subject to the cap. As you can see from **Table 6**, under the current paradigm \$1,096,980,272 was or will be added to the acquiring utility’s ratemaking rate base as compared to \$668,278,346 had HB 1865 been in place. This is a difference of \$428,701,926 or 39%. While my office has not calculated the revenue requirement difference between these two different rate bases, it is fair to predict that this change alone would have saved ratepayers tens of millions of dollars each year. Of course, even the \$668.2

million of ratemaking rate base would be more than the utilities would have received in the absence of 1329. The OCA supports HB 1865 – especially if enacted in conjunction with HB 1864 – as a means of capping the excessive purchase prices that ratepayers are asked to pay for the acquisitions of non-troubled systems. As is the case with HB 1864, nothing would prevent a utility for paying anything it wants for another utility, but in so doing it would have to make more informed and strategic choices because its shareholders would bear the costs associated with the acquisition above a certain threshold.

### **House Bill 1862**

House Bill 1862, unlike the other bills, would amend Section 1327 rather than Section 1329 and would do so by adding a new section that would impose certain duties on a selling municipal corporation to issue certain notices, and the Commission to hold public hearings, where an acquiring utility elects to put into rate base immediately – as opposed to in a subsequent rate case – the amount of its purchase price as well as the positive acquisition adjustment. Section 1327 is not like Section 1329 as it does not add a fair market value premium to rates, but rather allows an acquiring utility to seek an upwards adjustment if it purchases a utility for more than its book value depending on the condition of the system. This acquisition adjustment has been a “carrot” that is meant to entice a utility to buy a non-viable system that was not providing safe, adequate or reliable service. The changes proposed in HB 1862 would require certain notice and valuation provisions to be provided if a utility seeks to have the amount added to rate base immediately rather than in the next rate case. The OCA supports the additions contained in HB 1862, though it notes that it does not correct or otherwise adjust what occurs pursuant to Section 1329. Nevertheless, the changes proposed would provide additional clarity, protection, and a voice to consumers who are being served by small or non-viable systems that are not currently providing safe, adequate, or



reliable service. There are several, small technical changes to the bill that the OCA believes would improve clarity that the Committee may want to consider prior to passage, those are noted below:

- In Section (a.1)(2), the OCA recommends adding “social media” to the list of required notice for the request for proposals;
- In Section (a.1)(4), the phrase “estimates of the rates” is likely too vague. The OCA recommends specifications for "rates" or the median system usage (not typical usage) in 3 years, 6 years and 9 years or over the first 10 years of ownership (rather than one point in time), and for the public utility's residential, commercial, and industrial classes. The OCA also recommends that there be a requirement to include a link to a rate calculator hosted on the buying systems' website that allows a household to enter the specifics of their household usage to see what their estimate of rates will be.
- In Section (b)(2), it is not clear what is required by what has been added. The newly added language could be read that the estimate to be provided in this provision is tied to the notice that is required if that proposed acquisition would increase rates to the acquiring public utility's customer by more than 1% of the base annual revenue or that the public utility has a separate obligation to calculate rates for its customers from an actuary. More clarification is required.
- In Section (g), the OCA recommends that the clarity be provided about the approved actuary and, specifically, should not have been employed or performed work for the utility or municipality within the last 5 years and should be required to publicly disclose whether they have ever done work for the municipality or utility.

As noted above, the OCA supports the changes proposed by HB 1862 which would amend Section 1327. This would be a good and helpful companion to the changes proposed by HB 1863, 1864, and 1865 which would provide needed revisions to Section 1329.

## **Conclusion**

Thank you for the opportunity to testify today about these important issues. As indicated throughout, it is my view that the Committee 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 1329. If, after this study, the General Assembly believed that the legislation continued to have merit then it could remove and/or 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 the changes proposed in HB 1863, HB 1864, and HB 1865. Each would add needed protections and constrain the excesses that have materialized as a result of Act 12. In addition, the OCA supports the purpose and intent to HB 1862 and would be pleased to work with the Committee to make some necessary technical changes and clarifications.

I am happy to answer any questions that the Committee may have about my testimony or the information presented today.