STATEMENTS OF POLICY

Title 37—LAW

OFFICE OF THE VICTIM ADVOCATE

[37 PA. CODE CH. 801]

Guidelines for the Implementation of the Domestic and Sexual Violence Victim Address Confidentiality Program—Statement of Policy

This statement of policy is adopted under the authority of 23 Pa.C.S. Chapter 67 (relating to Domestic and Sexual Violence Victim Address Confidentiality Act) (act). Section 6712(1) of the act (relating to rules and regulations) directs the Office of the Victim Advocate (OVA) to "adopt and use guidelines which shall be published in the *Pennsylvania Bulletin*. The guidelines shall not be subject to review under section 205 of the act of July 31, 1968 (P. L. 769, No. 240), referred to as the Commonwealth Documents Law, or the act of June 25, 1982 (P. L. 633, No. 181), known as the Regulatory Review Act."

Purpose

The OVA publishes this statement of policy for the implementation of the Domestic and Sexual Violence Victim Address Confidentiality Program (ACP) approved by the General Assembly. This statement of policy implements the act, which permits eligible persons to receive a confidential substitute address provided by the OVA. This statement of policy reflects the statutory changes affecting the act and 75 Pa.C.S. (relating to vehicles) and procedures affecting State and local government agencies impacted by the ACP.

Requirements

This statement of policy enumerates and details the requirements of the act in the following structure:

Sections 801.1 and 801.2 (relating to scope; and defintions) provide the scope of the statement of policy and the definitions of words and terms used in the act.

Section 801.3 (relating to persons eligible for participation) provides the scope of eligibility for participation.

Sections 801.11 and 801.12 (relating to application; and certification) provide procedures for application to the ACP and the certification process.

Section 801.13 (relating to use of substitute address) provides for the proper use of the ACP substitute address by State and local government agencies.

Sections 801.14 and 801.15 (relating to marriage licenses; and certificate of vehicle title, security interest in vehicle, vehicle registration and driver's license) explain specific situations whereby the ACP participant can utilize the substitute address rather than the actual address.

Section 801.16 (relating to ACP participant responsibility) provides procedures for ACP participants to notify the OVA of a change of address or name.

Section 801.17 (relating to cancellation, expiration and voluntary withdrawal) provides procedures for cancellation and expiration from the ACP and voluntary withdrawal.

Section 801.21 (relating to agency of use of substitute address) provides procedures for the use of the substitute legal address.

Section 801.22 (relating to ACP records and release of information) explains the status of ACP records in the hands of the OVA as well as what information will be released by the OVA pertaining to requests for information in these records.

Section 801.23 (relating to disclosure of actual address) provides procedures pertaining to the disclosure of the actual address by the OVA if certain requirements are satisfied by the person or entity that is requesting disclosure.

Sections 801.31 and 801.32 (relating to agency request for waiver; and waiver review) provide procedures for government agencies requesting disclosure of the actual address by the OVA. These sections also set forth the process that government agencies should follow should they wish to appeal a decision of the OVA pertaining to the waiver process.

Affected Parties

Victims of domestic violence, sexual assault or stalking, as defined in the act, benefit by having clear guidelines regarding eligibility, application and waiver procedures. Additionally, this statement of policy is intended to provide guidance and direction to State and local government agencies and victim service agencies, including domestic violence programs and sexual assault programs.

Effective Date

This statement of policy will become effective March 30, 2007.

Sunset Date

This statement of policy is effective until regulations are promulgated or July 2007, whichever occurs first.

CAROL LAVERY,
Victim Advocate

(*Editor's Note*: Title 37 of the Pa. Code is amended by adding a statement of policy in §§ 801.1—801.3, 801.11—801.17, 801.21—801.23 and 801.31—801.33 to read as set forth in Annex A.)

Fiscal Note: 41-19. (1) Victim/Witness Services Restricted Revenue Account within the General Fund; (2) Implementing Year 2006-07 is $52,000; (3) 1st Succeeding Year 2007-08 is $54,000; 2nd Succeeding Year 2008-09 is $56,000; 3rd Succeeding Year 2009-10 is $58,000; 4th Succeeding Year 2010-11 is $59,000; 5th Succeeding Year 2011-12 is $61,000; (4) 2005-06 Program—$6,804,158; 2004-05 Program—$6,817,846; 2003-04 Program—$5,981,737; (7) Victim/Witness Services; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART XI. OFFICE OF THE VICTIM ADVOCATE

CHAPTER 801. DOMESTIC AND SEXUAL VIOLENCE VICTIM ADDRESS CONFIDENTIALITY PROGRAM—STATEMENT OF POLICY

GENERAL PROVISIONS

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GENERAL PROVISIONS

§ 801.1. Scope.

This chapter sets forth standards and procedures relating to participation in the ACP on or after June 1, 2005, as well as waiver requests from entities that have an interest in obtaining an ACP participant's actual address.

§ 801.2. Definitions.

(a) The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ACP—The Domestic and Sexual Violence Victim Address Confidentiality Program. See 23 Pa.C.S. § 6703 (relating to Adress Confidentialy Program).

ACP authorization card—A card issued by the Office of the Victim Advocate inder § 801.12 (relating to certification).

ACP code—An identifying number unique to each ACP participant.

Act—The Domestic and Sexual Violence Victim Address Confidentiality Act (23 Pa.C.S.A. §§ 6701—6713).

Agent for service of process— A third party agent for the formal delivery of a writ, summons or other legal process.

Cohabitant—A person who is a member of the same household as an ACP participant who is certified by OVA to participate in ACP.

OVA—The Office of Victim Advocate.

Victim service provider—A State or local agency that provides services to victims of domestic violence, sexual assault or other crimes.

(b) The definitions in 23 Pa.C.S. § 6702 (relating to defintions) are incorporated by reference.

§ 801.3. Eligibility.

(a) Except as otherwise provided in the act, the following persons are eligible for participation:

(1) Victims of domestic violence.

(2) Victims of sexual assault.

(3) Victims of stalking.

(4) A minor child who is a member of the same household as an ACP participant.

(5) An adult who is a cohabitant of an ACP participant.

(6) An ACP participant who notifies OVA of the ACP participant's intent to continue participation prior to expiration of the 3-year ACP certification period.

(b) An adult who is a cohabitant of an ACP participant shall apply separately for participation.

(c) Minor children who are enrolled with an adult ACP participant are required to apply separately upon reaching 18 years of age.

(d) Commonwealth residency is not a requirement for ACP participation. ACP applicants who do not provide a Commonwealth residential address will be enrolled as a "Non-PA Resident." This designation will appear on the ACP participant's ACP authorization card.

PROGRAM

§ 801.11. Application.

(a) An application may be filed by any eligible person on the form provided by OVA.

(1) An eligible ACP participant may apply, in person, at a victim service provider.

(2) The role of the victim service provider is to:

(i) Assist the eligible person in determining whether ACP should be part of the person's overall safety plan.

(ii) Explain ACP services and limitations.

(iii) Explain ACP participants' responsibilities.

(iv) Assist the person eligible for participation with the completion of application materials.

(b) The completed application must include:

(1) An affidavit from the applicant describing, in detail, a perpetrator's violent actions or threatened violent actions, or course of stalking conduct and describing, in detail, the applicant's fear of future violent acts of abuse, sexual assault or stalking, or all, by the perpetrator.

(2) Designation of OVA as the applicant's agent for service of process.

(3) An applicant's mailing address to which mail can be forwarded by OVA.

(4) An applicant's actual address and telephone number, if different from the applicant's mailing address.

(5) A listing of any minor children residing at the actual address, each minor child's date of birth and each minor child's relationship to the applicant.

(6) When applicable, a listing of all pending civil and criminal proceedings, including, but not limited to, domestic relations, family court, child custody or Protection From Abuse proceedings, in which the applicant or minor child is a victim, witness, plaintiff or defendant.

(7) When applicable, an explanation of the applicant's probation or parole supervision requirements (Federal, State or county) as well as the name and phone number of the applicant's probation or parole officer.

(8) A signed statement affirming that information provided on the ACP application is true and acknowledging the applicant's duty to notify OVA of any change in information provided on the application.

(9) The date and signature of the applicant and the signature of any person who assisted in the preparation of the application.

(c) Completed applications shall be submitted to the ACP substitute address by mail. Applications submitted by means of facsimile or electronic mail will not be accepted.

(d) Application packets must contain the following completed materials:

(1) Completed and signed ACP application form.

(2) Criminal/civil case information.

(3) Affidavit.

(4) Signed ACP authorization card.

(e) Upon receipt, OVA will determine if the applicant meets the prescribed criteria for eligibility for enrollment in ACP in accordance with 23 Pa.C.S. § 6704 (relating to persons eligible to apply), which are incorporated by reference.

(f) For purposes of ACP, residents of temporary housing (30 days or less), such as emergency domestic violence shelter, are not eligible to enroll in ACP until a permanent, residential address is obtained, unless otherwise determined by OVA, at the sole discretion of OVA.

(g) OVA will contact the applicant if additional information is necessary for OVA to determine the eligibility of the applicant or minor child for participation in ACP.

§ 801.12. Certification.

(a) If OVA determines that an applicant is eligible for participation in ACP, the ACP participant is assigned a unique ACP number, known as an ACP code.

(b) ACP participant data will be entered into OVA's confidential records.

(c) An ACP authorization card is created and certified by OVA. The ACP authorization card contains the ACP participant's substitute address.

(d) Certification is valid for 3 years unless the certification is withdrawn by OVA, at the sole discretion of OVA, or canceled by the ACP participant prior to the expiration of the 3-year period.

(e) If the ACP participant is a victim, witness, plaintiff or defendant involved in an ongoing civil or criminal case, OVA will provide, upon certification, notice of the ACP participant's substitute address to appropriate court officials in which an ACP participant is a victim, witness, plaintiff or defendant. Appropriate officials may include, but not be limited to, the county district attorney, clerks of court or other agencies with prosecutorial authority.

(f) If an ACP participant who is a victim, witness, plaintiff or defendant involved in an ongoing civil or criminal case cancels, withdraws or expires from ACP participation, OVA will provide notice to any appropriate court officials previously notified.

(g) Upon certification by OVA, the ACP participant will receive the following:

(1) Notification of the participant's enrollment in ACP.

(2) A completed and laminated ACP authorization card with the ACP participant's ACP code on the ACP authorization card.

(3) ACP materials advising the ACP participant how to use ACP when the ACP participant is dealing with Commonwealth and local agencies.

(h) If OVA determines, in the sole discretion of OVA, that an applicant or minor child does not meet the criteria for ACP certification, the applicant will receive notice of this decision from OVA.

§ 801.13. Use of substitute address.

(a) The substitute address shall be used in the following format on all mail sent to an ACP participant:

Participant Name, (ACP # _____)
P. O. Box _____
Harrisburg, PA 17105

(b) OVA will accept only first class, registered and certified mail on behalf of an ACP participant at the substitute address.

(c) OVA will not forward magazines, packages, articles of bulk mailing or any other items of mail.

(d) OVA may arrange, at the discretion of OVA, to receive and forward other classes or kinds of mail at the ACP participant's expense.

(e) ACP participant mail received at OVA will be repackaged and forwarded, by means of first class mail, to the ACP participant's actual address within 3 business days of receipt at OVA. Mail that is forwarded by OVA will use the ACP PO box as a return address.

§ 801.14. Marriage licenses.

(a) ACP participants may use the substitute address as the ACP participant's residential address when applying for a marriage license.

(b) ACP participants residing with the participant's parents may use the substitute address as the ACP participant's residential address when applying for a marriage license.

(c) Adult children of an ACP participant may use the substitute address as the ACP participant's residential address when applying for a marriage license.

§ 801.15. Certificate of vehicle title, security interest in vehicle, vehicle registration and driver's license.

(a) ACP participants may use the substitute address as the ACP participant's actual address when applying to the Department of Transportation (PennDOT) for:

(1) A vehicle certificate of title.

(2) A perfection of a security interest in a vehicle.

(3) Vehicle registration, including the process of self-certification of financial responsibility.

(4) Applying for or renewing a Commonwealth driver's license or a PennDOT identification card.

(b) ACP participants are responsible for any fee associated with the issuance of an updated Commonwealth driver's license or identification card.

(c) ACP participants shall utilize a centralized address provided by PennDOT when applying for or renewing a Commonwealth driver's license or a PennDOT identification card.

§ 801.16. ACP participant responsibility.

ACP participants shall:

(1) Notify OVA of any change in the information provided to OVA during the ACP certification procedure.

(2) Provide the ACP participant's actual address to OVA but can opt to receive mail forwarded by OVA at an alternative address.

(3) Accept all mail forwarded to them by OVA.

(4) Designate OVA as the ACP participant's legal agent for service of process and maintain responsibility for all legal documents received by OVA on behalf of the ACP participant.

(5) Present the ACP participant's ACP authorization card to Commonwealth and local government agencies to receive ACP privileges.

(6) Notify OVA of any name change or change of actual address within 5 calendar days of the date that the change occurs.

§ 801.17. Cancellation, expiration and voluntary withdrawal.

(a) ACP participation will expire 3 years after the date of ACP certification. The date of expiration will be indicated on the ACP authorization card.

(b) At least 60 days prior to the expiration of certification, OVA will send written notification to the ACP participant's actual address to afford the ACP participant the option of continuing the ACP participant's certification.

(c) An ACP participant may voluntarily withdraw from ACP at any time by advising OVA in writing of the participant's intent to withdraw. OVA will verify, to the extent possible, the accuracy of the request to ensure that the ACP participant is making the request knowingly and voluntarily.

(d) OVA may, in its sole discretion, cancel an ACP participant's certification if the following occurs:

(1) The ACP participant provides false information on any part of the application.

(2) The ACP participant fails to notify OVA of a change of name or change of address within 5 calendar days of the date that the change occurred.

(3) The ACP participant's mail is returned to OVA as nondeliverable.

(e) Mail that is returned to OVA as nondeliverable will be retained for 5 business days before being returned to the sender as nondeliverable.

(f) ACP participants whose participation is canceled, withdrawn or expires may reapply for participation in ACP.

ADDRESS

§ 801.21. Agency use of substitute address.

(a) Commonwealth and local government agencies will accept the substitute address indicated on an ACP participant's authorization card whenever the participant's actual address is required except as set forth in 23 Pa.C.S. § 6707(2) (relating to agency use of designated address), which is incorporated by reference.

(b) The substitute address shall be in the following format on all mail sent to an ACP participant by a Commonwealth or local government agency:

Jane Doe, (ACP # _____)
P. O. Box _____
Harrisburg, PA 17105

(c) Commonwealth and local government agencies may not require an ACP participant to disclose the participant's actual address.

(d) Commonwealth and local government agencies may contact OVA during regular business hours to verify a person's participation in ACP and the substitute address.

§ 801.22. ACP records and release of information.

(a) Records regarding ACP applicants and participants are the property of OVA. This includes the following records:

(1) ACP applications.

(2) Actual residential, work or school addresses of ACP participant.

(3) Records related to Commonwealth or local government agencies' requests for waiver.

(b) OVA will verify the enrollment status of an ACP participant to Commonwealth and local government agencies. No other information regarding ACP participants will be released to any entities or persons except as provided in this section and § 801.23 (relating to disclosure of actual address) or as permitted and agreed to by the ACP participant in writing.

§ 801.23. Disclosure of actual address.

(a) OVA will disclose the actual address of ACP participants in accordance with 23 Pa.C.S. § 6708 (relating to disclosure of actual adress), which is incorporated by reference.

(b) Government agencies may request emergency disclosure of an ACP participant's actual address by contacting the phone number established by OVA.

(c) For government agencies making requests for emergency disclosure, the requirements are contained in 23 Pa.C.S. § 6710(c) (relating to emergency disclosure), which are incorporated by reference.

(d) OVA will disclose an ACP participant's actual address in accordance with the standards in 23 Pa.C.S. § 6710(b), which are incorporated by reference.

(e) Determinations regarding the emergency disclosure of an ACP participant's actual address will be made solely at the discretion of the Victim Advocate or a designee of the Victim Advocate.

WAIVER

§ 801.31. Agency request for waiver.

(a) A Commonwealth or local government agency requesting disclosure of an ACP participant's actual adress shall provide OVA with the information in 23 Pa.C.S. § 6709(a) (relating to waiver process), which is incorporated by reference, and specify in the written statement which persons shall have access to the actual address information, where the actual address information shall be maintained and how the actual address information shall be maintained.

(b) The completed request for a waiver shall be sent to OVA by certified mail.

(c) Upon receipt of an agency waiver request, OVA will contact the ACP participant in accordance with 23 Pa.C.S. § 6709(b), which is incorporated by reference.

(d) Whenever possible, the ACP participant may be given the opportunity to be heard by the Victim Advocate or Victim Advocate's designee regarding the waiver request. Notice and the opportunity to be heard regarding disclosure of an ACP participant's actual address will not be provided to an ACP participant if the requirements of 23 Pa.C.S. § 6709(b)(3) are met, which are incorporated by reference.

(e) OVA may grant the waiver request of Commonwealth and local government agencies if the ACP participant provides written consent to OVA to disclose the ACP participant's actual address.

§ 801.32. Waiver review.

(a) Promptly after receiving a complete waiver request as set forth in § 801.31 (relating to agency requests for waiver) from a Commonwealth or local government agency, OVA will review the request and determine whether to grant or deny the waiver request.

(b) OVA may require additional information during the review of the waiver request, and the request for information will toll the waiver review process until the Commonwealth or local government agency complies with OVA's request for additional information.

(c) OVA will grant a request for waiver from a Commonwealth or local government agency in accordance with 23 Pa.C.S. § 6709(d) (relating to waiver process), which is incorporated by reference.

(d) When OVA grants a waiver to a Commonwealth or local government agency, OVA will provide, in writing, to the requesting agency the following:

(1) The ACP participant's actual address.

(2) A description of the scope of permitted use of the ACP participant's actual address.

(3) A listing of the names or classes of persons permitted to have access to and use of the actual address.

(4) An explanation that the agency receiving the actual address is required to limit access to and use of the actual address.

(e) When the permitted use of the actual address is only for a set period of time, OVA will provide a date that the granted waiver expires. Upon reaching the expiration date, the agency which obtained a waiver will be required to no longer maintain, use or have access to the ACP participant's actual address and shall delete all references to the participant's actual address from all of its files.

(f) Any Commonwealth or local government agency receiving a waiver by OVA shall comply with 23 Pa.C.S. § 6709(f), which is incorporated by reference.

§ 801.33. Waiver appeal process.

(a) When OVA denies a request for a waiver, the Commonwealth or local government agency requesting the waiver will be notified of the refusal, in writing, by OVA and provide the reasons for denial of the waiver.

(b) Within 15 calendar days of receiving written notice of the waiver denial, the Commonwealth or local government agency may file a written exception with OVA. The exception must:

(1) Have attached a copy of the letter from OVA denying the original waiver request.

(2) State the reason that and the grounds upon which the original waiver request should be granted.

(3) Specifically respond to the reasons stated by OVA for denying the original waiver request.

(c) The filing of an exception to OVA shall be submitted by certified mail and the date of actual delivery to OVA controls for purposes of time calculations.

(d) If a Commonwealth or local government agency timely files exceptions, OVA will review the exception request in accordance with 23 Pa.C.S. § 6709(i) (relating to waiver process), which is incorporated by reference.

(e) A Commonwealth or local government agency may appeal the final determination of OVA in accordance with 23 Pa.C.S. § 6709(j), which is incorporated by reference.

[Pa.B. Doc. No. 06-1908. Filed for public inspection September 29, 2006, 9:00 a.m.]

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-00051926]

Acquisitions of Water and Wastewater Systems

The Pennsylvania Public Utility Commission, on August 17, 2006, adopted a final policy statement order which seeks to increase the number of mergers and acquisitions of small, nonviable water companies to foster regionalization and enhance the viability of jurisdictional water and waster systems in this Commonwealth.

Public Meeting held
August 17, 2006

Commissioners Present: Wendell F. Holland, Chairperson; James H. Cawley, Vice Chairperson; Bill Shane; Terrance J. Fitzpatrick; Kim Pizzingrilli

Final Policy Statement on Acquisitions of Water and Wastewater Systems; Doc. No. M-00051926

Final Policy Statement

By the Commission:

Introduction

By Order entered December 5, 2005 at the previously-captioned docket, this Commission issued an amendment to the existing policy statement regarding the acquisition of water and wastewater systems in the form of a proposed policy statement. This order addresses the comments to the Commission's proposed policy statement and sets forth a final policy statement on the acquisition of water and wastewater systems in Pennsylvania.

Background

On March 11, 2005, Aqua Pennsylvania, Inc. (Aqua) filed a petition with the Commission in which it requested the Commission to issue a proposed statement of policy regarding water and wastewater system acquisitions. Aqua's draft proposed policy statement was essentially an amendment to the Commission's existing policy statement regarding water and wastewater system acquisitions at § 69.711. Aqua's proposed Policy Statement set forth several substantive duties and procedural obligations for acquiring utilities, most notably, a requirement that the acquiring utility prepare an original cost study within six months of closing. In support of its petition, Aqua asserted that the adoption of its proposed policy statement would enhance the Commission's and the Department of Environmental Protection's (DEP) continued goals of promoting water system viability and regionalization and would provide a workable system under which acquiring companies could continue acquisitions and, concomitantly, ensure fair treatment of customers.

The Commission determined that comments on Aqua's petition would be helpful in reaching a final determination on the necessity of issuing an amended policy statement regarding acquisitions of water and wastewater systems in Pennsylvania. The notice requesting comments from interested parties regarding Aqua's petition was published at 35 Pa.B. 2366 (April 16, 2005). The Commission received comment from various parties on Aqua's petition for a proposed policy statement.[1]

[1] The National Association of Water Companies - Pennsylvania Chapter (NAWC), the Pennsylvania Office of Consumer Advocate (OCA), the Pennsylvania Municipal Authority Association (PMAA), and a private individual, Lawrence G. Spielvogel, all filed comments to Aqua's petition.

Upon its review of those comments, the Commission issued a revised proposed policy statement regarding the acquisition of water and wastewater systems. The revised proposed policy statement was published at 36 Pa.B. 824 (February 18, 2006). The Commission received comments from Rhoads & Sinon LLP (Rhoads), Aqua Pennsylvania Inc. (Aqua), York Water Company (York Water), Pennsylvania American Water Company (PAWC), the Pennsylvania Office of Consumer Advocate (OCA), and the Pennsylvania Office of Small Business Advocate (OSBA).

Rhoads & Sinon LLP

Rhoads states that the proposed policy statement addresses only a small portion of the problem in dealing with non-viable water systems. Rhoads states that the policy statement does not address the problem of non-viable systems that do not have the rate base or resources to provide adequate service and for which there is no viable provider of last resort. Rhoads suggests that a cooperative effort between the Commission, the DEP, and local municipalities would be ideal.

Aqua Pennsylvania Inc.

Aqua states that it generally supported the revised proposed policy statement. Aqua notes that Pennsylvania Class A water utilities historically have assisted the Commission's efforts to consolidate the numerous water and wastewater systems by acquiring investor-owned companies and municipal operations. Accordingly, Aqua acknowledges that the revised proposed policy statement will give clear and fair guidance to acquiring companies, customers and Commission staff on important acquisition issues. Additionally, Aqua states that it was in favor of an allowance of additional rate of return basis points as a means to encourage the acquisition of smaller, less viable water and wastewater systems that fall outside of the parameters of 66 Pa.C.S. § 1327.

Nevertheless, Aqua also offers some limited changes. Aqua states that it was opposed to the language contained in proposed §§ 69.711(d)(2)(i)(C) and 69.721 (e)(1)(iii) regarding the mandatory treatment of tap-in fees and hook-up fees and contributions. Aqua states that the nature and use of tap-in fees and hook-up fees vary greatly between municipal entities. Aqua notes that some entities actually invested the fees in their system, while others used the fees as revenues. Aqua asserts that since the facts of every acquisition may be different with regard to tap-in fees and hook-up fees, the policy statement should not bind the acquiring utility to a particular treatment. Aqua states that all that should be required of the acquiring utility is that it obtain tap-in and hook-up fee records from the seller so that it can present the information and the treatment of those fees can be resolved in the context of a formal rate case.

Additionally, Aqua objects to the second sentences of proposed §§ 69.711(d)(2)(iii) and 69.721(e)(3). Aqua states that the terms "direct or indirect" contributions in aid of construction (CIAC) creates ambiguity and should be deleted from these sentences. Aqua asserts that the examination of a system's original cost will reveal either the existence or non-existence of actual CIAC. Aqua further asserts that to guess as to what should be treated as CIAC would create uncertainty for accounting purposes and subject the acquiring utility to arbitrary and capricious CIAC estimations, which will have the effect of discouraging acquisitions.

Furthermore, Aqua states that while it supported the notion of an acquiring utility submitting an original cost study or statement of reliance on Commission or seller records prior to the next rate filing, it was concerned with the 6-month timeframe set forth in § 69.711(e) of the proposed policy statement. Aqua proposes that the timeframe be shortened to four months because it allows for a more timely inclusion of acquisitions in rate base.

Lastly, Aqua states that it supports the premise of proposed § 69.711(f) that the use of the purchase price per customer is relevant in determining the reasonableness of the purchase price of a water and wastewater system. Nevertheless, to remove any inconsistency, Aqua asserts that the phrase "in most situations" be removed from the second sentence of this subsection.

York Water Company

York Water states that it has been a strong supporter of the Commission's policy of encouraging larger, well-run water companies to acquire smaller, troubled water systems. Additionally, York Water states that since it is a purchaser of water systems throughout the York County area, it has substantial experience in determining the original cost of acquired facilities, and in preparing documentation in support of acquisition incentives for submission in subsequent base rate proceedings.

York Water's first comment concerned proposed § 69.711(b)(2)(i), which involves acquisitions for a price below depreciated original cost (negative acquisition adjustment). York Water recommends that the final clause of the first sentence be revised to read:

> . . . provided that the difference between the acquisition cost and *depreciated* original cost should be amortized as an addition to income over a *reasonable* period of time *or be passed through to ratepayers by such other methodology* that is determined by the Commission. (Emphasis indicates York Water's new language to be inserted in policy statement).

York Water asserts that this revision tracks the provisions of section 1327 of the Public Utility Code. York Water further recommends that the final sentence of this subsection be revised to state affirmatively the statutory exception to any pass through to ratepayers. York Water suggests the following language be inserted:

> No amortization or pass through will be required when the acquisition involves a matter of a substantial public interest.

York Water's second comment concerns proposed § 69.711(d)(2)(v). This subsection provides that an acquiring utility should reconcile and explain any differences between the original cost valuation and the Commission's records at the time the original cost (OC) study is filed with the Commission. York Water states that many of the acquisitions that it conducts are of municipal systems that are not regulated by the Commission, or are small utilities that may never have submitted original cost valuations to the Commission. York Water asserts that this subsection of the policy statement should be revised to recognize that Commission records may not exist.

Furthermore, York Water states that it is unclear what records are to be considered in such reconciliation. Accordingly, York Water recommends that this provision be revised to state:

In the case of an acquisition of a water or wastewater system that is regulated by the Commission, the acquiring utility should reconcile and explain any discrepancies between the acquiring utility's original cost plant-in-service valuation and the Commission's record, to the extent reasonably known and available to the acquiring utility, at the same time the supporting documentation for the study is filed.

York Water also has concerns regarding the 6-month timeframe for submitting to the Commission a newly prepared original cost plant-in-service valuation of the acquired system or statement in reliance on existing records set forth in § 69.711(e). York Water proposes that this timeframe should be shortened, particularly when the acquiring utility intends to rely upon existing records of the acquired utility or of the Commission.

Additionally, York Water notes that proposed § 69.711(e) indicates that the acquisition adjustment is not to be included in the next rate filing if the acquiring utility is unable to provide the Commission with an OC valuation more than six months before its next rate filing. However, York Water asserts that in order to be consistent with proposed § 69.721(f), it should not just be the acquisition adjustment that is not presented in the next rate case, but the entire acquisition should not be included. York Water further asserts that if the acquisition adjustment is not permitted to be reflected in a rate case under this provision, the acquiring utility, at its option, should not be required to reflect revenues resulting from the acquisition in that rate case.

York Water also had concerns about the proposed Commission staff audit of the valuation. York Water suggests that the policy statement should be clarified so that it states that the results of the audit, which is not an on-the-record proceeding, are not binding on any party, but may be presented in the acquiring utility's next rate case, subject to applicable evidentiary rules.

Lastly, York Water seeks clarification regarding proposed § 69.711(e)(2)(ii). York Water is uncertain as to what represents a Commission request. York Water encourages the Commission to make it clear that a request does not have to appear in a formal order or document from the Commission. York Water notes that occasionally it will receive informal requests from Commission staff to consider an acquisition of a troubled small utility adjacent to its service territory. York Water suggests that an acquisition that occurs following such an informal request should also qualify under this exception.

Pennsylvania American Water Company

PAWC states that it is strongly supportive of the Commission's goal of promoting water system viability and regionalization, and that it generally supports the Commission-revised proposed policy statement. However, PAWC has some concerns regarding various provisions of the policy statement.

PAWC first takes exception to proposed § 69.711(d)(2)(i)(C). PAWC disagrees with the conclusion that tap-in fees and hook-up fees booked by the seller as revenue must be booked as contributions. PAWC states that if tap-in fees or hook-up fees are booked by the seller as revenue, they should not be included as contributions. PAWC notes that when tap-in fees are booked by the seller as revenue, they are part of the seller's revenue requirement needed to support that utility's expenses, not its capital base. PAWC further notes that since the buyer usually assumes the seller's tariff, requiring the buyer to restate these revenues as contributions does not provide the buyer with adequate revenue to support the business. PAWC asserts that this will become a disincentive to regionalization and consolidation. Moreover, PAWC notes that a utility may have financed the entire cost of its asset base with debt while using tap-in fees to reduce its revenue requirement. PAWC goes on to state that requiring the buyer to restate these tap-in fees as contributions means that the buyer would automatically have to assume an unfavorable adjustment in order to acquire the system.

Secondly, like Aqua, PAWC has concerns regarding proposed § 69.711(d)(2)(iii). In identifying the procedure for booking CIAC, this subsection of the Commission proposed policy statement references "direct and indirect CIAC." PAWC states that the distinction between "direct" and "indirect" CIAC is undefined and therefore confusing. PAWC notes that the term "CIAC" is defined in the National Association of Regulatory Utility Commissioners Uniform System of Accounts without distinction with regard to its being direct or indirect.

Thirdly, like the other commentators, PAWC has concerns regarding the fact that in order to request an acquisition adjustment, the acquiring utility had a 6-month timeframe to submit an OC study to the Commission prior to its next rate case filing. PAWC asserts that this requirement in proposed § 69.711(e) is onerous and unnecessary, and counter-productive to the Commission's goals of promoting regionalization and acquisition of small non-viable water and wastewater systems. PAWC further asserts it is not reasonable to presume a seller's willingness to sell a water or wastewater system and the acquirer's completion of an original cost study will coincide so far in advance of the acquiring utility's next rate case. PAWC recommends that the 6-month requirement be changed to 30 days, which is consistent with the notice requirement for filing a rate case.

Finally, PAWC has a concern with proposed § 69.711(f). PAWC states that it agreed that purchase price per customer is a factor to be considered, but objects to giving this one metric such elevated status. PAWC suggests that this subsection be revised to identify the purchase price per customer as one of the listed considerations without singling it out for special consideration.

Office of Consumer Advocate

The OCA submits that the Commission-revised proposed policy statement is more consistent with section 1327 of the Code, 66 Pa.C.S. § 1327, than Aqua's original policy statement. However, OCA submits that some of the proposed sections are still not consistent with section 1327 and are not necessary to set forth in a policy statement because they are already set forth in the statute.

The OCA has some concerns regarding acquisition incentives. In particular, the OCA's chief concern with the rate of return premium set forth in proposed § 69.711(b)(1) is to ensure that the Commission carefully applies this acquisition premium and that it be placed in the proper context in each case. Additionally, the OCA had concerns with proposed § 69.711(b)(5). The OCA asserts that this provision is too open-ended and vague and requested that it be deleted from the policy statement.

Additionally, the OCA seeks clarification of proposed § 69.711(d). The OCA states that the language at the beginning of this subsection could be interpreted so that the following subsections are the only type of documentation needed to justify an acquisition adjustment. The OCA notes, however, that it is clear under section 1327(a) of the Code that the acquiring utility is required to meet all of the criteria listed in section 1327(a). The OCA recommends that the proposed subsection should be revised so that it is clear that it does not address the criteria required under section 1327(a), which would allow the acquiring utility to include the acquisition

adjustment in its rates, but only addresses the determination of the original cost of the acquired utility. Moreover, the OCA states that there is no requirement in § 1327 that the acquiring utility perform an OC study. The OCA further states that an OC study should only be required when there is no other way of determining the net original cost or when there is a good deal of assurance that the records of the seller are inaccurate.

Furthermore, the OCA has significant concerns regarding proposed § 69.711(e). The OCA states that it was concerned about the situation where Commission staff completes the audit of the OC study of the acquired system and then releases its findings before the acquiring utility files its next rate case. The OCA cautions that the Commission, in the context of the policy statement, considers the audit to be a final determination regarding the original cost for ratemaking purposes, the policy statement goes beyond what can be done in a policy statement and presents a due process violation. Moreover, the OCA states that this subsection of the policy statement is inconsistent with section 1327 because the timing set forth in that provision is not envisioned under 66 Pa.C.S. § 1327(b).

Lastly, the OCA has concerns regarding proposed § 69.711(f). The OCA states that the purchase price per customer alone is not an appropriate way to judge the reasonableness of the purchase price for purposes of meeting section 1327(a)(6). The OCA further states that this information alone is not sufficient to judge whether the acquisition is in the best interests of the acquiring utility's existing customers because the purchase price per customer is not meaningful for ratemaking purposes.

Office of Small Business Advocate

The OSBA's sole concern is with proposed § 69.721(g). The OSBA states that awarding a rate of return premium to an acquiring utility may impose an unreasonable burden on the pre-acquisition customers of the acquiring utility. The OSBA suggests that the same standard that applies when an acquiring utility qualifies for an acquisition adjustment—the rates charged to its preacquisition customers will not increase unreasonably because of the acquisition—should apply when a larger utility is acquiring a viable utility. The OSBA also notes that larger utilities have been regularly acquiring smaller utilities that do not qualify as non-viable. The OSBA asserts that since these acquisitions have occurred without a rate of return premium, the economic gain to the acquiring utility has apparently been a sufficient incentive. Accordingly, the OSBA requests that this subsection be deleted from the Commission's proposed policy statement.

Discussion

After reviewing the comments to the proposed policy statement, we will revise portions of the policy statement so that it is more consistent with the parameters of section 1327 of the Code and tracks sound accounting practices.

First, we address Rhoads comments. Rhoads suggests that a cooperative effort between the Commission, the Department of Environmental Protection, and local municipalities would be ideal to discuss and address many of the issues faced by non-viable water system operators. We note the Commission has established a Small Water Company Task Force that includes representation by DEP, PENNVEST and the OCA. Additionally, the Commission also interacts with DEP regional offices on a regular basis about problem company situations and compliance. Furthermore, we interact with counties, municipalities and their planning offices when we process applications for certificates of public convenience. The Commission is also a member of DEP's Technical Assistance Center Advisory Board (TAC Board), which includes the Pennsylvania Municipal Authorities Association and the Association for Boroughs and Townships. The TAC meets quarterly and often discusses water utilities' problems and solutions. We believe that we currently have in place appropriate mechanisms to bring all parties of interest together and address their concerns to insure adequate service to the public. Nonetheless, expansion of our interaction with other relevant entities continues to be an important component in achieving the elimination of non-viable water and wastewater companies.

We note that York Water had a concern regarding proposed § 69.711(b)(2)(i), which involves acquisitions for a price below depreciated original cost (negative acquisition adjustment). Specifically, York Water recommends that this provision should be more consistent with 66 Pa.C.S. § 1327(e). In order to remove any substantial ambiguity regarding this subsection, we will adopt York Water's recommended language and revise this subsection of the policy statement so that it is more consistent with section 1327(e) of the Code.

The OCA believes that proposed § 69.711(b)(5) is too open-ended and vague. This subsection references additional acquisition incentives that may be considered by the Commission. We agree with OCA's assessment. We note that larger utilities have been regularly acquiring smaller non-viable utilities and that the acquisition adjustments that have been in existence since 1990 have apparently been a sufficient incentive for acquiring utilities. Therefore, we will delete this subsection from the policy statement.

York Water and the OCA both suggest that we clarify proposed § 69.711(d) of the policy statement regarding documentation for an acquisition adjustment. We note that the OCA stated that the language at the beginning of this subsection could be interpreted so that the following subsections are the only type of documentation needed to qualify for an acquisition adjustment. We acknowledge that it is clear that the acquiring utility is required to meet all of the criteria listed in 66 Pa.C.S. § 1327(a)(1)—(9) before it is eligible to claim an acquisition adjustment to its rate base. Therefore, we agree with the OCA's recommendation that this subsection should be revised so that it is clear it does not address the criteria required under section 1327(a)(1)—(9) of the Code, but only addresses the documentation that should be provided by the acquiring utility to support a requested acquisition adjustment during its next rate case. It should be understood that the acquiring utility is still required to meet all of the eligibility criteria outlined in 66 Pa.C.S. § 1327(a)(1)—(9) before it can request inclusion of the acquisition adjustment in its rate base. Therefore, we will modify proposed § 69.711(d) accordingly.

Additionally, York Water stated that it had concerns regarding proposed § 69.711(d)(v) of the policy statement. This subsection provides that an acquiring utility should reconcile and explain any differences between the original cost valuation and the Commission's records at the time the OC study is filed with the Commission. York Water asserted that this subsection of the policy statement should be revised to recognize that Commission records may not exist. Furthermore, York Water stated that it is unclear what records are to be considered in such reconciliation. Accordingly, York Water recommended that this provision be revised to state:

In the case of an acquisition of a water or wastewater system that is regulated by the Commission, the acquiring utility should reconcile and explain any discrepancies between the acquiring utility's original cost plant-in-service valuation and the Commission's record, to the extent reasonably known and available to the acquiring utility, at the same time the supporting documentation for the study is filed.

We adopt York Water's proposed revision to § 69.711(d)(v).

We note that both Aqua and PAWC had concerns regarding the treatment of tap-in fees and hook-up fees set forth in §§ 69.711(d)(2)(i)(C) and 69.721(e)(1)(iii) of the proposed policy statement. Accordingly, we will revise both sections so that the acquiring utility is not required to give tap-in fees and hook-up fees mandatory treatment as contributions. Additionally, both Aqua and PAWC had concerns with the proposed policy statement's distinction between "direct" and "indirect" CIAC. We note that PAWC indicated that CIAC is defined in the National Association of Regulatory Utility Commissioners Uniform System of Accounts without distinction with regard to its being direct or indirect. Therefore, we will revise §§ 69.711(d)(2)(iii) and 69.721(e)(3) in order to eliminate any distinction.

Aqua, York Water, PAWC and the OCA all had concerns with the timeframe set forth in §§ 69.711(e) and 69.721(f) of the Commission-proposed policy statement. Aqua stated that while it supported the notion of an acquiring utility submitting an OC study or statement of reliance of Commission or seller records prior to the next rate filing, Aqua was concerned with the 6-month timeframe. Aqua proposed that the timeframe be shortened to four months because it allows for a more timely inclusion of acquisitions in rate base.

York Water also had concerns regarding the 6-month timeframe set forth in the subsections. York Water proposed that this timeframe should be shortened, particularly when the acquiring utility intends to rely upon existing records of the acquired utility or of the Commission.

Additionally, York Water suggested that if the acquisition adjustment cannot be included in the next rate filing because the acquiring utility was unable to provide the Commission with an OC valuation more than six months before its next rate filing, then the entire acquisition should not be included in the acquiring utility's next rate case. York Water further determined that if the rate base is not permitted to be reflected in a rate case under this provision, the acquiring utility, at its option, should not be required to reflect revenues resulting from the acquisition in that rate case.

PAWC asserted that the 6-month timeframe in proposed §§ 69.711(e) and 69.721(f) is onerous and unnecessary, and counter-productive to the Commission's goals of promoting regionalization and acquisition of small nonviable water and wastewater systems. PAWC recommended that the 6-month requirement be changed to 30 days, which is consistent with the notice requirement for filing a rate case.

The OCA also had concerns regarding the timeframe of submitting the supporting documentation for the acquisition adjustment. In particular, OCA states that the proposed subsection is inconsistent with section 1327 of the Code because the timing set forth in that provision is not envisioned under 66 Pa.C.S. § 1327(b).

Additionally, the OCA and York Water also had other significant concerns regarding proposed § 69.711(e). Both parties were concerned about the situation where Commission staff completes the audit of the OC study of the acquired system and releases its findings publicly before the rate case is filed.

Lastly, York Water had concerns about the exception set forth in proposed § 69.711(e)(2)(ii) of the policy statement. York Water noted that occasionally it will receive informal requests from Commission staff to consider an acquisition of a troubled small utility adjacent to its service territory. York Water suggests that an acquisition that occurs following such an informal request should also qualify under this exception.

In light of these concerns regarding this subsection, we believe that it is appropriate to make several modifications to the proposed policy statement. We note OCA's comment that proposed § 69.711(e) of the policy statement appears to be inconsistent with section 1327(b) of the Code. We agree with this assessment. We recognize that an acquiring utility that is eligible to receive a 1327(a) acquisition adjustment can request such an adjustment before the acquisition is consummated or prior to its next filed rate case. See 66 Pa.C.S. § 1327(b). Therefore, we will modify § 69.711(c) of the policy statement so that it states expressly that an acquiring utility can elect to request a 1327(a)-acquisition adjustment in accordance with section 1327(b) of the Code or during its next rate case. Nevertheless, given the interrelationship of acquisition adjustments and just and reasonable rates, the Commission prefers that an acquiring utility request a 1327(a) acquisition adjustment during its next filed rate case and not outside the context of a rate case.

Additionally, we note that section 1327 of the Code does not require that an original cost study be performed each time an acquiring utility wants to include an acquisition adjustment. However, the Commission acknowledges that one of the primary reasons for this policy statement was to provide guidance as to when and whether an acquiring utility should prepare an original cost study. In fact, Aqua previously noted in this proceeding that, in many instances, Commission staff desires the acquiring company to prepare an original cost study in order to support the acquiring utility's request for an acquisition adjustment to its rate base.

However, it is recognized that requesting the acquiring utility for such specific bookkeeping information as part of the application process for the acquisition is not appropriate. See *Application of Pa. Suburban Water Co. and Eagle Rock Utility Corp*, Docket Nos. A-210104F0023 and A-210075F2000 (Order entered March 5, 2005) (*Eagle Rock*). § 69.711(e) was an attempt to address this concern. Therefore, we believe it is appropriate to modify proposed § 69.711(e) of the policy statement so as to indicate clearly that when the acquiring utility elects to request an acquisition adjustment during its next rate case, the acquiring utility should file the supporting documentation set forth in the policy statement. Although, we suggest that the acquiring utility, if it makes a claim for an acquisition adjustment outside of the context of a rate case, should also file adequate documentation to support its request for an acquisition adjustment as well.

Additionally, we will revise the timeframe in proposed § 69.711(e) to four months. We agree with Aqua that a 4-month timeframe allows for a more timely inclusion of acquisitions in rate base. Moreover, we agree with York Water's assertion that if the acquisition adjustment is not

included in the next rate case because the acquiring utility is unable to provide the Commission with an OC valuation in sufficient time, then the acquiring utility should not include any revenues or expenses related to the acquisition, including the requested acquisition adjustment, in its next filed rate case.

We note that York Water and the OCA had significant concerns about Commission staff audits of OC valuations. We believe that it is appropriate to clarify the purpose of such an audit. If staff completes an audit before the rate case is filed, the results of the audit will not be binding on any party, but rather the audit report will be made available to the public and the report can be presented in the acquiring utility's next rate case, subject to applicable evidentiary rules. This will cure any due process concerns.

Finally, we understand York Water's concern regarding staff's informal requests to acquire a troubled small utility adjacent to its service territory. However, we believe that the existing language in the proposed policy statement is sufficient and clearly encompasses informal requests from the Commission. If York Water still has concerns whether informal requests fall within this exception, York Water can always take steps on its own to memorialize any informal request from staff. We note, however, that regardless of whether it is considered an "informal" request from the Commission by the acquiring utility, the acquisition must still meet the requirements of section 1327 of the Code.

Aqua and PAWC both had concerns regarding the use of the purchase price per customer as outlined in proposed § 69.711(f). Aqua stated that while it believes that the purchase price per customer is relevant in determining the reasonableness of the purchase price of a water or wastewater system, in order to remove any inconsistency, the phrase "in most situations" should be removed from the second sentence of this subsection. PAWC suggested that this subsection be revised to identify the purchase price per customer as one of the listed considerations without singling it out for special consideration. In light of these comments, we will modify this subsection so that the purchase price per customer is listed only as one of several relevant factors to be considered in determining the reasonableness of the purchase price of the water and wastewater system.

The OSBA had a significant concern about allowing an acquisition adjustment to be requested when a large utility acquires a viable water and wastewater system. In particular, the OSBA noted that even without a rate of return premium, larger utilities have been regularly acquiring smaller utilities that do not qualify as nonviable. Consequently, the OSBA asserts that the economic gain to the acquiring utility has apparently been a sufficient incentive. Nevertheless, as we noted earlier, acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development and provide environmental enhancements. We strongly believe that these types of acquisitions generally serve public policy goals and that some sort of acquisition premium for this category of acquisition is appropriate.

Based upon the comments received and our consideration of the issues raised, we adopt this final policy statement as set forth in Annex A; *Therefore,*

It Is Ordered:

1. That 52 Pa. Code Chapter 69 is amended by amending § 69.711 and adding § 69.721 to read as set forth in Annex A.

2. That the Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. That the Secretary shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. That a copy of this order and Annex A shall be served upon the office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, all jurisdictional water and wastewater utilities, the Department of Environmental Protection, the National Association of Water Companies-Pennsylvania Chapter, the Pennsylvania Rural Water Association, the Pennsylvania Municipal Authority Association, Rhoads & Sinon LLP and Lawrence G. Spielvogel.

5. That this policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

Fiscal Note: Fiscal Note 57-246 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

ACQUISITIONS OF SMALL NONVIABLE WATER AND WASTEWATER SYSTEMS—STATEMENT OF POLICY

§ 69.711. Acquisition incentives

(a) *General.* To accomplish the goal of increasing the number of mergers and acquisitions to foster regionalization, the Commission will consider the acquisition incentives in subsection (b). The following parameters shall first be met in order for Commission consideration of a utility's proposed acquisition incentive. It should be demonstrated that:

(1) The acquisition serves the general public interest.

(2) The acquiring utility meets the criteria of viability that will not be impaired by the acquisition; that it maintains the managerial, technical and financial capabilities to safely and adequately operate the acquired system, in compliance with 66 Pa.C.S. (relating to the Public Utility Code), the Pennsylvania Safe Drinking Water Act (35 P. S. §§ 721.1—721.17) and other requisite regulatory requirements on a short and long-term basis.

(3) The acquired system has less than 3,300 customer connections; the acquired system is not viable; it is in violation of statutory or regulatory standards concerning the safety, adequacy, efficiency or reasonableness of service and facilities; and that it has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Protection or the Commission.

(4) The acquired system's ratepayers should be provided with improved service in the future, with the necessary plant improvements being completed within a reasonable period of time.

(5) The purchase price of the acquisition is fair and reasonable and the acquisition has been conducted through arm's length negotiations.

(6) The concept of single tariff pricing should be applied to the rates of the acquired system, to the extent that it is reasonable. Under certain circumstances of extreme differences in rates, or of affordability concerns, consideration should be given to a phase-in of the rate difference over a reasonable period of time.

(b) *Acquisition incentives.* In its efforts to foster acquisition of suitable water and wastewater systems by viable utilities when the acquisitions are in the public interest, the Commission seeks to assist these acquisitions by permitting the use of a number of regulatory incentives. Accordingly, the Commission will consider the following acquisitions incentives:

(1) *Rate of return premiums.* Under 66 Pa.C.S. § 523 (relating to performance factor considerations), additional rate of return basis points may be awarded for certain acquisitions and for certain associated improvement costs, based on sufficient supporting data submitted by the acquiring utility within its rate case filing. The rate of return premium as an acquisition incentive may be the most straightforward and its use is encouraged.

(2) *Acquisition adjustment.* When the acquiring utility's acquisition cost differs from the depreciated original cost of the water or wastewater facilities first devoted to public use, the difference may be treated as follows for ratemaking purposes:

(i) *Credit acquisition adjustment.* Under 66 Pa.C.S. § 1327(e) (relating to acquisition of water and sewer facilities), when a utility pays less than the depreciated original cost of the acquired system, the acquiring utility may book and include in rate base the depreciated original cost of the acquired system, provided that the difference between the acquisition cost and depreciated original cost should be amortized as an addition to income over a reasonable period of time or be passed through to ratepayers by another methodology that is determined by the Commission. The acquiring utility may argue that no amortization or pass through is appropriate when the acquisition involves a matter of substantial public interest.

(ii) *Debit acquisition adjustment.* Under 66 Pa.C.S. § 1327(a), when a utility pays more than the depreciated original cost of the acquired system, the acquiring utility may book and include in rate base the excess of acquisition cost over depreciated original cost of the acquired system, provided that the utility can meet the requirements of 66 Pa.C.S. § 1327(a). When the acquisition does not qualify under 66 Pa.C.S. § 1327(a), the debit acquisition adjustment should be treated in accordance with generally accepted accounting principles and not be amortized for ratemaking purposes.

(3) *Deferral of acquisition improvement costs.* In cases when the plant improvements are of too great a magnitude to be absorbed by ratepayers at one time, rate recovery of the improvement costs may be recovered in phases. There may be a one time treatment—in the initial rate case-of the improvement costs but a phasing—in of the acquisition, improvements and associated carrying-costs may be allowed over a finite period.

(4) *Plant improvement surcharge.* Collection of a different rate from customers of the acquired system upon completion of the acquisition could be implemented to temporarily offset extraordinary improvement costs. In cases when the improvement benefits only those customers who are newly acquired, the added costs may be allocated on a greater than average level—but less than 100%—to the new customers for a reasonable period of time, as determined by the Commission.

(c) *Procedural implementation.*

(1) An acquiring utility that has met the criteria set forth in 66 Pa.C.S. § 1327(a)(1)—(9) for inclusion of a debit acquisition adjustment in its rate base, may elect to have this acquisition adjustment considered on a case-by-case basis as set forth in 66 Pa.C.S. § 1327(b), or as part of its next rate case filing. The acquiring utility should file the supporting documentation outlined in subsection (d) to support the requested acquisition adjustment.

(2) The appropriate implementation procedure to qualify for the other acquisition incentives in subsection (b) would be to file the appropriate supporting documentation during the next filed rate case.

(3) In acquisition incentive filings, the burden of proof rests with the acquiring utility.

(d) *Documentation to support inclusion of acquisition adjustment.* When an acquiring utility elects to have the acquisition adjustment to its rate base considered as a part of its next rate case filing, the acquiring utility should file the following documentation to support the acquisition adjustment to its rate base:

(1) *Statement of reliance on existing records.* An acquiring utility may elect to rely in whole or in part upon the original cost records of the seller or Commission in determining the original cost of the used and useful assets of the acquired system.

(2) *Preparation of data to support acquisition adjustment.* An acquiring utility, upon its own election, may file an original cost plant-in-service study with the Commission to support its requested acquisition adjustment to its rate base. An original cost study is one method of determining the valuation costs of the property of a public utility. It requires the acquiring utility to develop realistic plant balances and accumulates the records and accounting details that support those balances. Disputes regarding the acquiring utility's original cost valuation of the assets of the acquired system will be resolved in the context of a rate proceeding when interested parties will have an opportunity to be heard.

(i) *Contents of an original cost plant-in-service study.* When an acquiring utility elects to submit its own original cost of plant-in-service valuation, the acquiring utility is obligated to exercise due diligence and make reasonable attempts to obtain, from the seller, documents related to original cost. In particular, as part of its exercise of due diligence, the acquiring utility should request from the seller, for purposes of determining the original cost plant-in-service valuation, the original cost of the assets being acquired and records relating to contributions in aid of construction (CIAC), such as the following:

(A) Accounting records and other relevant documentation and agreements of donations or contributions, services, or property from states, municipalities or other government agencies, individuals, and others for construction purposes.

(B) Records of unrefunded balances in customer advances for construction (CAC).

(C) Records of customer tap-in fees and hook-up fees.

(D) Prior original cost studies.

(E) Records of local, State and Federal grants used for construction of utility plant.

(F) Relevant PennVEST or Department of Environmental Protection records.

(G) Any Commission records.

(H) Summary of the depreciation schedules from all filed Federal tax returns.

(I) Other accounting records supporting plant-in-service.

(ii) *Failure of seller to provide cost-related documents.* The failure of a seller to provide cost-related documents, after reasonable attempts to obtain the data, will not be a basis for the Commission's denial of the inclusion of the value of the acquired system's assets in its proposed rate base. Because the documents obtained from the seller may be incomplete and may result in an inaccurate valuation, the acquiring utility will not be bound by the incomplete documents from the seller in the preparation of its original cost plant-in-service valuation.

(iii) *Procedure for booking CIAC.* The acquiring utility, at a minimum, should book as CIAC contributions that were properly recorded on the books of the system being acquired. If evidence supports other CIAC that was not booked by the seller, the acquiring utility should make a documented effort to determine the actual CIAC and record the contributions for ratemaking purposes, such as lot sale agreements or capitalization vs. expense of plant-in-service on tax returns.

(iv) *Plant retired/not booked/not used and useful.* The acquiring utility should identify all plant retirements and plant no longer used and useful, and complete the appropriate accounting entries.

(v) *Reconciliation with commission records.* In the case of an acquisition of a water or wastewater system that is regulated by the Commission, the acquiring utility should reconcile and explain any discrepancies between the acquiring utility's original cost plant-in-service valuation and the Commission's records, to the extent reasonably known and available to the acquiring utility, at the same time the supporting documentation for the study is filed.

(e) *Time to submit original cost valuation.* When the acquiring utility elects to request an acquisition adjustment, it should submit a copy of its newly prepared original cost plant-in-service valuation of the acquired system or a statement of reliance of the existing records of the Commission or the seller to the Commission's Secretary's Bureau, the Bureau of Audits, the Bureau of Fixed Utility Services, the Office of Trial Staff, the Office of Consumer Advocate, and the Office of Small Business Advocate at least 4 months prior to the date that the acquiring utility plans to make its next rate case filing with the Commission.

(1) The Commission staff may conduct an audit of the original cost valuation, but if no staff audit is completed and released at public meeting before the date of the rate case filing, the Commission's determination of the original cost valuation in the rate case will be deemed final action on the original cost valuation and any associated acquisition adjustment, absent subsequently discovered fraud or misrepresentation. When staff completes an audit before the rate case is filed, the results of the audit will not be binding on any party, but rather the audit report will be made available to the public and the report can be presented in the acquiring utility's next rate case, subject to applicable evidentiary rules.

(2) When the acquiring utility makes a rate case filing sooner than the 4-month window, the acquiring utility should not include any revenues or expenses related to the acquisition, including the requested acquisition adjustment in its proposed rate base unless it includes the original cost valuation with the rate filing and one of the following circumstances applies:

(i) A compelling reason exists for requesting the acquisition adjustment in the current rate filing.

(ii) The acquisition was requested or otherwise directed by the Commission.

(iii) No statutory party objects to the inclusion of the acquisition adjustment to the proposed rate base of the acquiring utility.

(f) *Purchase price of the water and wastewater system.* The factors relevant to the reasonableness of the purchase price of the acquired water and wastewater system include:

(1) Promotion of long-term viability.

(2) Promotion of regionalization.

(3) Usage per customer.

(4) Growth rates.

(5) Cost of improvements.

(6) Age of the infrastructure.

(7) Return on equity.

(8) Existing rates.

(9) Purchase price per customer.

ACQUISITIONS OF VIABLE WATER AND WASTEWATER SYSTEM—STATEMENT OF POLICY

§ 69.721. Water and wastewater system acquisitions.

(a) *General.* The Commission believes that further consolidation of water and wastewater systems within this Commonwealth may, with appropriate management, result in greater environmental and economic benefits to customers. The regionalization of water and wastewater systems through mergers and acquisitions will allow the water industry to institute better management practices and achieve greater economies of scale. To further this goal, the Commission sets forth the guidance in this section regarding the acquisition of water and wastewater systems. Guidance specifically applicable to the acquisition of nonviable systems is set forth in § 69.711 (relating to acquisition incentives).

(b) *Inclusion of acquisition assets in rate base.* After the approval of an acquisition, as evidenced by the receipt of a certificate of public convenience, an acquiring utility may request the inclusion of the value of the used and useful assets of the acquired system in its rate base. A request will be considered during the acquiring utility's next filed rate case proceeding. See 66 Pa.C.S. § 1311(a) (relating to valuation of and return on the property of a public utility).

(c) *Method of valuation of acquisition assets.* The assets of the acquired system should be booked at the original cost of the acquired system when first devoted to the public service less the applicable accrued depreciation and related contributions. See 66 Pa.C.S. § 1311(b).

(d) *Determining original cost of acquisition assets.* An acquiring utility may use various methods to support its valuation of the original cost of the used and useful assets of the acquired water or wastewater system. For example, an acquiring utility may elect to rely in whole or in part upon the original cost records of the seller or the Commission in determining the original cost of the used and useful assets of the acquired system that are to be included in its rate base.

(e) *Preparation of an original cost of plant-in-service valuation.* The Commission will not require an acquiring utility to submit a full original cost plant-in-service study in order to determine the value of the assets of the acquired system. An acquiring utility, upon its own election, may file an original cost study with the Commission to support its valuation of the assets of the acquired water and wastewater system proposed to be included in its rate base. A full original cost plant-in-service study is one method of determining the valuation costs of the property of a public utility. It requires the acquiring utility to develop realistic plant balances and accumulates the records and accounting details that support those balances. Disputes regarding the acquiring utility's original cost valuation of the acquired assets will be resolved in the context of a rate proceeding in which all interested parties will have an opportunity to be heard.

(1) *Contents of an original cost plant-in-service study.* The acquiring utility is obligated to exercise due diligence and make reasonable attempts to obtain, from the seller, documents related to original cost. In particular, as part of its due diligence, the acquiring utility should request from the seller, for purposes of determining the original cost plant-in-service valuation, the original cost of the assets being acquired and records relating to contributions in aid of construction (CIAC), such as the following:

(i) Accounting records and other related documentation and agreements of donations or contributions, services, or property from states, municipalities or other government agencies, individuals, and others for construction purposes.

(ii) Records of unrefunded balances in customer advances for construction (CAC).

(iii) Records of customer tap-in fees and hook-up fees.

(iv) Prior original cost studies.

(v) Records of local, State and Federal grants used for construction of utility plant.

(vi) Relevant PennVEST or Department of Environmental Protection records.

(vii) Any Commission records.

(viii) Summary of the depreciation schedules from all filed Federal tax returns.

(ix) Other accounting records supporting plant-in-service.

(2) *Failure of seller to provide cost-related documents.* The failure of a seller to provide cost-related documents, after reasonable attempts to obtain the data, will not be a basis for the Commission's denial of the inclusion of the value of the acquired system's assets in its proposed rate base. Because the documents obtained from the seller may be incomplete and may result in an inaccurate valuation, the acquiring utility will not be bound by the incomplete documents from the seller in the preparation of its original cost plant-in-service valuation.

(3) *Procedure for booking CIAC.* The acquiring utility, at a minimum, should book as CIAC contributions that were properly recorded on the books of the system being acquired. If evidence supports other CIAC that was not booked by the seller, the acquiring utility should make a documented effort to determine the actual CIAC and record the contributions for ratemaking purposes, such as lot sale agreements or capitalization versus expenses of plant-in-service on tax returns.

(4) *Plant retired/not booked/not used and useful.* The acquiring utility should identify all plant retirements and plant no longer used and useful and complete the appropriate accounting entries.

(5) *Reconciliation with commission records.* In the case of an acquisition of a water or wastewater system that is regulated by the Commission, the acquiring utility should reconcile and explain any discrepancies between the acquiring utility's original cost plant-in-service valuation and the Commission's records, to the extent reasonably known and available to the acquiring utility, at the same time the supporting documentation for the study is filed.

(f) *Time to submit original cost valuation.* When the acquiring utility elects to request inclusion of its acquisition in its rate base, it should submit a copy of its newly prepared original cost plant-in-service valuation of the acquired system or a statement of reliance of the existing records of the Commission or the seller to the Commission's Secretary's Bureau, the Bureau of Audits, the Bureau of Fixed Utility Services, the Office of Trial Staff, the Office of Consumer Advocate and the Office of Small Business Advocate at least 4 months prior to the date that the acquiring utility plans to make its next rate case filing with the Commission.

(1) The Commission staff may conduct an audit of the original cost valuation, but if no staff audit is completed and released at public meeting before the date of the rate case filing, the Commission's determination of the original cost valuation in the rate case will be deemed final action on the original cost valuation, absent subsequently discovered fraud or misrepresentation. When staff completes an audit before the rate case is filed, the results of the audit will not be binding on any party, but rather the audit report will be made available to the public and the report can be presented in the acquiring utility's next rate case, subject to applicable evidentiary rules.

(2) When the acquiring utility makes a rate case filing sooner than the 4-month window, the acquiring utility should not include any revenues or expenses related to the acquisition, including the requested acquisition adjustment in its proposed rate base unless it includes the original cost valuation with the rate filing and one of the following circumstances applies:

(i) A compelling reason exists for requesting the acquisition in the current rate filing.

(ii) The acquisition was requested or otherwise directed by the Commission.

(iii) No statutory party objects to the inclusion of the acquisition to the proposed rate base of the acquiring utility.

(g) *Acquisition incentives*. In its efforts to foster the acquisitions of smaller, less viable water and wastewater systems by larger more viable systems, the Commission, under 66 Pa.C.S. § 523 (relating to performance factor consideration), has broad latitude to allow the acquiring utility to request a rate of return premium in a subsequent rate case. The allowance of a rate of return premium, as an acquisition incentive for an acquisition that falls outside of the parameters of 66 Pa.C.S. § 1327 (relating to acquisition of water and sewer utilities), may be requested by those utilities that have a demonstrated track record of acquiring and improving the service provided to the customers of smaller and less viable water systems. The allowance of additional rate of return basis points may be awarded based on sufficient supporting data submitted by the utility within its rate case filing.

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