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VIA ELECTRONIC FILING

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

January 11, 2022

Re: Pa. PUC v. Aqua Pa., Inc., and Aqua Pa. Wastewater, Inc.,
R-2021-3027385, R-2021-3027386

Dear Secretary Chiavetta:

I have enclosed for electronic filing the Main Brief of Masthope Mountain Community Association in the above-referenced matters. I have served copies on counsel via email per the certificate of service.

Should you have any questions, please feel free to contact me.

Very truly yours,

GA BIBIKOS LLC



George A. Bibikos
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Community Association

Enclosures

c: Honorable Mary Long (via email and overnight delivery)
Certificate of Service (via email)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc.	:	
and Aqua Pennsylvania Wastewater	:	C-2021-3028992
	:	C-2021-3028996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing upon the parties and in the manner listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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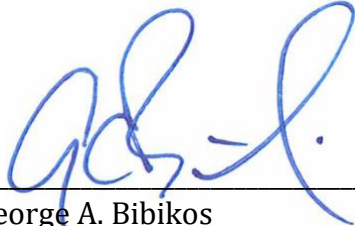
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Dated this 11th day of January, 2022.



George A. Bibikos

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc.	:	
and Aqua Pennsylvania Wastewater, Inc.	:	C-2021-3028992
	:	C-2021-3028996

MAIN BRIEF OF MASTHOPE MOUNTAIN COMMUNITY ASSOCIATION

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January 11, 2022

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I. INTRODUCTION AND SUMMARY OF MASTHOPE'S POSITION

Masthope Mountain Community Association ("Masthope") submits its main brief in support of its positions and the recommendations advanced by its expert witness, Robert A. Rosenthal, regarding the water and wastewater rate increases proposed by Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (together "Aqua"). As described in more detail below:

- ***Rate Base, Revenues, Expenses, Taxes, and Rate of Return.*** Masthope has not taken specific positions regarding rate base, revenues, expenses, taxes, rate of return, adjustments thereto, or related matters. Masthope reserves the right to address any such issues in its reply brief if and as necessary.
- ***Quality of Service: Masthope WWTP.*** The Commission should reject Aqua's request to increase rates for Masthope ratepayers for lack of adequate and reasonable wastewater service. The Masthope WWTP has experienced hydraulic overloading since at least 2018. The hydraulic overload conditions at the Masthope WWTP resulted in a PADEP-imposed moratorium on new building connections in the community that remains in place. It would be unjust and unreasonable to increase rates for Masthope ratepayers for a second time in the past three years despite ongoing and unresolved service issues, particularly when Aqua has represented that it may take the company five years to upgrade and expand the Masthope WWTP to fully resolve the hydraulic overload conditions. If the Commission approves any increase in rates, the Commission should impose conditions and deadlines on Aqua to assure that the company timely resolves the hydraulic overload conditions and permanently eliminates building restrictions that detrimentally affect the Masthope community.
- ***Rate Structure and Rate Design: Act 11 Revenue Allocation and Impact on Masthope.*** The Commission should reject any rate design or rate structure proposal for allocating water revenues to Aqua's wastewater revenue requirement that results in a significant increase to Masthope wastewater ratepayers. Although Masthope submits that the Commission should not increase rates in the amounts proposed by Aqua, the company's rate design and rate structure minimize the impact on Masthope wastewater customers while the adjustments to Aqua's Act 11 subsidy proposed by I&E and OCA would raise wastewater rates for Masthope customers by as much as 53% (and in some cases by 150%). Those adjustments would, in turn, result in unjust and unreasonable rates that disproportionately and negatively affect Masthope wastewater customers.

II. STATEMENT OF CASE AND PROCEDURAL HISTORY

Insofar as it relates to Masthope's positions in this proceeding, the following background and procedural history is relevant.

A. *Masthope Mountain Community Association*

Masthope is an incorporated association whose members consist of owners of 2029 improved and unimproved lots within the service territory of Aqua's CS Water Division and CS Sewer Division.¹ The property owners within the Masthope community are water and wastewater customers of Aqua.² Masthope itself is a customer of Aqua for water service supplied to its recreational facilities.³

Masthope is unique within Aqua's service territories. Masthope predominantly (though not exclusively) is a second home/short-term/seasonal community with approximately half of its billings reflecting usage rates of 1,000 gallons per month or less.⁴ Masthope water service is currently provided pursuant to Zone 3 and is subject to higher customer charges and lower consumption charges than the majority of Aqua's year-round water customers served under different schedules.⁵ Masthope wastewater service is presently provided pursuant to the Zone 6 schedule (to be renumbered Zone 5).⁶

¹ Masthope Compl. ¶ 2.

² Masthope Compl. ¶ 2.

³ Masthope Compl. ¶ 2.

⁴ Masthope St. 1, at 3-4; Masthope St. 3-SR, at 3.

⁵ Masthope St. 1, at 4.

⁶ Masthope St. 1, at 4. In this brief, Masthope sometimes refers to this zone as "Zone 6/5."

B. Masthope WWTP

The Masthope WWTP has experienced hydraulic overloading since at least 2018.⁷ In December 2020, PADEP issued a notice to Aqua and Lackawaxen Township restricting new connections to the Masthope WWTP due to hydraulic overloading.⁸ In response, Aqua submitted a responsive “Corrective Action Plan” to the PADEP that Lackawaxen Township and Pike County have approved but that PADEP has not approved.⁹ Among other things, the Corrective Action Plan requests that PADEP approve connections for 30 homes in 2021 and 15 homes annually thereafter until the Corrective Action Plan is complete.¹⁰ Aqua’s Corrective Action Plan also identifies projects designed to upgrade and expand the Masthope WWTP to resolve hydraulic overload conditions while pursuing Act 537 planning, all of which the company anticipates will take five years to complete.¹¹

C. Prior Rate Case

On May 9, 2019, the Commission approved a settlement involving Masthope in which Aqua increased monthly water customer charges to \$28.00 for 5/8-inch customers and increased monthly wastewater customer charges to \$39.64 with a usage charge of \$0.10 per hundred gallons for Masthope customers. Additionally, Aqua agreed to study alternatives to metered water service and address this issue in its next rate proceeding. *See Pa. P.U.C. v.*

⁷ Masthope St. 1, at 6-7.

⁸ Masthope St. 1, at 5.

⁹ Masthope St. 1, at 5-6 & Ex. Masthope-1, Sch. 3.

¹⁰ Masthope St. 1, at 5-6 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).

¹¹ Masthope St. 1, at 5-6 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).

Aqua Pennsylvania, Inc., Docket Nos. R-2018-3003558 & R-2018-3003561 (Opinion & Order entered May 9, 2019).

D. Aqua's Proposed Tariffs

On August 20, 2021, Aqua filed Original Tariff Water – PA P.U.C. No. 3 (“Tariff Water No. 3”) and Original Tariff Sewer – PA P.U.C. No. 3 (“Tariff Sewer No. 3”) to become effective on October 19, 2021.¹² As it relates to Mashope, these tariff filings, *inter alia*, propose a 17% increase in water rates for Zone 3 and a 27% increase in wastewater rates for Zone 5 (to be renumbered from previous Zone 6).¹³

E. Procedural History

Mashope filed a formal complaint in both cases docketed at C-2021-3028992 (Water) and C-2021-3028996 (Wastewater). The OCA and OSBA filed formal complaints at both rate cases and I&E also formally entered an appearance in both cases. In addition, CAUSE-PA, Aqua LUG, and various water and wastewater customers, associations, and individuals filed objections, protests, and/or formal complaints in both cases.

Mashope raised the following issues in its complaint: (1) whether the proposed rates in Tariff Water No. 3 and Tariff Sewer No. 3 filed by Aqua are unjust, unreasonable and inconsistent with the Public Utility Code, sound ratemaking principles, and public policy; (2) whether Aqua’s proposed rate design is discriminatory, unjust and unreasonable and violates ratemaking principles; (3) whether Aqua properly forecasted the impact of COVID-19 on customer growth patterns, consumption levels, and annualized sales; (4) the

¹² Aqua Initial Filing Vol. 1, Original Tariff Water-Pa.P.U.C. No. 3 & Original Tariff Sewer-Pa.P.U.C. No. 3.

¹³ Mashope Comp. ¶ 3; Aqua Initial Filing Vol. 1, Original Tariff Sewer-Pa.P.U.C. No. 3.

lawfulness and reasonableness of Aqua’s planning process for anticipating and resolving system overloads and connection restrictions within the company’s capital improvement program in light of “Corrective Action Plans” for wastewater operations currently under review by PADEP.¹⁴

By order entered October 7, 2021, the Commission instituted investigations to determine the lawfulness, justness and reasonableness of the rates, rules and regulations contained in Aqua’s proposed water and wastewater tariffs. The tariffs were suspended by operation of law until May 22, 2022, and both matters were assigned to the Office of Administrative Law Judge. The rate cases and complaints were consolidated.

The Presiding Officer, Administrative Law Judge Mary Long, issued a prehearing order on October 8, 2021, calling for prehearing memoranda to be filed on or before noon on October 14, 2021, and scheduling a prehearing conference for October 15, 2021. The parties engaged in extensive written discovery throughout these proceedings and exchanged written witness testimony. The Presiding Officer conducted multiple public input hearings during the week of November 8, 2021.

The Presiding Officer convened an evidentiary hearing on Monday, December 20, 2021. Counsel for Aqua, I&E, OCA, OSBA, CAUSE-PA, Aqua LUG and Masthope appeared. The parties agreed to waive cross-examination of witnesses and entered pre-served written testimony into the record. Masthope submitted the following into the record: Masthope Statement No. 1, Direct Testimony of Robert A. Rosenthal, including Exhibit Masthope-1 (Schedules 1-6) (“Masthope St. 1”); Masthope Statement No. 2-R, Rebuttal Testimony of

¹⁴ Masthope Complaint ¶ 4.

Robert A. Rosenthal (“Masthope St. 2-R”); and Masthope Statement No. 3-SR, Surrebuttal Testimony of Robert A. Rosenthal (“Masthope St. 3-SR”). In addition, Masthope’s “List of Evidence offered by Masthope Mountain Community Association” was marked and entered into the record as Masthope Hearing Exhibit 1.

The Presiding Officer’s prehearing order dated October 8, 2021, and interim post-hearing order dated December 20, 2021, call for main briefs to be filed and served on or before January 11, 2022. This is Masthope’s main brief.

III. SUMMARY OF ARGUMENT

The Commission should deny Aqua’s request to raise rates for Masthope water and wastewater customers given systematic and unresolved instances of hydraulic overload conditions affecting the Masthope WWTP since at least 2018, resulting in restrictions on Aqua’s ability to make new wastewater connections. Masthope submits that insufficient planning, investment, maintenance, and operation over the past several years caused the hydraulic overload conditions and ensuing building restrictions within Masthope (as opposed to COVID-19 or unseasonably high precipitation events over that same period as advanced by Aqua). Given that the Commission recently approved rate increases, yet substantial service issues remain unresolved for Masthope customers, any additional rate increase would be unjust and unreasonable.

If the Commission approves an increase in rates that affects Masthope ratepayers, the Commission should impose conditions and deadlines on Aqua to assure that the company timely mitigates and eliminates the building restrictions currently affecting the Masthope community as a result of hydraulic overloads on the Masthope WWTP. To that end, the Commission should order that Aqua (a) coordinate with Masthope and local officials

regarding the Corrective Action Plan; (b) report to Masthope and the Commission on the status of corrective actions and PADEP determinations; (c) seek additional requests or an amendment to the Corrective Action Plan to increase the number of connections to the Masthope WWTP pending completion of the Corrective Action Plan; (d) appeal any adverse PADEP determination that restricts Aqua's ability to connect customers to the Masthope WWTP; (e) assure that Aqua's "Project 15088006258 - Masthope WWTP Add Treatment Train" results in eliminating the building restrictions currently affecting the Masthope WWTP; and (f) timely complete Act 537 planning and related improvements to eliminate building restrictions in Masthope.

Finally, the Commission should reject any rate design proposals for allocating water revenues to Aqua's wastewater revenue requirement pursuant to Act 11 of 2021 that result in significant increases in wastewater rates for Masthope ratepayers. Although Masthope submits that the Commission should not increase rates in the amounts proposed by Aqua, the company's rate design and rate structure minimize the impact on Masthope wastewater customers while the adjustments to Aqua's Act 11 subsidy proposed by I&E and OCA would raise wastewater rates for Masthope customers by as much as 53% (and in some cases by 150%). Those adjustments would, in turn, result in unjust and unreasonable rates that disproportionately and negatively affect Masthope wastewater customers.

IV. ARGUMENT

The Commission has the duty to set "just and reasonable" rates pursuant to Section 1301 of the Public Utility Code ("Code"), 66 Pa.C.S. § 1301. The burden of proof to establish the justness and reasonableness of every element of a public utility's rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code.

See 66 Pa.C.S. § 315(a); *Berner v. Pa. P.U.C.*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955); *Lower Frederick Twp. Water Co. v. Pa. P.U.C.*, 409 A.2d 505, 507 (Pa. Cmwlth. 1980); *Brockway Glass Co. v. Pa. P.U.C.*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

In addition, Section 523 of the Public Utility Code, 66 Pa.C.S. § 523, requires the Commission to “consider ... the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates[.]” *Pa. P.U.C. v. Pa. Gas & Water Co.*, 61 Pa. P.U.C. 409, 415-16 (1986). Section 1501 defines the obligation to provide adequate and reasonable service:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The Commission has the discretion to deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa.C.S. § 526(a); *Pa. Gas & Water Co.*, 61 Pa. P.U.C. at 416 (“[I]n exchange for the utility’s provision of safe, adequate, and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return to the utility’s investors.”); *National Utilities, Inc. v. Pa. P.U.C.*, 709 A.2d 972 (Pa. Cmwlth. 1998) (holding that a public utility’s rate increase request could properly be denied solely on the basis of service issues, even where the public utility asserts that the increase is justified by evidence with respect to rate base, revenues, expenses and rate of return).

A. Rate Base, Revenues, Expenses, Taxes, and Rate of Return

At the outset, Masthope has not taken specific positions regarding rate base, revenues, expenses, taxes, rate of return, adjustments thereto, or related matters. Masthope reserves the right to address any such issues in its reply brief if and as necessary.

B. Quality of Service: Masthope WWTP

The Commission should deny Aqua's request to increase rates for Masthope ratepayers given the hydraulic overloading of the Masthope WWTP since 2018 that resulted in a moratorium on new building connections within the community. If the Commission approves a rate increase, the Commission should impose conditions on Aqua to address hydraulic overloading of the Masthope WWTP.

1. The Commission should deny Aqua's request for a rate increase for inadequate service.

As noted above, the Commission must consider the quality of the service provided by Aqua when determining whether rate increases proposed for Masthope ratepayers are just and reasonable and may deny a request in whole or in part based on inadequate service. *See* 66 Pa.C.S. §§ 523, 526(a). The Commission has jurisdiction to determine whether "repeated and ongoing overflows of sewage from [the public utility's] facilities demonstrate that [the public utility] has failed to provide its usage customers with adequate, efficient, safe and reasonable service and facilities." *See, e.g., Sutter v. Clean Treatment Sewage Company*, No. C-20078197 *et al.*, 104 Pa. P.U.C. 146, 2009 WL 1514994, slip op. at 14 (Pa. P.U.C. May 15, 2009). The failure to properly treat sewage constitutes a failure to provide safe, adequate, and reasonable service, for which customers are paying rates. *Id.*

Here, there is no dispute over the existence of hydraulic overload conditions at the Masthope WWTP. As the record demonstrates, PADEP issued a notice to Aqua and

Lackawaxen Township restricting new connections to the Masthope WWTP based upon a review of Aqua's 2019 Chapter 94 report.¹⁵ PADEP pursued that enforcement action due to WWTP hydraulic overloads.¹⁶ Aqua has acknowledged the conditions at the Masthope WWTP and submitted a Corrective Action Plan, the approval of which remains pending before PADEP.¹⁷ Among other things, Aqua proposes to take interim measures that the company believes will minimize overloads for now and also requests exemptions from the moratorium to connect 30 homes in 2021 and 15 homes annually thereafter until the Corrective Action Plan is complete.¹⁸ However, Aqua maintains complete discretion to avoid any connections if in its judgment additional connections might compromise permit limitations such that there is no way to dispute Aqua's determinations.¹⁹

As Mr. Rosenthal testified on behalf of Masthope, the hydraulic overload conditions could have been avoided with proper monitoring of overload conditions and better communication with Masthope and local officials to fully understand the needs of the Masthope community.²⁰ Mr. Rosenthal also testified that "Aqua PA Wastewater did not devote sufficient resources to fully understand the growth dimension in Masthope and

¹⁵ Masthope St. 1, at 5 & Ex. Masthope-1, Sch. 1 (PADEP Notice) & Sch. 2 (2019 Chapter 94 Report).

¹⁶ Masthope St. 1, at 5 & Ex. Masthope-1, Sch. 1 (PADEP Notice).

¹⁷ Masthope St. 1, at 6.

¹⁸ Masthope St. 1, at 6 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13). Aqua also submitted a request, pending review of the Corrective Action Plan, to exempt certain properties currently under construction in Masthope from the PADEP restriction. At present, PADEP has granted an exemption for 9 properties. *Id.*

¹⁹ Masthope St. 1, at 10-11 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).

²⁰ Masthope St. 1, at 10-11; Masthope St. 3-SR, at 4.

therefore did not adequately or timely plan for expansion of the Masthope wastewater treatment plant.”²¹ On this point, Mr. Rosenthal concluded:

Based on Aqua PA’s responses to Masthope’s Set I Interrogatories MH-I-8 (Schedule 5 of Exhibit Masthope 1), Aqua PA Wastewater does not estimate hydraulic loading on the Masthope wastewater system. The Chapter 94 report purportedly is reviewed by an Operations Team Leader “for accuracy” but prepared by an outside engineering firm that then submits the report to PADEP. Therefore, it is unclear whether and to what extent (if any) Aqua PA Wastewater’s Operational Team Leader or other members of the management team thoroughly reviewed and considered the Chapter 94 report before submitting to PADEP. It is also unclear whether and to what extent (if any) Aqua PA Wastewater’s Operations Team Leader or other members of the management team conducted a post-submittal review or analysis of hydraulic overload on the Masthope wastewater system. Given Aqua PA Wastewater’s recent merger with Peoples Natural Gas and related shift in focus to acquisition of wastewater systems in new territories over the course of the last several years, Masthope believes that Aqua PA Wastewater’s attention may have been diverted away from the needs of the Masthope wastewater system.²²

Aqua has acknowledged the need to expand and upgrade the Masthope WWTP and engage in additional Act 537 planning in order to fully resolve the hydraulic overload conditions to meet the needs of serving Masthope’s wastewater customers and remove building restrictions.²³ However, the company believes that process may take up to five years.²⁴ As the Commission has stated, a public utility must demonstrate actual improvements to rectify inadequate service. *See, e.g., Pa. P.U.C. v. Pa. Gas & Water Co.*, 61 Pa. P.U.C. 496, 501 (1986) (“PG&W must show actual results of service improvements as opposed to optimistic plans for the future. On this point, we again state that every customer

²¹ Masthope St. 1, at 8.

²² Masthope St. 1, at 8.

²³ AP Statement No. 9-R – Rebuttal Testimony of Todd M. Duerr (“AP St. 9-R”), at 36-37.

²⁴ Masthope St. 1, at 10-11 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).

is entitled to water that is fit for the basic, domestic purpose.”). Thus, although Aqua has plans for the future, any ongoing or additional restrictions on connections until at least 2026 or beyond is unreasonable, highly detrimental to Masthope, and militates against any rate increase for Masthope ratepayers for lack of adequate and reasonable wastewater service.

Aqua claims, nevertheless, that COVID-19 and increased precipitation explain the hydraulic overload conditions at the Masthope WWTP that led to the moratorium on new connections. As a threshold matter, Aqua’s explanations are irrelevant. As the Commission has explained: “Section 1501 makes the public utility responsible for providing reasonably continuous service to its customers. The actions/inactions of the Township do not excuse the Company's protracted inability to provide service to availability customers who wish to hook up to [the public utility's] system.” *See Sutter, supra*, at 17.

Beyond that, the COVID-19 explanation for hydraulic overload conditions lacks merit. Aqua’s witness, Mr. Todd M. Duerr, P.E., L.O., testified that “many people [in Masthope] resorted to working from home” and “residents likely worked or resided at their Masthope residence longer than previous years” such that Masthope shifted from seasonal/weekend to fulltime residency due to COVID-19 and caused increase wastewater flows.²⁵ However, Mr. Duerr provides no information, data, or documentation to form a basis for those conclusions. These are incorrect and unsupported presumptions that should be rejected.

By contrast, Mr. Rosenthal testified that COVID-19 did not change Masthope from a part-time to full-time community that meaningfully increased wastewater flows:

Q. DID MASTHOPE SHIFT FROM A SEASONAL TO A FULL TIME COMMUNITY DURING THE ONGOING COVID-19 PANDEMIC?

²⁵ AP St. 9-R, at 34.

- A. No. Although other Aqua PA systems may have exhibited significant residential consumption growth during the COVID-19 pandemic, Masthope remained a seasonal community, exhibiting its highest consumption in the summer and winter months as is typical for a seasonal community like Masthope. As confirmed by Aqua PA's responses to Masthope's Set I Interrogatories MH-I-1, approximately 50% of Aqua PA Water and Wastewater's billings for Masthope for the historic test year reflect usage rates of less than 1,000 gallons per month. In addition approximately 87% of Aqua PA Water and Wastewater's billings for Masthope for the historic test year reflect usage rates of less than the average Aqua PA Wastewater residential customer usage rate of 4,000 gallons per month. These percentages are similar to and consistent with the percentages of Masthope customers and their usage rates that I found during my evaluations in the prior Aqua rate cases.²⁶

Furthermore, Mr. Rosenthal testified that, in any event, the hydraulic overload conditions pre-date COVID-19:

The overload of the system was documented in 2018 based upon data contained the 2018 Chapter 94 report. Both the monthly MGD flow and 3-month average MGD flow greatly exceeded the permitted flow limits. It appears that the addition of 21 connections in 2017 greatly exceeded the historic connection rate of 6 and pushed the system routinely above the permitted limit. While no new connections occurred in 2018 or 2019, 19 new connections were added in 2020.²⁷

Aqua's other explanation – increased precipitation levels – fares no better. The Commission rejected similar arguments advanced by the public utility in *Sutter* that increased stormwater runoff excused repeated system overloads: “Thus, we specifically reject the ALJ's conclusion that the overflows from the sludge tanks are excused by the fact that the problem is caused in part by stormwater runoff from the MLEOPA property. This is especially true considering the number of years that the stormwater runoff problem from

²⁶ Masthope St. 1, at 8-9.

²⁷ Masthope St. 1, at 7.

the MLEOPA property has been an issue for CTSC. There has been ample time for CTSC to pursue appropriate remedies. CTSC has not done so. As a result, this situation does not excuse CTSC's violation of Section 1501." See *Sutter, supra*, at 18-19.

In any event, although Mr. Duerr testified that excessive precipitation caused the hydraulic overload on the Masthope system in 2018 and 2019,²⁸ Mr. Rosenthal explained that "the Masthope system is not a combined stormwater/wastewater collection system. Hence, Aqua PA Wastewater's explanation speaks to a problem with line infiltration. An examination of the monthly precipitation rates versus monthly daily average flows is not a consistent predictor of hydraulic overload levels."²⁹

In addition, Mr. Rosenthal explained that Aqua's witness misconstrued data to conclude that precipitation levels caused hydraulic overload conditions:

Q. IS MR. DUERR CORRECTLY INTERPRETING PRECIPITATION DATA AS PROOF THAT WEATHER EVENTS CAUSED HYDRAULIC OVERLOADS?

A. No. In Masthope Statement No. 1, I testified that unusually high precipitation events noted by Aqua PA in various years do not singularly account for the hydraulic overloads that resulted in a DEP-imposed moratorium on new connections to the wastewater system in Masthope. In response, Mr. Duerr emphasizes an increase in the annual amount of precipitation as the driver of the overloading. However, that comparison is not borne out when examining the month-to-month data embedded in Mr. Duerr's rebuttal in Aqua PA Statement 9-R, page 35. Changes in precipitation do not necessarily translate into increased flows. Additionally, the 2017 precipitation data on which Mr. Duerr relies on page 35 of his testimony does not appear to match the year-to-year data that Aqua PA reported to DEP in Aqua PA Exhibit TMD-2-

²⁸ AP St. 9-R, at 34-35.

²⁹ Masthope St. 1, at 7.

R and renders conclusions about the effect of increased precipitation unreliable.³⁰

Finally, Mr. Duerr testified that Aqua engaged in necessary planning for expansion of the Masthope WWTP, pointing to the fact that additional connections in 2017 resulted in only a modest increase in wastewater flows such that the current WWTP adequately service Masthope wastewater customers.³¹ Again, Mr. Rosenthal explained that Aqua's witness misconstrued data to conclude that the Masthope WWTP adequately serves the Masthope community despite systematic hydraulic overloads since 2018:

Q. IS MR. DUERR CORRECTLY INTERPRETING 2017 DATA REGARDING ADDITIONAL CONNECTIONS TO THE MASTHOPE SYSTEM AS PROOF OF PROPER PLANNING FOR COMMUNITY GROWTH IN MASTHOPE?

A. No. In Masthope Statement No. 1, I testified that Aqua PA did not adequately plan for community growth in Masthope and therefore did not pursue necessary system upgrades, resulting in wastewater system overloads in 2018-2021 and a restriction imposed by the Pennsylvania Department of Environmental Protection ("DEP") on new connections to the wastewater system for Masthope property owners pending Aqua PA's resolution of the problems. In his rebuttal, Mr. Duerr opines that Aqua PA properly planned for community growth and relies on data reflecting 21 new connections in 2017 in Masthope that resulted in only a modest increase in average wastewater flows to the Masthope system. However, Mr. Duerr's conclusion assumes that all new connections occurred in January 2017 and therefore the annual data reflects 12 months of flows from 21 new equivalent dwelling units ("EDUs"). That is an incorrect presumption. The true impact of 21 additional EDUs is reflected in data for wastewater flows *in 2018* after a full year of flows from the additional EDUs. In 2018, the data confirms that the Masthope system experienced its first of annual hydraulic overloads that persist today, indicating that Aqua PA's wastewater system was and is insufficient to account for known community expansion in Masthope such that DEP has imposed restrictions on new connections to the detriment of Masthope and its property owners.

³⁰ Masthope St. 3-SR, at 3-4.

³¹ AP St. 9-R, at 36.

When comparing the 2017 and 2018 reports in Exhibit TMD-2-R, Aqua PA projected no overloads in 2017 yet in the 2018 report Aqua PA projected overloads for the following next 5 years.³²

In the end, the record amply supports a finding that Aqua has failed to provide adequate and reasonable wastewater service to Masthope such that any increase in rates is unjust and unreasonable. Masthope acknowledges that although there may be several conditions that contributed to increased flows before 2020,³³ the issue is whether Aqua is entitled to significant rate relief despite the shortcomings of the Masthope WWTP that engendered restrictions on connections in the community, particularly when Aqua recently received rate relief and the hydraulic overload conditions have not been resolved. As Mr. Rosenthal concluded in his testimony:

[T]he current wastewater system equipment serving Masthope is inadequate for the community and requires expansion in order to meet its needs. The DEP's decision to impose restrictions on new connections to the wastewater system is based upon pre-COVID-19 conditions and data such that Aqua PA is incorrect to rely solely on high precipitation events and COVID-19 impacts for hydraulic overloads occurring since 2018. The COVID-19 pandemic may have resulted in some increased usage in Masthope, but the direct causes borne out by the data and other known factors most certainly pre-date the COVID-19 pandemic.³⁴

Accordingly, the Commission should deny Aqua's request to increase rates for Masthope ratepayers given the hydraulic overload conditions on the Masthope WWTP since 2018 that resulted in a moratorium on new building connections within the community.

³² Masthope St. 3-R, at 3.

³³ Masthope St. 3-SR, at 5 ("I have found that there are four known factors that in combination are pieces of the puzzle that impacted the effluent flows, leading to the reporting of the overloading condition prior to 2020: (1) new connections to the system in 2017; (2) increased usage through the increase in short-term rentals within the Masthope community; (3) infiltration and inflow ("I&I") intrusion from increased precipitation; and (4) recalibration of flow metering equipment.").

³⁴ Masthope St. 3-R, at 5-6.

2. The Commission should condition Aqua’s request for rate relief.

If the Commission approves a rate increase, the Commission should also impose conditions on Aqua to *timely* resolve the hydraulic overload conditions and take all necessary steps to permanently remove restrictions on new connections to the Masthope WWTP.

As it stands, the record demonstrates that the Masthope WWTP is (and has been) inadequate to meet current and future needs of the community; Aqua has not taken steps to fully understand the nature of the Masthope community and its growth and usage patterns; the stopgap measures in the Corrective Action Plan are insufficient to fully resolve Masthope’s current predicament; and Aqua’s purported five-year timeline to complete future projects is unreasonable and detrimental to the community.

To address these concerns, the Commission should exercise its authority and impose reasonable conditions on any increase in rates pursuant to 66 Pa.C.S. § 501, 1301 *et seq.*, and 1501. To that end:

- ***Coordination with Masthope and Local Officials.*** *First*, the Commission should order that Aqua coordinate with Masthope and local officials regarding the Corrective Action Plan and future Chapter 94 reporting requirements. As Mr. Rosenthal testified, “Masthope recommends that Aqua PA Wastewater review their annual Chapter 94 reports with local communities such as Masthope’s to keep them informed as to the problems encountered during the year and to forecast Masthope’s needs for the next 5 years. It is my opinion that such a review would better inform Aqua PA of the community’s perspective of forecasted needs.”³⁵
- ***Reporting.*** *Second*, Aqua should report to Masthope and the Commission on the status of corrective actions and PADEP determinations.
- ***Amendment to Corrective Action Plan.*** *Third*, the Commission should order that Aqua seek additional requests or an amendment to the Corrective Action Plan to increase the number of connections to the Masthope WWTP pending a permanent resolution of the issues affecting the WWTP. As Mr. Rosenthal

³⁵ Masthope St. 1, at 12.

testified, seeking interim relief to increase the number of connections pending PADEP’s review and approval of the Corrective Action Plan would “mitigate the lost opportunity to develop the homes in the community.”³⁶

- **Appeals of PADEP Determinations on Corrective Action Plans.** *Fourth*, the Commission should expect that Aqua pursue remedies, including appeals, if faced with adverse PADEP determination that restricts Aqua’s ability to connect customers to the Masthope WWTP. This is part of Aqua’s duty to assure adequate and reasonable service to Masthope.
- **Future Projects.** *Fifth*, the Commission should assure that Aqua’s “Project 15088006258 – Masthope WWTP Add Treatment Train” resolve hydraulic overload conditions and eliminate the building restrictions. Although Aqua contends that the Commission lacks jurisdiction to assure that future projects eliminate the moratorium,³⁷ Aqua acknowledges these obligations by identifying projects designed to expand the Masthope wastewater treatment system, pursuing corrective-action plans to mitigate building restrictions, reducing I&I, and pursuing Act 537 planning.³⁸
- **Deadlines.** *Finally*, the Commission should impose reasonable deadlines to accomplish these objectives and assure that Aqua timely complete Act 537 planning and expansion/upgrade projects that permanently eliminate building restrictions in Masthope. Mr. Rosenthal explained that “it is not in Aqua PA’s or Masthope’s best interest to have building restrictions within the community until the end of 2026 when Aqua PA completes (or anticipates completing) expanded wastewater treatment facilities while here pursuing substantial increases in rates. The community growth that is delayed or lost is what Masthope seeks to mitigate through a cooperative arrangement with Aqua PA and Lackawaxen Township that seeks a beneficial result for the area and Aqua PA’s customers.”³⁹

Accordingly, the Commission should only approve a rate increase that affects Masthope ratepayers on condition that Aqua timely resolve the hydraulic overload

³⁶ Masthope St. 1, at 11.

³⁷ AP St. 9-R, at 38-39.

³⁸ AP St. 9-R, at 36-37.

³⁹ Masthope St. 3-SR, at 7.

conditions and take all necessary steps to permanently remove restrictions on new connections to the Masthope WWTP.

C. Rate Structure and Rate Design: Act 11 Revenue Allocation and Impact on Masthope

Finally, to the extent the Commission approves an increase in rates, the Commission should reject any revenue allocation pursuant to Act 11 of 2021 that results in significant increases in wastewater rates for Masthope ratepayers and should structure rates consistent with Aqua's proposals in its original case filing.

1. Revenue Allocation

Act 11 amends Chapter 13 of the Code by exempting water and wastewater utilities from the prohibition on combining, for ratemaking purposes, different utility types and by allowing the Commission to allocate a portion of the wastewater utility's revenue requirement to the combined water and wastewater utility. *See* 66 Pa.C.S. § 1311(c); *Implementation of Act 11 of 2012*, 299 P.U.R.4th 367, 2012 WL 3249678 (Pa. P.U.C. Aug. 2, 2012). The Commission has broad discretion to allocate wastewater revenue requirements across a utility's combined customer base under Act 11, but not at the expense of assuring just and reasonable rates for all classes of customers as required by Section 1301 of the Code, 66 Pa.C.S § 1301.

Here, as depicted in Appendix C attached to this brief ("Rate Impact Tables"), Aqua's Act 11 proposal allocates \$20,839,425 million in water revenues to cover the revenue requirement for its wastewater operations, resulting in an increase of approximately 17% for Zone 3 water customers and an increase of approximately 26.4% for Zone 6/5

wastewater customers.⁴⁰ I&E's proposal reduces Aqua's water revenue support requirement from \$20,839,425 to \$15,766,549 (assuming the Commission grants Aqua PA's full rate increase); reduces water customer burdens by \$1/month while increasing wastewater customer burdens by \$10/month; *doubles* the average increase design of 26.4% that Aqua proposed for the Masthope wastewater rates in Zone 6/5; and increases in consumption charges contained in the Zone 6/5 by 150%.⁴¹ Similarly, OCA would reduce the proposed subsidy from \$20.839 million by \$9.065 million to \$11.774 million, resulting in an increase in Masthope wastewater rates by approximately 41%.⁴²

Although Masthope submits that the Commission should not increase rates in the amounts proposed by Aqua, the Act 11 subsidy adjustments proposed by I&E and (to a lesser extent) OCA result in unjust and unreasonable rates that, if adopted, would disproportionately and negatively affect Masthope wastewater customers. Mr. Rosenthal explained that the impact on Masthope would be particularly detrimental:

Q. HOW DOES [I&E's] PROPOSED INCREASE AFFECT MASTHOPE?

A. As I explained in my Masthope Statement No.1, Masthope is primarily a second home/short-term/seasonal community with approximately half of its billings reflecting usage rates of 1,000 gallons per month or less. Hence, it would be incongruous to use system-wide averages in order to support a proposed reduction in the Act 11 subsidy and assume those averages accurately apply to Zone 6/5 conditions in a just and reasonable manner. The I&E proposal in Masthope produces higher percentage burdens on year-round residents versus short-term/seasonal residents. Further, I&E's proposal is especially burdensome for Masthope commercial customers, the largest of which would experience a 150% rate increase if the Commission adopted I&E's proposal. I&E's proposal also places rate recovery at a greater

⁴⁰ Masthope St. 2-R, at 2-3.

⁴¹ I&E Statement No. 5 (Kubas) ("I&E St. 5"), at 13-18.

⁴² OCA Statement 4, Direct Testimony of Glenn A. Watkins ("OCA St. 4"), at 11.

risk for Aqua PA due to its shift to a consumption-based emphasis from the community's historic customer-based recovery.⁴³

Q. DOES OCA WITNESS WATKINS ALSO PROPOSE TO REDUCE THE ACT 11 CROSS-SUBSIDY BETWEEN WATER AND WASTEWATER CUSTOMERS?

A. Yes. However, OCA Witness Watkins uses a different approach than I&E Witness Kubas. The OCA's proposal is contained in OCA Statement No. 4, Direct Testimony of Glen Watkins, Section III, and corresponding Schedules. At the full increase level, OCA would reduce the proposed subsidy from \$20.839 million by \$9.065 million to \$11.774 million (OCA Statement No.4, page 11). OCA's proposal is tied to the acquisition adjustments linked to Aqua PA's new wastewater system acquisitions and proposes to double the suggested increase for legacy systems if the Commission granted the full rate increase requested by Aqua. While OCA's proposal suffers from the same risks that wastewater customers will experience rate increases substantially above Aqua PA's proposed amounts, OCA's approach invokes Aqua PA's distribution and design for its prorated proposal. In this manner, OCA's approach does not create the extraordinary impacts that the I&E proposal imposes on select members of the Masthope community.⁴⁴

If the Commission approves revenues in amounts less than Aqua proposed, the Commission should distribute any increased revenue requirement for water and wastewater customers and the amount of revenue support to be provided by water customers in a manner consistent with Aqua's proposal. As Mr. Rosenthal testified:

Q. WHAT IS MASTHOPE'S PREFERRED POSITION ON THE CROSS SUBSIDY OF THE WASTEWATER SYSTEMS?

A. Masthope understand that the Commission may order a lesser overall rate increase than Aqua PA proposed and that the Act 11 subsidy could be reduced by holding the wastewater increases at their originally proposed levels. The Act 11 subsidy is a function of the relative returns earned by Aqua PA from its water and wastewater systems. By holding the wastewater revenue at its original proposed increased level, the disparity in relative returns between the water and wastewater systems would be lessened. My understanding of I&E's proposal is that

⁴³ Masthope St. 2-R, at 3.

⁴⁴ Masthope St. 2-R, at 4.

the only increase in water rates is a function of the Act 11 cross subsidy level. Similarly, OCA would lessen water and wastewater reductions to reflect its Act 11 cross subsidy proposal. Depending upon the Commission's final decision on rates, Masthope can support the original proposed revenue levels for the wastewater side as necessary to reduce the ongoing Act 11 relative cross subsidy. In this manner, no wastewater customer would receive an increase more than the original case notice.⁴⁵

Given the ongoing hydraulic overload conditions at the Masthope WWTP, Masthope anticipates increased costs for upgrades to and expansions of the Masthope WWTP such that Masthope recognizes the potential need for a cross-subsidies to continue for several years. For this case, the Commission should hold the wastewater revenue increase at its original level proposed by Aqua while reducing the water increase to achieve a reduction in any computed cross subsidy for this case.

2. Rate/Tariff Structure

Similarly, the Commission should distribute any increase in rates both between and within rate schedules in a manner consistent with Aqua's original proposal. Mr. Rosenthal explained Masthope's position as follows:

Q. WHAT IS MASTHOPE'S PREFERRED POSITION ON DESIGN AND DISTRIBUTION OF THE WASTEWATER RATE INCREASE?

A. Masthope prefers Aqua PA's original apportionment of the requested increase among the zones and application of the same percentage to current charges to design the future rates for Zone 6/5 applicable to Masthope. Masthope submits that both the OCA's and I&E's significantly above-average increase for Masthope Zone 6/5 are particularly excessive and burdensome on Masthope customers given the current building restrictions that apply to Masthope as explained in detail in Masthope Statement No. 1 and accompanying schedules.⁴⁶

⁴⁵ Masthope St. 2-R, at 5.

⁴⁶ Masthope St. 2-R, at 5.

Aqua selectively proposed increases between and within rate schedules to foster its long-term plan of rate schedule consolidation into a uniform statewide tariff. By contrast, the adjustments proposed by I&E and OCA are excessive for certain customers in certain schedules, such as the commercial customers in wastewater Zone 6 (who would experience a rate increase by as much as 150%). Accordingly, to the extent the Commission faces a choice between the company's or the public advocates' respective positions, Masthope supports Aqua's original distribution of the proposed rate increases both between and within water and wastewater rate schedules.

3. Summary and Alternatives

Masthope recognizes that rate structure and rate design decisions facing the Commission involve (a) consolidation of historic rate schedules into a workable statewide tariff for Aqua; and (b) allocating water revenues to cover revenue shortfalls for wastewater operations. The attempt to address both policy considerations at once engenders significant and disparate impacts on customers, particularly customers such as Masthope and its homeowners. As noted, Masthope is unique within Aqua's service territories. Aqua provides water service (Zone 3) and wastewater service (proposed Zone 5) to Masthope and its homeowners. Masthope is also unique as the majority of customers located in the area are seasonal customers utilizing their properties on an intermittent basis.

In terms of revenue allocation, the potential need for a cross-subsidies may continue for several years given the ongoing hydraulic overload conditions at the Masthope WWTP and the anticipated cost of upgrades and expansions of the Masthope WWTP. In light of these considerations, Masthope does not view the cross-subsidy issue as a short-term condition. Consequently, Masthope submits that any revenue reductions from the original case

proposal can first be used to reduce the water system increases until the cross-subsidy of the wastewater system is minimized. Once any cross-subsidy is eliminated, rate reductions should be accomplished on an equal percentage basis to both water and wastewater systems.

In terms of rate/tariff structure, Masthope believes that the rate consolidation into a uniform statewide tariff may be best accomplished through interim incremental changes between rate cases. The Commission should direct the parties to meet on a collaborative basis to establish an annual plan of interim rate changes to consolidate the schedules offered in Aqua's tariffs. Through a collaborative process a series of annual rate modifications within the context of a fixed revenue target could create the steps necessary to move to a more consolidated schedule of rates. Within this process, Masthope submits that retention of a schedule focused on serving seasonal customers, such as wastewater Zone 6, may be an optional rate to the benefit of both Aqua and its customers. Aqua should therefore study the practicality of a statewide optional "seasonal or low average use" wastewater rate modeled after the Zone 6 rate (which is designed to impose a relatively higher customer charge but lower consumption charge) as a permanent schedule in the tariff.

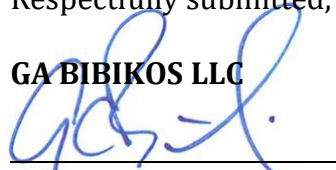
V. CONCLUSION

WHEREFORE, Masthope submits that the Commission should deny Aqua's request for a rate increase, adopt Masthope's positions, and order such other and further relief as the Commission deems just or reasonable. Masthope's proposed findings of fact, conclusions of law, and ordering paragraphs accompany this brief.

January 11, 2022

Respectfully submitted,

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APPENDIX A: RATE IMPACT TABLE

Water Rate Impacts Zone 3 Mashhope portion																				
	units	Aqua present			Aqua Proposed			I&E Proposed			OCA Proposed									
		rate	revenue	%	rate	revenue	%	rate	revenue	%	rate	revenue	%							
Residential																				
"5/8	16432	\$ 28.00	\$ 460,096	15.71%	\$ 32.40	\$ 532,397	15.71%	\$ 32.13	\$ 527,931	14.7%	\$ 31.91	\$ 524,417	14.0%							
"3/4	8	\$ 28.00	\$ 224	15.71%	\$ 32.40	\$ 259	15.71%	\$ 32.13	\$ 257	14.7%	\$ 31.91	\$ 255	14.0%							
"1	12	\$ 52.50	\$ 630	24.38%	\$ 65.30	\$ 784	24.38%	\$ 64.51	\$ 774	22.9%	\$ 63.89	\$ 767	21.7%							
subtotal	16452		\$ 460,950	15.73%		\$ 533,440	15.73%		\$ 528,963	14.8%		\$ 525,439	14.0%							
First 4000	196504	\$ 0.9128	\$ 179,369	33.99%	\$ 1.2231	\$ 240,344	33.99%	\$ 1.20	\$ 236,578	31.9%	\$ 1.19	\$ 233,614	30.2%							
Over 4000	50744	\$ 1.2608	\$ 63,978	26.67%	\$ 1.5971	\$ 81,043	26.67%	\$ 1.58	\$ 79,989	25.0%	\$ 1.56	\$ 79,160	23.7%							
subtotal	36	\$ 65.52	\$ 2,359	32.07%	\$ 83.00	\$ 321,387	32.07%	\$ 81.92	\$ 316,567	30.1%	\$ 81.07	\$ 312,774	28.5%							
unmetered	16488		\$ 706,656	26.68%		\$ 2,988	26.68%		\$ 2,949	25.0%		\$ 2,919	23.7%							
Res Subtotal				21.39%		\$ 857,815	21.39%		\$ 848,479	20.1%		\$ 841,132	19.0%							
Commercial																				
"5/8	12	\$ 28.00	\$ 336	15.71%	\$ 32.40	\$ 389	15.71%	\$ 32.13	\$ 386	14.7%	\$ 31.91	\$ 383	14.0%							
"1 1/2	12	\$ 101.10	\$ 1,213	24.43%	\$ 125.80	\$ 1,510	24.43%	\$ 124.27	\$ 1,491	22.9%	\$ 123.07	\$ 1,477	21.7%							
"2	72	\$ 143.90	\$ 10,361	24.46%	\$ 179.10	\$ 12,895	24.46%	\$ 176.93	\$ 12,739	23.0%	\$ 175.22	\$ 12,615	21.8%							
Subtotal	96		\$ 11,910	24.21%		\$ 14,794	24.21%		\$ 14,616	22.7%		\$ 14,475	21.5%							
First 4000	48768	\$ 1.1900	\$ 58,034	24.49%	\$ 1.4814	\$ 72,245	24.49%	\$ 1.4634	\$ 71,367	23.0%	\$ 1.4492	\$ 70,677	21.8%							
Over 4000	12350	\$ 1.0455	\$ 12,912	24.49%	\$ 1.3015	\$ 16,074	24.49%	\$ 1.2857	\$ 15,878	23.0%	\$ 1.2732	\$ 15,725	21.8%							
subtotal	12	\$ 70.946	\$ 70,946	24.49%	\$ 83.00	\$ 88,318	24.49%	\$ 81.92	\$ 87,245	23.0%	\$ 81.07	\$ 86,401	21.8%							
unmetered	108	\$ 65.52	\$ 786	26.68%	\$ 83.00	\$ 996	26.68%	\$ 81.92	\$ 983	25.0%	\$ 81.07	\$ 973	23.7%							
com subtotal			\$ 83,642	24.47%		\$ 104,108	24.47%		\$ 102,844	23.0%		\$ 101,849	21.8%							
Zone 6 total			\$ 790,298	21.72%		\$ 961,923	21.72%		\$ 951,323	20.4%		\$ 942,981	19.3%							
Excludes present DSIC																				

Wastewater Rate Impacts Zone 6																	
	units	Aqua present				Aqua Proposed				I&E Proposed			OCA Proposed				
		rate	revenue	%	rate	revenue	%	rate	revenue	%	rate	revenue	%				
Residential																	
"5/8	16432	\$ 39.64	\$ 651,364	\$ 50.10	\$ 823,243	26.39%	\$ 56.20	\$ 923,478	41.8%	\$ 57.34	\$ 942,268	44.7%					
"3/4	8	\$ 39.64	\$ 317	\$ 50.10	\$ 401	26.39%	\$ 56.20	\$ 450	41.8%	\$ 57.34	\$ 459	44.7%					
"1	12	\$ 39.64	\$ 476	\$ 50.10	\$ 601	26.39%	\$ 56.20	\$ 674	41.8%	\$ 57.34	\$ 688	44.7%					
subtotal	16452		\$ 652,157		\$ 824,245	26.39%		\$ 924,602	41.8%	\$ 57.34	\$ 943,415	44.7%					
mgal	301022	\$ 0.10	\$ 30,102	\$ 0.1263	\$ 38,019	26.30%	\$ 0.26	\$ 78,266	160.0%	\$ 0.14	\$ 43,516	44.6%					
subtotal			\$ 682,259		\$ 862,264	26.38%		\$ 1,002,868	47.0%		\$ 986,931	44.7%					
unmetered	36	\$ 43.64	\$ 1,571	\$ 55.15	\$ 1,985	26.37%	\$ 67.00	\$ 2,412	53.5%	\$ 63.12	\$ 2,272	44.6%					
Res Subtotal	16488		\$ 683,831		\$ 864,250	26.38%		\$ 1,005,280	47.0%	\$ 60.00	\$ 989,203	44.7%					
Commercial																	
"5/8	12	\$ 39.64	\$ 476	\$ 50.10	\$ 601	26.39%	\$ 56.20	\$ 674	41.8%	\$ 57.34	\$ 688	44.7%					
"1 1/2	12	\$ 39.64	\$ 476	\$ 50.10	\$ 601	26.39%	\$ 56.20	\$ 674	41.8%	\$ 57.34	\$ 688	44.7%					
"2	72	\$ 39.64	\$ 2,854	\$ 50.10	\$ 3,607	26.39%	\$ 56.20	\$ 4,046	41.8%	\$ 57.34	\$ 4,129	44.7%					
Subtotal	96		\$ 3,805		\$ 4,810	26.39%		\$ 5,395	41.8%	\$ 57.34	\$ 5,505	44.7%					
mgal	61118	\$ 0.10	\$ 6,112	\$ 0.1263	\$ 7,719	26.30%	\$ 0.26	\$ 15,891	160.0%	\$ 0.14	\$ 8,835	44.6%					
subtotal			\$ 9,917		\$ 12,529	26.33%		\$ 21,286	114.6%		\$ 14,340	44.6%					
unmetered	12	\$ 43.64	\$ 524	\$ 55.15	\$ 662	26.37%	\$ 67.00	\$ 804	53.5%	\$ 63.12	\$ 757	44.6%					
com subtotal	108		\$ 10,441		\$ 13,191	26.34%		\$ 22,090	111.6%	\$ 139.79	\$ 15,098	44.6%					
Zone 6 total			\$ 694,271		\$ 877,440	26.38%		\$ 1,027,370	48.0%		\$ 1,004,301	44.7%					
Excludes present DSIC																	

Masthope Average Customer Impacts

Water Tariff Zone 3		Includes Dsic 7.5%										
Customer	Average Use	Present Bill	Aqua Proposal	Aqua Proposal	I&E Proposal	I&E Proposal	OCA Proposal	OCA Proposal	I&E Proposal	OCA Proposal	OCA Proposal	
Class	100gal	\$	\$	%	\$	%	\$	%	\$	%	\$	
Residential 5/8"	15	\$ 44.82	\$ 50.75	13.23%	\$ 50.13	11.85%	\$ 49.76	11.02%	\$ 890.86	14.39%	\$ 882.22	13.28%
Commercial 2"	500	\$ 778.80	\$ 901.81	15.79%								

Wastewater Tariff Zone 6		Includes Dsic 5%										
Customer	Average Use	Present Bill	Aqua Proposal	Aqua Proposal	I&E Proposal	I&E Proposal	OCA Proposal	OCA Proposal	I&E Proposal	OCA Proposal	OCA Proposal	
Class	100gal	\$	\$	%	\$	%	\$	%	\$	%	\$	
Residential 5/8"	15	\$ 43.27	\$ 51.99	20.16%	\$ 60.10	38.90%	\$ 59.44	37.37%	\$ 186.20	92.71%	\$ 127.34	31.79%
Commercial 2"	500	\$ 96.62	\$ 113.25	17.21%								

Total Bill Impact												
Customer	Average Use	Present Bill	Aqua Proposal	Aqua Proposal	I&E Proposal	I&E Proposal	OCA Proposal	OCA Proposal	I&E Proposal	OCA Proposal	OCA Proposal	
Class	100gal	\$	\$	%	\$	%	\$	%	\$	%	\$	
Residential 5/8"	15	\$ 88.09	\$ 102.74	16.64%	\$ 110.23	25.13%	\$ 109.20	23.96%	\$ 1,077.06	23.03%	\$ 1,009.56	15.32%
Commercial 2"	500	\$ 875.42	\$ 1,015.06	15.95%								

Note: Masthope residential consumption average is half of Aqua's residential consumption average.

APPENDIX B: PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc.	:	
and Aqua Pennsylvania Wastewater	:	C-2021-3028992
	:	C-2021-3028996

Proposed Findings of Fact

1. Masthope is an incorporated association whose members consist of owners of 2029 improved and unimproved lots within the service territory of Aqua’s CS Water Division and CS Sewer Division. Masthope Compl. ¶ 2.
2. The property owners within the Masthope community are water and wastewater customers of Aqua. Masthope Compl. ¶ 2.
3. Masthope itself is a customer of Aqua for water service supplied to its recreational facilities. Masthope Compl. ¶ 2.
4. Masthope predominantly (though not exclusively) is a second home/short-term/seasonal community with approximately half of its billings reflecting usage rates of 1,000 gallons per month or less. Masthope St. 1, at 3-4; Masthope St. 3-SR, at 3.
5. Masthope water service is currently provided pursuant to Zone 3 and is subject to higher customer charges and lower consumption charges than the majority of Aqua’s year-round water customers served under different schedules. Masthope St. 1, at 4.
6. Masthope wastewater service is presently provided pursuant to the Zone 6 schedule (to be renumbered Zone 5). Masthope St. 1, at 4.
7. On May 9, 2019, the Commission approved a settlement involving Masthope in which Aqua increased monthly water customer charges to \$28.00 for 5/8-inch customers and increased monthly wastewater customer charges to \$39.64 with a usage charge of \$0.10 per hundred gallons for Masthope customers. *See Pa. Pub. Util. Comm’n v. Aqua Pennsylvania, Inc.*, Docket Nos. R-2018-3003558 & R-2018-3003561 (Opinion & Order entered May 9, 2019).
8. Additionally, Aqua agreed to study alternatives to metered water service and address this issue in its next rate proceeding. *Id.*

9. On August 20, 2021, Aqua filed Original Tariff Water – PA P.U.C. No. 3 (“Tariff Water No. 3”) and Original Tariff Sewer – PA P.U.C. No. 3 (“Tariff Sewer No. 3”) to become effective on October 19, 2021. Aqua Initial Filing Vol. 1, Original Tariff Water-Pa.P.U.C. No. 3 & Original Tariff Sewer-Pa.P.U.C. No. 3.
10. As it relates to Masthope, these tariff filings, *inter alia*, propose a 17% increase in water rates for Zone 3 and a 27% increase in wastewater rates for Zone 5 (to be renumbered from previous Zone 6). Masthope Comp. ¶ 3; Aqua Initial Filing Vol. 1, Original Tariff Sewer-Pa.P.U.C. No. 3.
11. Masthope filed a formal complaint in both cases docketed at C-2021-3028992 (Water) and C-2021-3028996 (Wastewater).
12. The Presiding Officer convened an evidentiary hearing on Monday, December 20, 2021.
13. Masthope submitted the following into the record: Masthope Statement No. 1, Direct Testimony of Robert A. Rosenthal, including Exhibit Masthope-1 (Schedules 1-6) (“Masthope St. 1”); Masthope Statement No. 2-R, Rebuttal Testimony of Robert A. Rosenthal (“Masthope St. 2-R”); and Masthope Statement No. 3-SR, Surrebuttal Testimony of Robert A. Rosenthal (“Masthope St. 3-SR”).
14. Masthope’s “List of Evidence offered by Masthope Mountain Community Association” was marked and entered into the record as Masthope Hearing Exhibit 1.
15. The Masthope WWTP has experienced hydraulic overloading since at least 2018. Masthope St. 1, at 6-7.
16. In December 2020, PADEP issued a notice to Aqua and Lackawaxen Township restricting new connections to the Masthope WWTP due to hydraulic overloading. Masthope St. 1, at 5.
17. Aqua has acknowledged the hydraulic overload conditions at the Masthope WWTP. Masthope St. 1, at 6; AP Statement No. 9-R – Rebuttal Testimony of Todd M. Duerr (“AP St. 9-R”), at 36-37.
18. In response, Aqua submitted a responsive “Corrective Action Plan” to the PADEP that Lackawaxen Township and Pike County have approved but that PADEP has not approved. Masthope St. 1, at 5-6 & Ex. Masthope-1, Sch. 3.
19. Among other things, the Corrective Action Plan requests that PADEP approve connections for 30 homes in 2021 and 15 homes annually thereafter until the Corrective Action Plan is complete. Masthope St. 1, at 5-6 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).
20. However, Aqua maintains complete discretion to avoid any connections if in its judgment additional connections might compromise permit limitations such that

there is no way to dispute Aqua's determinations. Masthope St. 1, at 10-11 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).

21. Hydraulic overload conditions could have been avoided with proper monitoring of overload conditions and better communication with Masthope and local officials to fully understand the needs of the Masthope community. Masthope St. 1, at 10-11; Masthope St. 3-SR, at 4.
22. Aqua PA Wastewater did not devote sufficient resources to fully understand the growth dimension in Masthope and therefore did not adequately or timely plan for expansion of the Masthope wastewater treatment plant. Masthope St. 1, at 8.
23. Aqua's Corrective Action Plan also identifies projects designed to upgrade and expand the Masthope WWTP to resolve hydraulic overload conditions while pursuing Act 537 planning, all of which the company anticipates will take five years to complete. Masthope St. 1, at 5-6 & Ex. Masthope-1, Sch. 3 (Section 8.0, p. 13).
24. Although Aqua has plans for the future, any ongoing or additional restrictions on connections until at least 2026 or beyond is unreasonable, highly detrimental to Masthope, and militates against any rate increase for Masthope ratepayers for lack of adequate and reasonable wastewater service.
25. COVID-19 did not change Masthope from a part-time to full-time community that meaningfully increased wastewater flows. Masthope St. 1, at 8-9.
26. Hydraulic overload conditions pre-date COVID-19. Masthope St. 1, at 7.
27. Excessive precipitation did not cause the hydraulic overload on the Masthope system in 2018 and 2019. Masthope St. 1, at 7.
28. The Masthope WWTP is inadequate to serve the Masthope community and requires expansion in order to meet its needs. Masthope St. 3-R, at 5-6.
29. The testimony of Robert A. Rosenthal regarding the Masthope WWTP and hydraulic overload conditions in Masthope Statements 1, 2-R, and 3-SR is credible and accepted.
30. The testimony of Mr. Duerr regarding the Masthope WWTP and hydraulic overload conditions in Aqua Statement 9-R is not credible and rejected.
31. Aqua's Act 11 proposal allocates \$20,839,425 million in water revenues to cover the revenue requirement for its wastewater operations, resulting in an increase of approximately 17% for Zone 3 water customers and an increase of approximately 26.4% for Zone 6/5 wastewater customers. Masthope St. 2-R, at 2-3.
32. I&E's proposal reduces Aqua's water revenue support requirement from \$20,839,425 to \$15,766,549 (assuming the Commission grants Aqua PA's full rate increase); reduces water customer burdens by \$1/month while increasing wastewater

customer burdens by \$10/month; doubles the average increase design of 26.4% that Aqua proposed for the Masthope wastewater rates in Zone 6/5; and increases in consumption charges contained in the Zone 6/5 by 150%. I&E Statement No. 5 (Kubas) (“I&E St. 5”), at 13-18.

33. OCA would reduce the proposed subsidy from \$20.839 million by \$9.065 million to \$11.774 million, resulting in an increase in Masthope wastewater rates by approximately 41%. OCA Statement 4, Direct Testimony of Glenn A. Watkins (“OCA St. 4”), at 11.
34. The Act 11 subsidy adjustments proposed by I&E and (to a lesser extent) OCA result in unjust and unreasonable rates that, if adopted, would disproportionately and negatively affect Masthope wastewater customers. Masthope St. 2-R, at 3; Masthope St. 2-R, at 4.

Proposed Conclusions of Law

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission has the duty to set “just and reasonable” rates pursuant to Section 1301 of the Public Utility Code (“Code”), 66 Pa.C.S. § 1301.
3. The burden of proof to establish the justness and reasonableness of every element of a public utility’s rate increase request rests solely upon the public utility in all proceedings filed under Section 1308(d) of the Code. *See* 66 Pa.C.S. § 315(a).
4. In addition, Section 523 of the Public Utility Code, 66 Pa.C.S. § 523, requires the Commission to “consider ... the efficiency, effectiveness and adequacy of service of each utility when determining just and reasonable rates[.]” *Pa. P.U.C. v. Pennsylvania Gas & Water Co.*, 61 Pa. P.U.C. 409, 415-16 (1986).
5. Every public utility has the obligation to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, including repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities that are necessary or proper for the accommodation, convenience, and safety of the public. 66 Pa.C.S. § 1501.
6. The Commission has the discretion to deny a proposed rate increase, in whole or in part, if the Commission finds “that the service rendered by the public utility is inadequate.” 66 Pa.C.S. § 526(a); *Pa. P.U.C. v. Pa. Gas & Water Co.*, 61 Pa. P.U.C. 409, 416 (1986); *National Utilities, Inc. v. Pa. P.U.C.*, 709 A.2d 972 (Pa. Cmwlth. 1998).
7. The Commission has jurisdiction to determine whether “repeated and ongoing overflows of sewage from [the public utility’s] facilities demonstrate that [the public utility] has failed to provide its usage customers with adequate, efficient, safe and reasonable service and facilities.” *Sutter v. Clean Treatment Sewage Company*, No. C-

20078197 *et al.*, 104 Pa. P.U.C. 146, 2009 WL 1514994, slip op. at 14 (Pa. P.U.C. May 15, 2009).

8. The failure to properly treat sewage constitutes a failure to provide safe, adequate, and reasonable service, for which customers are paying rates. *Sutter v. Clean Treatment Sewage Company*, No. C-20078197 *et al.*, 104 Pa. P.U.C. 146, 2009 WL 1514994, slip op. at 14 (Pa. P.U.C. May 15, 2009).
9. A public utility must demonstrate actual improvements to rectify inadequate service. *See, e.g., Pa. P.U.C. v. Pa. Gas & Water Co.*, 61 Pa. P.U.C. 496, 501 (1986).
10. "Section 1501 makes the public utility responsible for providing reasonably continuous service to its customers. The actions/inactions of the Township do not excuse the Company's protracted inability to provide service to availability customers who wish to hook up to [the public utility's] system." *Sutter*.
11. Act 11 amends Chapter 13 of the Code by exempting water and wastewater utilities from the prohibition on combining, for ratemaking purposes, different utility types and by allowing the Commission to allocate a portion of the wastewater utility's revenue requirement to the combined water and wastewater utility. *See* 66 Pa.C.S. § 1311(c); *Implementation of Act 11 of 2012*, 299 P.U.R.4th 367, 2012 WL 3249678 (Aug. 2, 2012).
12. The Commission has broad discretion to allocate wastewater revenue requirements across a utility's combined customer base under Act 11, but not at the expense of assuring just and reasonable rates for all classes of customers as required by Section 1301 of the Code, 66 Pa.C.S § 1301.
13. Tariff Water No. 3 and Tariff Sewer No. 3 and rates proposed therein are unjust, unreasonable, and inconsistent with the Public Utility Code, sound ratemaking principles, and public policy.
14. The proposed rate design in Tariff Water No. 3 and Tariff Sewer No. 3 filed by Aqua is discriminatory, unjust, and unreasonable and violates ratemaking principles.
15. The Act 11 subsidy adjustments proposed by I&E and OCA result in unjust and unreasonable rates that, if adopted, would disproportionately and negatively affect Masthope wastewater customers.

APPENDIX C: PROPOSED ORDERING PARAGRAPHS

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket Nos. R-2021-3027385
	:	R-2021-3027386
Aqua Pennsylvania, Inc.	:	
and Aqua Pennsylvania Wastewater	:	C-2021-3028992
	:	C-2021-3028996

It is hereby ordered:

1. That Aqua’s request to increase water and wastewater rates reflected in Tariff Water No. 3 and Tariff Sewer No. 3 be and hereby is denied as unjust, unreasonable, and inconsistent with the Public Utility Code, sound ratemaking principles, and public policy.
2. That Aqua coordinate with Masthope and local officials regarding “Corrective Action Plan” and future Chapter 94 reporting requirements.
3. That Aqua report to Masthope and the Commission on the status of corrective actions and PADEP determinations regarding the Masthope WWTP.
4. That Aqua seek additional requests or an amendment to the Corrective Action Plan to increase the number of connections to the Masthope WWTP pending a permanent resolution of the issues affecting the WWTP.
5. That Aqua pursue remedies, including appeals, if faced with adverse PADEP determination that restricts Aqua’s ability to connect customers to the Masthope WWTP.
6. That Aqua submit a report within 60 days from the date of this order explaining how “Project 15088006258 – Masthope WWTP Add Treatment Train” will resolve hydraulic overload conditions at the Masthope WWTP and eliminate building restrictions in Masthope.
7. That Aqua complete Act 537 planning and expansion/upgrade projects that permanently eliminate building restrictions in Masthope.
8. That Aqua and the parties to meet on a collaborative basis to establish an annual plan of interim rate changes to consolidate the schedules offered in Aqua’s tariffs.
9. That Aqua study the practicality of a statewide optional “seasonal or low average use” wastewater rate modeled after the Zone 6 rate as a permanent schedule in the tariff.