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VIA ELECTRONIC FILING

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Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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January 21, 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 Reply 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



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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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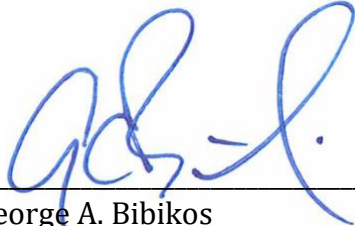
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Dated this 21st day of January, 2022.



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**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

REPLY BRIEF OF MASTHOPE MOUNTAIN COMMUNITY ASSOCIATION

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I. INTRODUCTION

Masthope Mountain Community Association (“Masthope”) submits its reply 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”).

II. REPLY

Masthope’s main brief addresses much of the arguments regarding Aqua’s proposed increase in water and wastewater rates and their effect on ratepayers in the Masthope community. Masthope submits this reply to address Aqua’s arguments regarding the Masthope WWTP and related hydraulic overload conditions that caused a moratorium on new hookups within the community; and the Act 11 cross-subsidy proposals that would result in substantial wastewater rate increases if adopted by the Commission.

A. ***The Commission should reject Aqua’s arguments that COVID-19 and increased precipitation caused hydraulic overload conditions on the Masthope WWTP.***

As Masthope explained at pages 9 to 19 of its Main Brief, the Commission should (a) 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; and (b) impose reasonable conditions to assure that Aqua resolve the hydraulic overloading and eliminate building restrictions in the community in the event the Commission grants rate relief.

On this point, Aqua contends at pages 195 to 198 that the company prudently planned for wastewater treatment capacity needs of the Masthope community consistent with Section 1501 of the Code, arguing that Masthope transitioned from a part-time to full-time

community as a result of COVID-19 and that increased precipitation accelerated the need for system and WWTP improvements. Aqua is incorrect.

First, Aqua points to no information, data, or documentation to form a basis for the conclusion that Masthope transitioned from a part-time to full-time community. By contrast, Mr. Rosenthal testified that COVID-19 did not change Masthope from a part-time to full-time community that meaningfully increased wastewater flows¹ and that, in any event, the hydraulic overload conditions pre-date COVID-19.² Aqua has not addressed all factors that Mr. Rosenthal identified in his surrebuttal that could have effected increased reported flows in the community *before* COVID-19:

Q. PLEASE SUMMARIZE THE FACTORS IN YOUR SURREBUTTAL THAT COULD HAVE EFFECTED INCREASED REPORTED FLOWS IN THE COMMUNITY PRIOR TO THE COVID 19 PANDEMIC?

A. To summarize the responses to Mr. Duerr’s rebuttal testimony, 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. This combination of factors has manifested in the conclusion that the 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

¹ Masthope St. 1, at 8-9.

² Masthope St. 1, at 7.

causes borne out by the data and other known factors most certainly pre-date the COVID-19 pandemic.³

Second, although Aqua emphasizes an increase in the annual amount of precipitation as the driver of the overloading,⁴ that comparison is not borne out when examining the month-to-month data embedded in Mr. Duerr's rebuttal in Aqua Statement 9-R at page 35. As depicted in the chart below, the 2017 precipitation data on which Mr. Duerr relied does not match the year-to-year data that Aqua reported to PADEP in Aqua Exhibit TMD-2-R:

Data from Aqua PA Exhibit TMD-2-R
PADEP Chapter 94 Reporting
Total Monthly Precipitation reported for 2017 (inches)

Month	2017 Report	2018 Report	Reporting Difference
January	6.40	0.67	5.73
February	16.50	0.06	16.44
March	37.30	2.55	34.75
April	3.20	0.92	2.28
May	3.60	0.22	3.38
June	3.80	0.12	3.68
July	5.00	0.41	4.59
August	4.20	2.12	2.08
September	2.20	2.40	-0.20
October	4.10	5.86	-1.76
November	1.00	1.00	0.00
December	12.00	12.90	-0.90

Consequently, Aqua's claims regarding precipitation not only lack merit, the data relied upon is inaccurate, unreliable, and contrary to the record.

Accordingly, the Commission should reject Aqua's arguments that it has provided adequate wastewater service and that unforeseen COVID-19 and wet-weather conditions beyond Aqua's control caused hydraulic overloads and ensuing moratorium.

³ Masthope St. 3-R, at 5-6.

⁴ AP St. 9-R, at 34-35.

B. The Commission has jurisdiction to implement Masthope's proposed conditions to assure that Aqua timely resolve the hydraulic overload conditions and take all necessary steps to permanently remove restrictions on new connections to the Masthope WWTP.

Aqua next contends that the Commission lacks jurisdiction to impose Masthope's recommendations for addressing hydraulic overloads on the Masthope WWTP and ensuing moratorium as conditions on Aqua's request for rate relief. Again, Aqua is mistaken.

The Commission has explained the difference between PADEP jurisdiction over hydraulic overloads and the Commission's jurisdiction over adequate service as follows:

We are sensitive to the possibility that a public utility can be caught between the competing demands of two regulatory agencies. Nevertheless, after review and consideration of the record in the instant proceeding, we find we have jurisdiction over the instant Complaints. This case does not involve a claim, for example, that CTSC improperly polluted a waterway when its sludge tanks overflowed on October 14, 2005. I.D. at 14. Rather, we are faced with such issues as whether CTSC failed to provide reasonably continuous service to customers being charged an availability fee, despite the fact that CTSC could not connect those customers to its wastewater system due to a moratorium on additional hookups. We are also presented with the question of whether the repeated and on-going overflows of sewage from CTSC's facilities demonstrate that CTSC has failed to provide its usage customers with adequate, efficient, safe and reasonable service and facilities. This is not a matter for DEP. Rather, it is a matter for this Commission, and we will resolve that question here.

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).

As in *Sutter*, the question here is not whether Aqua caused pollution or engaged in other environmental harm. Rather, the question is whether Aqua's wastewater service to Masthope is adequate and reasonable given the persisting hydraulic overload conditions and resulting moratorium on new connections to the Masthope WWTP.

With the question properly framed, the Commission surely has jurisdiction to assure that Aqua provides adequate, reasonable, and continuous service to the public within

Masthope, including new customers who await the ability to connect to the WWTP. To that end, the Commission has jurisdiction to order that Aqua:

- coordinate with Masthope and local officials regarding the Corrective Action Plan;
- report to Masthope and the Commission on the status of corrective actions and PADEP determinations;
- 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;
- appeal any adverse PADEP determination that restricts Aqua's ability to connect customers to the Masthope WWTP;
- assure that Aqua's "Project 15088006258 – Masthope WWTP Add Treatment Train" results in eliminating the building restrictions currently affecting the Masthope WWTP; and
- timely complete Act 537 planning and related improvements to eliminate building restrictions in Masthope.

The PADEP's recent approval of Aqua's Corrective Action Plan (dated January 11, 2022, but moved for admission into the record as AP Post-Hearing Ex. 1 on January 20, 2022) does not change Masthope's position. The PADEP's determination regarding the Corrective Action Plan imposes various reporting requirements on Aqua and only authorizes 60 new connections to the Masthope WWTP, as opposed to Aqua's request for 120 connections. The PADEP's determination therefore only goes so far. PADEP's determination does not lift the building restrictions entirely; imposes no hard deadlines on Aqua either to fully complete final Act 537 planning or to upgrade and enhance the Masthope WWTP; maintains Aqua's sole discretion to approve additional connections; and does not require that Aqua report, communicate, and coordinate with Masthope, local officials, or the Commission regarding Aqua's progress and activities.

The PADEP's determination only generally approves to some extent how Aqua proposed to address the hydraulic overloading but it does not address service issues under Section 1501 of the Code. Pursuant to Section 1501 of the Code, the Commission has the authority to impose Masthope's proposed recommendations identified above and at pages 17-18 of Masthope's main brief, consistent with and in addition to PADEP's determinations, to assure that Aqua provide adequate and reasonable service to Masthope ratepayers who face potential increases in rates without any assurance that Aqua will finally resolve all issues associated with the Masthope WWTP that render the system inadequate to serve Masthope's current and future needs.

Accordingly, the Commission should reject Aqua's arguments and adopt Masthope's recommendation for conditions on Aqua's rate increase to assure that the Masthope WWTP meets the needs of existing and future wastewater customers.

C. The Commission should reject any proposals for revenue allocation and rate structure that would result in substantial wastewater rate increases for Masthope wastewater ratepayers.

Having reviewed the main briefs of the parties, Masthope supports I&E's proposed overall revenue increase of \$33.91 million as opposed to Aqua's request for a \$97.68 million increase in total revenues for water and wastewater operations. In addition, the parties are aligned that rates should be scaled back to eliminate the cross-subsidy first. As Masthope explained in its Main Brief at pages 19 to 24, however, the Commission should reject any revenue allocation pursuant to Act 11 of 2021, 66 Pa.C.S. § 1311(c), along with any rate design/rate structure proposals that result in significant increases in wastewater rates for Masthope ratepayers. This is so because at least part of the rationale underlying Act 11 is to assure adequate revenues for wastewater operations pending an increase in the utility's

wastewater customer base. With the moratorium in place in Masthope, there will be no new customers within Masthope to increase Aqua's wastewater customer base.

Accordingly, any increase, particularly a substantial increase, as proposed by OCA and I&E well above Aqua's proposals for revenue allocation and rate structure would be unreasonable and have a disproportionately negative impact on Masthope given the indefinite restrictions on connecting new wastewater customers to the Masthope WWTP.

III. 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.

January 21, 2022

Respectfully submitted,



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