

PUBLIC VERSION – PROTECTED MATERIALS REDACTED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* :
 :
v. : Docket Nos. R-2021-3027385, *et al.*
 :
Aqua Pennsylvania, Inc. :

Pennsylvania Public Utility Commission, *et al.* :
 :
v. : Docket Nos. R-2021-3027386, *et al.*
 :
Aqua Pennsylvania Wastewater, Inc. :

**REPLY BRIEF OF
AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.**

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Dated: January 21, 2022

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I. INTRODUCTION

A. BACKGROUND

On January 11, 2022, in accordance with the Prehearing Order dated October 19, 2021, and Interim Order on Briefs and Closing Record dated December 20, 2021 issued by Administrative Law Judge Mary D. Long (the “ALJ”), Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, “Aqua PA,” “AP” or the “Company”), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), Masthope Mountain Community Association (“Masthope”), the Aqua Large Users Group (“Aqua LUG”), and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) submitted Main Briefs in this proceeding. In addition, a Letter in Lieu of Brief was submitted by customer complainants John Day and Fred Weiner.

In Aqua PA’s Main Brief, which explained that its proposed \$96.990 million base rate increase should be approved,¹ the Company anticipated and responded to many of the arguments that have been raised by the other parties. In several instances, Aqua PA’s position is fully set forth in its Main Brief and further response is not necessary. Certain arguments presented by other parties in their briefs, however, require further response. For ease of reference, Aqua PA’s Reply Brief follows the same sequence contained in its Main Brief.

¹ The Company’s initial filing sought a total increase of \$97.684 million. The Company’s final claim reflects certain updates and corrections, including the acceptance of certain adjustments identified by other parties, identified during the proceeding.

B. REPLY REGARDING THE IMPACTS OF COVID-19

OCA devotes an initial section of its Main Brief to presenting historic statistics on the effects of the COVID-19 pandemic in Pennsylvania. OCA MB, Section I.C.² Based upon these statistics, OCA asserts that the Commission should take the pandemic’s effects “into account when determining what constitutes a just and reasonable rate for Aqua’s ratepayers.” OCA MB at 15. In this case, OCA takes a number of extreme positions on various issues, including rate of return, to propose that Aqua PA be ordered to decrease its rates.

However, rejecting any increase, in the face of overwhelming evidence that a rate increase is justified under traditional ratemaking principles, is not a balancing of customers’ and investors’ interests. It is establishing a new ratemaking standard that rate increases can be granted or denied based upon subjective assessments of whether a sufficient number of customers will have trouble paying increased rates. Such a standard not only imperils the execution of needed safety investments in the short term, but will also do long-term harm as investors assess whether to continue to invest in Pennsylvania utilities or shift investment to other states or other enterprises.

In *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2020-3018835, et al. (Order entered Feb. 19, 2021) (“*Columbia 2020*”). the Commission expressed the following:

in our opinion, the continued use of traditional ratemaking methodologies during this pandemic is consistent with the setting of just and reasonable rates and the constitutional standards established in Bluefield and Hope Natural Gas, and the pandemic does not change the continued application of these standards.

Columbia 2020, at p. 51. The Commission further observed:

² CAUSE-PA also devotes a portion of its brief to claims regarding the impacts of the COVID-19 pandemic, and argues that certain temporary modifications to the Company’s programs should be ordered due to these impacts. CAUSE-PA MB, Section IX.A. The Company’s response to OCA’s arguments similarly demonstrates that the temporary measures proposed by CAUSE-PA are not necessary or appropriate at this time. See also Section VIII.E.2. *infra*.

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First, with regard to the pandemic's impact on customers, the ALJ cited unemployment rates of 8.8% to 19.2% of the working population in Columbia's service area. R.D. at 48. While we acknowledge the gravity of these unemployment statistics, it has not been demonstrated in this case with substantial evidence or explanation that the impact of any rate increase on unemployed customers will lead to harm that outweighs all other valid ratemaking concerns "especially the polestar – cost of providing service." Lloyd, 904 A.2d at 1020.

Id.

The proper, and constitutional, approach to deal with lingering effects of the pandemic is not to deny a rate increase, nor is it to adopt positions plainly contrary to past rulings and practice. Instead, it is to implement programs that support those with payment difficulties. As explained in Aqua PA's Main Brief, the Company has proposed a comprehensive Customer Assistance Program ("CAP"), that far exceeds the scope of programs generally offered by Pennsylvania water utilities. This program will provide substantial increased assistance to low-income water and wastewater customers in Aqua PA' service territory.

Data offered by OCA further shows that unemployment rates have dropped substantially from the 9%-19% unemployment rate cited in *Columbia 2020*. OCA MB at 6. Further, OCA's data shows that the number of Aqua PA customer accounts at risk of termination have begun to fall below pre-pandemic levels. OCA MB at 7. The dollar amount of accounts at risk of termination are still above pre-pandemic levels, although much of this difference can be attributed to the uncollectible accounts deferral associated with the Commission's termination moratorium. AP St. 1-R at 4. As explained in the Company's Main Brief and below, the Company has proposed to continue to defer recovery of this deferred balance to avoid a rate impact in this case, and to allow economic recovery and the availability of new aid programs, such as the Low-Income Household Water Assistance Program ("LIHWAP"), to hopefully reduce these balances. AP MB, Section IX.E.

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Aqua PA understands the difficulties faced by customers with an inability to pay. The Company implemented programs and practices during 2020 and 2021 to help customers who struggle to pay their bills, and, given the Commission’s recent actions to begin moving beyond the COVID-19 pandemic,³ will provide further assistance with its new CAP going forward. However, Aqua PA’s provision of water and wastewater services, like other utility services, are an essential service, and Aqua PA undertook substantial efforts to meet its obligation to provide safe and reliable service during the pandemic, while providing for the health and safety of its employees. The Company cannot continue to meet those obligations without appropriate rate relief.

The Commission needs to continue its long-standing approach of being forward-looking, to address future needs in a world responding and adapting to COVID. For example, the Return on Equity (“ROE”) authorized in this case needs to be set at a level that supports ongoing investment in infrastructure. That return must recognize increasing capital costs from inflation and supply chain challenges. It should not return to times of termination moratoriums, as proposed by witnesses for OCA and CAUSE-PA, or impose new restrictions such as mandatory waivers of late payment charges. As expressed by Aqua PA witness Mr. Packer:

In summary, the economic concerns are real for both customer and the Company. The requirements upon Aqua PA as a utility providing an essential service do not cease and require fair treatment from the Commission in its evaluation of the Company’s claim for rate relief. The Company is entitled to a fair opportunity to earn a reasonable rate of return on its investment. The Company believes that its position in this case is reasonable and strikes a fair balance in light of the current conditions.

³ See *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244, at pp. 3-4 (Order entered March 18, 2021) (acknowledging that it is time to return to the regular collections process set forth in the Public Utility Code and the Commission’s regulations). Aqua PA further submits that the additional protections described in this Order, which Aqua PA currently has in place, further demonstrate the additional protective measures proposed by CAUSE-PA are not necessary.

AP St. 1-R at 6.

With this additional information in mind, Aqua PA replies to the other parties' presentations in their Main Briefs below.

II. SUMMARY OF REPLY ARGUMENT

Aqua PA's request for rate relief in this proceeding is just and reasonable, driven by the need to replace aging infrastructure, and conservative in light of prevailing market conditions that have emerged since its base rate case was initially filed. Yet, OCA and I&E ignore these facts and propose drastic reductions in Aqua PA's requested increase; in fact, OCA proposed a revenue decrease. As demonstrated in Aqua PA's Main Brief, OCA and I&E achieve their inappropriate and unreasonable results by ignoring the Public Utility Code, appellate precedent, Commission regulations and prior rate case orders, and well-established principles of utility ratemaking. If the ALJ and the Commission fairly consider the evidence and follow the well-established precedent identified by Aqua PA, they should reject the adjustments and recommendations of OCA and I&E and approve Aqua PA's requested increase.

COVID-19 ISSUES. As an initial matter, Aqua PA noted that OCA devoted a portion of its Main Brief to arguing that the Commission should take the pandemic's effects "into account when determining what constitutes a just and reasonable rate for Aqua's ratepayers." CAUSE-PA similarly argues that the Commission's order in this proceeding should require Aqua PA to impose temporary modifications to its termination and payment arrangement procedures due to COVID-19. While Aqua PA understands the difficulties faced by customers with an inability to pay, the proposals of OCA and CAUSE-PA should be rejected.

RATE OF RETURN. As explained in Aqua PA's Main Brief, the largest single driver of OCA's and I&E's unreasonable revenue requirement positions is Rate of Return. I&E and OCA have proposed ROE at levels rarely, if ever, seen in Pennsylvania. Moreover, due to

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OCA's presentation of a hypothetical capital structure, its ROE is in fact lower than the 8.00% return it supposedly recommends. In fact, applying OCA's recommendations to Aqua PA's actual, reasonable capital structure ratios, OCA effectively requests that the ALJ and the Commission allow the Company to recover only a 7.71% ROE. I&E's ROE is based upon an undefended and understated discounted cash flow ("DCF") calculation, as well as a similarly understated capital assets pricing model ("CAPM") calculation. These parties' proposals are unjust, unreasonable and would completely undermine investors' confidence in Pennsylvania public utilities.

Furthermore, OCA and I&E also refuse to include any component for management performance in the cost of equity recommendation. The Company has provided extensive evidence to demonstrate that it provides high quality service and has implemented numerous programs designed to enhance the service it provides to customers. OCA and I&E failed to rebut this evidence and, therefore, the Company's ROE should include a component for management effectiveness consistent with past precedent.

RATE BASE. OCA and I&E further attempt to exclude the Company's claim for a positive acquisition adjustment related to the Borough of Phoenixville water system. Their arguments ignore the undisputed condition of the portion of the system that was acquired, and the fact that Aqua PA's acquisition of the system was specifically prompted by a regulatory requirement previously imposed upon the Borough by the Commission.

REVENUES AND EXPENSES. The various adjustments to the Company's revenues and expenses that were advanced by OCA and I&E are without merit. Certain of those adjustments are highlighted here, but each has been addressed in the Company's Main Brief and in further detail below.

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I&E seeks to have the Company cancel certain long-term negotiated rate contracts, and reflect revenues from these negotiated contracts at full tariff rates. I&E’s Main Brief adds nothing to its prior arguments, which were shown by Aqua PA to be meritless, contrary to the good-faith bargain of the parties to each contract and detrimental to other Aqua PA customers.

Aqua PA has also demonstrated that OCA’s attempt to disallow a portion of the Company’s adjustments to HTY sales volumes made to residential customers, in recognition of the effects of the COVID-19 pandemic, should be rejected. The OCA’s proposal to disallow 25% of the Company’s residential usage adjustment, while accepting the commercial and public adjustments, is arbitrary and unfair.

OCA’s opposition to the Company’s General Price Level adjustment, which reflects the effects of inflation on operating expenses that were not specifically adjusted, is also unreasonable. OCA takes a position that is contrary to a wealth of case law, including prior Aqua PA rate case orders. Moreover, Aqua PA demonstrated that the subject expenses have increased at rates well in excess of inflation, and, therefore, the adjustment is relatively conservative.

Aqua PA further demonstrated that OCA’s proposal to disallow the recovery of a portion of the Company’s incentive compensation expense should be denied. Consistent with Commission precedent, Aqua PA should be permitted to recover the costs of its incentive compensation program because it includes metrics and goals directly related to the provision of service.

OCA’s further attempts to justify its proposed increase of the Company’s tax repair deduction, which would decrease tax repairs expense, are without merit. OCA’s reference to Federal Energy Regulatory Commission (“FERC”) guidance on the treatment of FIN48 fails to

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recognize that this guidance is only related to financial accounting and reporting purposes; it provides no guidance for ratemaking treatment. Moreover, OCA’s concern that allowing the Company to make the FIN48 adjustment could result in shareholders receiving income for the tax effect of the adjustment is incorrect and reflects a lack of understanding of the Company’s accounting and ratemaking treatment.

LOW-INCOME PROPOSAL. OCA and CAUSE-PA devotes substantial portions of their respective Main Briefs towards attempting to justify various modifications to the Company’s proposed Universal Service Program (“USP”). For various reasons, including the parties’ failure to consider the capabilities of the Company’s current customer information system (“CIS”) and to quantify or consider the costs and benefits of their proposals, Aqua PA submits that the parties’ proposals should be rejected. In addition, OCA unjustifiably proposes to deny the Company’s Universal Service Rider (“USR”) for recovery of its USP costs. Aqua PA submits that the other parties’ recommended modifications should be rejected. Aqua PA has proposed a comprehensive, robust and transparent USP, that reasonably balances the needs of the Company’s low-income customers with the Company’s current technological capabilities and the costs of the program.

WATER QUALITY AND CUSTOMER SERVICE ISSUES. Other parties attempt to further argue that the Company has failed to comply with prior commitments and has provided less than superior performance by identifying quality of service and customer of service issues. Many of the arguments advanced attempt to impose requirements on the Company that do not actually exist, are outside the Commission’s jurisdiction, or have already been addressed by the Company in compliance with applicable legal and regulatory requirements. The ALJ and the Commission should reject these claims.

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MASTHOPE. Masthope’s arguments regarding proposed conditions that the Commission should impose upon any rate increase, and its concerns regarding Aqua PA’s implementation of a Corrective Action Plan submitted to the Pennsylvania Department of Environmental Protection (“PADEP”) are without merit. Importantly, the PADEP recently approved the Corrective Action Plan. Aqua PA will continue to work with and comply with the orders and directives of the PADEP.

RATE STRUCTURE. Aqua PA and the other parties have devoted a significant portion of their Main Briefs discussing the allocation of a portion of the wastewater revenue requirement to water customers pursuant to the provisions of Section 1311(c) of the Public Utility Code, 66 Pa.C.S. § 1311(c). The Company has proposed a 31.2% increase, on average, to wastewater rates, and to allocate a portion of the wastewater revenue requirement to water customers. Other parties have sought to reduce this allocation. Aqua PA submits that the proposed alternative Act 11 allocations advanced by the other parties are contrary to the principles of gradualism and not in the public interest.

For the reasons explained below, the other parties’ recommended adjustments and modifications to Aqua PA’s requested revenue increase, its proposed revenue allocation and rate design, and its USP should be rejected. The ALJ and the Commission should instead adopt Aqua PA’s requested revenue increase, proposed rate structure and its USP without modification.

III. RATE BASE

A. INTRODUCTION

None of the parties have contested Aqua PA’s claimed plant in service or depreciation reserves for water or wastewater operations, which were explained in Sections III.A. and III.B. of the Company’s Main Brief. However, Aqua PA anticipated the OCA’s and I&E’s arguments and challenges with respect to its claim for a positive acquisition adjustment associated with the

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Borough of Phoenixville water system, as well as certain additions to and deductions from rate base. The adjustments proposed by I&E and OCA should be rejected.

I&E also recommended that the Company provide the Commission’s Bureau of Technical Utility Services (“TUS”) and I&E with updates to Schedule G-2 of AP Exhibits 1-A through 1-G by no later than July 2022, reflecting actual capital expenditures, plant additions and retirements by month for the FTY, and a further update for the FPFTY by no later than July 1, 2023. I&E MB at 21-22. Aqua PA did not challenge this recommendation by I&E and does not oppose providing the requested reports.

B. BOROUGH OF PHOENIXVILLE ACQUISITION

This case reflects Aqua PA’s acquisition of a portion of the Borough of Phoenixville water system,⁴ which was specifically prompted by a regulatory requirement previously imposed upon the Borough by the Commission,⁵ and the inclusion of this system in the Company’s rate base. AP MB at 19. As explained in its Main Brief, the Company has requested a return on and return of the purchase price in this proceeding consistent with Section 1327 of the Public Utility Code, 66 Pa.C.S. § 1327. AP MB at 19.

⁴ The acquisition of the subject water system assets was approved by the Commission in *Joint Application of Aqua Pennsylvania, Inc. and the Borough of Phoenixville for approval of 1) the acquisition by Aqua of the water system assets of Phoenixville used in connection with the water service provided by Phoenixville in East Pikeland and Schuylkill Townships, Chester County, and Upper Provide Township, Montgomery County, PA; 2) the right of Aqua to begin to supply water service to the public in portions of East Pikeland Township, Chester County, and Upper Provide Township, Montgomery County, PA; and 3) the abandonment of Phoenixville of public water service in East Pikeland Township, Chester County, and Upper Provide Township, Montgomery County, and certain locations in Schuylkill Township, Chester County, PA*, Docket Nos. A-2018-2642837, A-2018-3642839, et al. (Recommendation Decision dated Sept. 13, 2019), *adopted as final* (Order entered Oct. 24, 2019) (“*Aqua-Phoenixville Order*”).

⁵ *Petition of the Borough of Phoenixville for a Declaratory Order that the Provision of Water and Wastewater Service to Isolated Customers in Adjoining Townships Does Not Constitute the Provision of Public Utility Service Under 66 Pa. C.S. § 102*, Docket No. P-2013-2389321 (Opinion and Order entered May 19, 2015) (“*Phoenixville Petition Order*”); *see also Aqua-Phoenixville Order* at 16 (“the Joint Petition is fully consistent with the Commission’s guidance (essentially a regulatory requirement) in a prior order denying the Borough’s request for a finding that its service to customers in the adjoining outside townships does not constitute public utility service subject to the Commission’s jurisdiction. The public interest supports the transfer of the remaining assets and remaining customers to Aqua.” (emphasis added)).

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While it is not disputed by any party that the Company has satisfied the requirements of Section 1327(a)(1)-(2) and (4)-(9), OCA and I&E both argue that the Company has not satisfied the requirements of Section 1327(a)(3). OCA MB at 17-21; I&E MB at 19-20. These arguments should be rejected.

As explained in Aqua PA's Main Brief, Section 1327(a)(3) provides a non-exclusive and non-exhaustive list of evidence that may be presented by a utility to demonstrate that the seller was not providing adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. § 1327(a)(3) (“the public utility, municipal corporation or person from which the property was acquired was not, at the time of acquisition, furnishing and maintaining adequate, efficient, safe and reasonable service and facilities, evidence of which shall include, but not be limited to, any one or more of the following:...” (emphasis added)). Aqua PA submitted substantial evidence that it had satisfied subpart (v) of this list, by demonstrating that the provider was manually reading meters, the system experienced high levels (i.e., 68%) of non-revenue or unaccounted for water (“UFW”), and 30% of the system fire hydrants required repair or replacement at the time of the acquisition. AP MB at 24-25.

Neither OCA nor I&E dispute that these conditions existed. *See* OCA MB at 20; I&E MB at 19. Rather, they attempt to divorce Aqua PA's acquisition of the water system from the Commission's prior *Phoenixville Petition Order* or equivocate regarding the condition of the system to attempt to undermine otherwise undisputed evidence of its poor condition. Importantly, neither OCA nor I&E deal with the facts that the Commission imposed a regulatory requirement upon the Borough of Phoenixville to sell the portion of its system serving extraterritorial customers in its prior *Phoenixville Petition Order*, and that the Commission clearly indicated that the Borough of Phoenixville must sell the system to another public utility if

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it cannot comply with the regulatory burdens and requirements imposed by the Public Utility Code on its extraterritorial service. AP MB at 28-29. The Borough could not comply with these regulatory requirements and, as such, sold the subject assets.

Aqua PA notes that OCA advances an additional argument that warrants further response. OCA cites to *Pa. PUC v. Citizens Util Water Co.*, Docket No. R-00953300, 1996 Pa. PUC LEXIS 167, at *20, *27-28 (Order dated Mar. 29, 1996) (“*Citizens Water 1996*”) and argues that while the factors identified by Aqua PA “may be indicia of trouble, they do not without more meet the requirements of a Section 1327 adjustment.” OCA MB at 21. However, *Citizens Water 1996* does not discuss the actual condition of the subject system at all. The Commission made no finding regarding levels of UFW, and similarly made no findings regarding the need to replace hydrants throughout the system. As such, the facts presented in *Citizens Water 1996* are entirely dissimilar from the facts presented here by Aqua PA.

The Commission did, however, explain its reasoning as follows:

This Commission, consistent with policy statements and statute has recognized that small, nonviable water and sewer utilities do pose a specific threat to the public interest, especially in the area of public health and sanitation. Therefore, we note that the public interest, generally, is served by encouraging the acquisition of such companies.

Section 1327 is a major component of the public policy goal which is designed to benefit customers of such troubled utilities, in that they are assured of safe and adequate water service upon acquisition by a utility having more substantial financial and technical resources available. This is so, even if the acquisition requires rate making allowances not otherwise available under the Public Utility Code to provide an incentive for the acquiring utility.

However, all of the pertinent statutory considerations and language enacted pursuant thereto, presuppose that there be evidence of record that the utility involved is troubled, i.e. nonviable. We are not persuaded that Citizens has established that Douglassville was not, at the time of the acquisition, providing adequate service.

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Also, the public policy benefits of regionalizing water supplies is a related, but separate consideration which has not been fully demonstrated on the record of this proceeding in any event.

Citizens Water 1996, at *27-28 (emphasis added). Evidence of such regionalization benefits have been identified here. As the Commission noted in the *Phoenixville Petition Order*:

In past years, the disproportionate cost of rate filings compared to the minimal revenues recovered from the Borough's small extraterritorial customer base has deterred the Borough from seeking rate relief and created cost subsidies flowing from inside-borough customers to outside-borough customers.

Phoenixville Petition Order at 3 (quoting the petition) (emphasis added); *see also* AP MB at 29-30. The fact that the conditions noted by Aqua PA were not resolved at the time of the acquisition, due to the Borough's inability to seek rate relief, makes clear that "[t]he Phoenixville acquisition was a prime candidate for using this policy," AP St. 2-R at 8, and that the Commission's policy encourages regionalization and the acquisition of smaller troubled systems by larger capable public utilities is served. AP MB at 30.

I&E relatedly attempts to salvage its claims in testimony by arguing that the issues addressed by Aqua PA were "known or knowable" conditions at the time of the acquisition. I&E MB at 19-20. First, the fact that poor conditions are known or knowable at the time of the acquisition is not the test; and if it was, it would completely undermine the purpose of Section 1327. Second, the assertion that the conditions were "known or knowable" actually supports the fact that the system was troubled at the time it was acquired, and that Aqua PA has satisfied the requirements of Section 1327(a)(3), which is to encourage acquisition of troubled systems.

I&E also argues that the Borough was capable of repairing the system by raising taxes or issuing bonds. I&E MB at 20. I&E's assertion fails to recognize that the system acquired was outside the Borough. The Borough could not tax the customers of the subject system, either to raise additional revenues or to pay for bonds to fix the system. I&E's "solution" would only

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have exacerbated the problem previously recognized by the Commission – cost subsidies flowing from customers inside the Borough to customers residing outside the Borough.

For these reasons, and the reasons more fully explained in its Main Brief, Aqua PA has demonstrated that it is entitled to a positive acquisition adjustment of \$2,315,440 regarding the Phoenixville water system and that this amount should be included in its claimed rate base for water operations.

C. ADDITIONS TO RATE BASE

1. Cash Working Capital.

The Company identified its claims for Cashing Working Capital (“CWC”) associated with its water and wastewater operations in Section III.D.1. of its Main Brief. As explained therein, no parties challenged the Company’s lead/lag study or its calculation of (a) the average lag days in payment of expenses, taxes or interest, (b) the average lag day in receipt of revenues, or (c) the average lag days between payment of expenses and receipt of revenue. I&E specifically noted its agreement with the Company’s study and method of calculating its CWC claim. I&E MB at 38.

OCA’s and I&E’s proposed adjustments to the CWC claim based upon adjustments to operating expenses, revenues, and/or interest. *See* AP MB at 31-32. Aqua PA continues to oppose the adjustments identified to CWC in OCA’s and I&E’s respective Main Briefs, for the same reasons that the Company explains various of the underlying adjustments should be rejected.

In its Main Brief, OCA asserts that Aqua PA opposes the use of interest synchronization in computing CWC. OCA MB at 23. This assertion is inaccurate. Aqua PA does not oppose the use of interest synchronization for CWC and income tax purposes. AP St. 1 at 25; AP St. 1-R at 22-23. Aqua PA’s opposition to OCA’s adjustment is because it is based upon a hypothetical

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capital structure. As explained in Section VII.B.2. of the Company’s Main Brief and this Reply Brief, OCA’s proposal to use a hypothetical capital structure in this case is contrary to facts and Commission precedent.

The adjustments to CWC should be rejected.

2. Materials and Supplies.

Aqua PA explained that its rate base for water operations included a claim for materials and supplies, but that its rate base for wastewater operations did not in Section III.D.2. of its Main Brief. No other party addressed the Company’s claim for materials and supplies in its Main Briefs and, therefore, it should be approved without modification.

D. DEDUCTIONS FROM RATE BASE

1. Customer Advances and Contributions In Aid Of Construction.

Aqua PA provided sufficient justification for its claimed deductions for customer advances for construction (“CAC”) and contributions in aid of construction (“CIAC”), in response to concerns raised by the OCA. AP MB at 33-34. OCA confirmed that the information provided by Aqua PA in its rebuttal testimony led it to withdraw its proposed adjustment. OCA MB at 23. Therefore, the Company’s claimed reductions to rate base associated with CAC and CIAC should be adopted without modification.

However, OCA’s Main Brief on this issue contains a statement that must be corrected. OCA asserts that Company witness Saball explained in rebuttal testimony that “the omission by Aqua was inadvertent.” OCA MB at 23. Ms. Saball presented no testimony regarding CAC or CIAC. Rather, Aqua PA witness Feeney explained that OCA improperly included contributed plant not in rate base in its adjustment. AP MB at 34. It was this testimony that led to OCA’s withdrawal of its adjustment.

2. Accumulated Deferred Income Taxes.

As explained in the Company’s Main Brief, AP has deducted from rate base \$6.1 Million, representing the reserve associated with the Company’s claim regarding the treatment of uncertain tax positions in computing the flow-through deduction for tax repairs (“FIN48”). AP MB at 34-35. OCA has opposed the Company’s FIN48 treatment in computing income taxes. OCA MB at 77. The Company responds to OCA’s arguments regarding FIN48 in computing income tax expense in Section VI.B.2. of this Reply Brief.

OCA does not address the issue of the rate base deduction for the FIN 48 reserve in its Main Brief. However, in its rate tables, OCA deducts \$6.1 million from rate base for the FIN48 reserve. OCA MB Appendix A, Table II.⁶ OCA’s position in its tables reflect multiple errors.

First, as explained in the Company’s Main Brief, the Company has included the \$6.1 million in its Company adjustments on Appendix F, Table I. This adjustment cannot be further added to the Company’s as adjusted claim. Second, OCA’s adjustment to include the FIN48 reserve as a rate base deduction is contrary to its position that the Company should not make a FIN48 adjustment in computing income tax expense. The rate base adjustment is only appropriate if the Company’s FIN48 adjustment is adopted. AP MB at 35.

The Company’s \$6.1 million adjustment to rate base associated with its FIN48 adjustment to compute income tax expense should be adopted. However, if OCA’s FIN48 position on income tax expense is adopted, the Company’s \$6.1 million reduction to rate base should be removed.

⁶ The total is separately listed as \$3.386 million and \$2.700 million. AP St. 8-RJ at 3.

IV. REVENUES

A. OTHER PARTIES' PROPOSED REVENUE ADJUSTMENTS

1. **I&E's Proposed Adjustment To Rider DRS Contracts Should Be Rejected.**

Aqua PA fully rebutted I&E's concerns and recommendations to cancel certain contracts between the Company and customers with competitive alternatives to obtaining water service from Aqua PA under "Rider DRS – Demand Based Resale Service." AP MB, Section IV.B.1. In its Main Brief, I&E only addresses its proposal to cancel the Rider DRS contracts between Borough of Sharpsville ("Sharpsville"), Schwenksville Borough Authority ("Schwenksville"), Chemung County Industrial Development Authority ("Chemung"), Horsham Water and Sewer Authority ("Horsham"), and New Wilmington Municipal Authority ("New Wilmington") in summary fashion. I&E MB at 25-29.⁷ In summary fashion, I&E asserts that it "does not accept" the information provided by the Company with respect to these challenged contracts. However, the issue is not whether I&E "accepts" information provided. The issue is whether the Company provided support for why it granted the contract rates in question. I&E further addressed its proposal that until the contract with Aqua Ohio's Masury Division ("Masury") is approved by the Commission that Masury should be billed under full tariff rates.⁸ I&E MB at 28.

Aqua PA fully addressed I&E's arguments regarding each of these contracts. Each of I&E's primary arguments in support of cancelling these contracts is without merit. *See* AP MB at 40-44. Aqua PA also demonstrated that each of the Rider DRS customers has produced documentation "to the Company's satisfaction" that shows the existence of a competitive alternative. *See* AP MB at 44-50 (detailing the documentation provided by each customer).

⁷ As explained in Aqua PA's Main Brief, I&E withdrew its proposals to cancel the contracts between Aqua PA and United Water, Hubbard, Warwick, Downingtown and Bristol, based upon the information supplied by the Company. *See also* I&E MB at 25-29.

⁸ Masury was previously charged under Aqua PA's tariff.

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Moreover, Aqua PA demonstrated that I&E’s proposal to cancel these contracts would ultimately be to the detriment of other customers. *See* AP MB at 39, 44-50 (quantifying the benefits provided by each contract customer, and the revenues that would be lost if the contract were cancelled). With respect to the Masury contract, Aqua PA explained that I&E’s position is unreasonable and not supported by the analysis supplied. That competitive analysis clearly demonstrated the availability and cost of an alternative supply of water to Masury, and that the discounted rate provided was designed to meet the cost of that competitive alternative. AP MB at 49-50. Masury was previously charged under a tariffed rate that was approved in the Company’s previous base rate cases (see Water-PA.P.U.C. No. 2), which moved to a rider contract rate in the current case per the Company’s settlement agreement from the 2018 Base Rate Case.

I&E’s attempts to alter the language of Rider DRS to eliminate long-term contracts entered into based on the unique facts and circumstances in existence at the time of their execution, which have provided and continue to provide “absolute benefit to the Company’s existing customers and the rates they are charged,” AP St. 2-R at 16, are inappropriate, unnecessary, and should be rejected.

2. East Brandywine Usage Rate.

I&E further recommends adjustments to the Company’s third-party sales customers, specifically that the usage rate for Southdown Homes increase and the customer charge for East Brandywine be increased. I&E MB at 29-30. The Company’s revised revenue exhibits reflected I&E’s proposed increase for Southdown Homes. *See* AP Exhibit 5R-B, Sch. WW-5, p. 17. However, the Company did not increase the East Brandywine rate, and therefore opposes I&E’s proposal to increase the customer charge for East Brandywine. As such, the Company’s claimed

revenues should not be modified to reflect I&E’s recommendation with respect to East Brandywine.

3. OCA’s Proposed Adjustment To The Escalation Provisions Of Certain Negotiated Water Contracts Should Be Denied.

OCA argued that the Company’s negotiated water contract revenues should be increased to reflect OCA’s proposed revisions to the escalation rates contained in several sales for resale and end-user negotiated rate contracts. OCA MB at 26, 110-112. However, OCA’s proposed adjustment uses “inflation factors not consistent with the inflation escalation clauses in the respective contracts.” AP St. 2-R at 28. In this regard, OCA admits that the escalation rates used in the contracts are based off the Consumer Price Index (“CPI”), but argues they should be adjusted upward using different inflation metrics. OCA MB at 26. This is an apples to oranges comparison that should not be adopted. OCA also asserts that the Company did not provide a basis for its adjustment factors. This is inaccurate. As the Company explained, the escalation factors used are the same factors that were used to develop its General Price Level Adjustment for expense purposes. AP MB at 53. Moreover, OCA’s attempt to revise the rates used in the contract by using different escalation factors would undermine the parties’ good-faith bargain and should not be permitted. For these reasons, and those more fully explained in Section IV.B.2. of Aqua PA’s Main Brief, OCA’s proposed adjustment to revenues associated with industrial and public authority contracts should be denied.

4. Metered Residential Sales Adjustment.

Aqua PA projected water consumption by class to be similar to usage patterns in its prior 2018 Base Rate Case rather than assume that consumption by class in the future will be similar to usage patterns during the pandemic (*i.e.*, the HTY). AP MB at 53. OCA explained in its Main Brief that it accepted the Company’s adjustment with respect to Commercial and Public

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Authority water sales, but proposed to only reflect 75% of the Company’s adjustment for Residential water sales. OCA MB at 24-25. Aqua PA addressed this proposal in Section IV.B.3. of its Main Brief, and demonstrated it should not be accepted.

However, Aqua PA notes that OCA’s statement that while water sales “numbers may be adjusting towards pre-pandemic levels, they are not there yet” undercuts its proposed adjustment. OCA MB at 25. It is axiomatic that a public utility’s base rates are established based upon a test year, which projects normal operating conditions. OCA appears to be arguing about future conditions in the FPFTY based on past conditions, and the conditions it has identified (*i.e.*, a global pandemic) are not normal. Indeed, residential usage for both the months of September 2021 and October 2021, have trended downward substantially from the pandemic months of September 2020 and October 2020. AP MB at 55 (citing OCA St. 1-SR at 28).

Moreover, OCA’s analysis based on these conditions cannot be trusted because of the flaw noted by Ms. Heppenstall: if individuals are staying home and using more water than pre-pandemic, it should follow that usage for commercial and public classes should also be lower than pre-pandemic levels. AP MB at 53-54. OCA’s one-sided adjustment is an arbitrary and biased attempt to reduce the revenue increase required to serve the residential class.

5. Forfeited Discounts / Late Payments.

Aqua PA anticipated and responded to I&E’s recommended adjustments to water and wastewater forfeited discounts (“late payment revenue”), respectively. AP MB, Section IV.B.4. Aqua PA notes that I&E and OCA have each accepted its adjustment to FPFTY miscellaneous revenues to normalize the impacts of COVID-19. AP MB at 56; OCA MB at 27.

While the Company accepted I&E’s recommendation that the Company’s wastewater revenues for its New Garden system under present rates be increased to reflect \$17,832 in late payment revenue, it demonstrated that I&E’s additional adjustments to late payment revenues

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should be denied. AP MB at 55-57. Contrary to I&E’s assertions in its Main Brief, its proposal to increase late payment revenues under proposed rates by the same percent as the overall increase granted by the Commission is not necessary and would result in double counting. AP MB at 56. I&E’s adjustments to late payment revenue, except for the adjustment regarding the New Garden system under present rates, should therefore be denied.

V. EXPENSES

A. INTRODUCTION REGARDING EXPENSES

As its applicable legal standard, I&E states that “a utility is entitled to recover its reasonably incurred expenses,” and “a public utility is entitled to recover all reasonable and normal operating and maintenance expenses incurred by providing regulated service.” I&E MB at 30 (citing *UGI Corp. v. Pa. PUC*, 410 A.2d 923 (Pa. Cmwlth. 1980) (“*UGI Corp.*”) and *Western Pa. Water Co. v. Pa. PUC*, 422 A.2d 906 (Pa. Cmwlth. 1980)). Importantly, the Commonwealth Court recognized in *UGI Corp.* that expenses are recoverable when they are “a direct and clearly prudent step in providing public service.” *UGI Corp.*, 410 A.2d at 932. In *UGI Corp.*, the Court reversed a Commission order denying recovery of expenses associated with feasibility studies related to the company’s participation in certain natural gas storage projects, which the company ultimately elected not to join. The Court explained that these studies were “reasonably calculated” to achieve more efficient operations and, therefore, reasonably and prudently incurred. Here, many of Aqua PA’s claimed expenses, which are opposed by I&E or OCA, are “reasonably calculated” to achieve more efficient and safe operations, as described in Section V of the Company’s Main Brief, and this Reply Brief. Therefore, they should be recoverable pursuant to the above-cited cited legal precedent.

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B. PHOENIXVILLE ACQUISITION – AMORTIZATION EXPENSE ADJUSTMENT

As explained in the Company’s Main Brief, OCA and I&E have proposed an adjustment to amortization expense⁹ associated with the Company’s claim for a positive acquisition adjustment to rate base related to the Phoenixville water system acquisition. AP MB, Section V.B. The other parties’ adjustments to deny recovery of the Phoenixville acquisition adjustment are in error, because the Company’s proposed rate treatment is consistent with Section 1327(a)(9) of the Public Utility Code, 66 Pa.C.S. § 1327(a)(9). AP MB, Sections III.C. and V.B. For those same reasons, the other parties’ proposed adjustments to amortization expense should also be denied.

C. GENERAL PRICE LEVEL ADJUSTMENT

Aqua PA demonstrated that its General Price Level Adjustment, which reflects the anticipated effect of inflation on operating expenses not specifically adjusted in this case, and the associated Inflation Factor are reasonable, consistent with Commission precedent and conservative in light of historical cost increases and prevailing economic conditions. AP MB, Section V.C. OCA cites to certain cases in its Main Brief, in support of its opposition to the Company’s proposed adjustment. OCA MB at 28.

However, Aqua PA anticipated and fully addressed OCA’s reliance on these cases, which are outdated and inaccurately represented. Indeed, Aqua PA explained:

“The inflation adjustment criticized in *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-0061931, et al., 2007 Pa. PUC LEXIS 45 (Order entered Sept. 28, 2007), cited by Mr. Smith testimony, concerned the use of a five-year planning period to project all expenses, including the use of an inflation factor. *Id.* at 23-27.

⁹ The Company notes that OCA and I&E make their adjustment to depreciation in their rate tables provided in their Main Briefs related to the utility plant acquisition adjustment for the Phoenixville water system (*see* OCA MB Appendix A, Table I Water; I&E MB Appendix A, Table 1 Water). Should the Commission determine that the Company is not entitled to a utility plant acquisition adjustment for the Phoenixville water system, the adjustment should be made to O&M and not depreciation.

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Further, in *Pa. PUC v. Philadelphia Electric Company*, Docket No. R-822291, et al., 1983 Pa. PUC LEXIS 9 (Order dated Nov. 22, 1983), the Commission did not reject the use of an inflation adjustment. Rather, the Commission disagreed with the Company's projected 8% inflation factor applied to certain expenses and adopted a 5% inflation factor, based upon the gross national product ("GNP") price deflator. *Id.*, at *73-77. In the third case cited by Mr. Smith, *Pa. PUC v. PECO*, Docket No. R-891364, et al., 1990 Pa. PUC LEXIS 155 (Order dated May 16, 1990), the issue of inflation arose with respect to a rate base claim for Materials and Supplies inventory. *Id.* at *130."

AP MB at 60-61.

OCA further argues that the General Price Level Adjustment should only be applied to expenses specifically related to employees, citing *National Fuel Gas Dist. Corp. v. Pa. PUC*, 677 A.2d 861 (Pa. Cmwlth. 1986). OCA's contention is without merit. Nothing in the *National Fuel Gas* case indicates that inflation adjustments are only allowed with respect to employee expenses. Furthermore, OCA fails to recognize that the Commission has, in fact, consistently accepted general price adjustment factors applied to expenses not separately adjusted, where the utility has demonstrated the adjustments are adequately supported and relatively conservative. AP MB at 61-62 (citing a *Pa. PUC v. Philadelphia Suburban Water Company*, Docket Nos. R-00016750, 2002 Pa. PUC LEXIS 55, at *53-55 (Order entered July 8, 2002) ("*PSW 2002*");¹⁰ *Pa. PUC v. United Water Pennsylvania, Inc.*, Docket Nos. R-00973947, et al., 1998 Pa. PUC LEXIS 6, at *29-32 (Order entered Jan. 30, 1998) ("*UPWA 1998*"); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-891468, et al., 1990 Pa. PUC LEXIS 162, at *37-44 (Order dated Sept. 20, 1990) ("*CPA 1990*"); *Pa. PUC v. Pennsylvania-American Water Company*, Docket Nos. R-880916, et al., 1988 Pa. PUC LEXIS, at *53-56 (Order dated Oct. 21, 1998) ("*PAWC 1988*"). OCA fails to distinguish any of this case law, including Commission

¹⁰ Per *PSW 2002*, the same method used by the Company in this proceeding was previously approved by the Commission. See *PSW 2002*, at *47 (explaining the utility's inflation factor was based on Blue Chip Forecast for the Gross Domestic Product Chained Price Index).

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decisions accepting the Company's General Price Level Adjustment in prior base rate proceedings involving Aqua PA's predecessor, *see PSW 2002*, at *49, 55, and in Aqua PA's last fully litigated base rate proceeding, *see Pa. PUC v. Aqua Pa., Inc.*, Docket No. R-00072711, 2008 Pa. PUC LEXIS 50, at *26-29 (Order dated July 17, 2008) ("*Aqua 2008*").

OCA's further argument regarding evidence presented to specific expense categories misses the mark. OCA MB at 29-30. The Company specifically presented evidence that "[t]he expenses that the Company is requesting be increased under this general inflation adjustment have all historically grown at rates that far exceed the requested inflation factor that the Company is applying to them, which is 1.75% in the FTY and 1.70% in the FPFTY." AP St. 3-R at 3.

Finally, OCA attempts to ignore macroeconomic conditions that further demonstrated the Company's adjustment was relatively conservative. AP MB at 63-64. It is not disputed that inflation rates are outpacing the factor applied to these categories by the Company. Therefore, the factor used is conservative, reasonably calculated, and supported by substantial evidence of record.

D. EMPLOYEE EXPENSES

1. Payroll Expense.

All parties have agreed to utilize the 2.88% vacancy rate proposed by OCA for purposes of non-seasonal payroll employees. AP MB at 66; OCA MB at 34; I&E MB at 37. However, as explained in Aqua PA's Main Brief, a dispute remains regarding the Company's claim for budgeted seasonal positions. AP MB at 67.

Aqua PA addressed OCA's arguments in support of this adjustment, and demonstrated that the Company's project budgeting of 33 seasonal employees during the FPFTY is reasonable. AP MB at 67. The Company notes, however, that OCA argues on page 35 of its Main Brief that

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Aqua PA’s claim that it filled 31 out of 33 positions in 2019 “is further evidence that the Company over-budgeted for seasonal employees even before the pandemic.” This argument misses the point; OCA’s adjustment to reflect only 11 employees is not reflective of any past period outside of the COVID-19 pandemic. OCA’s attempt to reduce the Company’s test year budget for important seasonal employees is based upon abnormal conditions and should be rejected.

OCA’s proposed adjustment reflects a disappointing pattern. Throughout the filing, Aqua PA made adjustments to normalize the effects of COVID-19 on HTY revenues and expenses. This included adjustment to sales usage, uncollectible accounts expense, late payment revenues, payroll and other categories. In many instances, these adjustments reduced revenue requirement. In some instances, they increased revenue requirement. However, OCA has disallowed adjustments that increased costs over the HTY (payroll, residential sales), while accepting those that reduced revenue requirement, such as commercial revenues, uncollectible accounts expense and late payment fees. OCA’s unbalanced approach to COVID-19 normalizations should be rejected.

OCA further argues that the payroll cost savings related to not hiring seasonal positions in 2020 and 2021 should be offset against Aqua PA’s proposed COVID-19 deferral. OCA MB at 35. OCA’s position assumes that a level of payroll expense can be known from the Company’s last, settled rate case. OCA’s proposal also violates rules against retroactive ratemaking. The Company addressed OCA’s positions regarding the Company’s proposed COVID-19 deferral in Section VIII.E. of its Main Brief and responds further in Section VIII.E.2. *infra*.

2. Employee Benefits Expense.

Both I&E and OCA proposed adjustments to the Company’s claimed employee benefits expense, based upon their proposed vacancy adjustments. AP MB at 67-68. For the same reasons discussed in Aqua PA’s Main Brief, the Company’s updated claim for employee benefits expense set forth in AP Exhibits 1-A(a) through 1-G(g) should be adopted.

3. Stock-Based Incentive Compensation.

OCA asserts that the Company should not be permitted to recover the cost of its stock-based incentive compensation program “because there is insufficient evidence demonstrating that the plan benefits customers or improves operational efficiency.” OCA MB at 36. OCA ignores its own exhibit. **[BEGIN HIGHLY CONFIDENTIAL]** [REDACTED]

[REDACTED] **[END HIGHLY CONFIDENTIAL]** Thus it is clear that improvement of operational efficiency is a critical component of the stock-based portion of the incentive compensation program.

OCA argues that some other jurisdictions do not allow recovery of stock-based compensation. OCA MB at 39. However, the decisions of other regulatory jurisdictions are not controlling and ignore prior commission precedent. *See, e.g., Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plant; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282, 2014 Pa. PUC LEXIS 93, at *34-35 (Recommended Decision Feb. 25, 2014) (“CPA DSIC Petition Order”) (“Although the OCA points to the practice of utilities in

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other states to support its argument to include ADIT in the DSIC, the jurisdictions that the OCA has identified in this proceeding have mechanisms that are dissimilar from the Pennsylvania mechanism. In the instant case, even if a review of the practices of other states in interpreting the Pennsylvania statute was appropriate, the mechanisms in the other states vary significantly from the Pennsylvania DSIC such that that they provide no relevant guidance in judging the reasonableness of the proposed ADIT adjustment.”), *adopted*, Docket Nos. P-2012-2338282, et al. (Order entered May 22, 2014); *Performance Metrics & Remedies (PMO III F0013) 2008 Guidelines Updates*, 2008 Pa. PUC LEXIS 1105, at *19-20 (Order entered July 22, 2008) (“[W]hether the NY PSC has adopted a particular change for use in NY (or whether other states in the footprint have adopted a particular change) does not control Pennsylvania’s decision to adopt or reject a particular change for use in Pennsylvania. . . We shall not, however, adopt changes or refrain from adopting changes for use in Pennsylvania based solely on what happens in NY or any other jurisdiction.”); *Petition for Declaratory Order Regarding Ownership of Alt. Energy Credits, Associated with Non-Utility Generating Facilities Under Contract to Pa. Elec. Co. and Metro. Edison Co.*, 2007 Pa. PUC LEXIS 7, at *26-27 (Order entered Feb. 12, 2007) (“*Pa. Elec. and Met-Ed PDO Order*”) (stating that neither the ALJ nor the Commission grounded their decisions on the analysis of the decisions of foreign jurisdictions); *see also Elder v. Orlucky*, 515 A.2d 517, 522 (Pa. 1986) (noting that it was not appropriate to consider another jurisdiction’s statute where there was no indication that the General Assembly based Pennsylvania legislation on legislation adopted in other jurisdictions). Moreover, the decisions of other jurisdictions are not even instructive where the Commission itself has authorized recovery of an expense under an established standard. AP MB at 69-70 (quoting *Pa. PUC v. UGI Utilities, Inc. – Electric Division*, Docket No. R-2017-2640058 (Order entered October 25,

2018) (“*UGI Electric*”). OCA seeks to distinguish *UGI Electric* on the basis that eligibility was based on performance duties and metrics directly related to the provision of service. However, as explained above, part of the applicable metrics are directly related to the provision of service.

OCA has otherwise not challenged the Company’s incentive program, inclusive of the stock reward, as unreasonable, imprudent or excessive. For the reasons explained above and in Section V.D.3. of Aqua PA’s Main Brief, OCA’s opposition to the recovery of stock-based incentive compensation is without merit and should be rejected.

4. Supplemental Executive Retirement Plan.

OCA argues that the cost of Aqua PA’s Supplemental Executive Retirement Plan (“SERP”) should be disallowed because the costs are not affiliated with the provision of utility service. OCA MB at 48-49. OCA misunderstands the legacy nature of the SERP.

The SERP is not a new retirement program offered to Company executives. As the Company explained, prior to 2003, the Company provided pension benefits to its employees, through its qualified pension plan and through a supplemental benefits plan for executives. The supplemental plan is provided because the Employee Retirement Income Security Act (“ERISA”) limits the benefits that may be paid to certain salaried employees.

In 2003, the Company ended its retirement programs, and moved all employees to 401K plans. However, those employees and executives who were hired prior to the 2003 termination of the pension plans retained their rights to retirement benefits under the plans. In order to fund those plans through retirement, the Company continues to accrue pension expense for the eligible employees. As explained in Aqua PA’s Main Brief, **[BEGIN HIGHLY CONFIDENTIAL]**

[REDACTED] **[END HIGHLY CONFIDENTIAL]** AP MB at 72.

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The fact that the SERP is no longer available to new employees does not disqualify the plan for rate recovery. The qualified pension plan also is not available to new employees, but the Company continues to accrue for future retirement benefits under that plan. The fact that this plan cost is slowly being phased out does not mean that the costs should be declared non-recoverable as not affiliated with the provision of current utility service. The retirement benefits under the qualified pension plan and the SERP are provided pursuant to prior commitments, and they should not be disallowed simply because the benefit has been replaced with a 401K for new employees.

OCA also asserts that the Commission has upheld incentive compensation plans, where the plan's incentive improved operational effectiveness. OCA argues that the SERP does not relate to customer service, and is not in place to attract new employees. OCA's reference to incentive plans is irrelevant. Pension plans are not incentive compensation plans. They are benefits offered to employees, no different from medical and dental plans. The fact that the SERP is slowly phasing out, as eligible retirees pass away, does not alter the fact that the plan was offered as a benefit to attract qualified executives in the past.

For reasons explained herein, and in Aqua PA's Main Brief, OCA's proposed disallowance of SERP costs should be rejected.

E. GENERAL LIABILITY INSURANCE EXPENSE

Aqua PA demonstrated that its claim for General Liability Insurance expense, as updated in its rebuttal testimony to reflect actual accruals of fiscal year ("FY") 2022 insurance expense, is reasonable and should be approved. AP MB, Section V.E.

OCA and I&E continue to contest the Company's claim in their respective Main Briefs. *See* OCA MB at 41-42; I&E MB at 32-33. However, each of the arguments advanced should be rejected.

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Aqua PA notes that OCA’s assertion that the Company’s claim is based on “outdated data” is erroneous. In the Company’s direct case, general liability insurance expense was computed by applying a five-year average escalation rate to 2021 insurance expense to derive 2023 expense. When OCA and I&E opposed the use of a five-year average escalation factor, and proposed the use of a three-year average, the Company updated its calculation to use more recent, known general liability expense for 2022, and adopted the OCA’s and I&E’s escalation rate of 4.38% to adjust 2022 expense to a 2023 level. AP MB at 77. Clearly, 2022 actual data is more recent than 2021 data, and therefore cannot be criticized as “outdated.”

OCA argues that while the Company accepted its proposed escalation rate of 4.38%, it “inconsistently mixed calculations” to derive the FPFTY claim. OCA MB at 42. Aqua PA did not mix calculations. It followed the same approach proposed by OCA and I&E to compute this expense; that is, it started with known cost and adjusted it to the FPFTY level, using the same escalation factor proposed by OCA and I&E. The only difference is that Aqua PA updated its claim to reflect more recent actual data as the starting point. Company witness Mr. Henkel fully explained the method by which he calculated the updates, which were reflective of actual accruals for FY 2022. AP MB at 75-77. OCA’s calculations do not reflect these actual amounts and, therefore, should be rejected.

I&E’s proposed adjustments should be rejected for similar reasons. I&E MB at 32-33. Although I&E continues to “question[] the reliability” of the actual amounts incurred for FY 2022, I&E provides no factual basis for its concerns. Moreover, there is nothing unusual or improper in updating the claim to reflect known, actual information. AP MB at 77.

The Company’s updated General Liability Insurance expense for water and wastewater operations should be accepted.

F. RATE CASE EXPENSE

Aqua PA addressed and responded to each of the arguments raised by OCA and I&E with respect to its proposed rate case expense. AP MB, Section V.F. As an initial matter, Aqua PA notes that both OCA and I&E continue to misunderstand the difference between the Company’s treatment of rate case expense for accounting purposes versus ratemaking purposes. OCA MB at 44-46; I&E MB at 31-32. Aqua PA fully explained that there is a difference between the treatment of this expense for accounting purposes versus ratemaking purposes, *see* AP MB at 78-79, and made it abundantly clear that Aqua PA normalizes rate case expense for ratemaking purposes. *See, e.g.*, AP MB at 78 (quoting AP St. 3 at 3 and explaining Aqua PA “proposes to normalize this cost over a thirty-six month period, which is the anticipated interval between this and the Company’s next base rate case.”). It is simply unnecessary to order Aqua PA to normalize its rate case expense for ratemaking purposes, as argued by OCA and I&E, when Aqua PA is already doing so.

The remaining disputes with respect to this expense category are related to OCA’s proposed 39-month normalization period, reductions to the “Other Consultants” and “Miscellaneous” sub-categories, and its assertion that Aqua PA overstated actual rate case expense in its last three base rate proceedings. *See* OCA MB at 42-45. Aqua PA fully addressed OCA’s argument that a 39-month normalization period should be used and its proposed reductions to sub-categories of rate case expense. AP MB at 79-80.

OCA’s further claim that Aqua PA’s claimed rate case expense was overstated to its actual rate case expense in each of its last three rate cases is without merit. OCA MB at 43. Importantly, OCA specifically admits that the fact these cases were settled “contributed to the Company’s claimed rate expense being higher than the actual costs.” OCA MB at 43. This case, however, has been fully litigated. Furthermore, OCA ignores the fact that each of the prior rate

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cases involved black box settlements where the revenue requirement agreed to in the settlement was, in fact, less than the revenue requirement initially requested. It stands to reason, therefore, that the actual rate case expense costs would similarly be less than what was claimed which assumes a fully-litigated case.

For these reasons and the reasons more fully explained in the Company's Main Brief, the Company's proposal to normalize for ratemaking purposes its claimed rate case expense of \$2,200,000 over three years should be accepted without modification.

G. NON-RATE CASE LEGAL EXPENSE

With respect to OCA's proposed adjustment to the Company's claim for non-rate case legal expense, OCA's continued proposal to utilize a two-year average to normalize this claim should be denied. OCA MB at 46-47. OCA's proposed two-year period ignores specific facts and circumstances associated with this expense category that make a 3-year period reasonable (*i.e.*, union contract negotiations). AP MB at 80-81.

Once it is recognized that OCA's proposed two-year period does not account for these facts, its further attempts to argue that Aqua PA witnesses are inconsistent with the use of a three-year period are also shown to be incorrect. OCA MB at 47. Indeed, this argument ignores the fact that the Company uses different periods based on the unique characteristics of each expense category "to appropriately account for the ebbs and flows of expense accounts that can fluctuate due to the normal course of business." AP St. 3-R at 10. Where different ebbs and flows are known to occur, *i.e.*, union contract negotiations, a different period is necessary to account for them. AP MB at 81. Moreover, OCA fails to recognize that it also proposes different averaging periods for different expenses, as it proposed a three-year averaging period for general liability insurance expenses. Yet, OCA presented no evidence regarding ebbs and flows specific to each category that drove its use of different periods. *See* AP MB at 81. OCA is

adjusting normalization periods solely to decrease specific expense categories, without regarding to any underlying facts.

Aqua PA's proposed non-rate case legal expense is reasonable and should be approved.

H. PURCHASED WATER EXPENSE

I&E's Main Brief attempts to justify its improper adjustments to the Company's purchased water expense claim. I&E MB at 34-35. Aqua PA fully addressed these arguments in its Main Brief. AP MB, Section V.H. Critically, I&E's arguments are divorced from the fact,¹¹ and divorced from the law.¹² The Commission should reject I&E's attempts to disregard the tariff rates of Aqua PA's affiliate that were established by another regulatory commission and, therefore, cannot be unilaterally changed by Aqua PA or its affiliate.

I&E's position is also internally inconsistent. I&E argues that the rate for purchases from the Struthers Division of Aqua Ohio should be substantially reduced, to be equal to the rate for sales by Aqua PA to the Masury Division of Aqua Ohio, while at the same time proposing to substantially increase the rate for sales to Masury. If there were merit to I&E's contention that the rates should be the same, which there is not, I&E's proposal is internally inconsistent.

I. PURCHASED POWER EXPENSE (WATER)

OCA proposed to increase the Company's claimed Purchased Power Expense for water operations based on its proposed adjustment to Metered Residential Water sales, which reflect only a portion of the Company's proposed COVID-19 usage adjustment.¹³ The Company opposed this adjustment, and has demonstrated that OCA's proposal is without merit and should

¹¹ AP MB at 82 (explaining that Aqua PA's sales to Masury and Aqua PA's purchases from the Struthers Division of Aqua Ohio are not comparable because they involve different geographic regions with different costs of service).

¹² AP MB at 83 (explaining that I&E's proposal would be contrary to another jurisdiction's approval of those rates and that I&E has not established those approved tariff rates are unreasonable).

¹³ See Section IV.A.3. *supra*; see also AP MB, Section IV.B.3.

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be denied. As such, OCA's related adjustment to Purchased Power Expense for water operations should also be rejected.

J. CHEMICALS EXPENSE (WATER)

OCA also proposed to increase the Company's claimed Chemicals Expense for water operations based on its proposed adjustment to Metered Residential Water sales, which reflect only a portion of the Company's proposed COVID-19 usage adjustment.¹⁴ The Company opposed this adjustment, and has demonstrated that OCA's proposal is without merit and should be denied. As such, OCA's related adjustment to Chemicals Expense for water operations should also be rejected.

K. DREDGING EXPENSE

I&E continues to oppose Aqua PA's proposal to accrue a reserve exclusively for dredging costs at a rate of \$400,000 per year, charge actual costs against that reserve as they are incurred, and record the reserve as a regulatory liability on the Company's books, subject to review for reasonableness or future adjustment in later base rate proceedings. I&E MB at 36. Aqua PA fully addressed the arguments raised by I&E in its Main Brief. AP MB, Section V.K. Moreover, I&E's Main Brief fails to recognize, or address, the fact that Aqua PA's proposal reflects a shift in operations that will benefit customers. By mobilizing and demobilizing only once every three years, the Company is able to reduce fixed costs by approximately \$300,000 over that period, while still being able to dredge as needed. AP MB at 85. To be clear, it is simply a request that will encourage cost savings. Aqua PA's proposal is reasonable and beneficial to ratepayers and, therefore, should be approved.

¹⁴ See footnote 13 *supra*.

L. ADVERTISING EXPENSE

The Company's claimed advertising expense includes \$75,000 for water operations and \$7,500 for wastewater operations related to advertising for the explanations of billing practices, rates, rules and regulations associated with the Company's proposed USP on an ongoing basis. AP MB at 86. OCA continues to propose to normalize this expense, and resultantly reduce the Company's claim to \$25,000 for water operations and \$2,500 for wastewater operations. OCA MB at 30-32.

However, OCA's focus on this being a "new" expense as justification for normalization is incorrect. OCA MB at 30-31. Just because an expense is new does not mean it will vary and OCA has presented no evidence that the Company's claim for advertising its USP will vary year-to-year. In particular, OCA has offered no rational argument that averaging two years with \$0 expense with the first year of a new expense produces a normalized cost reflective of future operations. Moreover, OCA's reliance on *Pa. PUC v. Pennsylvania American Water Co.*, Docket Nos. R-00038304, et al., 2003 Pa. PUC LEXIS 498, at *101-02 (Recommended Decision dated Nov 26, 2003), *adopted as modified*, Docket Nos. R-00038304, et al. (Opinion and Order entered Jan. 29, 2004) is misplaced. This case did not deal with a new expense; rather it dealt with the specific variability of uncollectibles expense.

OCA's further argument that Aqua PA has not shown why other advertising expenses could not be shifted to this program is also without merit. OCA MB at 32. The proposed USP is a different, new program. Shifting advertising expenses from other programs, such as customer safety and conservation, that are also properly claimed could lessen awareness of those programs. Moreover, OCA does not dispute the necessity of outreach and education for the proposed USP and further proposes increased outreach efforts. See AP MB at 87. OCA's proposal is neither fair nor reasonable and should be rejected.

M. CONCLUSION AS TO EXPENSES

For the reasons more fully explained above, the Company’s updated water and wastewater expenses for the FPFTY as set forth in AP Exhibits 1-A(a) through 1-G(g) and the tables include in Appendix F to its Main Brief are reasonable and, therefore, should be approved.

VI. TAXES

A. TAXES OTHER THAN INCOME TAXES

The only adjustments to Taxes Other Than Income Taxes are derivative adjustments to I&E’s contract revenue adjustment and OCA’s labor expense adjustment. As these adjustments should be rejected, as explained above and in Aqua PA’s Main Brief, the proposed adjustments to Taxes Other Than Income Taxes should be denied.

B. INCOME TAXES

1. Interest Synchronization.

OCA proposes an adjustment to the interest expense deduction used to compute income tax expense. OCA MB at 81-82. As explained in the Company’s Main Brief, OCA’s adjustment should be rejected because it improperly reflects the use of a hypothetical capital structure. AP MB at 89-90. The impropriety of OCA’s use of a hypothetical capital structure is explained in Section VII.B. of this Reply Brief and Aqua PA’s Main Brief.¹⁵

2. Tax Repair Deduction.

The Company has anticipated, and responded to, many of OCA’s arguments regarding the proper tax repair expense deduction. AP MB at 90-96. The Company will endeavor to limit this reply accordingly.

At page 77 of its Main Brief, OCA presents an argument in favor of the use of normalization for the repair allowance deduction. Ultimately, OCA concludes that it “is not

¹⁵ As explained previously in Section VI.B.1. of its Main Brief, the Company does not oppose the use of interest synchronization. It opposes the improper use of a hypothetical capital structure to derive the adjustment.

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practical in the current Aqua rate case to fully transition to deferred tax accounting for Aqua’s repairs deductions.”

OCA’s support for normalization of the tax repair deductions fails to address the “actual taxes paid” doctrine affirmed in binding Pennsylvania precedent and long-standing Commission application of this precedent. “It is established in this Commonwealth that one of the costs of the service rendered by a utility is the actual income tax paid to the Federal Government.” *Pittsburgh v. Pa. PUC*, 144 A.2d 648, 659 (Pa. Super. 1958) (citing *Riverton Consolidated Water Company v. Pa. PUC*, 140 A.2d 114, 123 (Pa. Super. 1958)).

In the seminal case, *Barasch v. Pa. PUC*, 507 Pa. 496, 491 A.2d 94 (Pa. 1985) (“*Penn Power*”), the Supreme Court of Pennsylvania concluded that where the use of normalization is not required under penalty of law (*e.g.*, such as the penalties Congress imposes for federal income tax purposes with respect to attempts to flow through the benefits of accelerated depreciation of post-1980 property), the use of normalization would violate the actual taxes paid doctrine. *See Penn Power*, 491 A.2d at 521. The Commission should not consider the issue of normalization of the repair allowance deduction in this case.

OCA identifies a repairs deduction amount of \$164.5 million. OCA MB at 78. As explained in Aqua PA’s Main Brief, this deduction amount is improperly computed. AP MB at 93. The correct deduction should be \$159.06 million, as proposed by the Company. Moreover, if OCA’s attempt to update the repairs allowance deduction to reflect a three-year average were adopted, then the correct deduction should be \$157.3 million. *Id.*

OCA opposes the Company’s adjustment to the repairs allowance deduction for FIN48. As explained in Aqua PA’s Main Brief, the FIN48 adjustment recognizes that a portion of the Company’s claimed repairs expense deduction more likely than not will be disallowed by the

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IRS. This is particularly the case given that the IRS has yet to issue guidance regarding the actual tax repair deduction that will be allowed. AP MB at 91.

OCA references FERC guidance on treatment of FIN48. OCA MB at 78-79. However, OCA fails to recognize that the FERC guidance related to **financial accounting and reporting purposes only**: “This guidance is for Commission financial accounting and reporting purposes only and is without prejudice to the ratemaking practice or treatment that should be afforded the items addressed herein.” *Accounting and Financial Reporting for Uncertainty in Income Taxes*, FERC Docket No. AI07-2-000, 119 F.E.R.C. ¶ 62,167, 2007 FERC LEXIS 976, at *4 (May 25, 2007). Thus, the FERC guidance letter cited by OCA provides no guidance for ratemaking treatment.

OCA further argues that allowing the Company to make the FIN48 adjustment “could produce excessive after-tax income for shareholders by ignoring income tax savings associated with income tax adjustments that are being claimed.” OCA MB at 79. OCA’s assertion is wrong, and demonstrates a lack of understanding of the Company’s accounting and ratemaking treatment. Specifically, OCA fails to consider that the Company has established a reserve, to be deducted from rate base, for the FIN48 adjustment. In so doing, shareholders will not receive income for the tax effect of the FIN48 adjustment, and the rate based deduction ensures that customers receive the time value of money benefit related to the deferral of the uncertain tax position. If, in the future, the IRS in fact allows the full tax repair deduction, then the reserve balance will be returned to customers in rates. If the full deduction is disallowed, as the Company assesses is likely, the reserve will be debited for the disallowed amount. AP St. 8-R at 6-7.

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OCA also argues that the Company’s proposed treatment of FIN48 is inequitable and one sided. OCA claims the Company “would first deny ratepayers the benefit of reduced tax expense from deductions claimed on its income tax returns” and then, if some portion of the deduction were disallowed by the IRS, “would propose to record regulatory assets for those income tax disallowances and to charge ratepayers to recoup the income taxes.” OCA MB at 80. OCA’s argument is a complete misreading of the Company’s testimony, and conflates two separate concepts. The need to record a regulatory asset would arise if OCA’s proposal were adopted,¹⁶ as Aqua PA witness Saball explained:

If the income tax benefit is not reduced by the reserve for the uncertain tax position, and the tax position is subsequently audited and disallowed, the Company would record a regulatory asset to recover the disallowed benefit that has been included in customer rates.

AP St. 8-R at 6 (emphasis added). In contrast, under the Company’s proposal, the excluded deduction for uncertain tax positions will have a rate base offset for the FIN48 reserve, and thus would not require the recording of a further regulatory asset if the deduction is denied by the IRS.

Finally, in surrebuttal testimony, OCA proposed a change to the collar mechanism adopted in the 2018 Base Rate Case settlement. The Company has explained in its Main Brief that this proposal should be rejected. OCA has not addressed the collar mechanism in its Main Brief.

¹⁶ OCA acknowledges the need to reflect a regulatory asset under its position, if the IRS in fact disallows any portion of the repairs allowance deduction. OCA MB at 81.

VII. RATE OF RETURN

A. INTRODUCTION

Subsequent to the preparation of rate of return data by the parties, the country began to experience substantial increases to the rate of inflation. As Aqua PA witness Mr. Moul testified in rejoinder testimony, the inflation rate reported in December was 6.8%, a 39-year high. AP St. 7-RJ at 5. That rate shows no sign of abating. The Federal Open Market Committee (“FOMC”) has made clear that these inflationary pressures will lead to increases in interest rates. AP St. 7-R at 6. Thus, capital cost rates in the FPFTY will be higher than earlier data may have indicated.

In the face of this information, I&E and OCA have proposed rates of return on common equity at levels rarely, if ever, seen in Pennsylvania. I&E’s proposed ROE is 8.9%. I&E MB at 42. OCA’s ROE is an even lower 8%, producing an overall after-tax Rate of Return of 6.0%. OCA MB, Appendix A Table I(A). However, OCA’s ROE is presented in the context of its proposal to adopt a hypothetical capital structure with a higher percentage of debt (but no higher cost rate) than the Company’s projected actual capital structure. This change effectively reduces the ROE that Aqua PA would have an opportunity to achieve to levels below what OCA displays in its rate tables. For example, at Aqua PA’s actual capital structure ratios, the Company would only be provided an opportunity to earn an ROE of 7.71% under OCA’s recommendations:

Type of Capital	Ratio	Cost Rate	Weighted Cost Rate
Long-Term Debt	46.05%	4.00%	1.84%
Common Equity	53.95%	7.71%	<u>4.16%</u>
			6.00%

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OCA's addition of hypothetical debt in the capital structure also creates greater hypothetical income tax deductions for ratemaking purposes, and thus lower pro forma income tax expense. AP MB Section VI.B.1. As a result, the ROE that Aqua PA will be provided an opportunity to receive, under OCA's hypothetical capital structure, will be even less than the 7.71% computed above.

As explained in Section VIII of Aqua PA's Main Brief, and as further explained below, the Commission should demonstrate its continued support for investment in plant to replace aging infrastructure through a proper rate of return. The Commission should reject the grossly inadequate returns proposed by OCA and I&E. These ROE are below the return on equity recently authorized by this Commission in rate cases, and for water utilities for DSIC purposes, and would signal to the investment community that the Commission has pulled back its support for water infrastructure investment. As the Commission recently observed in Pennsylvania American Water Company's 2021 base rate case:

Regarding the OCA's proposed ROE of only 8.00% and 8.05%, respectively, for the Company's water and wastewater operations, the ALJ found them to be well below the authorized returns for *all* water utilities in the United States for the last decade, excluding one South Carolina utility that serves only 16,500 water and 11,800 wastewater customers, is a fraction of the size of PAWC, and had significant operational problem. Further, the ALJ found that the ROEs proposed by the OCA are well below the 9.90% ROE authorized by the Commission for the water utility DSIC on October 29, 2020, based on data through September 28, 2020. R.D. at 52.

Pa. PUC, et al v. Pennsylvania-American Water Company, Docket Nos. R-2020-3019369, R-2020-3019371, et al., 2021 Pa. PUC LEXIS 55, at *66 (Opinion and Order entered Feb. 25, 2021) ("*PAWC 2020*").

B. CAPITAL STRUCTURE RATIOS

Aqua PA has reflected in the case its projected actual FPFTY capital structure of 53.95% common equity and 46.05% long-term debt.¹⁷ OCA proposes a hypothetical capital structure based upon average capital structure ratios of its proxy group and nationwide averages. OCA MB at 56.

OCA’s proposal to adopt a hypothetical capital structure comprised of 50% common equity and 50% debt is contrary to long-standing Commission precedent that the choice of capital structure is within the discretion of utility management, and is not to be changed absent proof that the capital structure is atypical or outside a range of reasonableness. OCA’s proposal to drive Aqua PA’s common equity ratio down to an historic average of other utilities is wrong and should be rejected.

1. OCA Has Ignored The Correct Legal Standard.

The legal standard in Pennsylvania for deciding whether to use a hypothetical capital structure in setting rates is simple and straightforward. If a utility’s actual capital structure is within the range of a similarly situated barometer group of companies, rates are set based on the utility’s actual capital structure. *See e.g., Columbia 2020; Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. R-2012-2290597, at p. 68 (Order entered Dec. 28, 2012) (“*PPL Electric 2012*”); *Pa. PUC v. ALLTEL Pa., Inc.*, Docket No. R-942710 et al., 59 Pa. PUC 447, 491, 1985 Pa. PUC LEXIS 53, *106-107 (Order entered May 24, 1985) (“*ALLTEL*”). If a utility’s actual capital structure is outside of the range of the barometer group, it is considered atypical and the Commission can rely on a hypothetical capital structure to set rates for the utility. Importantly,

¹⁷ Consistent with the matching principle and the use of a FPFTY, Aqua PA has used the projected actual capital structure at the end of the FPFTY.

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the legal standard is not whether the utility’s capital structure deviates from the “average” capital structure of the barometer group, but whether it is outside the range.

OCA ignores each of these decisions in its Main Brief. It cites to several decisions from the early 1980s to contend that the Commission should adopt a hypothetical capital structure whenever the actual capital structure “imposes an unfair cost burden on ratepayers,” which OCA deems to be any capital structure with equity above the proxy group. OCA MB at 56-57. However, the cases cited by OCA do not support its proposed legal standard, and in fact are entirely consistent with the legal standards identified by the Company above.

For example, in *Carnegie National Gas Co. v. Pa. PUC*, 433 A.2d 938, 940 (Pa. Cmwlth. 1981), Carnegie claimed an actual capital structure of 93.39% equity. The record indicated that the highest percentage of equity for comparable companies was about 69%. *Carnegie*, 433 A.2d at 939-41. It is unquestionable that Carnegie’s capital structure was atypical.

Similarly, in *T.W. Phillips Gas and Oil Co. v. Pa. PUC*, 474 A.2d 355 (Pa. Cmwlth. 1984), T.W. Phillips’ claimed capital structure included 60.1% equity. The Commission determined T.W. Phillips’ capital structure was “clearly atypical” compared to comparable small gas distribution companies with an equity ratio under 45%. *T.W. Phillips*, 475 A.2d at 358. The Commonwealth Court affirmed.

Finally, in *Big Run Tel. Co. v. Pa. PUC*, 449 A.2d 86 (Pa. Cmwlth 1982), Big Run claimed a capital structure composed entirely of equity. *Big Run*, 449 A.2d at 89. The Commission determined this was disproportionate, and the Court affirmed. These decisions are consistent with the standard adopted by the Commission, most recently reiterated in *Columbia 2020*:

[T]he legal standard in Pennsylvania for deciding whether to use a party’s proposed hypothetical capital structure in setting rates is

that if a utility's actual capital structure is within the range of a similarly situated barometer group of companies, rates are set based on the utility's actual capital structure.

Columbia 2020, at p. 116.

2. Aqua PA's Projected Actual Capital Structure Is Not Atypical.

As explained at page 106 of Aqua PA's Main Brief, Aqua PA's actual capital structure clearly lies within the range of capital structure ratios of comparable water utilities, as defined by the proxy groups accepted by the parties in this case. Thus, it is not possible to define Aqua PA capital structure ratio as "atypical."

OCA references the average capital structure of industries other than regulated water utilities. OCA MB at 58. This information is not relevant. The capital structures of non-regulated entities, and the capital structure ratios of other utility industries, do not establish a typical capital structure for water companies. Moreover, OCA's data is again based upon averages, and not typical ranges, and thus is inconsistent with the legal standard established by the Commission.

OCA also argues that the Commission should approve a capital structure "that is reflective of one that might actually exist in a competitive market." OCA MB at 59. OCA has offered no evidence that all companies in a "competitive market" have an identical capital structure. Rather, the companies have a range of capital structures. This is consistent with the different capital structure ratios of the barometer group of water utilities in this case.

Finally, OCA asserts that if the Company is granted its actual capital structure ratios, this would result in "excessively high capital cost and utility rates due to the simple fact that the cost of equity is much higher than the cost of debt." OCA MB at 58. However, OCA's statement implies that the cost of debt financing remains unchanged regardless of capital structure. This is a false assumption as OCA's own witness acknowledged. OCA St. 3 at 61.

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Aqua PA’s projected actual capital structure is fully supported by the record. That actual capital structure is within the range of typical capital structures, and should not be replaced by a hypothetical “average” capital structure. OCA’s proposed hypothetical capital structure should be rejected.

C. RETURN ON COMMON EQUITY

OCA and I&E have presented calculations of ROE that produce results that are 90 basis points to 180 basis points below the currently authorized 9.8% DSIC return. This is important because a base rate case provides only an opportunity to earn an authorized return, unlike the reconciled recovery allowed by the DSIC. AP St. 7-R at 5. These recommendations are also far below recent ROE allowances by the Commission. AP MB at 97.

A fundamental flaw in both I&E’s and OCA’s recommendations is their sole reliance upon rote formulations of a single approach to determining ROE, the DCF method. I&E, in particular, declares that ROE determinations have become “less controversial”, and that the DCF growth rate “should be established by mathematical formulation.” I&E MB at 42, 51. OCA similarly relies solely upon its erroneous DCF result to develop its recommendation. OCA MB, Section VI.D.3.

However, the Commission has long recognized that the determination of a fair rate of return requires much more than taking data from Column A and Column B, and running them through a mathematic formula. As the Commission has observed:

A fair rate of return for a public utility, however, is not a matter which is to be determined by the application of a mathematical formula. It requires the exercise of informed judgment based upon an evaluation of the particular facts presented in each proceeding. There is no one precise answer to the question as to what constitutes the proper rate of return.

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Pa. PUC v. Pennsylvania Power Co., 55 Pa. P.U.C. 552, 559 (1982) (emphasis added). For reasons explained below and in Aqua PA’s Main Brief, the Commission should reject the positions of I&E and OCA that a simply mathematical application of the DCF model is appropriate to determine ROE. The Commission should consider all evidence presented on the appropriate ROE, and, with due consideration of Aqua PA’s high quality management performance, adopt Mr. Moul’s recommendation of a 10.75% ROE.

1. Aqua PA’s Cost Rate For Common Equity Capital.

a. Criticisms Of Mr. Moul’s Use Of Multiple Models.

I&E and OCA oppose Aqua PA witness Mr. Moul’s use of four different models to derive his ROE recommendation. I&E MB at 45-46; OCA MB at 60. I&E and OCA both assert that the Commission has primarily relied upon the DCF method in recent decisions and, from this, proceed to base their recommendations entirely upon their DCF calculations.

Initially, I&E asserts that the Commission has rejected giving equal weight to other methodologies. I&E MB at 46. However, Mr. Moul did not give equal weight to his four results in reaching his recommendation of 10.75%. *See* AP Exhibit 4-A Schedule 1. Mr. Moul did not use a simple mathematical average, but instead used informed judgment to develop his recommendation.

Aqua PA recognizes that the Commission has long considered the results of DCF analyzes as important inputs into determining ROE. However, the Commission also recognizes the importance of informed judgment and the information provided by other models. For example, the Commission expressed its position on the sole use of DCF results in *PPL Electric 2012*:

In *Lower Paxton Township v. Pa. PUC*, 317 A.2d 917, 920-921 (Pa.Cmwlt. 1974), the Commonwealth Court recognized that the Commission may consider its judgment as well as other factors

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which affect the cost of capital, including the utility's financial structure, credit standing, dividends, risks, regulatory lag and any peculiar features of the utility involved. The Court stated that "the cost of capital is basically a matter of judgment governed by the evidence presented and the regulatory agency's expertise." *Id.* at 921. Here, we are guided by the legal analysis in *Lower Paxton*. In this case, we will rely upon the DCF methodology and informed judgment in arriving at our determination of the proper cost of common equity. In particular, we note that the evidence presented in this case based on the CAPM and RP methods produced a range of results that was consistently higher than the results produced by a DCF-only approach. This suggests that, while properly computed in the abstract, the DCF-only results understate the current cost of equity for PPL and that consideration should be given to the CAPM and RP evidence in determining the appropriate range of reasonableness.

PPL Electric 2012, at p. 81.

The use of informed judgment to temper the reliance on DCF results is necessary to ensure the utility has the opportunity to earn a reasonable return on its investment, consistent with long-standing ratemaking standards. *See, e.g., Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Waterworks and Imp. Co. v. P.S.C. of West Virginia*, 262 U.S. 679, 690 (1923). Pennsylvania case law applying these standards makes it clear that certain factors must be considered by the Commission, including (1) the earnings that are necessary to assure confidence in the financial integrity of the company and to provide a reasonable credit profile to permit access to capital markets on reasonable terms, and (2) the amount of the investment, the size and nature of the utility, and its business and financial risks in comparison to other enterprises. AP MB at 100-101.

Furthermore, I&E and OCA ignore the many flaws associated with the DCF method.

Aqua PA witness Mr. Moul explained:

While the results of a DCF analysis should certainly be given weight, the use of more than one method provides a superior foundation for the cost of equity determination. Since all cost of equity methods contain certain unrealistic and overly restrictive

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assumptions, the use of more than one method will capture the multiplicity of factors that 26 motivate investors to commit capital to an enterprise (i.e., current income, capital appreciation, preservation of capital, level of risk bearing). The simplified DCF model makes the assumption that there is a single constant growth rate, there is a constant dividend payout ratio, that price – earnings multiples do not change, and that the price of stock, earnings per share, dividends per share and book value per share all have the same growth rate. We know from experience that those assumptions are not realistic, because the stock market reveals performance that is very different from the assumptions of the DCF.¹⁸ The use of multiple methods provides a more comprehensive and reliable basis to establish a reasonable equity return for AP.

AP St 7-R at 10-11. Mr. Moul further noted that other models are evidently considered by the Commission in establishing DSIC rates:

Indeed, the influence of other methods must have an impact on the Commission's attitude toward the DCF model because the Commission's selection of the rate of return on equity for use in the DSIC is usually set well above the cost of equity indicated by the DCF model alone. For example, in the Quarterly Earnings Report at Docket No. M-2021-3028488, the Commission set the DSIC return at 9.80% for the Water Companies, while the DCF returns were just 8.50% using current stock prices and 8.61% using 52-week average stock prices. It is clear that the Commission has been guided by the results of other models and other factors aside from DCF when setting the DSIC return. As an apparent check on the reasonableness of the DCF result, the CAPM result was 9.99% for the Water Company Barometer Group as calculated in the Commission's Quarterly Earnings Report dated June 30, 2021 (Docket Number M-2021-3028488).

AP St. 7-R at 11.

Given these flaws in the DCF, it is appropriate to consider results of multiple analyses. In particular, as the economy rapidly transitions to a higher inflation rate and higher interest rate environment, the Commission should give increased consideration to other models, such as Risk Premium and CAPM, which directly include interest rates as part of their formulae.

¹⁸ The growth rate variables shown on Schedules 8 and 9 of AP Exhibit 4-A show that the assumption associated with the simplified DCF model are not reasonable.

b. Criticisms Of Aqua PA’s DCF Results Are Without Merit.

i. Growth Rate.

I&E asserts that Aqua PA’s growth rate is “inflated.” I&E argues that DCF growth rates should be mathematically formulated and that any alternative approach is subjective and should be rejected. I&E contends that the reasons the Company has provided in support of a 7.5% growth rate are already included in analysts’ growth forecasts, and thus would double count these factors. I&E MB at 50-51.

I&E’s criticism of Mr. Moul’s use of expert judgment is without merit. As explained previously, the Commission has rejected the application of a mathematical formula in determining ROE. As Mr. Moul explained, he appropriately used expert judgment in determining ROE from an array of growth rate data:

The forecasts shown on Schedule 9 for the Water Group exhibit a range of average earnings per share growth rates from 6.31% to 7.93%. DCF growth rates should not be established by mathematical formulation, and I have not done so. In my opinion, a growth rate of 7.50% is a reasonable estimate of investor-expected growth for the Water Group. This value is within the array of analysts’ forecasts of five-year earnings per share growth rates and is above the midpoint of that data set. The reasonableness of this growth rate is also supported by the earnings growth associated with the continuation of elevated water utility infrastructure spending.

AP St. 7 at 30. Given the increasing impact of inflation and the continued need to support infrastructure spending to address the problems of acquired troubled water and wastewater systems and other aging facilities, it is appropriate to choose a DCF growth rate at the higher end of the range of analysts’ projections.

ii. Criticisms Of Mr. Moul’s Leverage Adjustment.

I&E and OCA criticize Aqua PA’s presentation of a leverage adjustment to the DCF results. Aqua PA anticipated and responded to many of these criticisms in its Main Brief, and those arguments will not be repeated here. AP MB at 112-117.

I&E argues that a leverage adjustment is improper because investors base investment decisions on book value debt and equity ratios for utilities. I&E MB at 52. Mr. Moul explained the errors in I&E’s contention:

Mr. Spadaccio contends that information presented to investors (see page 44 of I&E Statement No. 2), such as that included in the Value Line reports, argues against my leverage adjustment because investors base their investment decisions on book value. However, the Value Line reports clearly show the market capitalization of each company in his barometer group. This means that investors are well aware of the market capitalization of the water utility stocks that Mr. Spadaccio relies upon for his analysis of the cost of equity. More importantly, I fundamentally disagree that investors base their decisions on book values. To the contrary, it is the future cash flows that investors expect to realize that determines the price they are willing to pay for a share of common equity. Stated differently, investors are concerned with the return that will be earned on the dollars they invest (*i.e.*, their market price) and not some accounting value of little relevance to them. The financial risk associated with the book value capital structure is different from the market value of the capitalization. I clearly demonstrate this point on Schedule 10 of AP Exhibit 4-A. Hence, the observation of Mr. Spadaccio is misplaced because I have clearly shown the difference in financial risk and that risk difference must be taken into account when arriving at an equity return that is applicable to the weighted average cost of capital using book value weights.

AP St. 7-R at 17. A leverage adjustment is properly considered in determining a DCF result because investors consider the return achieved based upon their market investment, not upon the book value of their stock.

I&E asserts that the leverage adjustment increases revenue requirement by over \$68 million. I&E MB at 54. This contention is deeply flawed. As shown on page 43 of I&E St. 2,

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the amount is derived by applying the full amount of the leverage adjustment, 234 basis points, to the equity weighted portion of Aqua PA's rate base. However, Mr. Moul's DCF calculation, inclusive of the leverage adjustment, produces an ROE of 11.78%. Mr. Moul's recommended ROE, based upon expert judgment, is 10.75%. Therefore, it is erroneous to suggest that Aqua PA's revenue requirement increase of approximately \$97 million includes over \$68 million due to the leverage adjustment.

OCA argues that Mr. Moul improperly applied the Hamada formula with an input of 28% for the debt ratio. Thus, OCA contends, Mr. Moul's calculations produce an incorrect unlevered beta. OCA MB at 67-68. It is OCA's calculations that are improper, due to a failure to understand Mr. Moul's leverage adjustment. As Mr. Moul explained, in response to the criticism of OCA's witness:

Indeed, he says that I misapplied the Hamada formula leverage adjustment approach. First, in the DCF approach, I did not use the Hamada formula, but rather I used the Modigliani & Miller approach. Second, at page 36 of OCA Statement No. 2, Mr. Garrett claims that the Hamada formula generates an unlevered beta of 0.47. But what I have shown is that the correct unlevered beta is 0.60 (see page 40 of AP Statement No. 7). The reason for the difference is that I correctly use the market capitalization for my calculation and Mr. Garrett did not, because he used the book value capital structure ratios of AP. Indeed, there, Mr. Garrett used the actual capital structure ratios of AP, rather than the hypothetical ratios he proposes.

AP St. 7-R at 18. The debt ratio used by Mr. Moul in the Modigliani & Miller approach properly reflects the debt ratio in a market-based capital structure. From this, Mr. Moul determines an unlevered ROE (100% equity), and relevers the ROE to the Company's actual capital structure.

AP St. 7 at 31. OCA's claim of an error in the calculation is without merit.

c. Criticisms Of Aqua PA’s CAPM Are Incorrect.

I&E opposes the addition of a size adjustment to Mr. Moul’s CAPM presentation. The Company anticipated and replied to I&E’s argument in its Main Brief. AP MB at 120-121.

OCA challenges the risk free rate of 2.75% used by Mr. Moul, on the basis that it was developed using projected bond yields. OCA argues that projections by utility experts often overstate actual yields. Mr. Moul responded to this overbroad and inaccurate assertion:

As a preliminary matter, interest rates, and indeed all capital cost rates, are influenced by investor expectations associated with inflation. It has been reported recently that inflation has reached a 39-year high of 6.8%. A rate not seen since 1982. Future capital costs will be influenced by this fact and, hence, interest rate forecasts must be considered. It is necessary to understand the fundamentals surrounding those forecasts before making the blanket statement the witnesses representing utility companies are inclined to use them in an attempt to increase the CAPM result. I do not dispute that, in a low interest rate environment, forecasts of future interest rates generally trend toward higher rates than current rates. With the Fed Funds rate near zero, there is little room for lower interest rates, unless negative interest rates were the prospect, which they are not. Likewise, during periods of high interest rates, which we have not seen for a long period, forecasts would be trend toward lower rates. So, the absolute level of interest rates must be considered when assessing the validity of the forecasts.

AP St. 7-RJ at 5. Inflation has risen dramatically. As a result, historic bond yields are an improper input to the CAPM.

OCA also criticize Aqua PA’s market risk premium of 9.00%. OCA asserts that Mr. Moul improperly relied upon long-term historic data to develop his market risk premium. OCA MB at 72-73. OCA’s criticism improperly describes Mr. Moul’s development of his market risk premium.

As explained in Mr. Moul’s direct testimony, and as shown on AP Exhibit 4-A, Schedule 13, p. 2, Mr. Moul developed both historical data and forecast returns. The historic data

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demonstrated that the market premium is 9.21% during periods of lower inflation. The historic data used is consistent with the data and methodology previously accepted by the Commission. *UGI Electric*, at p. 99. Mr. Moul also prepared a forecasted market risk premium, using multiple measures. The projected market risk premium is 8.79%. Mr. Moul used an average of these two results to derive his market risk premium. AP St. 7-RJ at 5-6.

OCA and I&E also oppose Mr. Moul's use of leveraged betas. The need for a leverage adjustment is explained previously.

2. Other Parties' Rate Of Return Proposals.

a. I&E's ROE Recommendation Should Be Rejected.

Aqua PA explained in its Main Brief the flaws in I&E's DCF and CAPM analyses. AP MB at 123-126.

A primary flaw in I&E's recommendation is its sole reliance on its DCF calculation. I&E asserts it has used its CAPM as a comparison to its DCF. I&E MB at 47. But in reality, I&E computes a 9.89% result for its CAPM, and then ignores it.

I&E offers no explanation, or defense, of its DCF calculation in its Main Brief. However, as explained in the Company's Main Brief, I&E's DCF growth rate is flawed by its improper inclusion of an abnormally low growth rate for Middlesex Water. Correction of this error would increase I&E's DCF growth rate to 7.74%. AP MB at 124.

I&E's CAPM calculation also is understated, as explained in Aqua PA's Main Brief. AP MB at 125-26. In particular, I&E uses a risk-free rate of only 1.98%. I&E St. 2 at 27. This rate is understated by its substantial reliance on current bond yields. If I&E witness Spadaccio had given equal weight to forecasted Treasury yields, the result would have been a risk-free rate between 2.8% - 3.3%.

b. OCA’s ROE Recommendation Should Be Rejected.

As explained in Aqua PA’s Main Brief, OCA’s ROE analysis contains numerous flaws and errors that make its recommendation unreliable. AP MB at 126-127.

OCA’s use of a 30-day average stock price to develop its dividend yield should be rejected. This short time frame introduces potential downward bias in the result where the period selected is a time of high stock prices.

OCA admits that it believes the proper growth rate should be between 2%-4%. OCA MB at 63. When that growth rate is added to its implicit dividend rate of 1.69%,¹⁹ the result would be a DCF recommendation of 3.69% to 5.69%. This recommendation would be slightly above, or slightly below, Aqua PA’s embedded cost of debt of 4%. It defies logic to assert that common equity should be allowed an opportunity to earn 3.69% to 5.69% when bondholders are assured a return of 4%.

Recognizing that this position is unsustainable, OCA’s witness Garrett selects the **lowest** growth rate from Mr. Moul’s data. OCA then asserts that Mr. Moul’s criticism of this growth rate is “difficult to reconcile” because Mr. Moul is criticizing his own growth rate. OCA MB at 65. OCA’s assertion is facile. Mr. Moul did not recommend the use of a 6.3% growth rate. Rather, he examined a range of growth rate projections to derive his 7.5% recommendation. Mr. Moul’s criticism remains valid. OCA’s witness “introduced a downward bias to his result because he adopted the lowest of the forecast growth rates.” AP St. 7-R at 15.

OCA also presented a CAPM analysis. While correctly using data for 30-year Treasury Bonds, OCA witness Garrett improperly uses only historic bond yields in his CAPM. OCA MB at 70. The use of only historic data fails to reflect the expectational nature of rate of return calculations. Use of only historic data fails to reflect that rates are being set for a FPFTY.

¹⁹ DCF result of 8.00% less growth rate of 6.32%. OCA MB at 66.

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OCA's CAPM also includes a market risk premium of 5.5%. This recommendation certainly understates true market risk premiums. As Mr. Moul explained:

As one input to his analysis, Mr. Garrett calculated a 7.0% "Required Return on Market" that is less than the 8.0% DCF return that he calculates for his Water Group. It is inconceivable that the total market return associated with a beta of 1.0 could be less than the return for the Water Group that has a beta of 0.794 according to Mr. Garrett. His total market return is just not credible.

Mr. Spadaccio's data leads to an ERP of 10.16% (12.14% - 1.98%), and I determined an 9.00% ERP. Furthermore, the implied total market return using Mr. Garrett's final inputs is just 7.52% (2.02% + 5.5%), which is clearly incompatible with actual stock market returns of 18.40% in 2020, 16.21% YTD in 2021, and 12.16% on average for the past 95 years (1926-2020).

AP St. 7-R at 23.

OCA's market risk premium produces total market returns that are well below rational projections and thus should be rejected.

3. Increment For Management Effectiveness.

As explained in Aqua PA's Main Brief, the Commission is required to consider management effectiveness in setting rates, and the Commission has included, where appropriate, an incremental upward adjustment to the cost of common equity to reflect management effectiveness. AP MB at 128-29. The Company has provided extensive evidence to demonstrate that it provides high quality service and has implemented numerous programs designed to enhance the service it provides to customers. AP MB at 129-37. This evidence supports an addition to the allowed ROE.

I&E and OCA seek to ignore the statutory directive of Section 523 of the Public Utility Code, which requires the Commission to consider management effectiveness in setting rates. 66 Pa.C.S. § 523. For example, I&E argues that Aqua PA should not receive any recognition for management performance through a basis point addition, as it is just doing what is required

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under Section 1501 of the Public Utility Code. I&E MB at 47-48. OCA similarly argues that Aqua PA should have been required to undertake a comparative analysis of its management performance to the barometer group of companies. Such a comparison would be impossible to undertake, as management performance considers much more than published data on operations. OCA's proposal would effectively write Section 523 out of the Public Utility Code.

OCA also offers examples of instances where Aqua PA has purportedly not provided exemplary performance in order to deny any recognition for management effectiveness. However, neither Section 523 of the Public Utility Code nor any prior Commission precedent has required exemplary performance in every aspect of operations to receive recognition of management performance through a basis point addition. For example, in *PPL Electric 2012*, the Commission granted a 12 basis point adjustment for management effectiveness, despite I&E's contentions that PPL had "considerable room for improvement" in various areas of operations. *PPL Electric 2012*, p. 94. Moreover, as explained later in this brief and as explained in Aqua PA's Main Brief, many of OCA's claims of inadequate performance reflect a misunderstanding of Aqua PA's operations and commitments.

I&E's and OCA's objections to an adjustment for management performance should be rejected.

VIII. MISCELLANEOUS ISSUES

A. UNIVERSAL SERVICE ISSUES

1. **Other Parties' Claims Regarding Bill Affordability And Modifications To The Proposed USP Are Generally Unreasonable And Unnecessary, And Should Be Rejected.**

a. **Introduction.**

As explained in its testimony and Main Brief, prior to this proceeding, Aqua PA made certain commitments regarding its existing Helping Hand program and the evaluation and

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development of a more comprehensive USP as a part of the Commission’s approval of the acquisition of the Peoples Companies by Essential Utilities, Inc., *f/k/a* Aqua America, Inc.²⁰ Specifically, in the settlement agreement approved by the Commission in the *Aqua-Peoples Acquisition Order*,²¹ Aqua PA committed to develop and propose a comprehensive USP as a part of its next base rate case and also proposed a funding mechanism comparable to those that exist for electric and gas utilities in Pennsylvania. AP MB at 141-142. Consistent with these commitments, the Company presented the detailed plan to the Helping Hand Collaborative prior to filing this base rate case and utilized the best practices from the Peoples Companies in developing a proposed USP.

The Company’s proposal is a comprehensive, robust and transparent universal service program, with an appropriate and reconcilable USR, developed in accordance with the commitments approved in the *Aqua-Peoples Acquisition Order*. Indeed, the Company’s review of its existing Helping Hand revealed additional opportunities to assist more low-income customers served by Aqua PA. AP MB at 142-143. In consideration of these opportunities, and in compliance with its commitments in the *Aqua-Peoples Settlement*, Aqua PA has proposed to implement a CAP that builds upon the successful aspects of Helping Hand, the costs of which are appropriately recovered by the proposed USR. With the additional recommendation of an income verification requirement, I&E is supportive of the Company’s proposal including the

²⁰ *Joint Application of Aqua America, Inc., Aqua Pennsylvania, Inc., Aqua Pennsylvania Wastewater, Inc., Peoples Natural Gas Company LLC and Peoples Gas Company LLC for All of the Authority and the Necessary Certificates of Public Convenience to Approve a Change in Control of Peoples Natural Gas Company LLC and Peoples Gas Company LLC by Way of the Purchase of All of LDC Funding, LLC’s Membership Interests by Aqua America, Inc.*, Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 (Order entered Jan. 24, 2020) (“*Aqua-Peoples Acquisition Order*”).

²¹ Docket Nos. A-2018-3006061, A-2018-3006062 and A-2018-3006063 (Joint Petition for Approval of Nonunanimous, Complete Settlement Among Most Parties dated June 26, 2019) (“*Aqua-Peoples Settlement*”).

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Company's proposed cost recovery. Aqua PA demonstrated that its proposed USP is just, reasonable and should be approved. AP MB, Section VIII.A.2.

Nevertheless, OCA and CAUSE-PA have advanced various modifications to the Company's proposed USP. The Company explained that these modifications should be rejected, except in the circumstances where it has agreed to incorporate the parties' suggestions. AP MB, Section VIII.A.3. Below, Aqua PA further responds to the arguments advanced by each of the parties raised in their respective Main Briefs with respect to the proposed USP, and further submits that the modifications they propose should be denied.

Prior to addressing each of these specific recommendations, however, it is important to emphasize that Aqua PA's proposed USP was presented to and vetted by stakeholders participating in its Helping Hand Collaborative prior to this proceeding. AP St. 10 at 3. Those stakeholders included parties to this proceeding such as CAUSE-PA and OCA. Thus, the proposed USP was not created in a vacuum. Furthermore, Aqua PA was able to draw upon the knowledge and expertise of their affiliates, the Peoples Companies, and the Peoples Companies' Director of Community Assistance Program, Ms. Rita Black, to develop the USP.

b. OCA's And CAUSE-PA's Affordability Concerns Are Addressed By The Proposed USP.

OCA spends a substantial portion of its Main Brief analyzing the affordability of water and wastewater bills. *See* OCA MB at 120-131. CAUSE-PA similarly argues that existing rates are unaffordable. CAUSE-PA MB at 17-18. As such, it reiterates its proposed modifications to the proposed USP. *See* CAUSE-PA MB at 19. Aqua PA explained in its direct and rebuttal testimony that it performed an affordability analysis, and considered bill affordability as a part of the development of the proposed USP. *See* AP MB at 144-148.

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Based on its analysis, OCA argues that the benefits of the affordability program contemplated by the proposed USP should be modified to increase discounts afforded to customers. OCA MB at 123-126. This in turn, OCA urges, will also “generate positive benefits to the utility as well.” OCA MB at 126-130.

OCA’s concerns have already been addressed by Aqua PA’s proposed USP. Indeed, as explained in Section VIII.A.2. of Aqua PA’s Main Brief, the Company considered the number of eligible households in its service territory, and then considered what affordability meant. AP MB at 144-145. Aqua PA witness Ms. Black specifically relied upon the guideline proposed by the United States Environmental Protection Agency, as well as the work of OCA witness Mr. Colton to determine how a water and wastewater USP should address affordability. AP MB at 145. Based on this analysis, Aqua PA proposed a three-tiered structure that provides the largest benefits to those with the least income, retained the Helping Hand arrearage benefit credit and conservation kits, and proposed an Emergency Repair Program. AP MB at 145-146.

OCA and CAUSE-PA also fail to consider the effect of their proposed changes upon the rates of non-low-income customers. OCA’s proposed increased discounts will increase costs by nearly \$2 million for discounts alone, and will nearly double (from \$25 to \$45 per month) arrearage forgiveness costs. These increases could be even greater, depending upon low-income customer participation. Particularly in the case of a new program, with substantial uncertainties regarding the level of customer participation, it is not reasonable to substantially increase the benefits proposed by the Company to the levels recommended by OCA and CAUSE-PA.

It is clear that Aqua PA developed the proposed USP in order to make water and wastewater service more affordable for its low-income customers. OCA’s concerns regarding affordability will actively be addressed by the program as proposed.

c. Aqua PA’s Proposed Bill Discount Program Is Adequate And Reasonable.

OCA goes on to admit that Aqua PA’s proposed bill discount program will, in fact, improve affordability for low-income customers. OCA MB at 134. It argues, however, that the proposed bill discount program will not achieve levels of affordability that it deems sufficient. *See* OCA MB at 134-135.

Importantly, OCA subsequently admits that the Commission has not established what water and wastewater burden should be deemed affordable, and concedes that the “policy decision of the appropriate water and wastewater burdens is best addressed in a statewide proceeding ‘involving all water/wastewater utilities and related stakeholders or would involve additional analysis that would require more time and data than is available in this proceeding.’” OCA MB at 135-136 (quoting OCA St. 5 at 31). Apparently, OCA’s basis for its assertion that the Company’s proposed bill discount program should be revised is that the program does not meet an affordability target that does not exist at this time, except as a proxy in the mind of its witness, and could not and should not be developed in the context of this base rate proceeding. The ALJ and the Commission should therefore reject OCA’s recommendation as arbitrary and unreasonable.

d. Aqua PA’s Proposed Bill Discount Program Should Not Be Modified.

OCA and CAUSE-PA each recommend modifications to the current bill discount program and further assert that Aqua PA should be directed to implement a percentage of income plan (“PIP”) at a future date, as a part of this proceeding. *See* OCA MB at 1135, 137-140; CAUSE-PA MB at 22. Aqua PA addressed these parties’ proposal to implement a PIP (AP MB at 153-154), and further addresses this proposal below.

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With respect to the other recommendations regarding the structure of its bill discount program, OCA and CAUSE-PA initially recommend that (a) the water program should be modified to utilize three income tiers with increased benefits (OCA MB at 137-140; CAUSE-PA MB at 19-23), and (b) the wastewater program should be modified to utilize three income tiers with increased benefits (OCA MB at 141-142; CAUSE-PA MB at 19-23).²²

Aqua PA explained why the proposal to use four income tiers for its proposed USP was unreasonable and not feasible at this time. AP MB at 154-155. The complexity of rate maintenance in Aqua PA's current CIS makes the implementation of this recommendation unreasonable, as it would further complicate enrollment and maintenance of the benefits. Moreover, Aqua PA's three tier structure provides benefits, encourages conservation and controls program costs. AP MB at 155. Moreover, Aqua PA explained that OCA's pivot to propose a modified three-tier structure was provided too late in the proceeding for any meaningful analysis to occur; Aqua PA's rejoinder testimony was due at noon less than three days after this proposal was raised. AP MB at 155, n.54.

The proposal to increase the bill discount benefits should similarly be rejected. OCA's calculation of the incremental costs of its proposal misses the point; it is not feasible to implement the proposed modifications using the current CIS. OCA effectively ignores the logistical hurdles that the Company would have to overcome prior to even incurring the additional costs, and that overcoming these hurdles would in fact impose additional costs which OCA's calculations do not consider. *See* AP MB at 151-152. Furthermore, Aqua PA notes that the logistical burden and costs to overcome it would, ultimately, be redundant given that the Company will transition to SAP in the future. AP MB at 152 (citing AP St. 10-R at 8, "[b]ecause

²² OCA's recommended use of three tiers for each program was advanced in its surrebuttal testimony, in response to limitations of the current CIS that were identified by Aqua PA with respect to the use of four tiers. AP MB at 154-155.

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Aqua PA will be converting [its billing system] to SAP in 2023 and development of system requirements is in the early stages, programmatic changes to the existing system are not recommended.”).

Indeed, Aqua PA explained, and neither OCA nor CAUSE-PA dispute the fact that, the proposed CAP’s design, including the bill discount and arrearage forgiveness benefits, were designed, and must be considered in light of, the functionality of the current CIS. AP St. 10-R at 8. However, each of OCA’s and CAUSE-PA’s recommended modifications to the program would unreasonably require programmatic changes to the CIS.

e. Income Verification.

With respect to the Company’s proposal regarding income verification, OCA and CAUSE-PA agreed with the Company’s proposal to permit self-attestation of income for enrollees and I&E opposed it. OCA MB at 143-144; CAUSE-PA St. 1-R at 4-6; I&E MB at 60-62. Aqua PA demonstrated that I&E’s concerns regarding fraudulent enrollment were unwarranted, and that self-attestation will permit customers that are genuinely low income to more easily seek and obtain assistance. AP MB at 150.

f. Aqua PA Should Not Be Required To Propose A PIP In Its Next Proceeding.

Both OCA and CAUSE-PA assert that Aqua PA should be required to implement a PIP no later than its next base rate proceeding. OCA MB at 144-151; CAUSE-PA MB at 22. OCA, in particular, goes to great lengths to attempt to demonstrate this proposal should be made in the next base rate proceeding. OCA MB at 144-151. CAUSE-PA similarly asserts that the transition to a PIP structure should occur if the proposed USP does not reach acceptable levels of affordability within 18 months of implementation. CAUSE-PA MB at 22.

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Aqua PA should not be required to make this presentation in its next rate case. Separate proceedings already exist for the evaluation of USPs. As explained in its Main Brief, as a water and wastewater provider, Aqua PA has many different residential tariff rates creating far more complexity in implementing a PIP than might be experienced in the energy sector. AP MB at 154. The benefits of a PIP, which has not been implemented by any other water or wastewater utility, should not be prejudged.²³

Furthermore, OCA’s and CAUSE-PA’s recommendation would undermine the ability of Aqua PA and stakeholders to evaluate the actual impacts of the proposed USP if it is implemented, prior to considering further programmatic changes. Importantly, USPs are regularly evaluated between base rate cases in proceedings specifically focused on the effectiveness, costs and benefits of those programs. Aqua PA submits that once its proposed USP is in place, it can be evaluated in the context of those proceedings. Moreover, as explained in Aqua PA’s Main Brief, parties are not prohibited from proposing further changes to the Company’s CAP in its next base rate case, and may do so with the benefit of having actual data regarding the performance of the CAP. AP MB at 154. Aqua PA should not be ordered to propose and bear the burden to support a PIP in its next base rate case, particularly where the Company questions the cost/benefit of a PIP for water and wastewater customers at this time.

g. Aqua PA’s USP Includes Reasonable And Appropriate Community Outreach And The Company Should Not Be Required To Modify Its Proposed Community Education And Outreach Plan As A Part Of This Proceeding.

OCA and CAUSE-PA further assert that Aqua PA should develop a Community Education and Outreach Plan (“CEOP”) as a part of this proceeding. OCA MB at 161-164;

²³ OCA asserts that the Peoples Companies have experienced usage reductions with a PIP. OCA MB at 146-148. However, OCA has not demonstrated that these savings are a result of the PIP, or the energy conservation components of the Peoples Companies’ USPs.

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CAUSE-PA MB at 26, 28, 37-40. Aqua PA agreed that a CEOP is an important component of universal service programs, and explained that the proposed USP envisions a CEOP similar in its design to the Peoples Companies', while taking into account the unique characteristics of Aqua PA's service territory, customer bases, and local agencies/organizations. AP MB at 150-151. Aqua PA also addressed CAUSE-PA's specific concerns regarding education and outreach specific to the Company's Hardship Fund. AP MB at 151. Nevertheless, OCA and CAUSE-PA dispute the Company's outreach efforts. Aqua PA has demonstrated that its proposed education and outreach efforts are reasonable, and do not require modification.

h. Aqua PA's Current And Proposed Arrearage Forgiveness Programs Are Reasonable.

OCA and CAUSE-PA further argue that the Company's current and proposed arrearage forgiveness programs are not reasonable and should be modified. OCA MB at 165-175; CAUSE-PA at 27-32. However, both acknowledge that Aqua PA is limited in its ability to modify the program under the current CIS, and that Aqua PA has agreed to update and revise the timely payment requirement once SAP is implemented. OCA MB at 167-168; CAUSE-PA MB at 31; AP MB at 152-153. OCA's further proposal to increase the \$25 arrearage forgiveness credit to \$45 per month is premature. OCA MB at 168-169. As Aqua PA explained, "[b]efore considering changes to that arrearage forgiveness amount, experience should be obtained with the new CAP, and its expanded benefits." AP MB at 153. The impacts of new federal assistance programs for water customers also should be examined before changes to arrearage forgiveness amounts are considered. Indeed, OCA's proposal to increase the costs of the program should not be implemented prior to any experience being gained about what benefits may already be experienced under the proposed modifications. Aqua PA has addressed these recommendations

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to accelerate arrearage forgiveness benefits and to increase the amount to \$45/month, and demonstrated that they are unreasonable.

i. The Application Process For The Proposed USP Should Not Be Modified.

OCA and CAUSE-PA also recommended that the Company’s proposed USP use a single application process for both the arrearage forgiveness program and the bill discount program. OCA MB at 173-175; CAUSE-PA MB at 36. This proposal reflects a basic misunderstanding of Aqua’s proposed USP. The Company did not propose two programs – a CAP and a Helping Hand arrearage forgiveness. Aqua PA proposed a single program, with both a bill discount and arrearage forgiveness component. There is no need to “streamline” the application process where the proposed USP will replace Aqua PA’s existing program, and where customers will complete a single application. Eligible customers who enter the USP with an arrearage will automatically receive the benefit of arrearage forgiveness. AP MB at 149.

OCA and CAUSE-PA also argue that existing Helping Hand customers should be automatically enrolled in the new USP without completing an application. OCA MB at 175; CAUSE-PA MB at 26. However, the requirement that existing Helping Hand customers affirmatively enroll in the proposed USP is necessary to ensure they are eligible. AP MB at 149. No modifications to the reasonable application process proposed by the Company are necessary.

Finally, OCA asserts that existing Helping Hand customers should be permitted to elect to only receive arrearage forgiveness. OCA argues that the proposed discounts are not sufficient, yet suggests that some customers who meet income eligibility should not receive any discounts if they choose not to. This does not make sense and would further complicate the Company’s implementation of its proposed USP with its current CIS, and with SAP in the future. If a

customer is eligible and in need of assistance, they should not be offered the option to just elect part of the program.

j. CAUSE-PA’s Proposals Regarding The Hardship Fund Could Be Implemented As An Overall Part Of The Modifications To The USP In This Proceeding.

CAUSE-PA further reiterates its proposed modifications to Aqua PA’s hardship fund. CAUSE-PA MB at 32-36. Aqua PA specifically noted its agreement with certain of these revisions in its Main Brief. AP MB at 151.

CAUSE-PA’s further recommendations regarding specific revisions to Aqua PA’s policies, procedures and training materials applicable to Hardship Grant funding, however, are not necessary. CAUSE-PA MB at 36. The Company already screens payment-troubled customers for eligibility to participate in Helping Hand and will continue to screen for eligibility for these customers to participate in the proposed USP.

k. CAUSE-PA’s Concerns Regarding The Emergency Repair Program Should Be Rejected.

Finally, while it appears that CAUSE-PA supports the proposed Emergency Repair Program, it raises certain concerns regarding it. CAUSE-PA MB at 40-43. First, CAUSE-PA asserts that the proposed budget of \$100,000 per year is inadequate. CAUSE-PA MB at 41-42. Second, it proposed that Aqua PA be required to develop a comprehensive conservation and line repair program through the Helping Hand Collaborative no later than 6 months after the final order is issued in this case. CAUSE-PA MB at 42.

With respect to CAUSE-PA’s concern regarding the budget of the Emergency Repair Program, Aqua PA submits that its proposed budget balances the costs and benefits of the program at this time. Aqua PA notes that, although CAUSE-PA claims the budget should be

increased, it does not quantify the impact of the additional costs for customers and does not demonstrate that such costs would be outweighed by any benefits.

Regarding CAUSE-PA’s proposal that Aqua PA develop a comprehensive conservation and repair program through the Helping Hand Collaborative, Aqua PA has indicated that it “believe[s] advisory groups such as this have a valuable role to play” and that “[i]nput from an advisory group...would be helpful.” AP St. 10-R at 14. Aqua PA can use this process to identify best practices related to conservation and repair programs in place at other water utilities. AP St. 10-R at 14.

2. The Costs Of The Proposed USP Should Be Recovered Via The Proposed USR.

Aqua PA demonstrated that its proposal to recover the costs of the USP through the reconcilable USR is reasonable, consistent with the Commission’s approval of reconcilable riders for other utilities’ programs, and consistent with the *Aqua-Peoples Settlement*. AP MB, Section VIII.A.4. Despite its vehement reliance on implementing practices and policies similar to those implemented by energy utilities in Pennsylvania, OCA argues against the implementation of a reconcilable rider to recover the costs of the USR and submits that only the “net costs” of Aqua PA’s proposed USP should be recovered through base rates. OCA MB at 152-160. OCA’s position is unreasonable and should be rejected.

OCA admits that Aqua PA was contractually obligated to propose the implementation of a USP in the *Aqua-Peoples Settlement*. OCA MB at 120 (stating Aqua PA has “contractually agreed, pursuant to the *Merger Settlement*, that they will implement a universal service program with a suite of low-income assistance programs.”). The *Aqua-Peoples Settlement* made clear Aqua PA’s CAP proposal will include “a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania.” *Aqua-Peoples Settlement* at ¶ 108. To the extent that OCA

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asserts Aqua PA is contractually obligated to implement a USP similar to those in place at other energy utilities, it must also recognize the same contract contemplated the implementation of a reconcilable rider similar to those in place at other energy utilities to recover the costs of those programs. OCA’s proposal to the contrary is an unfair attempt to have its cake and eat it too; OCA cannot credibly claim Aqua PA’s USP should be modified to be more similar to the programs in place at other energy utilities, but that Aqua PA’s recovery of the associated costs should be entirely dissimilar to those utilities. *See also* AP MB at 160 (explaining OCA’s position that the proposed CAP should mirror the robust programs of other energy utilities, but that Aqua PA at risk for the cost of this program in a way that other energy utilities are not).

Moreover, OCA overlooks that it was a signatory to the contractual commitment to “implement a universal service program.” Contractual commitments apply to all signatory parties. However, in this case, despite the fact that Aqua PA has developed and proposed a USP that fully complies with the *Aqua-Peoples Settlement* and takes into account the current limitations of its existing CIS, OCA submits that the Company should be prevented from implementing the method of recovery set forth in that contractual commitment. The Commission should reject OCA’s argument, and not permit it to attempt to undo the recovery mechanism set forth in the previously-approved *Aqua-Peoples Settlement*.

OCA’s position regarding recovery of the costs of the program is further belied by I&E. I&E “strongly opposes OCA’s recommendation to recover the USP costs through base rates.” I&E MB at 64. I&E further highlights its agreement with Aqua PA that the *Aqua-Peoples Acquisition Order* was clear, and the proposed USR is fair and transparent. I&E MB at 64.

OCA further raises for the first time in its Main Brief that the USR is not authorized under Section 1307(a) of the Public Utility Code, and constitutes impermissible single-issue

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ratemaking. OCA MB at 157-158. However, Section 1307(a) of the Public Utility Code authorizes the Commission to “specifically allow an automatic adjustment of rates outside of the rate-making procedures” and provides for “procedures to determine the reasonableness of the charges outside of a base rate case.” *Pa. Indus. Energy Coalition v. Pa. PUC*, 653 A.2d 1336, 1350 (Pa. Cmwlth 1995), *aff’d*, 670 A.2d 1152 (Pa. 1996) (“*PIEC*”). Specifically, Section 1307(a) of the Code permits utilities to establish a reconcilable rider to recover costs, (1) where expressly authorized by the General Assembly, or (2) where an expense is easily identifiable and beyond the utility’s control. AP MB at 246.

Clearly, the USR is permissible under Section 1307(a) and applicable Pennsylvania appellate precedent. As explained in Aqua PA’s Main Brief, the costs proposed for inclusion in the Company’s USR are easily identifiable, adjustment of these costs is a simple mathematical exercise, and its operation will be subject to audit and reconciliation. AP MB at 264. Moreover, because there is no limit on the number of customers that could participate in the USP, the actual costs the Company will incur are outside of its control. AP MB at 265 (citing both Aqua PA’s and OCA’s testimony that no limitation on the number of customers who could participate was proposed). The range of potential costs is considerable. The Company projects that the cost of discounts for the water program alone ranging from \$3 million to \$8 million. OCA projects costs of \$4 million to \$10 million under its proposal. OCA MB at 140. Arrearage forgiveness similarly ranges from \$1 million to over \$3 million, depending upon participation rates. OCA MB at 176. Moreover, these projections are based on eligible customer participation rates from 10% to 25%. Clearly, costs would escalate further if more eligible customers participate.²⁴

²⁴ This cost information, presented by OCA, clearly demonstrates the fallacy of OCA’s assertion that there will not be substantial fluctuations in costs. OCA MB at 158.

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OCA’s argument that the USR constitutes impermissible single-issue ratemaking is incorrect and should be rejected.

OCA’s reference to *Popowsky v. Pa. PUC*, 869 A.2d 1144 (Pa. Cmwlth. 2005), *appeal denied*, 895 A.2d 552 (Pa. 2006) (“*Popowsky 2005*”) and *PIEC* are inapposite. At issue in those cases were the recovery of capital costs. Section 1307(a) only allows recovery of expenses, and the Court concluded that capital cost recovery could only be allowed with further legislation.²⁵ The Company proposed USR only recovers expenses, and thus is authorized under Section 1307(a).

Aqua PA further reiterates that OCA’s proposal disregards the fact that various parties have proposed changes in program design, now and between rate cases. The Company has explained:

These changes would further complicate the projection and recovery of costs in base rates. Mr. Colton appears to acknowledge that projection may substantially vary from actual experience, but his recommendation completely disconnects the tracking and recovery of costs associated with the CAP from the fact that enrollment levels could vary. *See* AP St. 10-R at 13.[] In this regard, the proposed USR provides for a more transparent evaluation of the annual costs of the program than would recovery of the program costs through base rates.

AP MB at 159-160 (footnote omitted).

Finally, Aqua PA fully addressed OCA’s recommendation that the Company should only be permitted to recover the “net costs” of the program, and associated offset of 28%. OCA MB at 152-154. Indeed, OCA’s proposal is premature and unnecessary where a reconcilable rider is used. AP MB at 160-161. Contrary to OCA’s recommendations, Aqua PA’s proposal will align recovery with actual collections experience. AP MB at 161. Moreover, even if this offset were

²⁵ Subsequent legislation adopted Sections 1350-1359 of the Public Utility Code, 66 Pa.C.S. §§ 1350-1359, which authorize recovery of a distribution improvement system charge for wastewater companies.

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necessary and appropriate, OCA’s proposed 28% offset is unreasonable and any offset established should be based on actual collections experience gained after implementation of the CAP to ensure the offset is a reflection of actual collections savings.

B. QUALITY OF SERVICE ISSUES

As explained in its testimony and Main Brief, Aqua PA has pursued and delivered high quality water and wastewater service in Pennsylvania. With that said, the OCA raised several concerns during the course of this proceeding relating to Aqua PA’s quality of service. As noted in Aqua PA’s Main Brief, the OCA bears the burden of proof on these issues as they were not a part of Aqua PA’s prima facie case. *See* AP MB at 161-162. The OCA has failed to carry that burden and, as such, the recommendations regarding alleged quality of service issues in Aqua PA’s service territory should be rejected.

1. Unaccounted For Water / Non-Water Revenue.

As noted in the Company’s Main Brief, no party challenged the percentage of UFW²⁶ experienced in Aqua PA’s system. AP MB at 162. Aqua PA has maintained its UFW below the Commission’s target of 20% despite the fact that a number of recently acquired water systems have presented operational challenges.²⁷ AP MB at 162.

OCA’s primary recommendation regarding the Company’s UFW is OCA witness Fought’s proposal that Aqua PA should submit separate Section 500 reports for its six divisions and include the same data in these six Section 500 Reports as is included in the voluntary calculations²⁸ of Non-Revenue Water using the American Water Works Association (“AWWA”) Water Audit Tool (“AWWA Water Audit”) that are submitted to the Commission, and in the

²⁶ Sometimes referred to as “Non-Revenue Water.”

²⁷ For example, the recently-acquired Phoenixville water system has an unaccounted for water rate of 68%. AP St. 2-R at 8.

²⁸ The AWWA water audit results are voluntarily being provided to the Commission as part of its investigation into UFW. *Notice of Proposed Rulemaking Order – Proposed Water Audit Methodology*, Docket No. L-2020-3021932, at pp. 2-3 (Order entered Nov. 18, 2021) (“*Water NOPR*”).

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Chapter 110 Report submitted to the PADEP. OCA MB at 206-207. As explained more fully in Company witness Duerr’s rebuttal testimony and the Company’s Main Brief, this recommendation is inappropriate as Aqua PA’s Section 500 Report is prepared on a consolidated basis across operating divisions. The Section 500 Report is a comprehensive report containing financial and operating data regarding the entire company, and Aqua PA should not be singled out among all utilities to prepare separate reports for operating divisions. In addition, Section 500 Reports require different information than Chapter 110 Reports submitted to PADEP. Finally, AWWA Water Audits are a different measurement from UFW measurements prepared for the Section 500 reports, and there is currently a Water NOPR concerning water loss reporting ongoing before the Commission. AP MB at 163-164. In its Main Brief, OCA does not provide additional reasoning that was not previously rebutted by Company witness Duerr, or addressed at length in the Company’s Main Brief. Nor does the OCA address the fact that the Commission currently is evaluating the proper method for water loss reporting via the Water NOPR. The results of that NOPR should not be prejudged by adding a new water loss reporting requirement in this proceeding. As such, and as explained more fully in the Company’s Main Brief, the OCA’s recommendations regarding UFW water loss reporting should be rejected.

2. Pressure And Pressure Surveys.

Through testimony and its Main Brief, the OCA make several recommendations relating to the Company’s pressure and pressure surveys across its system. These are very similar arguments made by the OCA and opined on by the Commission in Pennsylvania American’s last rate case filing. *See PAWC 2020*, at *102. Specifically, the OCA contends that Aqua PA is not in compliance with the requirements of 52 Pa. Code § 65.6(d), and recommends that the Company develop a separate searchable category for “pressure” related customer complaints in its customer complaint log. OCA MB at 209-211. Both of these contentions were addressed at

length in the Company’s Main Brief and through the testimony of Company witness Duerr. *See* AP MB at 166-170; AP St. 9-R at 9-12.

In response to the pressure related customer complaint recommendation, Aqua PA made clear, at several junctures, that by simply searching “pressure” in the excel spreadsheet provided in response to OCA-VIII-18, parties are “able to locate each instance where pressure was an issue for the customer.” AP St. 9-R at 9. Notwithstanding, in the interests of compromise, Aqua PA also agreed to highlight pressure issues within the customer complaint log when Aqua PA files its next base rate case. AP St. 9-R at 9; AP MB at 168.

Regarding the Company’s compliance with 52 Pa. Code § 65.6(d), Aqua PA witness Duerr fully addressed this in rebuttal testimony. AP St. 9-R at 6-7. The OCA’s arguments on this point are without merit as it attempts to claim that the requirement to make a survey of pressures “of sufficient magnitude to indicate the pressures maintained at representative points on its system” must be interpreted to mean “a high and low pressure point in each system.” This is not what the regulation requires. *See* AP MB at 166-167. Aqua PA undertakes pressure measurement at thousands of points throughout its system daily, including at hydrants, wells, and various other facilities through SCADA systems. As such, the OCA’s recommendation on this issue should be rejected.

3. Isolation Valves.

The OCA makes several recommendations regarding the Company’s use and testing of isolation valves, all of which should be rejected by the Commission. Among these recommendations is Mr. Fought’s proposal that the Company start maintaining records of its attempts to exercise every isolation valve and whether such exercise was successful. OCA MB at 212. Further, Mr. Fought recommended that the Company exercise (or attempt to exercise)

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16,700 isolation valves per year until all non-critical valves were exercised in a 5-year period. OCA MB at 212-213.

As fully explained in Company witness Duerr's testimony and the Company's Main Brief, the recommendations of the OCA relating to isolation valves should be rejected in their entirety. AP MB at 170-172. With respect to OCA's recordkeeping proposal, Aqua PA witness Duerr explained that all valves have been identified in Aqua PA's asset registry, and schedules have been, or are in the process of being, developed. AP St. 9-R at 14. With respect to OCA's proposal to require a 5-year cycle for exercising non-critical valves, the Company has explained that it has committed to various non-critical valve inspection measures as part of its 2020 management audit with the Commission. AP MB at 171-172; AP St. 9-R at 13-14. OCA contends that the Company's schedule to exercise non-critical valves is too long. OCA MB at 213. However, as the party with the burden of proof on these issues, the OCA provided no cost estimate for the amount of time and additional workforce needed to accomplish Mr. Fought's recommendations. AP MB at 170; AP St. 9-R at 13. Cost considerations are a relevant factor, particularly with respect to valves that are not classified as critical.

OCA cites to the Commission's order in *Pa. PUC v. City of DuBois – Bureau of Water*, Docket No. R-2016-2554150 (Order entered Mar. 28, 2017) ("*City of Dubois*") to support its proposal. That decision is not controlling. First, the City and OCA entered into a stipulation for the City to exercise all valves by a certain date, and then submit a schedule for repairing or replacing inoperative valves. *City of Dubois*, at p. 122. As a stipulation, this is not precedent for OCA's proposal in this case. Second, the cited stipulation did not establish an ongoing schedule of exercising valves. Third, OCA has offered no evidence comparing the number of valves and cost to exercise for the City compared to Aqua PA.

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As such, the OCA's recommendations regarding valve inspections are redundant, unnecessary, and should be rejected.

4. Fire Hydrants.

As explained in Aqua PA's Main Brief and Mr. Duerr's testimony, there are no outstanding issues relating to fire hydrants in the Company's system. In fact, the OCA specifically noted that it "agrees with this [Mr. Duerr's approach explained in rebuttal] approach..." OCA MB at 213; *See also* AP St. 9-R at 15.

5. Flushing Of The Distribution System.

OCA recommends that Aqua PA be required to flush the entire SEPA system once every three years. OCA MB at 214. OCA also asserts that there is an alleged discrepancy between work orders in the SEPA division related to flushing and the number of customer complaints related to flushing. OCA MB at 214.

Aqua PA responded to OCA's proposal and its assertions in the Company's Main Brief. AP MB at 173-75. In rebuttal, Company witness Duerr made clear that the Company conducts flushing activities consistent with a number of factors, including: "water quality samples; customer issues; the geometry of the system (if mains are looped); volume of water traversing through an area on a daily basis; and proximity to wells and tanks." AP St. 9-R at 17-18. The relatively low number of customer complaints requiring flushing, and OCA's own recognition that the Company has a strong record of sustaining water quality in its SEPA system, support the Company's approach to flushing. AP MB at 174. Further, Mr. Duerr explained that he is not aware of an industry standard requiring flushing at the schedule proposed by the OCA. AP St. 9-R at 17; AP MB at 174. Flushing is a costly endeavor, and the Company's targeted program for flushing is more cost-effective, while maintaining high water quality standards. AP MB at 174.

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OCA’s claim of an alleged discrepancy between the number of work orders opened related to flushing and the number of customer complaints received related to flushing was fully rebutted by Aqua PA witness Mr. Duerr. AP St. 9-R at 16-17; AP MB at 173-174. OCA’s Main Brief completely ignores this explanation. OCA MB at 214.

OCA’s recommendations related to Aqua PA flushing its distribution system should be wholly rejected as without merit.

6. Per- and Polfluoroalkyl Substances (“PFAS”).

OCA acknowledges that there is no issue outstanding with regard to public reporting concerning PFAS, as the Company has agreed to the OCA’s recommendation. OCA MB at 215; AP MB at 175-176; AP St. 9-R at 19.

7. Water and Wastewater Customer Complaints.

As explained in testimony and the Company’s Main Brief, Aqua PA provided a summary report detailing the Company’s compliance with 52 Pa. Code § 65.3. Further, the Company provided a customer complaint log on a live Excel spreadsheet detailing customer complaints and the Company’s response thereto. AP MB at 176; OCA St. 7 at 20. OCA maintains that the customer complaint log provided by the Company is incomplete. OCA’s position on this point was fully explained and rebutted through rebuttal testimony, the Company’s Main Brief and further identified in Section VIII.B.5 of this Reply Brief, and will not be repeated here. *See* AP MB at 176-177; AP St. 9-R at 20-27. As such, OCA’s recommendations regarding the Company’s customer complaint log should be rejected.

8. Public Input Hearing and Other Formal Complaints.

OCA actively acknowledges that Aqua PA has properly responded to each customers complaint or testimony, except, in OCA’s opinion, with respect to the Complaints of Day, Weiner and Gage. OCA MB at 217.

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Complainants Day and Weiner oppose the Company's use of flat rate billing for wastewater service at Lake Harmony. OCA MB at 104-106; Day and Weiner Letter-Brief at 1-2. Aqua PA responded to the proposals to require wastewater service be billed at metered rates or, alternatively, to establish a "pilot" to bill wastewater service at metered rates at Lake Harmony. AP MB at 177-180. Herein, the Company will respond to certain assertions raised in those briefs.

OCA asserts that the Commission has a policy to move utilities to metered rates. OCA MB at 104. Aqua PA acknowledges this policy as it applies to water companies. However, the issue here is wastewater service. Wastewater utilities do not install meters to measure wastewater usage. Instead, they must rely upon metered water usage to bill metered rates for wastewater. This is accomplished any time water and wastewater service is provided by the same or affiliated entities, or if metered water service is provided by municipalities, authorities or other regulated public water providers who voluntarily agree to provide metered water data.²⁹

The issue in Lake Harmony, and several other developments where Aqua PA provides wastewater service, is that the water service is unmetered. Wastewater customers either have their own wells or receive unmetered water from a community system. In these situations, the Company bills wastewater service at a flat rate. This is industry practice throughout Pennsylvania where metered water information is unavailable, AP St. 9-R at 29-30, a fact that is unrefuted in OCA's or Day-Weiner's briefs.

The "solution" proposed by OCA, Day and Weiner is for Aqua PA to install water meters on the private wells or water lines. However, OCA, Day and Weiner do not explain Aqua PA

²⁹ There is no law or Commission regulation mandating that municipal entities or regulated water utilities provide meter readings to a third party.

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Wastewater’s authority to place a meter on a person’s water line.³⁰ Perhaps in recognition of this fundamental problem, OCA suggests a “pilot” in which customers can opt-in to the installation of a meter. However, as Aqua PA has explained, an “opt-in” process can never be a permanent solution, as a customer with higher usage will rationally always opt out rather than be billed based upon usage. AP MB at 179. OCA suggests, without evidence, that higher-usage customers could be “incentivized” to opt-in in the future. OCA MB at 106. Even if this were possible, OCA and Day and Weiner do not address the question why wastewater cost of service should be increased to cover the cost of installing, maintaining, and reading water meters for wastewater service.

Day and Weiner also criticize the Company’s use of 4,000 gallons per month to develop the flat rate to be charged. Day and Weiner Letter-Brief at 1. However, because the Company does not have water usage data for Lake Harmony customers, it uses average metered wastewater usage from customers with metered rates to develop a proxy of usage, which is then used to develop the rates. This fairly recognizes that most of the costs to provide wastewater service are fixed, and the system is available at all times to service customers, regardless of actual usage. AP MB at 179-180.

The provision of wastewater service at flat rates is a normal and acceptable procedure where metered water data is not available. The proposals of OCA, Day and Weiner should be dismissed.

Complainant Gage testified regarding high pressures at his residence. OCA proposes that the Company be required to reduce pressure to this customer, or install a pressure reducing valve (“PRV”) at the customer’s residence. OCA MB at 217. Aqua PA responded to these contentions

³⁰ Day-Weiner asserts that the Company need only “schedule an appointment with a homeowner.” Day-Weiner Letter-Brief at 2. This is not a response to the legal issue. If a homeowner refuses entry, Aqua PA has no right to force the homeowner to comply.

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at pages 168-170 of its Main Brief. OCA asserts that Aqua PA has not explained why it is providing high pressure in the location of Mr. Gage's home. OCA MB at 217. However, Mr. Gage's property is located close to one of the Company's largest treatment plants. That plant is engineered to provide pressure in excess of 200 psig in order to supply water to customers at higher elevations on the Company SEPA division. AP Exhibit TMD-1-R, Answer to Complaint of Richard Gage. Pressures are thus higher than 125 psig in this area in order to provide service to higher elevation areas of the Company. *See PAWC 2020*, at *102; AP MB at 169-170. OCA's proposals to require the Company to reduce pressures at this location should be denied.

C. CUSTOMER SERVICE ISSUES

As explained through its testimony and Main Brief, many of Aqua PA's service quality and customer service obligations were memorialized through the *Aqua-Peoples Settlement*. The relevant conditions contained in the *Aqua-Peoples Settlement* were delineated in Aqua PA's Main Brief. *See* AP MB at 182-183. As such, those commitments will not be recited here. With that said, through testimony and its Main Brief, the OCA contended that Aqua PA had not met several of the obligations contained in the *Aqua-Peoples Settlement*. Further, through testimony, CAUSE-PA and OCA contended that some of Aqua PA's customer service practices were inappropriate. As explained in Aqua PA's Main Brief, and more fully here, the recommendations of the OCA and CAUSE-PA regarding alleged customer service issues should be rejected.

1. Settlement Commitments.

The Company takes settlement commitments seriously and endeavors to always work with key stakeholders to make sure it is in compliance with any commitment, rule and/or regulation. The OCA and CAUSE-PA make several averments regarding Aqua PA's purported noncompliance with the *Aqua-Peoples Settlement*. All of these allegations are without merit and

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any recommendations from either CAUSE-PA and/or the OCA for Aqua PA to reach compliance with the *Aqua-Peoples Settlement* commitments either have already been met, are premature, or are wholly unnecessary. Aqua PA’s compliance with the *Aqua-Peoples Settlement* is explained at length its Main Brief, and will not be repeated at length here. AP MB at 182-188. However, it is important to specifically note that:

- Aqua PA has met its calls answered commitment, consistent with the calls answered standard required for the Peoples Companies. AP MB at 184-85
- Aqua PA conclusively demonstrated that call abandonment rates are consistent with the terms contained in the *Aqua-Peoples Settlement*, and any shortcoming at the end of December 2020 was due to extraordinary circumstances that were fully and transparently explained. AP MB at 185-186; AP St. 10-RJ at 3.
- Despite the OCA’s contentions to the contrary, Aqua PA is on track to meet its commitment to reduce the number of days to respond to customer complaints so that, within 24 months, the average is less than 10. The most recent average days to respond, as recorded in October 2021, was six days. AP MB at 186-187; AP St. 10-R at 10. Such requirement is not due to be met until March 2022.
- Aqua PA has – and will continue to – work with the OCA to develop a system to track Aqua PA customer complaints based upon the OCA’s requested parameters. Development of that spreadsheet in cooperation with OCA is ongoing. AP MB at 187-188; AP St. 10-R at 16-17.

For the foregoing reasons, and for the reasons explained in whole in the Company’s Main Brief, both the OCA’s and CAUSE-PA’s respective recommendations regarding the commitments made in the *Aqua-Peoples Settlement* should be rejected.

OCA also claims that Aqua PA has not followed through on statements made in certain wastewater acquisition proceedings to provide “enhanced customer service.” OCA MB at 195-196. In support of this allegation, OCA’s only assertion is to reference a discovery response, not identified as being part of the record, that the Company does not make available municipal offices “to pay Aqua bills and handle routine customer service requests and other issues.”

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OCA has offered no evidence that the Company committed to keep open former municipal offices. The closing of former offices by prior owners of these systems does not demonstrate a lack of enhanced service. Aqua PA has made available to these customers an enhanced customer contact center and multiple bill payment options that do not require face-to-face contact. Low-income customers of these systems also will be afforded the opportunity to participate in the Company's new CAP, and all acquired customers will receive service from a utility dedicated to quality service. OCA's assertion that the Company has not met its statements to provide enhanced customer service to customers of acquired wastewater systems is without merit.

2. Service Quality And Consumer Protection Performance.

OCA questions Aqua PA's service quality and consumer protection performance with respect to various other issues beyond compliance with the *Aqua-Peoples Settlement* commitments. OCA MB at 178-186, 196-204. As noted above, Aqua PA fully responded to alleged issues related to service quality and consumer protection performance through several rounds of testimony and in its Main Brief. AP MB at 133-134, 188-194. In some instances, Aqua PA was able to reach a mutually agreeable resolution and implement some of the recommended changes promoted by OCA's witnesses. This includes Aqua PA's agreement to update its policies regarding training and documentation provided to field service representatives ("FSR") when attempting to contact customers facing possible service termination. AP MB at 189.

OCA criticizes Aqua PA regarding various aspects of customer complaints. OCA MB at 179-180. However, OCA fails to recognize that in each of the metrics considered, the Company has made measurable improvements since the acquisition of the Peoples Companies and the addition of their experience in dealing with customer issues. AP MB at 139, 193.

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OCA also criticizes the Company for “only” having 72% of customers contacted stating that they were very or extremely satisfied with the Company’s performance. OCA MB at 181. Survey results do provide an important baseline for the Company to identify and evaluate areas for improvement. AP St. 10-R at 17. However, these results are not in themselves indicative of poor customer service and, particularly during the COVID timeframe where certain customer interactions have had to be limited, are given undue weight.

OCA also raises concerns about Aqua PA’s collections performance, citing data from 2012 through 2018. OCA MB at 182-183. Aqua PA responded to OCA’s assertions in its Main Brief. AP MB at 192-193. While these statistics indicate Aqua PA is not providing “best in class” performance in amounts in arrears and account disconnections, OCA has offered no evidence that these statistics are indicative of any improper actions by Aqua PA. Moreover, the Company is proposing a robust USP in this proceeding, which should have positive effects on arrearages and disconnections.

In addition, OCA identifies four National Pollutant Discharge Elimination System (“NPDES”) permit violations by Aqua PA facilities over 1 ½ years, and asserts these are indicative of less than superior management effectiveness. Such contentions are addressed in the Company’s Main Brief and are wholly without merit; Aqua PA achieved a compliance rate of over 95% for its wastewater systems in 2020, and a compliance rate of 99.24% for the nine months ended September 30, 2021. AP MB at 138-139; AP St. 9-R at 40. OCA’s assertion that any performance less than perfection is evidence of inadequate management performance is unreasonable and unfair. Unfortunately, violations can occur due to circumstances outside of Aqua PA’s control, including extreme weather events and aging infrastructure acquired by Aqua

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PA, or, as in one instance identified by OCA, byproducts in the wastewater stream due to a customer's cancer treatment.

OCA presented other claims regarding Aqua's PA compliance with Commission regulations. For instance, OCA contends that there is a discrepancy between the number of accounts the Company terminated for nonpayment and the reconnection of service for those customers, suggesting that this may indicate a failure to comply with reconnection requirements. OCA MB at 198; OCA St. 6 at 19. Aqua PA fully addressed this concern in rebuttal, with Company witness Black explaining that the Company's restoration of service policy fully complies with the Commission's requirements. AP St. 10-R at 21; *see also* AP MB at 190. OCA also questioned whether the Company attempts personal contact at a property immediately prior to termination of service. OCA MB at 197-98. The Company explained that its FSRs are fully trained to attempt personal contact with a responsible adult, but agreed to update its training documentation to clearly include this requirement. AP MB at 189. Similarly, OCA raised other concerns regarding payment methods, identifying customer disputes, and the Company's call center oversight. These concerns were fully addressed through the Company's testimony and in its Main Brief. *See* AP MB at 185-188; 191-194.

Finally, OCA argues that Aqua PA should not be permitted to charge late fees accrued during the moratorium on termination of service. OCA MB at 202-203. OCA points to no Commission directive that required utilities to cease accruing late payment fees during the termination moratorium. That is because there never was such a prohibition against accruing late payment fees, and at no point did the Company state or imply that late payment fees were being waived. AP MB at 192.

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The Company has pursued exemplary compliance with the relevant laws and applicable Commission regulations. Aqua PA has taken – and will continue to take – meaningful steps to continue to improve service its customers within the Company’s certificated service territory. In consideration of the foregoing, the OCA’s arguments regarding customer service issues should be rejected as being without merit.

3. Language Access.

CAUSE-PA has raised several concerns regarding Aqua PA’s language access policies. CAUSE-PA MB at 43-48. However, CAUSE-PA fails to acknowledge in its Main Brief that Aqua PA has agreed to address CAUSE-PA’s concerns. As explained in Aqua PA’s Main Brief, those concerns were addressed through the rebuttal testimony of Aqua PA witness Black. Ms. Black explained that Aqua PA already was exploring “the implementation of Language Line Translator, an entity that provides translation service and is currently used at the Peoples Companies.” AP St. 10-R at 27; AP MB at 194. Further, in rebuttal and in response to Mr. Geller’s various concerns, Ms. Black explained that Aqua PA would conduct a language access assessment, as recommended by Mr. Geller. AP St. 10-R at 27-28; AP MB at 194-195. Finally, Ms. Black explained that changes to billing information in Spanish would have to be incorporated into the development timeline for the new SAP system. AP St. 10-R at 28. For these reasons, CAUSE PA’s recommendations regarding language access are unnecessary and should be rejected.

D. MASTHOPE MOUNTAIN COMMUNITY ASSOCIATION

1. Aqua PA’s Proposed Rate Increase Should Not Be Denied Because It Has Provided Reasonable And Adequate Service In Accordance With 66 Pa.C.S. § 1501.

In its Main Brief, Masthope argues that the Commission should not grant Aqua PA’s proposed wastewater rate increase to Masthope customers because Aqua PA has provided

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unreasonable and inadequate service to Masthope. Masthope MB at 9. As explained in Aqua PA's Main Brief, pages 195-198, Aqua PA has provided reasonable and adequate service to Masthope in accordance with its obligations under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. Therefore, Masthope's arguments are not a reason to deny Aqua PA's requested rate increase to Masthope wastewater customers.

As part of its reasoning for requesting that Aqua PA's proposed rate increase be denied, Masthope alleges that hydraulic overloads could have been avoided if Aqua PA would have dedicated sufficient resources to expanding Masthope's wastewater treatment plant in a timely manner. Masthope MB at 10-11. As Aqua PA explained in its Main Brief, the Company proactively evaluated the needs of the Masthope community and determined that the Treatment Train Project and related capital upgrades were needed to address increasing capacity demands on the system. AP MB at 196. The Treatment Train Project was identified in 2019, well in advance of PADEP's connection restriction in December 2020. AP St. 9-R at 33; AP Exhibit TMD-3-R. While the Treatment Train Project was in progress, Masthope experienced elevated precipitation levels, as well as shifts to full-time use of residences that were previously used only seasonally. The combination of these factors led to hydraulic overloads on the system. The hydraulic overloads were not caused by inadequate planning as Masthope alleges. AP St. 9-R at 33-36.

As support for its inadequate service argument, Masthope cites *Sutter v. Clean Treatment Sewage Company*, Docket No. C-20078197 (Opinion and Order entered May 15, 2009). Masthope MB at 9. However, the facts in *Sutter* are not applicable to this case. In *Sutter*, the utility experienced continuous overflows on its sewage system, and the resulting moratorium on connections was in place for three years with no prospect of being lifted in the near future.

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Sutter, at pp. 12-15. The issue in *Sutter* also involved the utility’s imposition of a service availability fee while a moratorium on new connections was in place. *Sutter*, at p. s16. In this case, unlike the utility in *Sutter*, Aqua PA has promptly undertaken significant efforts to resolve the hydraulic overloads, including the submission of a Corrective Action Plan to the PADEP and Act 537 Sewage Facilities Planning for the wastewater treatment plant expansion. Masthope Exhibit 1, Schedule 3. That Corrective Action Plan identified various short-term steps, which were already completed or in process, and long-term steps to install treatment plant upgrades. Masthope Exhibit 1, Schedule 3 at 9-13.³¹ On January 11, 2022, PADEP approved the Corrective Action Plan, and authorized a sewer connection allocation of 60 additional Equivalent Dwelling Units (“EDUs”). AP Post-Hearing Exhibit 1 (attached hereto as Appendix A).³² Aqua PA’s efforts to resolve the hydraulic overloading are fully described on pages 196-197 of Aqua PA’s Main Brief and in the testimony of Aqua PA witness Mr. Todd M. Duerr, AP St. 9-R at 37. In addition, as a result of closed circuit review of the Masthope collection system, the Company has undertaken a multiphase rehabilitation of the collection system, to reduce inflow and infiltration. The first phase of that project was scheduled to be completed in late 2021. AP Exhibit TMD-3-R. Thus, any argument that Aqua PA has not been diligent in identifying needs in the Masthope system, and in developing solutions, is without merit.

Finally, Masthope argues that the potential for continued restrictions on new connections in the Masthope community is unreasonable, and a public utility must demonstrate actual improvements to rectify inadequate service. Masthope MB at 11 (citing *Pa. PUC v. Pa. Gas &*

³¹ Among the immediate efforts, the Company installed a Tertiary Pilot Effluent Filter to address exceedances. Masthope Exhibit 1, Schedule 3 at 9.

³² Aqua PA filed a Motion to Admit AP Post-Hearing Exhibit 1 on January 20, 2022. As explained therein, the PADEP’s January 11, 2022 approval of the Corrective Action Plan is relevant and admissible, and good cause exists for it to be admitted as an exhibit at this time. Alternatively, to the extent that this exhibit is not admitted, Aqua PA submitted that the ALJ and the Commission should take notice of it pursuant to 52 Pa. Code § 5.408.

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Water Co., 61 Pa. P.U.C. 496, 501 (1986)). Masthope fails to recognize that Aqua PA has, in fact, taken steps to rectify the hydraulic overloads by submitting the Corrective Action Plan, in which Aqua PA has requested that PADEP approve the connection of 30 homes in 2021 and 15 additional homes each year until the completion of the Corrective Action Plan. AP St. No. 9-R at 37-38. Masthope stated that it supports Aqua PA’s request for connecting additional homes while the Corrective Action Plan is in progress. Masthope St. 1 at 11. The Corrective Action Plan was approved by PADEP on January 11, 2022, as explained above. Aqua PA will continue to actively work with PADEP and there is no evidence that existing customers will receive less than adequate service while the Corrective Action Plan and Act 537 planning are being carried out.

2. Masthope’s Requested Conditions Are Inappropriate For This Base Rate Proceeding Before The Commission And Should Be Rejected.

In its Main Brief, Masthope asks the Commission to impose the following conditions on Aqua PA’s request for rate relief: (1) order Aqua PA to coordinate with Masthope and local officials regarding the Corrective Action Plan and future Chapter 94 reporting requirements; (2) require Aqua PA to report to Masthope and the Commission on the status of corrective actions and PADEP determinations; (3) order Aqua PA to seek an Amendment to the Corrective Action Plan to increase the number of connections to Masthope; (4) order Aqua PA to appeal any future PADEP decision that restricts Aqua PA’s ability to connect customers to the Masthope system; (5) assure that Aqua PA’s Treatment Train Project resolves the hydraulic overload conditions and eliminates the restriction on new connections; and (5) impose deadlines for Aqua PA to complete Act 537 expansion projects that will permanently eliminate building restrictions in Masthope. Masthope MB at 17-18.

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As Aqua PA explained in its Main Brief, these issues are inappropriate for this base rate proceeding and should be addressed before PADEP. AP MB at 198-200. While the Commission has authority to determine whether a utility has provided safe, reasonable and adequate service, PADEP is responsible for activities related to the planning of community sewage facilities pursuant to Act 537, the Corrective Action Plan and Chapter 94 reporting. *See* AP MB at 198-99. Masthope's requested conditions relate directly to PADEP's authority to oversee planning for community wastewater treatment plants under its regulations.

Masthope's proposed Chapter 94 coordination and reporting requirements should be rejected in this base rate case because PADEP, not the Commission, oversees and is responsible for the enforcement of PADEP's Chapter 94 regulations. Indeed, PADEP has recently acted upon and approved the Corrective Action Plan. Masthope's recommendation that the Commission assure Aqua PA's projects will result in PADEP lifting the moratorium on new connections should also be rejected because the Commission cannot require a specific determination from PADEP. Masthope's recommendation fails to consider the many factors that PADEP considers when determining whether new connections should resume without restriction. Likewise, the Commission should decline to impose the requested deadline for Aqua PA to complete its Act 537 expansion projects because the appropriate timeframe for completing Act 537 projects should be determined by PADEP, the agency that is responsible for carrying out Act 537. Moreover, the timeframe for completing the treatment plant upgrades set forth in the Corrective Action Plan is dependent upon receipt of necessary permits from PADEP, which is outside Aqua PA's control.

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For these reasons and the reasons explained in Aqua PA’s Main Brief at 198-200 and the Rebuttal Testimony of Mr. Duerr, AP St. 9-R at 38-39, Masthope’s proposed conditions should be rejected.

E. COVID-19 ISSUES

1. The Company’s Request For Continued Authorization To Defer Incremental Uncollectibles Expense Due To COVID-19 Should be Approved.

OCA and I&E address the Company’s request for continued authorization to defer incremental bad debt expense related to the COVID-19 pandemic. OCA MB at 50-51; I&E MB at 56-59. Each of the arguments advanced in OCA’s and I&E’s Main Briefs were addressed by Aqua PA’s Main Brief.

However, Aqua PA notes that OCA’s and I&E’s Main Briefs emphasize that each of these parties’ arguments pivoted in their respective surrebuttal testimony based off the Company’s rebuttal. *See* AP MB at 205-206. However, the surrebuttal positions of I&E and OCA are one-sided and should not be adopted. Both OCA and I&E argue that it is necessary to set an end-date for the calculation of COVID-19 deferrals that increase, but want to capture any future decreases to the balance. In contrast, Aqua PA has presented a balanced approach, that continues to defer the determination of changes to the COVID-19 uncollectible accounts balance, whether higher or lower, until the Company’s next rate case. The Commission should grant Aqua PA’s request for continued authorization to defer incremental uncollectibles expense associated with the COVID-19 pandemic, in order to provide additional time for uncollectibles expense to stabilize and possibly mitigate fully.

2. CAUSE-PA’s Proposed Temporary Protections Are Unnecessary.

CAUSE-PA devotes a portion of its brief to claims regarding the impacts of the COVID-19 pandemic, and argues that certain temporary modifications to the Company’s programs

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should be ordered due to these impacts. CAUSE-PA MB, Section IX.A. Specifically, CAUSE-PA recommends that the Company: (a) “should suspend terminations and offer more lengthy payment arrangement terms, regardless of prior broken arrangements, for at least one year from the date of the final order in the present proceeding (CAUSE-PA MB at 14-15); (b) “waive reconnection fees for one year from the final order in the present proceeding (CAUSE PA MB at 15); and (c) “expand its outreach to payment troubled customers and actively screen and solicit callers for enrollment in available assistance programs” (CAUSE-PA MB at 15). While Aqua PA responded generally to CAUSE-PA’s concerns and recommendations in the context of its response to OCA’s attempt to argue no rate increase is warranted due to the impacts of the COVID-19 pandemic, the Company specifically submits that the proposals advanced by CAUSE-PA are not necessary and not timely.

It is important to first note that CAUSE-PA acknowledges Aqua PA implemented many additional protections during the of the pandemic, pursuant to the orders issued by the Commission. CAUSE-PA MB at 12-13. Aqua PA also implemented additional temporary measures. AP St. 1 at 38. Moreover, as explained in Aqua PA’s Main Brief, the Company’s request for authorization to continue to defer incremental bad debt expense will likely mitigate the impacts of these incremental costs on customers. AP MB, Section VIII.E.

Moreover, the Commission has acknowledged that that it is time to return to the regular collections process set forth in the Public Utility Code and the Commission’s regulations. *See Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244, at pp. 3-4 (Order entered March 18, 2021) (acknowledging that it is time to return to the regular collections process set forth in the Public Utility Code and the Commission’s regulations). This

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acknowledgment was based in part on the economic improvements that have occurred and the relief available to customers. The Commission explained:

While the economic reality is much improved, but not yet optimal, successive stimulus packages by the federal government continue to counter a portion of the negative employment impacts. This past December's federal stimulus package, the Coronavirus Response and Relief Supplemental Appropriations Act of 2021, directed roughly \$848 million in funding to Pennsylvania for rent and utility assistance. Of that funding, \$278 million has already been allocated to larger counties, which are working to establish funding distribution programs, while approximately \$570 million has been directed to all Pennsylvania counties. The Pennsylvania General Assembly has also passed legislation to appropriate the funds and establish a grant program, the Emergency Rental Assistance Program (ERAP), administered by the Pennsylvania Department of Human Services (PA DHS). Additionally, the American Rescue Plan Act (ARPA) of 2021, passed by Congress on March 10, 2021, contains extended unemployment compensation, stimulus checks, monthly payments for families with children, and assistance for low-income water and wastewater customers. The ARPA also makes a significant additional allocation to the Low-Income Home Energy Assistance Program (LIHEAP), which directs approximately \$270 million more in home energy grants for low-income payment troubled customers in Pennsylvania. This amount exceeds, and is in addition to, the previous LIHEAP funding allocated to Pennsylvania of which approximately \$40 million remains available.

Id., at p. 3. Nevertheless, the Commission did maintain certain expanded payment arrangements for a limited period.

CAUSE-PA's proposed modifications are unnecessary expansions of the protections that the Commission deemed reasonable to end on September 30, 2021. Specifically, the Commission had provided for more extensive payment arrangements to be provided through September 30, 2021. *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244, at p. 3 (Order entered July 15, 2021). CAUSE-PA's assertion that the further suspension of terminations and more lengthy payment arrangements are necessary to permit federal relief dollars to be deployed is unreasonable. Contrary to CAUSE-PA's assertions, the

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Commission has already determined a deadline for the end of the modified payment arrangements it has deemed reasonable for all Pennsylvania utilities. It would be poor public policy, and unfair, for the Commission to order the more expansive measures proposed by CAUSE-PA to be imposed on a single utility after its statewide measures have ended.

CAUSE-PA’s recommendation that reconnection fees be waived should also be rejected. CAUSE-PA MB at 15. This recommendation disregards the relief available to Aqua PA’s customers to assist with utility payments, which were highlighted by the Commission in its March 18, 2021 Order.

Finally, CAUSE-PA’s assertion that a specific finding is required by the Commission to direct Aqua PA to expand its outreach efforts and engage in specifically targeted outreach activities is unnecessary. Notably, CAUSE-PA has not quantified the costs or benefits of this proposal. But regardless, Ms. Black addresses outreach efforts and the Company’s plans to continue outreach and communication to customers.

IX. RATE STRUCTURE

A. COST OF SERVICE

Aqua PA explained the purpose, basis and methodology used to prepare the cost allocation study (AP Exhibit 5-A, Part I) for its water operations, as well as separate cost allocation studies (AP Exhibit 5-B, Part I) for its wastewater operations in Section IX.A of its Main Brief. As explained therein, no parties disputed the Company’s use of the base-extra capacity method for purposes of its water cost allocation study and no parties disputed the Company’s use of the functional cost allocation method for purposes of the wastewater cost allocation studies. AP MB at 210. Aqua PA further notes that OSBA specifically “concluded that Aqua PA’s originally filed water COSS is accurate, just, and reasonable” and “concluded that Aqua PA’s originally filed wastewater COSS is accurate, just and reasonable” in its Main

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Brief. OSBA MB at 30. The ALJ and the Commission should accept the methodologies used in each of the Company's cost allocation studies as reasonable.

Both OCA and I&E, however, argue³³ that the Company should be required to prepare ongoing cost allocation studies for the wastewater systems acquired by Aqua PA under Section 1329 of the Public Utility Code, 66 Pa.C.S. § 1329, in future base rate cases. OCA MB at 84-86; I&E MB at 65-66. This means that going forward, Aqua PA will be required to file separate cost allocation studies for any newly acquired systems. The determination of whether to require separate cost allocation studies for future wastewater acquisitions should not be pre-determined in this case; rather, it should be determined in such future proceedings. Both OCA and I&E also argue that the Company should be required to file two separate revenue requirements going forward for Rate Zones 1 – 6 and 7 – 12. Aqua PA opposes these recommendations, which are unreasonable, unnecessary and inefficient. The Company has never been required to carve out water and wastewater acquisitions in this manner, after the initial rate case post acquisition. In addition, since the acquired systems are similarly operated as the legacy systems, no advantage is gained, on a cost of service basis, by separating these systems.

The Commonwealth Court has also specifically affirmed a prior Commission order that declined to condition a water utility's proposed consolidation of rate districts upon the maintenance of separate records for each district. *See Pittsburgh v. Pa. PUC*, 526 A.2d 1243 (Pa. Cmwlth. 1987), *pet. for allowance of appeal denied*, 538 A.2d 880 (Pa. 1988). As also noted in its Main Brief, I&E's and OCA's proposal is a step backward that is not supported by Commission policy or precedent, and would also result in significant accounting, tracking, operational and rate impacts. AP MB at 219-220. Furthermore, the increased costs and complications associated with preparing separate cost allocation studies would likely put the

³³ I&E originally advanced this recommendation. OCA has joined in it for the first time in its Main Brief.

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Company at a competitive disadvantage from other bidders in future acquisition opportunities. AP MB at 219.³⁴ Therefore, this recommendation should be denied.

B. REVENUE ALLOCATION

1. Introduction.

Having demonstrated that its cost allocation studies were prepared using reasonable methodologies, the Company further explained that its proposed allocation of revenue among the customer classifications is primarily driven by the cost to serve each class and tempered by the principle of gradualism to attempt to avoid significant rate increases to certain customer classifications under its proposed revenue allocation. AP MB, Section IX.B. Aqua PA’s proposed revenue allocation is reasonable under *Lloyd v. Pa. PUC*, 904 A.2d 1010 (Pa. Cmwlth. 2006), *appeal denied*, 916 A.2d 1104 (Pa. 2007) (“*Lloyd*”), as well as other applicable precedent.

OCA, I&E, OSBA, Aqua-LUG and Masthope each specifically addressed the Company’s proposed revenue allocation. As anticipated in the Company’s Main Brief, however, a substantial portion of the other parties’ Main Briefs regarding revenue allocation are devoted to the determination of an amount of wastewater revenues to be recovered in water rates pursuant to the Act of Feb. 14, 2012, P.L. 72, No. 11 (“Act 11”). Aqua PA responded to the arguments each party advanced regarding the appropriate Act 11 allocation in Section IX.B.2. of its Main Brief, and further addressed other wastewater revenue allocation issues raised by the parties in Section IX.B.3. of its Main Brief and other water revenue allocation issues raised by the parties in Section IX.B.4. of its Main Brief. Below, Aqua PA further replies to specific arguments raised by the parties with respect to revenue allocation issues in their Main Briefs.

³⁴ Aqua PA emphasizes that a single wastewater cost of service study will still enable parties to examine and consider the level of any future Act 11 allocation from wastewater to water rates.

2. Act 11 Revenue Allocation.

a. OCA’s Act 11 Revenue Allocation Proposal Is Not Reasonable And Should Be Denied.

As an initial matter, Aqua PA notes that OCA does not argue Aqua PA’s proposed allocation is not “reasonable” or not “in the public interest.” Rather, it asserts that its proposed Act 11 revenue allocation is “more reasonable.” OCA MB at 86. This is not the test. In order for a public utility to allocate a portion of its wastewater revenues to combined water and wastewater customers, Section 1311(c) requires a showing the proposed allocation is in the public interest. AP MB at 213.

With respect to its specific alternative Act 11 allocation proposal, OCA proposes to remove the “acquisition premium” associated with each wastewater system from the Act 11 allocation. OCA MB at 88-89. Aqua PA explained that there is no “acquisition premium” associated with any of these systems. AP MB at 217. OCA also ignores the fact that the Commission has already evaluated its argument and rejected it in *PAWC 2020*. *See also* AP MB at 218. For these reasons alone, OCA’s proposal should be rejected.

However, OCA’s Main Brief actually highlights a further reason why its proposal is critically flawed. OCA proposes to reduce the Company’s Act 11 allocation by approximately \$9 million. *See, e.g.*, OCA MB at 94. This recommendation is based upon OCA’s calculation of approximately \$10,055,979 of revenue requirement associated with wastewater “acquisition premiums,” as previously explained.

While OCA incorrectly asserts that this \$9 million adjustment is necessary to remove the “acquisition premiums,”³⁵ it actually seeks to recover approximately \$3.5 million of this disallowance from wastewater base operations customers. OCA St. 4 at 8 (Mr. Watkins

³⁵ *See* AP MB at 217-218.

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explaining that his proposal to double the proposed increases to the legacy system, *i.e.*, base customers, assigns an additional \$3,473,445 million to those customers). However, wastewater base customers have nothing to do with the Section 1329 “acquisition premium” adjustment OCA witness Mr. Watkins calculates. Indeed, as OCA admits “[t]his is the first Aqua rate case that includes Section 1329 acquisitions.” OCA MB at 86. In this respect, OCA is attempting to disguise a substantial further increase to wastewater base customers as a “break” to customers served by the acquired Section 1329 systems.

Furthermore, an examination of the Company’s proposed Act 11 allocation reveals that Aqua PA only proposed to shift approximately \$6.6 million of wastewater revenues from the Section 1329 systems to water operations. *See* AP Exhibit 1-A, Schedule Act 11, page 1 (sum of the proposed Act 11 allocation from Limerick, East Bradford, Cheltenham, East Norriton and New Garden wastewater operations). OCA attempts to “undo” approximately \$5.6 million of this allocation, based upon its incorrect assertions regarding an “acquisition premium,” but ignores the fact that the Company’s proposal already accounts for some of that “premium.” *See* OCA St. 4 at 10, Table 5 (difference of “OCA Increase” and “Aqua PA Proposed Increase” of “Total Newly Acquired Systems”).

For example, with respect to the Cheltenham system, OCA asserts that there was a \$4.35 million revenue requirement associated with the “acquisition premium” for this system. OCA St. 4 at 8, Table 4. However, the Company only sought to shift \$500,000 of revenues from this system to water operations. *See* AP Exhibit 1-A, Schedule Act 11, page 1. Despite the fact that OCA proposes to increase the Cheltenham Act 11 revenue allocation by more than \$500,000, which eliminates any subsidy, it still attempts to use the \$4.35 million it wrongly asserts is an

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“acquisition premium” in computing its approximately \$10 million adjustment to the Company’s proposed revenue allocation.

In this regard, OCA’s proposed adjustment to the Act 11 allocation is neither fair nor reasonable. Instead, it is an arbitrary attempt to shift additional revenue increases to the Company’s base operations wastewater customers, which frustrates the purpose of Section 1329 and the Commission’s stated policy and goals. *See* AP MB, Section IX.B.2.a.

OCA’s further arguments regarding the establishment of the revenue requirement of systems acquired under Section 1329 of the Public Utility Code does little more than attempt to relitigate the valuation of these systems that was previously established by the Commission. OCA MB at 90-95. Importantly, Section 1329 specifically provides for the determination of the “ratemaking rate base” for systems acquired under this section. *See* 66 Pa.C.S. § 1329(c). OCA’s incorrect attempts to calculate and remove “acquisition premiums” associated with these systems serve little purpose other than to improperly attempt to undo the Commission’s prior determinations of the ratemaking rate base of these systems. Moreover, the ultimate result of its proposal, as OCA admits, would be significant additional increases to wastewater customers. OCA MB at 96.

OCA further asserts that the Company’s proposed allocation shifts wastewater revenue requirement to water customers that do not receive wastewater service from Aqua PA. However, the Commission has authorized such allocations in prior cases. *See* AP MB at 213 (citing *Pa. PUC v. Pennsylvania-American Water Company*, Docket No. R-2013-2355276 (Order entered December 19, 2013) (“2013 PAWC Order”); *Pa. PUC, et al. v. The York Water Company*, Docket Nos. R-2012-2336379, et al., 2012 Pa. PUC LEXIS 1881 (Recommended Decision dated Dec. 6, 2013), *adopted without modification* (Order entered Jan. 9, 2014) (“York Water 2013”)).

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For these reasons, and the reasons more fully explained in the Company’s Main Brief and testimony, OCA’s proposed Act 11 allocation should be denied.

b. I&E’s Proposed Alternative Act 11 Revenue Allocation Is Not Reasonable And Should Be Denied.

Like OCA, I&E also advances an alternative Act 11 revenue allocation proposal. However, I&E’s Main Brief does little more than summarize the testimony of its witnesses with respect to Act 11 at a high level. I&E MB at 69-70. Aqua PA fully addressed these arguments in its Main Brief, both generally,³⁶ and with specific respect to I&E’s individual rate design proposals that were advanced to achieve adjustments to the Act 11 revenue allocation.³⁷ As explained therein, I&E’s proposals should be rejected because, *inter alia*, they would result in rate shock and result in unreasonable rate increases for certain wastewater customers on a percentage increase and dollar increase basis. *See* AP MB 221-223. For these reasons, and the reasons more fully explained in the Company’s Main Brief and testimony, I&E’s proposed Act 11 allocation should be denied.

c. OSBA Agrees With Aqua PA’s Proposed Method To Implement An Act 11 Revenue Allocation, But OSBA’s Proposed Revenue Allocation Should Be Denied.

OSBA’s discussion of its proposed wastewater revenue allocation, OSBA MB at 20-30, includes and makes clear that its proposed changes with respect to wastewater revenue allocation are associated with its desire to adjust the amount of wastewater revenues allocated to water operations under Act 11. *See* OSBA MB at 27-28. Aqua PA explained that OSBA’s proposed Act 11 allocation would force certain wastewater Rate Zones to absorb additional rate increases, in violation of the concept of gradualism, and is therefore not reasonable. AP MB at 224. Aqua

³⁶ AP MB, Section IX.B.2.c.

³⁷ AP MB, Section IX.C.2.

PA notes, however, that OSBA agreed with the Company’s proposed method of temporarily allocating Act 11 wastewater revenues to water service classes. OSBA MB at 23-24.³⁸

d. Masthope Opposes The Act 11 Allocations Proposed By I&E And OCA.

Masthope argued in its Main Brief that although it disagreed with the rate increase proposed by Aqua PA, it specifically believed that “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 MB at 20. As such, Masthope argued that any increase in revenue requirement and any amount of the Act 11 allocation should be distributed “in a manner consistent with Aqua’s proposal.” Masthope MB at 21. Masthope’s Main Brief makes clear that Aqua PA’s proposed Act 11 allocation is reasonable.

Masthope’s scale back proposal is that “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.” Masthope MB at 22. Although Aqua PA notes that this appears to be consistent with the Company’s scale back proposal, Masthope has taken no position with respect to revenue requirement issues. Masthope MB at 9. Aqua PA has demonstrated that its proposed increase in required water revenues, as well as its proposed increase in wastewater revenues and associated Act 11 allocation are just and reasonable and should be approved.

³⁸ OSBA asserts that Act 11 does not authorize a permanent shift of revenues from wastewater to water customers. OSBA MB at 23. The Company emphasizes that it is not proposing a permanent shift in this case, and intends to continue to reduce the Act 11 allocation in future cases. AP MB at 219 (quoting AP St. 1-R at 25 (“[i]t is not the Company’s position that once an allocation is established in a previous rate case, that the same allocation will be used indefinitely.”)).

3. Wastewater Revenue Allocation.

As explained in its Main Brief, Aqua PA's proposed revenue allocation results in movement of all wastewater customer classifications towards the cost of service. Aqua PA's proposed allocation of the revenue requirement among wastewater customer classifications in each of its divisions is reasonable and progresses each customer classification toward the average relative rate of return. No parties addressed the Company's proposed revenue allocation outside of the context of their proposed adjustments associated with Act 11. *See* AP MB, Section IX.B.2.c.

4. Water Revenue Allocation.

OSBA's water revenue allocation proposal has been addressed by the Company. OSBA MB at 11. As explained in Aqua PA's Main Brief, OSBA's proposed water revenue allocation is based upon the isolation of revenues related to the Act 11 allocation and compares the cost of service not related to the Act 11 allocation. AP MB at 228-29. OSBA's proposal should be rejected as it does not view the cost of service as a whole, and it appears to be motivated by a desire to decrease the revenue allocated to non-residential customer classifications, while increasing the revenue allocated to residential customer classes. AP MB at 228-229.

Aqua-LUG also advances an alternative water revenue allocation proposal. Aqua-LUG MB at 6-12. Aqua PA anticipated Aqua-LUG's arguments and addressed them. AP MB at 229-230. However, Aqua PA notes that Aqua-LUG argues in its brief that OSBA's proposed allocation of water revenues should be adopted. Aqua-LUG MB at 11. Aqua PA submits that this proposal should be denied for the same reasons OSBA's proposal should be denied.

5. Conclusion Regarding Revenue Allocation.

For the reasons explained above, in its Main Brief and in its testimony, Aqua PA has shown that its proposed allocation of a portion of the wastewater revenue requirement increase to

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water customers will produce just and reasonable rates. Accounting for the Act 11 allocation proposed by Aqua PA, the Company's allocation of revenues between all water customer classifications and all wastewater customer classifications is reasonable, and should be approved.

C. TARIFF STRUCTURE AND RATE DESIGN

1. Water Rate Design.

The Company summarized and explained its water rate design proposals in Section IX.C.1.a. of its Main Brief. Furthermore, it addressed the proposals advanced by other parties with respect to residential water charges (AP MB, Section IX.C.1.b.) and non-residential water charges (AP MB, Section IX.C.1.c.). For the reasons explained below and in Aqua PA's Main Brief, the Company's proposed water rate design should be approved.

a. Water Residential Charges.

With respect to residential charges for the Company's water operations, the Company anticipated and responded to the arguments raised by OCA in its Main Brief. *See* OCA MB at 99-103. Specifically, Aqua PA demonstrated that OCA's attempt to undermine the support provided for its customers charges lacked merit. AP MB at 234. The Company responded to OCA's attempt to exclude certain costs from the calculation of the residential water customer charge. AP MB at 234-235.

Aqua PA notes that OCA attempts to limit certain of the precedent relied upon by the Company. *See* OCA MB at 101 (citing *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. R-00038805, 236 PUR 4th 218, 2004 Pa. PUC LEXIS 39 (Order entered Aug. 5, 2004) ("*Aqua 2004 Order*")). However, OCA ignores the fact that Aqua PA demonstrated the subject costs are essential to maintain customer facilities, and that the Commission's prior determination in the *Aqua 2004 Order* was subsequently affirmed in *PPL Electric 2012*. AP MB at 234-235. OCA further fails to recognize that Aqua PA's consultant, Ms. Heppenstall, has specific knowledge

regarding the customer cost studies adopted in *Aqua 2004 Order*, because her firm was Aqua PA's consultant in that case.

The Company's residential water rate design proposal is just and reasonable, and should be approved.

b. Water Non-Residential Charges.

With respect to non-residential water charges, only Aqua-LUG addressed this issue. *See* AP MB at 236-237. Aqua-LUG's Main Brief merely reiterates the arguments it raised in testimony regarding changes to the design of the customer charges and the rates for consumption blocks for commercial and industrial customers. *See* Aqua-LUG MB at 10-12. Aqua PA fully responded to these arguments, and demonstrated that Aqua-LUG's proposals are unreasonable. AP MB at 229-230 and 236-237.

2. Wastewater Rate Design.

The Company summarized and explained its wastewater rate design proposals in Section IX.C.2.a. of its Main Brief. Furthermore, it addressed the proposals advanced by other parties with respect to residential water charges (AP MB, Section IX.C.2.b.) and non-residential water charges (AP MB, Section IX.C.2.c.). For the reasons explained below and in Aqua PA's Main Brief, the Company's proposed wastewater rate design should be approved.

a. Wastewater Residential Charges.

With respect to the Company's proposed residential wastewater charges, the Company similarly anticipated and responded to OCA's and I&E's arguments in its Main Brief. Each of these parties' proposals are improper and should be denied.

OCA's proposal regarding Zone 1 rates should be rejected. OCA MB at 101. Aqua PA demonstrated that the weighted average of all wastewater customer charges under proposed rates is lower than the customer charge that the Company can support based upon a customer cost

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analysis. AP MB at 239. Moreover, neither OCA's analysis in its testimony nor its Main Brief addressed Rate Zones 2 through 6 and, therefore, is incomplete. AP MB at 239.

OCA's proposals regarding other Rate Zones (*i.e.*, Rate Zones 7 through 11) are similarly meritless. OCA MB at 102-103. Aqua PA fully addressed the specific issues raised by OCA in its Main Brief, and does not need to restate them here. *See* AP MB, Sections IX.C.2.b.i.-vi.

Regarding OCA's claim that the Company provided no support for its proposed increase to wastewater residential customer charges, the Company fully addressed this issue and has responded to the additional claims raised by OCA in its Main Brief above. AP MB at 238-239. The Company did provide full support for its wastewater residential customer charges, and OCA's attempt to ignore that evidence is erroneous. OCA's customer cost analysis with respect to wastewater charges is incomplete and should be rejected.

I&E's proposed changes to rate design for wastewater customers are directly related to its adjustment to the proposed Act 11 revenue allocation. *See, e.g.*, I&E MB at 73. Aqua PA responded to I&E's Act 11 arguments and also specifically responded to each of the rate design proposals for wastewater rates made by I&E. *See* I&E MB at 74-91; AP MB, Section IX.C.2.b. Generally speaking, Aqua PA opposed modifications to rate design proposed by I&E where it was demonstrated that the modifications would result in significant percentage of average bill increases and significant dollar-for-dollar increases. *See* AP MB at 222-223.

OCA's further proposals regarding unmetered rates should also be rejected. OCA MB at 104-108. The Company demonstrated that valid reasons exist for the differences in rates. AP MB at 243-244. As such, no further study is required, and the ALJ and the Commission should not require Aqua PA to conduct a further study as OCA suggests.

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Similarly, OCA's proposals to cap non-seasonal wastewater rates are also not feasible. OCA MB at 108-110. While OCA cites *Aqua Illinois, Inc. Proposed Rate Increases for Water and Sewer Servs.*, 2018 Ill. PUC LEXIS 385, at *123 (Mar. 7, 2018), this decision is not binding on the Commission. See, e.g., *CPA DSIC Petition Order*, at *34-35; *Performance Metrics & Remedies (PMO III F0013) 2008 Guidelines Updates*, 2008 Pa. PUC LEXIS 1105, at *19-20; *Pa. Elec. and Met-Ed PDO Order*, at *26-27; see also *Elder*, 515 A.2d at 522. Furthermore, Aqua PA complied with its prior commitment from the 2018 Base Rate Case to provide a study as a part of this base rate proceeding, and the results of the study revealed that a cap only benefits high water users. AP MB at 244-245; see also AP Exhibit 5-C. In addition, the imposition of a cap on non-seasonal wastewater rates could also result in a need to shift more wastewater revenue requirement to water rates. Aqua PA explained that the further studies proposed by OCA will produce results similar to the analysis presented by Aqua PA in this case, and thus further studies are not necessary. AP MB at 244-245.³⁹

Finally, Aqua PA notes that Masthope supports the Company's proposed rate design for wastewater customers in Rate Zone 6 and opposes I&E's and OCA's alternative proposals. Masthope MB at 22-23. Support from the customer classification that is subject to the charges applicable to this zone further demonstrates the Company's proposal is reasonable.

b. Wastewater Non-Residential Charges.

As explained in Aqua PA's Main Brief, only I&E recommended changes to the Company's proposed wastewater rate design for non-residential customers. AP MB at 245. Aqua PA fully responded to I&E's recommendations, and demonstrated its proposal would be contrary to the principles of gradualism and should be rejected.

³⁹ OCA's proposal to install irrigation meters on a customer opt-in basis would only increase revenue requirement for installing and reading meters, while not reducing revenue requirement that must be recovered.

3. Proposed Reconcilable Rider Mechanisms.

Aqua PA proposed several reconcilable riders applicable to its water and/or wastewater operations as a part of this proceeding. AP MB, Section IX.C.3.

a. The Other Parties’ Arguments In Opposition To The Company’s Purchased Water Adjustment Clause and Energy Cost Adjustment Mechanism Lack Merit.

OCA, I&E, OSBA and Aqua-LUG oppose the Company’s proposed Purchase Water Adjustment (“PWA”) Clause, and the proposed Energy Cost Adjustment Mechanism (“ECAM”). OCA MB at 112-115 (addressing both riders); I&E MB at 91-92 (addressing PWA Clause), 93-95 (addressing ECAM); OSBA MB at 5-6 (addressing ECAM), 6-7 (addressing PWA Clause); Aqua-LUG MB at 4-6 (addressing both riders).⁴⁰ In many respects, the arguments of these parties in opposition to the PWA Clause and the ECAM overlap and, therefore, for purposes of this Reply Brief Aqua PA is consolidating its response to the other parties’ arguments in their Main Briefs.

Principally, Aqua PA notes that the parties argue the proposed PWA Clause and ECAM constitute impermissible single-issue ratemaking. However, as explained in the Company’s Main Brief, Section 1307(a) constitutes a well-recognized exception to the prohibition against single-issue ratemaking. AP MB at 245-246. Moreover, with specific respect to the PWA Clause, Aqua PA’s proposal is almost identical to the rider proposed and approved for Newtown in *Popowsky 2011*.⁴¹ See AP MB at 249, 251. Similarly, the Company demonstrated that the

⁴⁰ Aqua-LUG contested the PWA Clause and the ECAM for the first time in its Main Brief. It did not provide testimony on either of these riders. However, its arguments essentially mirror the opposition raised by I&E, OCA and OSBA.

⁴¹ OCA’s, I&E’s and OSBA’s attempts to distinguish this case on the basis that Aqua PA’s cost are not as significant also fail. OCA MB at 114; I&E MB at 92, 94; OSBA MB at 6-7. While the court in *Popowsky 2011* recognized that Newtown purchased a significant proportion of its water from other sources, precedent clearly demonstrates that where an automatic adjustment clause is not specifically authorized by statute, a utility must show that the expense is easily identifiable and beyond the utility’s control. See AP MB Section IX.C.3.a. (citing *Popowsky v. Pa. PUC*, 13 A.3d 583 (Pa. Cmwlth. 2011) (“*Popowsky 2011*”), *Popowsky 2005*, *Masthope Rapids*

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ECAM is analogous to other reconcilable riders approved by the Commission, including other purchased water adjustment clauses. AP MB at 257.

Regarding the argument that the proposed PWA Clause and ECAM are discriminatory,⁴² Aqua PA demonstrated that neither of these riders constitutes unreasonable discrimination. Aqua PA specifically explained the basis for the different treatment as between CRR customers, and other classes of customers that would be subject to the riders, is that CRR contract prices will not change due to either rider in recognition of the fact that CRR customers' rates are different from other classes to avoid a loss of sales to CRR customers that would ultimately increase the rates for all other classes. AP MB at 251-252, 257. Neither rider provides an undue preference for CRR customers at the expense of other classes; rather, the non-applicability of the clause is consistent with the intent of the CRRs, which is to obtain and retain customers with competitive alternatives to the benefit of other classes.

OCA's further argument that Aqua PA has "already captured the potential for future changes in purchased water and energy costs as part of its adjustments to its FPFTY claims" is incorrect. OCA MB at 115. The Company's FPFTY claim is based upon normal operating conditions projected during that year; it does not capture future adjustments that may occur beyond the FPFTY prior to the Company's next base rate case.

Finally, Aqua PA anticipated and addressed OSBA's argument that both riders are biased in favor of shareholders. AP MB at 254-255, 258-259. A proposal to ensure that the actual costs incurred by Aqua PA with respect to each of these expense categories are time reflected in rates (*i.e.*, increased or decreased) is balanced and reasonable.

Property Owners Council v. Public Utility Commission, 581 A.2d 994 (Pa. Cmwlth. 1990) ("*Masthope*"), and *PIEC*). Aqua PA has made this showing.

⁴² I&E MB at 92, 94.

b. Federal Income Tax Adjustment Surcharge.

OCA and I&E both opposed the Company's proposed FTAS. OCA MB at 82-83; I&E MB at 39-41. Effectively, each of these parties argues that the Company's concerns regarding changes in the federal corporate income tax rate are speculative, the proposed FTAS is not necessary, and any change in the federal corporate income tax rate should be addressed in a generic statewide proceeding.

Aqua PA addressed each of the arguments raised by OCA and I&E. AP MB, Section IX.C.3.d. Importantly, with respect to I&E's claim that a generic statewide proceeding must be used to address changes in federal income tax law due to issues surrounding excess ADIT, Aqua PA highlighted the fact that I&E's proposal to exclude excess deferred federal income taxes from the FTAS calculation is not only unreasonable, but also potentially violative of federal law. AP MB at 263. Aqua PA has demonstrated that this reconcilable rider will permit it to more timely reflect the actual costs changes in federal tax law that are clearly beyond its control, and is consistent with similar mechanisms used to reflect changes in state tax law.

c. Universal Services Rider.

Aqua PA has addressed the parties' criticisms of its proposed USP, and its associated proposal to implement a reconcilable USR in Section VIII.B.2. *supra*. The Company has fully explained the method of calculation and mechanics of the USR, and has also demonstrated that the USR is a reasonable and appropriate reconcilable rider under the Public Utility Code. *See* AP MB, Section IX.C.3.e. Therefore, and for the reasons more fully explained above and in the Company's Main Brief, the proposed USR should be adopted without modification.

D. SCALE BACK

As explained in its Main Brief and above, the Company's proposed rate increase is just and reasonable and, therefore, should be approved. However, the Company advanced a scale

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back proposal similar to that of I&E, which should be accepted to the extent the Commission approves a rate increase less than that proposed by the Company. I&E MB at 71-72; AP MB at 265-266. Aqua PA further demonstrated that OCA's scale back proposal is not reasonable and should be rejected. OCA MB at 97-98.

E. BILL IMPACTS

Aqua PA's Main Brief included a Rate Impact Analysis as Appendix E. The Rate Impact Analysis supplied by the Company demonstrates that its proposed rates are just and reasonable and should be approved.

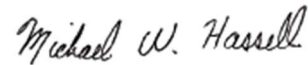
F. SUMMARY REGARDING RATE STRUCTURE

For the reasons explained above and in the Company's Main Brief, Aqua PA's proposed cost of service studies and revenue allocation are guided by the current rate of returns for each customer class and are consistent with the Commonwealth Court's directives in *Lloyd*. The result of the Company's revenue allocation is a just and reasonable rate design. On the other hand, the modifications proposed by other parties to this proceeding are neither just nor reasonable. For these and the above reasons, the Company's proposed rate structure is just and reasonable and should be adopted in this proceeding.

X. CONCLUSION

For all the foregoing reasons, Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc., respectfully request that Administrative Law Judge Mary D. Long and the Pennsylvania Public Utility Commission approve the rate increase and other proposals set forth in Tariff Water – Pa. P.U.C. No. 3 and Tariff Sewer – Pa. P.U.C. No. 3.

Respectfully submitted,



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Dated: January 21, 2022

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