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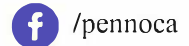

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February 28, 2022

Rosemary Chiavetta, Secretary
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Re: Pennsylvania Public Utility Commission
v.
Aqua Pennsylvania, Inc. and
Aqua Pennsylvania Wastewater, Inc.
Docket Nos. R-2021-3027385 (Water)
C-2021-3028466 (Water)
R-2021-3027386 (Wastewater)
C-2021-3028467 (Wastewater)

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in the above-referenced proceedings.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission	:	
	:	Docket Nos. R-2021-3027385 (Water)
v.	:	C-2021-3028466 (Water)
	:	R-2021-3027386 (WW)
Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.	:	C-2021-3028467 (WW)
	:	

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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Dated: February 28, 2022
*324746

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	Docket Nos. R-2021-3027385 (Water)
v.	:	C-2021-3028466 (Water)
	:	R-2021-3027386 (WW)
Aqua Pennsylvania, Inc. and Aqua	:	C-2021-3028467 (WW)
Pennsylvania Wastewater, Inc.	:	

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Dated: February 28, 2022

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I. INTRODUCTION

On February 18, 2022, the Public Utility Commission's (PUC or Commission) Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Long regarding Aqua Pennsylvania's (Aqua or Company) proposed increases for water and wastewater rates. Although ALJ Long's overall recommendation is more reasonable than Aqua's proposals, the OCA files these Exceptions where the ALJ did not adopt OCA's adjustments.

II. EXCEPTIONS

Exception 1: The ALJ Erred in Adopting Aqua's Residential Metered Water Sales When the Pandemic Continues to Keep People Using More Water at Home. R.D. at 54-55; OCA M.B. at 30-32; OCA R.B. at 10-11.

The ALJ accepted Aqua's reduction to revenues to reflect removing the impact of COVID-19 on metered customer water sales because "The Company expects usage to return to normal levels by class post pandemic." R.D. at 53; OCA St. 1 at 36. The Company's residential metered water sales in 2020 were over 1 billion gallons higher than they were pre-pandemic in 2019. OCA St. 1 at 36. Given this significant increase, it is unlikely that residential usage will decrease as quickly as Aqua predicts, such that usage would be back to "normal" for the purpose of deriving sales levels for the FPFTY. *Id.*

The ALJ also found that the OCA's adjustment to residential metered water sales is inconsistent with the OCA's acceptance of Aqua's prediction for commercial and industrial sales (R.D. at 54.), but the OCA's recommendation reflects the unpredictability surrounding how and when the pandemic will come to an end. Recent data about residential water usage indicates that it is still up from pre-pandemic levels by as much as 9.1%. OCA St. 1SR at 27-28. While commercial and industrial institutions are slowly re-opening, throughout this process many workers are still spending more time at home. The OCA's recommended increase to residential

revenues of $2.757 million addresses this slow return to pre-pandemic levels by reflecting 75% of Aqua's proposed reduction to residential revenues, in order to account for the decrease to residential water usage, but recognizing that it is not likely to return to pre-pandemic levels in the FPFTY. OCA Exh. LA-2, Sch. C-5. The ALJ erred in accepting Aqua's approach as the OCA's projections are more consistent with the data as it recognizes a gradual return to consumption more closely aligning to pre-pandemic levels, while Aqua's assumptions assert, without basis, an immediate return.

Based on this revenue adjustment, the OCA continues to recommend a related negative adjustment of $66,787 to the Company's claimed Chemicals Expense for water operations and a negative adjustment to Purchased Power expense of $96,312. OCA MB at 30; OCA Table II (Water). The OCA also continues to recommend that Cash Working Capital (CWC) be adjusted to reflect this recommended revenue adjustment and based on the expense adjustments discussed below. OCA M.B. at 22; OCA Table II (Water). OCA Table II (Wastewater).

Exception 2: <u>The ALJ Erred by Concluding that Aqua's Claim for a New Advertising Expense Does Not Need to be Normalized.</u> R.D. at 68-69; OCA M.B. at 30-32; OCA R.B. at 16-17.

The ALJ accepted Aqua's claims of $368,810 and $7,500 of Advertising Expense for water operations and wastewater operations, respectively. R.D. at 69. The ALJ's reasoning is that the advertising expense is associated with new programming not in effect in the HTY and that will not be in effect in the FTY, and thus it is different than a projected expense that had not been incurred in the HTY and FTY. R.D. at 68-69. The ALJ believes that to normalize this expense with prior years when the program did not exist is unfair. R.D. at 69. The ALJ also emphasizes the importance of intensified customer outreach with the launch of a new universal service program, which will require funding. *Id.*

The OCA does not dispute the importance of intensifying customer outreach, but normalizing the cost of this proposed expense over three years is consistent with an understanding that advertising priorities change over time as priorities and needs change. Furthermore, normalization of a new expense being introduced for the first time in the FPFTY that may fluctuate in future rate cases is required under Commission precedent. *Pa. P.U.C. v. Pennsylvania American Water Co*., 2003 Pa. P.U.C. LEXIS 498 at *101-02 (*PAWC 2003*). Normalization would reduce the impact for rate payers, and Aqua has failed to explain why doing so prevents it from accomplishing its goal of expanding customer outreach. OCA M.B. at 32. The ALJ notes that "no party has challenged any aspect of the Company's other advertising" as unreasonable, but the OCA pointed out repeatedly in this proceeding that Aqua had failed to justify its historic levels of customer outreach, let alone adequately explain why this new advertising expense cannot be normalized. OCA M.B. at 32; OCA St. 1SR at 30. By normalizing the new expense, the OCA's adjustment would reduce Aqua's proposed advertising expense by $50,000 for the water utility and by $5,000 for the wastewater utility. OCA Table II (Water); Table II (Wastewater Base).

Exception 3: The ALJ Erred by Accepting Aqua's Claim for Non-Rate Case Legal Expense, Which Was Derived from a Three-Year Average. R.D. at 64-65; OCA M.B. at 46-47; OCA R.B. at 22-23.

The ALJ accepted Aqua's claim for $644,475 for non-rate case legal expense. R.D. at 65. That amount of non-rate case legal expense was derived from a three-year average of non-rate case legal expense. The OCA proposed averaging two-years of non-rate case legal expense instead of three in order to exclude the year ending March 31, 2019, in which Aqua had unusually high legal expenses. OCA M.B. at 47. The ALJ adopted Aqua's three-year average because she found it necessary to account for variations in expense accounts due to the normal course of business. R.D.

at 64-65. The ALJ also found Aqua's claim reasonable because it was consistent with the Company's claims in prior cases. R.D. at 65.

Although Aqua claims the three-year time frame for averaging rate-case expense is important to maintain consistency with prior cases, Aqua itself has been inconsistent about whether the three-year time frame is appropriate. Aqua St. 3R at 10; Aqua St. 4R at 6. Aqua witness Henkel stated that the Company disagreed with using a three-year average to calculate expenses under some circumstances. Aqua St. 4R at 6. This inconsistency indicates that Aqua is not actually concerned with abiding by precedent. Further, nothing in the law requires that Aqua or the Commission use a three-year average to determine non-rate case legal expense. Aqua's non-rate case legal expense in the year ending March 31, 2019 was unusually high and it does not provide an accurate representation of what that expense will be in the future. OCA M.B. at 47. This is evidenced by the fact that Aqua's non-rate case legal expense has decreased in both of the years following 2019. OCA St. 1 at 58. Aqua has also failed to establish that any expenses from the 2019 year are reoccurring. Aqua's non-rate case legal expense should be reduced by $24,981 to more closely reflect what the Company's expenses will be in the future. OCA M.B. at 47; OCA Exh. LA-2, Sch. C-17 at 2, Table II (Water).

Exception 4: The ALJ Erred by Finding That the Company May Recover the Costs of Its Stock-Based Compensation Plan From Consumers. R.D. at 61-63; OCA M.B. at 36-40; OCA R.B. at 18-20.

The ALJ found that the Company's claimed expense for its stock-based incentive compensation program was reasonable and should be permitted because the Commission has approved incentive compensation programs in other cases, and because the ALJ agrees with Aqua's position that the program benefits ratepayers. R.D. at 60-62. The OCA's adjustment of

$846,493 to remove these costs for ratemaking purposes is reasonable and should be adopted. OCA M.B. at 36-39; OCA Table II (Water); Table II (Wastewater).

The ALJ first notes that since the purpose of the plan is to tie compensation to employees accomplishing the Company's objectives, the program must ultimately benefit consumers. R.D. at 62. However, Aqua has failed to demonstrate that the key component of the program is to establish employee eligibility based on performance duties and metrics that are *directly related to the provision of service* (emphasis added). *Pa. P.U.C. v. Pennsylvania American Water Co.*, 2021 Pa. P.U.C. LEXIS 55, *59-60 (*PAWC 2021*). Although in theory a payment program which benefits stockholders might also benefit consumers, in this case the payment program has no clear relationship to ratepayer benefits or operational effectiveness. OCA St. 1 at 48. Here, the stock-based incentive compensation program appears to have the primary purpose of benefitting executives and high-level managers. No evidence has been provided to show the benefits of the payment program to ratepayers. OCA St. 1SR at 36. A mere assertion of benefit to consumers is not evidence that it in fact occurs and Aqua's claim that this program should benefit consumers because it ties compensation with company objectives is speculative. Aqua St. 1R at 15-16. Aqua must definitively demonstrate how the program benefits consumers before it burdens them with the cost of the program. It has not done so.

The ALJ next notes that Aqua has established that compensation from the program is both "competitive" and "appropriate." R.D. at 62. This may be true, but it is irrelevant to whether the program is providing any benefit to ratepayers and should be funded by ratepayers.

The ALJ accepted Aqua's circular argument that if it has been using incentive compensation regularly since 1999, then it is a necessary component of the Company's compensation. R.D. at 62. This may be, but it is not a necessary component of compensation that should be paid for by ratepayers as Aqua has failed to detail exactly how its stock-based incentive

program has been benefitting consumers since 1999. Aqua M.B. at 70-71. Even if "some" objectives of the program are geared toward consumers, Aqua must affirmatively demonstrate that these objectives have been successful. *Pa. P.U.C. v. PPL Elec. Util. Corp.*, Docket No. R-2012-2290597, Order (Dec. 28, 2012) (*PPL 2012*). The amount of time that the Company has been providing incentive compensation to employees is irrelevant if the Company cannot establish that the program at issue in this case will benefit ratepayers.

Finally, the ALJ accepts the Company's claim that the payment program is a "key element" of its overall work package in attracting and retaining a skilled workforce. R.D. at 62; Aqua St. 1R at 15-16. Aqua's parent company released a statement in March of 2021 that described how performance share units and restricted share units (both of which were included under this Program to be charged to ratepayers in Aqua's FPFTY cost of service) have the primary purpose of benefitting shareholders, and not those employees directly engaged in providing service to consumers.[1] OCA St. 1 at 48. The program provides no benefit to employees providing customer service, and thus cannot possibly be a "key element" in attracting those employees.

Aqua's incentive compensation plan is not reasonable or prudently incurred, and there is no evidence in this case that it provides any benefit to ratepayers and Aqua should not be able to recover the plan expenses from ratepayers. The OCA's $846.493 adjustment to remove these costs for ratemaking should be adopted. OCA M.B. at 36-39; OCA Table II (Water) and (Wastewater).

Exception 5: The ALJ Erred by Accepting All 33 of Aqua's Authorized Seasonal Positions When Aqua Has Not Historically Filled All Positions. R.D. at 60; OCA M.B. at 34-35; OCA R.B. at 17-18.

The ALJ found that the Company adequately supported its claim for 33 seasonal positions in payroll expense. R.D. at 60. To support this finding the ALJ relied on Aqua witness Feeney's

[1] Available at https://www.essential.co/static-files/18867cab-fde9-441f-a7ba-4f6b47586a4f.

testimony that the 2020 data on seasonal employees from Aqua was an outlier due to restrictions and safety concerns related to COVID-19, and that the 2021 data on seasonal employees was also impacted by COVID-19. R.D. at 60; Aqua St. 2R at 39. The ALJ also notes that the Company believes it will fill all budgeted-for seasonal positions during the FPFTY. R.D. at 60.

The Company may believe that it will fill all 33 of its budgeted-for seasonal positions in the FPFTY, but Aqua has failed to provide actual evidence that this is likely. The record indicates that Aqua has not consistently filled all of its seasonal positions even before the COVID-19 pandemic began. OCA M.B. at 34-35. In 2019, the Company filled only 31 out of 33 budgeted-for seasonal positions. *Id.* During the pandemic, the Company filled only 11 out of 33 budgeted-for seasonal positions. OCA St. 1SR at 32-33. Neither of these numbers provides evidence that the Company will fill all 33 of its authorized seasonal positions in the FPFTY. Given the ongoing disruption of work caused by the pandemic, it is not reasonable to assume that seasonal 2022 hiring will be more robust than in the years prior to the pandemic. Aqua has not provided evidence that it actually has a need for, or is reasonably expected to be able to hire, the 33 authorized seasonal positions. Thus, the OCA's $286,373 adjustment to remove payroll expense for 22 of the authorized seasonal positions should be accepted. OCA M.B. at 35; OCA Exh. LA-2, Sch. C-11.

Exception 6: <u>The ALJ Erred by Failing to Adopt a 39-Month Normalization Period for Rate Case Expense.</u> R.D. at 57-58; OCA M.B. at 42-46; OCA R.D. at 21-22.

The ALJ accepted Aqua's proposed 36-month normalization period for rate case expense because the ALJ believed that to accept the OCA's proposed 39-month adjustment, which included the seven year gap between Aqua's 2011 and 2018 rate cases, would discourage the negotiation of settlement stay-outs in the future. R.D. at 57-58. The ALJ stated that the reason Aqua did not file a rate case between 2011 and 2018 is because during that time Aqua was "constrained" by the stay-out it agreed to in the 2011 rate case. R.D. at 48.

Aqua was not "constrained" from filing a rate case between 2011 and 2018. The stay-out negotiated in the 2011 settlement was for a term of two years. *Pa. P.U.C. v. Aqua Pa., Inc.*, Docket No. R-2011-2267958, Order at 18 (June 7, 2012) (*2011 Settlement*). After that two-year time frame had ended, Aqua was free to file rate cases. It chose not to do so for its own reasons, but it was neither bound nor constrained by that settlement. The 2011 settlement also included an option for the Company to make a tax repair election after 2012, which the Company ultimately chose to do. *2011 Settlement* at 10; Aqua St. 3R at 9. Because Aqua's decision not to file a rate case between 2011 and 2018 was one of the Company's own making and not the result of the two-year stay out negotiated in the 2011 settlement, including this time period between its 2011 and 2018 rate filings in calculating the appropriate normalization period for rate case expense would not have a "chilling" effect on negotiating stay-outs in future rate cases and is reasonable.

The ALJ also indicated that she believes Aqua's seven-year hiatus from filing should not be included in the calculations for normalization of rate case expense because she views this period of time as "anomalous" and an inaccurate portrayal of the Company's regular filing interval. R.D. at 57. First, as explained above there was no prohibition on Aqua filing during that time, once the stay out ended in November 18, 2013. *2011 Settlement* at 40. Settlement stay-outs are not anomalous; in fact, they are quite common. Settlement stay-outs are frequently negotiated to provide ratepayers a specified level of security where they can be certain that rates will stay constant. *Pa. P.U.C. v. Plumer Water Co.*, 2015 Pa. P.U.C. LEXIS 242 at *20 (2015). Second, Companies also often choose to continue to "stay out" even after their agreed upon time period has ended for a myriad of reasons, which is the basis for the use of actual amount of time between utility rate filings as it is the best evidence of the frequency of a Company's future filings.

Finally, the ALJ notes that the Commission may consider factors other than a utility's actual historic filing frequency to calculate an appropriate normalization period (citing *Emporium*

Water Co., Docket No. R-2014-2402324 at p. 48-49 (Order entered Jan. 18, 2015) (*Emporium*). R.D. at 57. While this is true, the case cited by the ALJ also emphasized the importance of using an actual history of prior filings to calculate a normalization period, stating that "use of an actual historic filing pattern often presents the best evidence of a representative time period to anticipate the company's future behavior with respect to filing its next rate case." *Emporium* at 48. The Commonwealth Court has similarly found that a normalization period should be determined by a utility's actual historic filings. *Popowsky v. Pa. P.U.C*, 674 A.2d 1149, 1154 (Pa. Cmwlth 1996). The seven-year period between 2011 and 2018 is the actual amount of time between Aqua's filings. It was chosen by Aqua and must be considered in the calculation of the normalization period of rate case expense. Thus, the OCA's 39-month normalization period should be accepted.

Exception 7: <u>The ALJ Erred by Accepting Aqua's Proposal to Continue Deferring Its COVID-19 Uncollectibles Expenses Indefinitely.</u> R.D. 133-37; M.B. at 50-51; R.B. at 24.

The ALJ accepted Aqua's proposal to continue deferring its COVID-19 related uncollectibles expenses without imposing a hard cutoff date for the accumulation of these expenses. R.D. at 136. The ALJ notes that "the effects of the COVID-19 pandemic are still being felt by utilities", and that it would be premature to establish a hard cut-off date for the accumulation of deferred expenses and savings in this proceeding. *Id.* The ALJ accepts the Company's claim that continuing to defer these expenses will not harm ratepayers. *Id.*

The OCA agrees that the pandemic is ongoing, and in fact the continuing impacts from the pandemic have informed the OCA's other adjustments including those regarding seasonal positions and rate case expense. *See supra* OCA Excs. 4 and 5. Even so, it is unreasonable to continue to allow deferrals indefinitely beyond the FPFTY. OCA St. 1 at 63. The Commission should establish a clear point in time during which Aqua must cease recording costs related to COVID-19 into the existing deferral account, in order to ensure that those costs do not accumulate

to unreasonably burden consumers in later rate cases. OCA M.B. at 50. The end of the FPFTY is a reasonable point in time to end the current deferral and the Commission should impose that date as a cut-off for the Company. If the Company finds it necessary to continue to defer COVID 19 related costs at the end of its FPFTY (March 31, 2023) it can ask the Commission to approve a new deferral mechanism at that time.

Exception 8: The ALJ Erred in Finding Aqua's Equity Heavy Capital Structure Reasonable for Ratemaking. R.D. at 76-77; OCA M.B. at 56-59; OCA R.B. at 28-29.

The ALJ found the Company's capital structure of 54% equity and 46% debt to be within a range of reasonableness. R.D. at 77. However, the OCA presented evidence that Aqua's equity heavy capital structure was **400 basis points above the average** of the Water Group used by both the Company's and the OCA's rate of return witnesses and was not reasonable for ratemaking purposes.[2] This 400 basis point difference is significant in setting rates that are required to balance the ratepayers' interests with the shareholders' interests.[3] The OCA recommended the use of a 50% equity/50% debt capital structure that represents the average of the Water Group (that includes Aqua). This 50% equity/50% debt capital structure is reasonable for ratemaking as it adequately balances the interests of the ratepayers and the investors and reflects a capital structure that might exist in a competitive environment. OCA St. 3 at 54-62; OCA St. 3SR at 3-4. By approving an equity heavy capital structure, the ALJ tipped the scales to favor the investors by causing rates to be higher than reasonable because of the costlier equity component. Pennsylvania courts have upheld the use of a hypothetical capital structure where the utility's management adopts an actual capital structure that imposes an unfair cost burden on ratepayers. A hypothetical

[2] Essential Utilities, the parent company of Aqua Water, has a 49.8% equity/50.2% debt capital structure when averaged over 2016-2020, and 45.71% equity/54.39% debt capital structure in 2020. I&E Exh. No. 2, Sch. 2.

[3] For example, I&E calculated the revenue requirement impact of Company witness Moul's 234 basis point leverage adjustment to be approximately $68.58 million of revenue requirement. I&E St. 2 at 43-44.

capital structure may be used by the Commission where a utility's actual capital structure is unreasonable or uneconomical. *Big Run Tel. Co. v. Pa. P.U.C.*, 449 A.2d 86, 89, 68 Pa. Commw. 296, 301-02 (1982) (*Big Run*), *T.W. Phillips Gas and Oil Co. v. Pa. P.U.C.*, 474 A.2d 355, 362, 81 Pa. Commw. 205, 217 (1984); *see Carnegie Natural Gas Co. v. Pa. P.U.C.*, 433 A.2d 938, 61 Pa. Commw. 436 (1981) (*Carnegie*). The approach is an equitable one, in which the Commission and Pennsylvania courts do not allow the utility's financial interests to outweigh the public interest. *Pa. P.U.C. v. Pennsylvania Gas and Water*, 424 A2d 1213, 1217, 492 Pa. 326, 332, (1980) (*PG&W*) (property must be regulated in the interest of the public no less than the interest of the utility); *see also Arrowhead Pub. Serv. Corp. v. Pa. P.U.C.*, 600 A.2d 251, 257, 143 Pa. Commw. 558, 570 (1991).

The ALJ incorrectly adopts the Company's unsupported statement that the OCA's position is that the average capital structure of the Water Group must always be used. *See* R.D. at 77. That is not the OCA's position. Rather, the analysis must be completed in each case, and the OCA's witness found that Aqua's capital structure was not reasonable for ratemaking purposes, even though it was near the top of the range of the Water Group. The equity component of the water group capital structure ranged from 40.2% to 55.1%. OCA St. 3 at 54-62; OCA St. 3SR at 3-4.

When an equity component is 400 basis points higher than average, it is reasonable to use the average of the Water Group for ratemaking. The ALJ's adoption of Aqua's equity-heavy component with a high return on equity, results in a higher than reasonable revenue requirement for ratemaking. The OCA's recommended ratemaking capital structure (50% equity/50% debt) reasonably balances the ratepayers' interests as well as investors' interests and should be adopted.

Exception 9: The ALJ Erred in Concluding That Aqua's Cost of Equity is 8.9%. R.D. at 77-79; OCA M.B. at 59-74; OCA R.B. at 30-33.

The ALJ reviewed the return on equity (ROE) recommendations and found I&E's method to be the most reasonable. R.D. at 77. The ALJ's rejection of the Company's flawed ROE calculation is reasonable. R.D. at 79; OCA St. 3 at 35-38. The ALJ summarily rejected the OCA's cost of equity recommendation because its Discounted Cash Flow (DCF) calculation was "problematic" and also adopted the reasons stated by the Company in its Main Brief. R.D. at 79. The ALJ does not explain what is "problematic" about the OCA's DCF calculation. In fact, the OCA's DCF calculation is consistent with the Commission's preference for DCF-calculated ROEs.[4] *See* R.D. at 77-78; OCA M.B. at 59-60. Adoption of I&E's cost of equity recommendation, albeit more reasonable than Aqua's ROE calculation, overstates the cost of common equity, especially using the Company's equity heavy capital structure.

OCA witness David Garrett's DCF calculation resulted in a recommended cost of equity of 8.0%.[5] OCA St. 3 at 25-34; *see* OCA Exh. DJG-6. Mr. Garrett used a Quarterly Approximation DCF model that accounts for quarterly growth of dividends rather than annual growth, which is reasonable for Aqua and its parent. The Quarterly Approximation DCF model produces higher cost of equity estimates compared with the other DCF Model variations because dividends are compounded quarterly. OCA St. 3 at 25. In calculating the three components of the DCF (stock price, dividend, and long-term growth rate), Mr. Garrett used a 30-day average for the stock price

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[4] *Pa. P.U.C. v. City of DuBois – Bureau of Water*, Docket No. R-2016-2554150, Order at 96-98 (Mar. 28, 2017); *Pa. P.U.C. v. UGI Util., Inc. – Elec. Div.*, Docket No. R-2017-2640058, Order at 119 (Oct. 25, 2018); *Pa. P.U.C. v. Wellsboro Elec. Co.*, Docket No. R-2019-3008208, Order at 80-82 (Apr. 29, 2020); *Pa. P.U.C. v. Citizens' Elec. Co. of Lewisburg, PA*, Docket No. R-2019-3008212, Order at 91-93 (Apr. 27, 2020); *Pa. P.U.C. v. Valley Energy, Inc.*; Docket No. R-2019-3008209, Order at 102-04 (Apr. 27, 2020); *Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, Order at 131 (Feb. 19, 2021).

[5] Mr. Garrett calculated an ROE using the Capital Asset Pricing Model (CAPM) while recognizing the Commission's preference for the DCF. OCA St. 3 at 38-52. This is the same ROE framework as used by I&E. R.D. at 78.

component of $78.16 because it represents a good balance and avoids unnecessary issues related to a one day or spot price for stock. OCA M.B. at 62, OCA St. 3 at 26-27; OCA Exhs. DJG-3, DJG-6. He used the most recent quarterly dividend paid by each company. OCA St. 3 at 27-28; OCA Exhs. DJG-4, DJG-6. This use of more recent data does not have a statistically significant difference in the calculation because utility stock prices and dividends are generally stable. *Id.* In estimating the final component, the growth rate, Mr. Garrett, as did the other rate of return witnesses, developed an estimate. Mr. Garrett chose a projected growth rate of 6.3% for Aqua using I/B/E/S data, which is was part of the data used by the Company witness and was the highest of his growth rate projections OCA St. 3 at 29-34; OCA Exhs. DGS-5, DJG-6. The 6.3% is the maximum, reasonable long term growth rate because it assumes that Aqua's growth in earnings will exceed the nominal growth rate of the U.S. economy over the long run – "a very charitable assumption." OCA St. 3 at 34; OCA M.B. at 63-65. I&E's growth rate was 7.15% using 5 year forecasted growth rates from four firms, including I/B/E/S. I&E St. 2; Exh. No. 2, Sch.5.

Mr. Garrett's DCF analysis does not vary from accepted DCF analyses and as discussed above uses reasonable inputs and judgments. It is not "problematic" as characterized by the ALJ. Similarly, the ALJ's acceptance of the Company's arguments in its Main Brief should not be adopted. In its Main Brief at pages 126 to 127, the Company feigns uncertainty regarding Mr. Garrett's calculations even though all of his calculations are contained in his direct testimony and exhibits. The Company claims that there are flaws in Mr. Garrett's growth rate, citing to Company witness Moul's rebuttal but not addressing Mr. Garret's response in surrebuttal. Aqua M.B. at 127-28. Mr. Garrett considered potential growth rates from several sources and discussed why it is prudent for U.S. gross domestic product (GDP) to typically be a limiting factor on the long-term growth rate input to the DCF Model. OCA St. 3SR at 4-5. He acknowledged the potential unique growth opportunities of water utilities in arriving at his growth rate and the same data is included

and considered in Company witness Moul's own growth rate calculation. *Id.* Mr. Garrett's analysis shows that when reasonable inputs to the DCF Model are used, the resulting ROE is 8.0%, even if one of the Company's relatively high proposed growth rate assumptions is considered. *Id.* There is nothing problematic or unclear or unusual about Mr. Garrett's DCF calculations. The recommended 8.0% equity cost rate is reasonable, consistent with investor expectations and current market conditions, and is appropriate in today's financial markets. It should be adopted.

Exception 10: The ALJ's Adoption of Aqua's FIN 48 Carve-Out is Not Supported by Record Evidence. R.D. at 72-74; OCA M.B. at 77-81; OCA R.B. at 36-39.

As discussed in the Recommended Decision, Aqua has been applying "flow through" treatment for its tax repairs deductions. R.D. at 72. This treatment reduces current income taxes. OCA M.B. at 77. It also reduces Aqua's effective tax rate by treating tax deductions for repairs as if it were a permanent difference between tax and book amounts, rather than a temporary difference. OCA M.B at 77. In this case, Aqua also sought to reflect FIN 48 reductions for uncertain amounts. OCA M.B. at 78; OCA St. 1 at 32-33. The ALJ recommended permitting Aqua to continue, unmodified, the treatment of tax repair deductions from the 2018 Rate Case Settlement.[6] R.D. at 73 *citing* OCA St. 1 at 31. The ALJ also approved a FIN 48 carve-out for uncertain amounts.

The ALJ's decision incorrectly claims that the OCA recommended that the flow through treatment for Aqua's repair deductions be abandoned. R.D. at 73. The OCA did not oppose Aqua continuing to flow-through tax repairs deductions. In this case, because the amounts of Aqua's repair deductions have been so large, it is not practical to implement a full transition to a more

[6] Imposing terms from a 2018 Settlement on the tax repairs deduction issue is unreasonable as the 2018 Settlement does not constitute precedent and was a negotiated outcome to resolve a multitude of issues. The FIN 48 carve out was not in the 2018 Settlement.

commonly utilized methodology for Aqua's repairs deductions. OCA M.B. at 77; OCA St. 1 at 31. Instead, the OCA recommended that the repairs deduction used in this case for Aqua's income tax calculation for the FPFTY should reflect *the amount expected to be deducted for repairs and should not include any offset for uncertain tax positions*. OCA R.B. at 37.

The uncertain tax positions at issue is called a "FIN 48" account. OCA M.B. at 77-81; OCA R.B. at 37-39. Aqua identified $4,000,000 as a "FIN 48 removal" account. OCA M.B. at 78. Tax repairs deductions should only include deductions that are expected to be claimed by Aqua, and carve-outs for amounts that Aqua deems as "uncertain" is inappropriate for ratemaking purposes as the amount claimed for tax purposes typically would include what is actually filed on the tax return. OCA St. 1SR at 19. Reflecting the amounts of repairs deductions that Aqua has claimed or has indicated that it expects to claim for federal income tax purposes reflects appropriate ratemaking treatment. OCA St. 1SR at 20. Here, since the year at issue is the FPFTY, the Company's tax position should be based on what is expected to be claimed on the tax returns for the FPFTY. As the amounts of Aqua's repair deductions have been so large, it is unreasonable to carve-out additional amounts that Aqua deems "uncertain" and assigns to a FIN 48 account. The repairs deduction used in Aqua's income tax calculation for FPFTY income taxes should reflect the amount expected to be deducted for repairs and should not include any offset for uncertain tax positions.

Additionally, as these amounts are projected, the ALJ approved a "collar mechanism", which is a range in which tax savings related to tax repairs deductions would either be kept by the shareholders if the tax repairs deductions exceeded the amount claimed, and would be returned to the ratepayers in the event that the amount of tax repairs deductions fell below the range. R.D. at 74; OCA R.B. at 38-39; OCA St. 1SR at 22. The OCA recommends that if any "collar" amount

around the repairs deduction amount that is used to compute income tax expense were to be used going-forward, the "collar" should be no wider than $4 million per year. OCA St. 1 at 29.

Exception 11: The OCA's Recommended Allocation of Wastewater Revenue Requirement to Water Operations Is More Reasonable than the Method Adopted by the ALJ and Because It Considers the Amount of Revenue Requirement Deficiency Generated by the Purchase Prices Paid above Book Value. R.D. at 84-91; OCA M.B. at 86-96; OCA R.B. at 46-49.

The ALJ agreed with the OCA, I&E and OSBA that Aqua's proposal to shift 30% of the wastewater revenue requirement to water operations was unreasonable, inequitable and without support. R.D. at 89-91. The ALJ adopted the methodology recommended by I&E witness Kubas, which results in a $10.144 million subsidy,[7] or roughly half of the $20.839 million subsidy that Aqua proposed in its filing. *Id.* at 88, App., Table Act 11. While the OCA supports the reduction to the subsidy for the reasons set forth in its testimony and briefs, the OCA submits that its method for allocating revenue requirement between water and wastewater customers is more reasonable and should be adopted instead.

The ALJ recognizes that "[i]t is not equitable to Aqua's water customers to mitigate the resulting increases in expenses to care for the Acquired Systems and to take on the entire burden of filling the gap between the cost of service to serve these wastewater systems." R.D. at 89-90. While the I&E method focuses on the gap generated by each system's revenue requirement, the OCA's method also considers how much of the gap is generated by the fair market value (FMV) premium paid for each Acquired System. OCA St. 4 at 6-8. In determining relative burdens, it is not reasonable for the subset of wastewater customers benefiting from the FMV premium to *further* benefit by having water customers pay the portion of the Acquired System's revenue

[7] This amount reflects an additional adjustment to provide Aqua the same net income from water customers that it would have received from wastewater customers (the water uncollectible accounts factor is lower than the wastewater uncollectible accounts factor). R.D. at 86-87, App., Table Act 11.

requirement generated by that very premium. OCA M.B. at 88-89, 91-96; OCA R.B. at 46-49; *see* OCA St. 4 at 6-7; OCA St. 4SR at 2-3.

The ALJ's primary concern is that the OCA's recommendation is more complex. *Id.* at 91. She states, "I&E's approach acknowledges the benefits received by the communities serviced by the Acquired Systems from the sale of their systems to Aqua, but is less complicated than the method advocated by OCA." The OCA submits that the additional steps are warranted and not unreasonably complex to implement. After calculating the revenue requirement associated with the FMV premiums ($10.056 million), that amount is allocated to the five acquired systems such that no system exceeds its cost of service. OCA St. 4 at 8. The remainder of the revenue requirement associated with the FMV premiums is allocated to the legacy wastewater systems. *Id.* at 8-9. Aqua's proposed class increases for each division are then applied pro-ratably. OCA St. 4 at 10; OCA Sch. GAW-4.

Further reason to adopt the OCA's method over the I&E method is that I&E recommended a larger revenue requirement be assigned to the Cheltenham wastewater system ($4.084 million minus $3.078 million). OCA St. 4SR at 5. If adopted, Cheltenham's resulting rates (at the Company's revenue requirement) would be higher than its cost of service.[8] *Id.* at 6; I&E St. 4SR at 14. As discussed in the OCA's Reply Brief, while the OCA agrees that the wastewater subsidy should be reduced, the revenue allocations should also be guided by cost-causation. OCA R.B. at 54. If the OCA's allocation method is not adopted, the OCA submits that an adjustment should be made as part of the scale back if the revenue allocated to the Cheltenham system would otherwise exceed its cost of service.

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[8] Cheltenham's revenue requirement (cost of service) is $10.316 million. Under Mr. Kubas' proposal, Cheltenham's revenues would be increased to $11.342 million ($10.336 million OCA plus $1.006 million additional I&E). OCA St. 4SR at 6, n.5.

In summary, the OCA's method moves rates for the acquired and legacy systems toward alignment with cost of service while mitigating rate increases to all wastewater customers by allocating a portion of the wastewater revenue requirement ($11.774 million at Aqua's filed-for increase) to water customers. OCA St. 4 at 4-9; OCA St. 4SR at 1-2. As such, the OCA submits that its method for allocating wastewater revenue requirement should be adopted.[9]

In tandem with adopting the OCA's allocation method, the OCA recommends a different approach for scaling back rates. The ALJ recommended the Commission adopt the scale back proposed by I&E and Aqua, which would mean no reduction to wastewater rates until the total Act 11 subsidy is eliminated. R.D. at 91 (citing Aqua St. 5-R at 25); I&E St. 5 at 63-64. The OCA recommends a different approach because its proposed method for allocating additional wastewater revenue to the acquired systems and legacy systems is calculated based on Aqua's authorized return on equity. OCA St. 4 at 11-12. Thus, if the Commission adopts a different capital structure and/or lower return on equity than proposed by Aqua, the scale back should first reduce the revenue requirement associated with the FMV premiums, to the benefit of wastewater customers. *Id.* at 11-12. If the Commission reduces revenue requirement for non-ROR reasons or the Commission does not adopt the OCA's method for allocating wastewater revenue requirement based on FMV premiums, the OCA agrees that the benefit should be applied to reduce the subsidy by water operations. *Id.*; *see* OCA M.B. at 96-97.

[9] The OCA does not except to the ALJ's recommendation regarding water allocation because, but for the Act 11 subsidy, the ALJ adopted the Aqua/OCA recommendation. R.D. at 91-93; OCA R.B. at 55-58. It is the OCA's understanding that the ALJ also accepts the OCA's recommended proportional scale back across the divisions and classes. OCA St. 4 at 12-13. This is consistent with the water revenue increase allocation (aside from the Act 11 subsidy) that ALJ Long adopted, and supported by the same reasons. R.D. at 91-93; OCA M.B. at 97-98.

Exception 12: The ALJ Erred in Accepting Aqua's Water and Wastewater Customer Cost Analyses, Which Produce an Inflated Result and Do Not Support Increasing Customer Charges for Residential Customers in Aqua's Main Water and Wastewater Divisions. R.D. at 94-95; OCA M.B. at 99-102; OCA R.B. at 58-61.

Aqua proposed to increase 5/8-inch customer charges by 25%, from $18.00 to $22.40 per month, for residential customers in its water Main Division Zone 1. Aqua St. 5 at 12. Aqua proposed a similar 26% increase for its wastewater Zone 1, increasing the customer charge for residential 5/8-inch meters from $31.00 to $39.10 per month. Aqua Exh. 5B, Part I at 15 (Sch. F-WW). The OCA challenged the customer cost analyses on which Aqua based these increases because they include allocated overhead expenses that are not direct costs required to connect and maintain a customer's account. OCA St. 4 at 14-17; OCA Sch. GAW-6; Aqua Exh. 5A at A36-A47 (RS1j); Aqua Exh. 5B, Part I at 8-11 (Sch. D-WW).

The ALJ recommended adopting Aqua's customer cost analysis, stating:

> While the Commission generally disfavors the inclusion of indirect costs into the calculation of customer charges, the Commission has nevertheless permitted the allocated portions of certain indirect costs such as employee benefits, local taxes and other general and administrative costs. I find that Aqua's witness adequately demonstrated that the indirect costs included in her study fall within the ambit of permissible general and administrative costs.

R.D. at 95.

Review of the specific indirect costs included in Aqua's studies show they do not fall within the ambit of costs that the Commission has permitted. For example, Aqua's indirect allocations to "customer accounting costs" for water and wastewater include uncollectibles expense for water and wastewater operations.[10] Aqua Exh. 5A at A43; Aqua Exh. 5B, Part I at 9; OCA Sch. GAW-6. Other examples include rate case expense, advertising, and utility plant acquisition adjustments.

[10] Specifically, "customer accounting" is allocated 98.5% ($2,865,864) of total bad debt expense in Aqua's water customer cost study and 100% ($428,675) of uncollectibles expense in Aqua's wastewater customer cost study. Aqua Exh. 5A at A43; Aqua Exh. 5B, Part I at 9.

Id. These costs relate to Aqua's general operation as a utility. Not all of a utility's fixed expenses for operation are properly included in a customer cost analysis and the Commission has generally permitted only expenses directly related to meter reading, customer service, accounting and customer records and collections. *See Pa. P.U.C. v. Metropolitan Edison Co.*, 60 Pa. P.U.C. 349 (1985); *Pa. P.U.C. v. West Penn Power Co.*, 59 Pa. P.U.C. 552 (1985); *Pa. P.U.C. v. West Penn Power Co.*, 1994 Pa. P.U.C. LEXIS 144, *154; *Pa. P.U.C. v. National Fuel Gas Dist. Corp.*, 83 Pa. P.U.C. 262, 371 (1994); *Pa. P.U.C. v. PPL Elec. Util. Corp.*, 2004 Pa. P.U.C. LEXIS 40, *82-84. Where the Commission has permitted allocated portions of indirect costs, on a case by case basis, it has allowed costs associated with direct labor costs, including employee benefits, workers compensation insurance and payroll taxes. *Pa. PUC v. Aqua Pa., Inc.*, 236 PUR 4th 218 at 251 (Pa. PUC 2004). Significantly, the Commission stated: "We caution that these are costs which may be considered for inclusion in the customer charge, but such claims are subject to scrutiny on a case-by-case basis." *Id.* Furthermore, since *PSWC 2004,* the Commission has rejected a utility's proposed customer charge increase based on a cost analysis that included indirect costs. *Pa. P.U.C. v. PPL Gas Util. Corp.*, Docket No. R-00061398, Order at 137 (Feb. 8, 2007).

The OCA's direct customer cost analysis is consistent with Commission precedent because it is limited to costs that are directly related to the provision of a service line, meter, and bill to a customer. OCA St. 4 at 15; OCA St. 4SR at 7; OCA Sch. GAW-7. The OCA also provided an analysis that included the types of costs that the Commission allowed in *PWSC 2004* (employee benefits, workers compensation insurance, and payroll taxes associated with direct labor costs). OCA St. 4 at 15-16; OCA Sch. GAW-7.

TABLE 7
Aqua Water
Residential Customer Costs
(5/8" Meter Equivalent)

	OCA Proposed Cost of Capital	Aqua Proposed Cost of Capital
Direct Costs	$17.07	$19.26
Direct + Indirect Costs	$17.36	$19.55

Id. Even when the additional types of costs that the Commission allowed in *PSWC 2004* are included, the indicated customer costs are below the current water Main division 5/8-inch customer charge of $18.00 and, thus, there is no reasonable basis to increase customer charges. Aqua's proposal to increase the wastewater Zone 1 5/8-inch residential customer charge to $39.10 also should be rejected because the study that Aqua relies on improperly includes indirect overhead costs that are not reasonably related to connecting and maintaining a customer's account, such as uncollectibles expense and rate case amortization. OCA St. 4 at 15, 17; Aqua Exh. 5B, Part I at 8-11. When the improper costs are removed, wastewater customer costs for residential 5/8-inch meters do not support any increase above the current Zone 1 rate of $31.00. OCA St. 4 at 16-17.

As noted above, Aqua proposed for residential customer charges for its Zone 1 water and wastewater divisions to increase by 25%. In addition to not supporting that level of increase with a direct cost study, that magnitude of increase is not supported by the public policy of gradualism and incentivizing conservation. *PPL 2007*; *Pa. PUC v. Community Utilities of Pennsylvania, Inc.*, R-2021-3025206, et al, Order at 62-63 (Jan. 13, 2022). The more revenue recovered through customer charges, the lower the volumetric rate, which impacts customers' incentive to conserve.

It is also important to recognize that the higher customer charges proposed by Aqua were calculated at the Company's filed-for revenue increase and claimed cost of capital. OCA Sch. GAW-6; *see, supra,* Table 7 (showing the impact of using different costs of capital). To the extent

the Commission approves a lesser revenue requirement and cost of capital than claimed by Aqua, any increase to customer charges should be scaled back also. This is reasonable to reflect that customer costs indicated by the cost analyses would be less and also to avoid a disproportionate increase to fixed versus volumetric charges.

Exception 13: The OCA's Wastewater Rate Design for the Legacy and Acquired Systems Should Be Adopted Because It Is Based on Cost-Based Customer Charges and Therefore More Reasonable than the Rate Design Recommended by the ALJ. R.D. at 88-89, 91, 96; OCA M.B. at 101-04; OCA R.B. at 60-61.

The principle difference between the OCA and I&E recommended wastewater rate design is that the OCA's recommendations flow from its recommended customer charges for Zone 1 (discussed in the prior section) and moving other divisions toward consolidation with those charges where reasonable. OCA St. 4 at 17-20. I&E witness Kubas acknowledged that he would normally support not increasing the customer charges above cost but did not do so here because it provided more revenue. I&E St. 5 at 10, 38; I&E St. 5R at 5. The ALJ recommended adoption of the I&E method for designing rates, noting that I&E's recommendations mitigate some of the large increases and are less complicated than the OCA's recommendations. R.D. at 91.

The OCA disagrees with I&E's proposals, which would increase customer charges in Zone 1 by 46.8% from $31.00 to $45.50 per month. This is nearly twice the increase that Aqua proposed, which the OCA has shown to be based on an inflated customer cost analysis. *See*, *supra*, OCA Exc. 11. All of I&E's proposed 5/8-inch customer charge increases exceed cost, ranging from increases of 26.3% to 66.0%. I&E Exh. 5, Schs. 2-8. The OCA submits that its wastewater rate design for the legacy and acquired systems is more reasonable and should be adopted because the charges are supported by customer cost analyses and move customer charges toward consolidation with the main wastewater zone customer charges. OCA M.B. at 102-04; OCA R.B. at 58-61; OCA

St. 4 at 17-20. As such, customers will be charged cost-based fixed rates, receive proper price signals and have greater control of their bills. *Id.*

Exception 14: The ALJ Erred by Not Requiring Aqua to Develop a Pilot Metering Program for Flat Rate Customers in Lake Harmony. R.D. at 96-98; OCA M.B. at 104-07; OCA R.B. at 62-64.

In response to the concerns raised by customers in the Lake Harmony service area, who may have below average usage but are charged flat rates for wastewater service based on average usage, the OCA proposed a pilot program to install meters on an opt-in basis for those customers who request metered service. R.D. at 96-98; OCA St. 4 Supp. at 1-2. The ALJ recognized that the Commission favors consumption-based utility rates,[11] however, she did not propose adopting the OCA's recommendation based on her finding that the OCA did not establish that the additional administrative complexity and costs for testing and maintaining meters and administering the program "will achieve overall benefits to Aqua's customers that will outweigh the costs." R.D. at 97. At the same time, the ALJ noted that Aqua permits the use of deduct meters for some of its acquired customers, citing to the Cheltenham rate zone. *Id.* at 97-98. The ALJ suggested that cost and operational data could be gathered from the existing Cheltenham program and evaluated in Aqua's next base rate case. *Id.*

Review of the tariff rules applicable to the Cheltenham program show that Aqua has had processes in place for registering, reading and inspecting meters, accessing the customer's property and adjusting bills for more than two years. *Application of Aqua Pennsylvania Wastewater, Inc.*, A-2019-3008491, Supplement No. 1 to Tariff Sewer-Pa P.U.C. No. 2 at 8.9.1-8.9.2. (eff. Dec. 21,

[11] R.D. at 97; *see* OCA M.B. at 94-95; 52 Pa. Code § 65.7 (Metered Service); 52 Pa. Code § 65.20(6) (Water Conservation Measures); *Pa. P.U.C. v. PPL Elec. Util. Corp.*, 237 PUR4th 419, 461 (Pa. PUC 2004); *Pa. P.U.C. v. Total Envtl. Solutions, Inc. - Treasure Lake Water Div. and Treasure Lake Wastewater Div.*, 103 Pa. P.U.C. 110, 160-61 (2008); *Emporium at* 524; *Pa. P.U.C. v. Lemont Water Co.*, 81 Pa. P.U.C. 392, 420-21 (1994).

2019) (Tariff Supp. 1). The cost and operational data from Aqua's existing deduct metering program in the Cheltenham service territory can help to inform how the pilot is structured.[12]

With regard to costs, Mr. Packer indicated that installing a water meter can range from $170 to $180. The OCA has proposed a pilot program on an opt-in basis for customers who request it and a random sample of 100 to 200 unmetered wastewater customers in the Lake Harmony service area. OCA St. 4 Supp. at 2; Day Exh. 1 at 3 (956 total customers). The OCA submits that the costs for metering, testing and maintaining meters and administering a pilot program for a few hundred customers should be reasonable, particularly when Aqua already has a metering program in Cheltenham Township that is available to more than 10,200 customers. *Application of Aqua Pennsylvania Wastewater, Inc.*, R.D. at 7 (Aug. 14, 2019).

As the ALJ recognized, assessing wastewater customers a flat rate is not consistent with the Commission's policy supporting consumption-based rates. *See, supra,* note 11. As such, it is reasonable to conclude that the benefits of a pilot program to move customers from flat to metered rates, in an area like Lake Harmony where a significant number of customers may use less than (and more than) Aqua's system-wide average usage of 4,000 gallons per month due to a substantial mix in types and occupancy of housing,[13] outweigh the costs.

As such, the OCA excepts to the ALJ's suggestion to delay a remedy until the next base rate case because it will delay relief to customers who, under the OCA's proposal, could begin participating in a pilot program within a few months of a final order in the current case. OCA St.

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[12] Aqua closed on its acquisition of Cheltenham in 2019, such that data should be available for two full years. *Application of Aqua Pennsylvania Wastewater, Inc.*, A-2019-3008491, Supplement No. 1 to Tariff Sewer-Pa P.U.C. No. 2 at 2 (eff. Dec. 21, 2019) (Tariff Supp. 1).

[13] Tr. 69-71, 112-13, 166-68, 199, 201-04, 323-25, 439-40.

4 Supp. at 2. Aqua should be directed to adopt a program, on a pilot basis, as a reasonable and measured response to the concerns raised by its customers regarding flat rates.

Exception 15: <u>The ALJ Erred by Not Requiring Aqua to Study the Feasibility of Affording Additional Customers the Option of Deduct Metering as a Way to More Accurately Reflect Wastewater Usage.</u> R.D. at 99; OCA M.B. at 108-10; OCA R.B. at 65-66.

The ALJ accepted Aqua's arguments that no further study of a non-seasonal wastewater cap is necessary because the OCA did not demonstrate that further study would yield better results. R.D. at 99. The ALJ did not distinguish between the two different studies that the OCA recommended. Regarding the first study, the OCA acknowledges that Aqua has already conducted an analysis of a capping mechanism with a summer multiplier of 100% but recommended that Aqua could study a summer multiplier greater than 100%. OCA M.B. at 109; OCA St. 4 at 21-22.

The ALJ did not address the OCA's recommendation for an alternative study, which OCA witness Watkins opined may be the most fair and equitable for Aqua – installing irrigation water meters on a customer-by-customer request basis. OCA M.B. at 109-10; OCA R.B. at 65-66; OCA St. 4 at 22. To be clear, Aqua has not, to the OCA's knowledge, already conducted any studies on irrigation metering, also referred to as deduct metering. Given that Aqua already has a deduct metering program in its Cheltenham service territory and two years of cost and operational data from that program,[14] Aqua's objection to studying the feasibility of opening that program to other Aqua customers is not reasonable. The OCA submits that the results of that study, including either a proposal to make deduct metering available to more or all customers or a detailed explanation

[14] See discussion of Cheltenham deduct metering program in the OCA's prior Exception and Tariff Supplement 1 at 8.9.1-8.9.2. The OCA also notes that the Aqua recently filed a proposed tariff for the Willistown Township system that provides for deduct metering. *Application of Aqua Pennsylvania Wastewater, Inc.*, A-2021-3027268, Revised Aqua Exh. G (Schedule of Rates Tariff Pages) at 8.14.2 (filed Nov. 4, 2021). https://www.puc.pa.gov/pcdocs/1724433.pdf

for why Aqua believes expansion to be infeasible in other service territories, should be filed no later than Aqua's next base rate case.

Exception 16: The ALJ Erred by Adopting Aqua's Proposed Reconcilable Surcharge Cost Recovery Mechanism. R.D. at 107-109; OCA M.B. at 152-61, 175-78; OCA R.B. at 82-89.

The ALJ erred in adopting the recovery of the costs of the program through a reconcilable rider. R.D. at 107-09. The costs of the program should be recovered through base rates and Aqua should only be permitted to recover the net costs of the program. OCA M.B. at 152-61; 175-78; OCA R.B. at 82-89. The ALJ erroneously concluded that a "comparable cost recovery mechanism" to the natural gas and electric utilities' cost recovery mechanism was approved by the *Merger Settlement*. R.D. at 107-08, citing *Joint Application of Aqua America Inc., Aqua Pennsylvania Inc., Aqua Pennsylvania Wastewater Inc., and Peoples Natural Gas Co. LLC*, Docket Nos. A-2018-3006061, *et al.*, Order at 147-150 (Jan. 24, 2020) (*Merger Settlement*). The *Merger Settlement* did not require that a specific cost recovery mechanism be used. *Id.* Contrary to the ALJ's conclusion, the Commission adopted the *Merger Settlement* without modification and did not comment specifically on the cost recovery mechanism to be used. *Id.* at 147-50.

The ALJ erred in her reliance of the *Merger Settlement* language and only quoted a portion of the language. R.D. at 109. The full *Merger Settlement* language reads:

> [Paragraph 108] notes that, through the Helping Hand Collaborative process, Aqua PA was *to consider development of a comprehensive and universal service and conservation program. The items for evaluation* included a customer assistance program, hardship fund, water conservation program, low-income service repair program and a comparable funding mechanism as utilized by energy utilities in the Commonwealth. Following this evaluation, Aqua PA would propose a recoverable universal service plan in its next base rate proceeding using input from the Helping Hand Collaborative and best practices from the Peoples Companies.

Merger Settlement at 135 (emphasis added); *see* OCA M.B. at 117; OCA R.B. at 85-86; OCA St. 5 at 7. What the ALJ importantly left out of her quotation is the language that provided that the

cost recovery mechanism would be an item for *evaluation*. *Id*. Nothing in the *Merger Settlement* binds Aqua **or** the signatory parties to any specific treatment of the items listed for evaluation. As the OCA discussed in its Main and Reply Briefs, a reconcilable rider is not required by the *Merger Settlement* and is not appropriate in this case. OCA M.B. at 152-61; 175-78; OCA R.B. at 82-89.

The ALJ also erred in the conclusion that the costs of the program are outside of the Company's control, and that a reconcilable surcharge is necessary to allow for full cost recovery. R.D. at 107-08. The ALJ provided that "recovery of universal service costs through a surcharge rather than in base rates is a more effective way to ensure robust customer assistance programs." R.D. at 108, citing to *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, Order at 15 (Dec. 18, 2006). The comparison between the energy utilities' mature universal services programs with a statute-defined cost recovery mechanism and Aqua's proposed discount/arrearage forgiveness programs is not appropriate. The ALJ disregards that there is no statutory basis for the cost recovery of water program costs.

The ALJ also ignored that every other Pennsylvania water utility with a discount program, including Pennsylvania-American Water Company and Pittsburgh Water and Sewer Authority (PWSA), recover the costs of its assistance program through base rates. *See* OCA R.B. at 87; OCA St. 5SR at 28-29. PWSA offers a robust tiered discount and arrearage forgiveness program with additional benefits to customers with income at or below 50% of Poverty similar to what Mr. Colton has proposed in this proceeding. OCA St. 5SR at 29. Other water utilities have treated the costs of the low-income programs as normal operating costs of the utility, and Aqua should continue to do so in this case. *Id.* The costs of the current Helping Hand program have been treated as normal operating expenses. Contrary to the ALJ's conclusion, Aqua does not anticipate that there will be substantial fluctuations in the costs of the program that would warrant the need for a reconcilable surcharge. *See* OCA R.B. at 88; OCA St. 5 at 45-46.

Furthermore, OCA witness Colton recommended that only the net costs be recovered rather than the gross costs and that those costs should be included in base rates including a cost offset to reflect the benefits of the program to Aqua's uncollectible expenses. OCA St. 5 at 42. The ALJ's R.D. appears to ignore the need for an offset to be established to address the impact of the program on Aqua's uncollectible expenses. An offset is needed for the discount and arrearage forgiveness program costs in order to prevent the double-recovery of costs. As the OCA discussed in its Briefs, the Commission has previously concluded that double recovery is possible through a reconcilable surcharge and as such an offset is appropriate. *See* OCA M.B. at 153-54; OCA R.B. at 83-85.

For the reasons set forth in the OCA's Briefs, the ALJ erred in her decision to allow Aqua to recover the costs of its water and wastewater discount and arrearage forgiveness programs through a reconcilable surcharge. *See* OCA M.B. at 152-61; 175-78; OCA R.B. at 82-89. The costs and offsets should be recovered as normal operating expenses through base rates.

Exception 17; The ALJ Erred in her Determination to Adopt Aqua's Proposed Program Design Without Modification. R.D. at 109-14; OCA M.B. 117-75; OCA R.B. at 73-82, 91-96.

The ALJ erred in her determination to adopt Aqua's proposed program design without modification. R.D. at 109-14. As the ALJ's R.D. acknowledged, OCA witness Colton performed an extensive analysis of the affordability of Aqua's proposed program design for its water and wastewater discount and arrearage forgiveness proposals. R.D. at 112. The ALJ, however, disregarded that evidence in her determination to adopt Aqua's proposed program design without modification. *See* OCA M.B. 117-75; OCA R.B. at 73-82, 91-96. The ALJ instead deferred the determination of the OCA's recommended program modifications to a generic proceeding sometime in the future. R.D. at 113-14.

The ALJ misunderstood the purpose of OCA witness Colton's testimony. The purpose of Mr. Colton's affordability analysis was not to create a final, definitive assistance program for Aqua. OCA witness Colton understood that the program would need to evolve and recommended that the affordability targets should be established in a future generic proceeding and that Aqua proposed a Percentage of Income Payment Program (PIPP) in the next base rate proceeding to further improve affordability. Instead, the testimony demonstrated the problems with Aqua's proposed discount and arrearage forgiveness levels, particularly for customers from 0-50% of the Federal Poverty Level (FPL) and reflected that the proposed program design will not achieve the objectives of the *Merger Settlement* to consider a "comprehensive universal services program." *See Merger Settlement* at 135; OCA M.B. at 133-36; OCA R.B. at 76-77. A comprehensive universal services program should be designed to achieve affordability for customers. The evidence presented by Mr. Colton demonstrated that the discount program as proposed for water and wastewater customers will significantly under-serve those customers from 0-50% of the FPL and will not help customers achieve affordability after implementation. *Id.* Moreover, the ALJ ignored the evidence of the shortcomings of continuation of the current $25/month arrearage forgiveness program described in OCA witness Colton's testimony. OCA St. 5 at 59-60, Sch. RDC-1, RDC-2; *see also* OCA St. 5SR at 7-8. For the reasons set forth in the OCA's Briefs, the OCA's proposed design modifications to Aqua's water and wastewater discount and arrearage forgiveness programs should be approved. *See* OCA M.B. 117-75; OCA R.B. at 73-82, 91-96.

Exception 18: The ALJ Erred in her Decision to Adopt Aqua's Proposed Customer Assistance Program Application Process. R.D. at 115-16; OCA M.B. at 173-175; OCA R.B. at 96-97.

The ALJ erred in her decision to adopt Aqua's proposed application process. R.D. at 115-16. The ALJ concluded that customers will be informed of the program change and will have the opportunity to apply for the new program, and that "existing Helping Hand customers should have

the right to make an affirmative choice whether to enter the new CAP." R.D. at 116. OCA witness Colton and CAUSE-PA Geller recommended that customers be automatically migrated to the new discount program. OCA St. 5 at 62-63; CAUSE-PA St. 1 at 46-48.

The ALJ may not have appreciated the fact that the existing Helping Hand customers **will lose their existing program benefits** if the customers do not apply for the new combined discount/arrearage forgiveness program. The existing Helping Hand program will cease to exist. Aqua St. 10R at 2. A group of customers that have not had their arrears completely forgiven, and who will not apply to the new CAP, will no longer have the program forgiveness to complete reducing their arrearage balance. OCA St. 5SR at 3. Arrearage forgiveness and the discount are designed to work hand-in-hand to address affordability. Separate enrollments and applications mean that not all low-income customers currently enrolled in the arrearage forgiveness program will continue to receive assistance either through the to-be-defunct arrearage forgiveness program or the new bill discount program. This can be avoided by the automatic migration to the new programs as OCA and CAUSE-PA recommended. For the reasons set forth in the OCA's Briefs, existing Helping Hand customers should be automatically migrated to the new program.

Exception 19: <u>The ALJ Erred by not Requiring that Aqua Adopt the OCA and CAUSE-PA's Recommendations for a Community Education and Outreach Plan (CEOP).</u> R.D. at 118; OCA M.B. at 161-64; OCA R.B. at 90-91.

In her R.D. the ALJ provided that Aqua did not appear to oppose OCA and CAUSE-PA's recommendations for the development of a CEOP, but did not require Aqua to adopt the recommendations. R.D. at 118. The ALJ instead stated that "Aqua should consider the input…and incorporate their reasonable recommendations into Aqua's outreach program. If OCA and CAUSE-PA provide recommendations to Aqua which Aqua does not adopt, OCA and CAUSE-PA may seek appropriate relief from the Commission." R.D. at 118. The OCA submits that the

ALJ's recommended approach is not sufficient to address the problems identified by the OCA and CAUSE-PA regarding the development of the CEOP. It is also not clear in what forum either the OCA or CAUSE-PA could seek appropriate relief.

While Aqua agrees that a CEOP is an important component of a universal service plan, Aqua does not appear to adopt the OCA's recommendations regarding what that outreach should look like. OCA M.B. at 161-64. The OCA recommends that the Company incorporate a strategy of reaching low-income customers "where the community lives, works, plays and prays to be present at those locations rather than to sponsor "events" that community members must attend." *See* OCA St. 5 at 49; *see also* OCA St. 5 at 47-50. The ALJ's R.D. indicates that the OCA and CAUSE-PA may seek appropriate relief from the Commission if their recommendations are not adopted. R.D. at 118. The OCA submits, however, that unlike with the energy utilities, Aqua would not need to submit a Plan for approval of its CEOP. There are not any Commission policy statements, applicable regulations or statutory requirements specifically regarding what effective outreach and education for Aqua's discount and arrearage forgiveness program should look like. There would not be an alternative appropriate forum to seek relief. The instant proceeding is the forum where the Company's proposed approach to education and outreach should be addressed, and the ALJ's R.D. fails to do so. For the reasons set forth in the OCA's Briefs, the Commission should direct Aqua to develop a Community Education and Outreach Plan with the OCA's identified elements. OCA M.B. at 161-64; OCA R.B. at 90-91.

Exception 20: The ALJ Erred in Concluding That Aqua Has Met its Obligation to Answer 82 Percent of Customer Calls Within Thirty Seconds. R.D. at 127-28; OCA M.B. at 190-92; OCA R.B. at 108-09.

The ALJ agreed with Aqua that it had met its commitment under the Aqua-Peoples settlement to answer 82% of customer calls within 30 seconds, which Aqua calculated based upon

an aggregate percentage of calls and not by the number of customers who proactively seek to speak with a customer representative. R.D. at 127-28. The ALJ agreed that use of aggregate data is consistent with the settlement and reasonable because it is the standard used by the Peoples Companies. *Id.* at 128. The OCA disagrees with the conclusion that use of aggregate data is reasonable. The calls answered standard should be measured only by the number of customers who choose to speak with a representative because use of aggregate data which also includes customers who use the interactive voice response system (and do not attempt to reach a representative) skews the results. These calls are clearly "answered" within less than 30 seconds, but they are irrelevant to the issues discussed and agreed to in the Aqua-Peoples settlement. Therefore, the Commission should adopt the OCA's recommendation.

Exception 21: <u>The ALJ Erred in Concluding That Aqua Complied with its Obligation to Reduce its Average Call Abandonment Rate to Four Percent or Less in 2020-2021.</u> R.D. at 127-28; OCA M.B. at 192-93; OCA R.B. at 109-10.

The ALJ found that while Aqua failed to reduce its average call abandonment rate to 4% or less in 2020-2021, Aqua sufficiently explained its failure to meet the metric due to unanticipated postal service delays which resulted in bills being delivered late and higher-than-normal call volumes in December 2020. R.D. at 128. The OCA respectfully disagrees with the ALJ's conclusion that Aqua should be excused from its obligation to reduce its average call abandonment rate to 4% or less. The ALJ agreed with Aqua that the Aqua-Peoples settlement "contemplated a situation where events outside of the Company's control do happen." R.D. at 128.

The evidence in this case shows that as of July 2021, the abandonment rate was 13.15% and in 2019 was 4.56%. In the year before and in the partial year following the unusual circumstances in late 2020, Aqua *never* met the "no higher than 4%" for its call abandonment rate, even when calculated using the aggregate calls that included IVR data. OCA St. 6SR at 5; OCA

M.B. at 192-93. This was not an isolated event because of unforeseen circumstances as Aqua has not met the 4% abandonment rate in any of the last two and one half years. Therefore, the Commission should adopt the OCA's recommendation.

Exception 22: The ALJ Erred in Concluding That Aqua Complied with its Obligation to Conduct a Root Cause Analysis of Customer Complaint Data. R.D. at 128-29; OCA M.B. at 193-95; OCA R.B. at 110-12.

The ALJ found that Aqua has demonstrated its good faith efforts to comply with the terms of the *Merger Settlement* to conduct a root cause analysis. R.D. at 129. However, as the ALJ notes, the settlement term requires Aqua to develop a system to track Aqua customer complaints in a live Excel spreadsheet and to review this information and conduct a root cause analysis of adverse trends at least annually. R.D. at 129. Aqua has failed to do this, and Aqua's compliance with this settlement obligation should not be determined based upon "good faith efforts."

A comparison of Aqua's performance compared to other utilities shows why it is critical for Aqua to comply with this term of the *Merger Settlement*. In 2020, Aqua had the highest number of "justified" complaints compared to other Pennsylvania water utilities; 16% of the closed and evaluated customer complaints were justified compared to 5% for other major water utilities. 2020 Utility Consumer Activities Report and Evaluation at 12.[15] OCA M.B. at 180; OCA R.B. at 110. In October 2021, Aqua's justified average complaint percentage was 13%. OCA Exh. BA-5; OCA R.B. at 111. In order to address Aqua's high percentage of justified complaints, the Company should be required to conduct a root cause analysis of customer complaint data to spot issues and concerns that require attention and potential changes in policies or processes as soon as practicable.

[15] https://www.puc.pa.gov/media/1380/ucare_2020-4q.pdf

For these reasons, the OCA submits that Aqua is not in compliance with this term of the settlement. Therefore, the Commission should adopt the OCA's recommendation.

Exception 23: The ALJ Erred in Concluding That Aqua's Customer Satisfaction Levels are Not An Additional Reason To Reject The Management Performance Adder. R.D. at 129-30; OCA M.B. at 181-82; OCA R.B. at 101-02.

The OCA presented testimony of Barbara Alexander and Roger Colton regarding Aqua's customer service and explained why its management performance adder should not be adopted. OCA St. 6 at 9-11; OCA St. 6SR at 5. The ALJ properly rejected Aqua's claim for a management performance adder. R.D. at 130. However in doing so, she did agreed with Aqua that the evidence submitted by OCA regarding Aqua's call center performance level in comparison to other utilities was not a good indicator regarding Aqua's customer satisfaction. R.D. at 129-30. For purposes of ensuring that all of the evidence rebutting Aqua's claim for a management performance adder is reviewed, in addition to the evidence adopted by the ALJ, the OCA submits that Aqua's lower customer satisfaction level should be considered as one of many instances of Aqua's lack of evidence to support a management performance adder.

The ALJ agreed with Aqua that its customer satisfaction survey indicating only 73% of customers rated their satisfaction as "excellent" or "very good" is not in and of itself indicative of poor customer service, particularly during the COVID-19 timeframe where certain customer interactions have had to be limited. R.D. at 129-30. The OCA disagrees with this conclusion. These results indicate lower satisfaction than other utilities for which we have public data where over 80% of customers typically express that they are "very satisfied" with their interaction with the utility's representative. OCA St. 6 at 11; OCA M.B. at 191. Importantly the comparison of Aqua's 73% customer satisfaction level with 80% for other utilities was measured at the same time. Any excuses proffered by Aqua as to why this indicator should not be considered should be

rejected because the measurements are an "apples to apples' comparison. In addition, this was not the only indicator of customer service performance provided by OCA witness Alexander who listed multiple areas where Aqua's customer service is not adequate. *See* OCA St. 6 at 8-15; OCA M.B. at 190-204; OCA R.B. at 107-10. Therefore, the Commission should consider Aqua's poor satisfaction ratings as further support for the OCA's recommended ROE and as additional support for the rejecting the management performance adder. *See* OCA St. 6 at 8-22.

Exception 24: The ALJ Erred in Concluding That Aqua Should Not be Required to Submit Section 500 Reports for Each of its Distribution Systems. R.D. at 119-20; OCA M.B. at 205-07; OCA R.B. at 122.

The ALJ agreed with Aqua that OCA's recommendation that Aqua submit a Section 500 Report for each of its distribution systems should be rejected because "OCA has not demonstrated that its modification will result in a significant benefit to Aqua's customers." R.D. at 120. The OCA respectfully disagrees with the ALJ's statement. Requiring Aqua to submit a Section 500 Report for **each** of its distribution systems would identify levels of Unaccounted For Water (UFW) which is a localized issue. Identification and reduction of UFW benefits all water customers by reducing non-revenue water which reduces chemical and power costs. OCA St. 7 at 3. Therefore, the Commission should adopt the OCA's recommendation.

Exception 25: The ALJ Erred in Concluding That Aqua Should Not be Required to Conduct Pressure Surveys at One High and One Low Pressure Point Within its System and That Aqua Should Not be Required to Reduce Upstream Water Pressures or Install Additional Pressure Valves. R.D. at 120-24; OCA M.B. at 207-11; OCA R.B. at 123-24.

The ALJ found that Aqua's pressure measurement processes comply with the regulation and rejected the OCA's recommendation that Aqua reduce upstream water pressures or install additional pressure valves to reduce dangerously high pressures for some residents, for example, Richard Gage and some of his neighbors in Chesterbrook. R.D. at 121-24.

Regarding pressure surveys, the ALJ concluded that Aqua should not be required to conduct pressure surveys at one high and one low pressure point within its system. R.D. at 121-22. Section 65.6 of the Commission's regulations states that:

> At regular intervals, but not less than once each year, each utility shall make a survey of pressures in its distribution system of sufficient magnitude to indicate the pressures maintained at representative points on its system.

52 Pa. Code § 65.6 (d). The ALJ found that "representative points" are not limited to those taken at one high and one low pressure point because Section 65.6 does not define "representative points." R.D. at 121. The OCA respectfully disagrees with the ALJ's conclusion.

The intent of Section 65.6 is to ensure that utilities are providing water service with pressures in reasonable ranges, i.e., not lower than 25 psi and not higher than 125 psi. In order to get a fully comprehensive and useful understanding of pressure reading of a system, it is only logical and consistent with expert opinion that pressures be surveyed at a minimum at one high and one low point. OCA M.B. at 211; OCA R.B. at 124. Indeed, the ALJ acknowledged that "Aqua's pressure surveys may be improved with the additional measurements recommended by OCA..." R.D. at 121. She concluded, however, that "there is no evidence that Aqua's current system is not reasonable for maintaining generally normal operating pressures between the range of 25 psi and 125 psi or that the points that measurements are taken are not sufficiently "representative."" R.D. at 121-22. The OCA disagrees with this conclusion. Richard Gage and others in Chesterbrook have experienced dangerously high pressures causing damage to their property for years, despite having pressure reducing valves in place. OCA Appendix E at 4; OCA R.B. at 130. There is clearly a pressure problem in at least a portion of the Chesterbrook area.

Regarding the OCA's recommendation that Aqua be required to reduce upstream pressures for all customers to below 125 psi or be responsible for damages resulting from higher pressures, the ALJ concluded that Aqua should not be directed to reduce upstream water pressures or install

additional pressure valves. R.D. at 124. In her discussion, the ALJ referenced Aqua customer Richard Gage's testimony about his experience with dangerously high pressures:

> I agree with OCA that Mr. Gage's testimony painted a troubling picture of a customer's experience with the continued failure of pressure valves and his struggle to protect his property from damage.

R.D. at 123. Ultimately, however, she concluded that the Commission has held that public utilities are not required to render perfect service, citing to *Rounce v. PECO Energy Co.*, Docket No. C-2015-2506941 Order (Dec. 9, 2016) and *Bertsch v. PPL Elec. Utils. Corp.*, Docket No. C-2011-2251784 Order (Apr. 2, 2012). R.D. at 123.

The OCA submits that while the Commission has held that public utilities are not required to render perfect service, they are required to provide "safe, adequate and reliable service" to their customers. 66 Pa. C.S. § 1501. Allowing Aqua to continue providing service to customers such as Mr. Gage in Chesterbrook at 200 psi causing PRVs to burst resulting in property damage is not consistent with Aqua's obligation to provide safe, adequate and reliable service.

Requiring Aqua to take pressure surveys at one high and one low pressure point and reducing upstream pressures would help ensure that customers are receiving water service at pressures within normal ranges in compliance with the Commission's regulations and prevent property damage. Therefore, the OCA's recommendations should be adopted.

Exception 26: <u>The ALJ Erred in Concluding That Aqua Should Not be Required to Inspect Non-Critical Valves Every Five Years Instead of Twelve Years</u>. R.D. at 124-25; OCA M.B. at 213; OCA R.B. at 126-27.

The ALJ found that OCA did not sustain its burden of proof that imposing a 5-year inspection cycle for non-critical valves is necessary or will derive a benefit to Aqua's system commensurate with the cost to implement the program. R.D. at 125. The ALJ recommended that Aqua develop an isolation valve inspection and exercise program to be implemented no later than

180 days from the effective date of rates resulting from this proceeding which establishes a defined schedule to exercise non-critical valves and maintain records of its attempts. *Id.* Contrary to the ALJ's conclusion, the OCA submits that it sufficiently demonstrated that a 5-year inspection cycle would provide a benefit to Aqua and its customers. In its testimony (OCA St. 7 at 15-16), the OCA explained that a 5-year exercising schedule may help proactively eliminate customer complaints and issues. Therefore, the Commission should adopt the OCA's recommendation.

Exception 27: The ALJ Erred in Concluding That Aqua Should Not be Required to Flush its SEPA System Every Three Years. R.D. at 126; OCA M.B. at 214-15; OCA R.B. at 128-29.

The ALJ concluded that Aqua should not be required to flush its SEPA system every three years. R.D. at 126. She agreed with Aqua in concluding that:

> [I]n view of Mr. Duerr's credible testimony that flushing can be labor intensive and result in UFW, it is not possible to conclude that it is reasonable to impose the inevitable costs to ratepayers for a three-year flushing program which may or may not result in the benefits identified by OCA.

R.D. at 126. The OCA respectfully disagrees with this conclusion. Mr. Duerr stated that flushing *can* be labor intensive and result in UFW, but he did not offer support for this statement. A three-year flushing program is reasonable and consistent with industry standards. ALJ agreed with the OCA that a three-year program has the potential to be beneficial to Aqua's customers and Aqua:

> It may be that adopting a three-year flushing program would proactively eliminate many customer complaints, as recommended by OCA. It may also be true that regular flushing would eliminate the need for Aqua to constantly assess the "many factors" listed by Mr. Duerr in determining whether and when to flush the system.

R.D. at 126. For these reasons, the Commission should adopt the OCA's recommendation.

Exception 28: The ALJ Did Not Appropriately Account for the Impact of the Pandemic on Aqua's Ratepayers When Setting Rates in This Proceeding. R.D. at 35; OCA M.B. at 5-15; OCA R.B. at 3-4.

Regarding the impact of the ongoing COVID-19 Pandemic, the ALJ wrote that "the Commission has repeatedly taken the position that the existence of the pandemic does not suspend the consideration of utility rate increases." *Id.* at 35 (internal citations omitted). The ALJ then notes that no party challenged Aqua's infrastructure spending and that parties recommended that Aqua put into place additional universal service programming and customer service requirements which require financial investment. *Id.* at 35.

The OCA's Main Brief and Reply Brief discussed the impact of the pandemic on Aqua's ratepayers specifically. OCA witness Colton provided unrefuted testimony showing that the economic crisis is ongoing and continues to severely impact the lives of Aqua's ratepayers. Portions of Aqua's service territory[16] have the highest hospitalization rates for COVID-19 in the United States. *See* OCA M.B. at 5; Aqua M.B. at 116.

Simply put, while the OCA did not argue that the existence of the pandemic should suspend the consideration of utility rate increases, it did argue that the continued impact of the COVID-19 pandemic should be taken into account in the Commission's consideration of appropriate return on equity and the OCA's other recommendations related to the pandemic, to keep any Aqua rate increase to the lowest possible cost for ratepayers. *See* OCA R.B. at 4.

The OCA further submits that the ALJ's reliance on the parties' lack of opposition to Aqua's infrastructure spending and the parties' recommendations regarding improvements to universal service programming and customer service, which require financial investment, inappropriately shifts the burden of proof in this proceeding. The OCA is not required to challenge

[16] Northumberland and Columbia counties.

the Company's infrastructure spending in order to offer recommendations regarding universal service programming or customer service. The OCA acknowledges that additional universal service programming and customer service improvements "require financial investment to implement," but those financial investments are meant to mitigate the impact of unaffordable rates for Aqua's most vulnerable customers. R.D. at 35. The costs of these programs would be fully recovered through surcharges or base rates. The OCA's expert witnesses took these additional costs into account in their analyses as appropriate means of addressing Aqua's proposed rate increase in this proceeding.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the OCA's Main and Reply Briefs, the OCA respectfully requests that the Commission grant the OCA's Exceptions and adopt the OCA's positions as discussed above.

Respectfully Submitted,

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