



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

March 7, 2022

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission v.  
Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc.  
Docket Nos. R-2021-3027385 and R-2021-3027386  
**I&E Replies to Exceptions**

Dear Secretary Chiavetta,

Enclosed for electronic filing please find **The Bureau of Investigation and Enforcement's Replies to Exceptions** for the above-captioned proceedings.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Scott B. Granger'.

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SBG/ac  
Enclosures

cc: Administrative Law Judge Mary D. Long (via *First-Class and Electronic Mail*)  
Office of Special Assistants (via e-mail – [ra-osa@pa.gov](mailto:ra-osa@pa.gov))  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**THE BUREAU OF INVESTIGATION AND ENFORCEMENT  
REPLIES TO EXCEPTIONS**

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Scott B. Granger  
Prosecutor  
PA Attorney ID No. 63641

Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Dated: March 7, 2022

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## I. INTRODUCTION

Pursuant to 66 Pa. C.S. § 332(h) of the Public Utility Code and 52 Pa. Code § 5.535 of the Public Utility Commission regulations, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits these Replies to Exceptions filed by the parties in response to the Recommended Decision of Administrative Law Judge Mary D. Long (“ALJ” or “ALJ Long”) issued on February 18, 2022 (“Recommended Decision” or “R.D.”)

On August 20, 2021, Aqua Pennsylvania, Inc. (collectively “Aqua” or “Aqua PA” or the “Company”) on its own behalf and on behalf of its wholly-owned subsidiary Aqua Pennsylvania Wastewater, Inc., filed, respectively, Original Tariff Water - PA P.U.C. No. 3 (“Tariff Water No. 3”) and Original Tariff Sewer - PA P.U.C. No. 3 (“Tariff Sewer No. 3”) to become effective on October 19, 2021.<sup>1</sup>

The parties to this base rate proceeding are Aqua; I&E; the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); the Aqua Large Users Group (“Aqua LUG”); and the Masthope Mountain Community Association (“Masthope” or “MMCA”). Additionally, there were dozens of formal complaints filed by Aqua ratepayers that were consolidated into this proceeding.

On Monday, December 20, 2021, at the time and place set for the evidentiary hearing, the parties appeared telephonically before ALJ Long. After the conclusion of the hearing and the closing of the record, the active parties submitted briefs according to the briefing schedule. I&E submitted its Main Brief on January 11, 2022 (“I&E MB”) as did the other active parties. I&E then submitted its Reply Brief on January 21, 2022 (“I&E RB”) as did the other active parties.

Then, on February 18, 2022, ALJ Long issued her Recommended Decision. I&E, Aqua, OCA, OSBA, CAUSE-PA, Aqua LUG, and Masthope all filed Exceptions to the Recommended

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<sup>1</sup> I&E MB, p. 1.

Decision on February 28, 2022. I&E now files these Replies to Exceptions of Aqua Nos. 1 through 13 (“Aqua Exceptions”); OCA Nos. 1 through 28 (“OCA Exceptions”); OSBA Nos. 1 through 4 (“OSBA Exceptions”); CAUSE-PA No. 1 (“CAUSE Exception”); Aqua LUG No. 1 (“Aqua LUG Exception”); and Masthope Exception Nos. 1 and 2 (“Masthope Exceptions”) and requests the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and as recommended in these I&E Replies to Exceptions.

## II. I&E REPLIES TO EXCEPTIONS OF AQUA

I&E recommends that the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and reject the Aqua Exceptions to the extent recommended below.

### A. **I&E Reply to Aqua PA Exception No. 1: The ALJ properly recommended that the Commission adopt I&E’s recommended return on common equity of 8.90%. R.D. at 77-81.**

Aqua erroneously argues that the adoption of an 8.90% ROE will represent a “watershed moment for the end of the Commission’s longstanding commitment to supporting infrastructure investment,” made doubly worse in a period of rising capital costs.<sup>2</sup> Further, Aqua erroneously argues that the ROE recommended in the R.D. would signal to the utilities and the credit rating agencies that Pennsylvania regulation has ceased to support investment in the state at a time of critical capital investment needs.<sup>3</sup>

Rather, the ALJ correctly found that:

... the method employed by I&E which results in an 8.90% ROE is the most reasonable. First, I&E’s recommendation is consistent with the methodology historically used by the Commission in base rate proceedings, even as recently as 2017, 2018, 2020, and 2021. Second, I&E’s calculation includes fewer biased inputs. Finally, I find that I&E’s recommended ROE fairly balances the impacts of the overall rate increase between ratepayers and stockholders.<sup>4</sup>

The ALJ correctly recommended the adoption of the I&E recommended 8.90% return on equity<sup>5</sup> and the Commission should reject Aqua Exception No. 1.

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<sup>2</sup> Aqua Exceptions, pp. 2-5.

<sup>3</sup> *Id.*

<sup>4</sup> R.D., pp. 77-78.

<sup>5</sup> *Id.*, pp. 77-81.

**1. I&E's DCF calculation as adopted by ALJ Long is not understated. R.D. at 77-78.**

Aqua erroneously argues that the ALJ failed to recognize arguments made by Aqua's rate of return witness regarding dividend yield and growth rate.<sup>6</sup>

However, the ALJ clearly considered and then rejected the arguments made by Aqua's rate of return witness.<sup>7</sup> Instead, the ALJ correctly recognized that Commission precedent clearly prefers the DCF methodology as applied by I&E and that Aqua's DCF calculation included the use of an inflated growth rate and an unnecessary leverage adjustment.<sup>8</sup>

The R.D. correctly recommends adoption of I&E's discounted cash flow calculations and the Commission should reject Aqua Exception No. 1, part 1.<sup>9</sup>

**2. The R.D. correctly rejected Aqua's recommended leverage adjustment to the DCF result. R.D. at 78-79.**

In support of its proposed leverage adjustment, Aqua erroneously argues that there is substantial evidence demonstrating that the unadjusted DCF results understate the cost of common equity in the current economic environment.<sup>10</sup>

Rather, it is clear that the ALJ considered Aqua's erroneous arguments and then rejected Aqua's proposed leverage adjustment.<sup>11</sup> Therefore, I&E recommends the Commission reject Aqua Exception No. 1, part 2.

**3. The RD correctly analyzed all parties DCF calculations and correctly recommended an 8.90% ROE. R.D. at 77-78.**

Aqua erroneously argued in rejoinder testimony that a rate of inflation adjustment should be added to the overall return on equity recommendation in the form of a leverage adjustment.<sup>12</sup>

Instead, the R.D. correctly finds that the I&E recommended return on equity of 9.80% fairly

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<sup>6</sup> Aqua Exceptions, pp. 5-6.

<sup>7</sup> R.D., pp. 78-79.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Aqua Exceptions, p. 8.

<sup>11</sup> R.D., pp 78-79.

<sup>12</sup> Aqua Exceptions, P. 9-10.

balances the impacts of the overall rate increase between ratepayers and stockholders.<sup>13</sup> Further, the R.D. considered Aqua's arguments and found that, at a certain point, professional judgment tips to an unacceptable bias toward a certain result.<sup>14</sup> Additionally, while Aqua can cite to a December inflation figure in its rejoinder testimony, it can be argued that with several simple spending, monetary policy, and public policy changes, the United States economy has the potential to experience rapid prosperity under a full reopening thus wiping out any temporary inflation. Further, while Aqua believes it would benefit from a rate of return increase based on a current rate of inflation, the resultant rate increase that would have to be absorbed by the responsible ratepayers would be out of balance with their ability to pay and would not be just and reasonable. Therefore, the Commission should reject Aqua Exception No. 1, part 3.

**4. The RD correctly relied on the results of the DCF methodology as applied by I&E to establish a reasonable ROE. R.D. at 79.**

Aqua erroneously argues that the R.D. was inaccurate in its assertion that I&E used the DCF method and the CAPM method to arrive at its recommended ROE of 8.90%.<sup>15</sup> Further, Aqua erroneously argues that, in reality, I&E ignored its CAPM result in deriving the I&E ROE recommendation.<sup>16</sup>

Rather, the R.D. correctly notes that I&E used the DCF methodology and the CAPM method to arrive at its recommended cost of equity of 8.90%.<sup>17</sup> In fact, I&E always states that it uses the DCF method as the primary methodology to calculate its recommended return on equity while also using the CAPM as a check on the reasonableness of its DCF results.<sup>18</sup> Aqua's allegation that I&E ignored its CAPM result is simply incorrect. Therefore, the Commission should reject Aqua Exception 1, part 4.

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<sup>13</sup> R.D., p. 78.

<sup>14</sup> *Id.*, p. 77.

<sup>15</sup> Aqua Exceptions, p. 10.

<sup>16</sup> *Id.*

<sup>17</sup> R.D., p. 78.

<sup>18</sup> See I&E St. No. 1, pp. 16-17.

**5. The ALJ's rate of return recommendation is proper based on the substantial record evidence presented in this base rate proceeding. R.D. at 77-81.**

Aqua erroneously argues that the ALJ's rate of return recommendation in this proceeding should have been based on the allowable DSIC rate of return and the rate of return awarded to other dissimilar public utilities in other base rate proceedings.<sup>19</sup>

Rather, ALJ Long correctly considered the substantial record evidence presented by all parties in this base rate proceeding and properly recommended the Commission adopt the I&E recommended 8.90% ROE.<sup>20</sup> Therefore, the Commission should reject Aqua Exception No. 1, part 5.

**6. The ALJ properly considered the requirements of Section 523 when rejecting Aqua's request for management performance points. R.D. at 79-81.**

Aqua erroneously argues that the ALJ did not properly consider the requirements of Section 523 when rejecting Aqua's request for management performance points.<sup>21</sup> Aqua then references the evidence it presented to support its original request that was rejected by the ALJ.<sup>22</sup> Aqua appears to believe that simply because it presented its version of evidence that Aqua thought was sufficient to support the awarding of management performance points, it was therefore entitled to receive an increase in its rate of return.

Instead, the ALJ considered the record evidence and the arguments presented by all of the parties, as required by Section 523, and concluded that to seek an additional premium from ratepayers during a pandemic is inequitable and tone deaf given the high level of unemployment experienced by residential customers and the detrimental effect the pandemic has had on small businesses.<sup>23</sup> Additionally, the ALJ cited the Commission's language in *Pa. P.U.C. v. Columbia Gas of Pennsylvania, Inc.*<sup>24</sup> and recommended the Commission reject Aqua's request to add basis points to

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<sup>19</sup> Aqua Exceptions, pp. 12-13.

<sup>20</sup> R.D., pp. 77-81.

<sup>21</sup> Aqua Exceptions., pp. 13-14.

<sup>22</sup> *Id.*

<sup>23</sup> R.D., p. 80.

<sup>24</sup> *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket No. R-2020-3018835, Order entered February 19, 2021 (*Columbia Gas*).

the ROE on the basis of management performance.<sup>25</sup> Therefore, the Commission should reject Aqua Exception No. 1, part 6.

**7. The ALJ’s recommendation to adopt the I&E ROE recommendation of 8.90% is well reasoned and proper. R.D. at 77-81.**

Aqua erroneously argues that the ALJs recommendation is contrary to the record evidence and would provide a chilling effect upon investors in Pennsylvania utilities.<sup>26</sup>

I&E rejects Aqua’s conclusion and refers back to ALJ Long’s statement that “at a certain point, professional judgment tips to an unacceptable bias toward a certain result.”<sup>27</sup> Further, while Aqua argues that the I&E recommended ROE of 8.90% is unreasonable, I&E counters that the adoption of Aqua’s proposed 10.75% ROE would be grossly unjust. Therefore, the Commission should reject Aqua Exception No. 1, part 7.

**B. I&E Reply to Aqua PA Exception No. 2: The ALJ properly recommended that the Commission should reject Aqua’s base rate claim related to the Section 1327 acquisition of the Borough of Phoenixville water system. R.D. at 44.**

Aqua argues that it had requested a return on and return of the purchase price in this proceeding consistent with Section 1327 of the Public Utility Code,<sup>28</sup> which was reflected as a positive acquisition adjustment as of the end of the FPFTY of \$2,315,440.<sup>29</sup> Aqua argues that because it chose to pay more than the depreciated original cost of the Phoenixville water system it is entitled to recover a positive acquisition adjustment.<sup>30</sup> Aqua also erroneously argues that the ALJ attempted to “sidestep” the issues regarding manually reading the meters; the non-revenue or unaccounted for water; and the fire hydrants in need of repair.<sup>31</sup>

I&E asserts that Aqua’s arguments do not accurately reflect the R.D. Aqua erroneously argues that the R.D. fails to recognize that Phoenixville’s inside the borough customers are

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<sup>25</sup> *Id.*, pp. 80-81.

<sup>26</sup> Aqua Exceptions, p. 15.

<sup>27</sup> R.D., p. 77.

<sup>28</sup> 66 Pa. C.S. § 1327.

<sup>29</sup> Aqua Exceptions, p. 15.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, pp. 16-17.

subsidizing the service provided to outside the borough customers.<sup>32</sup> This argument is irrelevant however as this is a rate structure concern internal to the Borough of Phoenixville and I&E provided testimony that the Borough of Phoenixville (unlike a small private system) had many funding options.<sup>33</sup>

Additionally, the ALJ noted that the excess Aqua chose to pay for the Phoenixville water system created a rebuttable presumption and the presumption was rebutted by I&E and the OCA.<sup>34</sup> Aqua's decision to pay in excess of the depreciated original cost does not guarantee recovery as Aqua appears to presume. Further, the fact that the Commission chose to express concern to Phoenixville regarding a possible acquisition does not justify Aqua's decision to pay more than book value for Phoenixville.<sup>35</sup> Also, the ALJ did not "sidestep" any issue. The ALJ considered the factors raised and rebutted by I&E and the OCA and clearly stated "those factors alone, though, do not support a conclusion that the service rendered by Phoenixville was inadequate within the meaning of Section 1327."<sup>36</sup> Further, Aqua's regionalization argument is irrelevant to Aqua's choice to pay more than book value for the system. The regionalization concept would also apply if Aqua would have paid less than book value.

Finally, the ALJ noted that "the Commission expects Class A public utilities, such as Aqua, to have completed a thorough analysis as part of any acquisition to factor the condition of a system prior to making an offer and closing on a transaction."<sup>37</sup>

I&E asserts that the ALJ presented a well-reasoned analysis; considered all factors raised by the parties; and correctly rejected Aqua's proposed positive acquisition adjustment claim for Phoenixville.<sup>38</sup> Therefore, the Commission should reject Aqua Exception No. 2.

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<sup>32</sup> Aqua Exceptions., p. 16.

<sup>33</sup> I&E St. No. 3-SR, p. 6. *See also* I&E St. No. 3, pp. 7-9.

<sup>34</sup> R.D., p. 43.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> R.D., pp. 39-44.

**C. I&E Reply to Aqua PA Exception No. 3: The R.D. correctly recommends the cancellation of contracts between Aqua and certain Rider DRS customers. R.D. at 47-50.**

Aqua argues that if it cancels certain contracts, as the R.D. directs, this action could likely negatively impact current Aqua customers, create unnecessary litigation, and force local governments to build unnecessary infrastructure.<sup>39</sup>

The ALJ, however, correctly reasoned, customers that can satisfy the requirements of Rider DRS can enter into customer specific contracts at prices designed to maintain sales that would otherwise be lost to water service alternatives.<sup>40</sup> And the key consideration under Aqua's tariff is the existence of a competitive alternative.<sup>41</sup> The ALJ correctly analyzed the evidence presented regarding each of the Rider DRS contracts and reached well-reasoned conclusions.<sup>42</sup> Aqua had the opportunity to provide substantial record evidence to support each of the Rider DRS contracts and failed to meet its burden regarding those contracts identified by the ALJ.<sup>43</sup> Therefore, the Commission should reject Aqua Exception No. 3, parts 1, 2, and 3.

**D. I&E Reply to Aqua PA Exception No. 4: The ALJ recommended increasing Aqua's special contract revenue associated with certain negotiated water rate contracts to reflect escalation rates as calculated by the OCA. R.D. at 53.**

I&E does not offer a reply to Aqua PA Exception No. 4.<sup>44</sup>

**E. I&E Reply to Aqua PA Exception No. 5: The ALJ properly recommended that the Commission adopt I&E's proposed adjustment to the Company's general liability insurance expense. R.D. at 59.**

Aqua argues that it fully explained how it calculated its projection of general liability insurance expense for the FPFTY.<sup>45</sup>

Nevertheless, after reviewing the record evidence presented by all parties, the ALJ correctly concluded that Aqua failed to provide adequate documentation in support of its treatment of

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<sup>39</sup> Aqua Exceptions, p. 18.

<sup>40</sup> R.D., p. 47.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*, pp. 47-50.

<sup>43</sup> *Id.*

<sup>44</sup> R.D., pp. 52-53.

<sup>45</sup> Aqua Exceptions, p. 24.

insurance expense, adding, the mixing of calculation elements is not justified for the purposes of projecting expense increases.<sup>46</sup> Therefore, the Commission should reject Aqua Exception No. 5.

**F. I&E Reply to Aqua PA Exception No. 6: The ALJ recommended that Aqua not be permitted to recover costs associated with the Company's SERP. R.D. at 63.**

I&E does not offer a reply to Aqua PA Exception No. 6.<sup>47</sup>

**G. I&E Reply to Aqua PA Exception No. 7: The ALJ recommended that the Company's full inflation adjustment should be removed as it is not supported by record evidence and contradicts precedent to approve inflation adjustments only when the proposed adjustments are specific. R.D. at 70.**

I&E does not offer a reply to Aqua PA Exception No. 7.<sup>48</sup>

**H. I&E Reply to Aqua PA Exception No. 8: The ALJ properly recommended that the Commission adopt I&E's recommendations regarding recently acquired Section 1329 systems and those acquired subsequent to this base rate proceeding. R.D. at 82-83.**

Aqua argues that requiring it to prepare separate cost of service studies in revenue requirements in its next base rate proceeding ignores applicable appellate precedent and disregards the impacts of imposing this requirement on Aqua relative to other water and wastewater utilities in Pennsylvania.<sup>49</sup>

The ALJ, however, considered the arguments presented by I&E and concluded that this base rate filing emphasizes the importance of tracking the implications of the acquisition of water and wastewater systems pursuant to Section 1329<sup>50</sup> and the effect of those acquisitions on rates and cost of service.<sup>51</sup> The ALJ correctly noted that while consolidating rate zones is important, it is also important to appropriately track the cost to serve the Section 1329 acquired systems and the steps taken to move rates in these systems closer to the cost of service while ensuring that other ratepayers

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<sup>46</sup> R.D., p. 59.

<sup>47</sup> R.D., pp. 63-64.

<sup>48</sup> R.D., pp. 70-71.

<sup>49</sup> Aqua Exceptions, pp. 29-30.

<sup>50</sup> 66 Pa. C.S. § 1329.

<sup>51</sup> R.D., p. 83.

are not subsidizing service to these customers indefinitely.<sup>52</sup> Therefore, the Commission should reject Aqua Exception No. 8.

**I. I&E Reply to Aqua PA Exception No. 9: The ALJ properly recommended that the Commission accept I&E’s methodology for allocating wastewater revenue and designing wastewater rates including I&E’s proposed Act 11 allocation. R.D. at 87-91, 96.**

Aqua argues that the ALJ should have accepted the Company’s proposed Act 11<sup>53</sup> revenue allocation, which proposed to allocate approximately 30% or \$21 million of the Company’s proposed revenue requirement from wastewater to water rates.<sup>54</sup> Aqua also argues that the ALJ should have adopted the wastewater revenue allocation and rate design proposed by the Company.<sup>55</sup>

I&E asserts that the ALJ properly considered all of the wastewater revenue allocations presented by the parties and properly recommended that the Commission accept the methodology presented by I&E for allocating revenue and designing the wastewater rates.<sup>56</sup> The ALJ recognized I&E’s approach takes into consideration the number of water and wastewater customers in each system and balances the goal of moving rates toward alignment with the cost of service, while also mitigating some of the large rate increases that would result if no allocation of wastewater revenue was approved.<sup>57</sup> Further, the ALJ acknowledges that I&E’s approach acknowledges the benefits received by the communities serviced by the acquired systems from the Section 1329 sale of their systems to Aqua, but is less complicated and more logical than methods advocated by other parties.<sup>58</sup> Therefore, the Commission should reject Aqua Exception No. 9.

**J. I&E Reply to Aqua PA Exception No. 10: The ALJ recommended that Aqua be required to study unmetered rates. R.D. at 98.**

I&E does not offer a reply to Aqua PA Exception No. 10.<sup>59</sup>

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<sup>52</sup> *Id.*

<sup>53</sup> 66 Pa. C.S. § 1311(c).

<sup>54</sup> Aqua Exceptions, p. 31.

<sup>55</sup> *Id.*, p. 34.

<sup>56</sup> R.D., p. 91.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> R.D., pp. 96-98.

**K. I&E Reply to Aqua PA Exception No. 11: The ALJ properly recommended that the Commission reject the Company’s proposed Energy Cost Adjustment Mechanism and Purchased Water Adjustment Clause. R.D. at 99-104.**

Aqua continues to make the failed argument that it demonstrated that both the ECAM and PWAC satisfy the requirements for approval of reconcilable riders under Pennsylvania law and Section 1307(a) of the Public Utility Code.<sup>60</sup> Further, Aqua continues to make the erroneous and unsupported arguments that it demonstrated that both the ECAM and the PWAC satisfy the well-recognized exception to the prohibition against single-issue ratemaking; and that each rider seeks to recover an expense that is easily identifiable and beyond the Company’s control.<sup>61</sup>

ALJ Long considered the counterarguments made by the statutory parties and correctly recommended that the ECAM for the recovery of energy costs be rejected.<sup>62</sup> The ALJ reasoned that Aqua is a large company with considerable buying power.<sup>63</sup> Therefore, there is no reason to believe that it cannot adequately control its energy costs through normal cost control mechanisms.<sup>64</sup> The ALJ concluded that the ECAM would equate to single issue ratemaking were it enacted and it should be rejected.<sup>65</sup>

Regarding the PWAC, the ALJ also correctly agreed with the statutory advocates and recommended that Aqua recover its purchased water costs in base rates rather than by the PWAC.<sup>66</sup> The ALJ reasoned, Aqua’s projected purchased water costs will amount to only about 0.7% of its total water cost of service.<sup>67</sup> Further, the ALJ noted, Aqua is not a small utility where purchased water or energy costs constitute a significant portion of its cost of service.<sup>68</sup> Aqua’s costs are not so significant such that they would cause its overall cost of service to vary widely from authorized revenues as a result of suppliers’ price changes.<sup>69</sup> Finally, the ALJ concluded, Aqua has failed to

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<sup>60</sup> Aqua Exceptions, p. 36.

<sup>61</sup> *Id.*

<sup>62</sup> R.D., p. 101.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*, p. 102.

<sup>66</sup> *Id.*, p. 103.

<sup>67</sup> *Id.*, p. 104.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

demonstrate that the PWAC is necessary, just or reasonable.<sup>70</sup> Therefore, the Commission should reject Aqua Exception No. 11.

**L. I&E Reply to Aqua PA Exception No. 12: The ALJ properly recommended that that the Commission reject the Company’s proposed Federal Adjustment Tax Surcharge. R.D. at 104-106.**

Aqua erroneously concludes that, because the ALJ concluded that the FTAS is “premature” because there is “no pending legislation proposing an increase to the federal corporate income tax rate” and “[e]ven if legislation was being considered in Congress, there is no way of knowing if or when and in what form the tax change would be implemented”;<sup>71</sup> the RD did not find or conclude that the proposed method of calculation, mechanics or safeguards set forth in the Company’s proposed FTAS were unreasonable.<sup>72</sup> I&E asserts that this is not a reasonable calculation as the two are not “if-then” related conclusions.

Rather, the ALJ did not even have to consider whether the FTAS is reasonable because the ALJ first concluded that the proposed FTAS is premature, stating “at this time there is no pending legislation proposing an increase to the federal corporate income tax rate.”<sup>73</sup> The ALJ noted, it is uncertain when the next change in the federal corporate income tax rate will occur and whether any future legislation enacting a change in the federal corporate tax rate would include other provisions which would affect tax liabilities.<sup>74</sup> The ALJ concluded, while it may be true that future changes in tax rates may affect utilities differently, there is no current legislation to actually consider and Aqua is requesting a surcharge mechanism with no trend or context in which to evaluate it.<sup>75</sup> Therefore, the Commission should reject Aqua Exception No. 12.

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<sup>70</sup> *Id.*

<sup>71</sup> R.D., p. 106.

<sup>72</sup> Aqua Exceptions, p. 37.

<sup>73</sup> R.D., p. 106.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

- M. I&E Reply to Aqua PA Exception No. 13: The ALJ recommended that Aqua be required to develop an isolation valve inspection and exercise program. R.D. at 124-125.**

I&E does not offer a reply to Aqua PA Exception No. 13.<sup>76</sup>

### **III. I&E REPLIES TO EXCEPTIONS OF THE OCA**

I&E recommends that the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and reject the OCA Exceptions to the extent recommended below.

- A. I&E Reply to OCA Exception No. 1: The ALJ adopted Aqua’s residential metered water sales while the pandemic continues to keep people at home and using more water than normal. R.D. at 53-55.**

I&E does not offer a reply to OCA Exception No. 1.<sup>77</sup>

- B. I&E Reply to OCA Exception No. 2: The ALJ concluded that Aqua’s claim for a new advertising expense does not need to be normalized. R.D. at 68-69.**

I&E does not offer a reply to OCA Exception No. 2.<sup>78</sup>

- C. I&E Reply to OCA Exception No. 3: The ALJ concluded that Aqua’s claim for \$644,475 in non-rate case legal expenses for its water utility is reasonable. R.D. at 64-65.**

I&E does not offer a reply to OCA Exception No. 3.<sup>79</sup>

- D. I&E Reply to OCA Exception No. 4: The ALJ recommended that Aqua be allowed to recover the costs of its stock-based compensation plan from consumers. R.D. at 61-63.**

I&E does not offer a reply to OCA Exception No. 4.<sup>80</sup>

- E. I&E Reply to OCA Exception No. 5: The ALJ recommended that the OCA’s further adjustment to disallow the cost of seasonal positions be rejected. R.D. at 60.**

I&E does not offer a reply to OCA Exception No. 5.<sup>81</sup>

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<sup>76</sup> R.D., pp. 124-125.

<sup>77</sup> R.D., pp. 53-55.

<sup>78</sup> R.D., pp. 68-69.

<sup>79</sup> R.D., pp. 64-65.

<sup>80</sup> R.D., pp. 61-63.

<sup>81</sup> R.D., pp. 60.

**F. I&E Reply to OCA Exception No. 6: The ALJ properly recommended the Commission adopt Aqua’s proposed 36-month normalization period for rate case expense. R.D. at 57-58.**

I&E does not offer a reply to OCA Exception No. 6.<sup>82</sup> Further, I&E agreed with the Company’s recommendation of a 36-month period.<sup>83</sup>

**G. I&E Reply to OCA Exception No. 7: I&E does not oppose the OCA’s argument that the ALJ erred by accepting Aqua’s proposal to continue deferring its COVID-19 uncollectible expenses indefinitely. R.D. at 133-137.**

The OCA argues that it 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.<sup>84</sup> The OCA adds, “even so, it is unreasonable to continue to allow deferrals indefinitely beyond the FPFTY.”<sup>85</sup> The OCA asserts, “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.”<sup>86</sup> The OCA concluded, 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.<sup>87</sup>

I&E argued, as the ALJ acknowledged, that the Company be required to track further COVID-19 related reductions to uncollectibles by Water and the individual Wastewater revenue requirements; and, that the balances be claimed in the next rate filing, which is anticipated to be filed in 2024.<sup>88</sup> Further, the ALJ noted that I&E recommended that the Company be allowed to claim no increases to COVID-19 related uncollectibles beyond the effective date of new rates in this proceeding, particularly since Aqua has expressed that its motivation in delaying the amortization of

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<sup>82</sup> R.D., pp. 57-58.

<sup>83</sup> *Id.*, p. 57.

<sup>84</sup> OCA Exceptions, p. 9.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*, pp. 9-10.

<sup>87</sup> *Id.*, p. 10.

<sup>88</sup> R.D., p. 135.

the balance is to mitigate the impact on ratepayers.<sup>89</sup> Adding, I&E argued any new increases to the COVID-19 related uncollectibles should not be recoverable in a future proceeding.<sup>90</sup>

The ALJ opined that the Commission should continue to authorize Aqua to defer its COVID-19-related uncollectibles expenses.<sup>91</sup> Further, the ALJ stated, “I agree with I&E that Aqua be required to track further COVID-19 related reductions to uncollectibles by Water and the individual Wastewater revenue requirements.”<sup>92</sup> The ALJ reasoned, the burden is on Aqua to demonstrate that these expenses are “prudently incurred incremental extraordinary, nonrecurring expenses related to COVID-19.”<sup>93</sup> Noting further, the ALJ agreed with OCA that “these expenses should be offset by any savings, as Aqua has agreed to do.”<sup>94</sup>

Finally, the ALJ concluded, to date, the Commission has declined to impose a hard cutoff date for the accumulation of deferred expenses related to COVID-19.<sup>95</sup> Until such time as a hard cutoff date is established, I&E recommends that, in this proceeding, the Commission set the cutoff date for Aqua at the effective date of new rates.

**H. I&E Reply to OCA Exception No. 8: The ALJ recommended the Commission adopt the Company’s claimed capital structure. R.D. at 76-77.**

I&E does not offer a reply to OCA Exception No. 8.<sup>96</sup> Further, I&E agreed with adopting the Company’s capital structure.<sup>97</sup>

**I. I&E Reply to OCA Exception No. 9: The ALJ recommended that Aqua’s cost of equity is 8.90%. R.D. at 77-79.**

I&E supports the ALJ’s recommendation to adopt the methodology employed by I&E, which resulted in an 8.90% ROE, as the most reasonable.<sup>98</sup> Aqua also excepted to the ALJ recommending

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*, p. 136.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*, citing Re: COVID-19 Cost Tracking and Creation of Regulatory Asset, Docket No. M-2020-3019775 (Secretarial Letter dated May 13, 2020).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> R.D., pp. 76-77.

<sup>97</sup> *Id.*, p. 76.

<sup>98</sup> *Id.*, p. 77.

that the Commission adopt the I&E recommended 9.80% ROE. *See* I&E's Reply to Aqua Exception No. 1, parts 1-7, at pages 3-8 *supra*.

- J. I&E Reply to OCA Exception No. 10: The ALJ recommended that the Commission permit Aqua to continue utilizing the treatment of tax repair deductions which were approved in the settlement of Aqua's 2018 base rate case. R.D. at 72-74.**

I&E does not offer a reply to OCA Exception No. 10.<sup>99</sup>

- K. I&E Reply to OCA Exception No. 11: The ALJ recommended the Commission adopt I&E's recommended allocation of wastewater revenue requirement and the Act 11 subsidy. R.D. at 84-91.**

The OCA argues that its method for allocating revenue requirement between waste and wastewater customers is more reasonable and should be adopted instead.<sup>100</sup> Aqua also excepted to the ALJ's recommendation to adopt I&E's recommended allocation of wastewater revenue requirement and the Act 11 subsidy.<sup>101</sup> *See* I&E's Reply to Aqua Exception No. 9 at pages 12-13 *supra*.

The ALJ considered all of the various proposals set forth by the parties, and I&E supports the ALJ's well-reasoned recommendation regarding this difficult issue.<sup>102</sup>

- L. I&E Reply to OCA Exception No. 12: The ALJ accepted Aqua's water and wastewater customer cost analysis regarding proposed increases to customer charges. R.D. at 94-95.**

I&E does not offer a reply to OCA Exception No. 12.<sup>103</sup>

- M. I&E Reply to OCA Exception No. 13: The ALJ recommended adoption of the I&E methodology regarding designing wastewater rates. R.D. at 88-89.**

The OCA argues that the principal 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 and moving other divisions toward consolidation with those charges where

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<sup>99</sup> R.D., pp. 72-74.

<sup>100</sup> OCA Exceptions, p. 16.

<sup>101</sup> Aqua Exceptions, p. 31.

<sup>102</sup> R.D., pp. 84-93.

<sup>103</sup> R.D., pp. 94-95.

reasonable.<sup>104</sup> The OCA notes, 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.<sup>105</sup>

I&E notes that I&E Exception No. 2<sup>106</sup> discusses I&E's final wastewater rate schedule as proposed in its surrebuttal testimony and also mentions that revisions were made in the final schedule to address positions proffered by other parties including the OCA. Therefore, I&E recommends the Commission adopt I&E's final wastewater revenue allocation and rate design as discussed in I&E Exception No. 2.<sup>107</sup>

**N. I&E Reply to OCA Exception No. 14: The ALJ did not recommend that Aqua develop a pilot metering program for flat rate customers in Lake Harmony as recommended by the OCA. R.D. at 96-99.**

I&E does not offer a reply to OCA Exception No. 14.<sup>108</sup>

**O. I&E Reply to OCA Exception No. 15: The ALJ did not recommend requiring Aqua to study the feasibility of affording additional customers the option of Deduct Metering as a way to more accurately reflect water usage as recommended by the OCA. R.D. at 99.**

I&E does not offer a reply to OCA Exception No. 15.<sup>109</sup>

**P. I&E Reply to OCA Exception No. 16: The ALJ properly recommended that Commission approve Aqua's proposed Universal Service Rider cost recovery mechanism. R.D. at 107-109.**

The OCA argues that Aqua's net costs of the program should be recovered in base rates.<sup>110</sup>

I&E disagrees and supports the ALJ's well-reasoned recommendation.<sup>111</sup> As the ALJ notes, the Aqua-Peoples Settlement makes clear that Aqua's proposal will include "a comparable funding mechanism that exists for electric and gas utilities in Pennsylvania."<sup>112</sup> Adding, the Commission

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<sup>104</sup> OCA Exceptions, p. 22.

<sup>105</sup> *Id.*

<sup>106</sup> *See* I&E Exceptions, pp. 4-5.

<sup>107</sup> *See* I&E St. No. 5-SR, p. 4; I&E Exhibit 5-SR, Sch. 1, p. 1 of 3.

<sup>108</sup> R.D., pp. 96-99.

<sup>109</sup> R.D., pp. 98-99.

<sup>110</sup> OCA Exceptions, p. 26.

<sup>111</sup> R.D., pp. 107-109.

<sup>112</sup> *Id.*, p. 109.

approved the Aqua-Peoples settlement as a part of the Aqua-Peoples Acquisition Order and, therefore, Aqua's proposed USR is consistent with the directives of the Commission and Aqua's obligation to comply with the terms of the settlement.<sup>113</sup>

**Q. I&E Reply to OCA Exception No. 17: The ALJ recommended that the Commission adopt Aqua's proposed universal service program design without modification. R.D. at 109-114.**

I&E does not offer a reply to OCA Exception No. 17.<sup>114</sup> Additionally, the ALJ noted that I&E generally agrees with the Company's proposed universal service program.<sup>115</sup>

**R. I&E Reply to OCA Exception No. 18: The ALJ recommended that Aqua's proposed Customer Assistance Program application process be approved. R.D. at 115-116.**

I&E does not offer a reply to OCA Exception No. 18.<sup>116</sup>

**S. I&E Reply to OCA Exception No. 19: The ALJ recommended that Aqua continue to work to develop a Community Education Outreach Plan as described in Aqua testimony. R.D. at 116-118.**

I&E does not offer a reply to OCA Exception No. 19.<sup>117</sup>

**T. I&E Reply to OCA Exception No. 20: The ALJ found that Aqua has met its obligation to answer 82% of customer calls within 30 seconds. R.D. at 127-131.**

I&E does not offer a reply to OCA Exception No. 20.<sup>118</sup>

**U. I&E Reply to OCA Exception No. 21: The ALJ found that the previous settlement contemplated Aqua failing to meet its commitment to reduce its average call abandonment rate to 4% or less in 2020-21 due to events outside the Company's control. R.D. at 127-128.**

I&E does not offer a reply to OCA Exception No. 21.<sup>119</sup>

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<sup>113</sup> *Id.*

<sup>114</sup> R.D., pp. 109-114.

<sup>115</sup> *Id.*, p. 114.

<sup>116</sup> R.D., pp. 115-116.

<sup>117</sup> R.D., pp. 116-118.

<sup>118</sup> R.D., pp. 127-131.

<sup>119</sup> R.D., pp. 127-128.

- V. I&E Reply to OCA Exception No. 22: The ALJ found that Aqua complied with its obligation to conduct a root cause analysis of customer complaint data. R.D. at 128-129.**

I&E does not offer a reply to OCA Exception No. 22.<sup>120</sup>

- W. I&E Reply to OCA Exception No. 23: The OCA argues the ALJ erred in concluding that Aqua's customer satisfaction levels are not an additional reason to reject Aqua's proposed management performance adder. R.D. at 80-81, 129-131.**

The OCA first recognizes that the ALJ properly rejected Aqua's claim for a management performance adder.<sup>121</sup> The OCA then argues, however, in doing so, the ALJ erroneously 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.<sup>122</sup> The OCA then asserts that 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.<sup>123</sup>

I&E did not present testimony regarding this specific factor as it relates to the consideration of whether to award management performance points. Nevertheless, I&E does not oppose the OCA's assertion in OCA Exception No. 23.

- X. I&E Reply to OCA Exception No. 24: The ALJ recommended that the OCA's proposal that Aqua submit a Section 500 Report for each of its distribution systems be rejected. R.D. at 119-120.**

I&E does not offer a reply to OCA Exception No. 24.<sup>124</sup>

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<sup>120</sup> R.D., pp. 128-130.

<sup>121</sup> OCA Exceptions, p. 34. *See also*, R.D., pp. 80-81.

<sup>122</sup> OCA Exceptions, pp. 34-35, *citing* R.D., pp. 129-130.

<sup>123</sup> *Id.*

<sup>124</sup> R.D., pp. 119-120.

**Y. Y.I&E Reply to OCA Exception No. 25: The ALJ found that there was not substantial record evidence presented to support the OCA’s recommendation that Aqua be directed to reduce upstream water pressures or install additional pressure valves. R.D. at 120-124.**

I&E does not offer a reply to OCA Exception No. 25.<sup>125</sup>

**Z. I&E Reply to OCA Exception No. 26: The ALJ recommended the Commission reject the OCA’s recommendation that Aqua be required to inspect non-critical valves every five years instead of every twelve years. R.D. at 124-125.**

I&E does not offer a reply to OCA Exception No. 26.<sup>126</sup>

**AA. I&E Reply to OCA Exception No. 27: The ALJ concluded that Aqua should not be required to flush its SEPA system every three years. R.D. at 126.**

I&E does not offer a reply to OCA Exception No. 27.<sup>127</sup>

**BB. I&E Reply to OCA Exception No. 28: The ALJ found that the existence of the pandemic does not suspend the consideration of utility rate increases and that the ALJ is not deaf to these important concerns raised by the parties. R.D. at 35.**

I&E does not offer a reply to OCA Exception No. 28.<sup>128</sup>

#### **IV. I&E REPLIES TO THE EXCEPTIONS OF THE OSBA**

I&E recommends that the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and reject the OSBA Exceptions to the extent recommended below.

**A. I&E Reply to OSBA Exception No. 1: The ALJ recommended that the Commission adopt the Company’s proposed revenue allocation for its water service customers. R.D. at 91-93.**

I&E does not offer a reply to OSBA Exception No. 1.<sup>129</sup>

**B. I&E Reply to OSBA Exception No. 2: The ALJ recommended the Commission reject the OSBA’s proposed water revenue allocation. R.D. at 92.**

I&E does not offer a reply to OSBA Exception No. 2.<sup>130</sup>

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<sup>125</sup> R.D., pp. 120-124.

<sup>126</sup> R.D., pp. 124-125.

<sup>127</sup> R.D., p. 126.

<sup>128</sup> R.D., p. 35.

<sup>129</sup> R.D., pp. 91-93.

<sup>130</sup> *Id.*

**C. I&E Reply to OSBA Exception No. 3: The OSBA asserts that the ALJ erred by not recommending how the Act 11 subsidies should be allocated to the Company's water customer classes. R.D. at 91.**

The OSBA argues that, consistent with the requirements of *Lloyd*,<sup>131</sup> and following the statutory language set forth in Act 11, the OSBA finds Aqua PA's proposal to recover Act 11 wastewater subsidies from water customers on a revenue neutral basis by customer class is just and reasonable.<sup>132</sup> Further, OSBA argues, while Act 11 provides the statutory authority to temporarily recover the costs associated with the Company's wastewater system from its water customers, nothing in Act 11 allows for any cross-subsidization of customer classes between wastewater and water customers.<sup>133</sup> Finally, the OSBA requests that the Commission adopt the revenue neutral allocation proposal advocated by Aqua and the OSBA as the only just and reasonable resolution of this issue.<sup>134</sup>

I&E asserts that, but for recommending a total amount for the Act 11 subsidy, I&E did not present testimony regarding the allocation of the Act 11 subsidy among the water customer classes.<sup>135</sup> Therefore, I&E does not offer a reply to OSBA Exception No. 3 as the ALJ's recommendation relied on the record evidence presented by Aqua, the OCA, the OSBA, and Aqua LUG.<sup>136</sup>

**D. I&E Reply to OSBA Exception No. 4: The ALJ recommended the Commission not apply a scale back to wastewater rate increases until the Act 11 subsidy allocation is eliminated. R.D. at 88-95.**

The OSBA argues that the ALJ did not discuss how proposed class water increases, inclusive of Act 11 allocations, should be scaled back if Aqua was awarded less than its overall requested revenue requirement.<sup>137</sup> Further, the OSBA argues that while the ALJ acknowledges that excluding wastewater rates from any scale back in this proceeding will reduce the Company's Act 11 revenue requirement, the R.D. fails to discuss how Aqua's allocation of its proposed Act 11 revenue

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<sup>131</sup> *Lloyd v. PA. P.U.C.*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

<sup>132</sup> OSBA Exceptions., p. 20.

<sup>133</sup> *Id.*, p. 19.

<sup>134</sup> *Id.*, p. 20.

<sup>135</sup> See I&E St. No. 5, pp. 4-6; I&E St. No. 5-R, pp. 3-23; I&E St. No. 5-SR, pp. 2-8; I&E Exh. No. 5-SR, Sch. 1, pp. 1, 3.

<sup>136</sup> R.D., pp. 91-95.

<sup>137</sup> OSBA Exceptions, p. 20.

requirement of \$20.8 million to water classes should be scaled back to the ALJ's recommended level of \$10.2 million.<sup>138</sup>

I&E agrees with the ALJ's recommended adoption of the I&E methodology for allocating revenue and designing wastewater rates including the ALJ's adoption of I&E's recommended Act 11 subsidy.<sup>139</sup> I&E also agrees that no scale back of the Company's proposed wastewater rates should occur until the total wastewater Act 11 subsidy allocation is eliminated.<sup>140</sup> Beyond that, I&E does not offer a reply to OSBA Exception No. 4 as the ALJ's recommendation relied on the record evidence presented by Aqua, the OCA, OSBA, and Aqua LUG.<sup>141</sup>

## V. I&E REPLY TO THE EXCEPTION OF CAUSE-PA

I&E recommends that the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and reject the CAUSE-PA Exceptions to the extent recommended below.

### A. I&E Reply to CAUSE-PA Exception No. 1: The ALJ agreed with Aqua that substantial modifications of Aqua's proposed customer assistance programs are not appropriate at this time for a variety of reasons. R.D. at 112-114.

CAUSE states its exception as a blanket exception to the recommended decision as it applies to Aqua's proposed customer assistance and low-income programs.<sup>142</sup> CAUSE references Aqua's rate discount and arrearage forgiveness programs; and, rate affordability for low-income customers.<sup>143</sup> Further, CAUSE reiterates the arguments it made in its main and reply briefs.<sup>144</sup> Only pages 113-114 of the Recommended Decision are mentioned in CAUSE' lengthy exception.

The ALJ provided a well-reasoned discussion of the issues CAUSE raised in its main and reply briefs in the R.D. at pages 109-118.<sup>145</sup> Therefore, I&E does not offer a reply to CAUSE-PA Exception No. 1 as the ALJ's recommendation relied on the record evidence presented by Aqua, the

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<sup>138</sup> *Id.*, p. 21.

<sup>139</sup> R.D., pp. 88, 91.

<sup>140</sup> *Id.*, p. 91.

<sup>141</sup> R.D., pp. 88-95.

<sup>142</sup> CAUSE Exceptions., p. 4.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*, p. 4-14.

<sup>145</sup> R.D., pp. 109-118.

OCA, and CAUSE-PA.<sup>146</sup>

## VI. I&E REPLY TO EXCEPTION OF AQUA LARGE USERS GROUP

I&E recommends that the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and reject the Aqua LUG Exception to the extent recommended below.

**A. I&E Reply to Aqua LUG Exception No. 1: The ALJ recommended that but for the Act 11 subsidy allocated to water customers, the Company's allocation of revenues between all water customer classifications and all wastewater customer classifications is reasonable and should otherwise be approved. R.D. at 93.**

Aqua LUG Exception No. 1 is similar to OSBA Exceptions No. 1, 2, and 3 discussed *supra*. Aqua LUG argues that the R.D. offers no basis to support approval of a revenue allocation that results in a Relative Rate of Return for Commercial customers of 1.05 while making little to no progress towards cost-of-service based rates for the other classes.<sup>147</sup> Further, Aqua LUG opines, the Commission must therefore reject this recommendation and, instead, adopt the allocation set forth by Aqua LUG, or the alternative by the OSBA, as both of these recommendations move all classes closer to their cost to serve.<sup>148</sup>

But for recommending a total amount for the Act 11 subsidy, I&E did not present testimony regarding the revenue allocation nor the allocation of the Act 11 subsidy among the water customer classes.<sup>149</sup> Therefore, I&E does not offer a reply to Aqua LUG Exception No. 1 as the ALJ's recommendation relied on the record evidence presented by Aqua, the OCA, the OSBA, and Aqua LUG.<sup>150</sup>

## VII. I&E REPLIES TO EXCEPTIONS OF MASTHOPE

I&E recommends that the Commission affirm the Recommended Decision as modified according to the I&E Exceptions and reject the Masthope Exceptions to the extent recommended below.

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<sup>146</sup> *Id.*

<sup>147</sup> Aqua LUG Exceptions, p. 2.

<sup>148</sup> *Id.*

<sup>149</sup> See I&E St. No. 5, pp. 4-6; I&E St. No. 5-R, pp. 3-23; I&E St. No. 5-SR, pp. 2-8; I&E Exh. No. 5-SR, Sch. 1, pp. 1, 3.

<sup>150</sup> R.D., pp. 91-95.

**A. I&E Reply to Masthope Exception No. 1: The ALJ recommended an increase in Masthope residential and commercial wastewater rates without recommending conditions and deadlines regarding a hydraulic overload condition. R.D. at 131-133.**

Masthope argues that if the Commission approves any increase in Masthope rates, the Commission should impose conditions and deadlines on Aqua to assure that the Company timely resolves the hydraulic overload conditions and permanently eliminates building restrictions that detrimentally affect the community.<sup>151</sup> Further, Masthope argues the existence of Aqua’s Corrective Action Plan in response to the Pa DEP does not preclude the Commission’s authority to act.<sup>152</sup>

I&E supports the ALJ’s well-reasoned recommendation that the Commission adopt the I&E methodology for allocating revenue and designing wastewater rates as they pertain to Masthope including the ALJ’s adoption of the I&E recommended Act 11 subsidy.<sup>153</sup> Beyond that, I&E does not offer a reply to Masthope Exception No. 1 as the ALJ’s recommendation relied on the record evidence presented by Aqua, Masthope and the OCA.<sup>154</sup>

**B. I&E Reply to Masthope Exception No. 2: The ALJ recommended an increase in Masthope residential and commercial wastewater rates. R.D. at 84-91.**

Masthope argues that it cautioned against adopting revenue allocations pursuant to Act 11 of 2021 for allocating water revenues to Aqua’s wastewater revenue requirement that result in significant increases in wastewater rates for Masthope ratepayers.<sup>155</sup> Further, Masthope argues the Act 11 subsidy adjustments adopted by the R.D. result in unjust and unreasonable rates that disproportionately and negatively affect Masthope wastewater customers.<sup>156</sup>

While I&E understands why Masthope is making the arguments it has, I&E would remind Masthope that any Act 11 subsidy imposed on the Aqua water customers is for the benefit of the Aqua wastewater customers (Masthope included). Without the Act 11 subsidy from wastewater to water customers, the Masthope wastewater rates would necessarily have to be increased even further.

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<sup>151</sup> Masthope Exceptions, p. 2.

<sup>152</sup> *Id.*, p. 6.

<sup>153</sup> R.D., pp. 88, 91.

<sup>154</sup> R.D., pp. 131-133.

<sup>155</sup> Masthope Exceptions, p. 10.

<sup>156</sup> *Id.*, p. 11.

Additionally, in cases such as the instant one before the Commission, the ALJ and the Commission are faced with the difficult task of balancing the justness and reasonableness of all components of revenue allocation and rate design, within the complexities of a cost-of-service methodology, among all customer classes. And, the reality is, as a result of the difficult choices that must be made, all customer classes will inevitably feel some degree of an undesired impact. Therefore, I&E supports the ALJ's well-reasoned recommendation that the Commission adopt the I&E methodology for allocating revenue and designing wastewater rates (including Masthope) including the ALJ's adoption of the I&E recommended Act 11 subsidy.<sup>157</sup>

### **VIII. CONCLUSION**

Wherefore, I&E respectfully submits that for all the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Recommended Decision of Administrative Law Judge Mary D. Long, issued on February 18, 2022, be adopted by the Commission pursuant to the I&E Exceptions and the I&E Replies to Exceptions set forth above.

Respectfully submitted,



Scott B. Granger  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 63641

Dated: March 7, 2022

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<sup>157</sup> R.D., pp. 82- 91.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Replies to Exceptions** dated March 7, 2022, in the manner and upon the persons listed below:

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