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March 7, 2022

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Attached are the Replies to Exceptions of Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. ("Aqua PA") in the above-referenced proceeding.

Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Michael W. Hassell

MWH/kl  
Attachment

cc: Honorable Mary D. Long (w/att.)  
Office of Special Assistants (w/att.)  
Certificate of Service

**CERTIFICATE OF SERVICE**  
**(R-2021-3027385 and R-2021-3027386)**

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), and the Prehearing Order dated October 19, 2021 (establishing the list of fully active parties in this proceeding).

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Date: March 7, 2022

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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**REPLIES TO EXCEPTIONS OF  
AQUA PENNSYLVANIA, INC. AND AQUA PENNSYLVANIA WASTEWATER, INC.**

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Dated: March 7, 2022

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## **I. INTRODUCTION**

Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc. (collectively, “Aqua PA,” “AP” or the “Company”) hereby file their Replies to the Exceptions of the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Aqua Large Users Group (“Aqua-LUG”), Masthope Community Association (“Masthope”), and Mr. Donald Osinki. Each of the aforementioned parties excepted to the Recommended Decision dated February 18, 2022 (the “RD”), and issued by Administrative Law Judge Mary D. Long (the “ALJ”). Page limitations restrict the explanations that can be provided herein, and AP requests that the Commission refer to AP’s briefs for more complete responses. AP submits that the exceptions filed by the other parties should be denied, AP’s exceptions should be granted, and the RD should be modified consistent with AP’s exceptions.

## **II. REPLY TO EXCEPTIONS**

### **A. REPLIES TO I&E EXC. NO. 1; OCA EXC. NO. 1. – PROPOSED REVENUE ADJUSTMENTS**

#### **1. The RD Correctly Determined That The Borough of Schwenksville Provided Documentation That Satisfies AP’s Commission-Approved Rider DRS.**

The RD rejected I&E’s proposal to cancel the Rider DRS contract between AP and the Borough of Schwenksville (“Schwenksville”). RD at 49. I&E has excepted, and argues that the letter provided by Schwenksville to AP, and relied upon by the RD, “does not rise to the level of an affidavit and therefore is not sufficiently reliable.” I&E Exc. at 4.

I&E’s argument disregards the plain language of Rider DRS, which permits AP to accept “documentation [that] may include, but is not limited to, an affidavit.” Tariff Water No. 3, Original Page 20 (emphasis added). AP fully addressed I&E’s claims, and demonstrated that it satisfies the

requirements of its tariff. AP MB at 46-47. Moreover, I&E's assertion that AP cannot accept documentation that meets the plain language of its tariff would violate the requirements of 66 Pa.C.S. § 1303. *See* AP Exc. at 19. For these reasons summarized above, and explained in AP's briefs, I&E's exception should be denied. AP MB at 46-47; AP RB at 17-18.

**2. The RD Correctly Rejected OCA's Adjustment To Water Residential Sales.**

The RD accepted AP's adjustments to water consumption for residential, commercial and public customers associated with COVID-19, and rejected OCA's proposal that only 75% of the residential sales adjustment be applied. RD at 54-55. OCA excepts, and argues residential water usage is not likely to return to pre-pandemic levels in the FPFTY. OCA Exc. at 1-2.

AP explained, and the RD correctly noted, that OCA's proposal to accept AP's adjustment for commercial and public customers, but not for residential customers, is inconsistent. RD at 54; AP MB at 54-55. Moreover, AP presented credible evidence that demonstrated usage for all classes is moving toward pre-pandemic levels. AP MB at 54-55 (citing AP St. 5-R at 18-19). OCA's assertion to the contrary is false. For the reasons summarized above, and explained in AP's briefs, OCA's exception should be denied. AP MB at 53-55; AP RB at 19-20.

**B. REPLIES TO OCA EXC. NOS. 2-7 – PROPOSED O&M EXPENSE ADJUSTMENTS**

**1. The RD Correctly Rejected OCA's Proposal To Normalize AP's Claimed USP Advertising Expense.**

The RD rejected OCA's proposal to normalize over 3 years the portion of AP's claimed advertising expense associated with its proposed Universal Service Plan ("USP"). RD at 68-69. OCA excepts and argues normalization is "consistent with an understanding that advertising priorities change" and that "normalization of a new expense being introduced for the first time in the FPFTY that may fluctuate...is required under Commission precedent." OCA Exc. at 3.

OCA's arguments should be rejected. The RD correctly concluded that AP is permitted to

recover this expense under 66 Pa.C.S. § 1316 and that to require AP to normalize an expense to be incurred in the FPFTY that is associated with a new program to be implemented in the FPFTY is unfair. RD at 68-69; *see also* AP MB at 86-87. Indeed, as emphasized by the RD, OCA itself proposed increased outreach efforts for the proposed USP. RD at 69. Further, OCA offered no evidence to indicate AP's existing level of advertising expense, exclusive of the new CAP spending, is excessive. In addition, OCA continues to rely upon an inapposite case, that dealt with the specific variability of uncollectibles expense and not a new expense associated with a new program. AP RB at 35.<sup>1</sup> For these reasons summarized above, and explained in AP's briefs, OCA's exception should be denied. AP MB at 86-87; AP RB at 35.

**2. The RD Correctly Accepted AP's Use Of A Three-Year Average For Non-Rate Case Legal Expense.**

The RD rejected OCA's proposed two-year normalization period for non-rate case legal expense. RD at 65. OCA excepts, and asserts AP "has been inconsistent about whether a three-year time frame is appropriate," "is not actually concerned with abiding by precedent," and "has failed to establish that any expenses from the 2019 year are reoccurring." OCA Exc. at 4.

Each of OCA's arguments is without merit. AP has not been inconsistent; AP has consistently used a three-year average for this expense category to account for the ebbs and flows that occur with respect to this expense category in the normal course of business. AP MB at 81. Specifically, a three-year average captures regular cyclical legal expenses, *i.e.*, union contract negotiations, not captured by OCA's proposal. AP MB at 81. Unlike OCA, AP presented evidence regarding the ebbs and flows specific to expense categories that drove its use of different periods for those categories. AP RB at 32-33. OCA's remaining arguments lack any evidentiary or legal

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<sup>1</sup> Citing *Pa. PUC v. Pennsylvania American Water Co.*, Docket Nos. R-00038304, et al., 2003 Pa. PUC LEXIS 498, at \*101-02 (Recommended Decision dated Nov 26, 2003), *adopted as modified*, Order entered Jan. 29, 2004.

support. For these reasons summarized above, and explained in AP's briefs, OCA's exception should be denied. AP MB at 80-81; AP RB at 32-33.

**3. The RD Correctly Concluded That AP's Claimed Incentive Compensation Expense Should Be Approved.**

The RD rejected OCA's proposal to disallow costs of AP's stock-based incentive compensation program. RD at 61-63. OCA excepted, arguing that the stock-based incentive compensation plan does not benefit customers. OCA disregards the record. One of the specific metrics for an employee to earn a stock award is to improve operational efficiency. AP RB at 26 (quoting HIGHLY CONFIDENTIAL OCA Exhibit LA-8 at 33-34). Specific efforts to control expenses are clearly a benefit to customers, and therefore justify recovery of the incentive compensation expense in rates. *See* AP MB at 69-70 (citing cases).

OCA also argues that AP must demonstrate its objectives have been successful in the past. OCA Exc. at 5-6. AP explained that incentive compensation has been paid each year since 1990, demonstrating that the plan is successful in encouraging accomplishment of AP's key objectives and the ongoing control over operating costs. AP St. 1-R, at 16-17.

For the reasons summarized above and explained in AP's briefs, OCA's exception should be denied. AP MB at 68-71, AP RB at 26-28.

**4. The RD Correctly Rejected OCA's Seasonal Employee Headcount Adjustment.**

The RD explained that the parties resolved their dispute regarding the vacancy rate adjustment used to calculate payroll expense, and denied OCA's further adjustment to reduce the number of seasonal positions included in AP's claim. RD at 67. OCA asserts that this recommendation is in error, and argues that AP failed to provide evidence that it was likely to fill all 33 of its budgeted-for seasonal positions. OCA Exc. at 7.

OCA's exception regarding seasonal positions should be denied. The RD correctly found

the testimony of AP witness Ms. Feeney credible. RD at 61. In addition, the RD correctly reasons that AP's payroll expense claim, including its claimed seasonal positions, is "based upon anticipated normal operating conditions" during the FPFTY. RD at 61. AP explained that OCA's adjustment was based off (1) erroneous information for 2019 that was subsequently corrected and (2) information for 2020 and 2021 that were impacted by the COVID-19 pandemic that is not reflective of normal operating conditions. AP MB at 66-67; AP RB at 24-25. Indeed, OCA's position appears to be another instance where it will accept adjustments related to COVID-19 that reduced costs, but reject adjustments due to COVID-19 that increased costs. AP RB at 25. For these reasons, and as explained in AP's briefs, OCA's exception should be denied.

**5. The RD Correctly Rejected OCA's Proposed Use Of A 39-Month Normalization Period For Rate Case Expense.**

The RD denied OCA's recommended 39-month normalization period for AP's claimed rate case expense, and accepted AP's claimed 36-month period. RD at 57-58. OCA excepts to this recommendation. OCA Exc. at 7-9. It argues that (a) AP was not constrained from making a rate case filing after its 2011 base rate case, (b) the decision by a utility to stay out of base rate cases for longer periods is the basis for the use of historical periods between rate cases to determine a normalization period, and (c) the cases cited in the RD support OCA's position that the historic period must be considered. OCA Exc. at 8-9.

OCA misreads the RD. AP did not argue that it was "constrained" from making a base rate filing. Rather, it explained that "OCA's calculated average is distorted by the time period between AP's 2011 and 2018 rate case, based upon a circumstance specific to the settlement of the 2011 rate case that will not occur in the future." AP MB at 79 (citing AP St. 3-R at 9).<sup>2</sup> This distortion, due to the unique circumstances presented by the case, is exactly why the Commission has noted

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<sup>2</sup> The circumstance was the initial adoption of the tax repairs election.

that the normalization period for rate case filings may require consideration of future circumstances. AP MB at 9. This is consistent with prior precedent.<sup>3</sup> For these reasons and as explained in AP’s briefs, OCA’s exception should be denied. AP MB at 77-80; AP RB at 31-32.

**6. The RD Correctly Approved AP’s Proposal To Continue To Defer Incremental Uncollectibles Expenses Associated With The COVID-19 Pandemic.**

The RD accepted AP’s proposal to continue to defer its incremental uncollectibles expenses incurred due to the COVID-19 pandemic, subject to the requirement that it track and offset associated savings, and that further reductions to uncollectibles be tracked by the water and individual wastewater requirements. RD at 136. The OCA excepts and asserts that 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,” and recommends the end of the FPPTY as this point. OCA Exc. at 9-10.

The RD correctly rejected these arguments by the OCA. Importantly, OCA still asserts that it is necessary to set an end-date for the calculation of COVID-19 deferrals that increase, but wants to capture any future decreases to the balance. AP RB at 89. This is an unbalanced approach and should be rejected. In contrast, AP’s proposal, which was modified and adopted by the RD, is balanced because it continues to defer the determination of changes to the COVID-19 uncollectible accounts balance, whether higher or lower, until AP’s next rate case. AP RB at 89; RD at 136-137. Finally, the RD recognizes that “[t]o date, the Commission has declined to impose a hard cutoff for the accumulation of deferred expenses related to COVID-19” and that “[t]he provisions of the May 13, 2020 Secretarial Letter have not been modified.” RD at 136. In this regard, OCA’s proposal to establish a cut-off date only for AP in the context of this rate proceeding

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<sup>3</sup> See *Emporium Water Company*, Docket No. R-2014-2402324, at pp. 48-49 (Order Entered Jan. 18, 2015), as well as *Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. R-2012-2290597 (Order entered Dec. 28, 2012) (“*PPL Electric 2012*”); see also RD at 57; AP MB at 79.

is unfair and premature. For these reasons summarized above, and explained in AP's briefs, OCA's exception should be denied. AP MB at 200-206; AP RB at 89.

**C. REPLIES TO OCA EXC. NOS. 8-9 – RATE OF RETURN ISSUES**

**1. The RD Correctly Rejected OCA's Hypothetical Capital Structure.**

OCA opposes the ALJ's adoption of AP's actual capital structure for ratemaking purposes. OCA Exc. at 10-11. OCA's position disregards long-established Commission precedent, which has recently been reaffirmed by the Commission.

OCA asserts that AP's actual capital structure should be replaced by a hypothetical 50% equity - 50% debt capital structure because AP's equity percentage is greater than the **average** of the barometer group. However, this is **not** the standard applied by the Commission. The Commission has consistently held that if a utility's actual capital structure is within the range of a similarly situated barometer group of companies, rates are set based on the utility's actual capital structure. *See, e.g., Columbia 2020*, as quoted at page 105 of Aqua's MB.<sup>4</sup> OCA's own data conclusively demonstrate that AP's capital structure falls with the range of the barometer group of water companies in this case. OCA Exhibit DGJ-14. AP's actual capital structure is not atypical and should be adopted. Therefore, for the reasons explained above and in AP's briefs, OCA's Exception 8 should be denied. AP MB at 102-107; AP RB at 42-45.

**2. The RD Correctly Rejected OCA's Proposed ROE Of 8.0%, But Erred In Adopting I&E's Understated 8.9% ROE.**

OCA contends that the Commission should adopt a return on common equity ("ROE") of 8%. AP has explained in its Exceptions that the RD's recommended 8.9% ROE, if adopted, would signal to Pennsylvania utilities and the investment community that Pennsylvania regulation no

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<sup>4</sup> See also *Pa. PUC v. PPL Electric Utilities Corp.*, Docket No. R-2012-2290597, at p. 68 (Order entered Dec. 28, 2012) ("*PPL Electric 2012*"); *Pa. PUC v. ALLTEL Pa., Inc.*, Docket No. R-942710 et al., 59 Pa. PUC 447, 491, 1985 Pa. PUC LEXIS 53, \*106-107 (Order entered May 24, 1985) ("*ALLTEL*").

longer is supportive of capital investment, made doubly bad given the clear rise in inflation and capital costs that is occurring. OCA's recommendation would be incrementally worse.

As explained in AP's briefs, the fundamental flaw in OCA's DCF-based recommendation is it is driven by OCA's belief that the Commission should adopt a growth rate between 2% and 4%. AP MB at.127-128. Such a result, when added to OCA's dividend yield, would produce an ROE near, or even less than, AP's embedded cost of debt.

Recognizing the absurdity of such a result, OCA arbitrarily selected the **lowest** growth rate presented by AP's witness Mr. Moul. In so doing, OCA's witness "introduced a downward bias to his result because he adopted the lowest of the forecast growth rates." AP St. 7-R at 15. This downward bias is not just "problematic," as the RD recognized, but should be disqualifying.

For reasons explained in AP's briefs and Exceptions, OCA's recommended ROE of 8% should be rejected by the Commission, and the Commission should substantially increase the RD's recommended ROE. AP MB at 126-128; AP RB at 54-55; AP Exc. at 2-15.

**D. REPLIES TO OCA EXC. NO. 10 - OCA'S FIN 48 PROPOSAL WAS PROPERLY DENIED BY THE RD**

OCA excepts to the ALJ's recommendation that Aqua be permitted to continue using the treatment of tax repairs deductions, including the FIN 48 adjustment and the "collar mechanism," approved in the settlement of AP's 2018 base rate case. RD at 72-74.

The RD correctly concludes that the FIN 48 adjustment appropriately recognizes that a portion of AP's claimed repairs expense deduction more likely than not will be disallowed by the IRS. To account for the adjustment, AP has established a reserve for the questioned deductions, which is deducted from rate base.<sup>5</sup> Any IRS disallowance would first be offset against the reserve. If in the future the IRS allows the full deduction, the reserve balance will be returned to customers.

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<sup>5</sup> The amount deducted from rate base in this case is \$6.1 Million. AP RB at 16.



This approach ensures customers are kept harmless, and minimizes future recoupment if the anticipated disallowances are made. AP MB at 94.

OCA's opposition to the "collar mechanism" is without merit. The collar adopted in the 2018 settlement is \$3 Million over/under the claimed net repairs deduction. This was established to address concerns that the claimed deduction could substantially vary from the actual deduction, while recognizing that this is not a reconciled cost. OCA's proposal to shrink the collar appears to be an effort to turn this deduction into a fully reconciled cost, which the RD properly rejected.

For reasons explained above and in AP's briefs, OCA's Exception concerning tax repairs should be denied. AP MB at 90-96; AP RB at 36-39.

**E. REPLIES TO OCA EXC. NOS. 11-13, I&E EXC. NO. 2, OSBA EXC. NOS. 1-4, AND AQUA-LUG EXC. NO. 1 – PROPOSED REVISIONS TO REVENUE ALLOCATION AND RATE DESIGN**

**1. The Commission Should Not Adopt Other Parties' Revenue Allocations.**

The RD recommended that the Commission adopt I&E's methodology for allocating wastewater revenues and designing wastewater rates, including I&E's proposed Act 11 allocation. RD at 87-91, 96. AP excepted to the RD's recommendations, and demonstrated that each of the justifications for its recommendation were the same justifications advanced by I&E and rebutted by AP. AP Exc. at 31-34. For the reasons explained in AP's briefs and its exceptions, the Commission should reverse the RD's recommended allocation of wastewater revenues, and adopt AP's proposed Act 11 revenue allocation and design of wastewater rates.

I&E excepts to the RD's use of its rebuttal wastewater revenue allocation, instead of the updated allocation used in its surrebuttal. I&E Exc. at 4-5. I&E's surrebuttal wastewater revenue allocation should be rejected for the same reasons as its rebuttal proposal, which were addressed in AP's exceptions and briefs.

OCA excepts to the RD and argues that its recommended revenue allocation was "more

reasonable” than the proposal of I&E, which was adopted in the RD. OCA Exc. at 16-18. Each argument advanced by OCA in support of its Act 11 revenue allocation is without merit. OCA’s calculation of “the revenue requirement associated with FMV premiums” (OCA Exc. at 17) is improper, seeks to disguise a substantial increase to wastewater base customers, and ignores the fact that AP’s proposal already accounts for the so-called “premiums” OCA seeks to undo. AP MB at 220-221; AP RB at 95-98.<sup>6</sup> OCA’s scaleback method should be rejected for the same reasons as its proposed revenue allocation. AP MB at 266. OCA’s proposed allocation of Act 11 revenues is neither fair nor reasonable, and was properly rejected.

OSBA similarly excepts to the RD’s determinations regarding revenue allocation. First, OSBA asserts that the RD erred by accepting AP’s proposed revenue allocation for water service customers. OSBA Exc. No. 1 at 2-11. Second, OSBA similarly asserts that its proposed water revenue allocation should have been accepted. OSBA Exc. No. 2 at 11-17. OSBA effectively raises the same arguments against AP’s proposed water revenue allocation and in favor of its own water revenue allocation as it did in its briefs. AP fully addressed these arguments in its briefs, and demonstrated that its proposals were consistent with Act 11 and *Lloyd*. AP MB at 224, 228-229; AP RB at 98-99, 100.<sup>7</sup> OSBA asserts the RD errs by not determining appropriate scaleback mechanisms for water rates. OSBA Exc. No. 4 at 20. OSBA asserts that AP’s proposed scaleback for water rates should be rejected for the same reasons it opposed AP’s water revenue allocation. AP demonstrated that its proposed scaleback was reasonable and, therefore, OSBA’s exception should be rejected. AP MB at 265-266; AP RB at 107-108.

Aqua-LUG also excepts to the RD’s recommended revenue allocation. Aqua-LUG Exc.

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<sup>6</sup> AP’s Reply Brief provides specific detail regarding this final point, which the Commission should take into consideration when evaluating OCA’s exceptions. AP RB at 96-97,

<sup>7</sup> A primary flaw in OSBA’s reliance upon *Lloyd* is that it treats the allocation of wastewater costs as though they are a separate rate charged to water customers. This is inaccurate.

at 2-6. Aqua-LUG asserts that if the Commission accepts I&E's scale back proposal to first eliminate the subsidy to water customers, additional water rates should be scaled back consistent with Aqua-LUG's proposal. Aqua-LUG Exc. at 6. The RD correctly rejected Aqua-LUG's proposal, which was based on moving a portion of the industrial class increase to the residential class, due to a larger increase to blocks 5 and 6 of the consumption rates for the industrial class. AP MB at 229-230. For the same reasons, Aqua-LUG's exceptions should be denied.

**2. The RD Should Have Adopted AP's Proposed Revenue Allocation Under Act 11, Consistent With The Position Of Masthope.**

Masthope excepts to the RD's adoption of I&E's proposed allocation of wastewater revenues to water customers under Act 11. Masthope Exc. at 10-11. Masthope supports AP's proposed Act 11 revenue allocation. AP RB at 99. Its exceptions lend further support to AP's proposed allocation of revenues and, therefore, AP does not oppose this exception.

**3. The RD Properly Adopted AP's Customer Cost Analysis.**

The RD adopted AP's customer cost analysis for residential water customer charges. RD at 94-95. OCA excepts to this recommendation, and further excepts to the RD's adoption of the AP's customer cost analysis for residential wastewater customer charges. OCA Exc. at 19-22. Contrary to OCA's claims in its exceptions, AP fully supported its increases to its water and wastewater customer charges, and demonstrated that the items OCA asserts are "overhead costs" or "indirect expenses" are actually essential to maintaining customer facilities. AP MB at 234-235. Moreover, AP's customer cost analysis is consistent with Commission precedent; the ALJ evaluated these costs "on a case by case basis" consistent with this precedent. AP MB at 235; RD at 95. OCA's further argument that AP's proposed customer charges violate gradualism and do not incentivize conservation should be rejected. OCA Exc. at 21. AP's rates were designed to balance these considerations with the cost of serving its customers, and AP demonstrated its rate

design guidelines were reasonable and appropriate. AP MB at 230-233, 237-238. Finally, OCA asserts AP's customer charges were designed based upon the full requested rate increase and should be scaled back based upon the actual increase adopted in this proceeding. OCA Exc. at 22. AP submits that its scaleback proposal should be accepted and the OCA's proposal should be rejected. AP MB at 265-266; AP RB at 107-108.

**4. The RD Should Have Adopted AP's Proposed Rate Design For Water And Wastewater Rates, Consistent With AP's Proposed Revenue Allocation.**

OCA also excepts to the RD's adoption of I&E's proposed wastewater rate design. OCA Exc. 22-23. AP submits that this exception should be denied for the same reasons advanced by AP in opposition to the RD's adoption of I&E's proposed wastewater rate design and revenue allocation. AP Exc. at 31-34; AP MB at 237-243; AP RB at 102-104.

**F. REPLIES TO OCA EXC. NO. 14 AND OSINSKI EXCEPTION NOS. 1-6 – SERVICE TO FLAT RATE CUSTOMERS**

**1. The RD Properly Rejected OCA's Proposed Flat Rate Metering Pilot.**

The RD rejected OCA's proposal for the implementation of a metering pilot for flat rate customers. OCA has excepted.<sup>8</sup> OCA Exc. at 24-25. As explained in AP's briefs, AP opposed any requirement to install Company water meters on customer owned (wells) or community owned water supplies, in order to implement metered wastewater rates. AP has no right to enter customers premises to demand the installation of water meters where AP does not provide the water supply. An "opt-in" pilot will only lead to meter installations where customers have decided that their usage is below average, thereby negating the validity of the "pilot." No further study is required, and AP should not be required to implement a pilot program at this time. For these summarized reasons, and those more fully explained in AP's testimony and briefs, OCA's exception should be

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<sup>8</sup> In its Exceptions, the Company opposed the ALJ's separate recommendation that the Company study certain usage assumptions used to develop wastewater flat rates.

denied. AP MB at 243-244; AP RB at 103.

**2. The RD Adequately Addressed Claims Raised By Campstead Circle Customers.**

Mr. Osinski filed exceptions to the RD, specifically related to the flat rate service provided to the Camp Stead Property Owners Association, which is part of AP's Tobyhanna Township Division. AP addresses concerns related to the flat rate service provided to certain customers in response to OCA's exception number 14 in Section F.1., *supra*. Moreover, AP responded to concerns raised by customers at residences on Campstead Circle. AP MB at 179-180. Furthermore, AP notes that Exhibits A-G, L and Q, attached to Mr. Osinski's exceptions, appear to be extra record evidence that was not offered into the record by Mr. Osinski in this proceeding. It is well established that a party is not permitted to introduce evidence not in the record in their exceptions.<sup>9</sup> As such, this extra-record evidence should be disregarded.

**G. REPLIES TO OCA EXC. NO. 15 – OCA PROPOSAL FOR DEDUCT METERS**

The RD rejected OCA's recommendation that AP be required to study the feasibility of the use of deduct meters to reflect wastewater usage, as a part of its rejection of OCA's recommendations regarding additional studies of a capping mechanism. RD at 99. Contrary to OCA's arguments, no such study should be ordered. The installation of a second meter to measure usage deductions will increase revenue requirement for installing and reading meters, but will not reduce the revenue requirement that needs to be recovered. As such, and for the reasons explained in AP's briefs, OCA's exception should be denied. AP MB at 244-245; AP RB at 104.

**H. REPLIES TO OCA EXC. NOS. 16-19, I&E EXC. NO. 3, AND CAUSE-PA EXC. NO. 1 – UNIVERSAL SERVICE RIDER AND UNIVERSAL SERVICE PLAN**

**1. The RD Correctly Recommended That AP's Proposed Universal Service Rider Should Be Approved.**

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<sup>9</sup> See, e.g., *Application of Apollo Gas Co.*, 1994 Pa. PUC LEXIS 45, at \*8-9 (Order entered Feb. 10, 1994) (denying party's attempt to introduce extra-record evidence in its exceptions).

The RD properly recommended that AP's proposed Universal Service Rider ("USR") be approved. The USR is a reconcilable rider to recover the actual net costs of its universal service plan. RD at 107-109. OCA excepts. Each of its arguments should be denied.

First, OCA asserts that the RD erred in its reliance on the *Aqua-Peoples Settlement*, and that it only quoted a portion of the *Aqua-Peoples Settlement*. OCA Exc. at 26-27. OCA attempts to walk back its admission in its brief that AP was obligated under this settlement to "implement a universal service program with a suite of low-income assistance programs." AP RB at 67. OCA's position is inconsistent; it wants AP to implement a USP similar to those in place at other energy utilities, but proposes that AP recover its costs in a manner entirely dissimilar to energy utilities. AP RB at 68. The RD correctly rejected this proposal, and affirmed the commitments approved by the Commission in the *Aqua-Peoples Settlement*.

Second, OCA claims that the costs of the program are within AP's control and that there is no statutory basis for the cost recovery of water program costs. OCA Exc. at 27. OCA ignores its own witness's admission that no enrollment limitations have been proposed, and that variance in enrollment will drive variances in costs. AP MB at 159.<sup>10</sup> In addition, OCA's assertion that there is no statutory basis for this reconcilable rider ignores 66 Pa.C.S. § 1307(a). AP MB at 264-265; AP RB at 68-70. AP demonstrated that the rider satisfies Section 1307(a).

Third, OCA argues that every other Pennsylvania water utility with a discount program recovers the costs of the program through base rates. OCA Exc. at 27. OCA disregards the fact that other water utilities' programs are not as robust as that proposed by AP. AP MB at 158.

Fourth, OCA claims that an offsetting reduction to AP's uncollectibles expense associated with the proposed USP is required. OCA Exc. at 28. This recommendation is premature and

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<sup>10</sup> The Company projects that the cost of discounts for the water program alone range from \$3 million to \$8 million. OCA projects costs of \$4 million to \$10 million under its proposal. See AP RB at 69.

unnecessary where a reconcilable rider is used. AP MB at 160-161; AP RB at 70-71.

OCA's exception should be denied. AP MB at 155-161, 264-265; AP RB at 67-71, 107.

## **2. The RD Correctly Rejected OCA's And CAUSE-PA's USP Design Changes.**

OCA and CAUSE-PA both except to the RD's recommendation that AP's proposed USP be approved without modification. OCA argues that the ALJ misunderstood its witness's testimony regarding program structure changes. OCA Exc. at 28-29. OCA further asserts that AP should be required to implement these changes in this case, as well as be required to transition to a percentage of income payment program ("PIPP") in its next base rate case. OCA Exc. 28-29.

CAUSE-PA similarly asserts that the RD does not adequately investigate the impact of proposed and existing rates on low-income customers. CAUSE-PA Exc. at 5-7. As such, CAUSE-PA asserts that the impacts of the rate increase must be mitigated by the implementation of "robust universal service programs." CAUSE-PA Exc. at 7. CAUSE-PA further claims that the RD "relegates" the analysis of low-income issues to the informal stakeholder process, and that this process is not a substitute for consideration of low-income interests in a base rate proceeding. CAUSE-PA Exc. at 8-12. Finally, CAUSE-PA claims that the need to address water and wastewater affordability on a statewide level does not preclude review of AP's low-income programs in this proceeding. CAUSE-PA Exc. at 12-14.

Both OCA and CAUSE-PA's exceptions regarding the proposed USP are without merit. Importantly, the RD properly recognized that AP's proposed USP will improve affordability and benefit customers, a fact conceded by both OCA and CAUSE-PA, but also balances the implementation of this new program as a part of this base rate case with the fact that AP will convert its existing customer information system ("CIS") to SAP in 2023. RD at 113-114. Indeed, the additional income tiers, changes to benefits, and other proposed modifications that OCA and CAUSE-PA assert should have been adopted were demonstrated by AP to be incompatible with

its existing CIS. AP MB at 148-155; AP RB at 56-67. In addition, AP explained that these proposals would increase the costs of implementing the USP, prior to any experience being gained about what benefits may already be experienced. *See, e.g.*, AP RB at 64.

Moreover, the fact that both OCA and CAUSE-PA support the implementation of a USP and concede that AP's proposed USP will benefit customers shows that the program is reasonable. The test is not whether the changes proposed by OCA and CAUSE-PA are more reasonable; it is whether AP's USP is reasonable. The RD correctly concluded that it was.

CAUSE-PA's further claims regarding the use of the informal stakeholder process misread the RD. The RD does not "relegate" the evaluation of the impacts of base rate increases to the informal stakeholder process. Rather, it recognizes that in the context of this base rate case, where AP has proposed a USP that will benefit low-income customers, the informal stakeholder process can be used to further present, discuss and vet possible modifications to the program before AP's next base rate case, or another case involving modifications to the USP, is initiated.

Finally, CAUSE-PA's claim that addressing affordability concerns in a statewide proceeding should not preclude an evaluation of low-income impacts and the USP in this base rate case misses the point. The RD properly found that an "affordability" determination should be made at the statewide level, because as OCA admits it will involve all water and wastewater utilities. RD at 113. A one-off determination on this matter should not be made in this proceeding, and need not be made in order to evaluate the proposed USP.

For these reasons summarized above, and those explained AP's briefs, OCA's and CAUSE-PA's exceptions should be denied. AP MB at 140-161; AP RB at 56-67.

### **3. The RD Correctly Rejected OCA's Revisions To The CAP Enrollment Process.**

OCA also excepts to the RD's rejection of its proposed modifications to the CAP enrollment process. OCA Exc. at 29-30. Contrary to its claims, the enrollment process involves



a single application, is simple and does not require additional income documentation and, therefore, poses no incremental burden. AP MB at 149; AP RB at 65. Existing Helping Hand customers will be asked to submit the simple application, to ensure customers are eligible for the new USP. AP MB at 149. Finally, OCA appears to assume AP will not encourage existing Helping Hand customers to participate in the new program. This is not the case, and AP will actively encourage these customers to enroll. AP MB at 149. OCA's exception should be denied.

**4. The RD Correctly Rejected OCA's Proposals For Specific Changes to AP's Community Education And Outreach Plan ("CEOP").**

OCA further excepts to the RD's recommendation that AP continue to work to develop a CEOP and consider the input of OCA and CAUSE-PA in its development. OCA Exc. at 31. OCA asserts that AP should be ordered to adopt OCA's CEOP proposals in this proceeding. OCA argues that AP is not required to submit a plan for its CEOP and, therefore, stakeholders lack an alternative forum to seek changes to the CEOP. OCA Exc. at 31. AP reiterates that it has worked, and will continue to work, with OCA and CAUSE-PA in the development of a CEOP, consistent with the RD. As such, OCA's concern is unfounded and its exception should be rejected.

**5. The RD Correctly Rejected I&E's Recommendation That CAP Enrollees Be Required To Verify Their Income.**

I&E, which generally supports AP's proposed USP, sought to require that AP verify enrollees' income for them to be eligible for CAP. AP, with concurrence of OCA and CAUSE-PA, proposed to permit self-attestation of income. The RD recommends adoption of AP's proposal, and I&E has excepted.

AP's proposal is based upon experience. Income documentation can be a barrier to enrollment. This must be balanced against the risk of fraud. When the Peoples Companies used self-attestation, at the encouragement of the Commission, it did not experience a spike in enrollment levels that would indicate a serious effort to defraud the program. AP MB at 150.

The CAP is a new program for AP's low-income customers, and barriers to participation should be avoided where possible. For reasons summarized above and detailed in AP's briefs, the RD's recommendation should be adopted. AP MB at 150; AP RB at 62.

**I. REPLIES TO OCA EXC. NOS. 20-23 – OCA'S CLAIMS REGARDING AP'S SATISFACTION OF CERTAIN CUSTOMER SERVICE STANDARDS**

**1. The RD Correctly Rejected OCA's Assertion That AP Had Not Satisfied Its Calls-Answered Commitment Under The *Aqua-Peoples Acquisition Order*.**

OCA excepts to the RD's conclusion that AP met its commitment to answer at least 82% of calls to its call center within 30 seconds.<sup>11</sup> OCA's arguments disregard the plain language of the commitment.

OCA argues that it is not reasonable to include calls handled by AP's Interactive Voice Response ("IVR") system in calculating compliance. However, OCA's contentions about what may be "reasonable" disregards the clear language of the commitment. Specifically, Paragraph 83 of the *Aqua-Peoples Settlement* states that "Aqua commits to improve Aqua's call center performance to meet or exceed the same performance standards that the Peoples Companies agreed to meet . . . i. percent of calls answered within 30 seconds of at least 82%." The Peoples Companies include IVR contacts in calculating service level performance, which is a standard calculation in measuring contact center performance. AP MB at 184. Thus, as the RD recognized:

Paragraph 83 of the *Aqua-Peoples Settlement* clearly references the standards of the Peoples Companies. Therefore, if the Peoples Companies customarily measure the number of calls answered within 30 seconds with aggregated data, it is reasonable for Aqua to do so.

RD at 128. OCA's exception should be denied. AP MB at 184-185; AP RB at 79-81.

**2. The RD Correctly Rejected OCA's Assertion That AP Had Not Satisfied Its Calls-Abandoned Commitment Under The *Aqua-Peoples Acquisition Order*.**

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<sup>11</sup> The commitment was made in the 2018 Settlement reached in the *Aqua-Peoples* merger proceeding ("*Aqua-Peoples Settlement*"). Docket No. A-2018-3006061, et. al.

The *Aqua-Peoples Settlement* includes a commitment that AP meet an average call abandonment rate no higher than 4% for the Years 2020-2021. The settlement further requires that AP provide a report on its achievement of service quality metrics, as follows:

The report will outline the actual metrics achieved and additional actions expected to be taken in the following year to further improve customer service. If Aqua PA has not achieved an identified metric, the report must also include the reasons for the failure and Aqua PA's plan to reach the service quality metric.

*Aqua-Peoples Settlement* ¶ 89. In its report for 2020, AP explained that it was unable to achieve the 4% rate due to unanticipated United States Postal Service delays and severe weather in late December 2020, which led to much higher than normal call volumes. AP MB at 185-186. When questioned for further details, AP demonstrated that it was on track to meet the commitment with an average rate of 3.9% as of December 27, 2020, until the extreme call volumes at year end exceeded AP's call center capabilities. AP St. 10-RJ at 3.

The RD concluded that the *Aqua-Peoples Settlement* contemplated that unexpected circumstances could prevent compliance, and that this "isolated situation does not equate to a failure to comply with the settlement commitments." RD at 128.

OCA excepts, and argues that the 2020 situation was "not an isolated event," citing partial year and prior year's data that AP did not achieve a 4% call abandonment rate. OCA Exc. at 32-33. However, the settlement commitment did not become effective until after the merger was approved by the Commission in 2020, and thus prior performance is not relevant to compliance with the commitment. OCA's exception should be denied. AP MB at 185-186; AP RB at 79-81.

### **3. The RD Correctly Rejected OCA's Assertion That AP Had Not Satisfied Its Commitment To Complete A Root Cause Analysis Of Customer Complaints.**

OCA excepts to the ALJ's conclusions concerning AP's efforts to comply with its commitments to establish a spreadsheet of customer complaints and conduct a root cause analysis ("RCA") of adverse trends. As the RD recognizes, AP has been working to finalize the

spreadsheet, but this had not been completed because AP has been attempting to work collaboratively with OCA to develop the spreadsheet's parameters. AP should not be criticized for these efforts. With respect to RCA, AP explained, and the RD recognized, that RCA occurs at AP on an on-going basis. If an isolated employee error is identified, coaching on compliance is provided. If multiple similar complaints are received, the issue is escalated to the customer contact team for review. AP is working to enhance and formalize the RCA process, which will be facilitated by AP's upcoming conversion to the SAP operating system. OCA's contentions regarding AP's RCA efforts are without merit. For the reasons summarized above and detailed in AP's briefs, OCA's exception should be denied. AP MB at 187-188; AP RB at 79-81.

**4. OCA's Claim That AP Should Not Receive A Management Performance Adjustment To Its ROE Based Upon Asserted Levels Of Customer Satisfaction.**

OCA asserts that AP's most recent customer satisfaction survey results should be considered in assessing the allowed ROE, including the allowance of an adder for management performance. OCA Exc. at 34-35.

Page limitations restrict AP's ability to detail the many reasons why a management performance adder should be included in the allowed ROE. *See* AP Exc. at 13-15. However, as the RD observes, survey results of 73% "excellent" or "very good" satisfaction with AP's service are not alone indicative of inadequate customer service, particularly where customer contact has been limited due to COVID-19.<sup>12</sup> OCA's Exception should be denied.

**J. REPLIES TO OCA EXC. NOS. 24-27 – THE RD CORRECTLY DENIED OCA'S CLAIMS REGARDING THE QUALITY OF WATER PROVIDED BY AP**

**1. The RD Correctly Denied OCA's Recommendation That AP Submit Section 500 Reports For Each Of Its Distribution Systems.**

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<sup>12</sup> OCA's attempted comparison to survey results for gas and electric utilities is undercut by its witness acknowledging that survey methods and categorization of responses are not necessarily comparable. OCA St. 6 at 11, n.9.

OCA argues that AP should be required to submit separate Section 500 Reports for each of its six operating divisions. OCA Exc. at 35. OCA fails to recognize that Section 500 Reports are filed by utilities on a consolidated basis, and has offered no reason why AP should be singled out to prepare separate reports for operating divisions. Furthermore, AP currently provides AWWA water audit reports on an annual basis pursuant to a pending Commission Water NOPR.<sup>13</sup> AP reporting on water loss in its annual Section 500 Report should not be revised while that NOPR remains pending. For reasons summarized above and explained in detail in AP's briefs, OCA's exception on UFW reporting should be denied. AP MB at 162-164; AP RB at 71-72.

**2. The RD Correctly Denied OCA's Recommendation That AP Conduct Additional Pressure Surveys On Its Distribution System.**

The ALJ correctly determined AP's extensive system of pressure measurement satisfies the requirements of 52 Pa. Code § 65.6(d) that AP "make a survey of pressures in its distribution system of sufficient magnitude to indicate the pressures maintained at representative points on its system."<sup>14</sup> OCA's claim that AP's process violates this regulation was properly rejected.

The RD also correctly rejected OCA's contention that AP should be required to reduce upstream pressures for all customers to below 125 psi or be responsible for damages. The RD recognizes that there are places in AP's system where higher pressures are necessary in order to ensure adequate water service to downstream customers.<sup>15</sup> For example, in the case of Mr. Gage, referenced by OCA in its exceptions, the customer's property is located close to one of AP's largest treatment plants, and pressures in excess of 200 psi are necessary to serve customers at higher

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<sup>13</sup> Notice of Proposed Rulemaking Order – Proposed Water Audit Methodology ("Water NOPR"), Order entered November 18, 2021, Order at 2.

<sup>14</sup> Pressure readings are taken at over 24,000 hydrants in the Company's system, SCADA systems at wells, treatment facilities, storage tanks and pressure regulating vaults throughout the system. The Company also uses computer modeling based upon pressure data to assess pressures across the systems. AP MB at 167.

<sup>15</sup> In AP's SEPA system, the Company must supply water to an area of over 500 miles with elevations ranging from near sea level to over 700 feet above sea level.

elevations. AP RB at 79. As the Commission has previously recognized in its recent PAWC decision, it is not reasonable in these situations to require AP to reduce pressures or to insure the customer against damages if the customer's required pressure reducing valve fails.<sup>16</sup> OCA's exception should be denied. AP MB at 164-170; AP RB at 72-73.

**3. The RD Correctly Denied OCA's Recommendation That AP Implement OCA's Valve Inspection Schedule.**

OCA asserts that AP should be required to adopt a 5-year inspection cycle for non-critical valves. OCA Exc. at 37-38. As explained in AP's Exceptions, AP already has made commitments through its 2020 management audit to exercise its non-critical valves over a 12-year period. AP already has identified all valves in its GIS system, and based on that data AP is developing a schedule by year for exercising the non-critical valves. OCA's proposal to accelerate that time frame is unsupported by cost estimates for the amount of time and additional workforce that would be needed. OCA's exception on this issue should be denied, and AP's exception adopted. AP MB at 170-172; AP RB at 73-75; AP Exc. at 38-39.

**4. The RD Correctly Denied OCA's Recommendation That AP Flush Its Entire SEPA System Every Three Years.**

OCA has excepted to the ALJ's rejection of its proposal that AP be required to flush its entire SEPA system every three years. OCA asserts, without proof, that its proposal might eliminate some customer complaints, and avoid the need to assess whether and when to flush portions of the system. OCA's proposal is an expensive and wasteful solution in search of a problem. The extent of customer complaints (about 3,600 over 2 ¾ years for approximately 370,000 customers in the SEPA system) does not suggest a serious water quality issue requiring a

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<sup>16</sup> *Pa. PUC, et al v. Pennsylvania American Water Company*, Docket Nos. R-2020-3019369, R-2020-3019371, et al., 2021 Pa. PUC LEXIS 55, at \*102 (Opinion and Order entered Feb. 25, 2021)

change to AP's flushing procedures. OCA's own witness acknowledges that AP has a "strong record of sustaining water quality in the SEPA system through its current practices." OCA St. 7-SR at 9, 10. What is clear is that OCA's proposal would result in additional lost water from increased flushing, and add to labor and water treatment costs. OCA's proposal is without merit and properly was rejected by the ALJ. AP MB at 173-175; AP RB at 75-76.

**K. REPLIES TO OCA EXC. NO. 28 – IMPACTS OF THE COVID-19 PANDEMIC IN THE CONTEXT OF ESTABLISHING BASE RATES**

OCA asserts that the ALJ did not appropriately account for the impact of the pandemic upon ratepayers in setting rates. OCA Exc. 39-40. OCA's exception identifies no specific adjustments to be made.

AP responded to OCA's assertions regarding the effects of COVID-19. AP RB at 2-5. In summary, the proper, and constitutional, approach to deal with lingering effects of the pandemic is to implement programs that support those with payment difficulties. This focuses the solution on the problem, rather than hampering AP's ability to continue to provide safe, exceptional service by denying adequate rate relief that is supported by the evidence and prior rulings. AP's comprehensive, new CAP, including arrearage forgiveness, and its Hardship Fund, along with new federal assistance programs for water customers, will provide that support to payment-troubled customers. OCA's exception, to the extent it seeks to encourage the Commission to rule adversely on issues simply to produce a lower result, should be rejected.

**L. REPLIES TO MASTHOPE EXC. NO. 1 – THE RD CORRECTLY DENIED MASTHOPE'S QUALITY OF SERVICE CLAIMS**

The RD rejected Masthope's requests that the Commission deny AP's proposed rate increase, or condition the proposed rate increase, based upon hydraulic overload conditions that have affected its wastewater treatment plant. RD at 133. Masthope excepts to this recommendation, and argues that (1) the RD should have concluded AP has rendered inadequate

and unreasonable wastewater service, (2) the RD incorrectly concludes that the Commission lacks jurisdiction over the hydraulic overload issues facing the Masthope system, (3) the record does not support a finding that increased precipitation levels and shifts from part-time to full-time residencies during the COVID-19 pandemic caused hydraulic overloads, and (4) the RD should have also considered whether to impose conditions upon any rate increased granted in this proceeding. Masthope Exc. 5-10. Each of these arguments should be rejected.

The RD properly concluded that AP has not ignored the problems facing this system. RD at 133. Rather, AP proactively identified improvements to address “sewage planning and regulatory issues within...[PADEP’s] purview.” RD at 133. Indeed, AP detailed its “Treatment Train Project,” its expansion to a long-term capital upgrade project, and the steps AP was taking to reduce inflow and infiltration (“I&I”) in the collection system. AP MB 195-196. These efforts have led to a lifting of the total ban on new housing in Masthope. AP has provided reasonable service and taken reasonable steps to address the problems facing this system.

Masthope’s further continues to misinterpret *Sutter v. Clean Treatment Sewage Company*, Docket No. C-20078197 (Opinion and Order entered May 15, 2009). AP fully addressed this argument and demonstrated that the facts and issues applicable in *Sutter* are not applicable here. AP RB at 85-86. Critically, unlike in *Sutter*, AP has promptly identified and undertaken significant efforts to resolve the hydraulic overloads facing this system, including submission of a Corrective Action Plan to PADEP. AP RB at 85-86.

The record also fully supports the RD’s conclusion that increased precipitation levels and shifts from part-time to full-time residencies during the COVID-19 pandemic caused hydraulic overloads. AP witness Mr. Duerr fully explained the steps AP began to take in 2018 to address these issues, and credibly testified regarding the intervening events occurring in 2020 that resulted



in these overloads. AP MB at 196-197. Masthope's assertions to the contrary are little more than an attempt to ignore record evidence.

Finally, Masthope's request that the Commission condition AP's requested rate increase was properly denied by the RD. Masthope's exceptions make clear that each of the conditions proposed deal with items identified in AP's Chapter 94 Reports and the Corrective Action Plan that are in the purview of the PADEP. Indeed, each of these proposed conditions was addressed in AP's reply brief. AP RB at 87-88.

For these reasons summarized above, and explained in AP's briefs, Masthope's exception should be denied. AP MB at 195-200; AP RB at 84-89.

### **III. CONCLUSION**

WHEREFORE, for the foregoing reasons, and those set forth in the Recommended Decision and AP's Main and Reply Briefs, the Exceptions of the other parties should be denied.

Respectfully submitted,



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