



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

January 27, 2023

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement v.
Aqua Pennsylvania, Inc.
Docket No. M-2023-3031237

Joint Petition for Approval of Settlement and Statements in Support

Dear Secretary Chiavetta:

Enclosed for electronic filing is the **Joint Petition for Approval of Settlement and Statements in Support** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Alphonso Arnold III'. The signature is written in a cursive, slightly slanted style.

Alphonso Arnold III
Prosecutor
Bureau of Investigation & Enforcement
PA Attorney ID No. 318487
(717) 787-3836
alphonarno@pa.gov

AA/ac
Enclosures

cc: Kathryn G. Sophy, Director, OSA (*via email only*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email only*)
Michael L. Swindler, Deputy Chief Prosecutor, I&E (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3031237
	:	
Aqua Pennsylvania, Inc.	:	

JOINT PETITION FOR APPROVAL OF SETTLEMENT

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.41, 5.232 and 3.113(b)(3), the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Aqua Pennsylvania, Inc. (“Aqua” or “Company”) hereby submit this Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) to resolve all issues related to an informal investigation initiated by I&E. I&E’s investigation was initiated based upon information provided by the Commission’s Bureau of Consumer Services (“BCS”).

As part of this Settlement Agreement, I&E and Aqua (hereinafter referred to collectively as the “Parties”) respectfully request that the Commission enter a Final Opinion and Order approving the Settlement, without modification. Statements in Support of the Settlement expressing the individual views of I&E and Aqua PA are attached hereto as Appendix A and Appendix B, respectfully.

I. INTRODUCTION

1. The Parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, by its prosecuting attorneys, 400 North Street, Commonwealth Keystone Building, Harrisburg, PA, 17120, and Aqua Pennsylvania, Inc. with a business address of 762 West Lancaster Avenue, Bryn Mawr, Pennsylvania 19010.

2. The Pennsylvania Public Utility Commission is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within this Commonwealth, as well as other entities subject to its jurisdiction, pursuant to the Public Utility Code ("Code"), 66 Pa. C.S. §§ 101, *et seq.*

3. I&E is the entity established to prosecute complaints against public utilities and other entities subject to the Commission's jurisdiction pursuant to 66 Pa.C.S. § 308.2(a)(11); *see also Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011)(delegating authority to initiate proceedings that are prosecutory in nature to I&E).

4. Section 501(a) of the Code, 66 Pa. C.S. § 501(a), authorizes and obligates the Commission to execute and enforce the provisions of the Code.

5. Aqua (Utility Code 210104) is a "public utility" as that is defined at 66 Pa.C.S. § 102,¹ as it is engaged in providing wastewater and water utility services ("water

¹ 66 Pa.C.S. § 102 "Public Utility"

(1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

(ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.

...

(vii) Wastewater collection, treatment, or disposal for the public for compensation.

service”) to the public for compensation. Aqua America (Aqua’s parent company) currently provides water service to more than 3 million people in eight states within the United States, including the Commonwealth of Pennsylvania.²

6. Aqua, as a public utility, is subject to the power and authority of this Commission pursuant to Section 501(c) of the Code, 66 Pa.C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

7. Section 3301 of the Code, 66 Pa. C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission’s authority for violations of the Code, the Commission’s regulations, and/or orders. Section 3301 allows for the imposition of a fine for each violation and each day’s continuance of such violation(s).

8. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa.C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Code, Commission’s regulations, and/or orders.

9. I&E instituted an informal investigation of Aqua based on information referred to I&E by BCS. BCS received several informal complaints from Aqua customers who had their water service terminated for non-payment. Upon BCS review of these complaints, it was revealed that these customers had their water service terminated *after* expiration of their 10-day shut off notices. These allegations, if found to be true, constitute

² [Aqua America: Water Utility Services & Bill Payment.](#)

a violation of Section 56.91(a) of the Commission's regulations, 52 Pa. Code § 56.91(a). Based on these allegations, I&E determined that an informal investigation was warranted to determine whether the actions of Aqua violated 52 Pa. Code § 56.91(a), or another regulation, law, or order that the Commission has jurisdiction to administer.

10. As a result of successful negotiations between I&E and Aqua, the Parties have reached an agreement on an appropriate outcome to the investigation as encouraged by the Commission's policy to promote settlements. *See* 52 Pa. Code § 5.231. The Settlement also is consistent with the Commission's Policy Statement for evaluating litigated and settled proceedings involving violations of the Code and Commission regulations, 52 Pa. Code § 69.1201. The Parties agree to the settlement terms set forth herein and urge the Commission to approve the Settlement as submitted as being in the public interest.

II. BACKGROUND

11. In January 2022, BCS received informal consumer complaints wherein the consumers alleged that their Aqua water service was terminated for non-payment. The consumers sought Commission assistance in having their water service restored.

12. BCS review of the January 2022 informal complaints revealed that each consumer had their water service terminated following expiration of the 10-day shut off notices issued to them by Aqua.

13. On February 10, 2022, BCS spoke with representatives from Aqua concerning the expired 10-day shut off notices and on February 28, 2022, BCS referred its concerns to I&E.

14. On March 30, 2022, I&E issued a Data Request Letter (“I&E Data Requests - Set I”) informing Aqua that it has initiated an informal investigation regarding potential violations of the Commission’s regulations by Aqua. Aqua was additionally informed of the scope of I&E’s investigation and was asked to provide a response to eight (8) data requests. On April 19, 2022, Aqua timely provided its responses to I&E Data Requests - Set I.

15. On May 5, 2022, I&E submitted a second set of data requests (“I&E Data Requests - Set II”), to which Aqua timely provided its responses on June 2, 2022.

16. Aqua’s responses to I&E’s Data Requests reveal that sixty-seven (67) Aqua customers had their water service terminated following expiration of the 10-day shut off notices issued to those customers. That is, 67 customers had their water service terminated more than 60 days following issuance of their 10-day shut off notices.

17. In terminating water service to customers following the expiration of their 10-day shut off notices, Aqua may have violated Section 56.91(a) of the Commission’s regulations.

18. Specifically, pursuant to 52 Pa. Code § 56.91(a), public utilities are required to issue 10-day shut off notices to customers prior to terminating their water service. The regulation states that these shut off notices shall remain in effect for 60 days. 52 Pa. Code § 56.91(a).^{3 4}

³ See also 66 Pa.C.S.A. § 1406(b)(1)(i).

⁴ Additionally, 10-day shut off notices must include a statement that specifies that the notice is valid for 60 days. See 52 Pa. Code § 56.91(b)(5). The notices issued to the January 2022 consumer complainants contained this statement.

19. Through its responses to I&E's data requests, Aqua revealed the following relevant information concerning its procedures for terminating residential water service:

- Aqua's customer information system (Banner) automatically creates a 10-day shut off notice when a residential customer's past due balance rises past \$110.
- Seven days past due, the delinquent customer is mailed a 10-day shut off notice.
- Eight days after the 10-day shut off notice is issued, the customer will receive a 72-hour call from Aqua.⁵
- Fifteen days after the 10-day shut off notice is issued, Banner will create a shut-off service order.
- Every Monday, a report of all open shut-off service orders is generated. As a quality control measure, Aqua's Collections Department reviews all open shut-off service orders to ensure compliance with the 60-day requirement. All expired orders are to be cancelled. The delinquency process may restart with a new 10 day shut off notice.
- On the day that a customer's water service is to be terminated, Aqua Field Service Representatives (FSR) receive the shut-off order from the Collections Department. As a quality control measure, FSRs are to review the service order to ensure that it complies with the 60-day requirement.

⁵ See 52 Pa. Code § 56.93.

20. Aqua identified two reasons as to why water service was terminated to customers following expiration of their 10-day shut off notices: (1) The Monday morning report was not using date that the 10-day shut off notice was issued to define the 60-day limit, and (2) Gaps in employee training with respect to identifying service orders outside the 60-day limit.

21. As a result of the improper terminations identified through I&E's investigation, Aqua made the following changes to its internal procedures:

- Corrected the Monday report of all open terminations service orders to utilize the date of the 10-day shut-off notice. Any order reaching the 60-day limit will be cancelled in Banner.
- Updated Aqua's service order management system to more easily identify when an account is approaching the 60-day limit.
- Updated training for all PA field employees and held meetings to review with the state divisions and the Company's contractor.
- Updated its PA Collection Activity Manual to instruct the Collections Department to verify the status of shut-off orders by looking at the date the 10-day shut-off notice was issued, and to restart with a 10-day shut off notice posting if the order has expired.

22. Concerning the 67 customers who had their water service improperly terminated, Aqua made the following efforts to restore their water service:

- 40 customers had their water service restored and restoration fee waived, with most of the restorations taking place within one to two days.

- 17 customers were informed, by voicemail or by notice posted at their place of residence to contact Aqua to have their water service restored due to these customers not responding to Aqua's attempts to contact them for water service restoration.
- 10 customers were no longer customers of Aqua following termination of their water service.

23. The results of I&E's investigation, which included review of the consumer complaints, and Aqua responses to data requests, formed the basis for the instant Settlement Agreement.

III. ALLEGED VIOLATION

24. Had this matter been fully litigated, I&E would have proffered evidence and legal arguments to demonstrate that Aqua violated Section 56.91(a) of the Commission's regulations when it terminated water service to 67 of its customers following the 60-day expiration of the 10-day shut off notices issued to those customers.

25. Had this matter been fully litigated, Aqua would have denied that it violated Section 56.91(a) of the Commission's regulations, raised defenses and/or mitigating factors in support of its defense, and defended against the same at hearing as set forth in Aqua's Statement in Support of Settlement.

IV. SETTLEMENT TERMS

26. Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held discussions that culminated in this Settlement. I&E and Aqua desire to (1) terminate I&E's informal investigation; and (2) settle this matter completely without litigation. The Parties recognize that this is a disputed

matter and given the inherent unpredictability of the outcome of a contested proceeding, the Parties further recognize the benefits of amicably resolving the disputed issues. The terms of the Settlement, for which the Parties seek Commission approval, are set forth below:

- a) Aqua shall pay a civil penalty of Thirty-Three Thousand Five-Hundred dollars (\$33,500.00) to fully and finally resolve all possible claims of alleged violations of the Public Utility Code and the Commission's regulations in connection with the Company's termination of service after the expiration of the 10-day shut off notice related to the accounts at issue. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) or passed through as an additional charge to Aqua's customers in Pennsylvania.

27. In consideration of the Company's payment of a monetary civil penalty of \$33,500.00, I&E agrees to forgo the institution of any formal complaint that relates to the Company's conduct as described in the Settlement Agreement. Nothing contained in this Settlement Agreement shall adversely affect the Commission's authority to receive and resolve any informal or formal complaints filed by any affected party with respect to the incident, except that no penalties beyond the civil penalty amount agreed to herein may be imposed by the Commission for any actions identified herein.

28. I&E and Aqua jointly acknowledge that approval of this Settlement Agreement is in the public interest and is fully consistent with the Commission's Policy Statement for Litigated and Settled Proceedings Involving Violations of the Code and Commission Regulations, 52 Pa. Code § 69.1201. The Parties submit that the Settlement Agreement is in the public interest because it effectively addresses I&E's allegations of the termination procedure violations that are the subject of the I&E's informal investigation and avoids the time and expense of litigation, which entails hearings and the preparation and filing of briefs, exceptions, reply exceptions, as well as possible appeals. Attached as Appendices B and C are Statements in Support submitted by I&E and Aqua, respectively, setting forth the bases upon which the Parties believe the Settlement Agreement is in the public interest.

V. CONDITIONS OF SETTLEMENT

29. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Settlement Agreement shall be construed and interpreted under Pennsylvania law, without regard to its conflicts of laws provisions.

30. The Settlement is conditioned upon the Commission's approval of the terms and conditions contained in this Joint Settlement Petition without modification. If the Commission modifies this Settlement Agreement, any party may elect to withdraw from this Settlement Agreement and may proceed with litigation and, in such event, this Settlement Agreement shall be void and of no effect. Such election to withdraw must be made in writing, filed with the Secretary of the Commission and served upon all parties within twenty (20) business days after entry of an Order modifying the Settlement.

31. The benefits and obligations of this Settlement Agreement shall be binding upon the successors and assigns of the Parties to this Agreement.

32. The Parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order, findings of fact or conclusions of law rendered in this proceeding. It is further understood that, by entering into this Settlement Agreement, Aqua has made no concession or admission of fact or law and may dispute all issues of fact and law for all purposes in all proceedings that may arise as a result of the circumstances described in this Settlement Agreement.

33. The Parties acknowledge that this Settlement Agreement reflects a compromise of competing positions and does not necessarily reflect any party's position with respect to any issues raised in this proceeding.

34. If either party should file any pleading, including comments, in response to an order of the Commission, the other party shall have the right to file a reply.

35. This Settlement Agreement is being presented only in the context of this proceeding in an effort to resolve the proceeding in a manner that is fair and reasonable. This Settlement Agreement is presented without prejudice to any position that any of the Parties may have advanced and without prejudice to the position any of the Parties may advance in the future on the merits of the issues in future proceedings, except to the extent necessary to effectuate the terms and conditions of this Settlement Agreement. This Settlement Agreement does not preclude the Parties from taking other positions in any other proceeding.


36. The terms and conditions of this Settlement Agreement constitute a carefully crafted package representing reasonably negotiated compromises on the issues

addressed herein. Thus, the Settlement Agreement is consistent with the Commission's rules and practices encouraging negotiated settlements set forth in 52 Pa. Code §§ 5.231 and 69.1201.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement and Aqua Pennsylvania, Inc. respectfully request that the Commission enter an Order approving the terms of the Joint Petition for Approval of Settlement in their entirety as being in the public interest.


Respectfully submitted,

Date: January 27, 2023



Mary McFall Hopper
*Regulatory Counsel for
Aqua Pennsylvania, Inc.*

Date: January 27, 2023



Alphonso Arnold III
*Prosecutor for the Commission's
Bureau of Investigation and Enforcement*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3031237
	:	
Aqua Pennsylvania, Inc.	:	

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Settlement filed on January 27, 2023 between the Commission’s Bureau of Investigation and Enforcement and Aqua Pennsylvania, Inc. is approved in its entirety without modifications.

2. That, in accordance with Section 3301 of the Public Utility Code, 66 Pa. C.S. § 3301, within thirty (30) days of the date this Order becomes final, Aqua Pennsylvania, Inc. shall pay Thirty-Three Thousand Five-Hundred dollars (\$33,500.00), which consists of the entirety of the civil penalty amount. Said payment shall be made by certified check or money order payable to “Commonwealth of Pennsylvania” and shall be sent to:

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

3. That the civil penalty shall not be tax deductible or passed through as an additional charge to Aqua PA’s customers in Pennsylvania.

4. A copy of this Opinion and Order shall be served upon the Financial and Assessment Chief, Office of Administrative Services

5. That the above-captioned matter shall be marked closed upon receipt of Aqua Pennsylvania, Inc. payment of the civil penalty.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3031237
	:	
Aqua Pennsylvania, Inc.	:	

**THE BUREAU OF INVESTIGATION AND ENFORCEMENT’S
STATEMENT IN SUPPORT OF THE
JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code §§ 5.231, 5.232 and 69.1201, the Pennsylvania Public Utility Commission’s (“Commission” or “PUC”) Bureau of Investigation and Enforcement (“I&E”), a signatory party to the Joint Petition for Approval of Settlement (“Settlement” or “Settlement Agreement”) filed in the matter docketed above, submits this Statement in Support of the Settlement Agreement between I&E and Aqua Pennsylvania, Inc. (“Aqua” or “Company”).¹ I&E avers that the terms and conditions of the Settlement are just and reasonable and in the public interest for the reasons set forth herein.

¹ I&E and Aqua are collectively referred to herein as the “Parties.”

I. Background

In January 2022, the Commission's Bureau of Consumer Services ("BCS") received several informal consumer complaints from consumers who had their water and wastewater service ("water service") terminated by Aqua and sought service restoration. BCS review of these informal complaints revealed that the consumers had their water service terminated following expiration of the 10-day shut off notices issued to them by Aqua. On February 28, 2022, BCS submitted a memo to I&E expressing concern that these consumers had their service terminated in violation of the Commission's regulations.

On March 30, 2022, I&E issued a Data Request Letter ("I&E Data Requests - Set I") informing Aqua that it has initiated an informal investigation regarding potential violations of the Commission's regulations by Aqua. Aqua was additionally informed of the scope of I&E's investigation and was asked to provide a response to eight (8) data requests. On April 19, 2022, Aqua timely provided its responses to I&E Data Requests - Set I.

On May 5, 2022, I&E submitted a second set of data requests ("I&E Data Requests - Set II"), to which Aqua timely provided its responses on June 2, 2022.

In light of the facts uncovered in the informal investigation, the Parties began discussing settlement to amicably resolve the instant matter.

On November 31, 2022, the Parties filed a Joint Petition for Approval of Settlement resolving all issues between the Parties in the instant matter. This Statement in Support is submitted in conjunction with the Settlement Agreement.

II. The Public Interest

Pursuant to the Commission's policy of encouraging settlements that are reasonable and in the public interest, the Parties held a series of settlement discussions. These

discussions culminated in this Settlement Agreement, which, once approved, will resolve all issues related to I&E's informal investigation involving allegations that Aqua unlawfully terminated water service to customers past the expiration of the 10-day shut off notices issued to the customers, in violation of Section 56.91(a) of the Commission's regulations. Aqua's responses to I&E's data requests revealed that sixty-seven (67) customers had their service terminated following expiration of the 10-day shut off notices issued to them from January 1, 2022, to June 2, 2022. Importantly, Aqua asserted that the internal issues that led to the unlawful terminations have been corrected and that there has been no further unlawful terminations as a result of the now corrected internal issues. Aqua has further asserted, to which I&E acknowledges, that it moved quickly to restore service to the customers whose service was unlawfully terminated. Moreover, Aqua waived all reconnection fees for these customers whose service it restored.

I&E intended to prove the factual allegations set forth in its investigation at hearing to which Aqua would have disputed. This Settlement Agreement results from the compromises of the Parties. I&E recognizes that, given the inherent unpredictability of the outcome of a contested proceeding, the benefits to amicably resolving the disputed issues through settlement outweigh the risks and expenditures of litigation. Here, Aqua has already implemented the appropriate remedies that, to date, have proven to effectively resolved the violations that were the subject of I&E's investigation. In addition, the information gleaned from I&E's informal discovery indicates that Aqua acted quickly and efficiently to correct the terminations and restore service to the affected customers. I&E submits that the Settlement constitutes a reasonable compromise of the issues presented and is in the public

interest. As such, I&E respectfully requests that the Commission approve the Settlement without modification.

III. Terms of Settlement

Under the terms of the Settlement Agreement, and noting that Aqua has already completed implementation of all appropriate non-monetary remedial measures, I&E and Aqua have agreed to the following:

- a) Aqua shall pay a civil penalty of Thirty-Three Thousand Five-Hundred dollars (\$33,500.00) to fully and finally resolve all possible claims of alleged violations of the Public Utility Code and the Commission's regulations in connection with the Company's termination of service after the expiration of the 10-day shut off notice related to the accounts at issue. Said payment shall be made within thirty (30) days of the date of the Commission's Final Order approving the Settlement Agreement and shall be made by certified check or money order payable to the "Commonwealth of Pennsylvania" and sent to:

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

The civil penalty shall not be tax deductible pursuant to Section 162(f) of the Internal Revenue Code, 26 U.S.C.S. § 162(f) or passed through as an additional charge to Aqua's customers in Pennsylvania.

In consideration of the Company's payment of a monetary civil penalty of \$33,500.00, I&E agrees that its informal investigation relating to Aqua's conduct as described in the Settlement Agreement referenced herein shall be terminated and marked closed upon approval by the Commission of the Settlement Agreement without modification and completion of the settlement terms.

Upon Commission approval of the Settlement in its entirety without modification, I&E will not file any complaints or initiate other action against Aqua at the Commission with

respect to the unlawful terminations which were the subject of I&E's instant informal investigation.

IV. Legal Standard for Settlement Agreements

Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense that the parties must expend litigating a case and, at the same time, conserve precious administrative resources. Settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. “The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a ‘burden of proof’ standard, as is utilized for contested matters.” *Pa. Pub. Util. Comm’n, et al. v. City of Lancaster – Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at p. 11. Instead, the benchmark for determining the acceptability of a settlement is whether the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

I&E submits that approval of the Settlement Agreement in the above-captioned matter is consistent with the Commission's Policy Statement regarding *Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* (“Policy Statement”), 52 Pa. Code § 69.1201; *see also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, Docket No. C-00992409 (Order entered March 16, 2000). The Commission's Policy Statement sets forth ten (10) factors that the Commission may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code § 69.1201.

The Commission will not apply the factors as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors may still be considered, in settled cases, the parties “**will be afforded flexibility in reaching amicable resolutions** to complaints and other matters as long as the settlement is in the public interest.” *Id.* (*emphasis added*).

The first factor considers whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty. 52 Pa. Code § 69.1201(c)(1). I&E acknowledges that the unlawful terminations at issue in this matter were not caused by willful fraud or misrepresentation. Rather, Aqua represented that the unlawful terminations at issue were caused by (1) the Monday Report generated by Aqua’s customer information system was not using the date of the 10-day shut off notice to define the 60-day limit, and (2) gaps in employee training leading to employees failing to identify shut-off service orders that were outside the 60-day limit. Fortunately, the terminations were short-lived, and the remediation was swift. Therefore, review of this factor weighs in favor of a lower penalty.

The second factor considers whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty. 52 Pa. Code § 69.1201(c)(2). I&E’s investigation did not result in any finding that Aqua’s alleged conduct resulted in personal injury or property damage. Nonetheless, the consequences of Aqua’s conduct resulted sixty-seven (67) customers being without water service during the

winter months of 2022. I&E asserts that 67 customers failing to have water service during the colder months are consequences of a serious nature. Therefore, review of this factor weighs in favor of a higher penalty.

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty. 52 Pa. Code § 69.1201(c)(3). This factor does not apply in this matter because this matter has been resolved through settlement, not litigation.

The fourth factor considers whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered. 52 Pa. Code § 69.1201(c)(4). I&E acknowledges that in this matter Aqua has already implemented modifications to its internal practices and procedures to address the conduct at issue, including (1) correcting the Monday report of all open terminations service orders to utilize the date of the 10-day shut-off notice, (2) updating Aqua's service order management system to more easily identify when an account is approaching the 60-day limit, (3) updating the training for all PA field employees and held meetings to review with the state divisions and the Company's contractor, and (4) updating its PA Collection Activity Manual to instruct the Collections Department to verify the status of shut-off orders by looking at the date the 10-day shut-off notice was issued, and to restart with a 10-day shut off notice posting if the order has expired. I&E additionally

acknowledges that Aqua worked quickly to correct the unlawful terminations at issue. As of May 27, 2022, Aqua had restored water service to forty (40) of the 67 customers whose water service was unlawfully terminated as a result of the conduct at issue. According to Aqua's responses to I&E's Data Requests, thirty-seven (37) of the 40 customers had their service restored prior to the initiation of the informal investigation in this matter on March 30, 2022. A majority of the 40 customers had their service restored within one to two days of having their service unlawfully terminated. Notably, the 40 customers were not charged a reconnection fee upon service restoration. Aqua was unable to restore service to the remaining twenty-seven (27) customers either because (1) the customer did not respond to Aqua's attempts to contact them, or (2) the customer was no longer a customer of Aqua. Aqua asserted that it left notices at the dwellings of the customers who did not respond to Aqua's attempts to contact them informing them to contact Aqua for service reconnection. In summary, review of this factor weighs in favor of a lower penalty.

The fifth factor considers the number of customers affected and the duration of the violation. 52 Pa. Code § 69.1201(c)(5). As noted above, Aqua unlawfully terminated water service to 67 customers, 40 of which had their service restored by May 27, 2022. The time period by which Aqua restored service to the 40 customers ranged from within one day to four months, with the majority of the restorations taking place within one to two days. As such, I&E acknowledges that only a small number of customers lost their service as a result of Aqua's violation and only for a short duration. Therefore, review of this factor weighs in favor of a lower penalty.

The sixth factor considers the compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result

in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty. 52 Pa. Code § 69.1201(c)(6). I&E is not aware of any Formal Complaints filed with the Commission relating to the conduct at issue. Review of Aqua's compliance history with the Commission reveals that Aqua has a strong compliance history regarding customer service terminations, especially given the size of the Company. In addition, neither the Code nor the Commission's Regulations require utilities to provide constantly flawless service to its customers. Therefore, review of this factor weighs in favor of a lower penalty.

The seventh factor considers whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty. 52 Pa. Code § 69.1201(c)(7). I&E submits that Aqua fully cooperated in the investigation in this matter, including timely responding to I&E's Data Requests as well as participating in settlement discussions. Therefore, review of this factor weighs in favor of a lower penalty.

The eighth factor considers the amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount. 52 Pa. Code § 69.1201(c)(8). Even though many of the *Rosi* factors addressed above weigh in favor of a lower penalty, I&E submits that the amount of the civil penalty amicably agreed to herein is substantial and sufficient to deter Aqua from committing future violations involving the conduct at issue.

The ninth factor considers past Commission decisions in similar situations. 52 Pa. Code § 69.1201(c)(9). While recognizing that each settlement should be based on the individual facts and circumstance of that case and that the parties have flexibility in crafting agreements that will be palatable to the settling parties, I&E nevertheless

considered a number of prior Commission decisions in arriving at the civil penalty in this matter, including the following: *Pa. Pub. Util' Comm Bureau of Investigation and Enforcement v. PECO Energy Co.*, M-2018-2531404 (Order entered February 7, 2019) (38 customers suffered unlawful terminations in the winter in violation of the Commission's winter moratorium. The Commission approved a Settlement with modifications, ordering that PECO pay a \$10,000 civil penalty in addition to increasing the amount available for matching contributions in PECO's Matching Energy Assistance Fund by \$20,000); *Pa. Pub. Util' Comm Prosecutory Staff v. Metropolitan Edison Co., Pennsylvania Electric Co. and Pennsylvania Power Co. d/b/a FirstEnergy, and Pennsylvania Power Co. d/b/a FirstEnergy*, M-2009-2112849 (Opinion and Order entered December 7, 2009) (492 customers had their service terminated without receiving the required 10-day shut off notice. The Commission approved a Settlement with modifications, ordering First Energy to make contributions in the amount of \$200,000 to hardship programs, in addition to the credits First Energy agreed to make towards its customers); *Pa Pub. Util' Comm Bureau of Investigation and Enforcement v. PECO Energy Co.*, M-2021-3014286 (Opinion and Order entered December 8, 2022) (48,536 distinct customers had their service terminated without being personally contacted by PECO prior to termination as required by the Public Utility Code and Commission's regulations. The Commission approved a Settlement with modifications, ordering PECO to pay a \$200,000 civil penalty in addition to providing a \$100,000 contribution to its Matching Energy Assistance Fund. The civil penalty and contribution were increased from the amounts proposed in the Settlement to account for the Settlement's failure to address penalties associated with PECO's unlawful collection of

reconnection fees from the customers in violation of the Public Utility Code and Commission's regulations).

The tenth factor considers "other relevant factors." 52 Pa. Code § 69.1201(c)(10). I&E submits that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the governmental agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty, or other remedial action. Both parties negotiate from their initial litigation positions. The fines and penalties, and other remedial actions resulting from a fully litigated proceeding are difficult to predict and can differ from those that result from a settlement. Reasonable settlement terms can represent economic and programmatic compromise while allowing the parties to move forward and to focus on implementing the agreed upon remedial actions.

In conclusion, I&E fully supports the terms and conditions of the Settlement Agreement. The terms of the Settlement Agreement reflect a carefully balanced compromise of the interests of the Parties in this proceeding. The Parties believe that approval of this Settlement Agreement is in the public interest. Acceptance of this Settlement Agreement avoids the necessity of further proceedings at what would have been a substantial cost in time and resources to the Parties and this Commission.

WHEREFORE, I&E supports the Settlement Agreement as being in the public interest and respectfully requests that the Commission approve the Settlement in its entirety without modification.

Respectfully submitted,

Handwritten signature of Alphonso Arnold III in cursive script.

Alphonso Arnold III

Prosecutor

PA Attorney ID No. 318487

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
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Dated: January 27, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3031237
	:	
Aqua Pennsylvania, Inc.	:	

STATEMENT IN SUPPORT OF AQUA PENNSYLVANIA, INC.

Aqua Pennsylvania, Inc. (“Aqua” or “Company”) hereby submits this Statement in Support of the Settlement Agreement (“Settlement”) that was entered into by the Pennsylvania Public Utility Commission’s Bureau of Investigation & Enforcement (“I&E”) and Aqua in the above-captioned matter. This settlement fully resolves all issues related to an informal investigation initiated by I&E. Aqua respectfully requests that the Pennsylvania Public Utility Commission (“Commission”) approve the Settlement, including the terms and conditions thereof, without modification.

I. BACKGROUND

Aqua adopts the Background discussion set forth in I&E’s Statement in Support.

II. TERMS OF SETTLEMENT

Aqua has reviewed the Settlement Terms and Conditions of Settlement as set forth in the Joint Petition for Approval of Settlement and agrees that it accurately sets forth the Terms of Settlement.

III. FACTORS UNDER THE COMMISSION’S POLICY STATEMENT

Commission policy promotes settlements. See 52 Pa. Code §5.231. Settlements lessen the time and expense of the parties to litigate the case. Settlements also conserve

administrative resources. Settlement terms are often preferable to those achieved the conclusion of a fully litigated proceeding. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pennsylvania Public Utility Commission v. Columbia Gas of Pennsylvania., Inc.*, Docket No. C-2010-2071433, 2012 Pa. PUC LEXIS 1377 at *6 (August 31, 2012).

The Commission has set forth ten factors that it may consider in evaluating whether a civil penalty for violating a Commission order, regulation, or statute is appropriate, as well as whether a proposed settlement for a violation is reasonable and in the public interest. 52 Pa. Code §69.1201. These factors are (i) Whether the conduct at issue was of a serious nature (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the conduct as issue was deemed intentional or negligent; (iv) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (v) The number of customers affected and the duration of the violation; (vi) The compliance history of the regulated entity that committed the violation; (vii) Whether the regulated entity cooperated with the Commission's investigation; (viii) The amount of the civil penalty or fine necessary to deter future violations (ix) Past Commission decisions in similar situations and (x) Other relevant factors. 52 Pa. Code §69.1201(b). While many of the same factors may still be considered, in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest" 52 Pa Code §69.1201(b).

The first factor addresses whether the conduct at issue was of a serious nature. The Company submits that the issues that resulted in the terminations which were the subject of the I&E investigation were not intentionally caused. The terminations at issues were caused by (1)

an error in a report used by the Company that was not using the date the 10-day shut off notice was issued to define the 60-day limit, and (2) gaps in employee training and how to identify service orders outside the 60-day limit. The Company, upon notice of the issue, immediately took action to correct the two issues, review all accounts that were affected and restore service as quickly as possible.

The second factor considers the seriousness of the consequences of the incident at issue. The Company recognizes that a loss of utility service is a serious matter, and it submits that there was no personal injury or property damage resulting from the terminations. The Company identified the customers who were impacted by the terminations outside the 60-day limit, contacted each customer to arrange to have the service restored, if service had not already been restored, waived any reconnection fee and to offered appropriate payment arrangements as needed by the customer. For customers who service was off and the customer contact information was no longer active, the Company posted notices at the property to contact the Company to arrange for service to be restored.

The third factor considers whether the conduct at issue was deemed intentional or negligent. This factor is only to be considered when evaluating litigated cases. 52 Pa. Code §69.1201(c)(3). This factor does not apply to the present case because this proceeding has been resolved through settlement.

The fourth factor considers whether Aqua made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future. The Company has already implemented modifications to its practices and procedures. The Company has corrected the referenced report to utilize the date of the 10-day termination notice and any order reaching the 60-day limit on the weekly report will be canceled. The

Company updated its PA Collections Manual to instruct the Collections Department to verify the status of shut-off orders by looking at the date the 10-day notice was issued and to restart with a 10-day notice posting if the order has expired. The Company also updated its service order management system to more easily identify when an account is approaching the 60-day limit and the Company updated training for all PA field employees and met with the state division and the Company's contractors to review the updates.

The fifth factor considers the number of customers affected and the duration of the violation. The number of customers affected in this proceeding were 67 customers, 40 of which had their service restored by May 27, 2022. The Company was able to restore a majority of customers within one to two days.

The sixth factor considers the compliance history of the Company. The Public Utility Code and the Commission's regulations do not require flawless service by utilities. The Public Utility Code requires public utilities to provide reasonable and adequate, not perfect service. 66 Pa.C.S. § 1501. The Company submits that it has a strong positive compliance history regarding customer terminations and is committed to providing safe and reliable service to its customers.

The seventh factor considers whether the Company cooperated with the Commission's investigation. The Company cooperated fully with I&E through all phases of this investigation and settlement process.

The eighth factor consider whether the amount of the civil penalty or fine will deter further violations. The Company submits that no civil penalty would have been necessary to deter it from committing future violations, however, the civil penalty of \$33,500 is substantial and a sufficient deterrent.

The ninth factor considered past Commission decision in similar situations. The Company submits that when all relevant factors are considered, the Settlement is consistent with past Commission actions.

The tenth, and final factor, considers any relevant factors. The Company submits that a mutually agreed upon Settlement is a factor that is important in this case and represents a balanced compromise of the interest of the parties in this proceeding and is in the public interest.

IV. CONCLUSION

Through cooperative efforts and the open exchange of information, the I&E and the Company have arrived at a settlement that resolves all issues in the proceeding in a fair, equitable and reasonable manner. This Settlement resolves all issues related to the Company's termination of customers outside the 60-day window. Finally, the terms and conditions of the Settlement should be viewed as satisfying the ten factors set forth in the Commission's Policy Statement, 50 Pa. Code §69.120(c). A fair, equitable and reasonable compromise has been achieved in this case. Aqua fully supports the Settlement and respectfully requests that the Commission approve the Settlement in its entirety, without modification.

Respectfully submitted,

Mary McFall Hopper

Mary McFall Hopper
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Dated: January 27, 2023

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

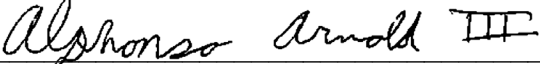
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. M-2023-3031237
	:	
Aqua Pennsylvania, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Joint Petition for Approval of Settlement and Statements in Support** dated January 27, 2023, upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Via Electronic Mail

Mary McFall Hopper, Esquire
Regulatory Counsel
Aqua Pennsylvania Inc.
762 W. Lancaster Avenue
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