

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc. for	:	Docket No. A-2022-3034143
Approval of its Acquisition of the Water	:	
System Assets of the Borough of Shenandoah	:	
and the Municipal Authority of the Borough	:	
of Shenandoah Pursuant to Sections 1102,	:	
1329 and 507 of the Public Utility Code	:	

**JOINT PETITION FOR AQUA PENNSYLVANIA, INC.,
THE BUREAU OF INVESTIGATION AND ENFORCEMENT, THE OFFICE OF
CONSUMER ADVOCATE, THE BOROUGH OF SHENANDOAH, AND THE
MUNICIPAL AUTHORITY OF THE BOROUGH OF SHENANDOAH
FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE JEFFREY A. WATSON, ADMINISTRATIVE LAW JUDGE:

This Joint Petition for Approval of Settlement (“Joint Petition”) is made and entered into by and between Aqua Pennsylvania, Inc. (“Aqua” or “Company”), the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission (“I&E”), the Borough of Shenandoah (“Borough”), and the Municipal Authority of the Borough of Shenandoah (“MABS”, and together with the Borough, “Shenandoah”),¹ parties to the above captioned proceeding for the purpose of settling the proceeding under the terms and conditions set forth below. Joint Petitioners request that Administrative Law Judge Jeffrey A. Watson recommend approval of, and that the Public Utility Commission (“Commission”) approve, the Joint Petition.

¹ Aqua, OCA, I&E, the Borough, and MABS are collectively referred to herein as “Joint Petitioners”. The Office of Small Business Advocate (“OSBA”) has authorized the Joint Petitioners to represent that while it is not a signatory to this Joint Petition it does not oppose the Settlement.

I. INTRODUCTION AND PROCEDURAL HISTORY

1. This proceeding concerns the Application of Aqua, at Docket No. A-2022-3034143, filed with the Commission on October 6, 2022 for approvals related to its acquisition of the Shenandoah water system assets pursuant to Sections 1102, 1329 and 507 of the Public Utility Code.

2. The Application asks the Commission to issue an order and certificates of public convenience pursuant to Section 1102 of the Code approving Aqua's acquisition of the water system assets of Shenandoah situated within the Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, Girardville Borough, and Union Township, within Schuylkill County, Pennsylvania, and allowing Aqua to begin to provide water service in the Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, within Schuylkill County, Pennsylvania.

3. The Application also asks that the Commission include in its order approving the acquisition, a determination that the ratemaking rate base of the assets being acquired by Aqua is \$12,000,000 pursuant to Section 1329(c)(2) of the Code.

4. The Application also seeks, to the extent necessary, approval of the Asset Purchase Agreement ("APA") between Aqua and Shenandoah pursuant to Section 507 of the Code and such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

5. The Bureau of Technical Utility Services ("TUS"), I&E, OCA and OSBA were served with copies of the Application on October 6, 2022. Thereafter, the Company filed and served supplemental information on November 9, 2022 and November 18, 2022 in response to information requests from TUS.

6. By letter dated December 9, 2022, the Commission conditionally accepted the

Application for filing. In compliance with the conditional acceptance letter, Aqua provided individualized notice of the proposed acquisition to its customers and MABS provided individualized notice of the proposed acquisition to its customers. Aqua also published a notice of the filing of the Application in a newspaper of general circulation.

7. On December 16, 2022, Aqua filed and served additional information the Commission requested in its conditional acceptance letter regarding MABS' Ringtown No. 5 Dam.

8. Following confirmation of the required notification, the Commission, by Secretarial Letter dated February 3, 2023, accepted the Application for filing and advised that notice of the filing would be published in the *Pennsylvania Bulletin* on February 18, 2023, with a protest deadline of March 6, 2023.

9. I&E filed a Notice of Appearance on October 25, 2022. OSBA filed a Notice of Appearance, Notice of Intervention, and Public Statement also on October 25, 2022. OCA filed a Protest and Public Statement on December 9, 2022. On January 17, 2023, Donna M. Gawrylik filed a Protest and Petition to Intervene. MABS and the Borough filed Petitions to Intervene on March 2, 2023.

10. On February 7, 2023, the Commission issued a Telephonic Prehearing Conference Notice scheduling a prehearing conference for 10:00 a.m. on March 7, 2023 with Administrative Law Judge Jeffrey A. Watson presiding. Also on February 7, 2023, Judge Watson issued a Prehearing Conference Order in advance of the Prehearing Conference.

11. The Call-In Telephonic Prehearing Conference was convened as scheduled on March 7, 2023. Aqua, I&E, OCA, OSBA, the Borough, MABS, and Ms. Gawrylik participated in the Conference. A litigation schedule was adopted providing for, *inter alia*, the distribution of

direct testimony of other parties,² rebuttal, supplemental direct (limited to public input hearing evidence), oral rejoinder testimony, and evidentiary hearings on March 28 and 29, 2023.

12. On March 20, 2023, the OCA filed the direct testimony of Morgan N. DeAngelo, and I&E filed the direct testimony of two witnesses: D.C. Patel and Esyan Sakaya. The OSBA and Ms. Gawrylik did not file written direct testimony. No parties filed supplemental direct testimony or rebuttal testimony.

13. On March 21, 2023, at 6 p.m., a Telephonic Public Input Hearing was held with Judge Watson presiding. Seven consumers and Ms. Gawrylik provided testimony under oath.

14. On March 22, 2023, Judge Watson issued an Interim Order Setting Deadline for the Parties to Confer and to Submit a Joint Witness Matrix, Exchange and Identification of Evidence and Exhibits (“Interim Order”), ordering the parties file any settlement petition, including statements in support thereof, on or before April 11, 2023, at 4 p.m. The deadline to file objections to any settlement was set for April 20, 2023, at 4 p.m. The Interim Order also established a deadline of April 10, 2023, on or before 12:00 p.m., for the parties to provide a list of common issues to be used in the settlement documents to Judge Watson.

15. On March 28, 2023, a telephonic evidentiary hearing was convened as scheduled, whereupon Aqua Witness Leo Pietkiewicz provided live testimony, and was subject to cross-examination by Ms. Gawrylik. At the evidentiary hearing, the following exhibits were admitted into the record by Judge Watson, by stipulation of the parties:³

2 Aqua included the direct testimony of William C. Packer, Brennan J. Kelly, P.E., Stephen Clark, Matthew J. Marchisello, P.E., Leo Pietkiewicz, Harold Walker, III, and Dylan D’Ascendis as Exhibits U, V, W, X, Y, and AA, respectively, to its Application filed October 6, 2022.

³ Exhibit No. 10 was not entered by stipulation, but was admitted following Mr. Pietkiewicz’s testimony, with an errata correction made on page 7, line 3, with no objection from any party.

Exhibit No.	Party	Exhibit Description
1	Aqua	Application with Exhibits A – CC2 filed on October 6, 2022 ⁴
2	Aqua	Letter to Sec. Chiavetta encl. Aqua’s Responses to TUS Information Request Nos. 1, 2, 3, 4 & 7 filed on November 9, 2022 ⁵
3	Aqua	Letter to Sec. Chiavetta encl. Aqua’s Responses to TUS Information Request Nos. 4-6, 8-12 filed on November 18, 2022 ⁶
4	Aqua	Letter to Sec. Chiavetta encl. Supplemental Information re Ringtown Dam No. 5 filed on December 16, 2022
5	Aqua	Application Ex. U – Verified Direct Testimony of William C. Packer, including Appendix A (Aqua Statement No. 1)
6	Aqua	Application Ex. V – Verified Direct Testimony of Brennan Kelly. Including Appendix A (Aqua Statement No. 2)
7	Aqua	Application Ex. W – Verified Direct Testimony of Stephen Clark (Aqua Statement No. 3)
8	Aqua	Application Ex. X – Verified Direct Testimony of Matt Marchisello (Aqua Statement No. 4) (Public)
9	Aqua	Application Ex. X – Verified Direct Testimony of Matt Marchisello (Aqua Statement No. 4) (Confidential)
10	Aqua	Application Ex. Y – Verified Direct Testimony of Leo Pietkiewicz, including Appendix A (Aqua Statement No. 5)
11	Aqua	Application Ex. Z – Verified Direct Testimony of Harold Walker, III, including Appendix A (Aqua Statement No. 6)
12	Aqua	Application Ex. AA – Verified Direct Testimony of Dylan D’Ascendis, including Attachment A (Aqua Statement No. 7)
13	Aqua	Verifications of Discovery Request Responses included in Exhibits to OCA and I&E Direct Testimony
14	OCA	Verified Direct Testimony of Morgan N. DeAngelo, including Appendices A – F and OCA Schedule MND-1 (OCA Statement No. 1)
15	I&E	Verified Direct Testimony of D.C. Patel, including Appendix A and I&E Exhibit No. 1 (I&E Statement No. 1)
16	I&E	Verified Direct Testimony of Esyan A. Sakaya, including Appendix A (I&E Statement No 2)

16. Throughout the course of this proceeding, Aqua, I&E, OCA, OSBA, and Shenandoah engaged in settlement discussions in an effort to resolve all or part of the proceeding. On March 28, 2023, at the conclusion of the evidentiary hearing, Aqua advised Judge Watson that

⁴ Includes public and confidential versions of Exhibits and Supporting Workpapers filed confidentially with the Commission on October 6, 2022.

⁵ Includes public and confidential versions of Exhibits and Supporting Workpapers filed confidentially with the Commission on November 9, 2022.

⁶ Includes public and confidential versions of information filed confidentially with the Commission on November 18, 2022.

the Joint Petitioners had achieved an agreement in principle to settle all issues in the proceeding. Ms. Gawrylik advised Judge Watson at that time that she had reviewed the settlement terms and would oppose the settlement.

II. SETTLEMENT TERMS AND CONDITIONS

17. Joint Petitioners agree that this Application proceeding can be settled without the need for further litigation and agree to the following terms and conditions in Settlement thereof:

A. Approval of Application and Acquisition

1. The Commission should approve Aqua's acquisition of the Shenandoah water distribution and treatment system assets and Aqua's right to begin to offer, render, furnish, or supply water service in the areas served by MABS.
2. The Commission shall issue any necessary approvals or certificates for the transaction pursuant to 66 Pa. C.S. § 507.⁷

B. Tariff

1. A revised pro forma tariff ("Settlement Tariff") is attached hereto as **Exhibit A**. The Settlement Tariff, including all rates, rules and regulations regarding conditions of Aqua's water service, shall be permitted to become effective immediately upon closing of the transaction.
2. MABS currently charges fees described as "Miscellaneous Charges: D.E.P Commercial \$ 1.00 per Month, D.E.P Residential \$ 3.00 per Quarter." The parties agree that Aqua will not adopt those fees and they are not included in the Settlement Tariff.
3. The OCA does not join in supporting the Settlement Tariff to the extent that it requires Aqua to provide free water service to the Fire Companies listed on First Revised page 12.9. The Joint Petitioners agree that no precedent is established by adoption of the Settlement Tariff and all parties reserve their rights to challenge the provision of free service in future proceedings. The parties further agree that:
 - i. For those fire companies receiving free water service, at closing for the metered fire companies, and as each meter is installed for the unmetered fire companies, Aqua will begin

⁷ The OCA does not join in this Paragraph but does not oppose Aqua's request.

tracking their monthly consumption. Aqua will report that usage, by customer, as part of its rate filing in its first base rate proceeding that includes the Shenandoah water system assets.

- ii. In the first base rate proceeding that includes the Shenandoah water system assets, Aqua will propose to charge rates for water service to all entities it serves in the Requested Territory.⁸
- iii. Aqua will join the OCA in any efforts, including but not limited to filing a petition for declaratory order with the Commission, to reconcile the regulatory, legal and policy precedent against provision of free service by Commission-regulated utilities and the provisions of Section 1329 of the Code, 66 Pa. C.S. § 1329(d), that address the buyer's adoption of seller's rates at closing.

C. Rate-making Rate Base

- 1. Pursuant to 66 Pa. C.S. § 1329(c), Aqua shall be permitted to use \$12,000,000 for rate-making rate base for the acquired assets.
- 2. Any improvements made by Shenandoah prior to closing related to the \$286,200 grant awarded by the Susquehanna River Basin Commission to MABS will not increase the \$12,000,000 addition to rate-making rate base and such improvements will be included in the assets transferred to Aqua at closing.

D. Cost of Service Study ("COSS")

- 1. In the first base rate case that includes the Shenandoah water system assets, Aqua will submit a water COSS that removes all costs and revenues associated with the operation of the Shenandoah system.
- 2. In the first base rate case that includes the Shenandoah water system assets, Aqua will file COSS calculations separately for the Shenandoah system consistent with typically filed rate-making exhibits including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

⁸ The Requested Territory includes the Borough and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, located in Schuylkill County, Pennsylvania.

E. Cell Tower Revenue

In future base rate cases, Aqua will impute 50% of revenue received from Cell Towers, as defined in Schedule 2.02(g)(4) of the APA, to the benefit of ratepayers, as if Aqua received and retained all revenues beginning on the closing date.

F. Distribution System Improvement Charge (“DSIC”) and Long Term Infrastructure Improvement Plan (“LTIP”)

1. Within 90 days after closing, Aqua will file an amendment to its water LTIP to include the Shenandoah water system and any other Section 1329 systems that have been acquired but not included in the LTIP, which does not re-prioritize other existing commitments in other service areas. This Paragraph does not limit Aqua’s current practice and ability to allocate projects as needed by Aqua necessary for its capital program, but recognizes that any Shenandoah system infrastructure will be in addition to capital improvements already planned.
2. No later than the next quarterly DSIC filing following the Commission’s approval of the amended water LTIP, Aqua will file a compliance tariff supplement that applies the DSIC, including all customer safeguards applicable thereto, to all systems included in the amended water LTIP. Additionally, Aqua will not include investments related to the Shenandoah system in its DSIC until Aqua applies the DSIC to those customers.

G. Allowance for Funds Used During Construction (“AFUDC”) and Deferral of Depreciation and Transaction Costs

1. Any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes, will be addressed in Aqua’s first base rate case which includes the Shenandoah water system assets.
2. Regarding future claims for AFUDC, deferral of depreciation, and transaction costs related to this acquisition, Joint Petitioners reserve the right to litigate their positions fully in future base rate cases when these issues are ripe for review. The parties assent to this agreement should not be construed to operate as its preapproval of Aqua’s requests.

H. Unaccounted For Water (“UAW”)

Aqua agrees to review the high UAW in the Shenandoah system and will submit an AWWA Water Audit Report for the Shenandoah system and provide a copy to the statutory advocates.

I. Metering

Aqua agrees to ensure the four unmetered Fire Companies are metered within 60 days after closing.

J. Lead Service Line Replacements

1. Aqua agrees that upon closing, it will incorporate the Shenandoah system into its customer-owned lead service line replacement (“COLSLR”) program.
2. Aqua also agrees it will explore low cost or no cost financing for lead service line replacement in the Requested Territory, and provide an update to the parties on the progress of obtaining a low interest loan or grant money to replace COLSLs in the Shenandoah system in its next base rate case following closing of the transaction.

K. Welcome Letter and Low Income Program Outreach

1. Aqua will send out a welcome letter within 30 days following closing and will include information about its customer assistance programs in the welcome letter, and the COLSLR program. The welcome letter will include, at minimum, a description of the low-income programs and eligibility requirements for participation in the programs, and Aqua’s contact information.
2. Aqua agrees it will include the same information regarding low-income programs in bills to MABS’ customers within the first 90 days after closing.
3. The welcome letter and information about the customer-assistance programs will be sent in both English and Spanish. If 5% or more of the residents of the Requested Territory are using another language, information in that language directing customers to the numbers to call for information and translation assistance will be included in the materials.
4. Aqua will include information in the welcome letter about in-person bill payment options reasonably proximate to the Requested Territory.
5. Aqua will work with community-based organizations with offices local to the Requested Territory for purposes of providing information and enrolling customers in Aqua’s customer-assistance programs.

L. Hardship Contribution

In addition to existing commitments, Aqua will contribute \$45,000 to the Company's Hardship Grant program. All unspent funds at the end of the program year will be rolled over and added to the budget for the Hardship Grant program in the following year(s).

M. Easements

1. Aqua and Shenandoah will (i) identify all missing easements including public rights-of-way and other property rights; (ii) take any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing; and (iii) Shenandoah shall bear all costs and expenses for obtaining and conveying the missing easements and other property rights.
2. Additionally, if for any circumstances beyond Shenandoah's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, Aqua and Shenandoah may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.

N. Transaction and Closing Costs

1. The Joint Petitioners acknowledge that the Application includes a request that Aqua be permitted to claim transaction and closing costs associated with the transaction. The Joint Petitioners agree that they will not contest this request in this proceeding, but they reserve their rights to litigate their positions fully in future rate cases. The Joint Petitioners' assent to this term should not be construed to operate as their preapproval of Aqua's request.
2. The inclusion of outside legal fees, if any, in Aqua's transaction and closing costs under the APA shall be separately identified in Aqua's next base rate case, and OCA, I&E and OSBA reserve the right to challenge the reasonableness, prudence, and basis for such fees.
3. Any claim by Aqua to recover transaction and closing costs associated with the transaction will not include costs incurred by Shenandoah.

III. PROPOSED FINDINGS OF FACT

18. As a consequence of the Settlement terms and conditions set forth in Section II above and supported by the Application, exhibits and testimony submitted for admission in the record, the Joint Petitioners request that Judge Watson and the Commission make the following findings of fact and such other findings and conclusions as may be required or appropriate.

Aqua and Shenandoah

19. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua is engaged in the water service business and furnishes water service to approximately 448,000 customers. Aqua's existing service territories cover various counties throughout Pennsylvania, including parts of Schuylkill County. Exhibit No. 1, Application, at ¶ 8.

20. The Borough is a duly organized and validly existing borough of the Commonwealth of Pennsylvania. In 1941, the Borough created MABS, which is duly organized and existing under the Municipal Authorities Act, and thereafter transferred ownership of the water system to MABS, which provides water service to approximately 2,899 customers (as of December 31, 2021) in the Requested Territory. Id. at ¶ 9.

APA

21. Aqua, the Borough, and MABS are parties to an APA, dated as of July 20, 2021. Id. at ¶ 7; Application Ex. B.

22. The negotiated purchase price for the Shenandoah water system assets (the "Assets") is Twelve Million Dollars (\$12,000,000.00), and is based on arm's length negotiations. Aqua is not affiliated with the Borough or MABS. Exhibit No. 1, Application, at ¶¶ 21-22.

23. Aqua will use short term debt initially for the purchase of the Assets with the

expectation that the short term debt will be converted to long term debt and equity capital at a later date. Id. at ¶ 23.

Assets Subject to Transfer

24. The water system assets to be transferred are the “Acquired Assets” and have the meaning specified in Section 2.01 of the Agreement. The Acquired Assets include the assets, properties and rights of Shenandoah used in the system and all pipes, services, valves, hydrants, pumping stations, reservoirs, dams, storage tanks, improvements, fixtures, manholes, and pipelines and any billing and collections related assets necessary to run the system. Id. at ¶ 24.

25. Aqua will be taking assignment of one contract identified on Schedule 4.15 of the APA (“Assigned Contracts”). Id. at ¶ 25; Application Ex. F.

26. The Acquired Assets also include all Authorizations and Permits of or held by Shenandoah (to the extent transferrable to Aqua under applicable law), including all Authorizations and Permits which are environmental permits, other operating permits and those items listed or described on Schedule 4.14 of the APA. Exhibit No. 1, Application, at ¶ 26.

27. “Excluded Assets,” which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the APA. Excluded Assets include contracts that are not Assigned Contracts; breached dams including, Kehly Run Dam No. 5, Kehly Run Dam No. 6, and Kehly Run Reservoir No. 3; cash and cash equivalents; and the assets, properties and rights set forth in Schedule 2.02(g) of the Agreement. Id. at ¶ 27.

28. “Assumed Liabilities” has the meaning specified in Section 2.04(a) of the APA and includes all liabilities and obligations arising out of or relating to Aqua’s ownership or operation of the water system and the Acquired Assets on or after closing. Id. at ¶ 28.

Rates

29. MABS bills customers with a 5/8", 5/8 x 3/4", 3/4", or 1" meter a minimum charge of \$61.46 quarterly for the first 3,000 gallons of water usage; \$20.49 on the next 3,000 gallons (4,000-6,000); \$10.96 for the next 3,000 gallons (7,000-9,000 gallons); \$4.83 for the next 12,000 gallons (10,000-21,000 gallons); and \$10.96 for all in excess of 21,000 gallons. Customers having a 2-inch meter or greater are billed monthly at a fixed charge up to a stated allowance, then \$3.92 on the next 500,000 gallons (per 1,000 gallons) and \$1.89 per 1,000 gallons on the balance. Exhibit No. 1, Application, at ¶ 36; Application Ex. B, at Schedule 7.04(a).

30. Aqua will implement MABS' water rates in effect at closing as reflected in the Settlement Tariff (**Exhibit A**), which rates shall remain unchanged until Aqua's next base rate proceeding following closing. A schedule of rates for MABS was included with the Application as Exhibit G. MABS presently bills on a monthly and quarterly basis. Aqua will convert MABS customers to monthly billing at closing. Exhibit No. 1, Application, at ¶ 35.

31. Aqua projects annual revenue of \$1,927,789 from MABS' customers based on MABS current rate schedule,⁹ and annual operating and maintenance expenses of \$1,203,215 based on MABS operating expenses presented in the 2020 financial statements, as adjusted by Aqua. *Id.* at ¶¶ 43-44.

32. Aqua projects an annual revenue requirement for the MABS system of approximately \$2.8 million and an annual revenue deficiency of \$865,000. Exhibit No. 5, Packer Direct, Appendix A, at 1; OCA Statement No. 1, at 6:4-8.

33. The current average monthly bill of a MABS residential customer is approximately \$43.46 per month. Applying 100% of the revenue deficiency to the existing rates, the average bill

⁹ This estimate included the Miscellaneous Charges DEP that are excluded as a result of the Settlement. See Paragraph 17.B.2, *supra*.

would increase to approximately \$62.96 per month or a 44.87% increase. Exhibit No. 5, Packer Direct, at 15:4-7 and Appendix A. Aqua projects that if 20% of the revenue deficiency of \$865,000 is applied to the existing Aqua water customers, the estimated incremental rate effect is a \$0.08 or 0.10% monthly increase for those customers. Exhibit No. 5, Packer Direct, Appendix A, at 1.

34. Aqua will implement its *Rules and Regulations* to govern the provision of water service in the Requested Territory, as those *Rules and Regulations* are in effect from time to time for Aqua. Id. at ¶ 37.

Proof of Compliance

35. Aqua will operate and manage the Shenandoah water system as a standalone system within Aqua's footprint from its Southeastern Division Office in Bryn Mawr, Pennsylvania, with operations support from Aqua's Roaring Creek Division Office in Shamokin, Pennsylvania. The system is approximately 14 miles from the Roaring Creek Division Office and a portion of the system overlaps with Aqua's closest water system. Aqua provides water service in Schuylkill County, as well as in the neighboring counties of Berks, Carbon, Columbia, Lehigh and Northumberland. Exhibit No. 1, Application, at ¶¶ 45, 51.

36. Aqua is planning to interconnect the Shenandoah water system with its Roaring Creek system to provide redundancy, improve water quality, and provide additional emergency supply as a result of the acquisition; however, this interconnection will occur only after Aqua has had an opportunity to conduct, review and analyze the results of hydraulic and water compatibility studies to determine any appropriate steps required prior to interconnection are followed.¹⁰ Id. at ¶ 52; Exhibit No. 7, Clark Direct.

37. Aqua is a Class A utility in good standing with the DEP and in general compliance

¹⁰ The Joint Petitioners have not waived their rights to take any position on future claims for rate recovery of investment in the Shenandoah system, including the ability to challenge reasonableness and prudence.

with the DEP with regard to the provision of water service. Exhibit No. 1, Application, at 49.

38. A list of violations for the MABS System within the last five years along with actions taken to address those violations is attached to the Application as Exhibit O, and the DEP correspondence related to deficiencies in the MABS dams was attached to the Application as Exhibit P. Id. at ¶¶ 47-48. Dam inspection reports for MABS dams were also provided. Exhibit No. 3.¹¹

39. Aqua is not aware of any DEP violations for MABS other than those listed in the Application. Exhibit No. 6, Kelly Direct, at 8:15-17.

Planned Capital Projects, COLSLs and UAW

40. Aqua has identified capital improvement needs for distribution mains, pump stations, emergency power, storage tanks, and dams based on facility conditions observed, facility age, and safety. Aqua estimates that it will invest approximately \$23 million over the next 10 years, with approximately \$13 million of that investment for distribution main replacement. Id. at 6:15-20.

41. The MABS water system also has high UAW, which MABS has taken steps to address, but which Aqua will look to measure through performing a system audit, and endeavor to reduce through main replacements and other improvements, including meter replacements. Exhibit No. 6, Kelly Direct, at 9:6-17.

42. Lead Service Lines (“LSLs”) have been observed in the MABS system, however, the number of LSLs in the system is unknown. MABS does not have a COLSLR program, but Aqua does. Exhibit No. 7, Clark Direct, at 6-7. Aqua will integrate the MABS system into its service line inventory efforts to be completed by 2024 and will make its COLSLR program

¹¹ These reports were filed confidentially with the Commission.

available to MABS customers, which will eliminate partial replacements of LSLs and provide opportunity for no-cost replacements to MABS customers with a COLSL. Id. at 8.

Fitness

43. *Legal Fitness.* Aqua is a certificated provider of water service in the Commonwealth, with no pending legal proceedings that would suggest that Aqua is not able to provide safe and adequate service to customers. Exhibit No. 1, Application, at ¶55.a., n.3; Exhibit No. 5, Packer Direct, at 8:6-8.

44. *Financial Fitness.* Aqua is a Class A water utility in the Commonwealth and the largest water subsidiary of Essential, with total net water utility plant assets of \$4.1 billion and annual revenues of \$495 million in 2021. Aqua had operating income of approximately \$260 million and net income of \$194 million. Aqua's cash flows from operations equaled approximately \$275 million. Exhibit No. 5, Packer Direct, at 8:11-15.

45. Aqua has an A rating from Standard and Poor's Rating Service and has approximately \$1.815 billion in outstanding long-term debt at a weighted average interest rate of approximately 4.00%. Aqua also utilizes low-cost long-term debt financing instruments through the Pennsylvania Infrastructure Investment Authority ("PENNVEST"), representing about 2% of Aqua's total debt portfolio. In addition to Aqua's access to long-term debt, Aqua has a short-term credit facility of \$100 million and has access to equity capital as a subsidiary of Essential. Id. at 8:15-21.

46. The Proposed Transaction will be funded using existing short-term credit lines. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. Aqua does not anticipate that the Proposed Transaction will affect its corporate credit rating. Id. at 9:3-10.

47. *Technical and Managerial Fitness.* Management, customer service, regulatory compliance, engineering, financial and ancillary services will be provided from the Southeastern Division Office in Bryn Mawr, as well as operational support to be provided by Roaring Creek Division Office in Shamokin, Pennsylvania. Mr. William M. Grutza will be the assigned Certified Water Operator for the system. Exhibit No. 1, Application, at ¶ 45.

48. Aqua is already providing water service in Girardville (through its Girardville System). Aqua's Girardville system is interconnected with Aqua's nearby Mt. Carmel and Roaring Creek systems. Aqua is planning to interconnect its existing water system with the MABS water system to provide redundancy and emergency supply. Aqua's Roaring Creek Division office is located in close proximity to the MABS water system. Exhibit No. 5, at 13:6-13.

Benefits of the Transaction and Settlement

49. Aqua has the managerial, technical, and financial resources to improve the operations of MABS. Exhibit No. 1, Application, at 55.d.

50. Aqua has technical experience and fitness in deploying resources towards capital improvements. Exhibit No. 5, Packer Direct, at 13:22-14:2; Exhibit No. 1, Application, at ¶ 55.b.

51. As noted above, Aqua is planning to interconnect its existing water system with the Shenandoah water system to provide redundancy and emergency supply. Exhibit No. 5, Packer Direct, at 13:6-13.

52. Aqua is projecting less O&M costs under its ownership through reductions in costs for water maintenance. Specifically, referencing MABS 2020 Financial Statements, Operating Expenses were approximately \$1.7 million, whereas Aqua is projecting annual expenses of approximately \$1.2 million. *Id.* at 13:14-21.

53. As noted above, Aqua plans to invest \$23 million in the MABS system for main

replacements and other system needs, will endeavor to minimize future water losses through main replacements and other improvements, will integrate the MABS system into its LSL inventory efforts, and MABS customers will be able to participate in Aqua's COLSLR program. Exhibit No. 6, Kelly Direct, at 6:15-20, at 9:6-17; Exhibit No. 7, Clark Direct, at 6-8.

54. Aqua provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business, which expands on MABS' current business hours. The same customer service number houses Aqua's 24/7/365 emergency response line. Exhibit No. 7, Clark Direct, at 3:22-4:2.

55. MABS customers will benefit from expanded bill payment options including payment by text message. MABS customers can also sign up for notifications and alerts to be via email or text message regarding their service. These services allow customers to stay informed of events impacting their service. MABS customers will also have access to Aqua's customer assistance programs. Id. at 4:2-6.

56. Aqua's turn on fee, during normal business hours, is \$50, which is significantly less than MABS turn on fee of \$123. Id. at 4:7-9.

57. Aqua has procedures in place under Chapter 14 of the Code that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Aqua has customer care teams available to help resolve service and billing issues and has an established process and procedure for addressing formal and informal complaints. Id. at 4:12-16.

58. The acquisition of the Shenandoah water system will be an approximate 0.6% increase in Aqua's customer base. Exhibit No. 5, Packer Direct, at ¶ 14:5-8.

59. The connections per MABS' records are approximately 2,900, which equates to an

approximately \$4,100 purchase price per connection and is approximately 50% less than Aqua's existing rate base per connection, projected at approximately \$8,500. Id. at 14:9-15.

60. Shenandoah will receive the benefit of sale proceeds of \$12,000,000, and retained cell tower revenues for a period of time following closing.

Section 1329 Considerations

61. *Ratemaking Rate Base.* Aqua and Shenandoah have agreed to use the process presented in Section 1329 of the Code to determine the fair market value of the Acquired Assets and the ratemaking rate base.

62. Aqua and Shenandoah agreed on a Licensed Engineer to complete the Engineering Assessment with Original Cost Estimate of the Shenandoah Water System and engaged UVEs to perform Fair Market Value analyses of the system in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), utilizing the cost, market, and income approaches. Exhibit No. 1, Application, at ¶ 12 and Exhibit D.

63. Aqua engaged the services of Gannett. Shenandoah engaged the services of ScottMadden. Both firms were pre-certified as authorized UVEs and are on the list of qualified appraisers maintained by the Commission. Id. at ¶ 57; *see also* Exhibit No. 11, Walker Direct, and Exhibit No. 12, D'Ascendis Direct.

64. As required by Section 1329(d)(1)(i), copies of the Fair Market Value Appraisal Reports of Gannett and ScottMadden were attached as Exhibit Q and Exhibit R, respectively, to the Application. Exhibit No. 1, Application, at ¶ 57, Exhibit Q, and Exhibit R.

65. As required by Section 1329(d)(1)(ii), the purchase price agreed to by Aqua and Shenandoah was identified as \$12,000,000. Exhibit No. 1, Application, at ¶ 58.

66. As required by Section 1329(d)(1)(iii), ratemaking rate base for the Shenandoah

Water System was identified as \$12,000,000. This amount is based on the agreed-to purchase price of \$12,000,000, which is less than the average of the two UVE appraisals. Exhibit No. 1, Application, at ¶ 59; *see also* Exhibit No. 5, Packer Direct, at 17:19-22. Gannett's fair market value appraisal is \$25,221,000. ScottMadden's fair market value appraisal is \$18,100,307. The average of the two appraisals is \$21,660,654. Exhibit No. 5, Packer Direct, at 17:11-15.

67. As required by Section 1329(d)(1)(iv), transaction and closing costs were identified as approximately \$457,000. Exhibit No. 1, Application, at ¶ 60. Exact closing costs will be determined at closing. Exhibit No. 5, Packer Direct, at 18:17-18.

68. As required by Section 1329(d)(1)(v), a tariff containing a rate equal to the existing MABS rates at the time of acquisition was attached as Exhibit G to the Application. Exhibit No. 1, Application, at ¶ 61 and Exhibit G.

69. The UVEs were paid \$45,977.50 for the completed Fair Market Value Appraisal Reports. Documentation of the fees paid to each UVE was included with the Application as Exhibit S1 and Exhibit S2, respectively. Exhibit No. 1, Application, at ¶ 63, Exhibit S1 and Exhibit S2; Exhibit No. 5, Packer Direct, at 3-13; Exhibit No. 12, D'Ascendis Direct, at 6:13-21.

70. The UVEs' fees were less than 5% of the fair market value benchmark noted in the Final Implementation Order. Exhibit No. 1, Application, at ¶ 63.

71. Gannett and ScottMadden filed verifications stating that they have no affiliation with Aqua or Shenandoah as specified in Section 1329 and that their Appraisals determined fair market value in compliance with the most recent edition of USPAP, employing the cost, market and income approaches and that they complied with applicable jurisdictional exceptions were attached to the Application. Exhibit No. 1, Application, at ¶ 41, Exhibit T1 and Exhibit T2.

72. Aqua's contract with Gannett to undertake its Fair Market Value Appraisal was

included as Exhibit S1 to the Application. Shenandoah's contract with ScottMadden to undertake its Fair Market Value Appraisal was included as Exhibit S2 to Application. Exhibit No. 5, Packer Direct, at 18:8-13.

73. Aqua is proposing to implement MABS' existing rates after closing and to maintain those rates until the next Aqua rate proceeding. Exhibit No. 1, Application, at ¶ 65.

Section 507 Considerations

74. Aqua's Application asks that the Commission, if necessary, issue certificates of filing pursuant to Section 507 of the Code, for its APA with the Borough and MABS. Exhibit No. 1, Application, at ¶ 75 and Exhibit B.

IV. PROPOSED CONCLUSIONS OF LAW

75. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §§ 1102 and 1329.

76. The Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1) and 1102(a)(3).

77. The burden of proving entitlement to a certificate is upon the applicant as it is the applicant that is seeking a proposed rule or order. 66 Pa.C.S. § 332; see also Se-Ling Hosiery v. Margulies, 70 A.3d 854 (Pa. 1950); Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600 (Pa. Commw. Ct. 1990). The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. Se-Ling Hosiery, supra. The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. Id.

78. Any finding of fact necessary to support an adjudication of the Commission must

be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Mill v. Comm., Pa. P.U.C., 447 A.2d 1100 (Pa. Commw. Ct. 1982); Edan Transportation Corp. v. Pa. P.U.C., 623 A.2d 6 (Pa. Commw. Ct. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. v. Pa. P.U.C., 413 A.2d 1037 (Pa. 1980); Erie Resistor Corp. v. Unemployment Com. Bd. Of Review, 166 A.2d 96 (Pa. Super. 1960); Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Commw. Ct. 1984).

79. Commission policy promotes settlements. 52 Pa. Code § 5.231.

80. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. 52 Pa. Code § 69.401.

81. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. Pa. P.U.C. v. York Water Co., Docket No. R-00049165 (Order entered Oct. 4, 2004); Pa. P.U.C. v. C.S. Water & Sewer Assocs., 74 Pa. PUC 767 (1991). The instant settlement is in the public interest.

82. A certificate of public convenience will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a).

83. In City of York v. Pa. P.U.C., 295 A.2d 825 (Pa. 1972), the Pennsylvania Supreme Court explained, in the context of a utility merger, that the issuance of a certificate of public convenience requires the Commission to find affirmatively that public benefit will result from the

merger.

84. In granting a certificate of public convenience, the Commission may impose such conditions as it may deem to be just and reasonable. 66 Pa.C.S. § 1103(a).

85. Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. Joint Application of Peoples Natural Gas Co. LLC, Peoples TWP LLC, and Equitable Gas Co., LLC, Docket No. A- 2013-2353647, 309 P.U.R.4th 213 (2013).

86. An existing provider of public utility service is presumed fit. See Re Pennsylvania-American Water Company, 85 PA PUC 548 (1995). The burden of proof to rebut the presumption is on Protestants. Re Byerly, 270 A. 2d 186 (Pa. 1970); Morgan Drive-Away, Inc., v. Pa. P.U.C., 293 A.2d 895 (Pa. Commw. Ct. 1972). Aqua has demonstrated that it is technically, legally, and financially fit.

87. Section 1329 of the Code, 66 Pa.C.S. § 1329, addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities.

88. If the buyer and seller agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of experts established and maintained by the Commission. The selected UVEs are required to perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches. 66 Pa.C.S. § 1329(a).

89. Aqua has demonstrated that Aqua and Shenandoah engaged the services of Gannett and ScottMadden, respectively, to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. Both firms were pre-certified as authorized UVEs by the Commission and are on the list of qualified appraisers maintained by the

Commission.

90. In regard to the ratemaking rate base, the General Assembly directed as follows for acquisitions proceeding under Section 1329:

(c) **Ratemaking rate base.** – The following apply:

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

91. Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).”

92. During the period that the *pro forma* tariff supplement is in effect, an acquiring public utility may collect a DSIC, as approved by the Commission. 66 Pa.C.S. § 1329(d)(4).

93. Section 1329 permits an acquiring public utility to include transaction and closing costs in its rate base, during its next base rate proceeding. 66 Pa.C.S. § 1329(d)(2). The Commission will not approve these costs during the 1329 proceeding. *Implementation of Section 1329 of the Public Utility Code*, Docket No. M-2016-2543193 (Final Implementation Order entered October 27, 2016).

94. Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. The APA, dated July 20, 2021, between Aqua, the Borough and MABS is accepted as valid pursuant to Section 507, subject to the conditions of the Settlement.

V. JUSTIFICATION AND SUPPORT FOR SETTLEMENT

95. It is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement.¹² Settlements lessen the time and expense of litigating a case and, thus, directly benefit all parties concerned. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.¹³ The Joint Petitioners submit that the resolution of issues as presented in this settlement will further the public interest. The Joint Petitioners agree that Aqua has the requisite technical, financial and legal fitness to own and operate the MABS system, and their respective Statements in Support of the Settlement are attached as Exhibits B, C, D, E and F.

VI. CONDITIONS OF SETTLEMENT

96. This Joint Petition is proposed to resolve all issues in the instant matter and, except as set forth above, is made without any admission against or prejudice to any positions which any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by any one of the Joint Petitioners as provided below. Except as set forth above, Joint Petitioners agree that this Joint Petition shall not constitute or be cited as controlling precedent in this or any other jurisdiction.

97. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein without modification. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn

¹² 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

¹³ *Pa. P.U.C. v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103, Opinion and Order entered July 14, 2011, citing *Warner v. GTE North, Inc.*, Docket No. C-00902815, Opinion and Order entered April 1, 1996; and *Pa. P.U.C. v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991). See also *Pa. P.U.C. v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

upon written notice to the Commission and all parties within three (3) business days by any one of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission does not approve the Joint Petition or any Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective right to fully litigate the case, including producing witnesses, conducting full cross-examination and presenting briefs and legal argument.

98. Joint Petitioners will make reasonable, good faith efforts to obtain approval of the Joint Petition by the Administrative Law Judge and the Commission without modification. If the Administrative Law Judge in his Recommended Decision recommends that the Commission adopt the Joint Petition without modification as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their right to file Exceptions with respect to any modifications to the terms and conditions of this Joint Petition, or any additional matters, proposed by Administrative Law Judge Watson in his Recommended Decision. The Joint Petitioners reserve their right to file Reply Exceptions to any Exceptions which may be filed whether by a Joint Petitioner or other party to the proceeding.

99. The Joint Petitioners recognize that this Joint Petition does not bind the *pro se* Protestant. A copy of the Joint Petition will be served on Ms. Gawrylik who may comment or object to the Joint Petition by Thursday, April 20, 2023, at 4:00 p.m., pursuant to the March 22, 2023 Interim Order issued in this proceeding. Nothing herein is intended to limit in any way any position which any Joint Petitioner may have or take concerning any comment or objection to the Settlement that may be filed by the Protestant.

WHEREFORE, Aqua, I&E, OCA, and Shenandoah request that Administrative Law Judge Jeffrey A. Watson recommend approval of and that the Pennsylvania Public Utility

Commission grant and approve the Application of Aqua at Docket No. A-2022-3034143 and order as follows:

1. That the Joint Petition for Settlement, filed on April 11, 2023, by Aqua, I&E, OCA, and Shenandoah, at Docket No. A-2022-3034143, including all terms and conditions thereof, is approved without modification.
2. That the Application filed by Aqua on October 3, 2022 and accepted by the Commission on February 3, 2023, is granted, subject to the conditions set forth in Paragraph 17 of the Joint Petition for Settlement.
3. That the Commission's Secretary issue a certificate of public convenience evidencing Aqua's right under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(1) and (2) of the Public Utility Code, 66 Pa.C.S. §§ 1102(a)(1), 1102(a)(3) and 1329(c)(1) and (2), to: (i) acquire, by sale, the water system assets of Shenandoah situated within the Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, Girardville Borough, and Union Township, within Schuylkill County, Pennsylvania; (ii) begin to offer, render, furnish and supply water service to the public in the Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough within Schuylkill County, Pennsylvania; and (iii) incorporate the ratemaking rate base of \$12,000,000 for the Shenandoah water system assets in its next base rate case pursuant to 66 Pa. C.S. § 1329(c)(1).
4. That within 10 days after closing of the acquisition, Aqua shall file a tariff supplement in the form filed with the Joint Petition for Settlement as **Exhibit A** implementing rates for MABS customers post-closing.
5. That the Secretary's Bureau shall issue certificates of filing pursuant to, 66 Pa. C.S. § 507 for the APA between Aqua and Shenandoah.
6. That all other approvals, certificates, registrations and relief are hereby issued with respect to Aqua's acquisition of the water system assets of Shenandoah pursuant to Sections 1102, 1329, and 507 of the Public Utility Code.
7. That the proceeding at Docket No. A-2022-3034143 is terminated and marked closed.

Respectfully submitted,

AQUA PENNSYLVANIA, INC.

By: /s/ Courtney L. Schultz

Courtney L. Schultz, Esq.
Saul Ewing LLP
1500 Market Street
Centre Square West, 38th Floor
Philadelphia, PA 19102
Courtney.schultz@saul.com

Counsel for Aqua Pennsylvania, Inc.

OFFICE OF CONSUMER ADVOCATE

By: /s/ Erin L. Gannon

David T. Evrard
Harrison W. Breitman
Erin L. Gannon
PA Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101-1923
OCAShenandoah@paoca.org

Counsel for the Office of Consumer Advocate

BUREAU OF INVESTIGATION AND ENFORCEMENT

By: /s/ Carrie Wright

Carrie Wright, Esq., Prosecutor
Bureau of Investigation and Enforcement
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
carwright@pa.gov

Counsel for the Bureau of Investigation and Enforcement

BOROUGH OF SHENANDOAH & THE MUNICIPAL AUTHORITY OF THE BOROUGH OF SHENANDOAH

By: /s/ William C. Rhodes

William C. Rhodes, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103
rhodes@ballardspahr.com

Counsel for the Borough of Shenandoah and the Municipal Authority of the Borough of Shenandoah

EXHIBIT A

AQUA PENNSYLVANIA, INC.
(hereinafter referred to as the "Company")

RATES, RULES, AND REGULATIONS
GOVERNING THE DISTRIBUTION AND SALE OF
WATER SERVICE
IN PORTIONS OF

ADAMS, BERKS, BRADFORD, BUCKS, CARBON, CHESTER, CLARION, CLEARFIELD,
COLUMBIA, CRAWFORD, CUMBERLAND, DELAWARE, FOREST, JUNIATA,
LACKAWANNA, LAWRENCE, LEHIGH, LUZERNE, MERCER, MCKEAN, MONROE,
MONTGOMERY, NORTHHAMPTON, NORTHUMBERLAND, PIKE, SCHUYLKILL,
SUSQUEHANNA, SNYDER, VENANGO, WARREN, WAYNE, AND WYOMING COUNTIES

IN THE COMMONWEALTH OF PENNSYLVANIA

ISSUED: XX/XX/XXXX

EFFECTIVE: XX/XX/XXXX

By:

Marc Lucca, President
Aqua Pennsylvania, Inc.
762 Lancaster Avenue
Bryn Mawr, Pennsylvania 19010

NOTICE

**THIS TARIFF ESTABLISHES WATER RATES FOR THE CUSTOMERS OF THE
BOROUGH OF SHENANDOAH, WEST MAHANOEY TOWNSHIP, MAHANOEY
TOWNSHIP, BUTLER TOWNSHIP, AND GIRARDVILLE BOROUGH, SCHUYLKILL
COUNTY, PENNSYLVANIA.**

LIST OF CHANGES MADE BY THIS TARIFF

Changes: This tariff makes changes to reflect the acquisition of the water assets of the Borough of Shenandoah, which services the Boroughs of Shenandoah and Girardville as well as the Townships of West Mahanoy, Mahanoy and Butler in Schuylkill County. Closing on the acquisition took place on XX/XX/XXXX, with the effective date of ownership occurring at 12:01AM on XX/XX/XXXX. (See pages XXX)

This tariff is made pursuant to the Commission's Order adopted XX/XX/XXXX at Docket No. A-2022-3034143, which authorizes the issuance of the Certificate of Public Convenience.

TABLE OF CONTENTS

	Page Number		
Rates, Rules, and Regulations	1	XXXX Revised Page	(C)
List of Changes Made by This Tariff	2	XXXX Revised Page	(C)
Table of Contents	3	XXXX Revised Page	(C)
Table of Contents (cont'd)	4	Original Page	
Table of Contents (cont'd)	5	Original Page	
Held For Future Use	6	Original Page	
Description of Territory Served	7	Original Page	
Description of Territory Served (cont'd)	8	Original Page	
Description of Territory Served (cont'd)	9	Original Page	
Description of Territory Served (cont'd)	10	Original Page	
Description of Territory Served (cont'd)	11	XXXX Revised Page	(C)
 SCHEDULE OF RATES:			
Metered and Unmetered Service Charge	12.1	Original Page	
Consumption Charge	12.2	Original Page	
Consumption Charge (cont'd)	12.3	Original Page	
Consumption Charge (cont'd)	12.4	Original Page	
Metered and Unmetered Private Fire Service	12.5	Original Page	
Metered and Unmetered Private Fire Service (cont'd)	12.6	Original Page	
Public Fire Service	12.7	Original Page	
Belle Aire Acres Division	12.8	Original Page	
Shenandoah Division	12.9	XXXX Revised Page	(C)
Shenandoah Division	12.10	Original Page	(C)
Industrial Standby Rate	13	Original Page	
Industrial Standby Rate (cont'd)	14	Original Page	
Industrial Standby Rate (cont'd)	15	Original Page	
Resale and Electric Generation Standby Rate	16	Original Page	
Resale and Electric Generation Standby Rate (cont'd)	17	Original Page	
Resale and Electric Generation Standby Rate (cont'd)	18	Original Page	
Rider DIS - Demand Based Industrial Service	19	Original Page	
Rider DRS - Demand Based Resale Service	20	Original Page	
Rider EGS - Electric Generation Service	21	Original Page	
Rider OPI - Off Peak/Interruptible Rate Service	22	Original Page	
Rider OPI - Off Peak/Interruptible Rate Service (cont'd)	23	Original Page	
Distribution System Improvement Charge (DSIC)	24	Original Page	
DSIC (cont'd)	25	Original Page	
DSIC (cont'd)	26	Original Page	
DSIC (cont'd)	27	Original Page	

DESCRIPTION OF TERRITORIES SERVED

SHENANDOAH DIVISION

The Boroughs of Shenandoah and Girardville, and the Townships of West Mahanoy, Mahanoy, and Butler in Schuylkill County

SCHEDULE OF RATES

Metered Rates

MONTHLY SERVICE CHARGE

Customer Charge (\$) Shenandoah
Division

Fixed (per Customer)

<u>Meter Size:</u>	
5/8 inch	\$ 20.49
5/8 x 3/4 inch	20.49
3/4 inch	29.88
1 inch	40.91

MONTHLY CONSUMPTION CHARGE : Rate per 1,000 gallons

All Classes (5/8, 5/8 x 3/4, 3/4 and 1 inch meters)

First 1000 Gallons		Included in Minimum Monthly Fixed Charge
Next 1000 Gallons	\$	20.49
Next 1333 Gallons	\$	10.96
Next 3667 Gallons	\$	4.83
Greater than 6667 Gallons	\$	10.96

MONTHLY SERVICE CHARGE

Customer Charge (\$) Shenandoah
Division

Fixed (per Customer)

<u>Meter Size:</u>	
2 inch	\$ 110.29 up to 2,000 gallons
3 inch	\$ 679.73 up to 84,000 gallons
4 inch	\$ 1,223.46 up to 150,000 gallons
6 inch	\$ 2,582.84 up to 324,000 gallons
8 inch	\$ 3,616.05 up to 453,000 gallons

MONTHLY CONSUMPTION CHARGE : Rate per 1,000 gallons

All Classes (2,3,4,6 and 8 inch meters)

500,000 gallons beyond base allowance	\$	3.92
Usage beyond base allowance plus 500,000 gallons	\$	1.89

Effective XX/XX/XXXX and until the Company's next base rate case, the following customers will be charged a monthly customer charge and consumption charge of \$0.00: Shenandoah Ambulance, Rescue Hook and Ladder Fire Co., Polish American Fire Co., Phoenix Fire Co., Columbia Fire Co., Defender Hose Fire Co., Shenandoah Heights Fire Co., and William Penn Fire Co. No. 1.

SCHEDULE OF RATES

Fire Suppression Rates

FIRE SUPPRESSION CHARGES

Customer Charge (\$)			Shenandoah Division
	<u>Service Type</u>		
	Fire Line	\$ 569.00	per Month
	Private Fire Hydrants (2',3',4',6')	\$ 152.94	per Hydrant per Quarter
	Public Fire Hydrants	\$ 28.48	per Hydrant Biannually
	Automatic Sprinkler System	\$ 1,033.51	per Year
	Automatic Sprinkler System	\$ 258.38	per Quarter
<u>Automatic Sprinkler System Additional Charges:</u>			
	Square Footage Charge billed Annually	\$ 0.0869	per square foot
	Square Footage Charge billed Quarterly	\$ 0.021725	per square foot

EXHIBIT B

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc. for : Docket No. A-2022-3034143
**Approval of its Acquisition of the Water :
System Assets of the Borough of Shenandoah :
and the Municipal Authority of the Borough :
of Shenandoah Pursuant to Sections 1102, :
1329 and 507 of the Public Utility Code :**

**STATEMENT OF AQUA PENNSYLVANIA, INC.
IN SUPPORT OF JOINT PETITION FOR APPROVAL OF SETTLEMENT**

TO THE HONORABLE JEFFREY A. WATSON, ADMINISTRATIVE LAW JUDGE:

Aqua Pennsylvania, Inc. (“Aqua” or “Company”), by and through its undersigned counsel, hereby submits the following statement in support of the Joint Petition for Approval of Settlement (“Joint Petition”) filed with the Public Utility Commission (“Commission”) in the above-captioned proceeding by Aqua, the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement of the Commission (“I&E”), the Borough of Shenandoah (“Borough”), and the Municipal Authority of the Borough of Shenandoah (“MABS”, and together with the Borough, “Shenandoah”).¹

I. INTRODUCTION AND PROCEDURAL HISTORY²

For the reasons stated herein and in the Joint Petition, Aqua believes that the settlement embodied in the Joint Petition (i) is fair and reasonable; (ii) allows Aqua to acquire the water system assets of Shenandoah (the “Acquired Assets”) and begin to provide water service to MABS

¹ Aqua, OCA, I&E, and Shenandoah are collectively referred to herein as the “Settling Parties”. As noted in the Joint Petition, the OSBA is not a signatory to the Joint Petition, but has authorized the Settling Parties to indicate that it does not oppose the Settlement.

² The procedural history is contained within the Joint Petition and is not restated here, but is so incorporated. However, certain background portions are included here for ease of reference.

customers; (iii) determines the ratemaking rate base of the Acquired Assets; and (iv) is in the public interest. Aqua presented substantial evidence of affirmative public benefits in support of the settlement and its acquisition of the Shenandoah water system and the expansion of its service territory into the Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, within Schuylkill County, Pennsylvania (the “Requested Territory”).

Aqua also believes that the settlement terms comply with and implement the Commission’s policy encouraging parties in contested proceedings to enter into settlements.³ Additionally, by resolving all issues raised in this proceeding, this settlement will avoid the time, expense and uncertainty of litigation, will conserve administrative hearing resources, which benefits all parties and is therefore in the public interest. The settlement has already shortened the hearing and eliminated the post-hearing briefing process. It also lessens the likelihood of possible appellate court review and provides regulatory certainty with respect to the issues raised in this proceeding, which benefits all parties. Therefore, Aqua respectfully requests that Administrative Law Judge Jeffrey A. Watson and the Commission approve the Joint Petition, without modification, and make the findings required by Sections 1102, 1329 and 507 of the Public Utility Code (the “Code”).

This proceeding concerns the Application of Aqua, at Docket No. A-2022-3034143, filed with the Commission on October 6, 2022 for approvals related to its acquisition of the Acquired Assets pursuant to Sections 1102, 1329 and 507 of the Public Utility Code.

³ See 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. See 52 Pa. Code § 69.401 (major rate cases – statement of policy, generally).

A. Section 1102

The Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. A certificate of public convenience will issue “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa.C.S. § 1103(a). The Commission, in granting certificates of public convenience, “may impose such conditions as it may deem just and reasonable.” 66 Pa.C.S. § 1103(a).

As addressed below, Aqua, in support of settlement, presented substantial evidence demonstrating that its proposed acquisition of the Shenandoah water system and proposed expansion of service territory into portions of the Requested Territory are necessary or proper for the service, accommodation, convenience, or safety of the public. In addition, I&E and OCA proposed in settlement, and Aqua accepted, several conditions for Commission approval of the transaction. The settlement, as presented in the Joint Petition, demonstrates substantial evidence of public benefits resulting from the proposed acquisition. By way of example, some of the public benefits from the proposed transaction are set forth below:⁴

Consolidation/Regionalization

- The Commission has a long-standing policy supporting the consolidation/regionalization of water/wastewater systems. Through consolidation/regionalization, the utility industry has a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater environmental/economic benefits. The Commission has previously stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall

⁴ This is not intended to be an exhaustive list, rather it is illustrative of the benefits provided and is complementary in some cases in addition to the benefits found in the Joint Petition.

long-term viability of the water and wastewater industry.”⁵
The benefits of consolidation/regionalization, ultimately,
inure to customers both existing and acquired.⁶

- Aqua provides utility service to approximately 448,000 water customers and has years of experience operating water systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to improve the operations of MABS.⁷ Aqua has over 135 years of experience operating water treatment and distribution systems in a safe, reliable and efficient manner. It has acquired 10 water systems over the past 10 years, many of which required significant investment to correct service and environmental issues. Given the fact that there are meaningful investments needed in the MABS water system, the customers will benefit greatly from Aqua’s technical experience and fitness in deploying resources towards capital improvements.⁸

Benefits to MABS Customers

- MABS’ customers will become part of a larger scale, efficiently operated, water utility. Aqua is already providing water service in Girardville (through its Girardville System). Aqua’s Girardville system is interconnected with Aqua’s nearby Mt. Carmel and Roaring Creek systems. Aqua is planning to interconnect its existing water system with the Shenandoah water system to provide redundancy and emergency supply. Aqua’s Roaring Creek Division office is located in close proximity to the Shenandoah water system, which will enable Aqua to assume its operations efficiently and improve long-term viability of the Shenandoah water system as envisioned in the PUC policy statement.⁹
- Aqua is projecting less O&M costs under its ownership through reductions in costs for water maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing and legal, among others. Specifically, referencing MABS 2020 Financial Statements, Operating Expenses were approximately \$1.7 million, whereas Aqua is

⁵ Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

⁶ Exhibit No. 1, Application, at ¶ 55.c..

⁷ Id. at ¶ 55.d.

⁸ Exhibit No. 5, Packer Direct, at 13:22-14:2; Exhibit No. 1, Application, at ¶ 55.b.

⁹ Exhibit No. 5, Packer Direct, at 13:6-13.

projecting annual expenses of approximately \$1.2 million.¹⁰

- MABS customers will also benefit from (i) the planned capital expenditures for main replacements and other system needs; (ii) Aqua’s planned Unaccounted for Water (“UAW”) review and enhancements designed to minimize future water losses; and (iii) Aqua’s lead service line (“LSL”) inventory efforts and participation by MABS customers in Aqua’s customer-owned lead service line replacement (“COLSLR”) program.¹¹
- Aqua’s DSIC will not be applied to MABS customers until calendar year 2023.¹²
- Aqua also has agreed it will explore low cost or no cost financing for LSL replacement in the Requested Territory, and provide an update to the parties on the progress of obtaining a low interest loan or grant money to replace COLSLs in the Shenandoah water system in its next base rate case following closing of the transaction.¹³
- Aqua will send out a welcome letter within 30 days following closing [and include the same information in customer bills within the first 90 days following closing] and will include information about its customer assistance programs in the welcome letter, and the COLSLR program. The welcome letter will include, at minimum, a description of the low-income programs and eligibility requirements for participation in the programs, and Aqua’s contact information, along with information about in-person bill payment options. The letter will be sent in both English and Spanish. Finally, Aqua will work with community-based organizations with offices local to the Requested Territory for purposes of providing information and enrolling customers in Aqua’s customer-assistance programs.¹⁴
- MABS customers will also benefit from enhanced customer service options: Aqua provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business, which expands on MABS’ current business hours. MABS customers will benefit from expanded bill payment options including

¹⁰ Joint Petition, at ¶ 52 (internal citations omitted).

¹¹ See Joint Petition, at ¶¶ 17.J.1 and 53.

¹² Exhibit No. 1, Application, at ¶ 35.

¹³ See Joint Petition, at ¶ 17.J.2.

¹⁴ See *id.* at ¶ 17.K, generally.

payment by text message. MABS customers can also sign up for notifications and alerts to be via email or text message regarding their service. These services allow customers to stay informed of events impacting their service. MABS customers will also have access to Aqua's customer assistance programs.¹⁵

- MABS currently charges fees described as "Miscellaneous Charges: D.E.P Commercial \$ 1.00 per Month, D.E.P Residential \$ 3.00 per Quarter." Aqua will not adopt those fees and they are not included in the Settlement Tariff.¹⁶

Benefits to Aqua's Existing Customers

- The acquisition of the Shenandoah water system will be an approximate 0.6% increase in Aqua's customer base. By virtue of Aqua's larger customer base, future infrastructure investments across the Commonwealth will be shared at a lower incremental cost per customer for all of Aqua's customers.¹⁷
- The connections per MABS' records are approximately 2,900, which equates to an approximately \$4,100 purchase price per connection and is approximately 50% less than Aqua's existing rate base per connection, projected at approximately \$8,500. Given Aqua is seeking approval to purchase the Shenandoah water system at a cost per customer that is less than its existing customers, combined with the approximately \$500,000 lower operating costs, the Shenandoah water system characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition, thus benefiting existing customers.¹⁸

Benefits to All Customers

- The proposed transaction will not have an adverse effect on the service provided to existing customers of Aqua, nor will it have any immediate impact on the rates of either existing customers of Aqua or MABS customers.¹⁹ Consistent with Section 1329(d)(1)(v) and subject to the Settlement terms, Aqua will implement the existing MABS base rates upon closing. Existing miscellaneous fees and charges in Aqua's

¹⁵ Joint Petition, at ¶¶ 53-54 (internal citations omitted).

¹⁶ *Id.* at ¶ 17.B.2.

¹⁷ Exhibit No. 5, Packer Direct, at 14:5-8.

¹⁸ *Id.* at 14:9-15.

¹⁹ Exhibit No. 1, Application, at ¶¶ 55.a. and 55.g.

tariff, however, will be applied.²⁰

- Aqua will contribute \$45,000 to the Company's Hardship Grant program. All unspent funds at the end of the program year will be rolled over and added to the budget for the Hardship Grant program in the following year(s).²¹

Accordingly, the settlement should be approved and the Commission should issue an order and certificates of public convenience pursuant to Section 1102 of the Code approving Aqua's acquisition of the Shenandoah water system, situated within the Requested Territory and Union Township, and allowing Aqua to begin to provide water service in the Requested Territory.

B. Section 1329

Section 1329 of the Code, 66 Pa.C.S. § 1329, addresses the valuation of the assets of municipally or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. In regard to the ratemaking rate base, the General Assembly directed as follows for acquisitions proceeding under Section 1329:

- (c)(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.²²

Aqua retained Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett") as its UVE and Gannett's fair market value appraisal is \$25,221,000. Shenandoah retained ScottMadden, Inc. as its UVE and ScottMadden's fair market value appraisal is \$18,100,307. The average of the two is \$21,660,654.

The fees paid to the UVEs are reasonable based on the scope of work, the methods used as accepted industry practice that the UVEs' fees were less than 5% of the fair market value

²⁰ Exhibit No. 5, Packer Direct, at 7:23-8:2.

²¹ Joint Petition, at ¶ 17.L.

²² 66 Pa. C.S. § 1329(c)(2). Section 1329(g) defines "fair market value" as "[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2)." *Id.* at § 1329(g).

benchmark noted in the Final Implementation Order.²³

Thus, the Commission should find pursuant to Section 1329 that the ratemaking rate base for the Shenandoah water system assets determined pursuant to Section 1329(c)(2) is \$12,000,000, being the lesser of the negotiated purchase price of \$12,000,000 and the average of the UVE appraisals of \$21,660,654.

C. Section 507

Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

The Asset Purchase Agreement, dated July 20, 2021, between Aqua, the Borough and MABS was filed with the Application as Exhibit B. Upon approval of the acquisition, on the terms set forth in the settlement in the Joint Petition, the Commission should also approve, to the extent necessary, the APA pursuant to Section 507 of the Code and provide such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

II. SETTLEMENT TERMS AND CONDITIONS

In settlement, Aqua accepted a several conditions for approval proposed by OCA and I&E consistent with Section 1103(a) of the Code. The Settling Parties have submitted that these conditions are just and reasonable and Aqua accepts them in resolution of this proceeding. The conditions proposed by OCA and I&E, as paraphrased from Paragraph 17 of the Joint Petition, include the following:

1. Tariff. The Settling Parties agreed that the Settlement Tariff should be permitted

²³ Exhibit No. 1, Application, at ¶ 63.

to become effective immediately upon closing of the transaction, as modified to remove the fees charged by MABS for “Miscellaneous Charges: D.E.P Commercial \$ 1.00 per Month, D.E.P Residential \$ 3.00 per Quarter.” The Settling Parties agreed that Aqua is permitted to continue MABS practice (as evidenced in its currently effective rates ordinance) of providing free water service to the Fire Companies listed on First Revised page 12.9 of the Settlement Tariff and that Aqua would propose to charge rates to these Fire Companies in its first base rate proceeding following closing. Aqua and OCA agreed to cooperate in efforts to seek a determination from the Commission to reconcile the regulatory, legal and policy precedent against provision of free service by Commission-regulated utilities and the provisions of Section 1329(d) of the Code that address the buyer’s adoption of seller’s rates at closing. It is appropriate that these matters not be addressed here but rather await a future proceeding where they can be fully vetted.

2. Cost of Service Study (“COSS”). In response to concerns raised by I&E and OCA, Aqua has agreed, in settlement, to submit, in its first base rate case that includes the Shenandoah water system assets, a water COSS that removes all costs and revenues associated with the operation of the Shenandoah water system. Aqua will file COSS calculations separately for the Shenandoah water system consistent with typically filed ratemaking exhibits including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods.

3. Cell Tower Revenue. Pursuant to the APA, while Aqua will be assigned a lease for cell tower revenues between Shenandoah and Verizon, Shenandoah has a right to retain revenues thereunder for a stated period following closing. In response to concerns raised by OCA and I&E, Aqua has agreed, in settlement, that in future base rate cases, Aqua will impute 50% of revenue

received from Cell Towers, as defined in Schedule 2.02(g)(4) of the APA, to the benefit of ratepayers, as if Aqua received and retained all revenues beginning on the closing date.

4. Distribution System Improvement Charge (“DSIC”) and Long Term Infrastructure Improvement Plan (“LTIIIP”). Aqua has agreed in response to concerns raised by OCA, in settlement, that it will amend its LTIIIP to include the Shenandoah water system and any other Section 1329 systems that have been acquired but not included in the LTIIIP, which does not re-prioritize other existing commitments in other service areas, provided however, that such inclusion shall not limit Aqua’s current practice and ability to allocate projects as needed by Aqua necessary for its capital program, but recognizes that any Shenandoah system infrastructure will be in addition to capital improvements already planned. Further, Aqua agreed not include investments related to the Shenandoah system in its DSIC until Aqua applies the DSIC to those customers, and that no later than the next quarterly DSIC filing following the Commission’s approval of the amended water LTIIIP, Aqua will file a compliance tariff supplement that applies the DSIC, including all customer safeguards applicable thereto, to all systems included in the amended water LTIIIP.

5. Allowance for Funds Used During Construction (“AFUDC”), Deferral of Depreciation and Transaction Costs. Aqua has agreed, in settlement, that any claims for AFUDC and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in Aqua’s first base rate case which includes the Shenandoah water system assets and that the Settling Parties reserve the right to litigate claims for AFUDC, deferral of depreciation and transaction costs in future rate cases. It is appropriate that these matters not be addressed here but rather await a future rate case where they can be fully vetted.

6. UAW. Aqua agreed to review the high UAW in the Shenandoah water system and to submit an AWWA Water Audit Report and provide a copy to the statutory advocates in response to concerns over the high levels of water loss reported by MABS.

7. Metering. There are four fire companies that are not metered, which Aqua agreed to meter within 60 days after closing, and which usage will then be tracked and reported in Aqua's next base rate proceeding, consistent with the OCA's condition that the fire companies be charged for service as a result of Aqua's next base rate proceeding.

8. Lead Service Line Replacements. The Settling Parties agreed that upon closing, Aqua will incorporate the Shenandoah water system into its COLSLR program and that Aqua would explore low cost or no cost financing for lead service line replacement in the Requested Territory, and provide an update to the parties on the progress of obtaining a low interest loan or grant money to replace COLSLs in the Shenandoah water system in its next base rate case following closing of the transaction.

9. Welcome Letter and Low Income Program Outreach. In order to ensure MABS customers are informed as to the low-income and COLSLR programs available to them as Aqua customers and that they are aware of all payment options, Aqua agreed to OCA's condition that it send a welcome letter with information that includes, at minimum, a description of the low-income programs and eligibility requirements for participation in the programs, and Aqua's contact information, along with information about in-person bill payment options reasonably proximate to the Requested Territory. Aqua agreed to send this letter within 30 days following closing and to also include the same information regarding low-income programs in bills to MABS' customers within the first 90 days after closing. Aqua further agreed to provide the welcome letter in both English and Spanish and to provide information in other languages if 5% or more of the residents

of the Requested Territory are using another language.

10. Hardship Contribution. The OCA also sought to further assist Aqua customers with bill payment assistance, and accordingly, Aqua, in settlement, agreed to contribute \$45,000 to the Company's Hardship Grant program.

11. Easements. Aqua and Shenandoah have a contractual provision in the APA that Aqua believes reasonably and adequately addresses the transfer of real property rights, easements and rights of way for the Acquired Assets. Supplementing the contractual provision, Aqua has agreed, in settlement and in response to concerns expressed by I&E, to work with Shenandoah (i) identify all missing easements including public rights-of-way and other property rights; (ii) take any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing; and (iii) Shenandoah shall bear all costs and expenses for obtaining and conveying the missing easements and other property rights. It is understood and agreed that this term does not preclude Aqua and Shenandoah from closing the transaction if any easements remain missing at closing, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights. The condition reflects a reasonable compromise of opposing positions of Aqua and I&E.

12. Transaction and Closing Costs. OCA, I&E and OSBA agreed that for purposes of settlement of this proceeding they will not oppose Aqua's request to claim transaction and closing costs associated with the transaction, but reserve their right to litigate their positions fully in future rate cases. Aqua agreed, in connection therewith, that (i) any claim by Aqua to recover transaction and closing costs associated with the transaction will not include costs incurred by Shenandoah; and (ii) the inclusion of outside legal fees, if any, in Aqua's transaction and closing costs under

the APA shall be separately identified in Aqua's next base rate case, and that the reasonableness, prudence, and basis for such fees will be subject to challenge by OCA, I&E and OSBA. It is appropriate that these matters not be addressed here but rather await a future rate case where they can be fully vetted.

III. PROPOSED FINDINGS OF FACT

Aqua submits that the proposed findings of fact proposed by the Settling Parties in the Joint Petition set forth a basis for the Commission's approval of the proposed acquisition and related expansion of certificated service territory as necessary or proper for the service, accommodation, convenience or safety of the public. Those findings of fact (incorporated by reference herein) and the additional facts offered by Aqua herein further demonstrate that Aqua submitted substantial evidence in support of the settlement and the many positive factors resulting from the acquisition consistent with City of York, Popowsky, and McCloskey. The evidence of record also demonstrates that hypothetical future rate impact is outweighed by other positive factors.

In addition to those proposed findings of fact set forth in the Joint Petition, Aqua submits that the following facts also evidence that the proposed transaction is in the public interest:

- In McCloskey v. Pa. P.U.C., 195 A.3d 1055 (Pa. Commw. Ct. 2018), petition for allowance of appeal denied No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with Popowsky v. Pa. P.U.C., 937 A.2d 1040 (Pa. 2007), to support a conclusion that there is a public benefit to a transaction such as the one that is the subject of this proceeding.²⁴

²⁴ Exhibit No. 1, Application, at ¶ 55.e.

- If Aqua were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers' rates and service. Both types of systems, viable and non-viable, are consistent with the Commission's policy statements regarding acquisitions. The acquisition of the Shenandoah water system will continue to address the Commission's supported policy of consolidation and regionalization.²⁵
- *Shenandoah Supports the Sale.* Shenandoah has agreed to sell the Acquired Assets. The public interest and need will be served by allowing Aqua, in lieu of MABS, to provide water service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The Shenandoah water system will benefit from the support of water professionals throughout Aqua's organization.²⁶
- Given that economies of scale can be achieved as a result of this acquisition and the fact that there are meaningful future investments needed to address deficiencies in the Shenandoah water system, future rate impacts could be spread across a broader customer base thus moderating those future rate increases that would otherwise be experienced by MABS customers alone over time. While rates are reasonably expected to increase, either on their own, or whether acquired by Aqua, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base. This benefits both existing and acquired customers alike.²⁷
- There is an expectation of increased rates as a result of acquisitions such as this, which was recognized by the Commonwealth Court in McCloskey. The positive factors from the transaction outweigh the possibility of increased rates.²⁸
- The transaction furthers a recognized legislative objective and is consistent with the Commission's consolidation/regionalization policy. There are demonstrated positive benefits, both tangible and intangible, identified above, that are likely realized as a result of the

²⁵ Exhibit No. 5, Packer Direct, at 12:7-11.

²⁶ Exhibit No. 1, Application, at ¶ 55.b.

²⁷ Exhibit No. 5, Packer Direct, at 15:7-16.

²⁸ Id. at 15:19-21.

transaction, including capital improvements, expense efficiencies, and economies of scale – such benefits outweigh any potential increase in rates. In addition, Shenandoah will receive the benefit of sale proceeds of \$12,000,000, and retained cell tower revenues for a period of time following closing.²⁹

- *Rate Stabilization Plan.* Aqua has not presented a rate stabilization plan for the Shenandoah water system. Aqua is proposing to implement MABS' existing rates after closing and to maintain those rates until the next Aqua rate proceeding.³⁰

IV. PROPOSED CONCLUSIONS OF LAW

Aqua supports the proposed conclusions of law proposed by the Settling Parties in the Joint Petition and incorporates them here as if set forth in full. In addition, Aqua believes the following conclusions of law are also supported by the Settlement in the context of this proceeding:

- In Popowsky, the Pennsylvania Supreme Court addressed City of York and explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.
- In McCloskey, the Commonwealth Court held that Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with Popowsky, to support a conclusion that there is a public benefit to a transaction. The Court held, further, that the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition.

²⁹ Id. at 15:21-16:2.

³⁰ Exhibit No. 1, Application, at ¶ 65.

- *Aqua is fit to acquire the Shenandoah water system and provide water service in the Requested Territory.* No party rebutted the presumption of fitness and Aqua established its technical, legal and financial fitness by a preponderance of the evidence and substantial evidence. Aqua is therefore fit to acquire the Shenandoah water system assets and to provide water service in the Requested Territory.
- *The public interest is served and there is an affirmative public benefit to the proposed transaction.* Aqua demonstrated through a preponderance of the evidence and substantial evidence that its acquisition of the Shenandoah water system will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways. Hypothetical rate impact is offset by other positive benefits of the transaction. Aqua's acquisition of the Shenandoah water system and provision of water service in the Requested Territory will further the public interest.
- *Section 1329 and Ratemaking Rate Base.* Gannett's fair market value appraisal is \$25,221,000. ScottMadden's fair market value appraisal is \$18,100,307. The average of the two is \$21,660,654. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$12,000,000, being the lesser of the negotiated purchase price of \$12,000,000 and the average of \$21,660,654.

V. JUSTIFICATION AND SUPPORT FOR SETTLEMENT

As noted in the Joint Petition, it is the stated policy of the Commission to encourage parties to resolve contested proceedings through settlement.³¹ Settlements lessen the time and expense of litigating a case and, thus, directly benefit all parties concerned. Where the active parties in a proceeding have reached a settlement, the principal issue for Commission consideration is whether the agreement reached is in the public interest.³² Aqua submits that the resolution of issues as

³¹ 52 Pa. Code § 5.231(a). The Commission, moreover, has stated that the results achieved from a negotiated settlement or stipulation in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

³² Pa. P.U.C. v. City of Lancaster - Bureau of Water, Docket No. R-2010-2179103, Opinion and Order entered July 14, 2011, citing Warner v. GTE North, Inc., Docket No. C-00902815, Opinion and Order entered April 1, 1996; and Pa. P.U.C. v. CS Water and Sewer Assoc., 74 Pa. P.U.C. 767 (1991). See also Pa. P.U.C. v. Philadelphia Electric Co., 60 Pa. P.U.C. 1 (1985).

presented in the Joint Petition will further the public interest and that it has the requisite technical, financial and legal fitness to own and operate the Shenandoah water system.³³

VI. CONCLUSION

The Joint Petition is the product of arms' length negotiations between Aqua, OCA, I&E, OSBA, and Shenandoah. This settlement contains significant positive results and will provide a public benefit, as stated above. All of the positive results of this settlement are achieved without requiring briefing and time consuming and expensive litigation. For all of the foregoing reasons, Aqua supports the Joint Petition and respectfully requests that Administrative Law Judge Jeffrey A. Watson and the Commission approve it in its entirety and without modification.

Respectfully submitted,

³³ See Joint Petition, at ¶ 95.

AQUA PENNSYLVANIA, INC.

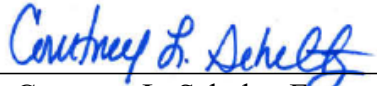
By: 
Courtney L. Schultz, Esq.
Saul Ewing LLP
1500 Market Street
Centre Square West, 38th Floor
Philadelphia, PA 19102
Courtney.schultz@saul.com
Counsel for Aqua Pennsylvania, Inc.

EXHIBIT C

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Aqua Pennsylvania, Inc.	:	
pursuant to Sections 507, 1102 and 1329	:	
of the Public Utility Code for Approval	:	Docket No. A-2022-3034143
of its Acquisition of the Water System	:	
Assets of Shenandoah Borough and MABS	:	

OCA STATEMENT IN SUPPORT OF
JOINT PETITION FOR APPROVAL OF SETTLEMENT

The Office of Consumer Advocate (OCA), one of the signatory parties to the Joint Petition for Approval of Settlement (Settlement) also joined by Aqua Pennsylvania, Inc., the Bureau of Investigation and Enforcement, the Borough of Shenandoah, and the Municipal Authority of the Borough of Shenandoah, respectfully requests that the terms and conditions of the Settlement be approved by the Pennsylvania Public Utility Commission (Commission).

I. INTRODUCTION AND PROCEDURAL HISTORY

On October 11, 2022, Aqua Pennsylvania, Inc. (Aqua or Company) filed an Application under Sections 507, 1102, and 1329 of the Public Utility Code seeking Public Utility Commission approval of the acquisition of the water system assets of the Borough of Shenandoah (Shenandoah or Borough) and the Municipal Authority of the Borough of Shenandoah (MABS), the right of Aqua to provide water service in the areas served by the Borough and MABS, and approval of the ratemaking rate base of the assets as determined under Section 1329(c)(2) of the Public Utility Code. By Secretarial Letter dated December 9, 2022, the Commission conditionally accepted the Application. The Commission required that individual notice be provided to Aqua's potentially affected existing water customers, that Aqua ensure concurrent notice is given to all current MABS

water customers, and that newspaper notice in the MABS area be provided. Upon completion, Aqua was directed to file proof of publication with the Commission.

On October 25, 2022, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention, and Public Statement. On the same date, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. The OCA filed a Protest and Public Statement on December 9, 2022. In January 2023, several individuals filed informal protests against the Application. On January 17, 2023, Donna M. Gawrylik filed a Protest.

On January 24, 2023, Aqua filed a letter with the Commission verifying that it had complied with the notice requirements contained in the December 9, 2022 Secretarial Letter. By Secretarial Letter dated February 3, 2023, the Commission informed Aqua that it had accepted the Application for filing. A Prehearing Conference Order was issued on February 7, 2023, in which Administrative Law Judge (ALJ) Jeffrey A. Watson directed the parties to submit prehearing conference memoranda by March 6, 2023.

A telephonic prehearing conference was held on March 7, 2023 before ALJ Watson, at which time a litigation schedule and discovery modifications were adopted. A public input hearing was held on March 21, 2023, at which several customers of MABS and an Aqua customer testified. Tr. 45-155. On March 28, 2023, an evidentiary hearing was held, during which Ms. Gawrylik conducted cross-examination and ALJ Watson was notified that Aqua, Borough/MABS, OCA and I&E (collectively, settling parties) had reached an agreement in principle.¹ The settling parties filed the accompanying Joint Petition for Settlement on April 11, 2023.

¹ The OSBA is not a signatory but does not oppose the proposed Settlement.

II. SETTLEMENT TERMS

A. Approval of the Application and Acquisition ¶ 17.A

The OCA submits that the terms and conditions of the proposed Settlement provide a reasonable resolution of the issues raised by the OCA in its testimony, including the ratemaking rate base to be incorporated into Aqua’s revenue requirement, the rate impact for existing Aqua customers and the acquired customers, cell tower lease revenue, Aqua’s application of the Distribution System Improvement Charge (DSIC) to acquired customers, the treatment of post-acquisition improvement, transaction and closing costs, and Aqua’s outreach and assistance to low income customers, as discussed below.

B. Tariff ¶ 17.B

Aqua submitted a *pro forma* tariff with the application, which includes all rates, rules, and regulations regarding conditions of Aqua’s Water service and requested that the tariffs become immediately effective upon closing of the transaction. *See* Aqua Exh. G. A revised *pro forma* tariff that reflects the terms of settlement is attached to the Settlement as Exhibit A (Settlement Tariff). Settlement ¶ 17.B.1.

Aqua initially proposed to charge the MABS customers a “Miscellaneous Charge” labeled “D.E.P. Commercial” and “D.E.P. Residential.” Aqua Exhibit G; OCA St. 1 at 16. Those charges appeared to be costs related to compliance with DEP requirements, which for PUC-regulated utilities are the type of costs recovered in base rates, rather than a separate line item. *Id.* As recommended by the OCA, and as adopted by the settlement, the miscellaneous charges are eliminated for the purpose of the rates that Aqua will apply to customers in the MABS at closing. Settlement ¶ 17.B.2; OCA St. 1 at 16.

The OCA does not join in supporting the Settlement Tariff to the extent that it requires Aqua to provide free water service to eight fire companies.² Settlement ¶ 17.B.3. Free service is not permitted under Section 1304 of the Public Utility Code and long-standing Commission and appellate precedent.³ Also, OCA witness DeAngelo explained that, although other Aqua ratepayers are not at risk to subsidize the cost of serving the Fire Companies until new rates are established in a base rate case that includes the MABS system, existing customers and the other acquired customers will not benefit from the Fire Companies contributing revenues through the DSIC during that period. OCA St. 1 at 15. If free service is permitted for entities acquired in Section 1329 acquisitions, it would have a cumulative impact on existing customers.⁴ *Id.*

In recognition of the OCA's position, the Settlement specifies that no precedent is established by adoption of the Settlement Tariff and all parties to the Joint Petition reserve their rights to challenge the provision of free service in future proceedings. Further, under the settlement, Aqua commits that, in the first base rate proceeding that includes the Shenandoah water system assets, it will propose to charge rates for water service to all entities it serves in the Requested Territory. Settlement ¶ 17.B.3.ii. This provision helps to ensure that free service will not continue beyond the next base rate case, to mitigate harm to Aqua's other ratepayers. Aqua will also begin tracking monthly consumption for those fire companies receiving free water service

² MABS does not bill 12 entities for service: eight Fire Companies and four Borough-owned properties. Also, MABS does not bill for public hydrants in the Borough. Aqua proposes that it will stop free service for the Borough-owned properties and public hydrants in the Borough and begin billing them at closing. OCA St. 1 at 14-15.

³ *See, e.g. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1050-51 (Pa. Commw. Ct. 2002) (*Coatesville*).

Pennsylvania-American cannot justify providing hydrant service to Coatesville at no charge; there must be a difference in the type and condition of the respective service in order for a rate differential to satisfy the terms [of Section 1304]. Free service is necessarily an illegally low charge.

Coatesville at 1061 (internal citations omitted).

⁴ Currently, Aqua has four pending Section 1329 acquisitions (DELCORA, Willistown, Shenandoah and Beaver Falls). Two more Section 1329 acquisitions have closed but not had new base rates set (Lower Makefield and East Whiteland).

and report that usage, by customer, in its first base rate proceeding that includes the MABS water system assets. Settlement ¶ 17.B.3.i. This information will assist the parties to evaluate whether the rates Aqua proposes for the fire companies in that rate proceeding are reasonable and recover the cost of service, to minimize subsidies paid by other Aqua customers.

Additionally, Aqua commits to join the OCA in any efforts, including but not limited to filing a petition for declaratory order with the Commission, to reconcile the regulatory, legal and policy precedent against provision of free service by Commission-regulated utilities and Section 1329(d) of the Code, which addresses the buyer's adoption of seller's rates at closing. Settlement ¶ 17.B.3.iii. This provision recognizes that the issue of free service is likely to reoccur in future 1329 acquisitions and its resolution will provide certainty for Aqua, other potential buyers, and potential sellers.

C. Ratemaking Rate Base ¶ 17C

Based on appraisals presented by Aqua and Shenandoah (\$25,221,000 and \$18,100,307, respectively), Aqua sought a ratemaking rate base of \$12,000,000 for the Shenandoah System, which was the price Aqua agreed to pay for the System. Application ¶ 59; Aqua Exh. B, Article III. According to the engineer's report, the original cost less depreciation for the system is \$10,790,078. OCA St. 1 at 3.

The OCA reviewed the Utility Valuation Engineer valuations and would have recommended reasonable adjustments to both appraisals under all three valuation approaches but determined that its recommended adjustments to the appraisals would not be likely to reduce the average of the appraisals below \$12,000,000 and, based on the facts and circumstances of this proceeding, did not address the valuations. OCA St. 1 at 2. The \$12 million amount is reasonably close to the system's depreciated original cost.

The settlement also specifies that any improvements made by Shenandoah prior to closing related to the \$286,200 grant awarded by the Susquehanna River Basin Commission to MABS (1) will not increase the \$12,000,000 addition to ratemaking rate base and (2) such improvements will be included in the assets transferred to Aqua at closing. Settlement ¶ 17.C.2. As such, Aqua customers will receive the benefit of improvements funded by the grant without having to pay return and depreciation on those assets.

D. Cost of Service Study ¶ 17D

In this proceeding, the OCA identified the need for Aqua to provide – in the first base rate case in which it includes Shenandoah’s assets in rate base – a cost of service study that removes all costs and revenues associated with the operations of the Shenandoah water system, as well as a separate cost of service study for the Shenandoah system. These studies will provide information to establish rates that reflect the costs for the Shenandoah system. OCA St. 1 at 17. The settlement adopts the OCA’s recommendation. Paragraph 17.D provides that, in its first base rate case in which Aqua includes Shenandoah’s assets in rate base, Aqua will submit a water cost of service study that removes all costs and revenues associated with Shenandoah’s system. Paragraph 17.D also provides that the Company will also provide a separate cost of service study for the system. Settlement ¶ 17.D. This separate COSS will include calculations including, but not limited to, the following: Rate Base (Measures of Value), Statement of Operating Income, Proof of Revenue, and Rate of Return, which correspond to the applicable test year, future test year, and fully projected future test year measurement periods. *Id.*

Taken together, these settlement terms will provide a means for the parties to use the cost of service data to set rates for Shenandoah customers that reflect the cost of service under Aqua ownership, or movement towards the cost of service, and that may differ, as appropriate, from rates established for other water customers. This will help to mitigate the potential level of subsidy by

Aqua's other water customers and applies the ratemaking principle of gradualism to rates set for customers in Shenandoah's service area for existing Aqua customers and the acquired Shenandoah customers by reducing overall costs.

E. Cell Tower Revenue ¶ 17.E

Aqua proposes to take assignment from MABS of an agreement to lease space to cellular communications facilities (Cell Towers). Aqua Exh. B, Schedule 2.02(g). Under the terms of the Asset Purchase Agreement, Aqua will acquire the MABS water assets on which the cell towers are located. Aqua also proposed, however, for the Borough to keep the revenues from the lease agreements. OCA St. 1 at 14. In total, Aqua proposed to forego a total of \$133,140 in revenue from the cell tower lease agreements over 10 years. *Id.* The OCA objected because Aqua customers will pay the costs for acquiring, operating, maintaining and replacing the assets that generate the lease revenue. *Id.* To address this disparity, the OCA recommended that in future base rate cases, Aqua should be required to impute the revenue received from the Cell Towers, to the benefit of ratepayers, as if Aqua received and retained all revenues beginning on the closing date. OCA St. 1 at 14. The settlement partly adopts the OCA's recommendation. Aqua will impute 50% of the revenue that it foregoes under its agreement with Shenandoah, or \$66,570. Settlement ¶ 17.E. This compromise serves to ensure that Aqua customers who will pay for the MABS assets will benefit from more of the revenues generated by those assets.

F. DSIC and LTIIIP ¶ 17F

Under the terms of the settlement, within 90 days after closing, Aqua will file an amendment to its water Long-Term Infrastructure Improvement Plan (Amended LTIIIP) to include the Shenandoah water system and any other Section 1329 systems that have been acquired but not included in the LTIIIP, which does not re-prioritize other existing commitments in other service areas. Settlement ¶ 17.F.1. This responds to a concern raised by OCA witness DeAngelo that Aqua

does not commit to when it will file an amended LTIP. OCA St. 1 at 13. The settlement places deadlines on when Aqua will file the amendment and when Aqua will file to apply the Distribution System Improvement Charge (DSIC) to customers of the acquired system. Settlement ¶ 17.F.1. As discussed by OCA witness DeAngelo, having the acquired customers pay a DSIC is one small way in which Aqua's existing customers can receive a short-term benefit from the acquisition – by spreading the costs recovered through the DSIC over a larger customer base. OCA St. 1 at 13.

The settlement also establishes, as recommended by the OCA, that proposed projects reflected in the amended LTIP should be in addition to, and not re-prioritize, any capital improvements that Aqua has already committed to undertake for existing customers. Settlement ¶ 17.F.2; OCA St. 1 at 13. Additionally, as recommended by the OCA, Aqua will not include investments related to the Shenandoah system in its DSIC until Aqua applies the DSIC to those customers. *Id.* These last two requirements protect Aqua's existing customers by helping to ensure that (1) the acquisition does not mean that planned projects and investment in their service areas will not be carried out as planned and (2) they will not pay for projects in the Shenandoah service area through their DSIC rates until Shenandoah customers are also paying DSIC rates. *See* OCA St. 1 at 13-14.

G. AFUDC and Deferral of Depreciation and Transaction Costs ¶ 17.G

Under the terms of the settlement, any claims for Allowance for Funds Used During Construction (AFUDC) and deferred depreciation related to post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in Aqua's first base rate case which includes Shenandoah's water system assets. Settlement ¶ 17.G. Further, the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to Section 1329(f) and transaction costs in future rate cases. Under the settlement, it is explicitly stated that the OCA's assent to Paragraph 17.G

should not be construed to operate as preapproval of Aqua's future requests. This settlement term preserves all parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims.

H. Unaccounted for Water

The Shenandoah water system experiences a significant volume of non-revenue (unaccounted for) water, approximately 50% in 2021. Aqua St. 5 at 5. According to Aqua witness Pietkiewicz, the Pennsylvania Department of Environmental Protection issued MABS a Water Allocation Permit, which includes a condition requiring MABS to reduce its unaccounted-for water loss to a level of 20% or less within five years. MABS does not anticipate that it will achieve the 20% condition by November 21, 2022. To address and ultimately reduce this high volume of unaccounted for water, Settlement Paragraph 17.H provides that Aqua will review the Shenandoah system, submit an American Water Works Association Water Audit Report for the system and provide a copy to the statutory advocates. Reducing the quantity of unaccounted for water will help the system to comply with its Water Allocation Permit and lower treatment and other operating costs for customers.

I. Metering

According to Aqua witness Clark, there are four fire companies in the Shenandoah service area that do not have meters on 2-inch water lines that serve their location. Aqua St. 3 at 9. Aqua planned to install meters within 90 days of closing. *Id.* In Settlement Paragraph 17.I, Aqua commits to installing meters at these fire companies one month sooner, within 60 days of closing. This will serve to increase the period of consumption data tracked and reported for the purpose of setting cost-based rates for these customers in the next base rate case (*see* Settlement Paragraph 17.B.3.i). It will also ensure that the customers have meters installed so they can be charged metered instead of flat rates for service, which is consistent with the Commission's policy requiring the installation

of meters and allows customers to control their usage through conservation. 52 Pa. Code § 65.7. Also, as stated by Aqua, metering all customers will improve the Company's understanding of water consumption and non-revenue water within the Shenandoah system and help Aqua to more effectively plan ways to make improvements to reduce water loss. Aqua St. 3 at 9.

J. Lead Service Line Replacement

Aqua witness Clark indicates that Shenandoah's water system contains lead service lines (LSLs), although the number of such lines is not known. Aqua St. 3 at 6. The MABS system does not have program for replacing (LSLs). Aqua has such a program, approved by the Commission pursuant to Section 1311(b)(2) of the Public Utility Code. Aqua's initiative is referred to as the Customer-Owned Lead Service Line Replacement (COLSLR) program. *Id.* at 6-7. In Settlement Paragraph 17.J.1, Aqua agrees that upon the closing of the transaction, it will incorporate the Shenandoah system into its COLSLR program. Inclusion of Shenandoah customers into this program will provide an opportunity for Shenandoah customers with LSLs to replace them without incurring a direct cost.

In Settlement Paragraph 17.J.2, Aqua agrees to explore low cost or no cost financing for lead service line replacement in the Shenandoah system and provide an update on its progress in obtaining low interest loan or grant money in its next base rate case. The costs of Aqua's COLSLR program are borne by Aqua customers in the aggregate. *Petition of Aqua Pennsylvania, Inc.*, P-2020-3021766, R.D. at 15, 32. If Aqua were successful in securing low interest loan or grant funding for its program, it would benefit customers by enabling more LSL replacements to be performed within the existing program budget or lowering the overall costs of the program recovered from customers through base rates and the DSIC.

K. Welcome Letter and Low-Income Program Outreach

Settlement Paragraph 17.K pertains to the welcome letter that will be sent by Aqua to Shenandoah customers upon completion of the sale as well as to Aqua's efforts to acquaint these customers with Aqua's customer assistance programs. Specifically, Paragraph 17.K.1 provides that within 30 days of the closing of the sale, Aqua will send a welcome letter that contains information about its low-income and other customer assistance programs along with eligibility requirements for these programs. It will also include information about the COLSLR program. Settlement Paragraph 17.K.2 provides that Aqua will include the same information regarding low-income assistance programs in the bills of Shenandoah customers sent within 90 days of closing.

The settlement provisions also require the welcome letter to be sent in both English and Spanish. Further, if 5% or more of the residents of the Shenandoah territory speak another language, information in that language directing customers to the numbers to call for information and translation assistance will be included in the materials. Settlement ¶ 17.K.3. Additionally, the welcome letter will include information about in-person bill payment options in or near the Shenandoah territory. Settlement ¶ 17.K.4.

Under the settlement, Aqua also commits to working with community-based organizations with offices in or near the Shenandoah territory for purposes of providing information and enrolling customers in Aqua's customer assistance programs. Settlement ¶ 17.K.5.

Each of the provisions of Settlement Paragraph 17.K will ease Shenandoah customers' transition to becoming customers of Aqua and will provide timely, important information to any payment-troubled Shenandoah customers on how to access Aqua's available customer assistance programs. According to information provided by Aqua witness Pietkiewicz, as of 2015, the household affordability limit in Shenandoah was \$561. Aqua St. 5, App. A at 7. Aqua has calculated that water bills for an average MABS residential customer could increase by 45% under

its ownership, from \$521.52 to \$755.52 per year, well above the household affordability limit. OCA St. 1 at 12. As OCA witness DeAngelo stated, "Unless MABS customers know about and enroll, the existence of Aqua's low-income programs will not provide a benefit." *Id.*

Providing information in Spanish and making it available to other commonly used languages responds to information provided during the Public Input Hearing that many people in Shenandoah do not use English as their first language. Tr. at 111. Having in-person bill payment options helps to ensure that customers in the Shenandoah system will continue to have local access to their water provider if acquired by Aqua. Similarly, having local access to community-based organizations will facilitate enrollment in the Company's customer-assistance programs.

L. Hardship Contribution

Settlement Paragraph 17.L provides that Aqua will make a \$45,000 contribution to its Hardship Grant program as part of its commitments under the Settlement. Any unspent funds at the end of the program year will be rolled over and added to the following year's program budget. Additional funding for the program will assist customers in need throughout Aqua's service territory, including the acquired Shenandoah customers. As discussed above, the rate increases projected for the Shenandoah customers under Aqua ownership will be substantial and unaffordable for many customers. According to information provided by Aqua witness Pietkiewicz, based on US Census data, 30.7% of households in Shenandoah are below the poverty level and 43% of households in Shenandoah have incomes below \$20,000 per year, which means that those households have already exceeded the 2% affordability limit for water service (\$400 per year or less for customers at that income level or below). Aqua St. 5, App. A at 7.

M. Easements

Settlement Paragraph 17.M concerns property rights to be transferred to Aqua in connection with the sale. Settlement Paragraph 17M.1 states that Aqua and Shenandoah will work

to identify and obtain all missing easements, including public rights-of-way and other property rights, so that they can be conveyed to Aqua at the closing of the sale. Shenandoah will bear the cost for obtaining and conveying the missing easements and other property rights.

Settlement Paragraph 17.M.2 provides that if for reasons beyond Shenandoah's control it is unable to transfer all missing easements to Aqua at closing, Aqua and Shenandoah may proceed with closing without the transfer of the missing easements provided an escrow account consisting of an appropriate amount of settlement funds is established to obtain any post-closing transfers of the missing easements or other property rights. This condition was recommended by OCA witness DeAngelo because it will help to ensure that the UVEs' assumption that all necessary easements would be conveyed to Aqua at closing is accurate, and that ratepayers receive the full assets for which the purchase price was negotiated and are protected from paying in rates any costs for acquiring the missing easements or other property rights. OCA St. 1 at 17; I&E St. 1 at 5-7.

N. Transaction and Closing Costs

Settlement Paragraph 17.N relates to Aqua's transaction and closing costs and adopts the recommendation by OCA witness DeAngelo. OCA St. 1 at 3. Aqua's Application (at ¶ 60) states its intention to include the transaction and closing costs of its purchase of the Shenandoah system in its rate base. The terms of settlement provide that while Aqua has estimated its transaction and closing costs, as required by Section 1329(d)(1)(iv), the Joint Petitioners reserve the right to litigate their positions fully in future rate cases when this issue is ripe for review. Settlement ¶17.N.1. Moreover, the settlement explicitly states that the Joint Petitioners' assent to these terms should not be construed to operate as their preapproval of Aqua's request. *Id.* Settlement Paragraph 17.N.2 states that any outside legal fees included as part of Aqua's transaction and closing costs must be separately identified in Aqua's next base rate case and that OCA and I&E reserve the right to challenge the reasonableness, prudence and basis for such fees. As such, the OCA submits that

these provisions are in the public interest as they provide for a full review of the transaction and closing costs in future rate cases. *See* OCA St. 1 at 3.

Finally, Settlement Paragraph 17.N.3 provides that Aqua will not include in its transaction and closing costs any costs incurred by Shenandoah in connection with the sale. This protects Aqua's ratepayers and is consistent with Section 1329, which does not allow transaction and closing costs incurred by the *selling* utility to be included in the acquiring utility's ratemaking rate base. OCA St. 1 at 3.

III. CONCLUSION

For the foregoing reasons, the Office of Consumer Advocate submits that the terms and conditions of the Settlement should be approved.

Respectfully Submitted,



Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
EGannon@paoca.org

David T. Evrard
Assistant Consumer Advocate
PA Attorney I.D. # 33870
DEvrard@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
HBreitman@paoca.org

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Counsel for:
Patrick M. Cicero
Consumer Advocate

Dated: April 11, 2023
344256

EXHIBIT D

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc. :
pursuant to Sections 1102, 1329 and 507 of :
the Public Utility Code for Approval of its : Docket No.: A-2022-3034143
Acquisition of The Water Assets of the :
Borough of Shenandoah and the Municipal :
Authority of the Borough of Shenandoah :

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

TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), by and through its Prosecutor Carrie B. Wright, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Approval of Settlement (“Joint Petition” or “Settlement”) are in the public interest and represent a fair and just balance of the interests of Aqua Pennsylvania Water, Inc. Company (“Aqua”), the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission (“I&E”), the Office of Consumer Advocate (“OCA”), the Borough of Shenandoah (“Borough”), and the Municipal Authority of the Borough of Shenandoah (“MABS”), parties to the above-captioned proceeding (collectively, the “Joint Petitioners”).

I. INTRODUCTION

A. Procedural History

On October 6, 2022 Aqua filed with the Commission its Application pursuant to Sections 1102 and 1329 of the Public Utility Code (“Code”), for, approvals related to its acquisition of the Shenandoah water system.

By Secretarial Letter dated December 9, 2022, the Commission acknowledged receipt of Aqua’s Application, but it indicated that the Application would be accepted for filing only on a conditional basis. The conditions included, inter alia, satisfying the Commission’s requirements that Aqua (1) certify service of its Application to designated entities; (2) provide individualized notice of the proposed acquisition to all potentially affected water and wastewater customers in accordance with the Commission’s Final Supplemental Implementation Order entered February 28, 2019, at Docket No. M-2016-2543193; (3) publish notice of the Application once a week for two consecutive weeks in a newspaper of general circulation in the impacted area; and (4) notify the Commission after such publication occurred.

The following entities made filings regarding participation in this case: on October 25, 2022, I&E filed its Notice of Appearance in this case. On October 25, 2022, the OSBA filed a Notice of Intervention and Public Statement and on December 9, 2022, the OCA filed a Protest and Public Statement in this case. On January 17, 2023, Donna M. Gawrylik filed a Protest and Petition to Intervene. On March 2, 2023, MABS and the Borough file Petitions to Intervene.

A telephonic Prehearing Conference was held on March 7, 2023, at 10:00 a.m., before ALJ Watson. During the hearing, the parties and ALJ Watson established a litigation schedule and the procedures that would apply to this case. On March 21, 2023, a telephonic public input hearing was held in this case at 6 p.m. The evidentiary hearing was held as scheduled on March

28, 2023. At the evidentiary hearing on March 28, 2023, at the conclusion of the evidentiary hearing, Aqua advised Judge Watson that the Joint Petitioners had achieved an agreement in principle to settle all issues in the proceeding.

I&E now submits this Statement in Support of Settlement and avers that the Settlement meets the requisite standards for approval and that it is in the public interest for the reasons explained below.

II. SETTLEMENT TERMS

It is the policy of the Commission to encourage settlements.¹ For the reasons discussed herein, I&E maintains that the Settlement meets all the standards necessary to warrant the requisite approvals under Sections 507, 1102, 1103, and 1329 of the Code. The signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the settlement process. As such, the issues raised by the Joint Applicants have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. I&E represents that subject to all of the Settlement's terms and conditions, Aqua's Application satisfies all applicable legal standards and results in terms that are preferable to those that may have been achieved at the end of a fully litigated proceeding. Accordingly, for the reasons articulated below, I&E maintains that the proposed Settlement is in the public interest and requests that the settlement terms be approved by the ALJ and the Commission without modification.

¹ 52 Pa. Code § 5.231.

A. APPROVAL OF THE APPLICATION AND ACQUISITION

1. Legal Standards

(i) Section 1102 Approval

The Code requires that the Commission issue a Certificate of Public Convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.² The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103³ of the Code. A Certificate of Public Convenience shall be granted “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public.”⁴ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁵ Additionally, pursuant to Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Shenandoah.⁶ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”⁷ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.⁸

² 66 Pa. C.S. § 1102(a).

³ 66 Pa. C.S. § 1103.

⁴ 66 Pa. C.S. § 1103(a).

⁵ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

⁶ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmmw. 1985);

Warminster Twp. Mun. Auth. v. Pa. PUC, 138 A.2d 240, 243 (Pa. Super. 1958).

⁷ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984).

⁸ 66 Pa. C.S. § 1103(a).

(ii) Legal Standard for Section 1329 Approval

Section 1329 of the Public Utility Code is a newly enacted statute which prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”⁹

(iii) Legal Standard for Section 507 Approval

Aqua’s request to assume enumerated municipal contracts currently held by Shenandoah is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval.

⁹ 66 Pa. C.S. § 1329 (d)(3)(ii); Aqua/New Garden Section 1329 Case, Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

2. Conclusion

Subject to all of terms and conditions of the Settlement, I&E opines that the Application should be approved and recommends that the Commission should issue Aqua a Certificate of Public Convenience pursuant to 66 Pa. C.S. §1102(a). Aqua's Application requests permission for it to acquire substantially all Shenandoah assets, properties and rights related to its water system and to obtain the Certificates of Public Convenience necessary for it to begin to offer water service to the public in the Service Area. The record supports the findings that Aqua is technically, legally, and financially fit to acquire the Shenandoah water services, and no party has refuted those claims in the record.

Additionally, Aqua's Application will provide affirmative public benefits. The affirmative public benefits are fully set forth in Aqua's direct testimony, and include, *inter alia*, further the goal of regionalizing water systems, benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits. Importantly, through the Settlement, the value of the public benefits will be better realized because the Settlement contains numerous terms to protect Aqua's ratepayers, both existing and those who will become Aqua's ratepayers through this transaction. The Settlement will also ensure that Aqua's ratepayers receive the benefit of the bargain that Aqua negotiated without being subject to protracted and expensive litigation. Accordingly, through this Settlement, I&E's identified concerns have been addressed and I&E opines that Aqua's Application, as modified by the Joint Petition, now meets the requisite standards for approval.

B. Tariff

Pursuant to the Settlement, the Joint Petitioners have agreed that the *pro forma* tariff supplement, which is attached to the Settlement as Exhibit A, shall be permitted to become

effective immediately upon closing of the transaction. Accordingly, the *pro forma* tariff will accurately include all rates, rules, and regulations regarding the conditions of Aqua's water service, and I&E submits that this full and accurate disclosure of rates is in the public interest.

C. Ratemaking Rate Base

Per the Settlement Aqua will be permitted to use \$12,000,000 for the ratemaking rate base of the acquired assets. Ultimately, through use of both the formal and informal discovery process and its extensive investigation, I&E was able to determine that the proposed value of \$12 million for this water system, comported with the valuation standards and requirements of Section 1329. As a result, I&E avers that approval of \$12 million for the ratemaking rate base is both warranted and in the public interest.

D. Cost of Service Study

Pursuant to the Settlement, at the time of its next base rate case that includes Shenandoah's water system assets, Aqua has agreed to provide a cost of service study that removes all costs and revenues associated with the operations of the Shenandoah system. At the same time, Aqua also agrees to provide a separate cost of service study for the Shenandoah system. I&E fully supports this term which is consistent with protecting the public interest.

I&E submits that the cost of service study will protect Aqua, its customers, the parties to this proceeding and the Commission. Specifically, the results of the cost of service study that Aqua has committed to perform will provide it with information necessary to determine an appropriate level of rates in the future. The cost of service study will benefit Aqua's ratepayers as well, because if Aqua's Application is approved, Aqua's existing customers will bear the rate impact. However, without a cost of service study, the Commission's ability to evaluate the rate

impact of the acquisition upon existing Aqua customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised.

E. Cell Tower Revenue

Per the Settlement, Aqua will impute 50% of revenue received from Cell Towers to benefit ratepayers as if Aqua had received and retained all revenues beginning on the closing date.

In testimony I&E witness Sakaya recommended that Aqua retain or impute 100% of the Cell Tower revenue because, “the cell tower revenue will be generated from cell towers located on plant that will be owned by Aqua. Therefore, since revenue will be generated from plant 100% owned by Aqua, it is reasonable that Aqua retain 100% of the cell tower revenue from the date of the Acquisition” and “...this additional revenue should accrue to the benefit of MABS customers as it is generated through plant that those customers pay for in their rates. The offsetting cell tower revenue helps to mitigate future rate increase requirements.”¹⁰

I&E agrees that the resolution contained in the Settlement represents a reasonable compromise which will serve to protect the interests both of Aqua and the Shenandoah customers. Settlement is the product of compromise and each side, which is evidenced by this term. As such, the provision is in the public interest and should be approved.

F. Distribution System Improvement Charge (“DSIC”) and Long-Term Infrastructure Improvement Plan (“LTIP”)

I&E’s investigation yielded no concerns regarding Aqua’s request for approval to collect a DSIC as permitted under Section 1329, as this request appeared to simply memorialize Aqua's intention to employ certain provisions of Section 1329. Nonetheless, I&E reserves the right to

¹⁰ I&E Statement No. 2, p. 12.

address these issues in future proceedings, including base rate, LTIIP, and distribution system improvement charge proceedings, when additional information and facts are available and when these issues are ripe for review. While I&E still reserves its rights, I&E nevertheless agrees that this term serves the public interest because Aqua has agreed that existing commitments will not be re-prioritized as a result of this term. With this in mind, acquired Shenandoah customers will benefit from improved water infrastructure, promoting safer and more reliable service.

Therefore, I&E opines that this term is in the public interest.

G. AFUDC and Deferral of Depreciation and Transaction Costs

Through the Settlement, the Joint Petitioners acknowledge that any claims that Aqua may make to accrue allowance for funds used during construction (“AFUDC”) and deferred depreciation for post-acquisition improvements not recovered through the DSIC for book and ratemaking purposes will be addressed in Aqua’s first base rate case which includes Shenandoah’s water system assets. Importantly, the Joint Petitioners agree that they reserve their rights to litigate their positions fully in future rate cases. I&E endorses this term because while it recognizes the potential for Aqua to invoke portions of Section 1329 related to post-acquisition projects,¹¹ it also empowers parties to review Aqua’s proposed treatment of those projects in a future base rate case. Preserving the ability to litigate any of Aqua’s proposed AFUDC and deferred depreciation treatment protects the public interest by ensuring that interested parties are not hindered in developing a full and complete record for the Commission on this issue when additional information is available and ratemaking issues are ripe for determination.

¹¹ 66 Pa. C.S. §1329(f).

H. Unaccounted for Water

Aqua has agreed per the Settlement to review the high unaccounted for water (“UAW”) on the Shenandoah system and provide a copy of the AWWA Audit Report to the statutory advocates. Getting UAW to reasonable levels is an important issue for any water system. Aqua’s review of and report on the UAW levels for the Shenandoah system is an important step in getting UAW levels down. Higher UAW levels result in more costs for customers because leaking water leads to chemical treatment of water that ultimately does not reach the end user. Determining the specific reasons UAW is high on this system will help Aqua combat the levels and determine what needs to be done to fix the cause of the high UAW levels.

I. Metering

In testimony I&E took no position on the issue of unmetered Fire Companies. However, I&E supports this term as being in the public interest as part of a total settlement.

J. Lead Service Line Replacement

As part of the Settlement Aqua has agreed to incorporate the Shenandoah system into its customer-owned lead service line replacement program (“COLSLR”). Replacing lead service lines is in the public interest. Lead represents a serious threats to the health and safety of water customers. Therefore, I&E supports this term as being in the public interest.

K. Welcome Letter and Low-Income Program Outreach

Pursuant to the Settlement, Aqua has agreed that as part of its Welcome Letter to newly acquired Shenandoah customers, it will include information regarding the COLSLR program and customer assistance programs. I&E fully supports this term because ensuring that acquired customers are fully informed about the programs offered by their new provider is prudent and in the public interest. Accordingly, I&E supports Aqua’s settlement commitment to ensure that

acquired customers will have a clear understanding of COLSLR program and low income programs.

L. Hardship Contribution

I&E took no position on this issue in testimony. However, I&E supports the settlement as a whole as being in the public interest.

M. Easements and Other Property Rights

I&E supports this term as necessary to protect the public interest in two ways. First, it is important to note that the public interest would be harmed if Aqua paid a purchase price that assumed that all rights necessary to operate Shenandoah would be transferred, and at Shenandoah's cost, and such action did not occur. To protect against this possibility, I&E fully supports the protection measure of the escrow account that would be imposed upon Shenandoah to ensure that any right not transferred at closing must be financially accounted for via payment to the escrow account. Additionally, the public interest is protected because this term provides an additional layer of accountability that would not exist if Aqua and Shenandoah would ever mutually decide to waive the applicable sections of the Asset Purchase Agreement that bind it to deliver good and marketable title to all real property necessary for the operation of the acquired system. Accordingly, this term of the Joint Petition is in the public interest and it should be approved without modification.

N. Transaction and Closing Costs

I&E submits that Aqua's commitment to separately identify any legal fees included in its transaction and closing costs pursuant to the Asset Purchase Agreement between Aqua and Shenandoah is consistent with ensuring that Aqua will only be permitted to recover prudently incurred costs from ratepayers. These terms are in the public interest because they protect

ratepayers from paying unwarranted costs and promote rate affordability. Additionally, this term also ensures that I&E will be able to challenge the basis of any claimed Shenandoah legal fees, meaning that I&E has not forfeited its position that Section 1329 does not permit the acquiring utility to recover the seller's transaction and closing costs. Through this term, the public interest is protected because I&E has preserved its ability to challenge the permissibility of any claims that Aqua may make for 's legal fees in its next base rate case, which is consistent with I&E's obligation to enforce the Code.

Furthermore, as a condition of this portion of the Settlement, Aqua agreed that if it ever does make a claim for any Shenandoah legal fees in a future base rate case, it will separately identify those fees. From I&E's perspective, the separate identification of any such fees is important in that it ensures that I&E, other interested parties, and the Commission will easily be able to identify any portion of claimed fees. It is imperative that any claimed fees are readily identified to ease the administrative burden of uncovering this information when Aqua files its next rate case, which may be several years from now and be complicated by the complexity of the resulting rate investigation. Accordingly, these combined commitments will protect Aqua's ratepayers from bearing the burden of Shenandoah's legal fees.

III. CONCLUSION

Based upon I&E's analysis of the filing, acceptance of this proposed Settlement is in the public interest. Resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation if the Settlement is rejected by the Commission or otherwise properly

withdrawn by any other parties to the instant proceeding. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E has not waived its right to file Exceptions with respect to any modifications to the terms and conditions of the Settlement, or any additional matters, that may be proposed by the ALJ in his Recommended Decision. I&E also reserves the right to file Reply Exceptions to any Exceptions that may be filed.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Settlement as being in the public interest and respectfully requests that Administrative Law Judge Jeffrey A. Watson and, thereafter, the Commission, approve the terms and conditions contained in the foregoing Joint Petition for Approval of Settlement without modification.

Respectfully submitted,



Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6156
carwright@pa.gov

Dated: April 11, 2023

EXHIBIT E

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc. for	:	Docket No. A-2022-3034143
Approval of its Acquisition of the Water System	:	
Assets of the Borough of Shenandoah and the	:	
Municipal Authority of the Borough of	:	
Shenandoah Pursuant to Sections 1102, 1329 and	:	
507 of the Public Utility Code	:	

**STATEMENT OF THE MUNICIPAL AUTHORITY OF THE BOROUGH OF
SHENANDOAH IN SUPPORT OF SETTLEMENT**

TO THE HONORABLE JEFFREY A. WATSON, ADMINISTRATIVE LAW JUDGE:

The Municipal Authority of the Borough of Shenandoah (“MABS” or the “Authority”), by its attorneys, submits this statement in support of the Joint Petition for Approval of Settlement (“Joint Petition”) submitted to the Public Utility Commission (“Commission”) by Aqua Pennsylvania, Inc. (“Aqua” or “Company”), the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement of the Commission (“I&E”), the Borough of Shenandoah (“Shenandoah” or the “Borough”), and MABS.¹

I. Introduction and Procedural History.²

This proceeding concerns Aqua’s Application, Docket No. A-2022-3034143, filed with the Public Utility Commission (“Commission”) on October 6, 2022 for approvals related to its acquisition of the water system assets of MABS (the “System”) pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (the “Code”).

¹ Aqua, I&E, OCA, the Borough and MABS are, hereinafter, referred to, collectively, as the “Settling Parties.” OSBA is not a signatory to the Joint Petition, but does not oppose it.

² The procedural history is contained within the Joint Petition and is not restated here, but is so incorporated. However, certain background portions are included here for ease of reference.

II. The Proposed Settlement is in the Public Interest.

The Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. The Commission will grant a certificate of public convenience upon a finding that doing so “is necessary or proper for the service, accommodation, convenience, or safety of the public.” The Commission, in granting certificates of public convenience, “may impose such conditions as it may deem just and reasonable.” 66 Pa.C.S. § 1103(a). The Authority supports the Joint Petition and submits that it should be approved without modification because it resolves all issues raised in this proceeding and will further the public interest.

A. The Proposed Settlement Minimizes Litigation and Administrative Burden.

As a threshold matter, the proposed settlement is the public interest because it is consistent with the Commission’s policy to promote settlements over costly litigation. *See* 52 Pa. Code § 5.231(a). Indeed, the Commission has explicitly stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401. This would unequivocally be the case here. The proposed settlement allows the transaction at issue to proceed without further litigation or administrative review. It is thus consistent with well-established Commission policy.

B. Aqua is Fit to Own and Operate the System.

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *See Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). There is no dispute

that Aqua has the requisite technical, financial and legal fitness to own and operate the System. Indeed, Aqua's fitness is presumed because it is a certificated provider of utility service. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

Aqua is a public utility operating under certificates of public convenience granted by the Commission, and there are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service. Based upon the testimony and statements submitted by Aqua and the information obtained by the Borough and MABS, MABS is confident that Aqua would be well qualified to own and operate the System and can do so better than the Borough or MABS could. Given the fact that there are meaningful investments needed in the water system, the System's customers will benefit greatly from Aqua's technical experience and fitness in deploying resources towards needed capital improvements.

C. The Public Will Benefit as a Result of the Settlement.

There is substantial evidence in support of settlement and the public benefits resulting from the acquisition.

1. The Transaction Provides Benefits for MABS, Shenandoah and its Customers.

For purposes of this statement, MABS will focus primarily on the considerable benefits that will directly impact the Borough's residents and System customers. First, based upon the testimony and statements submitted by Aqua and information MABS has received, Aqua has the managerial, technical and financial resources to continue to operate, maintain and improve the System in a safe, reliable and efficient manner now and in the future. Aqua is already providing water service in Girardville (through its Girardville System). Aqua's Girardville system is interconnected with Aqua's nearby Mt. Carmel and Roaring Creek systems. Aqua is planning to

interconnect its existing water system with the System to provide redundancy and emergency supply. Aqua's Roaring Creek Division office is located in close proximity to the System, which will enable Aqua to assume its operations efficiently and improve long-term viability of the System as envisioned in the PUC policy statement. The System's customers will become part of a larger-scale, efficiently operated, water utility that over time will likely yield further operating efficiencies and improve long-term viability.

Second, Aqua is projecting less operating and maintenance costs for the System under its ownership as a result of reductions in costs for water treatment, as well as efficiencies in administrative and general costs, such as insurance, auditing, and legal, among others. Additionally, Aqua will not adopt certain fees that MABS currently charges; specifically those fees described as "Miscellaneous Charges: D.E.P Commercial \$ 1.00 per Month, D.E.P Residential \$ 3.00 per Quarter."

Third, the System's customers will benefit greatly from Aqua's technical experience and fitness in deploying resources towards capital improvements. Specifically, customers will benefit from (i) the planned capital expenditures for main replacements and other System needs; (ii) Aqua's planned Unaccounted for Water ("UAW") review and enhancements designed to minimize future water losses; and (iii) Aqua's lead service line ("LSL") inventory efforts and participation by customers in Aqua's customer-owned lead service line ("LSL") replacement ("COLSLR") program. Aqua also has agreed it will explore low cost or no cost financing for LSL replacement throughout its expanded service territory into Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, within Schuylkill County, Pennsylvania, and provide an update to the parties on the progress of obtaining a low interest loan

or grant money to replace COLSLs in the System in its next base rate case following closing of the transaction.

Fourth, the System's customers will benefit from enhanced customer service and billing/payment protections. Aqua provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business, as well as 24/7/365 emergency response. The System's customers will be able to go to Aqua's website and establish an account to pay their bills online. Customers can also sign up for notifications and alerts to be sent to their email address or phone concerning their service, which allows customers to stay informed of events impacting their service. In addition, Aqua has procedures in place under Chapter 14 of the Code that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Aqua employs customer care teams to help resolve service and billing issues, and has an established process and procedure for addressing formal and informal complaints.

Fifth, Aqua will implement existing rates upon Commission approval of the acquisition. The acquisition will thus not have any immediate impact on the rates of the System's customers.

Finally, the sale of the System will directly benefit the Borough's residents and taxpayers. The transaction will provide the Borough with the financial flexibility to undertake other capital projects without having to raise taxes, and will allow it to avoid the financial difficulty that it could face in making the considerable improvements needed to the System. Moreover, Aqua will offer employment to all full-time employees of the Borough who currently work on the System, allowing for the preservation of jobs and operational continuity.

2. The Transaction Provides Additional Benefits.

Other considerable benefits of the proposed transaction exist, particularly for Aqua's existing customers. Aqua will increase its customer base by approximately 0.6% as a result of the acquisition.

With a larger customer base, future infrastructure investment across the state will be shared at a lower incremental cost per customer for all of Aqua's customers. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua, nor will it have any immediate impact on their rates.

In addition, the proposed transaction presents economies of scale that will be realized upon its consummation. Aqua is acquiring the System at a rate base per customer of \$4,100, which is approximately 50% lower than what was most recently included in Aqua's existing rate base per connection (approximately \$8,500 per customer). Given Aqua is seeking approval to purchase the System at a cost per customer that is less than its existing customers, combined with the approximately \$500,000 lower operating costs, the System characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition, thus benefiting existing customers.

III. Fair Market Valuation.

Section 1329 of the Code addresses the valuation of assets of municipally or authority-owned water systems that are acquired by investor-owned water utilities or entities. It is a voluntary process to determine the fair market value of an acquired water system at the time of acquisition, and provides that the ratemaking rate base will be the lesser of the fair market value (*i.e.*, the average of the buyer's and seller's independently conducted appraisals) or the negotiated purchase price. For the transaction at issue, MABS, Shenandoah, and Aqua negotiated a purchase price of \$12,000,000 for the System assets, which was the result of voluntary arm's length negotiations.

Shenandoah and MABS retained ScottMadden, Inc. ("ScottMadden") to provide a fair market value appraisal in accordance with the Uniform Standards of Professional Appraisal Practice, utilizing the cost, market, and income approaches. ScottMadden's fair market value appraisal is \$18,100,307. Aqua retained Gannett Fleming Valuation and Rate Consultants, LLC

for the same purpose and Gannett's fair market value appraisal is \$25,221,000. The average of the two is \$21,660,654. As a result, the ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$12,000,000, being the lesser of the negotiated purchase price of \$12,000,000 and the average of the appraisals of \$21,660,654.

IV. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code.

A. Section 507 Approval Should Be Given.

Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

The Asset Purchase Agreement, dated July 20, 2021, between Aqua, the Borough and MABS was filed with the Aqua's Application as Exhibit B. Upon approval of the acquisition, on the terms set forth in the settlement in the Joint Petition, the Commission should also approve, to the extent necessary, the APA pursuant to Section 507 of the Code and provide such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

B. Other Approvals, Certificates, Registrations and Relief.

As a final matter, MABS respectfully requests that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the System assets.

V. CONCLUSION.

MABS respectfully requests that Administrative Law Judge Jeffrey A. Watson recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

/s/ William C. Rhodes

William C. Rhodes, Esquire (PA I.D. 63029)

BALLARD SPAHR LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103-7599

rhodes@ballardspahr.com

Tel.: (215) 864-8534

Fax: (215) 864-8999

Email: rhodes@ballardspahr.com

*Counsel for the Municipal Authority of the Borough
of Shenandoah*

Date: April 11, 2023

EXHIBIT F

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania, Inc. for	:	Docket No. A-2022-3034143
Approval of its Acquisition of the Water System	:	
Assets of the Borough of Shenandoah and the	:	
Municipal Authority of the Borough of	:	
Shenandoah Pursuant to Sections 1102, 1329 and	:	
507 of the Public Utility Code	:	

**STATEMENT OF THE BOROUGH OF SHENANDOAH IN SUPPORT OF
SETTLEMENT**

TO THE HONORABLE JEFFREY A. WATSON, ADMINISTRATIVE LAW JUDGE:

The Borough of Shenandoah (“Shenandoah” or the “Borough”), by its attorneys, submits this statement in support of the Joint Petition for Approval of Settlement (“Joint Petition”) submitted to the Public Utility Commission (“Commission”) by Aqua Pennsylvania, Inc. (“Aqua” or “Company”), the Office of Consumer Advocate (“OCA”), the Bureau of Investigation and Enforcement of the Commission (“I&E”), the Borough, and the Municipal Authority of the Borough of Shenandoah (“MABS” or the “Authority”).¹

I. Introduction and Procedural History.²

This proceeding concerns Aqua’s Application, Docket No. A-2022-3034143, filed with the Public Utility Commission (“Commission”) on October 6, 2022 for approvals related to its acquisition of the water system assets of MABS (the “System”) pursuant to Sections 1102, 1329 and 507 of the Public Utility Code (the “Code”).

¹ Aqua, I&E, OCA, the Borough and MABS are, hereinafter, referred to, collectively, as the “Settling Parties.” OSBA is not a signatory to the Joint Petition, but does not oppose it.

² The procedural history is contained within the Joint Petition and is not restated here, but is so incorporated. However, certain background portions are included here for ease of reference.

II. The Proposed Settlement is in the Public Interest.

The Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory and to acquire property used or useful in the public service. The Commission will grant a certificate of public convenience upon a finding that doing so “is necessary or proper for the service, accommodation, convenience, or safety of the public.” The Commission, in granting certificates of public convenience, “may impose such conditions as it may deem just and reasonable.” 66 Pa.C.S. § 1103(a). The Borough supports the Joint Petition and submits that it should be approved without modification because it resolves all issues raised in this proceeding and will further the public interest.

A. The Proposed Settlement Minimizes Litigation and Administrative Burden.

As a threshold matter, the proposed settlement is the public interest because it is consistent with the Commission’s policy to promote settlements over costly litigation. *See* 52 Pa. Code § 5.231(a). Indeed, the Commission has explicitly stated that “the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding.” 52 Pa. Code § 69.401. This would unequivocally be the case here. The proposed settlement allows the transaction at issue to proceed without further litigation or administrative review. It is thus consistent with well-established Commission policy.

B. Aqua is Fit to Own and Operate the System.

When considering a transaction such as the one presently at issue before the Commission, the party receiving the assets and service obligation must be technically, legally, and financially fit. *See Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). There is no dispute

that Aqua has the requisite technical, financial and legal fitness to own and operate the System. Indeed, Aqua's fitness is presumed because it is a certificated provider of utility service. *See Re Pennsylvania-American Water Company*, 85 PA PUC 548 (1995).

Aqua is a public utility operating under certificates of public convenience granted by the Commission, and there are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service. Based upon the testimony and statements submitted by Aqua and the information obtained by the Borough and MABS, Shenandoah is confident that Aqua would be well qualified to own and operate the System and can do so better than the Borough or MABS could. Given the fact that there are meaningful investments needed in the water system, the System's customers will benefit greatly from Aqua's technical experience and fitness in deploying resources towards needed capital improvements.

C. The Public Will Benefit as a Result of the Settlement.

There is substantial evidence in support of settlement and the public benefits resulting from the acquisition.

1. The Transaction Provides Benefits for Shenandoah and its Customers.

For purposes of this statement, Shenandoah will focus primarily on the considerable benefits that will directly impact its residents and customers. First, based upon the testimony and statements submitted by Aqua and information Shenandoah has received, Aqua has the managerial, technical and financial resources to continue to operate, maintain and improve the System in a safe, reliable and efficient manner now and in the future. Aqua is already providing water service in Girardville (through its Girardville System). Aqua's Girardville system is interconnected with Aqua's nearby Mt. Carmel and Roaring Creek systems. Aqua is planning to interconnect its existing water system with the System to provide redundancy and emergency

supply. Aqua's Roaring Creek Division office is located in close proximity to the System, which will enable Aqua to assume its operations efficiently and improve long-term viability of the System as envisioned in the PUC policy statement. The System's customers will become part of a larger-scale, efficiently operated, water utility that over time will likely yield further operating efficiencies and improve long-term viability.

Second, Aqua is projecting less operating and maintenance costs for the System under its ownership as a result of reductions in costs for water treatment, as well as efficiencies in administrative and general costs, such as insurance, auditing, and legal, among others. Additionally, Aqua will not adopt certain fees that MABS currently charges; specifically those fees described as "Miscellaneous Charges: D.E.P Commercial \$ 1.00 per Month, D.E.P Residential \$ 3.00 per Quarter."

Third, the System's customers will benefit greatly from Aqua's technical experience and fitness in deploying resources towards capital improvements. Specifically, customers will benefit from (i) the planned capital expenditures for main replacements and other System needs; (ii) Aqua's planned Unaccounted for Water ("UAW") review and enhancements designed to minimize future water losses; and (iii) Aqua's lead service line ("LSL") inventory efforts and participation by customers in Aqua's customer-owned lead service line ("LSL") replacement ("COLSLR") program. Aqua also has agreed it will explore low cost or no cost financing for LSL replacement throughout its expanded service territory into Borough, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, within Schuylkill County, Pennsylvania, and provide an update to the parties on the progress of obtaining a low interest loan or grant money to replace COLSLs in the System in its next base rate case following closing of the transaction.

Fourth, the Borough's customers will benefit from enhanced customer service and billing/payment protections. Aqua provides customer service through a toll-free number that customers can call from 8:00AM-5:00PM EST for regular business, as well as 24/7/365 emergency response. Shenandoah's customers will be able to go to Aqua's website and establish an account to pay their bills online. Shenandoah customers can also sign up for notifications and alerts to be sent to their email address or phone concerning their service, which allows customers to stay informed of events impacting their service. In addition, Aqua has procedures in place under Chapter 14 of the Code that provide for billing, payment, collection, termination and reconnection of service, payment arrangements, medical certifications, and formal and informal complaint procedures. Aqua employs customer care teams to help resolve service and billing issues, and has an established process and procedure for addressing formal and informal complaints.

Fifth, Aqua will implement Shenandoah's existing rates upon Commission approval of the acquisition. The acquisition will thus not have any immediate impact on the rates of Shenandoah customers.

Finally, the sale of the System will directly benefit Shenandoah's residents and taxpayers. The transaction will provide the Borough with the financial flexibility to undertake other capital projects without having to raise taxes, and will allow it to avoid the financial difficulty that it could face in making the considerable improvements needed to the System. Moreover, Aqua will offer employment to all full-time employees of the Borough who currently work on the System, allowing for the preservation of jobs and operational continuity.

2. The Transaction Provides Additional Benefits.

Other considerable benefits of the proposed transaction exist, particularly for Aqua's existing customers. Aqua will increase its customer base by approximately 0.6% as a result of the acquisition. With a larger customer base, future infrastructure investment across the state will be shared at a

lower incremental cost per customer for all of Aqua's customers. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua, nor will it have any immediate impact on their rates.

In addition, the proposed transaction presents economies of scale that will be realized upon its consummation. Aqua is acquiring the System at a rate base per customer of \$4,100, which is approximately 50% lower than what was most recently included in Aqua's existing rate base per connection (approximately \$8,500 per customer). Given Aqua is seeking approval to purchase the System at a cost per customer that is less than its existing customers, combined with the approximately \$500,000 lower operating costs, the System characteristics demonstrate that there are economies of scale that can be achieved as a result of this acquisition, thus benefiting existing customers.

III. Fair Market Valuation.

Section 1329 of the Code addresses the valuation of assets of municipally or authority-owned water systems that are acquired by investor-owned water utilities or entities. It is a voluntary process to determine the fair market value of an acquired water system at the time of acquisition, and provides that the ratemaking rate base will be the lesser of the fair market value (*i.e.*, the average of the buyer's and seller's independently conducted appraisals) or the negotiated purchase price. For the transaction at issue, MABS, Aqua and Shenandoah negotiated a purchase price of \$12,000,000 for the System assets, which was the result of voluntary arm's length negotiations.

Shenandoah and MABS retained ScottMadden, Inc. ("ScottMadden") to provide a fair market value appraisal in accordance with the Uniform Standards of Professional Appraisal Practice, utilizing the cost, market, and income approaches. ScottMadden's fair market value appraisal is \$18,100,307. Aqua retained Gannett Fleming Valuation and Rate Consultants, LLC for the same purpose and Gannett's fair market value appraisal is \$25,221,000. The average of

the two is \$21,660,654. As a result, the ratemaking rate base determined pursuant to Section 1329(c)(2) of the Code is \$12,000,000, being the lesser of the negotiated purchase price of \$12,000,000 and the average of the appraisals of \$21,660,654.

IV. Section 507 Approval and Other Approvals, Certificates, Registrations and Relief, If Any, Under the Code.

A. Section 507 Approval Should Be Given.

Section 507 of the Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date.

The Asset Purchase Agreement, dated July 20, 2021, between Aqua, the Borough and MABS was filed with the Aqua's Application as Exhibit B. Upon approval of the acquisition, on the terms set forth in the settlement in the Joint Petition, the Commission should also approve, to the extent necessary, the APA pursuant to Section 507 of the Code and provide such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

B. Other Approvals, Certificates, Registrations and Relief.

As a final matter, Shenandoah respectfully requests that the Commission issue such other approvals, certificates, registrations and relief, if any, that may be required with respect to Aqua's acquisition of the System assets.

V. CONCLUSION.

Shenandoah respectfully requests that Administrative Law Judge Jeffrey A. Watson recommend approval of, and the Public Utility Commission approve, the Joint Petition for Approval of Settlement without modification.

Respectfully submitted,

/s/ William C. Rhodes

William C. Rhodes, Esquire (PA I.D. 63029)

BALLARD SPAHR LLP

1735 Market Street, 51st Floor

Philadelphia, PA 19103-7599

rhodes@ballardspahr.com

Tel.: (215) 864-8534

Fax: (215) 864-8999

Email: rhodes@ballardspahr.com

Counsel for the Borough of Shenandoah

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