

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held July 13, 2023

Commissioners Present:

Gladys Brown Dutrieuille, Chairman  
Stephen M. DeFrank, Jr., Vice Chairman  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Application of Aqua Pennsylvania, Inc., pursuant to 66 Pa. C.S. §§ 1102 and 1329 for: (1) approval of the acquisition by Aqua Pennsylvania, Inc. of the water system assets of the Borough of Shenandoah (Shenandoah or Borough) and the Municipal Authority of the Borough of Shenandoah (MABS or the Authority) situated in the Borough of Shenandoah, West Mahanoy Township, Mahanoy Township, Butler Township, Girardville Borough, and Union Township, Schuylkill County, Pennsylvania; (2) approval of the right of Aqua Pennsylvania, Inc. to begin to offer, render, furnish and supply water service in the Borough of Shenandoah, West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, Schuylkill County, Pennsylvania; and (3) an order approving the acquisition that includes the ratemaking rate base of the Borough and MABS water system assets pursuant to Section 1329(c)(2) of the Public Utility Code.

A-2022-3034143

Request for Approval of Contracts, between Aqua Pennsylvania, Inc., the Borough and MABS, Pursuant to Section 507 of the Public Utility Code.

**OPINION AND ORDER**

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## **BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Exception of Aqua Pennsylvania, Inc. (Aqua or Company or Applicant), and the Exception of the Municipal Authority of the Borough of Shenandoah (MABS or Authority) and the Borough of Shenandoah (Shenandoah or Borough), each filed on May 30, 2023, in the above-captioned proceeding. The Exceptions were filed in response to the Recommended Decision of Administrative Law Judge (ALJ) Jeffrey A. Watson issued on May 18, 2023. Also, before the Commission is the Joint Petition for Approval of Settlement (Settlement) filed by Aqua, the Commission's Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), the Borough, and MABS (collectively, Joint Petitioners) on April 11, 2023. For the reasons below, we shall grant the Exceptions, adopt the Recommended Decision, as modified, and approve the Settlement, as modified, consistent with this Opinion and Order.

### **I. History of the Proceeding**

This matter concerns the Application filed with the Commission by Aqua on October 6, 2022, pursuant to Sections 507, 1102, and 1329 of the Public Utility Code (Code), 66 Pa. C.S. §§ 507, 1102, and 1329. In its Application, Aqua requested Commission approval of the acquisition of the water system assets of the Borough and MABS, and the right of the Company to provide water service in the areas served by the Borough. The Application also requested, pursuant to Section 1329(c)(2), the Commission's approval of a ratemaking rate base value of the assets to be acquired by the Company in the amount of \$12,000,000, 66 Pa. C.S. § 1329(c)(2), and approval of the contract between Aqua, the Borough and MABS, pursuant to Section 507 of the Code, 66 Pa. C.S. § 507. Application at 2-3.

On February 3, 2023, the Commission accepted, for filing, the Application.

On January 17, 2023, a Protest was filed by Donna M. Gawrylik (Protestant or Ms. Gawrylik). Ms. Gawrylik was referred to as a Protestant throughout the proceeding. In addition, throughout every stage of the proceeding, Ms. Gawrylik participated as a full party in the proceeding.

On March 3, 2023, Petitions to Intervene were filed by the Borough and the Authority, to which no objections were filed. No other Protests or Petitions to Intervene were filed or asserted in this proceeding.

An Interim Order Granting the Petition for a Protective Order filed by Aqua was entered on March 8, 2023.

Written Direct Testimony was served upon the Parties on March 20, 2023, by the OCA and I&E.

The Public Input Hearing convened on March 21, 2023. Ten individuals pre-registered to testify at the Public Input Hearing, including Ms. Gawrylik.

On March 22, 2023, an Interim Order was entered which provided, in part, a deadline to file a Settlement Petition and Statements in Support of Settlement no later than April 11, 2023, at 4:00 p.m., and a deadline to file objections to the proposed Settlement on April 20, 2023, at 4:00 p.m.

The evidentiary hearing convened as scheduled on March 28, 2023. Aqua, the OCA, I&E, the Borough, and MABS appeared and participated through

counsel. In addition, Ms. Gawrylik appeared and participated. Testimony and exhibits were admitted into the record at the hearing.<sup>1</sup>

On April 11, 2023, Aqua, the OCA, I&E, the Borough, and MABS, filed the Settlement for the purpose of settling the proceeding under the terms and conditions set forth therein. The OSBA is not a Party to the Settlement but authorized the Joint Petitioners to represent that it does not oppose the Settlement. In addition, Ms. Gawrylik is not a party to the Settlement.

An Interim Order was entered on April 11, 2023, assigning a due date for written objections to the Settlement of 4:00 p.m. on April 20, 2023. On April 19, 2023, Ms. Gawrylik filed objections to the Settlement. No briefs or responsive pleadings were filed in response to the objections filed by Ms. Gawrylik.

The record in this case closed on May 1, 2023.

In the Recommended Decision issued on May 18, 2023, the ALJ recommended that the Commission approve the Settlement, as modified, because it is in the public interest. In addition, the ALJ recommended that the Commission dismiss the objections asserted by Ms. Gawrylik.

As discussed, *supra*, Aqua, MABS, and the Borough filed Exceptions on May 30, 2023. A Reply Exception was filed by the OCA on June 6, 2023.

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<sup>1</sup> See, R.D. at 7 for a detailed list and description of the testimony and exhibits admitted into the record.

## II. Discussion

### A. Transaction Overview

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. Aqua owns and operates eleven surface water treatment plants, approximately 300 wells, and approximately 6,000 miles of mains throughout Pennsylvania. Aqua has approximately 600 employees that provide water service to citizens of Pennsylvania. Aqua's Roaring Creek Division has two water systems in close proximity to the Borough. Application at 3; Aqua St. 1 at 6-7; Aqua St. 2 at 2.

Shenandoah is a duly organized and validly existing borough of the Commonwealth of Pennsylvania, located in the northern part of Schuylkill County, and the majority of the Borough is served by the public water system. 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). The water system is a treatment and distribution system that distributes water to the Borough, portions of West Mahanoy Township, and to several customers in Butler Township, Girardville Borough, and Mahanoy Township. Application at 3; Aqua St. 1 at 7; Aqua St. 2 at 3.

On July 20, 2021, Aqua, the Borough, and MABS entered into an Asset Purchase Agreement (APA) for the sale of the assets, properties, and rights of the Borough's water system at an agreed-upon price of \$12,000,000. According to the APA,

the acquired customers will be charged the existing rates of MABS upon closing, and Aqua's tariff rules and regulations will apply following closing. Aqua St. 1 at 7.

As required by Section 1329, Aqua and the Borough jointly retained the services of Pennoni Associates, Inc., (Pennoni) to complete the engineering assessment and original cost of the water system. Aqua St. 1 at 16. Aqua selected Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming), and MABS selected ScottMadden, Inc. (ScottMadden), as their respective Utility Valuation Engineers (UVEs) to prepare fair market value (FMV) appraisals of the water system. The MABS-sponsored appraisal performed by ScottMadden concluded that the value of the water system was \$18,100,307. The Aqua-sponsored appraisal performed by Gannett Fleming concluded that the value of the water system was \$25,221,000. Both appraisals were prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards. The FMV as defined in Act 12 of 2016<sup>2</sup> is the average of these two appraisals which is \$21,660,654. Under Section 1329, the ratemaking rate base is the lesser of either the purchase price in the APA, which is \$12,000,000, or the FMV which is \$21,660,654. Therefore, since the purchase price is lower than the FMV, the ratemaking rate base for the water system is \$12,000,000. Aqua St. 1 at 16-17.

## **B. Public Input Hearing**

A public input hearing was conducted to give the public an opportunity to be heard regarding the acquisition of the Borough water system by Aqua. The public input hearing was held on March 21, 2023, at which eight individuals testified to raise issues to be considered by the Commission. R.D. at 5-6, 76-79. We refer to the

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<sup>2</sup> Then-Governor Wolf signed into law Act 12 of 2016 (Act 12) on April 14, 2016. Act 12 amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2019. 66 Pa. C.S. § 1329 (Section 1329).

Recommended Decision for a detailed summary describing the positions of the witnesses who testified at the public input hearing, which is incorporated herein. *See Id.* at 76-79.

## **C. Legal Standards**

### **1. Burden of Proof, 66 Pa. C.S. § 332(a)**

As the proponent of a rule or order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Applicant's evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

### **2. Certificate of Public Convenience, 66 Pa. C.S. §§ 1102, 1103**

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate of Public Convenience (Certificate) prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa. C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a Certificate from the Commission prior to a utility or an affiliated interest of a utility to acquire or

transfer, to any person or corporation by any method, property used or useful in the public service. 66 Pa. C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a Certificate required under Section 1102:

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.* The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.

66 Pa. C.S. § 1103(a) (emphasis added); *see also Seaboard Tank Lines v. Pa. PUC*, 502 A.2d 763, 764-65 (Pa. Cmwlth. 1985).

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. PUC*, 449 Pa. 136, 141, 295 A.2d 825, 828 (1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will affirmatively benefit the public.” *Id.* (overruling in part, *Northern Pennsylvania Power Co. v. Pa. PUC*, 333 Pa. 265, 267, 5 A.2d 133, 134).

The Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based

determinations (including predictive ones informed by expert judgment) concerning certification matters.

*Popowsky v. Pa. PUC*, 594 Pa. 583, 611, 937 A.2d 1040, 1057 (2007) (*Popowsky*).

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Poposwky*, 594 Pa. at 617-618, 937 A.2d at 1061. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa. C.S. § 1103(a).

One of the factors that the Supreme Court identified in *City of York* for the Commission to consider in determining whether there is an affirmative public benefit is:

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.

*City of York*, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court recently held that the Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, *including the impact on rates*, to determine if there is a substantial public benefit.” *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). While *McCloskey* held that rate impact must be addressed, it recognized that “the Commission is charged with

deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.” 195 A.3d at 1067.

The Commission and the courts have held that granting a certificate need not be “absolutely necessary” in order to be in the public interest. *See, Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014). The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.” *Id.* In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “*all affected parties*, and not merely one particular group or geographic subdivision.” *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis in original); *see also, Dunk v. Pa. PUC*, 232 A.2d 231, 234-35 (Pa. Super. 1967), *aff’d*, 434 Pa. 41, 252 A.2d 589 (1969) (where public benefit included companies and customers other than the proponent utility).

To obtain a Certificate, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service. *McCloskey*, 195 A.3d at 1058. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992). It is the protestant’s burden to rebut that presumption. *Lehigh Valley Transp.* Where an Applicant is both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

### **3. Ratemaking Rate Base Value, 66 Pa. C.S. § 1329**

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities. 66 Pa. C.S. § 1329. Under Section 1329, the value of water and wastewater system assets to be included in the acquiring utility's rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the "fair market value" of the selling utility's system. 66 Pa. C.S. § 1329(c)(2).

The fair market valuation process under Section 1329 where the acquiring utility and the seller must elect and agree to have the fair market value of the seller's assets established through separate, independent appraisals conducted by UVEs is voluntary. 66 Pa. C.S. § 1329(a). The Commission maintains a list of qualified UVEs from which the acquiring utility and seller must choose their respective appraisers. 66 Pa. C.S. §§ 1329(a)(1), (2).

The UVEs must prepare an appraisal of the seller's system assets in compliance with the USPAP, employing the cost, market and income approaches. 66 Pa. C.S. § 1329(a)(3). The fair market value of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3). 66 Pa. C.S. § 1329(g).

The Applicant must provide to the Commission copies of the appraisals; the purchase price; the ratemaking rate base; the closing costs; and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1).

#### **4. Utility-Municipal Contracts, 66 Pa. C.S. § 507**

Section 507 of the Code provides as follows regarding a utility's contract with a municipal corporation:

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof.

66 Pa. C.S. § 507.

Thus, pursuant to Section 507, the Commission has discretionary power to institute proceedings to determine the reasonableness, legality and validity of the contracts between a municipality and a public utility. *Id.*; *see also County of Allegheny v. Pa. PUC*, 159 A.2d 227, 233 (Pa. Super. 1960).

#### **5. Settlements in the Public Interest**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the

named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7. Despite this policy, the Commission does not simply rubber stamp settlements without determining whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. CS Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

## **6. General Standards**

In the Recommended Decision, the ALJ made fifty-six Findings of Fact and reached twenty-one Conclusions of Law. *See*, R.D. at 9-19, 93-96. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

### **D. Settlement**

As stated above, the Joint Petitioners reached a Settlement in this proceeding for the purpose of settling the proceeding under the terms and conditions set forth therein and without the need for further litigation. However, the Settlement

presented by the Joint Petitioners is not a unanimous or full settlement because: (1) even though the OSBA does not oppose the Settlement, it is not a party to it; and (2) Ms. Gawrylik objects to the Settlement. The Joint Petition for Approval of Settlement filed by Aqua, I&E, the OCA, the Borough, and MABS contained proposed Findings of Fact, proposed Conclusions of Law, and proposed Ordering Paragraphs. The Joint Petition for Approval of Settlement also referenced any filings needed to complete the Settlement, including (without limitation) the Aqua-proposed Tariff.

## 1. Terms of the Settlement

The principal terms of the Settlement are set forth below, as submitted by the Joint Petitioners. The Settlement terms were provided at Paragraph No. 17 in the Joint Petition for Approval of Settlement.<sup>3</sup>

### 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.<sup>4</sup>

### B. Tariff

1. A revised pro forma tariff ("Settlement Tariff") is attached hereto as **Exhibit A**. The Settlement

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<sup>3</sup> Settlement at 6-10. In addition, Footnotes No. 4 and 5 below are presented verbatim as they appear in the Settlement.

<sup>4</sup> The OCA does not join in this Paragraph but does not oppose Aqua's request.

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 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.<sup>5</sup>

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<sup>5</sup> The Requested Territory includes the Borough and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, located in Schuylkill County, Pennsylvania.

- 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. Ratemaking Rate Base

1. Pursuant to 66 Pa. C.S. § 1329(c), Aqua shall be permitted to use \$12,000,000 for ratemaking 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 ratemaking 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 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.

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.

Settlement at 6-10.

## **2. Objection of Ms. Gawrylik to the Settlement**

In her Objection, Ms. Gawrylik argued that the Borough failed to abide by the Pennsylvania Code and the Third Class City Code by refusing to stay the sale and placing a referendum on the ballot. Ms. Gawrylik averred that the acquisition by Aqua will have a very deleterious effect on the residents in the Borough due to the impending rate increases as the majority of these residents are elderly and on fixed incomes. Ms. Gawrylik contended that the Borough's current water system is fully functional and financially sound. Objection of Ms. Gawrylik at 1.

In addition, Ms. Gawrylik argued that it is not in the public interest to sell the water rights because there is no affirmative public benefit that will result from the sale since the Borough's water system is fully functioning and providing water at reasonable rates to Borough residents. Rather, Ms. Gawrylik contended that the result of the Settlement will be that Borough residents would experience an average increase in

rates of 44.87 percent, which would be very deleterious to the elderly residents and residents on a fixed income. *Id.* at 2.

Furthermore, Ms. Gawrylik argued that due process was not afforded in this matter, and that the Borough's water system is financially sound. In support of her due process claim, Ms. Gawrylik averred that the Borough enacted an ordinance without allowing ten percent of the registered voters of the Borough to file a petition to stay the Aqua sale. *Id.* at 2-3. With respect to her concerns that the Borough's water system is financially sound, she stated that "based on the fact that the Borough's financials show that the current water system is sound, there is no reason for a sale to occur." *Id.* at 3.

#### **E. Recommended Decision**

The ALJ began by emphasizing that the Joint Petitioners submitted a non-unanimous settlement of all issues and that Commission policy promotes settlements. The ALJ explained that settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. Additionally, the ALJ noted that the focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a "burden of proof" standard, as is utilized for contested matters. Rather, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. Additionally, the ALJ highlighted that parties to settled cases are

afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. R.D. at 22-23.<sup>6</sup>

The ALJ recommended that the Settlement be approved, as modified. Specifically, the ALJ rejected the Settlement Tariff attached to the Settlement as Exhibit A, to the extent that it permits or requires Aqua to provide free water service to the eight enumerated fire companies.<sup>7</sup> In addition, the ALJ also rejected the Settlement provision set forth at Paragraph No. 17.B.3.iii, providing that 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. *See*, R.D. at 46. With the exception of these issues, the ALJ approved the Settlement without further modification. In addition, the ALJ denied the Objection raised by Ms. Gawrylik. *Id.* at 1.

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<sup>6</sup> The ALJ summarized the Joint Petitioners' positions regarding the various issues contained in the Settlement as set forth in their Statements in Support of the Settlement. Not all parties addressed each issue contained in the Settlement. Also, the ALJ did not give consideration to the Statements in Support of Settlement submitted on behalf of the Borough and MABS as they relate to the settlement terms because those parties failed to submit Statements in Support of Settlement consistent with the ALJ's Interim Order entered on March 22, 2023, and the common issue outline agreed upon by the Parties. Finally, the OSBA and Ms. Gawrylik did not file Statements in Support of Settlement because they are not parties to the Settlement. *See*, R.D. at 33-71.

<sup>7</sup> "Fire companies" collectively refers herein to the five volunteer fire companies in the Borough, two volunteer fire companies in West Mahanoy Township, and Shenandoah Ambulance. *See*, R.D. at 24, citing Settlement Paragraph No. 17.B.5 "...First Revised page 12.9."

## **1. Settlement**

### **a. Terms**

#### **i. Approval of Application and Acquisition**

The ALJ concluded that the approval of Aqua's Application, as modified by the Recommended Decision, and subject to its ordering paragraphs, is appropriate and should be approved by the Commission. R.D. at 35.

#### **ii. Tariff**

The ALJ rejected the Settlement Tariff attached to the Settlement as Exhibit A to the extent that it permits or requires Aqua to provide free water service to eight enumerated fire companies. The ALJ concluded that existing customers would bear the expense of the proposal to provide free water service to the eight enumerated fire companies. Moreover, the ALJ found that no legal authority was provided to permit the free service, nor was there a difference in the type and condition of the respective service in order for a rate differential to satisfy the terms of 66 Pa. C.S. § 1304. The ALJ agreed with the OCA that free water service to eight enumerated fire companies is not permitted under 66 Pa. C.S. § 1304 and long-standing Commission and appellate precedent. R.D. 43-46.

In addition, the ALJ rejected the Settlement provision at Paragraph No. 17.B.3.iii, which provided that Aqua will join the OCA in any efforts to reconcile the regulatory, legal and policy precedent against the provision of free service by Commission-regulated utilities and the provisions of 66 Pa. C.S. § 1329(d), that address the buyer's adoption of seller's rates at closing. The ALJ found that this provision is not

supported by the evidentiary record or any legal authority cited by the Joint Petitioners. *Id.* at 46.

Finally, the ALJ addressed the Settlement provision 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. Based on the ALJ's modification of the Settlement as set forth above, he found that this provision is rendered moot. *Id.* at 47.

### **iii. Ratemaking Rate Base**

The ALJ found that the agreed-upon ratemaking rate base of \$12,000,000 is supported by substantial record evidence and is consistent with 66 Pa. C.S. § 1329, and that the agreement in the Settlement that \$12,000,000 will go into Aqua's rate base in its next rate case due to the acquisition is appropriate. R.D. at 49.

### **iv. COSS**

The ALJ noted that Paragraph No. 17.D of the Settlement provides that, in its first base rate case in which Aqua includes the Borough's assets in rate base, Aqua will submit a water COSS that removes all costs and revenues associated with the Borough's water system, and that Aqua will provide a separate COSS for the system. The ALJ found that this provision is in the public interest because the results of the COSS will provide Aqua with information necessary to determine an appropriate level of rates in the future and will benefit Aqua's ratepayers. The ALJ further stated that, without a COSS, 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. R.D. at 51.

**v. Cell Tower Revenue**

The ALJ explained that under the terms of the APA, Aqua will take assignment of an agreement to lease space on the newly acquired water assets for cell towers, and Aqua proposed to forego the revenue from the cell tower lease agreements over ten years. Under the Settlement, Aqua will impute fifty percent of the revenue that it foregoes, or \$66,570, in future base rate cases, to the benefit of ratepayers, as if Aqua received and retained all revenues beginning on the closing date. The ALJ agreed with the Joint Petitioners that this resolution is a reasonable compromise which will protect the interests of Aqua and the Borough's customers; therefore, he found that this provision is in the public interest and should be approved. R.D. at 52-53.

**vi. DSIC and LTIP**

The ALJ noted that 66 Pa. C.S. § 1329(d)(4) permits an acquiring public utility to collect a DSIC from the closing date of an acquisition until new rates are approved in the next base rate case.<sup>8</sup> Furthermore, the ALJ states that pursuant to the Settlement, Aqua will file, within ninety days after closing, an amendment to its 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. The ALJ concluded that this will result in the Borough's customers benefiting from improved water infrastructure, and safer and more reliable service; therefore, it is in the public interest. R.D. at 55-56.

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<sup>8</sup> While the acquired customers can be charged the DSIC after closing of the acquisition, a utility must submit an amended LTIP to, and receive approval from, the Commission to qualify for DSIC recovery.

**vii. AFUDC and Deferral of Depreciation and Transaction Costs**

The ALJ explained that the Settlement provides 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 Shenandoah's water system assets, and that the Joint Petitioners reserve their rights to litigate future claims for AFUDC and deferral of depreciation on post-acquisition projects pursuant to 66 Pa. C.S. § 1329(f) and transaction costs in future rate cases. The ALJ found that this term preserves all of the Parties' positions in future rate cases, including the ability to challenge the reasonableness and prudence of the Company's claims, which is reasonable and in the public interest. R.D. at 58.

**viii. UAW**

The ALJ explained that the Settlement includes a provision to address and reduce the high volume of UAW that the Borough experiences by providing for a review of the water system by Aqua and the submission of an American Water Works Association Water Audit Report. The ALJ concluded that reducing the quantity of UAW will help the system to comply with its Water Allocation Permit and lower treatment and other operating costs for customers. R.D. at 59.

**ix. Metering**

The ALJ noted that the Settlement provides that Aqua will install meters at the four fire companies in the Borough's service area that do not have meters on two-inch water lines that serve their location within sixty days of closing. The ALJ further noted that this provision 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 and will 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 at 52 Pa. Code § 65.7. The ALJ stated that the issue of providing water service to the fire companies was addressed above, as discussed in Section E.1.a.ii of this Opinion and Order. R.D. at 61.

**x. Lead Service Line Replacement**

The ALJ explained that the evidence established that the Borough's water system contains lead service lines; however, the number of lines is not known. The ALJ further explained that, pursuant to the Settlement, Aqua will incorporate the Borough's water system into its Customer-Owned Lead Service Line Replacement (COLSLR) program, which will provide an opportunity for the Borough customers with lead service lines to replace them without incurring a direct cost, as the costs of Aqua's COLSLR program are borne by Aqua customers in the aggregate. The ALJ concluded that this term is in the public interest. R.D. at 63.

**xi. Welcome Letter and Low Income Program Outreach**

The ALJ noted that the Settlement provides for a welcome letter that will be sent by Aqua to the Borough's customers upon completion of the sale to acquaint these customers with Aqua's customer assistance programs. The letter will also include information about in-person bill payment options in or near the Borough's territory. The ALJ stated that the letter will also provide customers of the Borough with information regarding the projected increase in residential customer rates. R.D. at 65-66.

## **xii. Hardship Contribution**

The ALJ explained that the Settlement provides that Aqua will make a \$45,000 contribution to its Hardship Grant program, with any unspent funds at the end of the program year to be rolled over and added to the following year's program budget. The ALJ concluded that this additional funding will assist customers in need throughout Aqua's service territory, including the acquired Borough customers, and this provision is in the public interest given the percentage of households in the Borough below the poverty level and with incomes below \$20,000 per year. R.D. at 67.

## **xiii. Easements**

The Settlement includes a provision whereby Aqua and the Borough will work to identify and obtain any missing easements so that they can be conveyed to Aqua at closing, and if all missing easements are unable to be transferred at closing, an escrow account will be established to obtain any post-closing transfers of missing easements or property rights. The ALJ found that this compromise by the Joint Petitioners is reasonable under the circumstances. R.D. at 67-69.

## **xiv. Transaction and Closing Costs**

The ALJ noted that the Settlement provides that the Joint Petitioners will not oppose Aqua's request to claim transaction and closing costs associated with the transaction, but they reserve their right to litigate their positions fully in future rate cases. In addition, Aqua will not include in its transaction and closing costs any costs incurred by the Borough in connection with the sale. Also, the inclusion of any outside legal fees in Aqua's transaction and closing costs shall be separately identified in Aqua's next base rate case, and the reasonableness, prudence, and basis for such fees will be subject to challenge by the OCA, the OSBA, and I&E. The ALJ found that these terms preserve the

rights of the Joint Petitioners to challenge or litigate their positions fully in future rate cases and are in the public interest because they provide for a full review of the transaction and closing costs in future rate cases. The ALJ also concluded that these terms are consistent with 66 Pa. C.S. § 1329 because transaction and closing costs incurred by the selling utility are not allowed to be included in the acquiring utility's ratemaking rate base. R.D. at 69-71.

## **2. Statutory Approvals**

### **a. Section 1102 Approval**

With respect to the request in Aqua's Application that the Commission issue an order and Certificate pursuant to 66 Pa. C.S. § 1102 approving Aqua's acquisition of the water assets of the Borough, the ALJ found that there appears to be no opposition thereto raised by the Joint Petitioners. R.D. at 72.

### **b. Section 1329 Approval**

Similarly, the ALJ found that there appears to be no opposition raised by the Joint Petitioners to Aqua's request in its Application for the Commission to 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 66 Pa. C.S. § 1329(c)(2). R.D. at 72.

### **c. Section 507 Approval**

Aqua requested in its Application that the Commission approve, to the extent necessary, and issue certificates of filing for the APA pursuant to 66 Pa. C.S. § 507, which requires that contracts between a public utility and a municipal corporation

for other than the furnishing of service at tariff rates be filed with the Commission. Based upon the ALJ's rejection of the Settlement Tariff, as discussed, *supra*, in Section E.1.a.ii of this Order, the ALJ rejected the request for approval of the APA and any other contracts or documents requiring Commission approval to the extent that the APA and other such contracts or documents permit or requires Aqua to provide free water service to the eight enumerated fire companies or any other individual or entity. Moreover, the ALJ granted the request for approval under 66 Pa. C.S. § 507 subject to and consistent with this provision and modified the Settlement consistent with this provision. R.D. at 73-75.

### **3. Objections of Ms. Gawrylik to the Settlement**

The ALJ found that the objections of Ms. Gawrylik are not supported by any legal authority or record evidence in this proceeding and should be denied. R.D. at 84.

#### **a. Public Interest**

Regarding Ms. Gawrylik's argument that the Borough residents will not benefit because Borough residents will experience an average increase in water rates of almost forty-five percent following the acquisition, the ALJ found that the transaction benefits the public because it promotes the Commission's policy favoring regionalization and consolidation of water and wastewater systems at 52 Pa. Code § 69.721(a), and it promotes the Pennsylvania General Assembly's goals when it enacted 66 Pa. C.S. § 1329. The ALJ noted that Aqua projects less operations and maintenance costs, significant investment in the Borough's water system, and the opportunity for Borough customers to participate in Aqua's COLSLR program. Also, the ALJ explained that the Borough's water system will be an approximate 0.6% increase in Aqua's customer base,

resulting in an approximate purchase price per connection that is fifty percent less than Aqua's existing rate base per connection. R.D. at 80-81.

Moreover, the ALJ concluded that the record evidence in this proceeding demonstrates that the Settlement will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way and will further the public interest. In addition, the ALJ noted that no record evidence was presented challenging Aqua's technical, financial, and legal fitness under 66 Pa. C.S. § 1103. *Id.*

**b. Due Process**

With respect to Ms. Gawrylik's claims that due process was violated because the Borough enacted an ordinance without allowing ten percent of the registered voters of the Borough to file a petition to stay the sale of the water system to Aqua, the ALJ found that Ms. Gawrylik provided no citation to the record evidence to support this objection. The ALJ concluded that adequate notice was provided to the public to file protests and petitions to intervene as well as to participate in this proceeding, and that Ms. Gawrylik fully participated at all stages of the proceeding, including the Prehearing Conference, the Public Input Hearing, the evidentiary hearing, and the filing of objections to the Settlement. Furthermore, the ALJ found that the Commission provided notice of this proceeding and an opportunity to be heard, and that no legal authority was presented to establish that the interests of the Parties or customers of Aqua and the Borough were denied the opportunity to be heard in this proceeding before the Commission. R.D. at 82-83.

Moreover, the ALJ found that Ms. Gawrylik failed to cite any authority to support her objections regarding the Borough's actions in enacting an ordinance or aver that the Commission has jurisdiction to adjudicate these claims. Accordingly, the ALJ concluded that to the extent Ms. Gawrylik believes that due process was not afforded to

the Borough residents or taxpayers, or the customers of the Authority regarding the alleged improprieties in the make-up and votes of the Authority Board or Borough Council, those matters must be addressed by the Court of Common Pleas or another entity or forum with jurisdiction or authority to adjudicate such claims because the Commission does not have jurisdiction to consider or determine the merits of such issues. R.D. at 83.

**c. Financially Sound**

The ALJ found that Ms. Gawrylik provided no legal authority or record evidence to support her objection that there is no reason for the sale of the Borough's water system to occur because the Borough's financials show that the current water system is sound. Rather, the ALJ concluded that the stipulated Findings of Fact by the Parties and the record evidence demonstrate that the Settlement will affirmatively promote the service, accommodation, convenience, or safety of the public in a substantial way and will further the public interest. R.D. at 84.

**4. Modifications to the Settlement**

With respect to the revised *pro forma* Settlement Tariff which would be adopted by Aqua upon closing of the acquisition, the ALJ noted that it, along with the APA, provides for Aqua to continue the Borough's practice of providing free water service to eight enumerated fire companies in the Borough. Upon review of the record, the ALJ found that no legal authority or evidence has been established to permit this free service or substantiate the inclusion of this term in the Settlement. In addition, the ALJ concluded that the Settlement provision appears to be inconsistent with established precedent regarding the Commission's ultimate authority to set rates resulting from a base rate proceeding. R.D. at 86-87.

Furthermore, the ALJ found that the provision set forth at Paragraph No. 17.B.3.iii of the Settlement, providing that Aqua will join the OCA in any efforts to reconcile the regulatory, legal and policy precedent against provision of free service by Commission-regulated utilities and the provisions 66 Pa. C.S. § 1329(d), is also not supported by the evidentiary record or any legal authority cited by the Parties. For this reason, the ALJ rejected this provision, as well as the Settlement Tariff, to the extent that it permits or requires Aqua to provide free water service to the eight enumerated fire companies. *Id.* at 87-88.

Inasmuch as the ALJ rejected the Settlement Tariff because it is contrary to law, the ALJ recommended that the Parties amend the Settlement Tariff to comply with 66 Pa. C.S. §§ 1304 and 1329. *Id.* at 88.

**a. Settlement Paragraph No. 17.I**

The ALJ explained that Paragraph No. 17.I of the Settlement provides that Aqua shall meter four unmetered fire companies within sixty days after closing. Pursuant to 52 Pa. Code § 5.591, the ALJ modified the Settlement to require Aqua to file a verified notice at this docket within seventy days of closing, indicating that it has metered the unmetered properties. In addition, the ALJ recommended that Aqua be ordered to file notice of closing of the acquisition with the Commission at this docket within ten days after closing. R.D. at 89.

**b. Section 507 Approval**

The ALJ rejected Aqua's request for approval of, and excluded from the Settlement, the APA and any other contracts or documents requiring Commission approval under 66 Pa. C.S. § 507 to the extent that the APA and other such contracts or documents permit or require Aqua to provide free water service to the eight enumerated

fire companies or any other individual or entity. The ALJ reached this determination because he found that no legal authority or evidence was established to permit this free water service or the provision at Paragraph No. 17.B.3.iii of the Settlement, which would provide that Aqua will join the OCA in any efforts to reconcile 66 Pa. C.S. §§ 1304 and 1329. Therefore, the ALJ granted approval under 66 Pa. C.S. § 507 and modified the Settlement, subject to and consistent with this provision. R.D. at 89-90.

## **5. Conclusion**

The ALJ concluded that the Settlement, as modified, is in the public interest and should be approved. In addition, the ALJ found that Aqua has established that it has the financial, legal, and technical fitness to own and operate the Borough's water system under the circumstances, and that the Joint Petitioners introduced substantial record evidence to demonstrate that the acquisition proposed in the Settlement, as modified, will provide affirmative public benefits. The benefits of the Settlement include the assurance that the Borough's water system customers will receive quality service from Aqua that meets all applicable regulatory requirements and customer service standards pursuant to the Code, and that those customers will have access to the Commission's procedures for investigating and enforcing any complaints that the residents may have regarding their service. Also, any future rate increases will be subject to the Commission's jurisdiction. R.D. at 84-86, 90-92.

With regard to the objections of Ms. Gawrylik, the ALJ found that the issues raised were not supported by any record evidence or any applicable law. In addition, the ALJ concluded that several of the objections raise issues that are outside of the jurisdiction of the Commission. For these reasons, the ALJ recommended that the Commission dismiss the objections raised by Ms. Gawrylik. *Id.* at 92.

## **F. Exceptions and Reply Exception**

### **1. Aqua Exception No. 1**

Aqua excepts to the ALJ's conclusion in the Recommended Decision that it may not continue to provide free water service until its next base rate case to the fire companies who are currently charged \$0.00 for service under the Borough's existing rates. Aqua submits that its provision of free water service, post-closing, is consistent with the law and Commission precedent. Aqua Exc. at 2.

Aqua avers that, where a situation exists in the existing rates of a selling utility (typically a municipal utility with rates not regulated by the Commission) where a class of customers is provided free service, there is an inherent conflict that arises between the requirement in 66 Pa. C.S. § 1329 that the acquiring public utility include the seller's existing rates in its proposed tariff and to charge those rates until its next base rate case, and the prohibition in 66 Pa. C.S. § 1304 against the provision of any "unreasonable prejudice or disadvantage" as between customers. Aqua Exc. at 3. Aqua further contends that continuing the free water service to the enumerated fire companies is supported by a fair reading of 66 Pa. C.S. § 1329(d) and Commission precedent. *Id.* at 7.

Aqua argues that 66 Pa. C.S. § 1329 requires that Aqua shall include a tariff "containing a rate equal to the existing rates of the selling utility at the time of the acquisition" and that such rates "shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the [C]ommission." *Id.* citing 66 Pa. C.S. §§ 1329(d)(1)(v) and (d)(4). In addition, Aqua contends that, contrary to the ALJ's conclusions, the Settlement provision continuing free service to the enumerated fire companies is consistent with Commission precedent. To that point, Aqua submits that the Commission has previously required and approved a similar continuation of free service in a prior Section 1329 case.

*Id.* at 7-8, citing *Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102, 1329, and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of Cheltenham Township and Contracts between Aqua Pennsylvania Wastewater, Inc and Cheltenham Township*, Docket No. A-2019-3008491 (Order entered November 5, 2019) (*Cheltenham*). Aqua avers that *Cheltenham* is squarely on point with the facts of the instant case. Aqua argues that in *Cheltenham*, the Commission approved the requested acquisition, along with the tariff for rates to be charged to customers previously served by Cheltenham Township, which provided that entities receiving free service from Cheltenham Township prior to the acquisition would continue to receive free service after closing of the acquisition.<sup>9</sup> *Id.* at 8-9.

Similar to *Cheltenham*, Aqua argues that in the instant case, the Authority provides free water service to the enumerated fire companies, and Aqua's continuation of that free service is consistent with 66 Pa. C.S. § 1329 and the Commission's prior direction that free service continue when it is provided by the selling entity. Therefore, Aqua contends that the adoption of the Settlement Tariff is not contrary to law and the ALJ's recommendation to modify it should be rejected. *Id.* at 9.

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<sup>9</sup> Aqua states that in *Cheltenham*, it initially filed its application for approval under Section 1329 with a proposed tariff that did not continue the provision of free service. Aqua further states that following a question from Commission Staff asking why there was no tariff included with the application that showed continued free service to the entities listed as receiving same from Cheltenham Township, Aqua explained that it could not provide free wastewater service in violation of 66 Pa. C.S. § 1304. Aqua avers that the Commission, in response, granted conditional acceptance of Aqua's application, but required that Aqua amend the application to include a tariff adopting rates equal to the rates of the selling entity at the time of the acquisition pursuant to 66 Pa. C.S. § 1329(d)(1)(v), to which Aqua complied. Following the Commission's acceptance of the application, Aqua's tariff supplement continued the free water service. *Id.* at 8-9.

## 2. Borough and MABS Exception No. 1

The Borough and MABS except to the conclusion in the ALJ's Recommended Decision that Aqua may not continue providing free water service until Aqua's next base rate case to the enumerated fire companies that are currently charged \$0.00 for service under the Borough's existing rates. The Borough and MABS contend that Aqua's provision of free water service to those fire companies, post-closing, is consistent with public policy and the law. Borough/MABS Exc. at 2.

The Borough and MABS aver that they agreed to the Settlement as a complete package, and the ALJ's recommendation with respect to the free water service for the enumerated fire companies deviates from that agreement. The Borough and MABS argue that continuing the long-standing practice of offering free water to the enumerated fire companies until such time as meters can be installed and Aqua's next rate case is approved does not constitute an "unreasonable preference or advantage" under 66 Pa. C.S. § 1304. The Borough and MABS submit that the fire companies serve an essential public benefit to the residents of the Borough and customers of MABS and provide life-saving service to the general public. The Borough and MABS state that the fire companies rely on the practice of free water service and understood that it would be preserved, in the short term, following the sale of the water system to Aqua until the Borough and the fire companies could agree on alternate arrangements. Thus, the Borough and MABS aver that they agreed with Aqua to adopt the Borough's existing rate in the APA and the Settlement until Aqua's next base rate case following closing of the acquisition. *Id.* at 2-3.

Moreover, the Borough and MABS state that this agreement should be adopted by the Commission because 66 Pa. C.S. § 1329(d)(1)(v) mandates that the utility submitting an application under Section 1329(a) of the Code submit with its initial filing a "tariff containing a rate equal to the existing rates of the selling utility at the time of the

acquisition.” The Borough and MABS contend that their long-standing practice has been to offer free water service to the fire companies, which is the reason that this provision was included in the Settlement. *Id.* at 3.

### **3. OCA Reply Exception**

In reply to the Exceptions filed by Aqua, the Borough and MABS, the OCA contends that the characterization of certain facts and law related to free service by Aqua, the Borough, and MABS are disputed and should not be adopted. The OCA states that it supports the Settlement as being in the public interest; however, it did not join in the provision regarding approval of a Tariff that requires Aqua to provide free water service to eight fire companies because free service is not permitted and harms Aqua’s other customers. OCA R. Exc. at 1.

The OCA states that it disagrees with certain statements of facts and assertions of law in Aqua’s and the Borough’s and MABS’ Exceptions. First, the OCA argues that the Borough did not have a \$0.00 rate in place for service to the fire companies; rather, there was no rate. The OCA avers that the fire companies received no bills from the Borough; therefore, the fire companies are effectively “new” customers now that Aqua has acquired the system and service territory. For this reason, the OCA argues that, similar to any other entity that becomes a customer post-closing, Aqua’s rates for service should apply to these fire companies. OCA R. Exc. at 1-2.

In addition, the OCA disagrees with Aqua’s assertion that its practice of providing free service is supported by a fair reading of 66 Pa. C.S. § 1329. The OCA argues that 66 Pa. C.S. §§ 1304 and 1329 can be read in harmony by recognizing that the seller was not charging a “rate” for service for purposes of Section 1329 because the seller was not issuing bills for \$0.00, and Aqua refers to this as a “non-rate.” Furthermore, the OCA submits that Aqua did not continue the Borough’s practice of not

charging properties including the Police Department, the library, and public hydrants in the Borough for service, concluding that Aqua and the Borough understood that free service would not be continued under ownership by a Commission-regulated utility and did not believe that such practices are required by 66 Pa. C.S. § 1329(d)(1)(v). OCA R. Exc. at 2.

Finally, the OCA posits that if the Commission grants Aqua's Exception, it should also adopt the other related provisions of the Settlement that the ALJ rejected related to free service, because these provisions ensure that free service will not continue beyond the next base rate case. *Id.* at 2-3.

## **G. Disposition**

Upon review, we shall grant the Exception filed by Aqua, as well as the Exception filed by the Borough and MABS. The Exceptions address the issue of Aqua's continued provision of free water service to eight enumerated fire companies previously served by the Borough.<sup>10</sup> In his Recommended Decision, the ALJ rejected the Settlement Tariff to the extent that it permits or requires Aqua to provide free water service to the eight enumerated fire companies and agreed with the OCA that such free service is not permitted under 66 Pa. C.S. § 1304 and Commission and appellate precedent. Aqua, the Borough and MABS disagree with the ALJ and contend that Aqua's provision of free water service to the eight enumerated fire companies post-closing is consistent with

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<sup>10</sup> The OCA notes that the Settlement Tariff does not continue the Borough's practice of not charging other properties including the Police Department, the library, and public hydrants in the Borough for water service. OCA Exc. at 2. We also note that there appear to be seven other fire companies that were previously served by the Borough, but these fire companies were charged for such service, and will continue to be charged for the service by Aqua under the Settlement Tariff following the acquisition. Aqua Exh. BB, SDR-12 Attachment at 7. The OCA's non-support and challenge to the Settlement Tariff was specifically limited to the eight fire companies receiving free service. OCA Exc. at 2; Settlement at 6.

66 Pa. C.S. § 1329 and Commission precedent. The Parties suggest that an inherent conflict arises between the requirements in Sections 1304 and 1329 of the Code, 66 Pa. C.S. §§ 1304 and 1329, when an acquiring utility adopts the rates of a selling utility where a customer or class of customers has been provided free service by the selling utility.

We begin with an overview of the statutes at issue here and their relevant requirements. Section 1329(d)(1)(v) of the Code requires that a utility submitting an application under Section 1329(a) of the Code include with its initial filing a “tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.” 66 Pa. C.S. § 1329. Such tariff shall remain in effect until new rates are approved for the acquiring utility as a result of a base rate proceeding before the Commission. 66 Pa. C.S. § 1329(d)(4).

Section 1304 of the Code provides, in relevant part, that “[n]o public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.” 66 Pa. C.S. § 1304.

Upon review, we find that Sections 1304 and Section 1329 of the Code, 66 Pa. C.S. §§ 1304 and 1329, can and should be interpreted in harmony with each other. Both sections relate to the same subject matter, *i.e.*, utility rates; therefore, both statutes should be read in *pari materia* and construed together, if possible, as one statute.

1 Pa. C.S. § 1932. The Superior Court of Pennsylvania has held:

When interpreting statutes, they should be interpreted as being in harmony with each other and construed as a component of the whole statutory structure. *Com. Dept. of*

*Public Welfare v. Woolf*, 276 Pa. Superior Ct. 433, 419 A.2d 535 (1980). When laws pertain to the same subject matter, they should be construed, where possible, as one. *Girard School District v. Pittenger*, 481 Pa. 91, 392 A.2d 261 (1978); See 1 Pa. C.S. § 1932.

*Royal Indem. Co. v. Adams*, 455 A.2d 135, 141 (Pa. Super. 1983). Also, it is presumed “[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable.” 1 Pa. C.S. § 1922(1).

In this instance, reading Sections 1304 and 1329 of the Code, 66 Pa. C.S. §§ 1304 and 1329, in *pari materia*, leads us to conclude that the rates included in the Settlement Tariff providing for free water service to the eight enumerated fire companies comply with the requirements of 66 Pa. C.S. § 1329 while not offending the prohibition of rates that establish an “unreasonable preference or advantage” under 66 Pa. C.S. § 1304.

First, we find that including Aqua’s provision providing for free water service to the eight enumerated fire companies in the Settlement complies with 66 Pa. C.S. § 1329. Specifically, Section 1329 provides, in pertinent part:

**(d) Acquisitions by public utility.--**The following apply:

- (1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), the acquiring public utility shall include the following as an attachment to its application for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

.....

- (v) A tariff containing a rate equal to the existing rates of the selling utility at the time of

the acquisition and a rate stabilization plan, if applicable to the acquisition.

.....

- (4) The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. The acquiring public utility may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.

66 Pa. C.S. § 1329(d).

With respect to the eight enumerated fire companies, the Settlement Tariff submitted by Aqua provides for free service following closing of the acquisition which is equal to what those fire companies were paying to the Borough prior to the acquisition. This rate included in the Settlement Tariff will only remain in effect until such time as new rates are approved for Aqua as the result of its next base rate proceeding before the Commission. Therefore, we find that Aqua's action here is consistent, and in compliance with, the clear requirements of 66 Pa. C.S. § 1329. Moreover, it is important to recognize that the rates included in the Settlement Tariff, although perhaps imperfect, are temporary in nature, as the statute contemplates, because new rates will be proposed, and ultimately approved, in Aqua's next base rate proceeding after installing usage meters for the four unmetered fire companies, tracking monthly consumption, and studying the cost of service for the eight fire companies.

Second, we conclude that the Settlement Tariff provision continuing free service to the eight fire companies is consistent with past Commission action. The Commission has previously approved a similar continuation of free service to fire

companies in a prior application proceeding under 66 Pa. C.S. § 1329. *See, Cheltenham*. In *Cheltenham*, the Commission approved the proposed acquisition, along with the filing of rates to be charged to customers previously served by the selling entity, Cheltenham Township, which included the continuation of free wastewater service to four specific fire companies following the acquisition.<sup>11</sup> Also, Aqua filed a base rate proceeding following the acquisition of the Cheltenham Township wastewater system assets and incorporated a revised tariff that provided for the four specific fire companies to no longer receive free service. The facts and circumstances of the instant case are on point with the facts and circumstances in *Cheltenham*. Like *Cheltenham*, here the Borough was providing free water service to the fire companies specifically listed to continue to receive free water service after the acquisition. In addition, Aqua will be expected to timely file a base rate proceeding that includes the Borough's water system assets so that new rates can be implemented and the eight fire companies will no longer receive free service, similar to how it was done in *Cheltenham*. Therefore, in addition to being consistent with 66 Pa. C.S. § 1329, the Settlement Tariff is also consistent with prior Commission action.

Inasmuch as we conclude here that the Settlement Tariff, and specifically the continuation of free service to eight specific fire companies, is consistent with 66 Pa. C.S. § 1329 and prior Commission action, we also find that the rates contained in the Settlement Tariff do not create an “unreasonable preference or advantage” over other customers as prohibited by 66 Pa. C.S. § 1304 under the circumstances in this case. Most significantly, the rates included in the Settlement Tariff are temporary in nature and will only remain effective until new rates are proposed and approved in Aqua's next base rate proceeding, following detailed tracking and study of consumption and costs to serve the

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<sup>11</sup> Also, in *Cheltenham*, the approved tariff appears to have only continued free wastewater service for the four specific fire companies, and not for any other Cheltenham Township-related entities that were not paying for service prior to the acquisition. The instant case is similar to this aspect of *Cheltenham*.

fire companies. As mentioned above, we recognize that these rates may be imperfect; however, we also acknowledge the temporary nature of the rates because they will only remain in effect until new rates are established through the first base rate case that includes the Borough's water system assets, as contemplated by 66 Pa. C.S. § 1329. To that end, we encourage Aqua, to timely incorporate the Borough's water system assets into a base rate proceeding in the near future, as it did following the acquisition of the Cheltenham Township wastewater assets and other previous application proceedings under 66 Pa. C.S. § 1329.

Moreover, we find that the rates included in the Settlement Tariff providing for the continuation of free service to the eight specific fire companies is not inconsistent with 66 Pa. C.S. § 1304. As discussed, *supra*, the rates included in the Settlement Tariff are consistent and compliant with the statutory directives set forth in 66 Pa. C.S. § 1329. Also, consistent with the intent of 66 Pa. C.S. § 1329, the rates contained in the Settlement Tariff are temporary in nature as new rates will be adopted when Aqua files a base rate proceeding that includes the Borough's water system assets in the near future. Moreover, in concluding that the rates in the Settlement Tariff are in compliance with 66 Pa. C.S. § 1329 and, therefore, are reasonable, we also conclude that those temporary rates, while perhaps appearing to create a short-term rate preference among similarly situated customers, do not create an unreasonable preference or advantage as prohibited under 66 Pa. C.S. § 1304. As agreed to by the Joint Petitioners in the Settlement, following the necessary tracking of consumption, and studying the cost to serve these new customers, Aqua will file a base rate proceeding including the Borough's water system assets and new rates to serve will take effect and the eight fire companies will no longer receive free service. The process of adopting those new base rates will be expected to cure any appearance of rate preferences or inequities potentially caused by implementing the Settlement Tariff at this time under 66 Pa. C.S. § 1329. Therefore, we find that any perceived preferences resulting from the temporary free rates for the fire companies under the Settlement Tariff are not unreasonable under 66 Pa. C.S. § 1304,

based upon the circumstances of this case. *See, Painter v. Pa. PUC*, 116 A.3d 749, 755 (Pa. Cmwlth. 2015) (citing *Mill v. Pa. PUC*, 447 A.2d 1100, 1102 (Pa. Cmwlth. 1982) (“It is true that Section 1303 prohibits a public utility from demanding or receiving a rate less than that established in the applicable tariff, but Section 1304 modifies that prohibition by providing that a utility shall not grant any *unreasonable* preference or advantage to any person. The clear implication from this language is that a person may be given a rate preference so long as it is not unreasonable, and we believe that it falls to the Commission to determine under what circumstances and in what amounts such a preference would be reasonable.” (emphasis in original))).<sup>12</sup>

For the reasons set forth above, we shall grant the Exceptions of Aqua and the Borough and MABS. Accordingly, we will also modify the ALJ’s Recommended Decision. Specifically, we will approve the Settlement Tariff and Paragraph No. 17.B.3.iii of the Settlement, consistent with this Opinion and Order. We will also direct the issuance of certificates of filing pursuant to 66 Pa. C.S. § 507, without modification, for the APA. We will uphold, however, the ALJ’s modification to Paragraph 17.I of the

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<sup>12</sup> We also do not find *Philadelphia Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044 (Pa. Cmwlth. 2002) (*Philadelphia Suburban*) instructive here. In that case, the Commonwealth Court found that the Commission’s approval of the inclusion of a provision in the acquisition of the City of Coatesville’s (Coatesville) water system to Pennsylvania-American Water Company (PAWC), that provided for PAWC to make an annual contribution, in perpetuity, to Coatesville’s Economic Development Fund in an amount exactly equal to the annual rates paid by Coatesville to PAWC for fire hydrant service, violated 66 Pa. C.S. §§ 1303 and 1304. However, the facts and circumstances in *Philadelphia Suburban* are distinguishable from the instant case. The arrangement that the Court deemed to be free service was to last in perpetuity, whereas the Settlement Tariff provision subject to challenge here is a rate that will temporarily be in effect until new rates are implemented in a base rate proceeding. Also, *Philadelphia Suburban* and its related acquisition was considered and decided in 2002, well over a decade before 66 Pa. C.S. § 1329 was enacted. Finally, the arrangement in *Philadelphia Suburban* was included as an amendment to an asset purchase agreement, and not a rate contained in a water service tariff like the instant matter.

Settlement.<sup>13</sup> Requiring Aqua to file notices with the Commission that the metering of the four unmetered fire companies was completed and that the acquisition is closed complies with the Commission's Regulation at 52 Pa. Code § 5.591, which requires reports of compliance by utilities to Commission orders. With these changes in mind, we will turn next to our consideration of the Settlement.

As a further matter and as discussed below, we find that the Settlement as proposed, with the ALJ's modification to Paragraph No. 17.I as described above, is in the public interest. Therefore, the Recommended Decision shall be modified, as discussed above, so that it corresponds with the Settlement. With respect to the remaining terms of the Settlement, the ALJ recommended approval, without modification, as being in the public interest. We concur.

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case. *Pa. PUC, et al. v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2015-2468056, *et al.* (Order entered December 3, 2015) at 6-7.

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<sup>13</sup> The ALJ recommended that Paragraph No. 17.I of the Settlement be modified to require Aqua to file a verified notice at this docket within seventy days of closing, indicating that it has metered the unmetered properties, as required by the Settlement. In addition, the ALJ included an Ordering Paragraph requiring, within ten days of closing of the acquisition, Aqua shall file notice of closing of the transaction with the Commission at this docket. R.D. at 89.

Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy. *Id.*

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as those proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

The Settlement reflects the consensus of the Parties that the terms and conditions benefit all interested parties. The Settlement resolves the issues necessary for the ultimate resolution of the present proceeding. It also removes several potentially contentious issues that would have prolonged or required further litigation or administrative proceedings. The benefits of approving the Settlement are numerous and will result in savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Settlement provides regulatory certainty with respect to the disposition of issues which benefits all Parties.

We shall adopt the Settlement because it is in the public interest. We agree with the ALJ that Aqua has established that it has the financial, legal and technical fitness to own and operate the Borough's water system. Furthermore, as demonstrated by the

Joint Petitioners, the acquisition as proposed in the Settlement will provide affirmative public benefits, several of the main ones being that Aqua will ensure that the Borough's customers will receive high quality water service that meets all applicable regulatory requirements and customer service standards pursuant to the Code, that the Borough's customers will have access to the Commission's procedures for investigating and enforcing complaints, and that future rate increases affecting the Borough's customers will be subject to the Commission's jurisdiction. *See*, R.D. at 90-92.

In adopting the Settlement, we will, however, adopt two modifications as recommended by the ALJ and which were not opposed by any party. First, consistent with the Settlement provision at Paragraph No. 17.I, that requires Aqua to install meters at the four unmetered fire companies within sixty days after closing, the Settlement will be modified to require Aqua to file a verified notice with the Commission at this docket within seventy days of closing that indicates that it has metered the unmetered properties. Second, we will require that Aqua shall also file notice of closing of the transaction with the Commission at this docket with ten days after closing of the acquisition.

Additionally, we agree with the ALJ's approval of the Settlement's provision pursuant to 66 Pa. C.S. § 1329(c)(2) that Aqua shall be permitted to use \$12,000,000 for ratemaking rate base for the acquired assets. Since there was no opposition to this request, we find this to be an appropriate result.

Finally, as discussed, *supra*, we will not require any modifications to the Settlement with respect to our review of the APA under 66 Pa. C.S. § 507, as the ALJ recommended. Based upon our determination and explanation above regarding the continued temporary free service for the eight enumerated fire companies under the Settlement Tariff, we shall direct that a certificate of filing under Section 507 of the Code, 66 Pa. C.S. § 507, shall be issued, without modification, as Aqua requested.

Accordingly, we shall adopt the ALJs' Recommended Decision, as modified, and approve the Settlement, as modified, consistent with this Opinion and Order.

### **III. Conclusion**

Upon review, we shall grant the Exception of Aqua, as well as the Exception of the Borough and MABS, and adopt the Recommended Decision, as modified, consistent with this Opinion and Order. Further, we shall grant the Settlement and approve the terms and conditions of Aqua's Application set forth in the Settlement, as modified, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exception of Aqua Pennsylvania, Inc. filed on May 30, 2023, is granted, consistent with this Opinion and Order.
2. That the Exception of the Borough of Shenandoah and the Municipal Authority of the Borough of Shenandoah filed on May 30, 2023, is granted, consistent with this Opinion and Order.
3. That the Recommended Decision of Administrative Law Judge Jeffrey A. Watson issued on May 18, 2023, is adopted, as modified, consistent with this Opinion and Order.
4. That the Joint Petition for Approval of Settlement filed by Aqua Pennsylvania, Inc., the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Borough of Shenandoah, and the Municipal Authority

of the Borough of Shenandoah, on April 11, 2023, is approved, as modified, consistent with this Opinion and Order.

5. That the Application at A-2022-3034143 filed by Aqua Pennsylvania, Inc. on October 6, 2022, is approved, subject to the terms and conditions set forth in Paragraph No. 17 of the Joint Petition for Settlement filed on April 11, 2023, as modified, consistent with this Opinion and Order.

6. That within ten days after closing of the acquisition, Aqua Pennsylvania, Inc. shall file notice of closing of the transaction with the Commission at this docket.

7. That the Commission's Secretary shall issue a Certificate of Public Convenience evidencing Aqua Pennsylvania, Inc.'s rights under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3) and 1329(c)(2), subject to the conditions set forth in this Opinion and Order, to: (a) acquire, by sale, the water system assets of the Borough of Shenandoah situated within the Borough of Shenandoah, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, Girardville Borough, and Union Township, within Schuylkill County, Pennsylvania, as provided in the Application; (b) begin to offer, render, furnish and supply water service to the public in the Borough of Shenandoah, and portions of West Mahanoy Township, Mahanoy Township, Butler Township, and Girardville Borough, within Schuylkill County, Pennsylvania, as indicated in the Application; and (c) incorporate the ratemaking rate base of \$12,000,000 for the Borough of Shenandoah water system assets in its next base rate case pursuant to 66 Pa. C.S. § 1329(c)(2).

8. That within ten days after closing of Aqua Pennsylvania, Inc.'s acquisition of the Borough of Shenandoah's water system, Aqua Pennsylvania, Inc. shall

be permitted to file with the Commission a tariff supplement, to be effective on one day's notice, consistent with the *pro forma* tariff supplement submitted as Exhibit A of the Joint Petition for Settlement for the Borough of Shenandoah's water system, implementing rates for customers of the Municipal Authority of the Borough of Shenandoah post-closing.

9. That, pursuant to 66 Pa. C.S. § 1329(c), the ratemaking rate base of the Borough of Shenandoah water system assets is \$12,000,000.

10. That within seventy days of closing of the acquisition, Aqua Pennsylvania, Inc. shall file a verified notice with the Commission at this docket indicating that it has metered the four unmetered fire companies in accordance with Paragraph No. 17.I of the Joint Petition for Settlement.

11. That pursuant to the Settlement, within ninety days after closing, Aqua Pennsylvania, Inc. shall file an amended Long-Term Infrastructure Improvement Plan that includes the eligible water system assets of the Borough of Shenandoah and the eligible assets of any other water systems that have been acquired under Section 1329 of the Pennsylvania Public Utility Code, but not included in Aqua Pennsylvania, Inc.'s currently effective Long-Term Infrastructure Improvement Plan, and which does not re-prioritize other existing commitments in other service areas.

12. That pursuant to the Settlement, no later than the next quarterly Distribution System Improvement Charge filing following the Commission's approval of the amended water Long-Term Infrastructure Improvement Plan referenced in Ordering Paragraph 11 above, Aqua Pennsylvania, Inc. shall file a compliance tariff supplement that applies the Distribution System Improvement Charge, including all customer safeguards applicable thereto, to all systems included in the amended water Long-Term Infrastructure Improvement Plan.

13. That the Commission's Secretary shall issue a certificate of filing pursuant to 66 Pa. C.S. § 507 for the Asset Purchase Agreement between Aqua Pennsylvania, Inc. and the Borough of Shenandoah and the Municipal Authority of the Borough of Shenandoah, attached to the Application as Exhibit B.

14. That the Commission's Secretary, upon the receipt of written notice from Aqua Pennsylvania, Inc., filed with the Secretary's Bureau notifying the Commission of the closing of the acquisition, pursuant to Ordering Paragraph No. 6 above, and upon notice and the completion of Ordering Paragraph Nos. 8 and 10 above, mark the proceeding at Docket No. A-2022-3034143 closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: July 13, 2023

ORDER ENTERED: July 13, 2023