



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 27, 2024

Via Electronic Filing

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

Re: Application of Aqua Pennsylvania Wastewater, Inc. for approval of the acquisition of Greenville Sanitary Authority situated within the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania
Docket No. A-2023-3041695
I&E Main Brief

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief of the Bureau of Investigation and Enforcement in the above-captioned proceeding.

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

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

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CBW/ac
Enclosures

cc: Deputy Chief Administrative Law Judge Mark A. Hoyer (*via email*)
Administrative Law Judge Alphonso Arnold III (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. for approval of the :
acquisition of Greenville Sanitary :
Authority situated within the Borough : Docket No. A-2023-3041695
of Greenville, Hempfield Township, :
and West Salem Township, Mercer :
County, Pennsylvania :

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: August 27, 2024

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I. STATEMENT OF THE CASE

A. Procedural History

On November 17, 2023, Aqua Pennsylvania Wastewater, Inc. (Aqua) filed an application with the Pennsylvania Public Utility Commission (PUC or Commission) seeking approval to acquire the wastewater system assets of the Greenville Sanitary Authority (GSA).

On December 1, 2023, the Office of Small Business Advocate (OSBA) filed a Protest and Notice of Appearance. On December 8, 2023, the Office of Consumer Advocate (OCA) filed a Protest and Public Statement. Between January 11, 2024, and April 12, 2024, Aqua petitioned the Commission five times for extensions of time for the Commission's initial review period of the instant Application. During this period, Aqua provided updated information contained in the initial filing to resolve the filing's deficiencies and comply with the requirements of an application filed under Section 1329. By Secretarial Letter dated May 2, 2024, the Commission conditionally accepted the instant application. On June 11, 2024, Greenville and the Borough of Greenville filed a Petition to Intervene in this matter. Aqua filed a proof of publication on June 18, 2024. The Commission accepted Aqua's application on June 21, 2024, by Secretarial Letter. I&E filed a notice of appearance on June 24, 2024. On June 26, 2024, a Prehearing Conference Order was issued scheduling a telephonic prehearing conference for July 17, 2024.

A Prehearing Conference was held on July 17, 2024, with Deputy Chief Administrative Law Mark Hoyer and Administrative Law Judge Alphonso Arnold, III

(the ALJs) presiding. A litigation schedule was developed that provided for the filing of testimony, hearings and briefs as follows:

Direct testimony of other parties	July 26, 2024
Rebuttal testimony	August 2, 2024
Surrebuttal testimony	August 9, 2024
Evidentiary hearing (with oral rejoinder)	August 15-16, 2024
Main Briefs	August 27, 2024
Reply Briefs	September 5, 2024

ALJs Hoyer and Arnold conducted evidentiary hearings on August 15, 2024. At the hearing, testimony and exhibits were entered into the record and cross examination was conducted. I&E Statement No. 1 (with its accompanying exhibit) and I&E Statement No. 1-SR were entered into the evidentiary record. Pursuant to the procedural schedule and in accordance with Commission regulations at Section § 5.501, I&E submits this Main Brief.

B. Overview of the Proposed Transaction

Aqua’s Application requests that the Commission grant approval for multiple acquisition-related requests. Aqua’s first request arises under Section 1102, as it requests permission for it to acquire the Greenville Sanitary Authority’s wastewater assets and to obtain the Certificates of Public Convenience necessary for it to begin to offer wastewater service to the public in the Greenville territory.¹ The Greenville assets consist of, inter alia, the assets, properties and rights of the GSA used in the system and all treatment and collection facilities, pipes, pumping stations, generators, improvements, manholes and pipelines and billing- and collections-related assets necessary to run the

¹ Aqua Application, p. 2.

wastewater system.² The GSA owns the sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 2,281 customers and which also provides transmission and treatment service for Hempfield and West Salem. GSA accepts flows from approximately 1,168 Hempfield customers and 571 West Salem customers.³

In its second request, pursuant to Section 1329, Aqua seeks to utilize the fair market value process to establish the ratemaking rate base of GSA's assets at \$18 million.⁴ In accordance with Section 1329, the \$18 million amount represents the lower of Aqua and Greenville's negotiated purchase price, and the average of two fair market value appraisals completed by each of these parties' utility valuation experts (UVEs). The average of the UVEs appraisals was \$24,408,817.⁵ The average was calculated using the value assigned by Aqua's UVE, Harold Walker, III of Gannett Fleming Valuation and Rate Consultants, LLC who valued the Greenville assets at \$24,060,000, and Greenville's UVE, Dylan D'Ascendis of ScottMadden, Inc., who valued the assets at \$18,757,633.⁶

In an additional request, pursuant to 66 Pa. C.S. § 507 (Section 507), Aqua is seeking approval to enter into an Asset Purchase Agreement (APA) with Greenville to and to assume municipal contracts identified in APA Section 4.15 that GSA has pledged to assign.⁷

² Aqua Application, p. 5.

³ Aqua Application, p. 3.

⁴ Aqua Application, p. 16.

⁵ Aqua St. No. 3, p. 21.

⁶ Aqua Application, p. 16.

⁷ Aqua Application, p. 6.

II. BURDEN OF PROOF

Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application.⁸ In a case such as this one, pending before an administrative tribunal, Courts have held that a “litigant’s burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”⁹ In order to meet its burden of proof, Aqua must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party.”¹⁰ To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved.¹¹ Specifically in this case, Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102 and 1329 of the Code.

III. STATEMENT OF QUESTIONS INVOLVED

1. Should Aqua’s Application be granted?

Suggested Answer: No. Aqua’s Application does not provide the requisite affirmative public benefits necessary to find the Application in the public interest.

2. If Aqua’s Application is granted should conditions be imposed on the acquisition?

Suggested Answer: Yes. While ultimately, I&E does not believe Aqua’s Application should be approved, should the Commission disagree, I&E recommends the following conditions: (1) Aqua should be required in its next base rate case to file a COSS for the GSA system. This COSS should also group bulk customers into a single separate class. (2) Additionally, if the Application is approved, closing of the transaction should not occur until GSA provides proof

⁸ 66 Pa. C.S. § 332(a).

⁹ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

¹⁰ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹¹ *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

that it has identified all missing easements and other property rights; taken all necessary actions to obtain any missing easements or other property rights; and borne all costs and expenses for obtaining and conveying any missing easements and other property rights.

IV. SUMMARY OF ARGUMENT

Aqua is seeking to acquire the Greenville Sanitary Sewer Authority system, which is a wastewater system that provides sewage collection and treatment services to approximately 2,281 customers. The Application, as filed, is not in the public interest. The Company has not alleged any substantial, affirmative public benefits that will be produced by the acquisition as required by *City of York*.¹² In fact, the tangible harms that will be produced by approval of this Application far outweigh any alleged benefits that might tentatively arise from the transaction.

The Code requires that the Commission issue a certificate of public convenience as a prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests.¹³ The standards for the issuance of a certification of public convenience are set forth in Sections 1102 and 1103 of the Code.¹⁴ 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.”¹⁵ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction

¹² *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

¹³ 66 Pa. C.S. § 1102(a).

¹⁴ 66 Pa. C.S. §§ 1102, 1103.

¹⁵ 66 Pa. C.S. § 1103(a).

benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.¹⁶ To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.¹⁷

Section 1329 of the Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission's jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts (UVE).

Aqua has failed to demonstrate that its Application meets the criteria that it serves the public interest within the meaning of Sections 1102 and 1103 of the Code. Aqua has failed to demonstrate that this transaction will affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.¹⁸

Because the information contained within this filing is insufficient to establish that the acquisition is in the public interest and will result in affirmative benefits to Aqua's existing customers, I&E recommends that the Application be rejected.

¹⁶ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

¹⁷ 66 Pa. C.S. § 1103(a).

¹⁸ *City of York*, at 828.

In the alternative, should the Commission approve Aqua's Application, I&E respectfully requests that that the Commission require Aqua to provide a separate cost of service study (COSS) for the GSA system in its next base rate filing so that the parties and the Commission can accurately determine the rates that would need to be set for GSA customers. Further, if the Commission approves the Application, I&E recommends that the approval be conditioned on GSA providing proof, to Aqua's satisfaction, that GSA has: (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights; and (3) borne all costs and expenses for obtaining and conveying the missing easements and other property rights so that Aqua's ratepayers are not burdened with those costs. I&E also recommends that the Commission conditional any approval of this Application that for circumstances beyond GSA's control where it is unable to transfer all missing easements and property rights before or at closing, Aqua and GSA may close the transaction without the transfer of those missing easements and other property rights, provided and escrow account has been established of an appropriate dollar amount from the purchase price to be used to obtain post-losing transfer of those easements and other property rights.

V. ARGUMENT

A. Sections 1102/1103

1. Introduction

As noted above, as a prerequisite to offering service, the Code requires that the

Commission issue a certificate of public convenience.¹⁹ The standards for the issuance of a certification of public convenience are set forth in Sections 1102 and 1103 of the Code.²⁰ 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.”²¹ These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.²²

Additionally, pursuant to Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from Greenville.²³ In addition to assessing fitness, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties”²⁴ including existing customers. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable.²⁵ I&E submits that Aqua’s Application is not in the public interest and must be denied for the reasons set forth below.

¹⁹ 66 Pa. C.S. § 1102(a).

²⁰ 66 Pa. C.S. §§ 1102, 1103.

²¹ 66 Pa. C.S. § 1103(a).

²² *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

²³ *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).

²⁴ *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984).

²⁵ 66 Pa. C.S. § 1103(a).

2. Fitness

I&E did not challenge Aqua’s legal, technical, or financial fitness to own and operate the Greenville Sanitary Authority.

3. Substantial Affirmative Public Benefits

As noted above, in an acquisition proceeding, a certificate of public convenience will 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.”²⁶ Further, in the *City of York v. Pennsylvania Public Utility Commission*, it was established that in order to show that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.²⁷ The Applicant in this proceeding has made unquantified and generalized assertions that current customers will benefit from the economies of scale, but I&E submits that this is simply insufficient to show any affirmative public benefits.

In order to determine if there is a substantial public benefit, the Commission must weigh the factors in favor of and against the acquisition, which includes the impact on rates, before making its decision.²⁸ Importantly, the Commonwealth Court noted recently in the *Cicero* decision, “...services and upgrades that are the result of the acquiring utility’s size and fitness are substantial affirmative public benefits is not consistent with

²⁶ 66 Pa. C.S. § 1103(a).

²⁷ *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

²⁸ *Application of Aqua Pennsylvania Wastewater, Inc.*, Docket No. A-2021-3024267, p. 8 (Order entered January 13, 2022) (quoting *McCloskey v. Pennsylvania Public Utility Commission*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019)).

City of York and its progeny. This is particularly true when the existing system is already operating safely and reliably.”²⁹ In addition, where “...there are **no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility’s fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the CPC under Section 1103(a).”³⁰

I&E does not dispute that Aqua has the expertise to provide wastewater service to GSA; however, this alone does not demonstrate that approval of the application will result in substantial public benefits. This is especially true in light of the fact that GSA is currently providing adequate service, and no evidence has been provided to show that GSA cannot continue to do so at potentially at a lower cost than Aqua can. In an attempt to demonstrate GSA’s alleged inability to operate the system properly, Aqua witness Martin notes that GSA is currently in breach of its Consent Order and Agreement (COA) with DEP.³¹ However, GSA’s non-compliance with the COA was a direct result of the currently pending acquisition.³² Furthermore, it isn’t as if GSA simply has done nothing; GSA has been in discussions with DEP regarding how to proceed under the COA given the fact that there is a pending acquisition and DEP has indicated that they would amend the COA.³³

²⁹ *Cicero v. Pa. Pub. Util. Comm’n*, 910 CD 2022 (July 23, 2023).

³⁰ *Id.* at 20.

³¹ Aqua St. No. 1-R, p. 3.

³² Aqua St. No. 2, p. 10.

³³ OCA Exh. CMH-2SR.

To the best of I&E's knowledge, there are not currently significant service or quality concerns about the service being rendered by GSA. Based on the testimony of Aqua witness Bubel, it appears that GSA has largely responded in a timely fashion and addressed the concerns raised by the Department of Environmental Protection (DEP).³⁴ In fact, GSA witness Urey notes that GSA may be able to undertake improvements to its infrastructure and has done so on an as needed basis.³⁵ While Aqua witness Martin details some deficiencies in the system in his direct testimony, they all seem to arise from the idea that Aqua would have done things differently had it been running the system. When describing Aqua's operations in relation to the GSA system geographically, witness Martin explains that in Aqua's Western Area there are nine water and four wastewater systems that serve approximately 30,000 customers, or 84,000 people in 34 municipalities.³⁶ Given the scope and scale of Aqua's operations just in that specific geographic area, there is little wonder that Aqua would do things differently than GSA would. However, even smaller Commission regulated water utilities do things differently than their large counterparts. Simply doing things differently does not, in and of itself, indicate that GSA's operations are deficient. To do things the way Aqua chooses or prefers, results in tremendous rate increases for these customers.

In fact, "benefits" Aqua identifies to GSA customers: (1) acquisition of supplies at a lower cost; (2) acquisition of lower cost purchased power; (3) flexibility and efficiency in the provision of emergency and operational equipment; (4) reduced or eliminated

³⁴ Aqua St. No. 2, pp. 13-16.

³⁵ Greenville St. No. 1-R, p. 4.

³⁶ Aqua St. No. 1, p. 5.

reliance on outside professionals³⁷ all also seem to stem from the idea that Aqua would do things differently than GSA, therefore, what GSA is doing must simply be wrong. Considering the fact that GSA currently operates the system with much lower rates than Aqua would, there is simply no showing that these “benefits” would outweigh the harms of much higher rates.

Regarding the creation of economies of scale, I&E witness Kubas explains that there is a potential to achieve some economies of scale, but what has been provided by the Company are unquantified, generalized assertions that are simply insufficient to show any economies of scale.³⁸ Aqua has provided no timeline for when these economies of scale might be achieved or shown how these would benefit GSA ratepayers whose rates will inevitably increase substantially. Further, as Mr. Kubas points out, the GSA system will not be interconnected with the rest of the existing Aqua system which will likely further diminish these alleged economies of scale.³⁹

Additionally, OCA witness Hoover notes that Aqua claims the weighted average cost of service, measured in cost per connection prior to any Act 11 shift to serve GSA customers is less than its current weighted average cost to serve.⁴⁰ However, as witness Hoover importantly points out, it is likely that a portion of the cost to serve the GSA customers will be shifted to Aqua’s existing water and wastewater customers and, like I&E witness Kubas, notes that Aqua has not provided any timeframe under which it

³⁷ Aqua St. No. 3, p. 16.

³⁸ I&E St. No. 1, p. 13.

³⁹ I&E St. No. 1, p. 13.

⁴⁰ OCA St. No. 1, p. 22.

expects to achieve these economies of scale.⁴¹ And, as witness Hoover points out, Aqua has not shown what economies of scale it would be able to achieve that GSA is not able to achieve on its own.⁴²

As explained above, the benefits alleged by Aqua appear to be nothing more than vague assertions and tentative promises of economies of scale with no date certain by which customers can expect to experience them. The detriments of the transaction are however real and quantifiable.

Regarding the GSA customer, the APA provides that Aqua will not propose to increase rates until the next Aqua base rate case including the system, and Aqua has indicated that post closing it will transition GSA customers from quarterly bills to monthly bills.⁴³ The current average GSA bill is approximately \$23.09 and in order for GSA customers to cover the full cost to serve for their system with no allocation to other Aqua customers, the rate for the GSA customers would need to be set at \$64.84 which is a 180.85% increase.⁴⁴ I&E witness Kubas expressed several concerns about the estimated \$64.84 monthly bill for GSA customers. I&E witness Kubas explained that what Aqua has presented is merely an estimate which is likely understated and GSA customers will likely experience even higher average residential bills.⁴⁵ Ultimately, the goal would be to consolidate GSA rates with Aqua's Rate Zone 1 wastewater rates. As witness Kubas points out, the current average Zone 1 residential bill is \$95.19 per

⁴¹ OCA St. No. 1, p. 22.

⁴² OCA St. No. 1, p. 22.

⁴³ Aqua St. No. 3, pp. 8-10.

⁴⁴ Aqua St. No. 3, p. 17.

⁴⁵ I&E St. No. 1-SR, p. 3.

month.⁴⁶ The Company's estimated increase of 180.85% in the average GSA residential customer's bill alone is substantial enough to deny the Petition, because this estimate represents a substantial near-term burden to GSA customers. Otherwise, the GSA revenue requirement will be shifted to Aqua water customers to make Aqua whole.

It is unclear whether GSA is aware of how dramatically rates could increase for GSA customers as GSA witness Urey states that it is his understanding that on a stand-alone basis rates could potentially increase to \$64.84 per month.⁴⁷ Witness Urey states that to focus upon an increase of approximately \$40 or 180% is misleading.⁴⁸ This statement is concerning considering that this is information provided by Aqua itself regarding what rates would need to be to cover the full cost to serve this system. It certainly does not appear from I&E's review that it was Aqua's intention to mislead the parties, the ALJ and the Commission about what the cost to serve the GSA system is. Witness Urey's statement further lends to the concern that Greenville is not fully aware of the impact that this acquisition could have on its residents.

Additionally, OCA witness Hoover explains that for year 1, the proposed acquisition will create a \$2,223,000 revenue deficiency and if Aqua continues to hold the GSA customers at current rates, the gap between the cost to serve the GSA customers and what is recovered from them will continue to grow due to the \$20.4 million capital expenditure commitments and any rate increases imposed on Aqua's existing

⁴⁶ Aqua Volume 5, Sch. 7-WW, p. 1, Docket R-2024-3047824.

⁴⁷ Greenville St. No. 1, p. 13.

⁴⁸ Greenville St. No. 1-R, p. 5.

customers.⁴⁹ As noted above, the revenue deficiency will have to be covered somehow to make Aqua whole. This burden is likely to fall on existing Aqua customers.

As has been demonstrated, the potential increases to both GSA customers and existing Aqua customers is substantial. OCA witness Hoover notes that 55.44% of Aqua's current projected rate base is from Fair Market Value (FMV) acquisitions and 44.56 is from non-FMV acquisitions.⁵⁰ As she explains, this demonstrates the impact FMV acquisitions such as this have on customer rates. The impacts of these acquisitions are financially burdensome to both existing Aqua customers and the customers of the acquired systems. In this proceeding both I&E and OCA have shown there will be a detrimental impact on rates for both Aqua and GSA customers. Meanwhile, there has been no assurance that the changes Aqua would make will do more than maintain the status quo as far as service is concerned or do anything that GSA would not be able to do on its own at potentially lower costs. When weighing the alleged benefits of the acquisition against the identified detriments, it is clear that Aqua's Application must be denied.

4. Conclusion

As noted above, in an acquisition proceeding, a certificate of public convenience will 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."⁵¹ Further, in the *City of York v. Pennsylvania Public Utility Commission*,

⁴⁹ OCA St. No. 1, p. 6.

⁵⁰ OCA St. No. 1, p. 21.

⁵¹ 66 Pa. C.S. § 1103(a).

it was established that in order to show that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.⁵² The Applicant in this proceeding has made unquantified and generalized assertions that current customers will benefit from the economies of scale, and the potential (but not guarantee) that Aqua may be able to do some things cheaper than GSA would. I&E submits that this is simply insufficient to show any affirmative public benefits.

The benefits alleged by Aqua regarding the creation of economies of scale are largely unsubstantiated. This does not equate to the showing of substantial affirmative public benefits as required by the *City of York* standard. Vague assertions of what is likely to occur fail to result in an affirmative public benefit. In order for this acquisition to be in the public interests, there must be benefits for Aqua's existing customers, as well as benefits for GSA customers. The Commission simply cannot rely on Aqua's vague assertions that there may be some operational efficiencies to determine that this acquisition is in the public interest and provides substantial, affirmative public benefits. Aqua has alleged no affirmative benefits to its existing customers, and therefore, this Application must be rejected.

The result of this acquisition for both GSA and the other currently existing Aqua customers is that their rates will go up significantly base both on the information provided in this Application and review of the impact of past acquisitions on Aqua rates.

⁵² *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

Aqua’s application poses identifiable detriments to existing customers. The detriment imposed upon existing customers is relevant because, in its public interest analysis, the Commission should consider the benefits and **detriments** of the transaction “with respect to the impact on all affected parties”⁵³ including existing customers.

Accordingly, considering that the identified detriments of the transaction far outweigh any speculative benefits that existing ratepayers may hope to receive, I&E submits that Aqua’s Application fails the public interest test and it should be rejected. The GSA system is a well-functioning wastewater system that does not appear to be troubled. The instant acquisition presents merely speculative public benefits to GSA and Aqua’s existing customers. However, the detriments imposed are real and identifiable.

Therefore, I&E believes the acquisition is not in the public interest and should not be approved.

B. Section 1329

1. Introduction

By invoking Section 1329, Aqua’s Application asks the Commission to issue an Order establishing the ratemaking rate base of the GSA assets at \$18 million.⁵⁴ To establish the proposed ratemaking rate base amount, Aqua complied with the Section 1329 process. Section 1329 allows investor-owned water and wastewater utilities to use fair market valuation in the acquisition of water and wastewater systems that are owned by a municipal corporation or authority. Section 1329’s fair market valuation approach

⁵³ *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis added).

⁵⁴ Aqua St. No. 3, p. 21.

dictates that once the buyer and the seller agree to its use, they must engage the services of a licensed engineer to assess the tangible assets of the seller. The licensed engineer assessment is then presented to two UVEs, one to represent the buyer and one to represent the seller, to conduct independent analyses based on the Uniform Standards of Professional Appraisal Practice (USPAP), employing the cost, market and income approaches. The results of the UVEs' analyses are then incorporated into the Section 1102 of the Code application submitted to the Commission for approval. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price.

In this case, pursuant to Section 1329, the \$18 million amount Aqua proposes represents the lower of Aqua and Greenville's negotiated purchase price, \$18 million, and the average of two fair market value appraisals completed by each of these parties' UVEs, \$24,408,817.⁵⁵ As explained more fully above, I&E is not proposing any adjustments to the proposed value of the ratemaking rate base itself, but recommends the Application be denied under Section 1102 of the Public Utility Code as the Application does not present the requisite affirmative public benefits; therefore, a determination of the ratemaking rate base under Section 1329 would be unnecessary.

2. Legal Principles

Section 1329 of the Public Utility Code prescribes the process used to determine the fair market value of a municipal utility that is the subject of an acquisition. Section

⁵⁵ Aqua St. No. 3, p. 21.

1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. Notably, a Commission Order approving a transaction under Section 1329 is permitted to include “[a]dditional conditions of approval.”⁵⁶

3. Aqua’s Application

I&E has not challenged the UVEs appraisals in this case; however, as I&E explains in further depth below, the UVEs’ reliance on the fact that all easements and real property rights will be transferred to Aqua by Greenville prior to closing may invalidate the accuracy of their appraisals. Because the UVEs’ appraisals were predicated, at least in part, on the assumption that Aqua would obtain all easements, public rights-of-way, and other real property rights if Greenville does not transfer such at or prior to closing, the UVEs’ appraisals are flawed and unreliable.

4. Conclusion

As explained above, I&E does not believe approval of the Application is warranted as Aqua has not met its burden to demonstrate that there are substantial affirmative public benefits. As a result, I&E recommends that the Application not be

⁵⁶ 66 Pa. C.S. § 1329(d)(3)(ii); Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102 and 1329 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of New Garden Township (“Aqua/New Garden Section 1329 Case”), Docket No. A-2016-2580061, p. 69 (Order entered June 29, 2017).

approved and that the ratemaking rate base of \$18 million related to the GSA system not be incorporated into Aqua's rate base for ratemaking purposes. However, as explained below, if the Commission ultimately approves the Application, I&E recommends the conditions set forth in Section C of this brief be required for approval of the Application.

C. Recommended Conditions

1. If this Acquisition is Approved, a Cost of Service Study Should be Ordered

The primary goal of a COSS is to determine a utility's revenue requirement to serve its different customer classes. A COSS determines the cost to operate the different systems, calculates the cost of the utility's services, separates the costs between the different customer classes, attributes the costs to the different classes, determines how the costs will be recovered from the different customer classes, and establishes the existence and extent of any inter or intra-class subsidizations.

Because these subsidizations could be significant, it is important that the Commission know what the extent of this subsidization is, if this acquisition is approved. Therefore, I&E continues to recommend that Aqua be required to provide a separate COSS in its next base rate case should this acquisition be approved.

Aqua witness Packer explains that Aqua will agree to submit a separate COSS for the GSA system similar to those that it submitted in its 2021 and 2024 base rate proceedings.⁵⁷

⁵⁷ Aqua St. No. 3-R, p. 17.

Regarding the separate COSS, I&E also recommended that bulk customers be grouped into a single separate class so that the parties and Commission in Aqua's next rate case that would include this system could determine if the revenues from these customers, including operating the West Salem sewer system, are more or less than the cost to serve these bulk customers.⁵⁸ Aqua witness Packer notes that this recommendation makes sense, but he will reserve his final opinion until he is able to see the resulting rate design and cost of service analysis that goes into evaluating this recommendation.⁵⁹ As it is not clear what Aqua would need to review, I&E continues to recommend that bulk customers be grouped into a single separate class so that the parties and Commission can determine if the revenues from these customers are more or less than the cost to serve these bulk customers.

Therefore, I&E continues to recommend the Commission order Aqua to present a separate COSS for the GSA in its next base rate case including the GSA system as Aqua has agreed. I&E further recommends the Commission order Aqua to group bulk customers into a separate class so that the parties and Commission to that rate case can determine if these customers are paying more or less than their actual cost to serve.

2. Missing Easements and Other Property Rights

As explained by I&E witness Kubas, as part of its Application, Aqua provided a list of 276 missing easements.⁶⁰ As of the writing of the other parties' direct testimony in

⁵⁸ I&E St. No. 1, p. 16.

⁵⁹ Aqua St. No. 3-R, p. 17.

⁶⁰ Application Exhibit B, Asset Purchase Agreement Sch. 6.05. e. and I&E St. No. 1, p. 17.

this proceeding, there were 119 missing easements.⁶¹ As OCA witness Hoover explains, it is especially concerning that there are 119 missing easements given that Aqua has been in discussions to acquire GSA since 2022.⁶² Contained within the UVE's valuation, is a presumption that the system will be transferred with all easements and other property rights needed to operate the system and, if GSA is unable to transfer all the necessary easements and property rights to Aqua at closing, the UVE appraisals may be considered factually inaccurate and invalid.⁶³

As a result, I&E recommends that the closing of the transaction not be permitted to occur unless and until GSA provides proof that it has (1) identified all missing easements including public rights-of-way and other property rights; (2) taken 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 (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so that Aqua's ratepayers are not burdened with those costs and associated expenses.

Further, I&E recommends that the Commission condition the approval of Aqua's Application that for circumstances beyond GSA'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 GSA 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

⁶¹ OCA St. No. 1, p. 25.

⁶² OCA St. No. 1-S, p. 15.

⁶³ I&E St. No. 1, pp. 17-18.

be used to obtain any post-closing transfers of the easements and other real property rights. I&E acknowledges that Aqua has agreed to establish and Easement Escrow Fund in which \$2,000 per missing easement will be placed at the time of closing, however I&E does not take a position on the sufficiency of that fund.⁶⁴

Because conveying these land rights and easements to Aqua at closing is essential to ensuring the UVE appraisals are accurate, should the Commission ultimately approve this Application, it is essential that this I&E condition be adopted to ensure that ratepayers are protected from the cost of acquiring the easements and other property rights necessary for the operation of the GSA system.

D. Section 507 Approvals

Section 507 relates to contracts between public utilities and municipalities. It requires that any such contract or agreement between a certificated utility and a municipality, except for those contracts to furnish service at regularly filed tariff rates, be filed with the Commission at least 30 days before the effective date of the contract. Upon notice to both the municipality and utility, the Commission may, prior to the effective date of the contract, institute proceedings to determine the reasonableness, legality, or any other matter affective the validity of the contract or agreement. The Commission approves these filings by issuing a certificate of filing. Section 507 notes that "...such contract or agreement shall not be effective until the commission grants its approval thereof."⁶⁵

⁶⁴ I&E St. No. 1, p. 19.

⁶⁵ 66 Pa. C.S. § 507.

I&E did not present testimony on the Section 507 approvals requested as part of this Application.

E. Other Approvals, Certificates, Registrations, and Relief, If Any, Under the Code

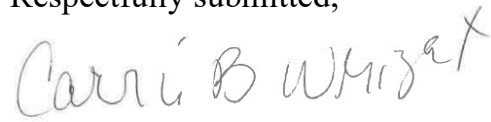
I&E did not present any testimony on these topics.

VI. CONCLUSION

The proposed transaction as filed will not affirmatively promote the public interest in a substantial way. Therefore, I&E recommends that the Application be denied. In the alternative, if the Commission approves Aqua's Application, I&E respectfully requests that the Commission require Aqua to provide a separate cost of service study for the Greenville system as part of its next base rate filing. Further, if the Commission approves the Application, I&E recommends that the approval be conditioned on GSA providing proof, to Aqua's satisfaction, that GSA has: (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights; and (3) borne all costs and expenses for obtaining and conveying the missing easements and other property rights so that Aqua's ratepayers are not burdened with those costs. I&E also recommends that the Commission conditional any approval of this Application that for circumstances beyond GSA's control where it is unable to transfer all missing easements and property rights before or at closing, Aqua and GSA may close the transaction without the transfer of those missing easements and other property rights, provided and escrow account has been established of an appropriate dollar amount from

the purchase price to be used to obtain post-losing transfer of those easements and other property rights.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright". The signature is written in black ink and is positioned directly below the typed name.

Carrie B. Wright
Deputy Chief Prosecutor
PA Attorney ID No. 208185

Proposed Findings of Fact

1. Parties

- a. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code. 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).
- b. The I&E analysis in the proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interest of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1, p. 1.
- c. Aqua provides water and wastewater service to approximately 510,000 customers (450,000 water and 60,000 wastewater) in Pennsylvania. Aqua St. No. 3, p. 6.

2. The Greenville Sanitary Authority System

- a. The Greenville Sanitary Authority owns, operates, and maintains the assets to be acquired which consist of a sanitary wastewater collection and conveyance system and the GSA wastewater treatment plant. The system includes approximately 29 miles of pipe and serves 2,281 customers. Greenville St. No. 1, p. 4.

3. The Asset Purchase Agreement

- a. Aqua's negotiated purchase price for the Greenville system is \$18,000,000. Aqua St. No. 3, p. 6.
- b. In this case, Aqua is requesting to establish a ratemaking rate base level of \$18 million for the Greenville system. Aqua St. No. 3, p. 21.

4. The Application and the UVE's Appraisals

- a. Aqua selected Gannett Fleming Valuation and Rate Consultants, LLC. to perform an appraisal of the Greenville system.

- b. Greenville selected ScottMadden, Inc. to perform an appraisal of the Greenville system.
- c. Aqua's UVE, Harold Walker, III of Gannett Fleming Valuation and Rate Consultants, LLC valued the GSA assets at \$24,060,000. Aqua's Application, Ex. Q, p. 1 (Letter dated October 4, 2023).
- d. Greenville's UVE, Dylan D'Ascendis of ScottMadden, Inc., valued the GSA assets at \$18,757,633. Aqua's Application, Ex. R, p. 1 (Letter dated October 6, 2023).
- e. The average of the UVE appraisals of the Greenville system was \$24,408,817. Aqua St. No. 3, p. 21.

5. Aqua's Financial, Technical and Legal Fitness

- a. Aqua alleges that it is financially, technically, and legally fit to own and operate the GSA system and it sets forth the basis for those claims in its direct testimony. Aqua St. No. 1, pp. 10-12; Aqua St. No. 3, p. 7.
- b. I&E has not challenged Aqua's financial, technical and legal fitness to own and operate the GSA system.

6. Affirmative Public Benefits

- a. Aqua alleges that multiple public benefits will arise under the transaction. Aqua St. No. 3, pp. 14-16.
- b. The public benefits as alleged by Aqua do not rise to the level that would result in the finding of substantial affirmative public benefits which would be required to approve the instant Application.

7. Cost of Service Study

- a. Without a cost of service study, the Commission's ability to evaluate the rate impact of the acquisition upon existing Aqua customers and its options of addressing that impact to provide any appropriate relief to existing customers, could be compromised.
- b. The goal of a cost of service study is to determine a utility's revenue requirement to provide service to its different customer classes.

- c. Aqua has agreed that it will file a separate cost of service study for the GSA system in its first base rate case following closing of the acquisition. Aqua St. 3-R, p. 15.

8. Easements and Other Property Rights

- a. As part of its Application, Aqua provided a list of 276 missing easements. Application Exhibit B, Asset Purchase Agreement, Sch. 6.05. e. and I&E St. No. 1, p. 17.
- b. As of the writing of the other parties' direct testimony in this proceeding, there were 119 missing easements. OCA St. No. 1, p. 25.

Proposed Conclusions of Law

1. Commission Jurisdiction

- a. The Commission has jurisdiction over the subject matter of this proceeding. 66 Pa.C.S. §§ 507, 102, 1103, 1329.
- b. I&E serves as the Commission's prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code. 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).
- c. The Commission maintains the ultimate rate setting authority.

2. Burden of Proof

- a. Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application. 66 Pa. C.S. § 332(a).
- b. In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- c. To satisfy its burden, Aqua must demonstrate, by a preponderance of the evidence, that its proposed transaction complies with Pennsylvania law and should be approved. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
- d. Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102 1329 of the Code.

3. Legal Standards

- a. The Commission must issue a certificate of public convenience as prerequisite to offering service, abandoning service and certain property transfers by public utilities or their affiliated interests. 66 Pa. C.S. § 1102.

- b. The standards for the issuance of a Certificate of Public Convenience are set forth in Sections 1102 and 1103 of the Code. Under these Sections, 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.” 66 Pa. C.S. §§ 1102-1103.
- c. These provisions have been interpreted by the Pennsylvania Supreme Court in the *City of York v. Pennsylvania Public Utility Commission* for the proposition that to establish that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way. *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).
- d. Under Section 1103, Aqua must show that it is technically, legally, and financially fit to own and operate the assets it will acquire from GSA. *Seaboard Tank Lines v. Pa. PUC*, 502 A. 2d 762, 764 (Pa. Cmwlth. 1985); *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240, 243 (Pa. Super. 1958).
- e. In assessing Aqua’s Application, the Commission should consider the benefits and detriments of the transaction “with respect to the impact on all affected parties” including existing customers. *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. C Cmwlth. 1984).
- f. To ensure that a transaction is in the public interest, the Commission may impose conditions on granting a certificate of public convenience as it may deem to be just and reasonable. 66 Pa. C.S. § 1103(a).
- g. Section 1329 provides a framework for valuing, for ratemaking purposes, water and wastewater systems that are owned by a municipal corporation or authority that are to be acquired by an investor-owned water or wastewater utility under the Commission’s jurisdiction. It allows the rate base of the municipal system being purchased to be incorporated into the rate base of the purchasing investor-owned utility at the lesser of either the purchase price or the fair market value as established by the two independent appraisals conducted by two utility valuation experts. 66 Pa. C.S. § 1329.
- h. Section 1329’s fair market valuation approach dictates that once the buyer and the seller agree to its use, they must engage the services of a licensed engineer to assess the tangible assets of the seller. The licensed engineer assessment is then presented to two UVEs, one to represent the buyer and

one to represent the seller, to conduct independent analyses based on the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. For ratemaking purposes, the valuation will be the lesser of the fair market value or the negotiated purchase price. 66 Pa. C.S. § 1329.

- i. Aqua's request to assume enumerated municipal contracts alleged to be currently held by GSA is subject to review under Section 507 of the Code. Under Section 507, other than contracts to furnish service at tariffed rates, any contract between a public utility and a municipal corporation must be filed with the Commission at least 30 days prior to its effective date to be valid. Upon receipt of the filing, and prior to the effective date of the contracts, the Commission may institute proceedings to determine whether there are any issues with the reasonableness, legality, or any other matter affecting the validity of the contract. If this Commission decides to institute such proceedings, the contracts at issue will not become effective until the Commission grants its approval. 66 Pa. C.S. § 507.

- j. Aqua's request to assume enumerated municipal contracts currently held by GSA is subject to review under Section 2102 of the Code. Under Section 2102, no contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those listed, made between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement as received the written approval of the Commission. It is the duty of every public utility to file with the Commission a verified copy of any such contract and the Commission shall approve such contract only if it shall clearly appear and be established upon investigation that it is reasonable and consistent with the public interest. 66 Pa. C.S. § 2102.

Proposed Ordering Paragraph

IT IS ORDERED THAT:

Aqua's Application is denied.

In the alternative:

IT IS ORDERED THAT:

Aqua's Application is approved subject to the following terms:

- (1) In the next base rate case, Aqua must provide a separate cost of service study for the GSA system;
- (2) Aqua's cost of service study for the GSA system must group bulk customers into a single separate class;
- (3) GSA must provide proof that it has identified all missing easements including public rights-of-way and other property rights, taken 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 assumed all costs and expenses for obtaining and conveying the missing easements and other property rights. However, if the above cannot occur, in order to close the transaction without the missing easements or other property rights, Aqua and GSA must establish an escrow account 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.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania :
Wastewater, Inc. for approval of the :
acquisition of Greenville Sanitary :
Authority situated within the Borough : Docket No. A-2023-3041695
of Greenville, Hempfield Township, :
and West Salem Township, Mercer :
County, Pennsylvania :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated August 27, 2024, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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