

August 27, 2024

**VIA ELECTRONIC MAIL**

The Honorable Alfonso Arnold III  
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**PUBLIC VERSION**

RE: Application of Aqua Pennsylvania Wastewater, Inc.,  
Greenville Sanitary Authority  
Docket No. A-2023-3041695

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Dear Judge Arnold and Judge Hoyer:

Enclosed please find Aqua Pennsylvania Wastewater, Inc.'s Main Brief, which was filed with the PA Public Utility Commission, in the above-referenced proceeding. Thank you for your attention to this matter.

Please note that Aqua's Main Brief contains information designated as Confidential and Highly Confidential; as such, a publicly redacted version has been filed and the Confidential and Highly Confidential Versions will be submitted to the Commission via SharePoint only. We ask that the Commission not allow any public disclosure of the Confidential and Proprietary Information and that the Commission take appropriate steps to exclude the Confidential and Proprietary Information from any and all public folders. We ask the parties to please handle this information in accordance with the Protective Order entered in this matter. Thank you.

Respectfully submitted,

  
Courtney L. Schultz

Enclosure

cc: Service List  
Rosemary Chiavetta, Secretary

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Application of Aqua Pennsylvania Wastewater, Inc. Pursuant to Sections 1102 and 1329 of the Public Utility Code, for Approval of the Acquisition by Aqua of the Wastewater System Assets of the Greenville Sanitary Authority Situated within the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania** : **Docket No. A-2023-3041695**  
:  
:  
:

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 27th day of August, 2024, served a true and correct copy of the Main Brief of Aqua Pennsylvania Wastewater, Inc., upon the persons and in the manner indicated below:

**VIA E-FILE AND ELECTRONIC MAIL**

**PA PUC-E-file Only**

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**PUBLIC VERSION**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Administrative Law Judges Mark A. Hoyer and Alphonso Arnold III, Presiding**

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**Application of Aqua Pennsylvania : Docket No. A-2023-3041695**  
**Wastewater, Inc. Pursuant to Sections 1102 : :**  
**and 1329 of the Public Utility Code, for : :**  
**Approval of the Acquisition by Aqua of the : :**  
**Wastewater System Assets of the Greenville : :**  
**Sanitary Authority Situated within the : :**  
**Borough of Greenville, Hempfield Township, : :**  
**and West Salem Township, Mercer County, : :**  
**Pennsylvania : :**

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**MAIN BRIEF OF  
AQUA PENNSYLVANIA WASTEWATER, INC.**

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DATED: August 27, 2024

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# **PUBLIC VERSION**

## **AQUA'S MAIN BRIEF**

AND NOW, comes Aqua Pennsylvania Wastewater, Inc. (“Aqua”), by and through the undersigned counsel, and submits this Main Brief in connection with the above-captioned matter.

### **I. STATEMENT OF THE CASE**

#### **A. Procedural History**

This proceeding concerns the Application of Aqua Pennsylvania Wastewater, Inc. (“Aqua” or “Company”), filed with the Public Utility Commission (“Commission”) on November 17, 2023, pursuant to Sections 1102, 1329, and 507 of the Public Utility Code (“Code”), 66 Pa. C.S. §§ 1102, 1329, and 507.

The Application asks the Commission to issue an order and certificates of public convenience pursuant to Section 1102 of the Code approving Aqua’s acquisition of the wastewater system assets of the Greenville Sanitary Authority (“GSA”) and to allow Aqua to begin to provide wastewater service in the Requested Territory, as outlined in the map attached to the Application as Exhibit A and which includes the Borough of Greenville (“Borough”), Hempfield Township (“Hempfield”) and West Salem Township (“West Salem”), Mercer County, Pennsylvania.

The Application also asks that the Commission include in its order approving the acquisition, a determination that the ratemaking rate base of the assets being acquired by Aqua is \$18,000,000 pursuant to Section 1329(c)(2) of the Code.

The Application, additionally, asks that the Commission approve, to the extent necessary, assignment of contracts between Aqua and the GSA pursuant to Section 507 of the Code, and to provide such other approvals, certificates, registrations and relief, if any, under the Code that may be required.

The Commission’s Bureau of Technical Utility Services (“TUS”), the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”),

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and the Office of Small Business Advocate (“OSBA”) were served with copies of the Application on November 17, 2023. Thereafter, the Company filed and served supplemental information on January 30, 2024, February 16, 2024, February 23, 2024, April 12, 2024, and April 19, 2024 in response to information requests from TUS.

By letter dated May 2, 2024, the Commission conditionally accepted the Application for filing. In compliance with the conditional acceptance letter, Aqua provided individualized notice of the proposed acquisition to its water and wastewater customers and the GSA provided individualized notice of the proposed acquisition to its wastewater customers. Aqua also published a notice of the filing of the Application in a newspaper of general circulation.

Following confirmation of the required notification, the Commission, by letter dated June 21, 2024, acknowledged its final acceptance of the Application and advised that notice of the filing of the Application would be published in the Pennsylvania Bulletin on July 6, 2024, with a protest deadline of July 16, 2024.

OSBA filed a Protest and Notice of Intervention on December 1, 2023. OCA filed a Protest and Public Statement on December 8, 2024. The GSA and the Borough each filed a petition to intervene on June 17, 2024. I&E filed a Notice of Appearance on June 24, 2024. Keith Gabage filed a Protest on June 3, 2024. Walter Wujcik filed a Protest on July 16, 2024.

By Notice dated June 25, 2024, the Commission scheduled a Call-In Telephonic Prehearing Conference for July 17, 2024, with Administrative Law Judges Mark Hoyer and Alphonso Arnold, III presiding. Judges Hoyer and Arnold issued a Prehearing Conference Order, June 26, 2024, in advance of the Prehearing Conference.

The Call-In Telephonic Prehearing Conference was convened as scheduled on July 17, 2024. Aqua, I&E, OCA, OSBA, GSA and the Borough participated in the Conference. A litigation

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schedule was adopted providing, inter alia, for evidentiary hearings on August 15 and 16, 2024, and memorialized in a Prehearing Order, dated July 24, 2024.

A Telephonic Public Input Hearing was held on July 30, 2024. Four witnesses offered testimony at the Telephonic Public Input Hearing.

The call-in evidentiary hearing was convened on August 15, 2024. Written testimony of Aqua, GSA, I&E, OCA, and OSBA was admitted into the evidentiary record along with Aqua's Application, exhibits, workpapers and responses to TUS information requests for additional information.

Aqua submits this Main Brief in accordance with the litigation schedule presented in the Prehearing Order.

### **B. Overview of the Proposed Transaction**

Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 60,000 customer accounts, as reflected in documents already on file with the Commission. Aqua's existing service territories cover various counties throughout Pennsylvania with wastewater operations in nearby Venango County, and its affiliate Aqua Pennsylvania, Inc. ("Aqua PA") also provides water operations in close proximity in Mercer County, including Aqua's Western Division office in Sharon, Pennsylvania. Aqua is a subsidiary of Aqua PA, the second largest investor-owned water utility in the Commonwealth of Pennsylvania, providing service to 510,000 water and wastewater customers. Aqua PA is a subsidiary of Essential Utilities, Inc. ("Essential").

The GSA is a duly organized and validly existing municipal authority organized and existing under the Municipal Authorities Act of 1945. The GSA owns the sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately

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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. GSA provides bulk treatment service for Hempfield and West Salem as these municipalities own their respective collection systems and bill their own residents. **GSA currently charges its wastewater customers approximately \$23.00 per month.**

Aqua will acquire the GSA wastewater collection and treatment system assets as defined in the Asset Purchase Agreement (the “Agreement” or the “APA”), *i.e.*, the Acquired Assets, dated April 27, 2023. The Acquired Assets include 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 wastewater system. All of the Acquired Assets are located in Greenville, except for several gravity sewers that connect into the wastewater collection systems of Hempfield and West Salem. The Acquired Assets also include the six contracts identified on Schedule 4.15 of the Agreement to which the GSA is a party (the “Assigned Contracts”).

Aqua and the GSA have agreed to use the process presented in Section 1329 of the Code to determine the fair market value of the wastewater system assets and the ratemaking rate base.

## II. BURDEN OF PROOF

As the proponent of a proposed rule or order, the applicant – here, Aqua – has the burden of proof. 66 Pa.C.S. § 332. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990).

In *Se-Ling Hosiery*, the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. *See Se-Ling Hosiery*, 70 A.2d

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at 856-57. Under the preponderance of the evidence standard, “the Commission is ‘not required to ensure beyond all doubt that the noted public benefits would accrue.’ [Popowsky, 937 A.2d] at 1055 n.18. Rather, the preponderance of the evidence standard ‘means only that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party.’ *Energy Conservation Council of Pa. v. Pub. Util. Comm’n*, 995 A.2d 465, 478 (Pa. Commw. Ct. 2010).” *Cicero v. Pennsylvania Pub. Util. Comm’n*, 300 A.3d 1106, 1118 (Pa. Commw. Ct. 2023), *reargument denied* (Sept. 26, 2023), *appeal granted*, 568 MAL 2023, 2024 WL 2988362 (Pa. June 14, 2024) (“*Cicero*”).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Mill v. Comm., Pa. P.U.C.*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); 2 Pa.C.S. § 704.

More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. P.U.C.*, 413 A.2d 1037 (Pa. 1980); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

In Section 1329 cases, the Applicant need only show that “the affirmative public benefits that arise from and are specific to a transaction outweigh the harms of the transaction such that approval of the transaction will ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’” *Cicero*, 300 A.3d at 1120.

As demonstrated herein, Aqua has met its burden of proof.

### III. STATEMENT OF QUESTIONS INVOLVED

Question No. 1: Is Aqua’s acquisition of the wastewater system assets of GSA necessary or proper for the service, accommodation, convenience or safety of the public?

*Suggested Answer*: Yes. Aqua’s acquisition of the wastewater system assets of GSA is necessary or proper for the service, accommodation, convenience or safety of the public.

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The Commission should issue certificate(s) of public convenience approving the acquisition, as summarized Section IX of the Application.

Question No. 2: Pursuant to Section 1329 of the Code, what is the ratemaking rate base of the wastewater system assets of the GSA?

*Suggested Answer:* The ratemaking rate base determined pursuant to Section 1329(c)(2) of the Public Utility Code is \$18,000,000, being the lesser of the purchase price of \$18,000,000 negotiated by Aqua and the GSA and the average of the fair market value appraisals which is \$20,977,920 – determined by \$23,260,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants and \$18,695,839 presented in the appraisal of Scott Madden.

Question No. 3: Pursuant to Section 507 of Code, is the APA between Aqua and GSA and the assignment of the municipal agreements of the GSA to Aqua reasonable, legal, and valid?

*Suggested Answer:* The APA between Aqua and the GSA, and the assignment of the GSA’s municipal agreements to Aqua are reasonable, legal, and valid, pursuant Section 507 of the Code.

#### **IV. SUMMARY OF ARGUMENT**

##### **A. Sections 1102/1103 and Certificates of Public Convenience**

Section 1102 of the Code requires Commission approval through the issuance of a Certificate of Public Convenience (“CPC”) for a public utility to expand its service territory and to acquire property used or useful in the public service. Section 1103 of the Code provides that a CPC will issue if the Commission finds or determines that the granting of a certificate is necessary or proper for the service, accommodation, convenience, or safety of the public. Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit.

Aqua, as an existing provider of public utility service is presumed to be technically, legally, and financially fit. Aqua has established its technical, legal, and financial fitness by a

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preponderance of the evidence and, indeed, no party in this proceeding challenged Aqua's fitness. Aqua is therefore fit to acquire the GSA system and to initiate wastewater service in the Requested Territory.

Further, Aqua has demonstrated that the proposed transaction will further a legislative objective and affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways. **The GSA currently charges its wastewater customers approximately \$23.00 per month.**

### **B. Section 1329 and Ratemaking Rate Base**

Section 1329 of the Code addresses the valuation of municipal assets in connection with a sale of those assets to an investor-owned public utility subject to regulation by the Commission. If the contracting parties agree to utilize the Section 1329 process, the acquiring public utility and the selling municipality each select a Utility Valuation Expert ("UVE") from a list of experts maintained by the Commission.

Aqua engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC ("Gannett") to provide a fair market value appraisal of the Acquired Assets and the ratemaking rate base in accordance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), utilizing the cost, market, and income approaches. The GSA engaged the services of ScottMadden, Inc. ("ScottMadden") for the same purpose. Both firms were pre-certified as authorized UVEs.

The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$18,000,000, being the lesser of the negotiated purchase price of \$18,000,000 and \$20,977,920, which is the average of the Gannett and ScottMadden Appraisals. No party recommended a specific reduction to the \$18,000,000 ratemaking rate base, however OSBA recommended that the appraisals be updated.

**V. ARGUMENT**

**A. Sections 1102/1103**

**1. Introduction**

Section 1102 of the Code requires Commission approval through the issuance of a CPC for a public utility to expand its service territory and to acquire property used or useful in the public service. Specifically, Section 1102(a)(1) and (3) of the Code requires a public utility to obtain a CPC from the Commission “to begin to offer, render, furnish or supply within this Commonwealth service” and to “acquire from . . . any . . . municipal corporation, by any method or device, . . . including the sale . . . of[] any tangible or intangible property used or useful in the public service.” 66 Pa. C.S. § 1102(a)(1), (3).

Section 1103 of the Code provides that a CPC will be issued “only if the Commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.” 66 Pa. C.S. § 1103(a). In *City of York v. Pa. P.U.C.*, 295 A.2d 825 (Pa. 1972) (“*City of York*”), the Supreme Court explained in the context of a utility merger that the issuance of a CPC 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.” *Id.* at 828. This is referred to as the affirmative public benefits test.

The Supreme Court addressed *City of York* in *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007) (“*Popowsky*”) and explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters. *Id.* at 1057.

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*Popowsky* further explains that demonstration of affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. 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, moreover, can, under Section 1103(a), impose conditions that it deems just and reasonable.

More recently, the Commonwealth Court in *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Commw. Ct. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019) (“*McCloskey*”) held that Commission findings that: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky*, to support a conclusion that there is a public benefit to a transaction.<sup>1</sup>

*McCloskey* also explains that the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition. Significantly, however, the Commonwealth Court recognized that rate impact is not dispositive in the Commission’s determination of affirmative benefits and 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.” *Id.* at 1067. **The GSA currently charges its wastewater customers approximately \$23.00 per month.**

In *Cicero v. Pennsylvania Pub. Util. Comm’n*, 300 A.3d 1106, 1119 (Pa. Commw. Ct. 2023), *reargument denied* (Sept. 26, 2023), *appeal granted*, 568 MAL 2023, 2024 WL 2988362

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<sup>1</sup> As noted in *McCloskey*, “[a]s per [*Popowsky*] these aspirational statements are substantial evidence to support the notion that there is a public benefit for the merger.” 195 A. 3d at 1065.

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(Pa. June 14, 2024) (“*Cicero*”), the Commonwealth Court acknowledged that “[w]hile Pennsylvania courts have recognized that the Commission is not required to obtain legally binding commitments from acquiring utilities and that ‘aspirational statements’ are substantial evidence of an affirmative public benefit, under the preponderance of the evidence standard, that recognition must be considered in the context of those cases. *Popowsky*, 937 A.2d at 1055-57 & n.18; *City of York*, 295 A.2d at 829-30; *McCloskey*, 195 A.3d at 1065-66.” *See also id.* at 1120 (holding that “in every Section 1329 case, it must be shown that the affirmative public benefits that arise from and are specific to a transaction outweigh the harms of the transaction, such that approval of the transaction will ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’”).

Additionally, the party receiving the assets and service obligation must be technically, legally, and financially fit. *Joint Application of Peoples Natural Gas Company LLC, Peoples TWP LLC, and Equitable Gas Company, LLC*, Docket No. A-2013-2353647, 309 P.U.R.4th 213 (2013). An existing provider of public utility service is presumed fit. *See McCloskey*, 195 A.3d at 1058. The burden of proof to rebut the presumption is on Protestants. *Re Byerly*, 270 A. 2d 186 (Pa. 1970); *Morgan Drive-Away, Inc., v. Pa. P.U.C.*, 293 A.2d 895 (Pa. Commw. Ct. 1972).

### 2. Fitness

As a certificated provider of utility service, Aqua’s fitness is presumed. *See McCloskey*, 195 A.3d at 1058; *see also Re Pennsylvania-American Water Company*, 85 Pa. P.U.C. 548 (1995). Aqua, nevertheless, presented substantial evidence that it is legally, financially, and technically fit to acquire the GSA System.

The Commission addressed the fitness criteria in *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982).

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As to legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission regulations. *Hassman, supra*. Aqua is a public utility operating under Commission granted CPCs. There are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service.<sup>2</sup> Aqua is legally fit.

Aqua is also financially fit. As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. *Hassman, supra*. Aqua is a Class A wastewater utility with total net utility plant assets of approximately \$497 million and annual revenues of approximately \$60 million, as of December 31, 2022. Aqua is a direct subsidiary of Aqua PA which is a Class A water utility with total net utility plant assets of \$4.4 billion and annual revenues of \$545 million, as of 2022. As a direct subsidiary of Aqua PA (which has an A rating from Standard and Poor's Rating Service), Aqua has access to Aqua PA's financing capabilities, as well as access to equity capital as a subsidiary of Essential.<sup>3</sup>

Aqua will use existing short-term credit lines to fund the acquisition.<sup>4</sup> The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The transaction is not expected to have any effect on Aqua PA's corporate credit rating.<sup>5</sup>

As to technical/managerial fitness, Aqua must have sufficient staff, facilities, and operating skills to provide the proposed service. *Hassman, supra*. Aqua will provide management, customer service, regulatory compliance, engineering, financial and ancillary services, seamlessly, from its Western Area office in Sharon, Pennsylvania, with management support from Aqua's headquarters

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<sup>2</sup> Aqua St. No. 3, at 7.

<sup>3</sup> Aqua St. No. 3, at 7. As of December 31, 2022, Aqua PA had operating income of approximately \$272 million and net income of \$208 million, and its cash flows from operations equaled approximately \$275 million.

<sup>4</sup> Aqua St. No. 3, at 8. Aqua PA has a \$100 million short term credit facility and access to equity capital. *Id.* at 7.

<sup>5</sup> Aqua St. No. 3, at 8.

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in Southeastern Pennsylvania.<sup>6</sup> The transaction will easily fold into Aqua's existing wastewater operations. Aqua is technically/managerially fit.

### 3. Substantial Affirmative Public Benefits

The Court in *McCloskey* focused on two Commission findings as substantial evidence sufficient to support a conclusion that there is a public benefit to an Aqua Section 1329 transaction:

- i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and
- ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities.

Substantial evidence supports these same findings in this proceeding and a conclusion that there are substantial affirmative public benefits to this transaction. Substantial evidence, however, also supports many additional affirmative public benefits, which are identified below.

Additional further support for the existence of substantial affirmative public benefits is the General Assembly's determination, through the enactment of Section 1329, that the public interest will be furthered by the purchase / sale of municipal systems at fair market value to capable public utilities.

In *Cicero*, the Commonwealth Court reversed the Commission's approval of that Section 1329 transaction on the basis of the particular facts in that case, and that decision is currently pending appeal to the Pennsylvania Supreme Court. In *Cicero*, the Court stated:

"Holding that a transaction will result in substantial affirmative public benefits because it will provide the same services as already being provided is not a benefit, let alone a substantial affirmative public one as required by statute and our caselaw. Nor is it a benefit to provide for upgrades that Township is equally capable of providing. Holding that these services and upgrades that are the result of the acquiring utility's size and fitness are substantial affirmative public benefits is not consistent with *City of York* and its

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<sup>6</sup> Aqua St. No. 1, at 5-16.

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progeny. This is particularly true when the existing system is already operating safely and reliably. As our Supreme Court described in *Popowsky*, the affirmative public benefit test is a “net benefits assessment.” 937 A.2d at 1056 (emphasis added). Where, as here, 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).”

*Cicero*, 300 A.3d at 1119. Accordingly, while the Commonwealth Court’s holding and findings in *Cicero* regarding the affirmative public benefits test is subject to reversal, the facts here militate in favor of a finding that the test has been met. There are substantial affirmative public benefits that will accrue to Aqua’s current customers, the GSA’s customers, and the community in and around the Borough as a result of the proposed transaction. As described below, and in short, net benefits result here as: the GSA system is not operating safely today, the upgrades that Aqua plans to make would not be made by the GSA if the transaction is not approved, other benefits provided by Aqua arise as a result of this transaction, and the only purported identified harm of the transaction is the increase to customer rates (which ignores the evidence that without the transaction the GSA would implement a nearly 200% rate increase for its wastewater customers in short order). These many public benefits would not otherwise be possible absent the acquisition, are taken from the Application and testimony in support of it, as incorporated herein, are summarized below:

(i) ***Aqua’s Record of Acquiring and Improving Wastewater Systems.***

- Aqua provides utility service to approximately 60,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to continue to operate, maintain and improve the GSA System.<sup>7</sup>

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<sup>7</sup> Aqua St. No. 3, at 11; Updated Application, at ¶53.d.

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- Aqua has acquired 15 wastewater systems over the past 10 years.<sup>8</sup> Many of these systems required significant investment to correct service and environmental issues. Other systems did not need substantial capital investment. The inherent diversification of systems and customers provides a foundation of stability in the day to day, month to month, and year to year operations of the utility, in that, they are all not requiring major capital investments at the same time. Thus, spreading the financial impacts over the long-term operations of the acquiring utility.<sup>9</sup>

**(ii) *Public Policy Endorsing and Encouraging Regionalization / Consolidation.***

- If Aqua were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers' rates and service. Consolidation of both types of systems, viable and non-viable, is consistent with the Commission's policy statements regarding acquisitions. The GSA System is in need of significant infrastructure investment and suffers from various operational and safety deficiencies. The acquisition of the GSA System will continue to address the Commission's supported policy of consolidation and regionalization.<sup>10</sup>
- The Commonwealth and the Commission have a long-standing record of support for consolidation/regionalization of water/wastewater systems, because it provides the utility industry a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry."<sup>11</sup>
- "Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development, and provide environmental enhancements."<sup>12</sup> Ultimately, these benefits inure to customers both existing and acquired. The proposed transaction with the GSA is no exception to these principles. The benefits are evident by Aqua and Aqua PA's successful acquisition of numerous water/wastewater utilities in their over approximately 135 years of operation.<sup>13</sup>

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<sup>8</sup> North Heidelberg Sewer Company (2023); East Whiteland, Lower Makefield (2022); New Garden, East Norriton (2020); Cheltenham (2019); East Bradford, Limerick (2018); Tobyhanna, Avon Grove (2017); Emlenton, Honeycroft (2016); Bunker Hill (2015); Penn Township (2014); and Treasure Lake (2013).

<sup>9</sup> Aqua St. No. 3, at 11.

<sup>10</sup> Aqua St. No. 3, at 11-12.

<sup>11</sup> Aqua St. No. 3, at 10-11; Updated Application, at ¶53.c.

<sup>12</sup> *Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006).

<sup>13</sup> Aqua St. No. 3, at 10-11; Updated Application, at ¶53.c.

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- In *McCloskey*, the Commonwealth Court held that Commission findings that Aqua, as owner of numerous water and wastewater systems in Southeastern Pennsylvania, has sufficient operational expertise to operate a system and ability to raise capital to support a system and that the Commission has a policy of consolidation and regionalization that allows for increased maintenance, upgrade and expansion of public facilities. The Court concludes that the foregoing are reasons of the type that the Supreme Court in *Popowsky* held were sufficient to meet the public benefit standard and that, accordingly, they are “substantial evidence to support the notion that there is a public benefit” for the transaction.<sup>14</sup> This same analysis is equally applicable in this proceeding and constitutes substantial evidence sufficient to support the public benefit of this transaction.<sup>15</sup>

### (iii) *Enhanced Customer Service, Customer Billing, and Payment Protections.*

- The GSA customers will benefit from access to expansive customer service provided by the Company’s customer service call centers and the customer service work order programs. The GSA customers will have access to customer service centers during normal business hours and emergency call centers 24/7/365. Aqua’s customer service can assist with (i) resolution of account issues, such as account status and billing issues; and (ii) facilitation of responses to outages and other emergencies like replacement of broken meters, obstructed or leaking service connections, and wastewater main breaks and/or backups.<sup>16</sup>
- Aqua is continuously improving customer service and adding efficiencies to make bill payment and access to other customer tools more user-friendly. The GSA is not. For example, Aqua has improved its disruption notifications and mapping system to be real-time and initiated from our field personnel on site, at the disruption, so with respect to the field work improvements noted above, when Aqua’s technicians enter a work order and go “in route”, a text notification is sent to the customer providing a notification with the technician’s expected arrival time regardless of whether the work order is scheduled or unscheduled.<sup>17</sup>
- Aqua also has a customer ePortal and Aqua App for mobile devices that provides access to improved customer tools for account maintenance, notifications, viewing meter reads and trending consumption, as well as viewing and paying bills from anywhere in the world. In addition to payment through Aqua App, Aqua customers also have the benefit of expanded bill payment options including auto-payment and pay by text. For customers using an ACH payment method, all of these options are

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<sup>14</sup> Aqua St. No. 3, at 12-13; Updated Application, at ¶53.e.

<sup>15</sup> The Commonwealth Court’s decision in *Cicero* does not change the standard of review here, as noted above, and while the test espoused in *McCloskey* may ultimately be viewed differently depending upon the Supreme Court’s decision on appeal, the Company has included numerous affirmative benefits which far outweigh the potential harms of this transaction. Aqua St. No. 3, at 13-14.

<sup>16</sup> Aqua St. No. 1, at 9-10.

<sup>17</sup> Aqua St. No. 1-R, at 9-10.

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free. In addition to offering bill payment, Aqua's ePortal also provides electronic billing and the ability to view prior bills.<sup>18</sup>

- For GSA customers who have difficulty paying their bills today, there are no payment plan options available and if they do not pay their sewer bill their water service may be shut off until the GSA bill is paid. With Aqua's ownership, GSA customers would will have the option to enter into a deferred payment arrangement to help pay off unpaid balances, and for those that meet eligibility requirements, they may participate in Aqua's low-income programs, like Aqua Aid.<sup>19</sup>

### (iv) *Access to Customer Assistance Programs and Funds.*

- The customers of the GSA do not currently have access to an income-based discount program, and the GSA has not taken steps to implement such programs. Aqua's programs would provide clear and specific public benefits to the GSA customers that would not be present absent this transaction.<sup>20</sup>
- The GSA customers will have access to customer assistance programs and funds. The Company offers a suite of programs designed to support limited income families in the Company's service territory. These programs are designed to address affordability in a number of ways, including discounted wastewater services; a leak repair program for minor household leaks that lead to high water bills and thereby increase wastewater charges; conservation kits to reduce water and wastewater usage charges; and a hardship fund for customers who need assistance with arrears. The most comprehensive income-based assistance program is the Company's Customer Assistance Program ("CAP"), which provides three benefits to eligible participants (up to 200% of the Federal Poverty Level ("FPL")): 1) discounted monthly bills on a tiered basis; 2) \$25 credits towards pre-program arrearages for each timely monthly payment; and 3) protection from late payment charges.<sup>21</sup>
- The hardship fund (known as Aqua Aid) will be available to GSA customers with a high bill or arrearages in need of assistance. It can be used, for example, to relieve a high bill burden or to provide arrearages assistance.<sup>22</sup>
- Aqua has agreed to provide an annual contribution of \$25,000 for the three years following closing of the transaction to Aqua Aid, representing a \$75,000 benefit for both existing and GSA customers alike. All funds remaining at the end of a calendar year are rolled over to the following year.<sup>23</sup>

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<sup>18</sup> Aqua St. No. 1-R, at 10.

<sup>19</sup> Aqua St. No. 1-R, at 10.

<sup>20</sup> Aqua St. No. 5, at 7.

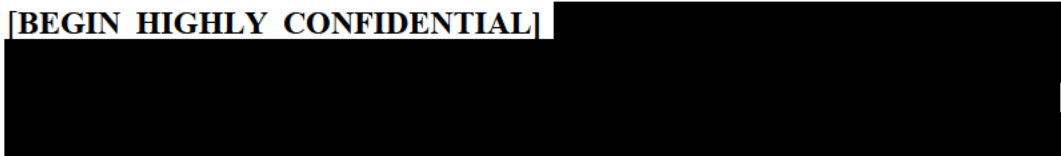
<sup>21</sup> Aqua St. No. 5, at 3-4.

<sup>22</sup> Aqua St. No. 5, at 6.

<sup>23</sup> Aqua St. No. 5-R, at 7.

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### (v) *Technological and Operational Benefits Creating Efficiencies and Enhancing Safety*

- While a system does not have to be troubled for an acquisition to be in the public interest there are significant operational deficiencies present in the system, that support the conclusion that the GSA is a troubled system, and even if the Commission determines that the GSA is not a troubled system there are significant affirmative public benefits that will be realized with the proposed transaction between Aqua and the GSA..<sup>24</sup>
- The GSA entered into a Consent Order Agreement (“COA”) with the Pennsylvania Department of Environmental Protection (“DEP”), and the GSA is presently in breach of the COA..<sup>25</sup>
- The GSA suffers from several operational deficiencies that have not historically been address by the GSA that Aqua is able to address, thereby conferring substantial public benefits for the GSA system and its users, including: (i) limited quantity and availability of licensed operators, access to training and redundancy of operators; (ii) limited or lacking process control testing; (iii) permit compliance issues; (iv) lack of emergency preparedness training; (v) lacking safety and security equipment and training; (vi) hazardous chemical storage, labeling, safety and dichlorination issues; (vii) wastewater treatment plant (“WWTP”) ventilation, physical safety, and security concerns; (viii) inadequate SCADA and operator alarm systems; (ix) lack of proactive capital planning leading to a patchwork of physical assets; (x) insufficient emergency/standby power generation; and (xi) lack of asset management or compliance management software systems..<sup>26</sup>
- The GSA collection system has significant inflow and infiltration (“I&I”), Aqua has allocated funds for sewer main rehabilitation and replacement which will address I&I; such replacements will be targeted by the results of the metering program the Company will conduct. GSA, despite being aware of this issue, has not made a targeted effort to reduce I&I and reduce environmental impacts from the discharges which by-pass trickling filter treatment; thus, Aqua’s plan to immediately address I&I in the GSA collection system is a positive benefit not only to customers (through the reduced expenses) but also to the environment and communities in and around the Borough of Greenville..<sup>27</sup>
- **[BEGIN HIGHLY CONFIDENTIAL]** 

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<sup>24</sup> Aqua St. No. 1-R, at 3.

<sup>25</sup> Aqua St. No. 1-R, at 3, 11.

<sup>26</sup> Aqua St. No. 1-R, at 4-5; Aqua St. No. 1, at 16-36 and Appendix A; *see also* Aqua St. No. 3-R, at 4-7.

<sup>27</sup> Aqua St. No. 2-R, at 3.

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] [BEGIN  
CONFIDENTIAL]

[REDACTED] [END

CONFIDENTIAL] These are real opportunities for efficiencies in operations that will further promote the proper treatment of wastewater for the GSA customers.

- [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

- [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

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<sup>28</sup> Aqua St. No. 4, at 9.  
<sup>29</sup> Aqua St. No. 4, at 9-10.  
<sup>30</sup> Aqua St. No. 1-R, at 7-8.  
<sup>31</sup> Aqua St. No. 4, at 8.  
<sup>32</sup> Aqua St. No. 4, at 11.  
<sup>33</sup> Aqua St. No. 4, at 8-9.  
<sup>34</sup> Aqua St. No. 4, at 11.  
<sup>35</sup> Aqua St. No. 4, at 5.

[REDACTED]

[END HIGHLY CONFIDENTIAL] These are specific benefits tied directly to this transaction, and evidence how Aqua will provide so much more than the GSA currently has in this regard.

(vi) *Net Benefits for the GSA's Customers.*

- The GSA customers will become part of a larger scale, efficiently operated, wastewater utility. The Company has key operations in nearby service areas and will be able to assume the operations of the GSA System, fold them into a larger scale, efficiently operated wastewater utility, which over time will yield further operating efficiencies and improve long term viability as envisioned in the Commission policy statement..<sup>38</sup>
- The Company is projecting less operations and maintenance (“O&M”) costs under Company ownership that will likely be realized through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing, legal, and environmental among others. Specifically, referencing the GSA’s 2022 Financial Statements, Total Operating and Maintenance Expenses for the System were approximately \$1.160 Million, whereas the Company is projecting annual expenses of approximately \$0.996 Million, or an approximate 14% reduction..<sup>39</sup>
- Aqua’s and the GSA’s public benefits analysis shows tangible financial benefits of the transaction to GSA customers of paying off all their debt, being able to utilize their cash surplus (otherwise encumbered by sewer utility operations), have proceeds to place into interest earning securities, saving of administration expenses, avoiding their own projected 200% rate increase as a result of a \$46 million investment in their treatment assets, and having a new property tax paying business in their community are substantial, and **in this case offset the initial revenue requirement deficiency of \$2.223 million by \$168,131..**<sup>40</sup>
- There is also a general public benefit for the GSA customers in that Aqua is subject to the regulatory oversight of the PUC requiring it to provide safe, adequate and reliable service at just and reasonable rates. The GSA is not subject to the PUC’s jurisdiction and thus, no such regulatory oversight currently exists for the GSA..<sup>41</sup>

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<sup>36</sup> Aqua St. No. 4, at 10-11.

<sup>37</sup> Aqua St. No. 4, at 7.

<sup>38</sup> Updated Application, at ¶49.

<sup>39</sup> Aqua St. No. 3, at 14.

<sup>40</sup> Aqua St. No. 3-R, at 8; Aqua St. No. 3-RJ, at 8-; Evidentiary Hearing Tr. at 151-54, 164-70 (Mr. Packer explaining the net benefit analysis and reality that benefits will occur).

<sup>41</sup> Aqua St. No. 3, at 14; Greenville St. No. 1-R, at 6-7.

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- Similarly, there is a general public benefit to the residents of Greenville related to the increased tax revenues that Aqua will pay following the closing of the Proposed Transaction. Having additional property subject to tax does provide a benefit as a result of the Proposed Transaction. And, even with this additional operating expense, Aqua is still anticipating a savings in operational expenses from those currently incurred by the GSA to operate the System.<sup>42</sup>
- Aqua estimates that it will invest approximately \$20.4 million in the system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Customers will benefit greatly from the Company's technical experience and fitness in deploying resources towards capital improvements.<sup>43</sup> Moreover, GSA had no formal long-term capital planning in place and only performed reactive maintenance.<sup>44</sup>
- The GSA customers also benefit from the avoidance of nearly \$46 million in capital spend by the GSA planned if the transaction is not approved, which would ensure an immediate rate increase of nearly 200%.<sup>45</sup>

### **(vii) *The GSA's and the Borough's Desire to Sell***

- The GSA has agreed to sell its system. The public interest will be served by allowing Aqua to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The GSA system will benefit from the support of wastewater professionals throughout Aqua's organization.<sup>46</sup> The GSA currently charges its wastewater customers approximately \$23.00 per month – a rate that has not changed in over 10 years.<sup>47</sup>
- The Borough no longer desires to be in the utility business.<sup>48</sup>

### **(viii) *Benefits to Aqua's Existing Customers.***

- The acquisition of the GSA System will be an approximate 4% increase in Aqua's customer base. By virtue of the Company's larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers.<sup>49</sup>

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<sup>42</sup> Aqua St. No. 3, at 14.

<sup>43</sup> Aqua St. No. 2, at 10-12.

<sup>44</sup> Greenville St. No. 1, at 5.

<sup>45</sup> Aqua St. No. 3-RJ, at 12-13; Greenville St. No. 1-R, at 4-5.

<sup>46</sup> Updated Application, at ¶53.b; Greenville St. No. 1-R, at 2-3.

<sup>47</sup> Greenville St. No. 1, at 13.

<sup>48</sup> Greenville St. No. 1-R, at 5, 7.

<sup>49</sup> Aqua St. No. 3, at 1; Updated Application, at ¶53.f.

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- The revenue requirement per customer based on the Company's last rate case at \$1,660 per customer is meaningfully lower than the \$2,075 per customer of Aqua's non-FMV systems as of that case.<sup>50</sup>
- Aqua estimates the non-FMV systems cumulative revenue requirement per customer to be approximately \$2,600 based on the Company's current rate case. Compared to the all systems average of \$1,811 per customer, the reality is that in the post Section 1329 era, the cost of service or revenue requirement as measured on a per customer served basis has decreased by approximately 30%. The economies of scale are present today and existing customers are benefiting from acquisitions.<sup>51</sup>
- The GSA System, at a revenue requirement deficiency of \$1,512 per customer is both lower than the Company's existing systems and lower than the consolidated group. This demonstrates a reasonable cost of operations, such that the entirety of systems operated by Aqua benefit by adding the GSA to its service territories.<sup>52</sup>

### (ix) *No Adverse Effect*

- The acquisition will not have an adverse effect on the service provided to existing customers of Aqua.<sup>53</sup>
- The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of the GSA.<sup>54</sup>
- Consistent with Section 1329(d)(1)(v), Aqua will implement the existing GSA base rates upon closing. Existing miscellaneous fees and charges in the Company's tariff, however, will be applied.<sup>55</sup>

Significantly, together with the foregoing and as set forth above, Aqua's acquisition of the GSA wastewater system is consistent with the General Assembly's clear support and encouragement of municipal wastewater acquisitions. The proposed transaction is supported by substantial affirmative public benefits consistent with *City of York, Popowsky, McCloskey*, and *Cicero*. The benefits that arise and accrue to Aqua's existing customers, the GSA customers, and

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<sup>50</sup> Aqua St. No. 3-RJ, at 9.

<sup>51</sup> Aqua St. No. 3-RJ, at 9-10.

<sup>52</sup> Aqua St. No. 3-RJ, at 15.

<sup>53</sup> Updated Application, at ¶53.a.

<sup>54</sup> Updated Application, ¶53.g.

<sup>55</sup> Aqua St. No. 3, at 8.

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the public as a whole are specific to this transaction and are not simply based on Aqua's fitness as a utility provider. The acquisition of the GSA system by Aqua is not just maintaining the status quo as shown in the above summary and in more detail below.

4. Any Potential Rate Impact to Customers is Hypothetical and Outweighed by Net Benefits

The current average monthly bill of a residential GSA customer is **approximately \$23.09 per month**. Applying 100% of the revenue deficiency requirement borne by the acquired customers of the GSA and associated with the proposed rate base addition to the existing GSA rates, **the average GSA bill would increase to approximately \$64.68 per month or an 180.85% increase.**<sup>56</sup>

The Company acknowledges this increase from a dollar and percentage increase. Again, an average monthly bill of a residential GSA customer is \$23.09 per month (and has remained as such for over 10 years). Based on Aqua's estimates, it should increase and that increase is more than doubling what customers would pay as a stand-alone rate. Aqua is being as transparent as possible in this regard. But this alone cannot, and should not, be the basis for approving or rejecting this application before the Commission. Rate impact aside, there are net benefits that will accrue to the benefit of GSA customers and current Aqua customers alike.

The calculation and percentage increase is, a point in time estimate reflective of revenue deficiency upon year one ownership. While there is an expectation of increased rates going forward, Aqua is not proposing any change in rates to GSA customers as part of this transaction. Proposed rate changes for GSA customers will be presented in an Aqua post-Closing base rate proceeding.

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<sup>56</sup> Aqua St. No. 3, at 17 and Appendix A.

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Hypothetical rate impact is addressed below.

- While there is an expectation of increased rates as a result of the transaction, this is not unexpected. The possibility of increased rates was noted in *McCloskey*. The positive factors from the transaction outweigh the possibility of increased rates.<sup>57</sup>
- While the rates of the GSA system are reasonably expected to increase, whether by the GSA (at nearly 200%) or by Aqua post-acquisition, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base as part of Aqua. This benefits both existing and acquired customers alike to the extent costs can be shared between systems over longer periods of time such that rate shock and affordability are mitigated.<sup>58</sup>
- The GSA system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition. Given this fact and the fact that there are meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time.<sup>59</sup>
- The systems Aqua has acquired under Section 1329, as would be the case with the GSA, has decreased its consolidated revenue requirement per customer. Simply said the Company is providing wastewater utility service to more customers at a lower consolidated cost.<sup>60</sup>
- The “harm” that the parties cite to of the revenue requirement deficiency is offset by net financial benefits that come from the transaction through paying off add debt, utilization of cash surplus, proceeds to put into interest earning securities and avoidance of their own needed increases, among others.<sup>61</sup>
- As stated above, the transaction furthers a recognized legislative objective and is consistent with the Commission’s consolidation/regionalization policy. There are demonstrated positive benefits, both tangible and intangible, that are likely realized as a result of the transaction, including capital improvements, operational and safety enhancements, expense efficiencies, and economies of scale – such benefits outweigh any potential increase in rates.<sup>62</sup>

In sum, the hypothetical impact on rates, while significant from where the GSA rates are set today **at \$23 per month**, is, respectfully, outweighed by the recognized benefits of Aqua’s

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<sup>57</sup> Aqua St. No. 3, at 19.

<sup>58</sup> Aqua St. No. 3, at 18-19.

<sup>59</sup> Aqua St. No. 1, at 10, 15-16.

<sup>60</sup> Aqua St. No. 3-R, at 5-6.

<sup>61</sup> Aqua St. No. 3-R, at 7-8.

<sup>62</sup> Aqua St. No. 3, at 18-19.

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ownership including its expertise and ability to raise capital; the operational, safety and environmental benefits of the transaction; the furtherance of consolidation/regionalization of wastewater services; the financial benefits of the transaction, and the spreading of costs over a larger customer base. Perhaps more significantly, the acquisition furthers the objective of the General Assembly with the enactment of Section 1329. While *McCloskey* concludes that rate impact should be addressed, it recognizes that it is not dispositive in the Commission's determination of substantial affirmative benefits.

### (i) *Testimony of OCA Witness Hoover*

OCA witness Hoover testified that neither Aqua nor GSA has demonstrated affirmative public benefits that outweigh known harms associated with an increase to the current GSA customer **\$23.00 per month** wastewater rate.<sup>63</sup> Preliminarily, however, Aqua emphasizes that the GSA does not agree with Ms. Hoover and no one is in a better position than the GSA and the Borough to speak for the benefits afforded to its customers and improvement of service levels.<sup>64</sup> The OCA has sought to take each benefit cited by Aqua or the GSA and individually compare it to the revenue requirement deficiency, concluding that that specific benefit does not individually outweigh the "harm" of the revenue requirement deficiency. Taken together, however, the benefits that have been shown by Aqua and the GSA clearly outweigh any claimed detriments of the proposed transaction.

### *Benefits to GSA Customers Outweigh Any Potential Increase in Rates*

As a primary matter, Witness Hoover's Direct Testimony and Surrebuttal Testimony do not take into account that (1) the Borough – which runs the GSA system through a leaseback – is a distressed community and does not have the resources, time, or expertise to continue to maintain

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<sup>63</sup> OCA St. No. 1, at 24.

<sup>64</sup> *See generally*, Greenville Statement No. 1 and Greenville Statement No. 1-R.

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and operate the system, and (2) that the GSA system is “antiquated yet functioning at the present time” but needs a substantial amount of work to remain functional into the foreseeable future.<sup>65</sup> As Mr. Urey stated in his Rebuttal Testimony, ignoring the situation and avoiding rate increase is no longer an option.”<sup>66</sup> Further, although the GSA has been able to keep rates consistent and lower, it comes at a cost to the public. For example, the GSA has not be able to establish and follow through with a long-term capital improvement plan, so the likely reality is that the GSA would have to increase rates to pursue necessary capital improvements – that increase is imminent and will be approximately 200%.<sup>67</sup> Additionally, the GSA sees high turnover of employees, including Board Members who lack the experience to manage the system.<sup>68</sup> With Aqua ownership brings a whole host of other experiences and expertise including legal, human resources, and accounting and regulation by the Commission would bring an added layer of experienced oversight that the GSA is currently missing.<sup>69</sup> Lastly, there are certain costs saving incentives that Aqua as a regional owner can implement at the benefit of customers, including the ability to share needed equipment and purchase items in a larger volume.<sup>70</sup>

### Bill Payment Options

Witness Hoover asserts that there is no functional difference in Aqua’s billing from the GSA aside from where in-person payments can be made. However, this disregards that Aqua is continuously improving customer service and adding efficiencies to make bill payment and access to other customer tools more user-friendly whereas the GSA is not. Make no mistake about it, the OCA and Commission demand a much higher standard of customer service and billing options

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<sup>65</sup> Greenville St. No. 1, at 5; Greenville St. No. 1-R, at 4.

<sup>66</sup> Greenville St. No. 1-R, at 3, 5 (“To us, as sellers, the increasing of rates is inevitable (not just a possibility), regardless of who operates the system, so to focus on that aspect of the transaction is also misguided.”).

<sup>67</sup> Greenville St. No. 1-R, at 4.

<sup>68</sup> Greenville St. No. 1-R, at 3.

<sup>69</sup> Greenville St. No. 1-R, at 2-5.

<sup>70</sup> Greenville St. No. 1-R, at 2-7.

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than what currently is in place for GSA customers. Most recently, Aqua has improved its disruption notifications and mapping system to be real-time and initiated from its field personnel on site, at the disruption. Aqua has also released a new and improved customer ePortal and Aqua App for mobile devices that provide customers with access to improved customer tools for account maintenance, notifications, viewing meter reads and trending consumption, as well as viewing and paying bills from anywhere in the world. In addition to payment through Aqua App, Aqua customers also have the benefit of expanded bill payment options including auto-payment and pay by text. For customers using an ACH payment method, all of these options are free. In addition to offering bill payment, Aqua's ePortal also provides electronic billing and the ability to view prior bills. These customer-driven tools clearly demonstrate that there are numerous functional differences in Aqua's billing and customer service, as compared to what GSA customers have today.<sup>71</sup>

### Customer Assistance Programs

Aqua's low income assistance program is not limited to 150% of Federal Poverty Income Guidelines ("FPIG") as Witness Hoover corrected in her Surrebuttal Testimony. Aqua's CAP serves customers with incomes up to 200% of FPIG, an important distinction. While an eligibility limit at 150% of FPIG is the typical CAP eligibility limit for Pennsylvania utilities, Aqua carefully considered the population it was seeking to support when designing its CAP and recognized that the existing FPIG program limitations may not be reflective of households in need of resources. Aqua also provides tiered discounts to participants to provide the lowest income customers with the highest level of benefits. Aqua also worked with an advisory group to develop a comprehensive Consumer Education and Outreach Plan ("CEOP") to provide awareness to customers of low-

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<sup>71</sup> Aqua St. No. 1-R at 9-10; Greenville St. No. 1-R at 6.

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income assistance via colorful bill inserts, increasing prominence of assistance on the webpage, and tracking initiatives for GSA customers.<sup>72</sup> Ultimately, Witness Hoover's testimony completely fails to take into account that no CAP or payment plan options are available with the GSA and if customers do not pay their sewer bill their water service may be shut off until the GSA bill is paid. Aqua would be able to provide GSA customers with the option to enter into a deferred payment arrangement to help pay off unpaid balances.<sup>73</sup>

### Cost and Financial Benefits

Contrary to Witness Hoover's assertion second guessing the elected and appointed officials in this community, there are many financial benefits to the proposed sale, including paying off all of the GSA's debt, being able to utilize their cash surplus (otherwise encumbered by sewer utility operations), have proceeds to place into interest earning securities, save of administration expenses, avoid their own projected 200% rate increase as a result of a \$46 million investment in their treatment assets, and have a new property tax paying business in their community are substantial, and in this case offset the initial revenue requirement deficiency of \$2.223 million by \$168,131.<sup>74</sup>

Regardless of whether the GSA keeps the proceeds or whether the GSA remits it after reorganizing under the Borough to the general fund, the GSA customers, who are mainly taxpayers of the Borough, will benefit from the transaction as this resource will be used in the community. Aqua has shown that based on the ratemaking rate base of \$18 million there would be a revenue deficiency of \$2.2 million, however, the proceeds from the sale can be used within the Borough or

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<sup>72</sup> Aqua St. No. 5-R at 3-6.

<sup>73</sup> Aqua St. No. 1-R at 10; Greenville St. No. 1-R at 6-7.

<sup>74</sup> Aqua St. No. 3-R at 8; *see also* Evidentiary Hearing Tr., at 164-169.

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the GSA to offset costs either for maintaining stormwater rates, not having to borrow money for public works projects within the Borough, and thus reduce costs to taxpayers.<sup>75</sup>

Additionally, while it is correct at the OCA states that Aqua pays sales tax and federal and state income taxes along with a return on its utility plant in service.<sup>76</sup>, these differences in cost have been present in every acquisition of municipal assets previously completed by the Company, most of which occurred prior to Section 1329. Part of what the OCA seeks to leverage as a basis for denial in this transaction have existed in these prior Commission-approved transactions.<sup>77</sup>

The GSA also does not agree with Ms. Hoover's Direct Testimony that suggests GSA customers receive greater benefits per dollar under municipal control than they would under private control. Although the GSA does not incur the same tax liabilities as a private owner there are many other expenses and costs that are associated with municipalities that private owners do not incur, including but not limited to elevated demolition/removal costs, requirement to use public bidding for purchases and contracts which often results in less experienced contractors being retained or failure to receive bids among other issues, mutual ownership often requiring bidders to pay their workers prevailing wage rates, and compliance with the Separations Act.<sup>78</sup>

Operational, Security, and Safety Benefits

Ms. Hoover attempts to discount the operational, security, and safety benefits that will inure to the benefit of the GSA's customers as a result of Aqua's ownership of the GSA system. In particular, with respect to information technology, Mr. Hoover notes that [BEGIN

CONFIDENTIAL] [REDACTED]

<sup>75</sup> Evidentiary Hearing Tr., at 165-167.

<sup>76</sup> OCA St. No. 1, at 19-20.

<sup>77</sup> Aqua St. No. 3-R, at 4.

<sup>78</sup> Greenville St. No. 1-R, at 6.



[REDACTED]  
[REDACTED] [END CONFIDENTIAL]

With respect to operational issues, Ms. Hoover discounts the numerous deficiencies identified by Aqua when she concludes that the GSA system is not troubled because the GSA is able to make all necessary upgrades to the system, there were only some non-compliance issues in the GSA system, and any Aqua-planned capital improvements for the system are not urgent but rather classified as ongoing replacements and upgrades for any system that is reaching the end of its useful life.<sup>84</sup> Putting aside that the system does not need to be troubled to use Section 1329 for an acquisition, the GSA system is not capable of making all the necessary upgrades as Ms. Hoover suggests. In fact, Mr. Urey noted in discovery that “[w]hile the GSA had been able to replace infrastructure during the last 10 years, the replacements have been on an as-needed basis without formal planning. The GSA did not have a formal capital plan to proactively address system needs and aging infrastructure.” If all the necessary upgrades had been made in the past decade, the GSA system would not have needed to enter into the COA with the DEP.<sup>85</sup>

In addition, the operational deficiencies in the GSA system are many, and they will be remedied by Aqua post-closing. While each deficiency standing alone may not make the GSA a troubled system, taken as a whole, these system deficiencies show the troubled nature of the system.<sup>86</sup> In short, as explained by Mr. Martin and Mr. Bubel, separate and apart from Aqua’s technical fitness to operate the GSA system, correction of the following deficiencies will provide affirmative public benefits to GSA customers and employees, as well as the community at large:

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<sup>83</sup> Aqua St. No. 4-R, at 6.

<sup>84</sup> OCA St. No. 1, at 16.

<sup>85</sup> Aqua St. No. 1-R, at 3.

<sup>86</sup> Aqua St. No. 1-R, at 5.

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- There are only six employees employed by the GSA to operate the system and while the certified operators are experienced, the laborers do not possess the skills to operate and make process control decisions for the WWTP or the collection system assets. Adequate treatment and timely process control decisions are necessary to ensure adequately treated wastewater safely reaches the discharge of the WWTP, which ultimately reaches the Shenango River.<sup>87</sup> Aqua's skilled employees will complement the GSA employees and its training programs will assist in developing the needed skills for the laborers.
- The GSA only requires minimal sampling and analysis be completed for the WWTP. Aqua will require the additional routine process control testing analysis above the regulatory requirements of the DEP to the discharge permit parameters. The addition and/or increased frequencies of the testing will facilitate optimization of the facility and processes, which will allow operators to make educated decisions and meet the permit effluent requirements. These process enhancements will also drive towards the optimization and cost control of the WWTP, which will directly benefit the environment and the community meeting the principal objectives of the Clean Water Act – fishable, swimmable, and drinkable waterways.<sup>88</sup>
- The GSA does not have a laboratory management system and analytical results and compliance with critical standards for laboratories is tracked only using physical bench sheets and excel. These results are not currently capable of being audited and changes are not capable of being tracked by user and justifications for any changes are lacking. With Aqua's ownership, it will implement its laboratory information management system ("LIMS"), which will allow for tracking of regulatory and process control data (including sample results and plant processes key performance indicators) and will be fully auditable with changes authorized and explained.<sup>89</sup>
- The GSA has exceeded total residual chlorine allowable limits in its NPDES permit multiple times, and the exceedance of the fecal coliform permit parameter led to the entry into the COA with the DEP.<sup>90</sup>
- Aqua identified a significant safety concern at the WWTP, [BEGIN CONFIDENTIAL] 

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<sup>87</sup> Aqua St. No. 1, at 18.

<sup>88</sup> Aqua St. No. 1, at 19.

<sup>89</sup> Aqua St. No. 1, at 20.

<sup>90</sup> Aqua St. No. 1, at 20.

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[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

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<sup>91</sup> Aqua St. No. 1, at 21-22.

<sup>92</sup> Aqua St. No. 1, at 22-23.

<sup>93</sup> Aqua St. No. 1, at 24.

<sup>94</sup> Aqua St. No. 1, at 25-26 and Appendix A, at 1.

<sup>95</sup> Aqua St. No. 1, at 27-28.

[REDACTED]

- [REDACTED] [END]
- CONFIDENTIAL**

- There are additional areas of general safety concern in the GSA system summarized and explained by Mr. Martin, which Aqua will catalogue and become a part of Aqua’s already robust capital plan and which will be made a year 1 priority for correction.<sup>99</sup> There are also issues of concern regarding back up power and which processes would be capable of operation in the event of a power failure, along with concerns regarding assets and processes not operating correctly due to lack of maintenance or expertise (e.g., unequal aeration in solids contact unit at WWTP without redundancy, incomplete or insufficient maintenance of the trickling filters, and improper hazardous gas collection equipment on the digestors and residuals management processes) – Aqua will address these as well following closing in its comprehensive audit.<sup>100</sup>
- The WWTP has not had an upgrade since 1994, and it exceeded its organic design capacity through increased biological loadings during 2020. The process upgrades that Aqua has included in the GSA’s 10-year capital plan would make the WWTP capable of handling the excessive peak loads experienced in August 2020 and February 2021 – and without it, the organic loading is projected to be overloaded over the next four years. Aqua’s upgrades are less than half the cost of the upgrade option advanced by the GSA, which would have cost \$46.5 million, avoiding \$20 million of capital costs that would otherwise be paid for by GSA customers.<sup>101</sup>
- The GSA also experienced several non-compliance incidents during 2019-2022, one of which was caused by lack of back-up power. Aqua plans to include

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<sup>96</sup> Aqua St. No. 1, at 28.

<sup>97</sup> Aqua St. No. 1, at 31-32.

<sup>98</sup> Aqua St. No. 1, at 32.

<sup>99</sup> Aqua St. No. 1, at 30-31.

<sup>100</sup> Aqua St. No. 1, at 33-36 and Appendix A, at § 5.

<sup>101</sup> Aqua St. No. 2, at 10-11, 17.

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emergency backup power capable of powering the entire WWTP to ensure protection of the receiving stream.<sup>102</sup>

Ms. Hoover's conclusion that the GSA could just implement Aqua's solution misses the point that without Aqua's involvement and expertise this solution would not have been implemented. This is a benefit that is specific to and arises out of the proposed transaction.<sup>103</sup>

### (ii) *Testimony of OSBA Witnesses Hails and Cathcart*

Witnesses Hails and Cathcart's testimony primarily provides that the Application is not in the public interest because (i) the transaction may lead to unfair and unreasonable rate increases for GSA customers, (ii) the purchase price could be too high, (iii) there is no justification for Aqua's proposed capital plan for the GSA system, (iv) the GSA could modify its capital plan to do what Aqua proposes to do, and (v) a multi-year phase in for rates over 10-years should have been proposed to mitigate rate shock.<sup>104</sup>

However, this ignores the many net benefits to customers that offset any potential rate increase that were discussed in the Application,<sup>105</sup> the testimonies of several Aqua and Greenville witnesses.<sup>106</sup> and as discussed in this Brief. That said, the revenue deficiency identified by Aqua for the GSA customers is based upon Aqua's reasonable due diligence of the GSA system and perhaps more importantly, however, the Commission is not being asked to approve a particular capital improvement plan, spend related thereto, or future rates for GSA customers – those decisions will all be made later in the context of a base rate proceeding.<sup>107</sup> In addition, Messrs.

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<sup>102</sup> Aqua St. No. 2, at 14; *see also* Aqua St. No. 2-R, at 5 (noting additional DEP compliance violations since the filing of direct testimony by Mr. Martin).

<sup>103</sup> Aqua St. No. 2-R, at 14.

<sup>104</sup> OSBA St. No. 1, at 3-4.

<sup>105</sup> Aqua Ex. No. 1 at ¶ 53.

<sup>106</sup> Aqua St. No. 3-R at 22.

<sup>107</sup> Aqua St. No. 2-R, at 2-9 (explaining Aqua's proposed improvements and its analysis of the GSA System); *see also* Aqua St. No. 3-R, at 20-22 (explaining Aqua has not proposed to recover 100% of the revenue deficiency from the GSA customers as part of this proceeding and need not address rate design or potential future phase in of rates).

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Hails and Cathcart's assumption that significant rate increases are apparent from the Gannett valuation is incorrect – the comparisons made by them are apples to oranges, as the capital cost rates and capital additions reflected in the appraisal are that of hypothetical buyers, and are not Aqua-specific.<sup>108</sup>

With respect to OSBA's contention that the purchase price is unreasonable because it is 397% higher than net book value, this ignores the fact that Section 1329 contemplates that this will be the case and that no other party provided an alternative appraisal of the GSA system assets or suggested a particular reduction to the purchase price based on the analyses contained therein. The average of the FMV appraisals of the GSA system of \$21,408,817 is greater than the purchase price, hence the rate base is set to the lower purchase price of \$18 million in compliance with Section 1329.<sup>109</sup>

Finally, as to benefits, and whether they inure to taxpayers or ratepayers, in this instance these two groups are largely the same – a significant majority of the GSA customers are residents of the Borough.<sup>110</sup> As such, the GSA customers will benefit from the transaction as the proceeds from the sale, whether they be used for reduction in stormwater rates or to ensure that the Borough would not have to incur new debt to complete projects, will reduce costs passed through to them and represent real benefits from this transaction. Mr. Packer, who has 17 years of municipal experience as a councilman and mayor, stated that the benefits that come from the proceeds into the GSA or the Borough are real for the GSA customers who are mainly the taxpayers of the Borough.<sup>111</sup>

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<sup>108</sup> Aqua St. No. 6-R, at 4-5; *see also* Greenville St. No. 2-R, at 4-5 (explaining that under ScottMadden's appraisal, hypothetical cost savings or capital expenditures under Aqua management is irrelevant to the value of the GSA and necessary rate increases to cover those expenditures.)

<sup>109</sup> Aqua St. No. 3-R, at 19-20.

<sup>110</sup> Aqua St. No. 3-R, at 22.

<sup>111</sup> Evidentiary Hearing Tr., at 164-70.

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### (iii) *Testimony of I&E Witness Kubas*

Witness Kubas agrees with the OCA's position that the Company has not shown that there are affirmative public benefits that outweigh the potential rate increases that GSA customers will face. Mr. Kubas concludes that overall there is not a substantial public benefit because: (i) Aqua has not shown that the improvements cannot be done by the GSA at a potentially lower cost, (ii) the Borough's financial troubles should not be resolved via GSA's ratepayers, (iii) potential service improvements do not outweigh the large increase in the average bill of a GSA customer (which he believes to be understated), (iv) the GSA's lack of investment should not be used as a public benefit, (v) the GSA should not be considered a troubled system, (vi) the claims that the GSA customers would be better treated better under Aqua and the Commission could also occur if GSA applies the same treatment, and (vii) while economies of scale could occur, there is a lack of detail on savings and when they would reach the GSA customers.<sup>112</sup> Mr. Kubas' Direct and Surrebuttal testimonies largely understate the public benefits that have been detailed across Aqua's and Greenville's witnesses testimony.

Mr. Kubas' testimony states that the GSA *can* increase rates, *can* make improvements, including necessary long-term capital improvements, and *can* be more responsive to customer needs, but he discounts the fact that the GSA is unable to find and retain skilled and experienced employees to manage and maintain the system, whereas Aqua is able fill this need to the benefit of GSA customers.<sup>113</sup> He also ignores the reality that Aqua's commitment to hire and further develop the skillsets of those existing GSA employees is a benefit to customers and the community – it ensures that the tacit knowledge of the people who know the system post-sale is not lost and

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<sup>112</sup> I&E St. No. 1, at 13-14.

<sup>113</sup> Greenville St. No. 1-R at 2-7.

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prevents gaps in service while the system is brought up to Aqua's, DEP's, and the industry's standards. This is not the status quo.<sup>114</sup>

This same logic tracks with regard to Mr. Kubas' testimony that that the GSA Board can provide oversight just the same as the Commission, which similarly disregards the fact that the Board is comprised of inexperienced volunteers, experiences a high rate of turnover, and its failure to maintain a capital plan until after entering into the COA with the DEP in 2023.<sup>115</sup> Mr. Kubas' testimony also largely disregards the fact that the GSA no longer wishes to provide public utility services to its customers, thus, whether it could or could not make the improvements Aqua proposes to make is irrelevant to consideration of affirmative public benefits.<sup>116</sup>

As to his claim that the GSA system is not troubled, that too is belied by the testimony of Aqua and GSA witnesses in this case as detailed in their testimony and in this Brief.

As to rate impact, Mr. Kubas takes issue with the fact that the estimated rate impact does not take into consideration the fact that the Company and Commission will ultimately consolidate GSA rates with Rate Zone 1 wastewater rates; however, Aqua did not make that proposal in this case.<sup>117</sup> Similarly, Mr. Kubas' statements regarding timing of future rate increases and capital expenditure levels to be included in those cases is purely speculative and does not provide a basis to discount the Company's estimated rate impact in this proceeding.<sup>118</sup>

### **(iv) *Testimony of Protestant Keith Gabage***

Mr. Gabage, who is a water-only customer of Aqua PA, raised three points in his testimony provided under oath at the public input hearing (1) that the purchase price exceeds the \$5.7 million

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<sup>114</sup> Aqua St. No. 1-R, at 11.

<sup>115</sup> Greenville St. No. 1-R at 2-7.

<sup>116</sup> Aqua St. No. 3-R at 16; Aqua St. No. 3-RJ, at 15.

<sup>117</sup> Aqua St. No. 3-R, at 15.

<sup>118</sup> Aqua St. No. 3-R, at 15-16.

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net value of the GSA's assets, causing customers to ultimately pay three times more than if Aqua had proceeded with this acquisition under 66 Pa. C.S. § 1327; (2) that the public notice that goes to customers should (i) be more detailed with respect to other Act 11, 66 Pa. C.S. § 1311(c), subsidies paid by water customers, and (ii) should disclose other pending acquisitions; and (3) that Aqua include a line item on water customers bills showing the amount of Act 11 that impacts their bill.<sup>119</sup>

The Company notes preliminarily in response to Mr. Gabage's testimony that Aqua and the GSA elected to proceed under Section 1329, as stated in the APA, and therefore Mr. Gabage's suggestion that Aqua should have elected to file an application under Section 1327 is of no consequence as the Commission must evaluate this transaction under Section 1329.<sup>120</sup> In response to Mr. Gabage's other points, Aqua notes that (1) as to the net value issue, Section 1329 contemplates that contributed property not be relevant to valuation of the acquired assets;<sup>121</sup> (2) as to Act 11 impacts and billing matters, it would be inappropriate to speculate as to potential impacts of acquisitions that are not closed and subsequently included in a base rate case and there is currently no way to separate out the Act 11 allocation on customers' bills;<sup>122</sup> and (3) similar to Act 11 impacts of future acquisitions, it would be inappropriate, for the reasons stated above in response to Ms. Hoover's testimony, to include potential rate impacts for pending, non-approved and non-closed Section 1329 acquisitions in the customer notice for this transaction.<sup>123</sup>

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<sup>119</sup> Public Input Hearing Transcript, at 71-74, 77.

<sup>120</sup> Aqua St. No. 3-SR, at 3.

<sup>121</sup> 66 Pa. C.S. § 1329(d)(5); Aqua St. No. 3-SR, at 3.

<sup>122</sup> Aqua St. No. 3-SR, at 4-5.

<sup>123</sup> Aqua St. No. 3-SR, at 4.

5. Conclusion

For the foregoing reasons, and as aptly and succinctly summarized by Aqua Witness Packer at the Evidentiary Hearing, “I’m absolutely confident that the financial benefits will happen, and I’m relying on my experience, 17 years in municipal government leadership to render that opinion. This money is real. [. . .] It’s a resource to that community [which includes the GSA customers] that they will undoubtedly benefit from.”<sup>124</sup>, Aqua has met its burden to show not only that there are net affirmative benefits that will result from this transaction, but that this transaction “affirmatively promotes the service, accommodation, convenience [and] safety of the public in [a] substantial way.” *City of York*, 295 A.2d at 828.

**B. Section 1329**

1. Introduction

Section 1329 of the Code addresses the valuation of the assets of municipally- or authority-owned water and wastewater systems that are acquired by investor-owned water and wastewater utilities or entities. For ratemaking purposes, the valuation is the lesser of the fair market value (*i.e.*, the average of the buyer’s and seller’s independently conducted appraisals) or the negotiated purchase price.<sup>125</sup>

If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a UVE from a list of pre-qualified experts maintained by the Commission.

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<sup>124</sup> Evidentiary Hearing Tr., at 165.

<sup>125</sup> Aqua acknowledges the Commission’s *Final Supplemental Implementation Order* in Docket No. M-2016-2543193, dated July 2, 2024 (“*July 2024 FSIO*”), establishing the Reasonableness Review Ratio (“RRR”) for use in connection with Section 1329 proceedings. The provisions of that Order, by its terms, however, “are not retroactive.” *Id.* at 114. “For acquisitions where an APA has been executed, including those for which a Section 1329 application has been filed, but not finally accepted, we will consider the unique facts and circumstances of each acquisition and take into account the dates on which the APAs were executed and applications were filed.” *Id.* Aqua supported the Commission’s initiatives on this matter, however, would note that this APA was signed on April 27, 2024, before this concept was discussed and adopted.

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The UVEs perform independent fair market value appraisals of the system in compliance with USPAP, employing the cost, market and income approaches.

Having undergone this process, the appropriate ratemaking rate base to be established in this case is \$18,000,000.

### 2. Legal Principles

In regard to the ratemaking rate base, Section 1329(c) directs as follows:

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

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

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

The negotiated purchase price is \$18,000,000. The average of the Gannett and ScottMadden fair market value appraisals – the “fair market value” – is \$20,977,920. The ratemaking rate base of the GSA wastewater system, as determined in accordance with the clear and unambiguous statutory language, is, accordingly, \$18,000,000.

### 3. Aqua’s Application

Aqua and the GSA negotiated a purchase price of \$18,000,000 for the wastewater system. The price was the result of voluntary arm’s length negotiations. Aqua and the GSA are not affiliated with each other.<sup>126</sup> They agreed to use the process presented in Section 1329 to determine the fair market value of the wastewater system and the ratemaking rate base.

Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. The GSA engaged

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<sup>126</sup> Updated Application, at ¶¶ 22-23.

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the services of ScottMadden for the same purpose. Both firms are on the list of qualified appraisers maintained by the Commission. Both firms have extensive specific experience with the valuation and appraisal of utility assets.

Gannett’s fair market value appraisal is \$23,260,000. ScottMadden’s fair market value appraisal is \$18,695,839. The average of the two is \$20,977,920. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$18,000,000, being the lesser of the negotiated purchase price of \$18,000,000 and the average of \$20,977,920.

The results of the Gannett analyses and calculations are as follows:<sup>127</sup>

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$22,545,011	33.33%	\$7,514,252
Market Approach	\$23,147,443	33.34%	\$7,717,357
Income Approach	\$24,086,220	33.33%	\$8,027,937
<b>Conclusion</b>			<b>\$23,260,000</b>

The results of the ScottMadden analyses and calculations are as follows:<sup>128</sup>

<u>Valuation Approach</u>	<u>Indicated Value</u>	<u>Weight</u>	<u>Weighted Value</u>
Cost Approach	\$18,460,465	1/5	\$3,692,093
Income Approach	\$19,372,669	2/5	\$7,749,068
Market Approach	\$18,136,695	2/5	\$7,254,678
<b>Conclusion</b>			<b>\$18,695,839</b>

Copies of the Fair Market Value Appraisal Reports of Gannett and ScottMadden (as later updated) were attached as Exhibit Q and Exhibit R, respectively, to the Application. Verified Statements of Gannett and of ScottMadden, verifying that their Appraisals determined fair market value in compliance with USPAP, employing the cost, market and income approaches,

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<sup>127</sup> Aqua St. No. 6, at 13.

<sup>128</sup> Greenville St. No. 2, at 14.

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were attached to the Application as Exhibit T1 and Exhibit T2, respectively.

Section 1329 provides that if the Commission issues an order approving an application thereunder, the order “shall include the ratemaking rate base of the selling utility, as determined under subsection (c)(2).” The Commission’s Order approving Aqua’s acquisition of the GSA wastewater system should include a determination that the ratemaking rate base is \$18,000,000.

#### 4. Challenges to the UVE Appraisals

The only party to assert a challenge to the UVE appraisals was the OSBA. However, no party recommended any specific adjustment to the recommended rate base of \$18,000,000. Specifically, OSBA Witnesses Hails and Cathcart took issue with variables used in the UVE’s appraisals, including: (i) use of the cost approach in relation to net book value; (ii) ScottMadden’s weighting of Market Approach methods of market value, and (iii) ScottMadden’s capital expenditure and revenue inputs, and ultimately recommend that the UVEs should “update their valuation models to reflect current circumstances and evidence, given the delays in progression of the case.”<sup>129</sup> Messrs. Hails and Cathcart’s recommendation should not be adopted. They did not perform an appraisal of the GSA’s assets, nor did they recommend specific adjustments to consider.

#### 5. Conclusion

The ratemaking rate base of the GSA wastewater system, determined pursuant to Section 1329(c)(2), is \$18,000,000, being the lesser of the negotiated purchase price of \$18,000,000 and the average of the UVE appraisals of \$20,977,920. The OSBA’s criticisms of the appraisals should be rejected and given no weight.

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<sup>129</sup> OSBA St. No. 1, at 7-10.

**C. Recommended Conditions**

1. Missing Easements

(i) *Testimony of OCA Witness Hoover*

OCA Witness Hoover recommends that, if the Commission approves the transaction, it should condition approval such that closing will not be permitted until the Aqua has:<sup>130</sup>

- (1) Identified all missing easements including rights-of way and other property rights;
- (2) Taken any and all necessary actions to obtain the missing easements and other property rights so they may be conveyed to Aqua at closing; 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 and expenses.<sup>131</sup>

She further recommends that, "Aqua should not be permitted to include the GSA assets into its rate base until it acquires all outstanding easements" based on her opinion that "[a]bsent this condition, ratepayers would be in the position of paying for assets, including a return on such assets, that Aqua does not actually own and this result is not in the public interest."<sup>132</sup>

Witness Hoover's first three recommendations are unnecessary. First, because not having easements does not prevent Aqua from being able to complete work if required as (i) Aqua has the ability to secure a temporary construction easement for maintenance or repair from a property owner if no permanent easement exists; and (ii) Aqua would perform emergency work after notice to the property owner.<sup>133</sup> Moreover, the OCA's recommendation is extreme considering that both UVEs valued the easements at \$276,<sup>134</sup> and to prevent a closing based on failure to obtain easements pre-closing while assets like the treatment plant, pump stations, and other significant

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<sup>130</sup> I&E St. No. 1 at 5.

<sup>131</sup> OCA St. No. 1, at 25-26.

<sup>132</sup> OCA St. No. 1, at 26; *see also* OSBA St. No. 1-SR, at 15.

<sup>133</sup> Aqua St. No. 3-R, at 13.

<sup>134</sup> Aqua St. No. 6-R, at 3; Greenville St. No. 2-R, at 6.

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assets would be able to be transferred and included in rate base is illogical. The OCA's recommendation is an attempt to find another method to block Section 1329 transactions that have otherwise met the Commission's standard for approval. Second, Ms. Hoover appears to conflate who bears responsibility for the costs to obtain the missing easements under the APA, which places the responsibility squarely upon the GSA:

All costs and expenses incurred in connection with obtaining each Missing Easement (including any payment to a landowner in connection with condemnation, in lieu of condemnation or otherwise) shall be paid by Seller and no additional consideration is payable by Buyer for any Missing Easement.<sup>135</sup>

Third, the APA contains a process by which a portion of the purchase price is held in escrow to ensure that GSA obtains any missing easements after Closing occurs, which process has been used in several prior fair market value acquisitions to come before the Commission.<sup>136</sup>

Finally, all of these reasons underscore why Ms. Hoover's additional recommendation that Aqua be precluded from including the entirety of the \$18,000,000 fair market value in its rate base until all easements are acquired is both unreasonable and unnecessary. There are protections built into the APA to ensure that Aqua and its customers do not bear any costs associated with acquiring any missing easements; those costs will be borne by GSA, and as stated previously the amount associated with those easements was \$276.<sup>137</sup>

### (ii) *Testimony of I&E Witness Kubas*

Similar to OCA Witness Hoover, I&E Witness Kubas stated that if the transaction is approved that closing should not occur until GSA provides Aqua proof that it has:

- (1) Identified all missing easements including rights-of way and other property rights;

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<sup>135</sup> Aqua St. No. 3-R, at 14 (citing Exhibit B to Application, APA at § 6.05(c)).

<sup>136</sup> Aqua St. No. 3-R, at 14.

<sup>137</sup> Aqua St. No. 13-14. *See also* Aqua St. No. 6-R, at 3, and Greenville Statement No. 2-R, at 6 (reflecting value at original cost included in UVE appraisals for missing easements of \$276).

## PUBLIC VERSION

- (2) Taken any and all necessary actions to obtain the missing easements and other property rights so they may be conveyed to Aqua at closing; 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 and expenses.

Additionally, Mr. Kubas recommends that, for situations beyond GSA's control where it is unable to transfer certain missing easements or other property rights at closing, Aqua and GSA may, at their discretion, close the transaction provided that an escrow account is established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of remaining missing easements or other real property rights.<sup>138</sup>

Given the reality of utility service and that often not all property rights are accounted for, coupled with the protections in the APA (noted above) and the fact that Aqua will require all missing easements be identified, the transaction should not be prevented from closing due to the inability to acquire and convey an easement at closing.<sup>139</sup> As the APA specifically contemplates the rights and responsibilities of Aqua and the GSA in regard to missing easements and provides for the creation of an escrow account for obtaining missing easements post-closing, Aqua submits that while Aqua mostly agrees with Mr. Kubas' recommended condition, it is not necessary.

### 2. Cost of Service Study ("COSS")

#### (i) *OCA Witness Hoover*

OCA Witness Hoover recommends that Aqua file a separate COSS for the GSA system in its next base rate case, so that the information needed to establish rates that reflect the costs of the GSA system can be established. She also recommends that Aqua also submit a wastewater COSS that removes all costs and revenues associated with the operation of the GSA system.<sup>140</sup>

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<sup>138</sup> I&E St. No. 1, at 18-19.

<sup>139</sup> Aqua St. No. 3-R, at 18.

<sup>140</sup> OCA St. No. 1, at 31.

## PUBLIC VERSION

Aqua has agreed to submit a separate COSS for the GSA System in a similar manner as it has submitted separate COSS in its 2021 base rate case proceeding and pending 2024 base rate case proceeding.<sup>141</sup>

### (ii) *I&E Witness Kubas*

Similar to OCA Witness Hoover, I&E Witness Kubas recommends that Aqua, in its next rate case, provide a separate COSS for the GSA wastewater system similar to the methodology it used for other systems acquired through Section 1329 proceedings in the current base rate case at Docket Nos. R-2024-3047822 and R-2024-3047824.<sup>142</sup> Mr. Kubas also recommends that “bulk service customers be grouped into a single separate class so that the parties and the Commission can determine if the revenue received from these bulk customers, including operating the West Salem sewer system, is more or less than the cost of providing service to these bulk customers.”<sup>143</sup>

The Company agrees that, in its next base rate case filing that includes the GSA system, it will include a separate COSS for the GSA system using the same methodology it used for other systems acquired through Section 1329 proceedings in the base rate case at Docket Nos. R-2024-3047822 and R-2024-3047824.<sup>144</sup> While Aqua believes Mr. Kubas’ recommendation to group together bulk service customers in a single separate class makes sense, Aqua would reserve the right to revisit this recommendation once it is able to evaluate the resulting rate design and CCOS analysis that goes into evaluating such a change.<sup>145</sup>

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<sup>141</sup> Aqua St. No. 1-R, at 15.

<sup>142</sup> I&E St. No. 1, at 16.

<sup>143</sup> I&E St. No. 1, at 16; I&E St. No. 1-SR at 20.

<sup>144</sup> Aqua St. No. 1-R, at 15.

<sup>145</sup> Aqua St. No. 3-R, at 17.

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### 3. Rate Stabilization and Multi-Year Rate Plan

OSBA Witnesses Hails and Cathcart took issue with the fact that “Aqua could have proposed a rate stabilization plan” but did not do so in this application.<sup>146</sup> Aqua, however, is not required by Section 1329 to propose a rate stabilization plan; it is only required to include a rate stabilization plan in the proposed tariff, if applicable to the acquisition.<sup>147</sup> Specifically, such a plan is required only if the Company is proposing to hold rates constant or phase rates in over a period of time after the next base rate case.<sup>148</sup> Aqua has made no such proposal in this Application.<sup>149</sup>

Messrs. Hails and Cathcart also recommended that the Commission consider alternatives for the rate recovery of the revenue deficiency from GSA customers, in particular, that Aqua be required to “begin to consolidate GSA’s rates with the Company’s system-wide average rates for wastewater service in its next rate proceeding over a ten-year period” and that “movement to a system wide cost of service should be considered to move towards implementation of single tariff pricing.”<sup>150</sup>

The Commission should reject this recommendation because this is not the appropriate proceeding to address the setting of future rates for GSA customers. Section 1329 requires that the buyer implement the existing rates of the selling entity. Thus, Messrs. Hails’ and Cathcart’s proposal is more appropriate in a base rate case proceeding.<sup>151</sup>

### 4. Long Term Infrastructure Improvement Plan (“LTIIP”)

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<sup>146</sup> OSBA St. No. 1, at 19.

<sup>147</sup> Aqua St. No. 3-R, at 21 (citing 66 Pa. C.S. § 1329(d)(1)(v)).

<sup>148</sup> 66 Pa. C.S. § 1329(g).

<sup>149</sup> Aqua St. No. 3, at 9.

<sup>150</sup> OSBA St. No. 1, at 24-26; *see also* OSBA St. 2-SR, at 2.

<sup>151</sup> Aqua St. No. 2-R, at 22-23.

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Aqua and Ms. Hoover agree that Aqua must file and receive approval of an amended LTIP that includes the GSA system prior to charging the Distribution System Improvement Charge (“DSIC”) to GSA customers. Ms. Hoover further recommends that any GSA projects reflected in the amended LTIP should be in addition to, and not reprioritize existing capital projects.<sup>152</sup>

If Aqua proposes to modify its LTIP to include the GSA system, the timing of such a filing will be at the Company’s discretion as there is not a requirement to file an updated LTIP after the closing of a Section 1329 transaction or any transaction under Section 1102. If the Commission determines that Aqua should file an LTIP update, the capital projects added for the GSA will be in addition to those that Aqua plans for existing systems in compliance with the Commission’s regulations.<sup>153</sup> Aqua otherwise disagrees with Ms. Hoover’s recommendation as capital plans and prioritization are not set in stone and Aqua must maintain the ability to prioritize and allocate projects based on system needs as they evolve during an LTIP period.<sup>154</sup>

### 5. Recommendations Regarding Closing Costs

OCA Witness Hoover recommends that, if the application is approved, the Commission should require Aqua “to separately identify all of its closing costs by cost category, including any outside legal fees when it makes a claim for recovery in its next base rate case.”<sup>155</sup> She further recommends, while acknowledging Section 1329 does not allow transaction and closing costs incurred by the selling utility to be included in the acquiring utility’s ratemaking rate base, that “Aqua should not be permitted to claim any transaction and closing costs incurred by GSA.”<sup>156</sup>

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<sup>152</sup> OCA St. No. 1, at 32.

<sup>153</sup> See 52 Pa. Code §§ 121.1 *et seq.*

<sup>154</sup> Aqua St. No. 3-R, at 15.

<sup>155</sup> OCA St. No. 1, at 5.

<sup>156</sup> OCA St. No. 1, at 5.

## **PUBLIC VERSION**

Aqua is not seeking recovery of the GSA's transaction and closing costs; this recommendation is unnecessary.

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### 6. Customer Notice Recommendations

Witness Hoover takes issue with the public notices provided to customers of Aqua and the GSA in this proceeding and makes a number of recommendations regarding changes to those notices. First, she states that going forward, the Company's notices should "include rate impacts at more than just average usage" (self-selecting 5,000 and 10,000 gallons per month), her reasoning being that customers cannot calculate their bill impact at usage other than that which is stated.<sup>157</sup> Second, Ms. Hoover recommends that, in addition to the average usage, estimated quarterly increase, and estimated percentage increase, the bill should also include the monthly or quarterly estimated volumetric charge, as well as the impact that the DSIC will have on wastewater bills under Aqua ownership.<sup>158</sup> Finally, Ms. Hoover recommends that Aqua be required to calculate the rate impacts of potential future acquisitions, whether pending before the PUC for approval or simply announced at the time of the request for the instant proceeding, in the customer notice.<sup>159</sup>

Protestant Keith Gabage similarly testified at the public input hearing that he believes the customer notice should include the rate impact of other pending acquisitions and be more detailed with respect to other Act 11, 66 Pa. C.S. § 1311(c), subsidies paid by water customers (including a recommendation that Act 11 charges be included as a separate line item on water customers' bills).<sup>160</sup>

None of the requested changes to the customer notice are appropriate, necessary or mandated by existing Commission regulations. First, as to the requested differing consumption

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<sup>157</sup> OCA St. No. 1, at 9.-10.

<sup>158</sup> OCA St. No. 1, at 10.

<sup>159</sup> OCA. St. No. 1, at 11; *see also* OSBA St. No. 1-SR, at 14.

<sup>160</sup> *See* Public Input Hearing ("PIH") Transcript, at 71-74, 77. To briefly address the customer line item request, it is important to remember that the Act 11 component of the revenue requirement is embedded in the rates of the Company's tariff and so the Commission would have to issue regulations to establish a calculation of each customer's bill to determine what portion of a bill is attributable to the overall impact of Act 11; thus this recommendation should be rejected. Aqua St. No. 3-SR, at 4-5.

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levels, not only has the Commission stated its judgment that a notice “with a complex set of potential rate increases based on a variety of assumptions and scenarios, or even a range of potential outcomes” would not provide meaningful notice to customers and would be confusing, it specifically declined to adopt a recommendation by the OCA to include differing consumption levels in Section 1329 proceedings, as recently as July of 2024.<sup>161</sup> Similarly, there is no requirement in Section 1329 proceedings to highlighting current or estimated Act 11 subsidies, and do so would be premature and speculative.<sup>162</sup>

Second, the inclusion of other applications into the notice is speculative and goes far beyond what is required, which is to provide customers a best estimate of the rate impact from the specific transaction under Commission review in the subject proceeding. In the same way that the inclusion of a potential transaction in a base rate case filing has been rejected by the Commission, it is not appropriate to include other pending (or even contemplated) acquisition applications because it is not known whether those potential transactions would close or be part of a base rate proceeding that would include the subject transaction.<sup>163</sup> Indeed, until a transaction is closed and the subject system is included in Aqua’s subsequent base rate case, any speculation regarding the impact on rates of that system is premature.

Finally, with respect to including volumetric and/or DSIC charges in the customer notice, this too is premature and speculative. Regarding the volumetric charge, what Ms. Hoover is suggesting is that the Company perform a billing analysis and rate design for the subject system outside of a rate case. Such an analysis cannot be performed with any accuracy as the rates that are proposed and ultimately determined in a rate case are subject to significant influence and inputs

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<sup>161</sup> Aqua St. No. 3-R, at 11 (citing *July 2024 FSIO*, Docket No. M-2016-2543193, at 39, 58, 67-72); Aqua St. No. 3-SR, at 4.

<sup>162</sup> Aqua St. No. 3-SR, at 4.

<sup>163</sup> Aqua St. No. 3-R, at 9-10.

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based upon the ultimate presentation and approval of a final rate design. And, as it pertains to the DSIC, the Company must first include the acquired system in an amended LTIIP filing, which may not be done for months or years post-closing, before the DSIC rate could be included on a customer's bill.<sup>164</sup>

Accordingly, the OCA's and Protestant Gabage's recommendations regarding changes to the customer notice should be rejected.

### 7. Employment Related Recommendations

OCA Witness Hoover raised a potential issue concerning who will oversee the Borough's stormwater assets, given that today the GSA's employees oversee those assets pursuant to a lease agreement which Aqua did not seek approval to be assigned.<sup>165</sup> Specifically, OCA's position is that none of the GSA employees who will be hired by Aqua may continue to work on the stormwater system, post-Closing, and as such, relatedly, OCA is concerned that those stormwater customers may be negatively impacted by the departure of employees who currently oversee the stormwater system.<sup>166</sup>

This should be of no concern to the Commission, because "any [GSA] employee hired by Aqua will not work on the Borough's stormwater system",<sup>167</sup> and as explained by Greenville Witness Urey, the stormwater system is maintained by entirely separate Borough employees and thus will not be impacted by the sale.<sup>168</sup> Ms. Hoover also acknowledged in her Surrebuttal Testimony that her concerns in this regard were addressed by Messrs. Urey and Martin.<sup>169</sup>

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<sup>164</sup> Aqua St. No. 3-R, at 12.

<sup>165</sup> OCA St. No. 1, at 11.

<sup>166</sup> OCA St. No. 1, at 12. (noting further that all GSA customers within the Borough are also stormwater customers).

<sup>167</sup> Aqua St. No. 1-R, at 2.

<sup>168</sup> Greenville St. No. 1-R, at 4.

<sup>169</sup> OCA St. No. 1-SR, at 7.

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### 8. Customer Assistance Fund Contributions & Low Income Program Notices

OCA Witness Hoover made a number of recommendations regarding low income programs and access to the same for the GSA's customers. First, she acknowledged that "there are many individuals and families who might benefit from Aqua's programs" but noted that they must know about them and enroll in them to benefit.<sup>170</sup> As a result, she recommended that Aqua send a letter to the GSA customers within 30 days of closing and again with their first bill post-closing (within 90 days of closing).<sup>171</sup> Aqua agrees that it is important to ensure the GSA customers know of Aqua's CAP and understand the eligibility requirements and enrollment process. Accordingly, Aqua has agreed to include the color flyers describing the CAP (as developed in the stakeholder Customer Education and Outreach Program) with a letter to the GSA customers post-closing, as well as including a bill insert more specific to acquired customers post-closing with their first bills.<sup>172</sup>

Ms. Hoover further recommended that Aqua separately track the enrollment of the GSA customers into Aqua's CAP and report on those enrollments every six months to the Commission and the parties until the conclusion of the next base rate case proceeding.<sup>173</sup> Aqua believes this to be reasonable and agreed to track and report the enrollments as recommended, and further suggested that that GSA's participation reports should be included in the agenda for the next quarterly meeting of the Aqua Assistance Collaborative (of which the OCA is a part) following the 90-day bill insert after closing is sent to discuss any trends or outreach opportunities for GSA customers in particular that could be beneficial to pursue.<sup>174</sup>

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<sup>170</sup> OCA St. No. 1, at 29-30.

<sup>171</sup> OCA St. No. 1, at 30.

<sup>172</sup> Aqua St. No. 5-R, at 4-5.

<sup>173</sup> OCA St. No. 1, at 30.

<sup>174</sup> Aqua St. No. 5-R, at 5.

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Finally, Ms. Hoover recommended that if the acquisition is approved Aqua should be required to make an additional annual contribution of \$50,000 to the hardship fund (known as Aqua Aid) for five years following closing, that these contributions should not be recovered in rates, and any unspent funds be rolled over into the following years.<sup>175</sup> Ms. Hoover stated that “this will provide a concrete and actual benefit to Aqua’s existing and acquired customers that will provide a small offset to the rate increase that will result from approval of this acquisition.”<sup>176</sup>

Providing an additional annual contribution to Aqua Aid is a benefit to existing and acquired customers which would not occur absent this transaction. However, Aqua believes on the facts and circumstances present in this transaction that it would be more appropriate to increase funding by \$25,000 per year for the next three years, instead of the five-year/\$50,000 annual contributions recommended by OCA Witness Hoover.<sup>177</sup> Aqua also noted that monitoring funding levels is important to ensuring funds are appropriately allocated to where they can do the most good and therefore suggested an annual review of Aqua Aid through the AAC.<sup>178</sup>

### 9. Capital Expenditure Recommendations

OSBA Witnesses Hails and Cathcart make a number of recommendations regarding the proposed capital expenditures, including:

- that the Year 1 and Year 2 capital spending should be assessed and to the extent possible moderated;

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<sup>175</sup> OCA St. No. 1, at 30-31. Ms. Hoover noted in her Surrebuttal Testimony that she misspoke and agreed that the CAP is limited to 200% of the FIPG; however, she nevertheless believed her recommendation to be appropriate. OCA St. No. 1-SR, at 17.

<sup>176</sup> OCA St. No. 1, at 30-31.

<sup>177</sup> Unsurprisingly, Ms. Hoover disagrees with this lower contribution level simply because it would reduce the level of the benefit she suggested. OCA St. No. 1-SR, at 17.

<sup>178</sup> Aqua St. No. 5-R, at 7-8.

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- that a capital condition assessment should be provided and prioritization and rationing of capital spending should be done to ensure the pacing of capital spending is supported and mitigates rate increases; and
- that Aqua provide a business case supporting each of its capital spending projects showing the need for the spending and the benefits to the GSA System, which they believe should also be reconciled with the GSA capital spending plans.<sup>179</sup>

Aqua has provided ample support for the reasonableness and need for the improvements provided in the proposed 10-year capital plan for the GSA system, thus any recommendation to moderate or further assess Year 1 or Year 2 spending should be rejected.<sup>180</sup> Further, as explained by Aqua Witness Bubel, Aqua conducts thorough and detailed post-acquisition audits to fully assess the plant condition, which will also allow the Company to refine its current assessment of future capital spend.<sup>181</sup> Aqua has agreed to file these audits with the Commission in its next base rate case.<sup>182</sup> Similarly, preparing a reconciliation of Aqua's planned capital investments to those in the GSA's capital plan<sup>183</sup> is of little value given that Aqua is not proposing to make the same improvements as the GSA would make were the transaction not approved. However, Aqua has agreed that it will provide a reconciliation in its next base rate case, if the application is approved, for Aqua's capital projects and spend with those in the current GSA capital plan.<sup>184</sup>

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<sup>179</sup> OSBA St. No. 1, at 3, 14-15.

<sup>180</sup> Aqua St. No. 2-R, at 9.

<sup>181</sup> Aqua St. No. 2-R, at 9-10.

<sup>182</sup> Evidentiary Hearing Tr., at 141-43.

<sup>183</sup> During the Evidentiary Hearing, Aqua agreed to file a copy of the GSA's capital plan; however, that plan has already been filed and is in the record for this proceeding. *See* Exhibit R to Application, at Appendix E (Town of Greenville Sanitary Sewer Capital Improvements Plan 2023-2024).

<sup>184</sup> Evidentiary Hearing Tr., at 139.

## PUBLIC VERSION

In light of the evidence presented and the agreements by Aqua to provide additional information regarding capital improvements to the GSA system, post-closing, the Commission should reject the OSBA's recommendations.<sup>185</sup>

### 10. UVE Recommendations

OSBA Witnesses Hails and Cathcart recommend that Aqua and GSA UVEs update their models to reflect updated information due to the delay in the case (*i.e.*, nine months having elapsed between when the appraisals were completed and the filing of OSBA's direct testimony) and potential changes to capital spending plans.<sup>186</sup>

Updating the UVE's appraisals is not necessary, nor is it justified simply due to the passage of time (or based on the potential for changes to capital spending plans). As noted by Aqua Witness Walker, the valuation date (here, May 31, 2023) is the specific date at which the value of the GSA system is based, and generally, only circumstances present at that point in time are considered.<sup>187</sup> Further, while events may occur following that date, they are appropriately not considered as the valuation is also based on the Engineering Assessment, which is also prepared close to the date of the APA and is close in time to the valuation date.<sup>188</sup> In addition, updating the valuation at such a late stage in the proceedings, given the Commission's condensed timeline for review of Section 1329 matters would simply not be possible. And, finally, Mr. Walker noted that if an updated assessment were to be prepared, he would have to reflect the updated information for capital expenditures, which would more than likely increase the fair market value

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<sup>185</sup> Aqua also agreed at the Evidentiary Hearing that it would provide copies of the post-closing audits for the GSA system in its next base rate case. Evidentiary Hearing Tr., at 142.

<sup>186</sup> OSBA St. No. 1, at 9-10; *see also* OSBA St. No. 2-SR, at 7 (noting now valuations are 14 months old).

<sup>187</sup> Aqua St. No. 6-R, at 5.

<sup>188</sup> Aqua St. No. 6-R, at 6.

## PUBLIC VERSION

determination, leading to a higher appraised value than is stated.<sup>189</sup> Thus, this recommendation should be denied.

### **D. Section 507 Approvals**

The Application asks that the Commission approve, if necessary, its acquisition agreement with the GSA and the assignment of six contracts with municipalities under Section 507 of the Code.<sup>190</sup> The contracts are necessary for the operation of the system and no party opposed the issuance of the certificates. Aqua submits that the contracts, including assignments, are reasonable, legal and valid and that the certificates should issue.

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

Aqua asks that the Commission acknowledge, in its Opinion and Order, the issuance of all other approvals, certificates, registrations and relief, if any, under the Code as may be appropriate.

## **VI. CONCLUSION WITH REQUESTED RELIEF**

For the reasons set forth above, Aqua Pennsylvania Wastewater, Inc. requests that the Public Utility Commission approve its Application and:

- a. Issue *Certificates of Public Convenience* under Section 1102 of the Code:
  - (1) Authorizing Aqua to acquire, by purchase, the wastewater system assets of the GSA; and
  - (2) Authorizing Aqua to begin to offer, render, furnish and supply wastewater service to the public in the Requested Territory;
- b. Authorize Aqua to file tariff revisions, effective upon one day's notice, to:
  - (1) Include within its territory all the Requested Territory;
  - (2) Adopt and apply the GSA's rates as Aqua's Base Rates within the Requested Territory; and

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<sup>189</sup> Aqua St. No. 6-R, at 6.

<sup>190</sup> Aqua St. No. 3, at 22-23; *see also* Application, at ¶ 73.

**PUBLIC VERSION**

- (3) Apply Aqua's *Rules and Regulations* within the Requested Territory;
- c. Enter an *Order* approving this Application and Aqua's acquisition of the Acquired Assets and, as part of that *Order* include the ratemaking rate base of the GSA as \$18,000,000 pursuant to Section 1329(c)(2) of the Code;
- d. Approve the APA between Aqua and the GSA and the Assigned Contracts pursuant to Section 507 of the Code; and
- e. Issue such other approvals, certificates, registrations and relief, if any, under the Code that may be required with respect to Aqua's acquisition of the Acquired Assets.

Respectfully submitted,

**AQUA PENNSYLVANIA WASTEWATER, INC.**

By:  \_\_\_\_\_

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Dated: August 27, 2024

**PROPOSED FINDINGS OF FACT**

**AQUA AND THE GSA**

1. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Hearing Ex. No. 5, Updated Application, at ¶ 8.

2. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 60,000 customer accounts. Aqua's existing service territories cover various counties throughout Pennsylvania with wastewater operations in nearby Venango County, and its affiliate Aqua Pennsylvania, Inc. ("Aqua PA") also provides water operations in close proximity in Mercer County, including Aqua's Western Division office in Sharon, Pennsylvania. Hearing Ex. No. 5, Updated Application, at ¶ 8.

3. Aqua is a subsidiary of Aqua PA, the second largest investor-owned water utility in the Commonwealth of Pennsylvania, providing service to 510,000 water and wastewater customers. Aqua PA is a subsidiary of Essential Utilities, Inc. ("Essential"). Hearing Ex. No. 10, Aqua St. No. 3, at 6.

4. The GSA is a duly organized and validly existing municipal authority organized and existing under the Municipal Authorities Act of 1945. Hearing Ex. No. 5, Updated Application, at ¶ 9.

5. 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. GSA provides bulk treatment service for Hempfield and West Salem as these municipalities own their respective collection systems and bill their own residents. Hearing Ex. No. 5, Updated Application, at ¶ 9.

6. GSA currently charges its wastewater customers approximately \$23.00 per month and has not changed its rates in over 10 years. Hearing Ex. No. 25, Greenville St. No. 1, at 13.

**ASSET PURCHASE AGREEMENT**

7. Aqua and the GSA are parties to an Asset Purchase Agreement dated April 27, 2023 (the “APA”). Hearing Ex. No. 5, Updated Application ¶ 7 and ¶ 22; *see also* Hearing Ex. No. 1, Application Exhibit B.

8. The negotiated purchase price, which is based on arms’ length negotiation, is Eighteen Million Dollars (\$18,000,000). Aqua and the GSA are not affiliated with each other. Hearing Ex. No. 5, Updated Application, at ¶ 22 and ¶ 23; Hearing Ex. No. 10, Aqua St. No. 3, at 6.

9. Aqua will use short-term debt initially for the purchase of the Acquired Assets, with the expectation that the short-term debt will be converted to long-term debt and equity capital at a later date. Hearing Ex. No. 10, Aqua St. No. 3, at 8; *see also* Hearing Ex. No. 5, Updated Application, at ¶ 24.

**ASSETS BEING TRANSFERRED**

10. The wastewater system assets to be transferred are the “Acquired Assets” and have the meaning specified in Section 2.01 of the APA. The Acquired Assets include 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 wastewater system. All of the Acquired Assets are located in Greenville, except for several gravity sewers that connect into the wastewater collection systems of Hempfield and West Salem. Hearing Ex. No. 5, Updated Application, at ¶ 25.

11. The Acquired Assets also include the six contracts identified on Schedule 4.15 of the Agreement to which the GSA is a party (the “Assigned Contracts”). Hearing Ex. No. 5,

Updated Application, at ¶ 26.

12. The Acquired Assets also include all Authorizations and Permits of or held by the GSA (to the extent transferrable to Aqua under applicable law), including all Authorizations and Permits which are environmental permits, other operating permits, and those items listed or described on Schedule 4.14 of the Agreement. Aqua Exhibit No. 1, Application ¶ 27.

13. “Excluded Assets,” which are those assets not being transferred to Aqua, has the meaning specified in Section 2.02 of the Agreement. Excluded Assets include Stormwater System Assets, contracts that are not Assigned Contracts, cash and cash equivalents, and the assets, insurance policies, plans, properties, and rights set forth in Schedule 2.02(h) of the Agreement. Hearing Ex. No. 5, Updated Application, at ¶ 28.

14. “Assumed Liabilities” has the meaning specified in Section 2.04(a) of the Agreement and include all liabilities and obligations arising out of or relating to Aqua’s ownership or operation of the wastewater system and the Acquired Assets on or after Closing. Hearing Ex. No. 5, Updated Application, at ¶ 29.

**RATES**

15. The GSA bills its direct retail customers a monthly base fee of \$10.50 per unit, which includes an allowance of 500 gallons, and an inclining consumption charge per 1,000 gallons based on water usage. The GSA charges well users a flat rate of \$30.41 per month per unit. Hearing Ex. No. 5, Updated Application, at ¶ 35.

16. The Contributing Municipalities bill their own residents at their established rates; however, per Exhibit F1 to the Application, West Salem retains 15% of the revenue collected and remits the remainder to the GSA, and similarly, per Exhibit F4 to the Application, Hempfield retains 25% of the revenue collected and remits the remainder to the GSA. West Salem remits

payment to GSA for its revenue collected on a monthly basis, and Hempfield remits payment to GSA for its revenue collected on a quarterly basis. Hearing Ex. No. 5, Updated Application, at ¶ 35 and Exhibit H.

17. After Closing, Aqua will implement the GSA’s sanitary wastewater rates in effect at Closing, as reflected on Schedule 7.04(a) of the Agreement. The GSA presently bills on a monthly basis to GSA end use customers – **the average wastewater customer pays approximately \$23.00 per month for service from the GSA.** Aqua will continue to bill the GSA customers on a monthly basis. A schedule of rates tariff page implementing monthly rates for the GSA customers post-Closing is attached to the Application as Exhibit G. Hearing Ex. No. 5, Updated Application, at ¶ 34; Hearing Ex. No. 25, at 13.

18. Aqua will implement its Rules and Regulations to govern the provision of wastewater service in the Requested Territory. Hearing Ex. No. 5, Updated Application, at ¶ 36.

### **COST OF SERVICE**

19. Based on the GSA’s current rate schedule, Aqua projects annual revenue of \$1,229,219 from the GSA customers and annual Operating and Maintenance (“O&M”) expenses of \$996,206 based on GSA’s operating expenses presented in the 2022 financial statements, as adjusted by Aqua. Hearing Ex. No. 5, Updated Application ¶¶ 41, 42.

### **INTEGRATION WITH CURRENT OPERATIONS**

20. Aqua will operate and manage the GSA wastewater system as a standalone collection system, but within Aqua’s footprint, from its Western Division Office in Sharon, Pennsylvania with operations and management support from Aqua’s headquarters in Southeastern Pennsylvania. The system is approximately 14 miles from Aqua’s Western Division Office. Hearing Ex. No. 7, Aqua St. No. 1, at 5-6.

21. Mr. Isaiah Vernon will be the assigned Certified Wastewater Operator for the System. Mr. Vernon's currently effective Wastewater Operator's License is attached to the Application as Exhibit L. Aqua is not anticipating any physical, operational or managerial changes at its Southeastern Division Office as a result of the acquisition. Hearing Ex. No. 5, Updated Application, at ¶¶ 43, 50.

**PROOF OF COMPLIANCE**

22. Aqua is in good standing with DEP. Hearing Ex. No. 5, Updated Application, at ¶ 46.

23. The service area comprising the Requested Territory is consistent with the GSA's sewage planning and in compliance with the DEP-approved Act 537 Plans. Hearing Ex. No. 5, Updated Application, at ¶ 47.

24. The Water Quality Management ("WQM") Permit for the WWTP issued in 2023, the National Pollution Discharge Elimination System ("NPDES") Permit for the WWTP, along with the GSA's NPDES permit renewal application, and copies of Discharge Monitoring Reports were all provided with the Application. Hearing Ex. No. 5, Updated Application, at ¶ 44.

25. Notices of Violation ("NOVs") issued to the GSA, along with GSA's response to the NOVs were included in the Application. Hearing Ex. No. 5, Updated Application, at ¶ 45.

26. The GSA entered into a Consent Order with the DEP on December 21, 2021 (the "COA") in relation to violations of effluent limitations between June 2019 and June 2021, and failure to implement the DEP-approved plan for upgrades to the WWTP. The GSA is presently in breach of the COA. Hearing Ex. No. 5, Updated Application, at ¶ 45 and Exhibit O2; Hearing Ex. No. 15, Aqua St. No. 1-R, at 3, 11.

**PLANNED CAPITAL PROJECTS**

27. Aqua has planned capital improvement projects for the GSA system totaling \$20.4 million for the first ten years of operation. The capital improvement work includes upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Hearing Ex. No. 9, Aqua St. No. 2, at 10-12.

**FITNESS**

**Legal Fitness**

28. Aqua is a Pennsylvania public utility certificated by the Commission to provide wastewater service in the Commonwealth of Pennsylvania. There are no pending legal proceedings challenging Aqua's ability to provide safe and adequate service to customers. Hearing Ex. No. 10, Aqua St. No. 3, at 7.

**Financial Fitness**

29. Aqua is a Class A, Pennsylvania wastewater utility with total net utility plant assets of \$497 million and annual revenues of \$60 million, as of December 31, 2022. As a subsidiary of Aqua PA, Aqua has access to all of Aqua PA's financing capabilities. Hearing Ex. No. 10, Aqua St. No. 3, at 7.

30. Aqua PA is a Class A water utility and the largest subsidiary of Essential, with total net utility plant assets of \$4.4 billion and annual revenues of \$545 million, as of 2022. As of December 31, 2022, Aqua PA had operating income of approximately \$272 million and net income of \$208 million, and its cash flows from operations equaled approximately \$275 million. Hearing Ex. No. 10, Aqua St. No. 3, at 7.

31. Aqua PA has a Standard and Poor's Rating of A and has approximately \$2.0 billion in outstanding long-term debt at a weighted average interest rate of approximately 4.10%. Aqua PA also has a \$100 million short-term credit facility and access to equity capital as a subsidiary of

Essential. Hearing Ex. No. 10, Aqua St. No. 3, at 7.

32. Aqua will finance the acquisition of the GSA wastewater system using the existing short-term credit lines. The short-term credit funding will be converted to a mix of long-term debt and equity capital shortly after closing. The acquisition is not expected to have any effect on Aqua PA's corporate credit rating. Hearing Ex. No. 10, Aqua St. No. 3, at 8.

**Technical and Managerial Fitness**

33. Aqua will provide support for the operation of the System through its employees' expertise in accounting and financial, administrative, communications, corporate secretarial, customer service and billing, engineering, fleet services, human resources, information systems, operations, regulatory compliance, rates and regulatory, risk management, water quality, legal, and purchasing, contracts and sales of real estate. Aqua plans to offer employment to the six current GSA employees. The System will be operated from Aqua's Western Area office with support from employees located at Aqua's Headquarters. Hearing Ex. No. 9, Aqua St. No. 2, at 8-9.

34. Aqua has 40 wastewater operators, many holding dual water and wastewater certifications, which may be called upon to assist in the operation of the system. Aqua St. No. 2 at 11.

35. Aqua has acquired many systems in the last three decades. Aqua has worked with the Commission and statutory advocates to improve troubled wastewater systems (*e.g.*, Washington Park Wastewater, Docket No. A230550F2000). In addition, Aqua was appointed receiver for the North Heidelberg Sewer Company system in Berks County by the Commission, effective March 5, 2018. Aqua took over daily wastewater operations of the facility serving approximately 274 customers and has provided operations service and improvements to the system to ensure quality and reliable service. Hearing Ex. No. 7, Aqua St. No. 1, at 11-12.

36. In the Western Area of its operations, Aqua has improved the Treasure Lake wastewater system in several ways. Aqua also navigated strict DEP regulations to install chemical treatment systems and optimize this plant for copper removal to benefit an impaired receiving stream. The improvements to this watershed were recently recognized by the DEP following stream assessments in 2022 and 2023 which identified material improvements to the stream ecosystems downstream of its outfall. Hearing Ex., No. 7, Aqua St. No. 1, at 11-12.

37. In Emlenton, Aqua has worked to improve the quality and reliability of services and has significantly reduced sanitary sewer overflows in the Emlenton system. Hearing Ex., No. 7, Aqua St. No. 1, at 12.

#### **AFFIRMATIVE PUBLIC BENEFITS**

##### *Aqua's Record of Acquiring and Improving Wastewater Systems*

38. Aqua operates 40 wastewater treatment plants throughout Pennsylvania and provides utility service to approximately 60,000 wastewater customers and has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner. Aqua has the managerial, technical, and financial resources to continue to operate, maintain and improve the GSA System. Hearing Ex. No. 10, Aqua St. No. 3, at 11; Hearing Exhibit No. 5, Updated Application, at ¶53.d.

39. Aqua has acquired 15 wastewater systems over the past 10 years.<sup>1</sup> Many of these systems required significant investment to correct service and environmental issues. Other systems did not need substantial capital investment. The inherent diversification of systems and customers provides a foundation of stability in the day to day, month to month, and year to year

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<sup>1</sup> North Heidelberg Sewer Company (2023); East Whiteland, Lower Makefield (2022); New Garden, East Norriton (2020); Cheltenham (2019); East Bradford, Limerick (2018); Tobyhanna, Avon Grove (2017); Emlenton, Honeycroft (2016); Bunker Hill (2015); Penn Township (2014); and Treasure Lake (2013).

operations of the utility, in that, they are all not requiring major capital investments at the same time. Thus, spreading the financial impacts over the long-term operations of the acquiring utility.

Hearing Ex. No. 10, Aqua St. No. 3, at 11.

***Public Policy Endorsing and Encouraging Regionalization / Consolidation***

40. If Aqua were permitted to acquire only non-viable systems, rather than a mix of viable and non-viable systems, this would have a significant impact on its existing customers' rates and service. Consolidation of both types of systems, viable and non-viable, is consistent with the Commission's policy statements regarding acquisitions. The GSA System is in need of significant infrastructure investment and suffers from various operational and safety deficiencies. The acquisition of the GSA System will continue to address the Commission's supported policy of consolidation and regionalization. Hearing Ex. No. 10, Aqua St. No. 3, at 11-12.

41. The Commonwealth and the Commission have a long-standing record of support for consolidation/regionalization of water/wastewater systems, because it provides the utility industry a better chance to realize the benefits of better management practices, economies of scale, and the resulting greater customer/environmental/economic benefits. The Commission has previously stated that "acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry." Hearing Ex. No. 10, Aqua St. No. 3, at 10-11; Hearing Ex. No. 5, Updated Application, at ¶53.

42. "Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development, and provide environmental enhancements." *Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order at 18 (Aug. 17, 2006). Ultimately, these benefits inure to customers both existing and acquired. The proposed transaction

with the GSA is no exception to these principles. The benefits are evident by Aqua and Aqua PA's successful acquisition of numerous water/wastewater utilities in their over approximately 135 years of operation. Hearing Ex. No. 10, Aqua St. No. 3, at 10-11; Hearing Ex. No. 5, Updated Application, at ¶53.

***GSA Customer Benefits – Enhanced Customer Service, Customer Billing, and Payment Protections***

43. The GSA customers will benefit from access to expansive customer service provided by the Company's customer service call centers and the customer service work order programs. The GSA customers will have access to customer service centers during normal business hours and emergency call centers 24/7/365. Aqua's customer service can assist with (i) resolution of account issues, such as account status and billing issues; and (ii) facilitation of responses to outages and other emergencies like replacement of broken meters, obstructed or leaking service connections, and wastewater main breaks and/or backups. Hearing Ex. No. 7, Aqua St. No. 1, at 9-10.

44. Aqua is continuously improving customer service and adding efficiencies to make bill payment and access to other customer tools more user-friendly. The GSA is not. Aqua has real-time disruption notifications and mapping system initiated from its field personnel on site, at the disruption, so with respect to the field work improvements, when Aqua's technicians enter a work order and go "in route", a text notification is sent to the customer providing a notification with the technician's expected arrival time regardless of whether the work order is scheduled or unscheduled. Hearing Ex. No. 15, Aqua St. No. 1-R, at 9-10.

45. Aqua also has a customer ePortal and Aqua App for mobile devices that provides access to improved customer tools for account maintenance, notifications, viewing meter reads and trending consumption, as well as viewing and paying bills from anywhere in the world. In

addition to payment through Aqua App, Aqua customers also have the benefit of expanded bill payment options including auto-payment and pay by text. For customers using an ACH payment method, all of these options are free. In addition to offering bill payment, Aqua's ePortal also provides electronic billing and the ability to view prior bills. Hearing Ex. No. 15, Aqua St. No. 1-R, at 10.

46. For GSA customers who have difficulty paying their bills today, there are no payment plan options available and if they do not pay their sewer bill their water service may be shut off until the GSA bill is paid. With Aqua's ownership, GSA customers would will have the option to enter into a deferred payment arrangement to help pay off unpaid balances, and for those that meet eligibility requirements, they may participate in Aqua's low-income programs, like Aqua Aid. Hearing Ex. No. 15, Aqua St. No. 1-R, at 10.

***GSA Customer Benefits – Access to Customer Assistance Programs and Funds***

47. The customers of the GSA do not currently have access to an income-based discount program, and the GSA has not taken steps to implement such programs. Aqua's programs would provide clear and specific public benefits to the GSA customers that would not be present absent this transaction. Hearing Ex. No. 13, Aqua St. No. 5, at 7.

48. The GSA customers will have access to customer assistance programs and funds. The Company offers a suite of programs designed to support limited income families in the Company's service territory. These programs are designed to address affordability in a number of ways, including discounted wastewater services; a leak repair program for minor household leaks that lead to high water bills and thereby increase wastewater charges; conservation kits to reduce water and wastewater usage charges; and a hardship fund for customers who need assistance with arrears. The most comprehensive income-based assistance program is Aqua's Customer

Assistance Program (“CAP”), which provides three benefits to eligible participants (up to 200% of the Federal Poverty Level (“FPL”)): (1) discounted monthly bills on a tiered basis; (2) \$25 credits towards pre-program arrearages for each timely monthly payment; and (3) protection from late payment charges. Hearing Ex. No. 13, Aqua St. No. 5, at 3-4.

49. The hardship fund (known as Aqua Aid) will be available to GSA customers with a high bill or arrearages in need of assistance. It can be used, for example, to relieve a high bill burden or to provide arrearages assistance. Hearing Ex. No. 13, Aqua St. No. 5, at 6.

50. Aqua has agreed to provide an annual contribution of \$25,000 for the three years following closing of the transaction to Aqua Aid, representing a \$75,000 benefit for both existing and GSA customers alike. All funds remaining at the end of a calendar year are rolled over to the following year. Hearing Ex. No. 21, Aqua St. No. 5-R, at 7.

***GSA Customer Benefits – Technological and Operational Benefits Creating Efficiencies and Enhancing Safety***

51. While a system does not have to be troubled for an acquisition to be in the public benefit there are significant operational deficiencies present in the system, that support the conclusion that the GSA is a troubled system; there are significant affirmative public benefits that will be realized with the proposed transaction between Aqua and the GSA. Hearing Ex. No. 15, Aqua St. No. 1-R, at 3.

52. The GSA entered into a Consent Order Agreement (“COA”) with the DEP, and the GSA is presently in breach of the COA. Hearing Ex. No. 15, Aqua St. No. 1-R, at 3, 11.

53. The GSA suffers from several operational deficiencies that have not historically been address by the GSA that Aqua is able to address, thereby conferring substantial public benefits for the GSA system and its users, including: (i) limited quantity and availability of licensed operators, access to training and redundancy of operators; (ii) limited or lacking process control

testing; (iii) permit compliance issues; (iv) lack of emergency preparedness training; (v) lacking safety and security equipment and training; (vi) hazardous chemical storage, labeling, safety and dichlorination issues; (vii) wastewater treatment plant (“WWTP”) ventilation, physical safety, and security concerns; (viii) inadequate SCADA and operator alarm systems; (ix) lack of proactive capital planning leading to a patchwork of physical assets; (x) insufficient emergency/standby power generation; and (xi) lack of asset management or compliance management software systems. Hearing Ex. No. 15, Aqua St. No. 1-R, at 4-5; Hearing Ex. No. 7, Aqua St. No. 1, at 16-36 and Appendix A; *see also* Hearing Ex. No. 18, Aqua St. No. 3-R, at 4-7.

54. Aqua plans to correct the following deficiencies in the GSA system providing affirmative public benefits to GSA customers and employees, as well as the community at large:

A. There are only six employees employed by the GSA to operate the system and while the certified operators are experienced, the laborers do not possess the skills to operate and make process control decisions for the WWTP or the collection system assets. Adequate treatment and timely process control decisions are necessary to ensure adequately treated wastewater safely reaches the discharge of the WWTP, which ultimately reaches the Shenango River. Aqua’s skilled employees will complement the GSA employees and its training programs will assist in developing the needed skills for the laborers. Hearing Ex. No. 7, Aqua St. No. 1, at 18.

B. The GSA only requires minimal sampling and analysis be completed for the WWTP. Aqua will require the additional routine process control testing analysis above the regulatory requirements of the DEP to the discharge permit parameters. The addition and/or increased frequencies of the testing will facilitate optimization of the facility and processes, which will allow operators to make educated decisions and meet the permit effluent requirements. These

process enhancements will also drive towards the optimization and cost control of the WWTP, which will directly benefit the environment and the community meeting the principal objectives of the Clean Water Act – fishable, swimmable, and drinkable waterways. Hearing Ex. No. 7, Aqua St. No. 1, at 19.

C. The GSA does not have a laboratory management system and analytical results and compliance with critical standards for laboratories is tracked only using physical bench sheets and excel. These results are not currently capable of being audited and changes are not capable of being tracked by user and justifications for any changes are lacking. With Aqua’s ownership, it will implement its laboratory information management system (“LIMS”), which will allow for tracking of regulatory and process control data (including sample results and plant processes key performance indicators) and will be fully auditable with changes authorized and explained. Hearing Ex. No. 7, Aqua St. No. 1, at 20.

D. The GSA has exceeded total residual chlorine allowable limits in its NPDES permit multiple times, and the exceedance of the fecal coliform permit parameter led to the entry into the COA with the DEP. Hearing Ex. No. 7, Aqua St. No. 1, at 20.

E. Aqua identified a significant safety concern at the WWTP, **[BEGIN CONFIDENTIAL]** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F.

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

G.

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[REDACTED]

[REDACTED]

H.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I.

[REDACTED]

[REDACTED]

[END CONFIDENTIAL]

J. There are additional areas of general safety concern in the GSA system summarized and explained by Mr. Martin, which Aqua will catalogue and become a part of Aqua's already robust capital plan and which will be made a year 1 priority for correction. There are also issues of concern regarding back up power and which processes would be capable of operation in the event of a power failure, along with concerns regarding assets and processes not operating correctly due to lack of maintenance or expertise (e.g., unequal aeration in solids contact unit at WWTP without redundancy, incomplete or insufficient maintenance of the trickling filters, and improper hazardous gas collection equipment on the digestors and residuals management processes) – Aqua will address these as well following closing in its comprehensive audit. Hearing Ex. No. 7, Aqua St. No. 1, at 30-32, 33-36, and Appendix A, at § 5.

K. The WWTP has not had an upgrade since 1994, and it exceeded its organic design capacity through increased biological loadings during 2020. The process upgrades that Aqua has included in the GSA's 10-year capital plan would make the WWTP capable of handling the excessive peak loads experienced in August 2020 and February 2021 – and without it, the organic loading is projected to be overloaded over the next four years. Aqua's upgrades are less than half the cost of the upgrade option advanced by the GSA, which would have cost \$46.5 million, avoiding \$20 million of capital costs that would otherwise be paid for by GSA customers. Hearing Ex. No. 9, Aqua St. No. 2, at 10-11, 17.

L. The GSA also experienced several non-compliance incidents during 2019-2022, one of which was caused by lack of back-up power. Aqua plans to include emergency backup power capable of powering the entire WWTP to ensure protection of the receiving stream. Hearing Ex. No. 9, Aqua St. No. 2, at 14; *see also* Hearing Ex. No. Aqua St. No. 17, 2-R, at 5.

55. The GSA collection system has significant inflow and infiltration (“I&I”), Aqua has allocated funds for sewer main rehabilitation and replacement which will address I&I; such replacements will be targeted by the results of the metering program the Company will conduct. GSA, despite being aware of this issue, has not made a targeted effort to reduce I&I and reduce environmental impacts from the discharges which by-pass trickling filter treatment; thus, Aqua’s plan to immediately address I&I in the GSA collection system is a positive benefit not only to customers (through the reduced expenses) but also to the environment and communities in and around the Borough of Greenville. Hearing Ex. No. 17, Aqua St. No. 2-R, at 3.

56. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. [END

CONFIDENTIAL] Hearing Ex. No. 12, Aqua St. No. 4, at 9-10.

57. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] These are real opportunities for efficiencies in operations that will further promote the proper treatment of wastewater for the GSA customers. Hearing Ex. No. 16, Aqua St. No. 1-R, at 7-8.



**[REDACTED]** **[END HIGHLY CONFIDENTIAL]** These are specific benefits tied directly to this transaction, and evidence how Aqua will provide so much more than the GSA currently has in this regard. Hearing Ex. No. 12, Aqua St. No. 4, at 5, 7, 10-11.

***GSA Customer Net Benefits***

60. The GSA customers will become part of a larger scale, efficiently operated, wastewater utility. The Company has key operations in nearby service areas and will be able to assume the operations of the GSA System, fold them into a larger scale, efficiently operated wastewater utility, which over time will likely yield further operating efficiencies and improve long term viability as envisioned in the Commission policy statement. Hearing Ex. No. 5, Updated Application, at ¶ 49.

61. The Company is projecting less O&M costs under Company ownership that will likely be realized through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing, legal, and environmental among others. Specifically, referencing the GSA's 2022 Financial Statements, Total O&M Expenses for the System were approximately \$1.160 Million, whereas the Company is projecting annual expenses of approximately \$0.996 Million, or an approximate 14% reduction. Hearing Ex. No 10, Aqua St. No. 3, at 14.

62. Aqua's and the GSA's public benefits analysis shows tangible financial benefits of the transaction to GSA customers of paying off all their debt, being able to utilize their cash surplus (otherwise encumbered by sewer utility operations), have proceeds to place into interest earning securities, saving of administration expenses, avoiding their own projected 200% rate increase as a result of a \$46 million investment in their treatment assets, and having a new property tax paying business in their community are substantial, and in this case offset the initial revenue requirement

deficiency of \$2.223 million by \$168,131. Hearing Ex. No. 18, Aqua St. No. 3-R, at 8; Hearing Ex. No. 24, Aqua St. No. 3-RJ, at 8; Evidentiary Hearing Transcript (“Tr.”), at 151-54, 164-70.

63. There is also a general public benefit for the GSA customers in that Aqua is subject to the regulatory oversight of the PUC requiring it to provide safe, adequate and reliable service at just and reasonable rates. The GSA is not subject to the PUC’s jurisdiction and thus, no such regulatory oversight currently exists for the GSA. Hearing Ex. No. 10, Aqua St. No. 3, at 14; Hearing Ex. No. 27, Greenville St. No. 1-R, at 6-7.

64. There is a general public benefit to the residents of Greenville related to the increased tax revenues that Aqua will pay following the closing of the Proposed Transaction. Having additional property subject to tax does provide a benefit as a result of the Proposed Transaction. And, even with this additional operating expense, Aqua is still anticipating a savings in operational expenses from those currently incurred by the GSA to operate the System. Hearing Ex. No. 10, Aqua St. No. 3, at 14.

65. Aqua estimates that it will invest approximately \$20.4 million in the system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Customers will benefit greatly from the Company’s technical experience and fitness in deploying resources towards capital improvements. Moreover, GSA had no formal long-term capital planning in place and only performed reactive maintenance. Hearing Ex. No. 9, Aqua St. No. 2, at 10-12; Hearing Ex. No. 25, Greenville St. No. 1, at 5.

66. The GSA customers also benefit from the avoidance of nearly \$46 million in capital spend by the GSA planned if the transaction is not approved, which would ensure an immediate

rate increase of nearly 200%. Hearing Ex. No. 24, Aqua St. No. 3-RJ, at 12-13; Hearing Ex. No. 27, Greenville St. No. 1-R, at 4-5.

***The GSA's and the Borough's Desire to Sell***

67. The GSA has agreed to sell its system. The public interest will be served by allowing Aqua to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures. The GSA system will benefit from the support of wastewater professionals throughout Aqua's organization. Hearing Ex. No. 5, Updated Application, at ¶53.b; Hearing Ex. No. 27, Greenville St. No. 1-R, at 2-3.

68. The GSA currently charges its wastewater customers approximately \$23.00 per month – a rate that has not changed in over 10 years. Hearing Ex. No. 25, Greenville St. No. 1, at 13.

69. The Borough no longer desires to be in the utility business. Hearing Ex. No. 27, Greenville St. No. 1-R, at 5, 7.

***Benefits to Existing Aqua's Customers***

70. The acquisition of the System will be an approximate 4% increase in Aqua's customer base. By virtue of the Company's larger customer base, future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers. Hearing Ex. No. 10, Aqua St. No. 3, at 15; Hearing Ex. No. 5, Updated Application, at ¶ 53.f.

71. The revenue requirement per customer based on the Company's last rate case at \$1,660 per customer is meaningfully lower than the \$2,075 per customer of Aqua's non-FMV systems as of that case. Hearing Ex. No. 24, Aqua St. No. 3-RJ, at 8.

72. Aqua estimates the non-FMV systems cumulative revenue requirement per customer to be approximately \$2,600 based on the Company's current rate case. Compared to the

all systems average of \$1,811 per customer, the reality is that in the post Section 1329 era, the cost of service or revenue requirement as measured on a per customer served basis has decreased by approximately 30%. The economies of scale are present today and existing customers are benefiting from acquisitions. Hearing Ex. No. 24, Aqua St. No. 3-RJ, at 9-10.

73. The GSA System, at a revenue requirement deficiency of \$1,512 per customer is both lower than the Company's existing systems and lower than the consolidated group. This demonstrates a reasonable cost of operations, such that the entirety of systems operated by Aqua benefit by adding the GSA to its service territories. Hearing Ex. No. 24, Aqua St. No. 3-RJ, at 15.

***No Adverse Effect***

74. The acquisition will not have an adverse effect on the service provided to existing customers of Aqua. Hearing Ex. No. 5, Updated Application, at ¶ 53.a.

75. The acquisition will not have any immediate impact on the rates of either existing customers of Aqua or existing customers of the GSA. Hearing Ex. No. 5, Updated Application, at ¶ 53.g.

76. Consistent with Section 1329(d)(1)(v), Aqua will implement the existing GSA base rates upon closing. Existing miscellaneous fees and charges in the Company's tariff, however, will be applied. Hearing Ex. No. 10, Aqua St. No. 3, at 8.

***Hypothetical Rate Impact Is Outweighed by Other Positive Benefits***

77. The current average monthly bill of a residential GSA customer is approximately \$23.09 per month. Applying 100% of the revenue deficiency requirement borne by the acquired customers of the GSA and associated with the proposed rate base addition to the existing GSA rates, the average GSA bill would increase to approximately \$64.68 per month or an 180.85% increase. The calculation and percentage increase are a point in time estimate reflective of revenue

deficiency upon year one ownership. Rate impact aside, there are net benefits that will accrue to the benefit of GSA customers and current Aqua customers alike. Hearing Ex. No. 10, Aqua St. No. 3, at 17 and Appendix A.

78. While the rates of the GSA system are reasonably expected to increase, whether by the GSA (at nearly 200%) or by Aqua post-acquisition, the fact is that there is more flexibility and opportunity to deal with those impacts over a much larger customer base as part of Aqua. This benefits both existing and acquired customers alike to the extent costs can be shared between systems over longer periods of time such that rate shock and affordability are mitigated. Hearing Ex. No. 10, Aqua St. No. 3, at 18-19.

79. The GSA system has characteristics that demonstrate that economies of scale can be achieved as a result of this acquisition. Given this fact and the fact that there are meaningful future investments needed to address deficiencies in the system, those future rate impacts could be spread across a broader customer base thus moderating those future rate increases over time. Hearing Ex. No. 7, Aqua St. No. 1, at 10, 15-16.

## **SECTION 1329 CONSIDERATIONS**

### ***Ratemaking Rate Base***

80. Aqua and the GSA have agreed to use the process presented in Section 1329 of the Code to determine the fair market value of the wastewater system assets and the ratemaking rate base. Hearing Ex. No. 5, Updated Application, at ¶ 54.

81. Aqua and the GSA agreed on a Licensed Engineer to complete the Assessment of Tangible Property and engaged Utility Valuation Experts (“UVE”) to perform Fair Market Value analyses of the system in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), utilizing the cost, market, and income approaches. Hearing Ex. No. 5,

Updated Application, at ¶ 14; Hearing Ex. No. 1, at Exhibits DD1 and DD2.

82. Aqua engaged the services of Gannett. The GSA engaged the services of ScottMadden. Both firms were pre-certified as authorized UVEs and are on the list of qualified appraisers maintained by the Commission. Copies of the Fair Market Value Appraisal Reports of Gannett and ScottMadden were attached as Exhibit Q and Exhibit R, respectively, to the Application. Hearing Ex. No. 5, Updated Application, at ¶¶ 54-55, and Exhibit Q and Exhibit R.

83. The purchase price agreed to by Aqua and the GSA was identified as \$18,000,000. Hearing Ex. No. 5, Updated Application, at ¶ 56.

84. The results of the Gannett analyses and calculations are as follows:

<b><u>Valuation Approach</u></b>	<b><u>Indicated Value</u></b>	<b><u>Weight</u></b>	<b><u>Weighted Value</u></b>
Cost Approach	\$22,545,011	33.33%	\$7,514,252
Market Approach	\$23,147,443	33.34%	\$7,717,357
Income Approach	\$24,086,220	33.33%	\$8,027,937
<b>Conclusion</b>			<b>\$23,260,000</b>

Hearing Ex. No. 14, Aqua St. No. 6, at 13.

85. The results of the ScottMadden analyses and calculations are as follows:

<b><u>Valuation Approach</u></b>	<b><u>Indicated Value</u></b>	<b><u>Weight</u></b>	<b><u>Weighted Value</u></b>
Cost Approach	\$18,460,465	1/5	\$3,692,093
Income Approach	\$19,372,669	2/5	\$7,749,068
Market Approach	\$18,136,695	2/5	\$7,254,678
<b>Conclusion</b>			<b>\$18,695,839</b>

Hearing Ex. No. 26, Greenville St. No. 2, at 14.

86. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$18,000,000, being the lesser of the negotiated purchase price of \$18,000,000 and the average of the fair market value appraisals which is \$20,977,920 – determined by \$23,260,000 presented in

the Gannett appraisal and \$18,695,839 presented in the ScottMadden appraisal. Hearing Ex. No. 5, Updated Application, at ¶ 57.

87. Transaction and closing costs were identified as approximately \$487,250 which will be included in rate base. Exact closing costs will be determined at closing. Hearing Ex. No. 5, Updated Application, at ¶ 58; Hearing Ex. No. 10, Aqua St. No. 3, at 22.

88. The fees paid to the UVEs are reasonable based on the scope of work, the methods used as accepted industry practice, and that the UVEs' fees were less than 5% of the fair market value benchmark noted in the Final Implementation Order. Hearing Ex. No. 10., Aqua St. No. 3, at 22.

**SECTION 507**

89. Aqua and the GSA entered into the APA on April 27, 2023. Hearing Ex. No. 1, Application, Exhibit B.

90. Six contracts the following contracts will be assigned or entered into by Aqua at Closing:

F1 – Intermunicipal Sewage Agreement, dated October 28, 1998, between Greenville, the GSA, West Salem, and the WSMSA.

F2 – Addendum to Intermunicipal Sewage Agreement, dated December 23, 1998, between Greenville, GSA, West Salem, and WSMSA.

F3 – Addendum to Intermunicipal Sewage Agreement, dated March 19, 2008, between Greenville, the GSA, West Salem, and the WSTMSA.

F4 – Consent Agreement, dated June 16, 2011, between Greenville, the GSA, West Salem, and the WSTMSA.

F5 – Intermunicipal Sewage Agreement, dated December 21, 2006, between the GSA,

Greenville, Hempfield Township Municipal Authority, and Hempfield.

F6 – Pro Forma Water Meter Read Agreement, between Aqua and GWA

Hearing Ex. No. 5, Updated Application, at ¶ 73; Hearing Ex. No. 10, Aqua St. No. 3, at 22-23.

## PROPOSED CONCLUSIONS OF LAW

### Background and Burden of Proof

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

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

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

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

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

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

7. In *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040 (Pa. 2007), the Pennsylvania Supreme Court addressed *City of York* and explained that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.

8. In *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055 (Pa. Commw. Ct. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019), the Commonwealth Court held that the Commission findings: (i) that Aqua, as the owner of numerous water and wastewater systems has sufficient operational expertise and ability to raise capital to support system operations; and (ii) that the Commission has a policy of consolidation/regionalization of wastewater system assets that allows for increased maintenance, upgrade and expansion of public sewer and water facilities, are substantial evidence, consistent with *Popowsky*, to support a conclusion that there is a public benefit to a transaction. The Court held, further, that the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition.

9. In *Cicero v. Pennsylvania Pub. Util. Comm'n*, 300 A.3d 1106, 1119 (Pa. Commw. Ct. 2023), *reargument denied* (Sept. 26, 2023), *appeal granted*, 568 MAL 2023, 2024 WL 2988362 (Pa. June 14, 2024) (“*Cicero*”), the Commonwealth Court acknowledged that “[w]hile Pennsylvania courts have recognized that the Commission is not required to obtain legally binding commitments from acquiring utilities and that ‘aspirational statements’ are substantial evidence of an affirmative public benefit, under the preponderance of the evidence standard, that recognition must be considered in the context of those cases. *Popowsky*, 937 A.2d at 1055-57 & n.18; *City of York*, 295 A.2d at 829-30; *McCloskey*, 195 A.3d at 1065-66.” *See also id.* at 1120 (holding that “in every Section 1329 case, it must be shown that the affirmative public benefits that arise from and are specific to a transaction outweigh the harms of the transaction, such that approval of the transaction will ‘affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.’”).

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

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

**Aqua Is Fit to Acquire the GSA System and Provide Wastewater Service in Portions of Borough of Greenville and Hempfield and West Salem Townships**

12. No party rebutted the presumption of fitness and Aqua established its technical, legal, and financial fitness by a preponderance of the evidence and substantial evidence.

13. Aqua is fit to acquire the GSA wastewater system assets and to provide wastewater service in portions of the Borough of Greenville, Hempfield Township and West Salem Township.

**Public Interest and Affirmative Public Benefit**

14. Aqua demonstrated through a preponderance of the evidence and substantial evidence that its acquisition of the GSA wastewater system will affirmatively promote the service, accommodation, convenience, or safety of the public in substantial ways, including that any hypothetical rate impact is offset by other positive benefits of the transaction.

15. Aqua's acquisition of the GSA wastewater system and provision of wastewater service in portions of the Borough of Greenville, Hempfield Township and West Salem Township will further the public interest.

16. In addition to the benefits derived as a result of and as correlated to Aqua's fitness, there are numerous other substantial affirmative benefits that will flow to customers of GSA, existing customers, and the communities in the GSA's service territory, including, but not limited to, the following:

a. GSA Customers: expansive customer service offerings; bill payment assistance, such as deferred payment arrangements and access to Aqua's CAP and Aqua Aid; field work information and visibility; ePortal and Aqua App access for account information, consumption, e-billing, and auto-payment; correction of numerous operational deficiencies providing for enhanced operations and safety for employees, customers and the community, as well as protection of the environment; part of a larger scale, efficiently operated utility in the business of providing safe and reliable wastewater service, leading to savings of at least an anticipated 14% in O&M expenses; avoidance of capital expenditures and an anticipated near-term 200% rate increase by the GSA; at least \$168,131 in tangible net financial benefits.

b. Aqua Customers: a 4% increase in Aqua's customer base, leading to lower incremental cost per customer for future infrastructure investments across the state; continued decline of per customer revenue requirement with addition of GSA system and its customers.

c. Communities: The Borough was, until recently, an Act 47 community, this influx of \$18,000,000 – no matter how used, will benefit the Borough, its residents – nearly all of whom are GSA customers, and the surrounding communities; increase in tax revenues; and correction of operational deficiencies at the WWTP, which will provide benefits for the environment.

**Section 1329 and Ratemaking Rate Base**

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

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

19. Aqua engaged the services of Gannett to provide a fair market value appraisal in accordance with USPAP, utilizing the cost, market and income approaches. GSA engaged the services of ScottMadden for the same purpose. Both firms were pre-certified as authorized UVEs by the Commission and are on the list of qualified appraisers maintained by the Commission.

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

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

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

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

22. Gannett’s fair market value appraisal is \$23,260,000. ScottMadden’s fair market value appraisal is \$18,695,839. The average of the two is \$20,977,920. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$18,000,000, being the lesser of the negotiated purchase price of \$18,000,000 and the average of \$20,977,920.

**Section 507**

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

24. The following contracts are accepted as valid pursuant to Section 507:

- a. The APA between Aqua and the GSA, dated April 27, 2023.
- b. Intermunicipal Sewage Agreement, dated October 28, 1998, between Greenville, the GSA, West Salem, and the WSMSA.
- c. Addendum to Intermunicipal Sewage Agreement, dated December 23, 1998, between Greenville, GSA, West Salem, and WSMSA.
- d. Addendum to Intermunicipal Sewage Agreement, dated March 19, 2008, between Greenville, the GSA, West Salem, and the WSTMSA.
- e. Consent Agreement, dated June 16, 2011, between Greenville, the GSA,

West Salem, and the WSTMSA.

- f. Intermunicipal Sewage Agreement, dated December 21, 2006, between the GSA, Greenville, Hempfield Township Municipal Authority, and Hempfield.
- g. Pro Forma Water Meter Read Agreement, between Aqua and GWA.

**PROPOSED ORDERING PARAGRAPHS**

IT IS ORDERED:

1. That the Application filed by Aqua Pennsylvania Wastewater, Inc. (“Aqua”) is approved, subject to the following conditions below:

a. That, in the first base rate proceeding filed by Aqua that includes GSA system assets, Aqua shall submit a separate cost of service study for GSA system.

b. That, within 30 days following closing, and again with the first bill, Aqua will send a welcome letter to GSA customers with information regarding income assistance programs and Aqua’s Customer Assistance Program, in particular.

c. That Aqua and GSA shall work to ensure the transfer of all real property rights, including easements and missing easements as defined in the APA, by Closing.

d. That Aqua shall be permitted, in its discretion, to close the transaction without the transfer of all the real property rights, provided that an escrow is established from the purchase price to be used to obtain any post-Closing transfer of the real property rights.

e. That, if Aqua proposes to modify its LTIP to include the GSA system, the projects added for GSA shall be in addition to those that Aqua plans for its existing systems.

f. That, upon Commission approval of a modification to Aqua’s LTIP that includes the GSA system, Aqua shall be permitted to apply the Distribution System Improvement Charge to the GSA customers prior to the first base rate case in which the GSA assets are incorporated into rate base.

g. That, if Aqua is not already applying the DSIC to the GSA system, it shall do so when rates for those customers are implemented in the first base rate proceeding that includes the GSA system assets.

h. That Aqua shall contribute \$25,000 per year for each of the three years following closing of the transaction to Aqua Aid, which contributions shall not be included in customer rates in any subsequent base rate case.

i. Aqua will file a reconciliation of capital spend for projects it has completed for the GSA system as compared to those that were included in the Town of Greenville Sanitary Sewer Capital Improvements Plan 2023-2024 (included as Appendix E to Exhibit R to the Application) in its next base rate case including the GSA system.

j. Aqua will file all post-closing audits conducted to fully assess the WWTP and the GSA system's condition with the Commission in its next base rate case including the GSA system.

2. That, pursuant to 66 Pa. C.S. § 1329(c)(2), the ratemaking rate base of the GSA wastewater system assets is \$18,000,000.

3. That Commission Secretary shall issue a Certificate of Public Convenience evidencing the right of Aqua, 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) to:

a. acquire, by purchase, the wastewater system assets of the Greenville Sanitary Authority ("GSA") situated within the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania;

b. begin to offer, render, furnish or supply wastewater service to the public in portions of the Borough of Greenville, Hempfield Township and West Salem Township, Mercer County, Pennsylvania; and

c. allow Aqua to incorporate the ratemaking rate base of \$18,000,000 for the GSA wastewater system assets in its next base rate case pursuant to 66 Pa. C.S. § 132(c)(2).

4. That the Commission's Secretary is directed to issue Certificates of Filing under Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, for the Asset Purchase Agreement between the GSA (as Seller) and Aqua (as Buyer) and the contracts, including assignment of contracts, identified on Schedule 4.13 of the APA and included with the Application as Exhibits F1 through F6.

5. That, after closing of the acquisition, Aqua shall file with the Commission a compliance tariff supplement to be effective immediately upon closing, consistent in form and content with the Tariff Supplement attached to the Application, filed on November 17, 2023, implementing rates for GSA customers post-closing.

6. That the Commission's Secretary, upon the receipt of written notice from Aqua filed with the Secretary's Bureau notifying the Commission of the closing of the acquisition and upon the completion of the immediately preceding Ordering Paragraph, mark this docket closed.

7. That all such other approvals, certificates, registrations and relief as may be required under the Public Utility Code for Aqua to acquire the GSA wastewater system assets are hereby issued.