

COMMONWEALTH OF PENNSYLVANIA



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September 5, 2024

**Via Electronic Filing**

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

Re: Application of Aqua Pennsylvania Wastewater, Inc. for Approval of  
its Acquisition of the Wastewater System Assets of Greenville  
Sanitary Authority, Docket No. A-2023-3041695

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Brief in this matter. Please note that the **CONFIDENTIAL** version of OCA's Reply Brief will only be sent to the parties that have executed the non-disclosure agreement as indicated on the Certificate of Service. The **CONFIDENTIAL** version of the OCA's Reply Brief will be e-filed using the Public Utility Commission's Share Point file process.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Enclosures:

cc: The Honorable Mark A. Hoyer (email only)  
The Honorable Alphonso Arnold III (email only)  
Certificate of Service

CERTIFICATE OF SERVICE

Application of Aqua Pennsylvania Wastewater, :  
Inc. pursuant to Sections 1102, 1329, and 507 :  
of the Public Utility Code for Approval of its : Docket No. A-2023-3041695  
Acquisition of the Wastewater System Assets :  
of Greenville Sanitary Authority :

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s Reply Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5th day of September 2024.

**\* Received Confidential Version**

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Dated: September 5, 2024

**BEFORE  
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 1102, 1329, and 507 of the Public Utility Code for Approval of its Acquisition of the Wastewater System Assets of the Greenville Sanitary Authority	:	:	:	Docket No. A-2023-3041695
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**PUBLIC VERSION**

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REPLY BRIEF  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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

The Office of Consumer Advocate (OCA) is a statutory advocate with authority and duty to represent the interest of utility consumers as a party before the Pennsylvania Public Utility Commission (Commission). 71 P.S. § 309-4. The OCA's interest in this case is to protect utility consumers by ensuring that the Commission appropriately exercises its authority to issue a Certificate of Public Convenience and approve an acquisition only where there is a net, affirmative public benefit with or without Commission imposed conditions.

As set forth in the OCA's Main Brief and further in this Reply Brief, a certificate of public convenience should not be issued because the applicant, Aqua Pennsylvania Wastewater, Inc. (Aqua, Applicant, or Company), has failed to meet its burden of demonstrating that the proposed acquisition would produce a net, affirmative public benefit.

### **A. Procedural History**

The OCA incorporates, by reference, the Procedural History section of its Main Brief and now addresses only procedural developments that extend beyond those already identified. OCA M.B. at 1-3. On the same date that OCA timely submitted its Main Brief, August 27, 2024, Main Briefs were also submitted by Aqua, Greenville Sanitary Authority (GSA or Greenville), the Commission's Bureau of Investigation and Enforcement (I&E), and the Office of Small Business Advocate (OSBA). Pursuant to the procedural schedule established for this case, and in accordance with Sections 5.501-5.502 of the Public Utility Code ("Code"), the OCA submits this Reply Brief.

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

The OCA incorporates, by reference, the Proposed Transaction section of its Main Brief. OCA M.B. at 4.

## **II. BURDEN OF PROOF**

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

The OCA incorporates by reference its discussion of the burden of proof from its Main Brief and notes that, except for GSA, all parties correctly acknowledge that Aqua carries the burden of proof in this case. In the Burden of Proof section of its Main Brief, GSA fails to indicate that Aqua, as the applicant, bears the burden of proof. GSA M. B. at 7.

### **B. Substantial Public Benefits, 66 Pa.C.S. § 1103(a)**

The OCA incorporates, by reference, the standards that are required to show an affirmative public benefit from its Main Brief. OCA M.B. at 5-6..

### **C. Contracts Between Utilities and Municipal Corporations, 66 Pa.C.S. § 507**

The OCA incorporates, by reference, Contracts Between Utilities and Municipal Corporations section of its Main Brief. OCA M.B. at 8.

## **III. STATEMENT OF QUESTIONS INVOLVED**

The OCA incorporates, by reference, the Statement of Questions Involved Section of its Main Brief. OCA M.B. at 8-9. The OCA reaffirms, and as it will again demonstrate in its comprehensive response below to Aqua and GSA's Main Briefs, that Aqua has failed to present substantial evidence that the Transaction will provide an affirmative public benefit.

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

None of the arguments made in Aqua's Main Brief provide a viable basis for approving the Transaction under Sections 1102 and 1103 of the Public Utility Code (Code). Aqua has identified that mere de minimis benefits may inure only to GSA customers and it did not identify any benefits to Aqua's existing customers. However, as the OCA's Main Brief showed, the potential de minimis benefits for GSA customers would be far outweighed by the significant

rate harms to both Aqua's existing and acquired GSA customers alike.

Aqua's request for approval of its proposed purchase of the GSA wastewater system under Sections 1102 and 1103 of the Code should be denied because Aqua failed to establish that the transaction would result in substantial affirmative public benefits. 66 Pa. C.S. §§ 1102, 1103; *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. Cmwlth. Ct. 1972) (*City of York*); *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*); *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1067 (Pa. Cmwlth. Ct. 2018), *alloc. denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*). Aqua's averred benefits are either not benefits at all – because they do not differ in any substantial way from the technical, legal, or financial capability of GSA – or they do not outweigh the substantial adverse impact on its existing wastewater customers and the GSA customers who would be served by Aqua following the close of the proposed transaction.

Tellingly, Aqua barely attempts to allege benefits for its existing customer base, as it offers only skewed and, in some cases, demonstrably inaccurate claims to somehow support the notion that costs per customer are declining as it acquires more systems. Moreover, the public benefits Aqua alleges are general and ignore that public benefits must be *specific to this Transaction*. Aqua's only claimed benefit for existing customers is that they will not be immediately harmed by the Transaction because rate increases will not go into effect until the first rate case post-closing. The OCA submits that any notion that the delay of the pending harmful rate impact is somehow an affirmative public benefit should be rejected because it dilutes and distorts the protection given to the public under the Section 1103(a) standard.

Nothing Aqua argues in its Main Brief changes the harmful and unnecessary rate impact that will flow from this Transaction. As OCA explained in its Main Brief, the rate detriments are significant and likely understated. The only clear Transaction consequences for Aqua's existing customers are the higher rates they will pay if Aqua's Application is accepted.

Significantly, Aqua projects an annual revenue deficiency of \$2.23 million for operating the GSA system. The projected deficiency will likely increase, given Aqua's demonstrated under projections of the recent past, its rate case filing frequency, and given its propensity to propose Act 11 cost-shifting.

GSA customers too will be harmed by the rate impact of the Transaction. For GSA customers, the rate impact of moving from compliance – which is where GSA is currently -- to “top of the class” service, as Aqua suggests, is an 185% increase in rates at the time of closing. Thus, Aqua's decision to pay \$18 million for the GSA system, which is 2.63 times higher than the net book value of \$6,854,439, will have measurable, detrimental rate consequences for existing and acquired customers that far outweigh any benefits. This would be true even if the benefits of the sale proceeds that Aqua and GSA touted for the Borough of Greenville were to actually materialize; however, the record of this case demonstrates that the proceeds are devoted to GSA stormwater needs and not the claimed community benefits.<sup>1</sup> On these facts alone, Aqua's Application should be denied.

Additionally, the OCA maintains that the Commission should deny Aqua's Application because Aqua failed to demonstrate that the APA is reasonable or valid under Section 507. The OCA's concerns regarding the contradictory representations about the GSA system call into question the condition of the GSA system that Aqua agreed to buy for \$18 million under the negotiated terms and conditions of the APA. In reality, Aqua's captive ratepayers will be the forced financiers of the GSA system and ratepayers should not be forced to fund the Transaction in the wake of the material conflicts between the record Aqua created regarding the GSA system and

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<sup>1</sup> GSA alleged that the proceeds would provide the public with an “infusion of capital.” GSA St. No. 1-R at 7. Aqua alleged that benefits from sale proceeds included GSA paying off all of its debt and having a cash surplus, and placing proceeds into interest earning securities. Aqua St. No. 3-R at 8.

GSA's contractual warranties contained in the APA.

Finally, in the event that the Commission somehow determines to approve the proposed transaction under Sections 1102 and 1103, the OCA identified several conditions that are essential to mitigating ratepayer harm and to protecting the public interest and they should be adopted as part of such determination. The OCA's recommended conditions, which have not been adopted by Aqua<sup>2</sup>, include that Aqua should be required to (1) obtain all missing easements and property rights prior to closing the Transaction and including the GSA system into its rate base; (2) separately identify and categorize Transaction costs in its next rate case; (3) increase its hardship funding by \$50,000 for the next five years; (4) amend its Long Term Infrastructure Improvement Plan to include GSA and charge the GSA customers a Distribution System Improvement Charge (DSIC) once their capital projects are DSIC-financed; (5) revise its customer noticing to better reflect rate impact information through inclusion of additional and more realistic usage levels, and inclusion of impact from pending proposed acquisitions and the DSIC.

## V. REPLY ARGUMENT

### A. Section 1102 and 1103 - This Transaction Does Not Result in Net Affirmative Public Benefits

#### 1. Introduction

The OCA incorporates, by reference, the Introduction section of its Main Brief. OCA M.B. at 12.

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<sup>2</sup> The OCA's Main Brief identified conditions that Aqua has agreed to accept on pp. 44-45. These include Aqua's agreement to provide a separate cost of service study for GSA in its next rate case; its agreement to segregate acquired GSA employees from providing service to the Borough/GSA's stormwater operations; and its agreement to provide low-income programming information to acquired GSA customers and to track their program enrollment levels.

2. Fitness: Aqua’s Fitness and Benefits that Flow From it are Not Substantial Affirmative Public Benefits.

The OCA did not contest Aqua’s fitness as a certificated public utility. However, under *Cicero v. Pa. P.U.C.*, 300 A.3d 1106, 1120 (Pa. Cmwlth. Ct. 2023) (*Cicero*), *appeal docketed at* Nos. 568 MAL 2023, 569 MAL 2023, 570 MAL 2023 (June 14, 2024), Aqua is required to present evidence that any benefits which derive from its technical, managerial, or financial fitness provide a substantial benefit over the fitness of the acquired utility. *Cicero*, 300 A.3d at 1119. As discussed below, Aqua has not provided evidence sufficient to prove that the approval of the instant Application would create a substantial improvement for GSA customers over the *status quo*. As discussed fully below, in many cases, Aqua inappropriately sought to convert fitness-based claims into public benefits.

3. Substantial Affirmative Public Benefits: There are no Substantial Affirmative Public Benefits Resulting from this Transaction

a. The Purported Public Benefits for GSA are Unsupported and Largely Predicated Upon Unsupported Assumptions and Contradicted Claims.

While GSA customers may receive a de minimis public benefit from the Transaction, mainly in the form of access to a customer assistance program that would be vital to mitigating the harmful rate impact imposed by this Transaction, most other claimed benefits are fitness-related claims, or they are contradicted in the record. The clear and certain rate detriments that await GSA customers far outweigh the benefits that Aqua, and in some cases, GSA, alleges will materialize. For purposes of providing the Commission with a full analysis, the OCA issues a record-based reply to purported substantial affirmative public benefits alleged in Aqua and GSA’s Main Brief and their claims do not withstand scrutiny.

i. Claimed Policy-Based Benefits

(a) Encouraging Regionalization

In its Main Brief, Aqua argues that the Transaction will provide a public benefit in the form of regionalization and consolidation because acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Aqua M.B. at 14. Aqua cites to no record evidence specific to this transaction that would support that its acquisition of customers is a per se good in support of regionalization. Any efficiencies that may materialize from Aqua owning the GSA system are rooted in Aqua's size and underlying technical, managerial, and financial fitness. While Aqua's size and capabilities are relevant to a determination that Aqua is fit to operate the GSA system, they are not relevant to a determination of an affirmative public benefit.

Despite Aqua's attempts to blur the line, the law recognizes a clear line of demarcation between fitness and affirmative public benefit determinations. The Commonwealth Court has held that "a determination that a utility is fit to provide the proposed service is separate from the determination that the transaction will result in affirmative public benefits that outweigh the harms thereof." [\*Cicero v. Pa. PUC\*, 300 A.3d 1106, 1119 \(Pa. Cmwlth. Ct. 2023\)](#) (*Cicero*). Accordingly, Aqua's claimed public benefit of regionalization, fails because it is unsupported by the record and is offered outside its appropriate context, fitness. It is inappropriate in the context of a public benefit determination absent specific showing that there are fact-based, transaction-specific benefits from the consolidation and regionalization.

(b) Honoring the GSA Board's Decision to Sell

Both GSA and Aqua conflate the GSA Board's decision to sell the GSA system and exit the wastewater business with an affirmative public benefit. GSA M.B. at 12; Aqua M.B. at 20. To

support its position, GSA argues that “GSA Board Members engaged in a very extensive and thorough investigation of the benefits of keeping its System and the benefits of selling their System. It was their conclusion that there were no benefits to keeping their System.” GSA M.B. at 12. According to GSA, the “flipside of an ‘affirmative public’ benefit is the reality of an ‘affirmative public detriment’ to keeping the System.” *Id.* For Aqua’s part, Aqua simply claims that “the Borough no longer desires to be in the utility business.” Aqua M.B. at 20.

At the outset, the notion that GSA’s business decision to sell its system is somehow an affirmative public benefit must be rejected. While it may be true that GSA wishes to sell its system to Aqua, its desire to do so does not confer a benefit upon the public. Desire to sell is a business decision, not a public benefit. To the contrary, GSA’s business decision to sell to Aqua under the terms of the Transaction will have detrimental consequences to the public that far outweigh any benefits. OCA M.B. at 35-38. Beyond this, Aqua’s claim that the Borough desires to exit the utility business will not be accomplished in this case, even if the Transaction were to be approved without any modification.

(c) PUC Oversight

In their Main Briefs, both Aqua and GSA generally argue that, if acquired, GSA customers would benefit from the Commission’s regulatory oversight. GSA M.B. at 6, 10; Aqua M.B. at 19. This argument must fail for a few reasons. First, the argument is not supported by the record as neither Aqua nor GSA identify record-based facts to support the Commission’s regulatory oversight as an affirmative public benefit. Additionally, regulatory oversight alone is certainly not enough to be meet the *City of York* standard, because if it were certificates of public convenience in acquisition cases would be a matter of entitlement. Moreover, existing law does not support this argument given that under the Municipal Authorities Act, the General Assembly allows municipal

authorities to operate without Commission oversight. Finally, GSA's Main Brief dispels the notion that it is operating in a way that somehow requires the Commission's regulatory oversight. *See* GSA M.B. at 8. GSA indicates that it is currently providing safe and reliable service to its customers. Therefore, regulatory oversight is not an affirmative public benefit.

ii. Capital Improvements

In the record of this case, GSA and Aqua have made contradictory claims about required capital improvements for the GSA system, and those contradictions exist in both parties' Main Briefs. For GSA's part, it claims that its system will require \$45 million in capital improvements due to its aging system needing significant upgrades. GSA M.B. at 6, 11-12. Aqua makes similar claims, arguing that through the Transaction, GSA will benefit from avoiding \$46 million in capital spending, and a resultant rate increase of 200%. Aqua M.B. at 20. However, a review of the record demonstrates that the \$46 million spend and resulting rate increase are not inevitabilities.

First, the \$46 million spend to upgrade the GSA wastewater treatment plan is predicated upon a capital spending plan that GSA adopted before Aqua identified a less expensive upgrade plan that would save GSA \$20 million. Aqua St. No. 2-R at 8. While OCA witness Hoover recognized that Aqua's identification of a more cost-effective treatment plant upgrade could benefit GSA, it means that \$46 million is no longer the starting point for the cost of upgrading the GSA system. OCA St. 1-SR at 8-9. To be sure, Aqua witness Bubel does not contest the OCA's position that GSA could now adopt the cost-saving measure to similarly reduce the projected \$46 million spend by \$20 million; instead, he simply opines that OCA "misses the point." Aqua St. No. 2-R at 10-11. The OCA respectfully submits that it did not miss the point; on the contrary, Aqua and GSA are missing it by advancing a comparison that relies upon a \$46 million capital improvement cost that is no longer supported by the record.

An additional defect of Aqua's position is that it fails to admit that the \$20 million savings it touts will not convey rate savings. Instead of capturing the \$20 million in savings for ratepayers to mitigate the rate impact of the Transaction, Aqua instead will still spend it, as it now intends to devote that \$20 million in savings to other capital expenditures during the projected 10-year timeframe, devouring any savings benefits. OCA St. 1 at 8-9.

Another way that Aqua and GSA skew the impact of capital spending is by adopting an arbitrary 10-year timeline to completely upgrade the entire GSA system. However, GSA has not performed its own audit of GSA's facilities and it will not do so until after the Transaction closes. Tr. at 135-136. Aqua lacks direct knowledge of the GSA's system needs (apart from any due diligence that it is conducting on the system as part of the Transaction). Aqua also does not tie its spending level and projected timeline to any demonstrated environmental compliance directive or other regulatory requirement. OCA M.B. at 21; *See* Aqua St. No. 2 at 10. From a practical perspective, OCA witness Hoover explained that the treatment plant and collection system projects that Aqua identified are the types of projects that a wastewater system undertakes in its normal course of business. OCA St. 1SR at 8. Capital projects need not all be done immediately nor in the short-term but on an as-need basis (whether that be in a proactive or reactive nature). OCA St. 1 SR at 8. No regulatory urgency for Aqua's planned upgrades and projected timeline was identified in the record, and GSA indicated that it has been able to replace all infrastructure within the system and make all necessary upgrades within the past 10 years. OCA St. 1 at 14; OCA Exh. CMH-6. Thus, Aqua and GSA's argument that their arbitrary 10-year timeline to overhaul the GSA system and the resulting significant rate increase is unsupported.

The record demonstrates that the rate impacts that GSA and Aqua allege are built upon unsupported and incomplete information. The fallacies of the capital improvement-based rate

impacts that Aqua and GSA allege are further compounded in that neither GSA nor Aqua attempt to include any projection of Aqua rate increases that would be approved over the course of the same 10-year period. OCA M.B. at 17. Those rate impacts also do not include the rate increases that may be shifted to former GSA customers from the acquisitions of other systems through Section 1329 fair market value and/or Section 1327 purchase price premiums as has happened to other former municipal system customers acquired under Section 1329. *Id.*; OCA St. 1 SR at 3. The rate projections also ignore Aqua's previously stated intent to file for yet another base rate case in 2025, and its propensity to proposed cost shifting under Act 11. *See* OCA Exh. CMH-4 at p. 14. Because none of these pending impacts are acknowledged in the capital spending impact claims presented in GSA and Aqua's Main Briefs, which reply on an unsupported project timeline without any underlying basis, the analysis these parties present is simply insufficient to support a determination of affirmative public benefits.

iii. Environmental and Regulatory Compliance

The appropriate starting point and ending point for Aqua and GSA's claims regarding purported environmental compliance issues for the GSA system is with recognition of the fact that GSA is currently in environmental compliance, with one lone exception that directly resulted from this Transaction. Aqua St. No. 2 at 16; OCA St. 1 at 15; OCA St. 1 SR at 9. As the OCA explained in its Main Brief, during the pendency of this case, GSA received a notice of breach from the PA Department of Environmental Protection (DEP) that resulted directly from GSA's failure to move forward under its Consent Order and Agreement (COA) with DEP. OCA St. 1 SR at 9; OCA Exh. CMH-2SR. Aqua provided testimony to indicate that GSA did not move forward with the COA obligation *because it entered the APA with Aqua*. Aqua St. No. 2-R at 40; OCA M.B. at 39-40. Put another way, GSA was in compliance with its obligations under the COA with the PA DEP before

it transacted with Aqua, but it is now out of compliance directly because it entered the APA with Aqua. OCA M.B. at 40. There is no record evidence in this proceeding indicating that GSA is unable to comply with the COA if required to do so.

No environmental compliance arguments raised by GSA or Aqua substantiate affirmative public benefits on the basis of environmental compliance. Aqua argues that GSA is in breach of a COA with PA DEP, but as the OCA demonstrated above, that argument is disingenuous because it ignores that the Transaction is the direct cause of the breach. Similarly, Aqua relies upon GSA's past environmental issues, which have since been remedied and no longer exist, to support environment compliance benefits that will not materialize because GSA is presently in compliance. Specifically, Aqua argues that in the past, GSA 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. Aqua M.B. at 31. While the OCA does not dispute that GSA entered into a COA to remedy issues that Aqua identified, the OCA does dispute that any past compliance issues are relevant. There is no evidence that such compliance issues exist today, as GSA indicates that it is currently providing safe and reliable service to its customers. GSA M.B. at 8. The undisputed evidence indicates that the sole PA DEP compliance issue extant for GSA today resulted directly from the Transaction, and this is a public detriment, not a public benefit.

As recognized in the OCA's Main Brief, Aqua does attempt to inject its own unilaterally-determined environmental compliance issues into this case by identifying a "significant safety concern at GSA (**BEGIN CONFIDENTIAL**) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**CONFIDENTIAL)** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **(END CONFIDENTIAL)** were somehow

determinative that affirmative public benefits could be assumed to materialize under Aqua’s plan.

There is no determination by any regulatory agency that GSA is in non-compliance at this time,

and Aqua admits that GSA has a current **(BEGIN CONFIDENTIAL)** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **(END CONFIDENTIAL)**, this

relies upon the argument that Aqua can do it better. It is important to note that Aqua’s claims about

doing it better do not compare apples to apples, because, as a small municipal utility, GSA currently

uses **(BEGIN CONFIDENTIAL)** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **(END CONFIDENTIAL)** See OCA M.B. at 31; Aqua St. No. 1 at 21-26.

Accordingly, Aqua’s claimed remediation of “significant safety concerns” with GSA’s system as

an affirmative public benefit do not withstand scrutiny and they should be rejected.

iv. Operational Issues

(a) Technical Issues

Aqua claims that the GSA systems has operational issues that will be addressed under Aqua’s ownership, constituting substantial public benefits, including “significant inflow and

infiltration” (I&I) which Aqua will address with allocated funds for sewer main rehabilitation and replacement to address. Aqua M.B. at 17. Additionally, Aqua claims that GSA does not have a laboratory management system and that after it takes 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. Aqua M.B. at 31. The OCA submits that the record does not support a need for Aqua’s operational intervention for the GSA system in the manner proposed.

First, Aqua’s claims regarding its planned remediation of GSA’s I&I issues do not comport with the facts of record. More specifically, Aqua has not completed an investigation of GSA’s I&I yet as would be necessary for it to have developed a plan to address the alleged I&I issue. During the evidentiary hearing in this case, Aqua witness Bubel admitted that Aqua has not conducted its own audit of the GSA system and that it will not do so until after close of the Transaction. Tr. at 135-136. Additionally, review of Aqua witness Bubel’s rebuttal testimony demonstrates that Aqua will conduct flow metering with GSA’s collection system to identify areas with drainage basins exhibiting significant I&I and will prioritize this work to maximize reduction of I&I. Aqua St. No. 2-R at 2. Aqua’s testimony indicates a future plan to gauge the existence of I&I and its underlying sources, not knowledge of GSA’s I&I issues and a comprehensive plan to address them. Thus, at present, Aqua’s “plan” is a statement of future intent to conduct an investigation.. This may be prudent management, but there is no record indication that GSA is incapable of addressing I&I that needs to be addressed. Instead, the record indicates that GSA has been able to replace infrastructure within the system and to make all necessary upgrades to the system within the past 10 years. OCA St. 1 at 14; OCA Exh. CMH-6. Thus, there is no fact-based support for the notion

that Aqua has a plan for addressing GSA's I&I or that GSA is unable to address any I&I issues that may exist.

Additionally, Aqua's claims about GSA's laboratory management do not appear to be supported by any regulatorily-required basis for GSA to implement Aqua's LIMS. Neither GSA nor Aqua presented evidence to support any notion that GSA is somehow in noncompliance with local, state, or federal regulations for failing to have a laboratory management system that meets Aqua's standards. Like many of the other fitness-based claims that Aqua attempts to convert into public benefits in this case, Aqua's position that it can "do it better" does not somehow make GSA's operations deficient. OCA witness Hoover explanation of why Aqua "do it better" arguments do not equate to substantial affirmative public benefits is pertinent here:

Essentially Mr. Martin and other Aqua witnesses attempt to find "deficiencies" if a smaller system like GSA does not do everything at the same level or to the same extent as a large company like Aqua. Under this approach, elevating Aqua's fitness in this way subsumes the substantial public benefits analysis and fails to meet the legal standard required of this transaction. Moreover, taking GSA's planning processes to Aqua's level would require GSA customers to pay more than 2x more for that at closing and even higher rates going forward. 31

OCA St. 1 SR at 7.

Here, Aqua compares GSA's compliant municipal operations to its own investor-owned operations, and it concludes that its LIMS is superior and would automatically confer an affirmative public benefit. Aqua again conflates fitness with public benefits and there is no record-based need for GSA to incur a significant rate impact in order to implement Aqua's LIMS at premium pricing.

(b) Cybersecurity

No evidence exists to support that GSA has violated any cybersecurity regulations. OCA St. 1 at 26; Exh. CMH-16. Neither Aqua nor GSA dispute this fact. For GSA, it generally claims that the Transaction would improve security of information systems against cyber-attacks targeted

at “municipal-owned utilities” without identifying any need-based improvements that are specific to the GSA system. GSA M.B. at 10. Aqua’s claims include that **(BEGIN CONFIDENTIAL)**

[REDACTED]

[REDACTED] **(END CONFIDENTIAL)**. OCA St. 1

at 28.

Thus, the notion that “Aqua can do it better” and that it may be willing to provide GSA with the enumerated cybersecurity protocols, does not support a determination that GSA is required to undertake these protocols. Instead, Aqua’s proposed improvements appear to be

designed to make GSA's system consistent with its own processes, which does not necessarily confer a benefit. In some cases, it will produce a detriment. OCA M.B. at 27.

Finally, assuming, for argument's sake, that GSA is somehow required to undertake the actions Aqua plans to undertake to enhance cybersecurity, the record indicates that tools are available to assist GSA in doing so at a reduced cost. Specifically, OCA identified opportunities for GSA to pursue federal or state grant or loan funding, such as PENNVEST funding, for projects that improve safety and bring systems into statutory and regulatory compliance. OCA St. 1 at 29. Eligible projects could include building out cybersecurity infrastructure. *Id.* citing 25 Pa. Code §§ 963.5, 963.8. In addition to PENNVEST funding availability, the OCA identified the existence of a significant number of free programs which are specifically designed to assist small- and medium-sized wastewater systems with upgrading their cybersecurity infrastructure without requiring substantial funding or technical expertise.

Despite identified opportunities, GSA indicated that it has not pursued them. OCA Exh. CMH-21. However, there is no evidence in the record demonstrating that GSA *could not* pursue these remedies and, as such, as the Commonwealth Court found in *Cicero* it is not a benefit "to provide for upgrades that [the Authority] is equally capable of providing." *Cicero*, 300 A.3d at 1119. Accordingly, ratepayers should not should the burden of this Transaction in the name of cybersecurity because the claimed affirmative public benefits are not actual benefits under the facts of this case.

(c) Physical Security and Safety

In its Main Brief, the OCA explained that the record indicates that GSA has never been informed by any local, state, or federal authority that is must improve its physical security in order to maintain regulatory compliance with the law. OCA M.B. at 30; OCA St. 1 at 26; OCA Exh.

CMH-16. No evidence exists to support any determination that GSA has been cited by any local, state or federal entity for any alleged deficiencies that Aqua claims exist, and in their Main Briefs, neither Aqua nor GSA refute this fact. Instead, Aqua makes a litany of claims in an attempt to substantiate safety and security public benefits. The stretch of these claims is telling, as Aqua relies upon past GSA compliance issues, to support a need for Aqua's ownership today. See Aqua M.B. at 33. Aqua's Main Brief offers the same criticisms of the GSA system that it alleged during the litigation phase of this case, which are mainly predicated upon claims lack of **(BEGIN CONFIDENTIAL)** [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] **(END CONFIDENTIAL)**. Aqua Main Brief at 17.

In totality, nothing in Aqua's Main Brief substantiates record-based support for any determination that GSA is required to undertake these protocols, or even that if it were required, that it could not do so. Instead, Aqua's proposed improvements appear to be designed to make GSA's system consistent with its own processes, which does not necessarily confer a benefit. OCA St. 1 at 28. Aqua's position that it can "do it better" does not somehow make GSA's operations deficient. This is especially true here where GSA has not only failed to allege any compliance issues that have resulted from its current operations, but where GSA indicates that is currently providing safe and reliable service to its customers. GSA M.B. at 8. Accordingly, Aqua's claims regarding these benefits, which are essentially the same "Aqua can do it better" fitness-determinative arguments that it has made in many contexts throughout this case, are not determinative of public benefits.

(d) Aqua's Expertise

GSA points to Aqua's technical and financial fitness as affirmative public benefits of the Transaction. GSA M.B. at 6, 10. Similarly, Aqua's points to its fitness to provide safe, reliable and quality wastewater service for GSA, as well as is claimed great track record of acquiring and improving 15 wastewater systems over the past 10 years, as affirmative public benefits of the Transaction. Aqua M.B. at 13-14. These claims are irrelevant because no party has disputed Aqua's fitness to acquire GSA. Beyond this, case law make it clear that an acquiring utility's fitness alone cannot establish substantial benefits. Instead, purported benefits must be specific to the transaction, even if aspirational, to be able to outweigh any known or foreseeable harms which would result from the transaction. *Cicero*, 300 A.3d at 1119. According, Aqua and GSA's fitness-based public benefit claims are misplaced.

v. Customer Assistance Programs and Customer Service

GSA and Aqua argue that access to Aqua's customer assistance programming would be an affirmative public benefit for acquired GSA customers. GSA M.B. at 6,10; Aqua M.B. at 16, 26. Additionally, GSA and Aqua claim that additional public benefits will ensure to GSA customers through Aqua's customer service and operational functions that included expanded hours, enhanced bill payment options and customer education. The OCA submits that neither of these claims withstand record-based scrutiny.

At the outset, the OCA has agreed that GSA customers' access to Aqua's customer assistance programming will be important, but its importance exists in that the assistance will provide at least some harm mitigation. OCA M.B. at 37. To be sure, there are 1,766 individuals in Greenville that are below 200% of the federal poverty limit (FPL) and 335 families in Greenville that are below 200% of the FPL, meaning that many families may benefit from assistance. OCA

St. 1 at 29; OCA Exh. CMH-22. GSA will face higher bills under Aqua's ownership. OCA St. 1 at 30. Because higher rates will likely increase ratepayers' need for CAP assistance, benefits that flow from GSA's customers' access to CAP are more akin to band aids than benefits, as they address a need that will either be created by, or exacerbated by, the rate consequences of the Transaction. OCA M.B. at 36-37. Neither Aqua nor GSA address the significant rate impact that GSA customers will soon bear under the Transaction as part of their assessments that GSA customers will benefit from low-income assistance, and there is no evidence to support any notion that Aqua's programming will somehow meet the need for all customers who may struggle to afford service.

Additionally, claimed customer service benefits omit key facts. First, as a direct consequence of this Transaction, GSA customer will no longer be able to pay their wastewater bills in person as they may do now. OCA St. 1 at 24; OCA Exh. CMH-12. In lieu of the ability to make in-person payments at no cost, the sole in-person payments available under Aqua's ownership will rely upon retailers with Western Union payment location centers, whereby Western Union would charge customers a fee for such service. *See* OCA Exh. CMH-12. Beyond this, there do not appear to be any advantages over the GSA's current billing system under Aqua's ownership. While the OCA does agree that there may be incremental benefits, including customers' access to more information through real-time notifications, such benefits not only will come at a cost that far outweighs any benefit, but they are also benefits that will materialize simply because of Aqua's larger size and fitness, rendering the outside of the context of any public benefit determination.

vi. Tax Revenue and Sale Proceeds

According to GSA and Aqua, a key public benefit of the Transaction will ensure to its community in the form of municipal, county, and tax revenue that GSA will receive because the system will be placed on the tax rolls. GSA M.B. at 6, 9; Aqua M.B. at 20. GSA also claims that

the Transaction proceeds will provide an infusion of capital into Borough to jumpstart economic development into a community that has recently created a Redevelopment Authority. GSA M.B. at 6. Aqua makes claims that the sale proceeds will benefit the community. Aqua hypothesizes that the benefits will 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 on administration expenses, and avoid their own projected 200% rate increase as a result of a \$46 million<sup>3</sup> investment in their treatment assets. Aqua M.B. at 27. Even if these claimed benefits were to materialize, which evidence now refutes, they still would not be determinative of affirmative public benefits because they are outweighed by detriments for both existing and acquired customers.

First, the notion that tax revenues for the Borough of Greenville somehow produce an affirmative public benefit must be rejected. To accept it as a benefit would requiring ignoring the detriment imposed by the fact that the tax revenues will be paid by Aqua's existing and future customers in the form of higher rates. If acquired, GSA customers would soon find themselves in a similar situation, when their Aqua rates pay taxes in additional jurisdictions where acquisitions are made. This Ponzi scheme-like approach to public benefits may produce a temporary benefit to GSA customers to the detriment of Aqua's customers, but the cycle of acquisitions will subsume any such benefits producing a net-negative result for all impacted parties, which is the antithesis of affirmative public benefits.

Beyond this, all of the speculative sale proceed benefits that GSA and Aqua allege, which range from economic development and interest-bearing investments are contradicted in the record. During the evidentiary hearing, it became clear that the paper-based claims about GSA's sale

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<sup>3</sup> As the OCA explained above, the 200% rate increase claim does not withstand scrutiny because it is predicated upon flawed assumptions and relies upon an artificial timeline and improvements that are no longer planned.

proceeds conflict with reality. At the hearing, Aqua witness Packer admitted that he was unaware of and had not received any direction from the authority or the borough as to how the proceeds will be used. Tr. at 159-160. For its part, GSA directly dispelled any notion that sales proceeds will further economic development or ensure to customers by indicating at the hearing that no such benefits. More specifically, GSA's attorney indicated as follows:

This is Jim Douglas on behalf of the Sanitary Authority and the [B]orough of Greenville. And maybe it was a misstatement, but the characterization that the borough would be in better financial position is not accurate as stated. These monies will remain in the Sanitary Authority, which also still runs the stormwater. So the borough is not actually receiving these funds at this time.

Tr. at 155-156.

Accordingly, there is no evidence in the record, let alone substantial evidence for the notion that the Borough can expect to receive the sale proceed benefits that Aqua and GSA allege. Even if the claimed sale proceed benefits were to materialize, they still would not be sufficient to overcome the demonstrable harm that would be imposed by the Transaction, including the more than \$2 million in net rate harm waiting in the wings and likely to grow larger. Yet, the public detriment column has expanded even further here where Aqua and GSA claimed that GSA could at least benefit from sale proceeds that the record now indicates will no longer flow to the community.

b. The Purported Public Benefits for Existing Aqua Customers are De Minimis, at Best, and Far Outweighed by Detriments

Aqua and GSA's Main Briefs both acknowledge the *City of York* case that a transaction must "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way"; however, each these parties failed to give due consideration to the fact that "public" extends beyond GSA customers and includes Aqua's current customers. *See* Aqua M. B. at 8-9; GSA M.B. at 9. The lack of meaningful public benefits for Aqua's customers are well-

exemplified in the fact that GSA fails to allege any benefits for Aqua’s existing customers, and that the benefits Aqua alleges are either de minimis or they rely upon the notion that it is too early to worry about the pending detrimental rate impact today. As explained below, none of the purported benefits, either on their own or in combination, are substantial public benefits, but while Aqua and GSA conveniently ignore them, significant public detriments will exist.

i. Economies of Scale/Lower Costs Per Customer

Aqua argues that existing customers will benefit from an approximate 4% increase in Aqua’s customer base. Aqua M.B. at 20. According to Aqua, the 4% increase means that its existing customer base will benefit because future infrastructure investments across the state will be shared at a lower incremental cost per customer. Aqua M.B. at 20. Aqua alleges that by increasing its customer base, it has lowered its revenue requirement per customer from \$2,075 for non-fair market value systems in its last rate case to \$1,600 per customer for fair-market value customers. Aqua makes similar additional claims, including that customers are benefitting from acquisitions because cost of service requirements have decreased on a “per customer served basis” by 30%, and that GSA’s revenue requirement deficient is lower than other systems. *Id* at 21.

At the outset, Aqua’s claims fail because even if they were accurate (they are not) they are not unique to this Transaction. In order to qualify as public benefits of a transaction, the alleged benefits must be specific to the transaction in question. *Cicero v. Pa. P.U.C.*, 300 A.3d 1106, 1120 (Pa. Cmwlth. Ct. 2023) (*Cicero*), appeal docketed at Nos. 568 MAL 2023, 569 MAL 2023, 570 MAL 2023 (June 14, 2024). Thus, Aqua’s claims of customers benefits in this case, which reply upon the claimed costs per customer arising out of multiple previous acquisitions that are not specific to this transaction, would not be viable public benefits even if they were not faulty (they are demonstrably faulty).

Beyond reliance upon other acquisitions in its quest to support a public benefit in this case, the claimed cost per customer benefits that Aqua rely upon faulty assumptions and are defective in multiple respects when more closely examined. OCA M.B. at 24-25. Acceptance of Aqua's claims would reply upon acceptance of the following six defects underlying Aqua's claims:

1. Projected economies of scale that fail to identify an underlying timeframe for when these economies will materialize;
2. Complete disregard of any cost shifting between wastewater and water customers may materialize, especially under Aqua's pending acquisition of the Greenville Water Authority;
3. Failure to identify data points at the time of acquisition or following the conclusion of capital expenditures, resulting in the potential inclusion of anticipated capital expenditures, which could affect the weighted cost per connection;
4. Complete disregard for dramatic rate increases that acquired systems must receive in order to have consolidated rates. As an example, the average GSA customer currently pays around \$23 per month (Greenville St. 1 at 13). Aqua wastewater customers in Rate Zone 1 currently pay, on average, \$94.62 (Aqua Notice of Proposed Rate Increase, R-2024-3047824, 1-WW). Aqua Rate Zone 1 wastewater customers currently pay a monthly fixed customer charge of \$47.35, or over twice a GSA customer's average bill, *before the inclusion of any usage charges* (Tariff Sewer-Pa. P.U.C. No. 3, p. 10.1.1).
5. Complete disregard for the level of rate increases borne by existing customer to cover the revenue deficiencies. As an example, In Aqua's 2021 rate case, it included 5 acquisitions made pursuant to fair market value. Aqua proposed an overall increase in annual revenues of \$96.99 million, or 18% increase in revenues. Aqua proposed to shift \$20.8 million from wastewater to water customers under Section 1311(c). Although the Commission did not adopt Aqua's original proposal, it approved shifting \$11.2 million to water customers of the overall increase of \$70.393 million. *Pa. PUC v. Aqua Pa., Inc.*, Docket Nos. R- 2021-3027385 (water) and R-2021-3027386 (wastewater) (Order entered May 12, 2022) at Table Act 11.
6. Complete disregard for the fact that Aqua's pending 2024 rate case includes of three acquisitions (Lower Makefield, East Whiteland, and Shenandoah Water) with greater than projected revenue shortfalls, which are likely to grow.

In order to support Aqua's cost per customer claims, one would have to overlook all of the above concerns to accept Aqua's claims. No public benefit for existing customers has been or can be substantiated based on the record in this case that is unique to this transaction.

ii. Lack of Adverse Impact

Aqua also asserts that a benefit to existing customers is that they will not be adversely impacted by the Transaction because they will not experience an immediate rate impact. Aqua M.B. at 21. While it may be true that customers' rates will not be impacted immediately, the fact that Aqua views the temporary reprieve from the impending rate impact as a benefit exemplifies the reality that no public benefits will be produced. Unfortunately, as the record lays bare, significant detriments will be produced in the form of increased rates for customers.

While the \$2,223,000 deficiency that Aqua projects for its operation of the GSA system is already substantial, it will likely increase, as OCA has demonstrated that Aqua's projections of revenue deficiencies for recently acquired systems have been understated by as much as almost \$2 million. OCA St. SR at 6. Taking into account Aqua's historic under projection of revenue deficiencies for acquired systems, it is likely that Aqua's existing customer base will be subject to absorbing costs that are not yet quantifiable and which may be substantial. OCA M.B. at 12-13. History proves that existing customers have already borne significant rate consequences under Aqua's acquisition scheme, and those consequences will continue to grow in the near future, and especially for Aqua water customers.

More specifically, Aqua's 2021 rate case included 5 acquisitions made pursuant to fair market value. Although the Commission did not adopt Aqua's original cost-shifting proposal of \$20.8 million of wastewater revenue requirement to water customers, it approved shifting \$11.2 million to water customers of the overall increase of \$70.393 million. *Pa. PUC v. Aqua Pa., Inc.*,

Docket Nos. R- 2021-3027385 (water) and R-2021-3027386 (wastewater) (Order entered May 12, 2022) at Table Act 11. OCA St. 10. Now, in its pending base rate cases, Aqua proposes to include three more acquisitions valued using fair market value. *Pa. PUC v. Aqua Pennsylvania, Inc. and Aqua Pennsylvania Wastewater, Inc*, R-2024-3047822 et al. All three acquisitions (Lower Makefield, East Whiteland, and Shenandoah Water) have even greater annual revenue shortfalls in this first rate case compared to the revenue deficiencies at closing. The shortfalls for Lower Makefield, East Whiteland, and Shenandoah Water are \$1.4 million, \$698,708, and \$1.98 million, respectively, and they are likely to continue to grow. *Id.* at 10-11; *See also* OCA Exhibit CMH-1SR; OCA M.B. at 13-14. Therefore, as it has a demonstrated propensity to do, it is likely that Aqua will seek to shift at least some of GSA's \$2.23 million operating revenue deficiency to other customers, and that amount is likely understated. The notion that the delay of the pending rate impact is somehow an affirmative public benefit is absurd and it must be rejected on its face.

c. There Are No Net Benefits to the Proposed Transaction.

After weighing Aqua's claims of substantial benefits against the known or foreseeable harms which would result from the proposed transaction, it is clear that there is no substantial affirmative public benefit. Specifically, to the extent that Aqua's claims regarding economic, environmental, and regionalization benefits appear more in line with Aqua's fitness as a large, investor-owned utility and application of standards that apply to Aqua but not to GSA. Where an Application under Sections 1102 and 1103 of the Public Utility Code relies on benefits which flow from the acquiring utility's fitness – as opposed to benefits which arise specifically from the transaction – those benefits cannot be considered substantial. *Cicero*, 300 A.3d at 1119. Instead, purported benefits must be specific to the transaction, even if aspirational, to be able to outweigh any known or foreseeable harms which would result from the transaction. *Id.* This Transaction

produces the opposite outcome, as known and foreseeable harms outweigh the few benefits that may materialize and which are contingent upon significant rate increases that are likely to exceed Aqua’s representation of “worst-case scenario” rates. The contradictory claims in Aqua and GSA’s respective cases about both the condition of the GSA system and the benefits from sale proceeds, as well as the recognition that Aqua intends to file another base rate case in 2025, only serves to further expand the public detriments that already far outweighed the aspirational and de minimis benefits that could be expected from this Transaction.

#### 4. Conclusion

When considering the long-term rate impact of the proposed transaction, to both Aqua and GSA customers, Aqua has not provided evidentiary support to establish that net benefits will result. To the extent that Aqua has alleged any benefits exist – with the exception of Aqua’s ability to provide a low-income discount program – those benefits result entirely from Aqua’s fitness, are not specific to this transaction, and do not differ substantially from the service currently provided by the GSA. As a result, Aqua has failed to meet its burden of its proof under Section 1103 of the Public Utility Code, as interpreted by the Commonwealth and Supreme Courts, to establish that net benefits would result from the proposed transaction. Where a utility is unable to establish a net benefit would result from an Application under Section 1102, the Commission should reject that Application. *City of York*, 295 A.2d at 141. Therefore, the OCA respectfully requests that Aqua’s Application be denied.

#### **B. Section 1329**

##### 1. Introduction

The OCA incorporates, by reference, the Section 1329 Introduction section of its Main Brief. OCA M.B. at 40-41. The OCA also avers that the Commission need not reach any conclusion

of the appropriate ratemaking ratebase to put into rates because, even assuming that there are no adjustments to the UVE appraisals that would reduce the average of the two below the purchase price, there are no affirmative public benefits that result from this transaction.

## 2. Legal Principles

The OCA incorporates, by reference, the Section 1329 Legal Principles section of its Main Brief. OCA M.B. at 41-42. The OCA wishes to expand only upon one matter related the Applicant's obligations, which is that Aqua, as the Applicant must provide to the Commission copies of the appraisals, the purchase price, the ratemaking rate base, the closing costs, and, if applicable, a tariff and rate stabilization plan. 66 Pa. C.S. § 1329(d)(1). Importantly, as a recommended condition of approval, the OSBA has argued that Aqua ought to be required to submit either a "multi-year rate plan" or a "rate stabilization plan." See OSBA M.B. at 5; OSBA St. No. 1 at 19. The OCA notes that "rate stabilization plan" is a term of art within the confines of Section 1329, and it is defined as "A plan that will hold rates constant or phase rates in over a period of time after the next base rate case." 66 Pa. C.S. § 1329(g). Aqua has not proposed such a plan, and for that reason, parties have not had the benefit of the materials that the Commission requires of applicants who propose a rate stabilization plan. Such materials would have included include testimony, schedules, and electronic work papers to established the basis for the plan and its impact on existing customers as required by the Commission. *Final Implementation Order for Section 1329*, M-2016-2543193, p. 25 (Order entered October 27, 2016). Because Aqua did not propose a rate stabilization plan, the record does not contain supporting materials for such a plan nor the ability to investigate the customer impact of any plan that may materialize.

3. Aqua's Application

As discussed in OCA's Main Brief, although the OCA did not recommend any adjustments to the UVEs' appraisals in this case, it contests Aqua's Application because it does not meet the threshold requirements of demonstrating an affirmative public benefit pursuant to the requirements of Section 1102 and 1103 which warrant rejection of the Application. Accordingly, the Commission should not approve Aqua's Application nor the addition of the \$18 million purchase price as GSA's ratemaking rate base under Section 1329.

a. Fair Market Value for Ratemaking Purposes

The OCA did not offer adjustments to the fair market value appraisals of the GSA's system in this case.

4. Conclusion

The fact that the OCA did not offer adjustments to the UVEs fair market value appraisals should not be construed as OCA's endorsement for including a ratemaking rate base value of \$18 million for the GSA system in Aqua's next rate case. On the contrary, the OCA's position is that the Transaction is not in the public interest for failure to provide any affirmative public benefit. Therefore, OCA expressly opposes inclusion of an \$18 million ratemaking rate base for the GSA system into future Aqua rates.

**C. Recommended Conditions<sup>4</sup>**

The OCA's recommended conditions of approval for the Transaction were floor-level protections necessary to mitigate the harm that ratepayers would face if Aqua's Application were to be approved. The harms include rate consequences, but also extend beyond that, and include the possibility that Aqua's customers could be subject paying for property that Aqua will not actually own, and to having planned infrastructure improvement projects re-prioritized to account for the GSA system. As explained below, Aqua's opposition to the OCA's recommended conditions are without merit. The OCA also recognizes that, for the first time, and in one conclusory sentence without any underlying support, GSA indicates blanket opposition to all recommended conditions of approval. GSA MB at 14-15. Because GSA provides no basis for, or substance to, its opposition, the OCA cannot reply to it; however, as demonstrated in OCA's reply to Aqua, all recommended conditions comport with the Code's recognition that just and reasonable conditions may be imposed. See 66 Pa.C.S. § 1103(a).

1. Conditions that Aqua Opposes, But Are Necessary to Protect Ratepayers

a. Missing Easements and Other Property Rights

In their Main Briefs, neither Aqua nor GSA refute the fact that there are currently 119 missing easements for the GSA system, and neither of these parties bother to provide any update on when such easements will be obtained. No plan to acquire the easements is set forth, as GSA is completely silent on this issue, and Aqua confines its discussion to arguing against the OCA's

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<sup>4</sup> In OCA's Main Brief, the OCA identified and supported conditions that Aqua agreed to accept as conditions of the Transaction. OCA M.B. at 44-45. These conditions include (1) Aqua's performance of a cost of service study for the GSA system; (2) the agreement not to have former GSA employees performing work or service related to the Borough of Greenville's Stormwater system; and (3) Aqua's agreement to provide low-income program information to acquired GSA customers and to track enrollment. OCA will not address those again here, but to the extent that GSA's blanket denial that any conditions ought to be attached to the transaction is intended to oppose these terms, OCA avers that such opposition is unsupported and inappropriate.

common-sense protections. See Aqua M.B. at 43-44. Aqua's claims that the OCA's conditions are unnecessary because (1) Aqua does not need to acquire the easements in order to complete work if required; (2) the UVEs only valued the easements at \$276 in total; and (3) GSA will be held responsible for the easements vis a vis the "escrow account" term of the APA. *Id.* Each of these claims come apart when examined with the facts in the record.

First, as OCA explained in its Main Brief, Aqua's claims that it can simply enter into an easement agreement whenever it needs to do so, even on an emergency basis, have no support behind them. OCA M.B. at 46. Putting aside the fact that Aqua's claims requires the Commission to assume that Aqua can quickly identify, contact, and successfully negotiate access with the owners of all 119 easements whenever the need may arise, Aqua provides no identification of the process for and timeframe of securing construction easements or obtaining an easement for an emergency. Aqua's attempts to swat away OCA's well-founded concerns are not built upon identifiable plans, timelines, or details that would be necessary to ensure that Aqua can perform essential service on all parts of the GSA system without incurring liability.

Additionally, Aqua makes much of the fact that the UVEs valued all missing easements at \$276 and attempts to conflate the fictional easement value into a conclusion that only \$276 is at issue. See Aqua M.B. at 43. The \$276 value is alleged to be assigned by the UVEs who made fair market value recommendations in this case. *Id.*, *citing* Aqua St. No. 6-R, at 3; Greenville St. No. 2-R, at 6. A closer review of the basis for Aqua's UVE determination indicates that a value of \$1 per easement was built into fair market value appraisals because it originated from the KLH Engineering assessment. Aqua St. 6-R at 3. The UVEs in this case relied upon the KLH Engineering Assessment's inventory and accuracy in determining their fair market valuations for this case. Aqua St. No. 6 at 12, 16; GSA St. No. 2 at 11-12.

Reliance upon the \$1 per easement value originating from the KLH Engineering assessment means that the UVEs relied an easement value based entirely upon the KLH's indication that "the cost of each easement was assumed to be \$1 at the time of acquisition<sup>5</sup>." Aqua Application, Exhibit D at 2. Aside from lacking any underlying support other than a single sentence from an engineering report, Aqua's claimed \$1 per easement value flies in the face of its APA, which, as explained below, contemplates a value of at least \$2,000 per easement. See Aqua M.B. at 43-44. Thus, the notion that missing easements would have only a \$276 impact upon the ratemaking rate case of the GSA assets is not just unsupported.

Finally, Aqua's claims regarding the APA providing a sufficient basis to negate the need for OCA's conditions are also without merit. To be sure, such claims amplify the OCA's concerns because they reveal that if the Transaction closes without the protection of OCA's conditions, that ratepayers would be at the mercy of a non-jurisdictional entity, GSA, to convey property that their rates are already paying for. Aqua points to the existence of an escrow account as set forth in the APA, as identified below:

For all of the Missing Easements listed on attached Schedule 6.05(e) as of the Closing Date, Seller will have additional time following the Closing Date to secure and assign and transfer the Missing Easements to Buyer. Seller shall diligently pursue and deliver the Missing Easements on or before the third (3rd) anniversary of the Closing Date, subject to any extension as permitted by Escrow Agreement, in the form attached as Exhibit C, that will require, among other things, the funding of an escrow account in the amount of Two Thousand Dollars (\$2,000) per Missing Easements listed on attached Schedule 6.05(e) as of the Closing Date to secure the Seller's obligations under this Agreement and the Escrow Agreement.

Aqua Application at Exhibit A, Section 6.05(e), *Escrow at Closing for Missing Easements*.

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<sup>5</sup> Aside from being arbitrary, KLH's \$1 per easement determination could not have been based upon any fact-based review of the easements because timing would have made that impossible. KLH submitted its engineering analysis in June 2023 and the Abstractor's report to identify missing easements was not completed and remained incomplete over a year later, as reflected in a July 9, 2024 discovery response. See Aqua APA at Exhibit D; OCA Exh. CMH-14.

Despite Aqua’s claims that all responsibility to convey the missing easements will be “squarely upon the GSA” the above term indicates that GSA need not fulfill its obligation until three years after the closing date of the sale, which certainly leaves open the possibility that Aqua may seek to include the GSA ratebase into its next base rate case before GSA easements are attained. To be sure, Aqua has indicated an intention to file another rate case in 2025. *See* OCA Exh. CMH-4 at p. 14. Beyond the very real possibility that ratepayers could be put in a position of having to pay for property Aqua does not own, the “escrow account” terms rely solely upon GSA’s promise to perform made to Aqua. GSA is not a jurisdictional utility and the Commission would not have any recourse to protect ratepayers if GSA does not perform as agreed.

Aqua’s Reply Brief does not provide a basis to deny OCA’s recommended easement conditions, but a closer look at its underlying arguments certainly substantiates a need for the conditions. Accordingly, as a condition for approval of the application, the Commission should require that the closing of the transaction shall not be permitted to occur until Aqua has (1) identified all missing easements including public rights-of-way and other property rights and (2) taken any and all necessary actions to obtain the missing easements and other property rights so that they may be conveyed to Aqua at closing. Also, Aqua should not be permitted to recover in rates any costs for obtaining and conveying the missing easements and other property rights. Finally, Aqua should not be permitted to include the GSA assets into its ratebase until it acquires all outstanding easements OCA St. 1 at 25-26; OCA St. 1SR at 15.

b. Transaction and Closing Costs

Aqua’s claims that the OCA’s recommendation should be rejected because it is not seeking transaction and closing costs are misplaced and ignore the substance of the OCA’s recommendation. *See* Aqua M.B. at 48-49. More specifically, while it may be true that Aqua is not

making a claim for transaction and closing costs today, it is also true that when it submitted its November 2023 Application, Aqua projected that it incur transaction and closing costs of approximately \$487,250, “which it will include in its rate base.” Application ¶58.

In recognition of Aqua’s expressed intent to include approximately \$487,250 in its rate base, the OCA recommended that Aqua should be required to separately identify all of its closing costs by cost category, including outside legal fees, when it makes a claim for recovery in its next base rate case. Additionally, the OCA recommended that Aqua should be barred from claiming any transaction and closing costs incurred by the seller. OCA St. 1 at 5. As indicated in OCA’s Main Brief, these conditions are necessary to ensure that ratepayers do not pay imprudent and unreasonable transaction and closing costs if the Commission determines to approve Aqua’s Application. OCA M.B. at 47. Aqua’s argument that it is not seeking cost recovery today is of no moment, as the OCA’s recommended condition is tailored to the future recovery that Aqua indicates an intention to make, and which must be in place now to ensure access to important information that must be evaluated when Aqua does make its claim. Aqua’s arguments miss the point entirely and are not responsive to the substance of OCA’s position.

c. Increased Hardship Funding from Aqua

In its Main Brief, Aqua agreed to provide an additional \$25,000 contribution to its hardship fund for the next three years following the close, but this fell short of the OCA’s recommended condition that Aqua should provide an additional annual contribution of \$50,000 to the hardship fund for five years following the closing of the Transaction. Aqua M.B. at 54; OCA M.B. at 48. According to Aqua, “the facts and circumstances present in this transaction” support the conclusion that \$25,000 per year for three years is more appropriate. Aqua M.B. at 54. Aqua fails to identify which facts and circumstances support its position. Additionally, Aqua claims that

“monitoring fundings levels is important” and that funds should be allocated to “where they can do the most good” warranting an annual review. These generalities are not tied to the record of this case, and while some level of funding is better than nothing, they are insufficient.

The record in this case established that the median income in the Greenville Borough is \$54,237 and there are 1,766 individuals in Greenville that are below 200% of the federal poverty limit (FPL) and 335 families in Greenville that are below 200% of the FPL. OCA St. 1 at 29; OCA Exh. CMH-22. No party refuted these facts. No party disputed that GSA customers’ wastewater rates are approximately \$23 per month now, and that those rates could rise to levels that increase to \$64.68 or more after Aqua’s next base rate case (anticipated in 2025). See Aqua M.B. At 22. OCA’s recommendation takes into account the level of poverty and significant rate impact that GSA customers will face under the Transaction, and the need for additional funding tied to that need. While providing an additional \$50,000 hardship fund contribution for five year will not be sufficient to absorb the rate detriment customers will incur under the Transaction, it is a floor-level mitigation tool that Aqua should be required to adopt as a condition of the Transaction.

d. Amended LTIP and DSIC for GSA Customers

In its Main Brief, the OCA explained that Aqua should be required to adopt conditions related to its Long-Term Infrastructure Improvement Plan (LTIP) and Distribution System Improvement Charge (DSIC) to provide protections for Aqua’s existing customers. OCA M.B. at 48-49. Specifically, the OCA recommended that Aqua should be required to file an amended LTIP including the GSA customers within 90 days of closing the Transaction. Additionally, the proposed projects reflected in the amended LTIP should be in addition to, and not re-prioritize, any capital improvements that Aqua has already committed to undertake for existing customers. Finally, Aqua should not include GSA system-related investments in its DSIC until Aqua collects

a DSIC from GSA customers. OCA St. 1 at 32. These recommendations are necessary to ensure that Aqua is accountable for timely planning the infrastructure improvements it claims will occur for GSA, that existing customers' projects will not be compromised, and that GSA customers contribute to projects in their service area. *Id.* at 32-33; OCA M.B. at 49.

Aqua opposed each of the OCA's recommendation, although it does concede that if it were required by the Commission to file an updated LTIP, then capital projects added for the GSA would not replace existing projects but they would be in addition to those projects. Aqua M.B. at 48. However, Aqua opposed all other aspects of the OCA's recommendations by averring, in a single sentence, that "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." *Id.* In its single sentence of opposition, Aqua raises a strawman argument that fails to respond to OCA's actual position. To be sure, Aqua can add the GSA system into its LTIP, refrain from including GSA-related investments in its DSIC until GSA customers pay a DSIC, and ensure that existing projects are not unfairly reprioritized all while retaining the ability to address evolving needs. OCA's recommendations and Aqua's ability to prioritize and allocate projects based on mutual needs not only can coexist, but they must do so in order to facilitate an outcome where (1) Aqua is accountable for timely planning the infrastructure improvements it claims will occur for GSA, (2) existing customers' projects will not be compromised, and (3) that GSA customers contribute to projects in their service area. OCA M.B. at 48. Aqua's opposition is not responsive, it is without merit, and it should be rejected.

e. Customer Notice Recommendations

In its Main Brief, Aqua argues that OCA's customer notice recommendations for Aqua should be rejected because there is no regulatory requirement for Aqua to adopt those

recommendations. Aqua M.B. at 50-51. As Aqua identified, OCA recommended that, moving forward, the rate impact notices Aqua sends to its customers extend beyond “average usage” and include rate impacts at usages of 5,000 and 10,000 because those are more consistent with the usage of smaller and larger families, respectively. OCA St. 1 at 9. Additionally, the OCA argued that it should include the monthly or quarterly estimated volumetric charge, as well as the impact that the DSIC will have on wastewater bills under Aqua ownership. By including this information in the customer notice, it will provide a more accurate representation for what customers can expect their bills to look like should the Application be approved. *Id.* at 10. Finally, OCA recommended that customers of the selling entity should receive notice that reflects the rate impacts of the proposed transaction as well as the impact of other pending proposed acquisitions and the DSIC, at the time of a system sale in order to inform them of the true potential rate consequences. *Id.* at 11. The crux of Aqua’s opposition is its determination that the requested notice changes are inappropriate, unnecessary, and not mandatory. Aqua M.B. at 50.

While Aqua may be correct that there is no regulatory mandate for it to adopt OCA’s recommended notice changes, the Commission has the authority to compel such changes and it should do so. It is wholly appropriate and necessary for customers who stand to face the rate consequences of Aqua’s transactions to have the best possible understanding of what those consequence may be. To be sure, as Aqua admits, public input testimony in this case, from Aqua water customer Keith Gabage, indicates the desire for more disclosure about rate impacts, including that Aqua’s notices should, but fail to, include notices about pending acquisitions. Tr. at 75-76. Additionally, Mr. Gabage indicated that if billing notices were “a little more transparent” then customers would have a better understanding of impacts and take more interest. *Id.* at 72-73.

Mr. Gabage views the existing notices as “a kind of check the box item” that should be more detailed. *Id.* at 71-2.

The OCA agrees with Mr. Gabage, as the evidence in this case reveals that GSA customers were never informed of another pending acquisition rate impact that will directly impact them. By choosing to omit the existence of its pending Section 1329 purchase of the Greenville Water Authority from notices issue in this case, Aqua deprives 95% of GSA’s customers<sup>6</sup> of their ability to understand the truth about potential rate consequences that they may soon face under Aqua’s ownership. See OCA St. 1 at 8. This is true because 2,162 of GSA’s 2,281 customers are also GWA customers. See Application ¶9; OCA Exh. CMH-3. Despite that fact that Aqua announced that it had executed an APA with GWA prior to filing the instant Application, and that it has had sufficient time to formulate the potential rate impact of the GWA purchase on GSA customers and incorporate that information into the notice provided to GSA, it determined not to do so. The OCA submits that Aqua’s decision to deprive GSA customers of material information regarding identifiable rate consequence best exemplifies the need for Aqua to revise its notices as recommended by the OCA. While there may be no regulatory mandate for Aqua to do so at this time, there certainly is evidentiary proof of a need for it to do so to better protect consumers; accordingly, the OCA’s recommendations for Aqua’s future notices should be adopted.

**D. Section 507**

Aqua seeks approval of its APA under Section 507 of the Code. Aqua M.B. at 57. As part of this case, Aqua asks the Commission to find, as a fact, that its APA arrived at a purchase price of \$18 million based on an arm’s length transaction, but that claim and the APA warranties underlying the purchase price, are undermined in the record of this case. See Aqua M.B. at

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<sup>6</sup> 2,162 GSA customers/ 2,281 GWA customers = 0.947

Appendix A at FOF 8. As indicated in the OCA's Main Brief, this claim does not comport with the evidence that Aqua and GSA offered in this case. OCA M.B. at 10; 32-34; 49-50. The representations that Aqua makes in its Application regarding the GSA system directly conflict with the warranties that GSA made as the Seller in the Asset Purchase Agreement (*see, Representation and Warranties* section contained in Article IV of the APA (Section 4:13, *Environmental Compliance*). See Aqua St. No.1 at 21-23; Aqua St. No. 1-R at 6. Thus, the APA's purchase price for the GSA was predicated upon warranties that cannot coexist with the testimonies that Aqua and GSA offered regarding the GSA system, rendering the APA invalid.

The invalidity of the APA offends Section 507 of the Code. To receive approval of a contract between a public utility and a municipal corporation, the public utility must seek Commission approval of that contract. 66 Pa. C.S. § 507. When considering the filing, the Commission is tasked with ensuring that the contract is reasonable, legal, and otherwise valid. *Id.* Where a contract is not reasonable, legal, or is otherwise invalid, the Commission may revise or reform the contract to ensure that its provisions are just, reasonable, and equitable. 66 Pa. C.S. § 508.

Neither Aqua nor GSA reconcile the conflicts between their claims regarding the GSA system and the APA, and instead, Aqua triples-down on claims about the GSA system . Aqua M.B. at 31-33. The OCA submits that substantial evidence demonstrates that the APA contains representations and warranties that are unreasonable and invalid when reviewed in conjunction with the testimony that Aqua and GSA offered in this record. Aqua bears the burden of proof to demonstrate, with substantial evidence, that the proposed APA should be approved under Section 507 of the Code, and it failed to meet that burden, the Commission should not approve the APA.

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

At this time, the OCA has not requested any additional relief related to other approvals, certificates, registrations, and relief under the Code beyond that which is addressed in this Main Brief. To the extent that the OCA does identify a need to raise such matters, or to respond to those matters raised by other parties, the OCA expressly reserves the right to address them in further pleadings as deemed necessary to protect consumers.

**VI. CONCLUSION WITH REQUESTED RELIEF**

For the reasons stated above, the Application should be denied. Aqua Wastewater, Inc. has failed to meet its burden of proof under Section 507, 1102 and 1103.

Respectfully Submitted,

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