

PUBLIC VERSION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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 : :

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

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PUBLIC VERSION

TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT1

II. ARGUMENT4

 A. SECTIONS 1102/1103 4

 B. SECTION 1329 17

 C. SECTION 507 19

III. RECOMMENDATIONS.....22

IV. CONCLUSION WITH REQUESTED RELIEF23

PUBLIC VERSION

TABLE OF AUTHORITIES

STATE CASES

Cicero v. Pennsylvania Pub. Util. Comm’n, 300 A.3d 1106 (Pa. Commw. Ct. 2023),
reargument denied (Sept. 26, 2023), *appeal granted*, 568 MAL 2023,
2024 WL 2988362 (Pa. June 14, 2024)1, 2

City of York v. Pa. P.U.C., 295 A.2d 825 (Pa. 1972)1, 2

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)1, 2

Popowsky v. Pa. P.U.C., 937 A.2d 1040 (Pa. 2007).....1, 2, 13

Com. Dept. of Transp., Bureau of Driver Licensing v. Kappas, 621 A.2d 1204
(Pa. Commw. Ct. 1993)11

STATE STATUTES

66 Pa. C.S. §§ 332(c) and (d).....16

66 Pa. C.S. § 507.....19, 21, 23

66 Pa. C.S § 1102.....23

66 Pa. C.S § 1329(c)(2).....18, 23

PUBLIC VERSION

AQUA'S REPLY BRIEF

Aqua Pennsylvania Wastewater, Inc. (“Aqua” or the “Company”), by and through the undersigned counsel, hereby submits this Reply Brief in support of its Main Brief filed in the above-captioned matter on August 27, 2024 and in support thereof avers as follows.¹

I. SUMMARY OF ARGUMENT

This Commission is tasked with determining whether the proposed transaction, **based on the circumstances and facts present in this case as adduced through evidence on the record**, will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. P.U.C.*, 295 A.2d 825, 828 (Pa. 1972) (“*City of York*”); *see also 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*”). In so doing, the Commission must apply “a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.” *Popowsky v. Pa. P.U.C.*, 937 A.2d 1040, 1057 (Pa. 2007) (“*Popowsky*”). Importantly, while the Commission must address rate impact in a “general fashion” when deciding whether there is substantial public benefit for a Section 1329 acquisition, that rate impact is not dispositive in the Commission’s determination of affirmative benefits – rather, “the Commission is charged with deciding whether the impact of rates...is outweighed by ... other positive factors that...served [as] a substantial public benefit.” *McCloskey v. Pa. P.U.C.*, 195 A.3d 1055, 1067 (Pa. Commw. Ct. 2018), *petition for allowance of appeal denied* No. 703 MAL 2018 (April 23, 2019) (“*McCloskey*”).

¹ Defined terms and acronyms have the meanings set forth in Aqua’s Main Brief unless otherwise stated herein.

PUBLIC VERSION

In their main briefs, the OCA, OSBA, and I&E (collectively, the “Opposing Parties”) all claim that the Commission should deny Aqua’s Application to acquire the wastewater assets of the GSA under Section 1329 because of a single purported harm, which they claim outweighs any benefits that will flow to Aqua’s existing customers and the GSA’s customers as a result of this transaction. Indeed, contrary to the Commission’s standards espoused in *City of York, Popowsky, McCloskey*, and *Cicero*, the Opposing Parties all improperly focus *only* on the potential 185% rate which would potentially increase GSA customers rates to approximately \$65.00. Currently, GSA rates have been approximately \$23.00 per customer **and have been approximately \$23.00 for at least the past 10 years**. The Opposing Parties simultaneously ignore or otherwise discount other record evidence, such as the magnitude of rate impacts GSA customers will face absent the transaction and the real benefits that will accrue to those customers as well as to Aqua’s existing customers.

Aqua understands and recognizes both the Opposing Parties’ and the Commission’s focus on rate impacts. Moving from a \$23.00 bill to potentially a \$65.00 bill will have an impact on GSA customers and the Company does not take this lightly. With this in mind, the Company took into consideration the Commission’s applicable standards and, in light of *Cicero*, expounded upon the explanation and identification of the value proposition for the GSA customers and Aqua customers that would flow from the proposed transaction. For example, Aqua provided additional evidence into the deficiencies it would remedy on the GSA system assets, it provided new testimony on the benefits of cybersecurity and the ability to implement remote monitoring and operations in addition to onsite operations, as well as customer service and payment-related benefits, and it quantified a net benefit from the acquisition for GSA customers. And, in response, the OCA, in particular, minimizes these real, identifiable, and tangible net benefits and instead

PUBLIC VERSION

attempts to create a burden on the Applicant with respect to the net benefits that is higher than the applicable burden and indeed, Aqua submits, creates a standard that can likely never be met for any public utility seeking to acquire a municipal or other similar utility under Section 1329. Under the OCA's interpretation of the affirmative public benefits test, it appears that no capable public utility in this Commonwealth will be able to acquire any system using Section 1329.

Not only does the OCA counter the evidence supporting net affirmative public benefits by simply ignoring record evidence counter to its beliefs, it goes so far as to suggest a double standard for the service provided by regulated and non-regulated public utilities in this Commonwealth. First, the OCA implies in its brief that Aqua's Commission-reviewed and approved level of service is too high, as it continually criticizes Aqua for providing high-quality service to its customers (as if to say providing that level of service to GSA customers would be a detriment). Then, the OCA discounts the GSA's testimony that oversight by the PUC is a value add and a benefit for its customers from that which exists today – a utility run by a board consisting of individuals who have little to no utility experience, high rates of board membership turnover, and have the ability to set rates without significant rate oversight. And, finally, instead of accepting that bringing a manual plant into the 21st century through the addition of remote operations which creates reliability and resiliency with commensurate added cybersecurity protections, the OCA instead, astonishingly, claims that Aqua should be running its systems completely manually, like the GSA, as if that would benefit customers more than the efficiencies and safety benefits provided for by the implementation of technology to operate remotely and receive advance warnings when any issues arise and warnings when a system is in distress.

In short, the Commission should look beyond the hyperbole in the OCA's Main Brief, understand the needed rate increase for GSA customers, recognize that the percentage increase in

PUBLIC VERSION

calculated rate impact is higher because the GSA rates are starting at a very low average bill of \$23.00, and focus on the net affirmative public benefits that Aqua has shown will flow (despite the needed rate increase) to the GSA customers and to its existing customers, as well as the community, as a result of the proposed transaction. For these reasons and on the basis of the evidence and arguments set forth in its Main Brief, Aqua respectfully requests that the Commission approve its Application and grant the certificates of public convenience so that it may acquire the wastewater system assets of the GSA.

II. ARGUMENT

A. Sections 1102/1103

The Opposing Parties all acknowledge Aqua's fitness to acquire the GSA system. However, each claim that there is no affirmative public benefit from the proposed transaction because the harms outweigh the benefits. All singularly focus, however, on one harm – the impact on rates to the GSA customers, Aqua customers, and Aqua Pennsylvania, Inc's ("Aqua PA") customers. While the Company understands and recognizes this very important issue, the arguments set forth by the Opposing Parties in their Main Briefs all ignore or inappropriately disregard key factual evidence adduced on the record in this case that supports a finding that net affirmative public benefits exist here.

1. Response to the OCA

As noted above, the OCA goes above and beyond in its Main Brief to distract the Commission from the very real benefits that will result from the proposed transaction not only for the GSA customers, but also for Aqua's customers. OCA does this by focusing solely on rate impact, second guessing whether the GSA System is troubled or non-viable, despite the fact that Section 1329 may be used for systems both troubled and not troubled, and ignoring evidence that is contrary to its position as it relates to the very real economies of scale that have been realized

PUBLIC VERSION

from Aqua's prior 1329 Acquisitions and that will be achieved if the proposed transaction is approved. In pursuit of its mission – to ensure the Commission denies all Section 1329 applications, thereby rendering the legislation ineffective – the OCA goes a step further than ever before in its Main Brief by casting aspersions at Aqua regarding the level of service it provides to existing customers and the services Aqua thereby proposes to provide to the GSA's customers if the proposed transaction is approved.

First, Aqua has been fully transparent about the impact on the GSA customer's rates that could result if the proposed transaction is approved – the current GSA rate of \$23.00 is expected to increase by approximately 180.85% (or to \$64.84 per month) assuming that 100% of the revenue requirement deficiency is borne by those customers.² The OCA, however, claims that because GSA customers and existing Aqua customers will pay higher rates as a result of this transaction, the future rate harms outweigh any benefits that would result from the transaction.³ The OCA's arguments with regard to the rate impacts to customers – both existing and acquired – which understandably impact customers, cannot and should not be the only guiding factor in these proceedings.

With respect to the GSA customer rate impact, the OCA has selectively ignored that evidence which would contradict its conclusion that the GSA customers rates only go up if the acquisition is approved. As noted further, *infra*, the GSA will need to implement a rate increase of nearly 200% if the proposed transaction is not approved and in that case, customers will pay **more** than the 180.85% increase that could occur with the proposed transaction, but will receive

² Aqua St. No. 3, at 17.

³ OCA Main Br., at 11.

PUBLIC VERSION

none of the benefits that ownership by Aqua brings with it, whether through customer service and assistance offerings, operations and safety improvements, or otherwise.⁴

Further in making its arguments that the O&M expense reduction is “immaterial”⁵ and that the anticipated revenue requirement of \$2.223 million for the GSA is “under projected”⁶ OCA boldly claims that it has “unrefuted evidence” that Aqua’s last three acquisitions were under projected. Not only is the OCA’s claim in this regard misleading, but the Company explained the inappropriateness of the apples to oranges comparisons made by the OCA when it refuted those claims in its Rejoinder Testimony, wherein Mr. Packer stated, for starters:

The Company’s calculations of the revenue deficiency, at the first year of operation, has been the manner in which all of the deficiency impacts have been calculated in the Section 1329 process, which calculations are compliant with the PUC’s Section 1329 implementation orders. **Taking a point in time Section 1329 revenue deficiency calculation and comparing it to the current base rate proceeding with zero context as to significant differences between those acquisitions does not provide a fair comparison and should not be given weight in this proceeding.**⁷

Mr. Packer continued, by explaining that “some of the differences, which Ms. Hoover failed to acknowledge, for example, include historically high inflationary impacts on expenses and interest rates nationwide, and a higher cost of equity in the current filed rate case as compared to the cost of equity used in the Section 1329 proceedings” while noting further that “[i]nflationary pressures and interest rates would have an impact on a selling municipality as well, thus could impact the deficiency difference now being used as evidence against this proposed transaction. The reality is

⁴ Greenville St. No. 2-R, at 3-4; Aqua St. No. 3-RJ, at 12-13.

⁵ OCA Main Br., at 22.

⁶ OCA Main Br., at 23.

⁷ Aqua St. No. 3-RJ, at 7.

PUBLIC VERSION

that all of the impacts shown in Ms. Hoover's table have financial offsets as I demonstrated for the GSA in my Rebuttal Testimony financial public benefits table.”⁸

In addition, the OCA's claims ignore the very real evidence of the economies of scale that will be gained by the proposed acquisition for existing and acquired customers alike.⁹ In its Main Brief, the OCA lays out in summary fashion the surrebuttal testimony of its witness, Ms. Hoover, wherein she claimed that Aqua's economies of scale (as reflected through revenue requirements per customer served) were flawed; however, what the OCA fails to acknowledge is that these claims are not unrefuted, they were in fact addressed and proven false in Aqua's Rejoinder Testimony. As Aqua explained, the economies of scale it identifies are not “aspirational” and “are real, exist right now, and are not projected to occur at a later date.”¹⁰

In fact, in response to the OCA's perceived flaws, Aqua updated its economies of scale analysis to address some of the concerns raised by Ms. Hoover in its Rejoinder Testimony – in particular, Mr. Packer extracted the “most current information filed in the Company's pending base rate case and scaled back the cost of equity to 9.65%, which is the level of the current DSIC allowable return on equity to be used as calculated by the [Commission]. The result is the most up to date comparison of the revenue requirement per customer that includes projected capital spend through December 31, 2025.”¹¹ The following table¹² shows that the revenue requirement per customer served by the Company based on the last rate case at \$1,660 is meaningfully lower than the \$2,075 per customer of Aqua's non-FMV systems as of that case, as well as that the estimated non-FMV systems cumulative revenue requirement per customer of approximately

⁸ Aqua St. No. 3-RJ, at 7.

⁹ Aqua St. No. 3-RJ at 7-12.

¹⁰ Aqua St. No. 3-RJ, at 8.

¹¹ Aqua St. No. 3-RJ, at 9.

¹² Aqua St. No. 3-RJ, at 10.

PUBLIC VERSION

\$2,600, based on the Company’s current rate case, is nearly 30% higher than the all systems average of \$1,811 per customer.

System	Revenue Req. NO ACT 11	Rev. Req. Per Cust	Customers Served
Base Operations *!	\$79,785,323	\$1,887	42,277
Lower Makefield *	\$14,645,462	\$1,281	11,445
East Whiteland *	\$6,397,903	\$2,462	4,024
Beaver Falls ^	\$6,751,118	\$2,090	3,230
Greenville WW ^	\$3,452,919	\$1,512	2,283
ALL SYSTEMS (a)	Weighted Average =>	\$1,811	
Non-FMV Systems 2021 Case	Weighted Average =>	\$2,075	
Non-FMV Systems 2024 Case Est.	Weighted Average =>	\$2,600	

* = Source 2024 Base Rate Case Application - Docket No. R-2024-3047822 & 3047824 @ 9.65% ROE Scale Back
 ! = Base Operations now include FMV Acquisitions Cheltenham, East Norriton, East Bradford, Limerick, and New Garden
 ^ = Source Docket No. A-2022-3033138 & A-2023-3041695 Appendix A
 (a) = All systems average is approximately 30% lower than the Non-FMV Systems estimated for the 2024 Rate Case \$1,811 / \$2,600 = ~70%

This table demonstrates the positive effect of FMV systems on the overall cost of service of Aqua’s wastewater operations and proves without a doubt the economies of scale are present today and existing customers are benefiting from acquisitions.¹³

A few additional points made by the OCA throughout its brief in an attempt to minimize the benefits provided by the proposed transaction warrant a brief response, and they are addressed in turn below.

The OCA claims that “the record is devoid of evidence that the more than \$20 million in capital improvements that Aqua proposes to make are anything more than Aqua wanting to make GSA more like Aqua and this additional spending is not a benefit per se.”¹⁴ To the contrary, Aqua Witness Bubel provided ample evidence as to why each of the projects and capital expenditures proposed by Aqua in its preliminary 10-year capital plan were necessary for the GSA System.¹⁵ He further explained that it is possible that the capital plan may change after closing and Aqua has

¹³ Aqua St. No. 3-RJ, at 9-10. Aqua would note further that the Commission has any number of mechanisms available to it to mitigate the rates paid by the GSA customers or Aqua’s existing customers when the time comes to address rates from this transaction in a base rate case. *See id.* at 11-12.

¹⁴ OCA Main Br., at 22.

¹⁵ Aqua St. No. 3, at 10-13 and Appendix A; Aqua St. No. 3-R, at 2-10.

PUBLIC VERSION

an opportunity to conduct a more detailed and thorough examination through operation of the system and as part of post-acquisition audits, but that does not make the initial plan or spend any less reasonable as proposed based on the information known at present.¹⁶ OCA also selectively ignores and falsely claims that none of the planned improvements are compliance-related,¹⁷ a fact which is belied by Mr. Bubel’s Rebuttal Testimony identifying specific compliance-related projects.

The OCA also states in various iterations throughout its Main Brief that the “gist of Aqua’s argument in this case is that making GSA operate exactly like Aqua operates its existing wastewater systems will provide affirmative benefits”¹⁸ and that the rate impact of “being brought up to Aqua’s standards” or to “top of the class” from “compliance – which is where [OCA believes] GSA is currently” does not justify the 180.85% rate increase.¹⁹ This argument is concerning. The Company works very diligently to provide safe and reliable service for all of its customers. OCA’s theme of somehow making GSA operate like Aqua (or suggesting Aqua operate more like the GSA in some instances) is wrong and appears to be a distraction so that the Commission does not focus on the very real operational, safety, customer, and environmental benefits that will result from the planned improvements to the GSA System, as discussed in detail further below. The OCA actually suggested that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END CONFIDENTIAL] This assertion is equally concerning and warrants no further response. However, Aqua would note that many of the referenced planned

¹⁶ Aqua St. No. 3-R, at 2
¹⁷ OCA Main Br., at 21.
¹⁸ OCA Main Br., at 16-17.
¹⁹ OCA Main Br., at 17.
²⁰ OCA Main Br., at 28.

PUBLIC VERSION

improvements to the GSA system are necessary not because Aqua wants the GSA to be like Aqua, but because the GSA's customers deserve a WWTP and a sewer system that will provide them with reliable and safe service for years to come, which simply will not occur under the current ownership.²¹

The OCA next argues that Greenville's desire to exit the wastewater business is irrelevant and ignores the practical realities Mr. Urey – the Borough's Manager – articulated related to this borough-run system. Rather, in response, OCA instead suggests that the Commission can simply deny this Section 1329 acquisition (elected by both Aqua and GSA) and force the GSA to avail itself of some other available transaction process.²² As Aqua explained in its Rejoinder Testimony, “while true at face value, the reality is that is not the case.”²³ This is true because the acquisition reflects a negotiated purchase price for the GSA System that is less than its appraised FMV; both Aqua and the GSA believe they have acted in the best interest of their constituents; “it is unlikely that if the [Commission] were to reject this Application, any restructuring of the proposed transaction such that the Seller would accept even less proceeds or the Buyer would pay more for the system would occur”; and “to suggest Aqua instead pursue a regulatory avenue with even more uncertainty through a non-FMV application via Section 1327 where Aqua would face similar arguments of the differences between investor-owned utilities and municipalities/municipal authorities is even less probable.”²⁴

The OCA discounts entirely the access that the 1,766 individuals and 335 families in Greenville who are below 200% of the FPL will have to Aqua's income assistance programs²⁵ and

²¹ See generally, Aqua St. Nos. 1, 1-R, 2, and 2-R; see also Greenville St. No. 1 and 1-R.

²² OCA Main Br., at 35.

²³ Aqua St. No. 3-RJ, at 7.

²⁴ Aqua St. No. 3-RJ, at 8.

²⁵ OCA also minimizes the tangible benefit to all eligible customers of the \$75,000 contribution Aqua has agreed to make to Aqua Aid as a part of this transaction. OCA Main Br., at 48.

PUBLIC VERSION

all GSA customers' access to deferred payment arrangements as a result of the proposed transaction.²⁶ However, access to payment assistance programs is a benefit for customers who will see an increase from their current \$23.00 bill, and the lack thereof is certainly a detriment to those same customers who will be facing a 200% increase in their bill if the proposed transaction is not approved.

Finally, the OCA takes aim at the Company's affirmative public benefits analysis by arguing that the evidence offered by Aqua and the GSA as to potential uses of the sale proceeds is contradicted by the GSA's and Greenville's counsel's statements made in arguing an objection at the evidentiary hearing.²⁷ Foremost, these statement support the Company's position regardless. The Commission should nevertheless disregard this thinly veiled non-substantive attempt to attack Aqua's analysis in this way. Statements by a party's attorney are not evidence and thus they cannot form the basis of a finding that the "claimed public benefits [] to Greenville Borough are not only unsupported, but they are actually refuted."²⁸ *See Com. Dept. of Transp., Bureau of Driver Licensing v. Kappas*, 621 A.2d 1204, 1207 (Pa. Commw. Ct. 1993) ("Statements made by a party's counsel do not constitute evidence.").

2. Response to I&E

I&E claims that the because there are "acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction."²⁹ This claim appears to be premised on I&E's conclusions that (i) the "GSA is currently providing adequate service, and no evidence has been provided to show that GSA cannot continue to do so

²⁶ OCA Main Br., at 37.

²⁷ OCA Main Br., at 38.

²⁸ OCA Main Br., at 10.

²⁹ I&E Main Br., at 10.

PUBLIC VERSION

at potentially at a lower cost than Aqua can”;³⁰ (ii) the deficiencies in the GSA System identified by Aqua “all seem to arise from the idea that Aqua would have done things differently had it been running the system”³¹ or that the changes Aqua would make would simply maintain the status quo as far as service is concerned;³² and (iii) the GSA customers current \$23.00 rate will not go up if the proposed transaction is not approved.³³ The record evidence in this matter reveals that these conclusions are incorrect and that significant net benefits will accrue not only to the GSA’s customers but to Aqua’s customers as well.³⁴

As to the first point, Aqua presented evidence regarding the nature of service provided by the GSA in its Main Brief and aptly explained how – based on the evidence presented by Aqua and the GSA – the GSA simply cannot continue to provide service to its customers at the same cost as it does today if the sale does not go through.³⁵ Finding of a public benefit does not require that Aqua be able to establish that its cost to provide service will be cheaper than that which the GSA could provide, nor does it require that the Commission identify all the costs of either party to the transaction. What the evidence does show, however, is that Aqua expects to realize an approximately 14% reduction in O&M expenses and other system-wide economies of scale from this transaction.³⁶ I&E agrees that “there is a potential to achieve some economies of sale” but

³⁰ I&E Main Br., at 10.

³¹ I&E Main Br., at 11.

³² I&E Main Br., at 10, 15.

³³ I&E Main Br., at 12. I&E also makes a passing reference to costs to serve Aqua’s existing customers and a potential Act 11 shift that could impact Aqua PA’s customers, however, those matters have been addressed, *supra*, in response to the OCA’s arguments in Aqua’s Main Brief.

³⁴ I&E suggests that the GSA may not be aware of how much rates will increase for customers if the sale is approved; however, this ignores the testimony from the Borough’s Manager, Jasson Urey, wherein he states his opinion that looking at a totality of the circumstances, the assumption that GSA customers will suffer financial harm due to the resulting rate increases is overstated, given the focus on an increase of \$40.00 per month and ignoring the reality that the GSA would be proceeding with a costly WWTP upgrade without the sale that which means that “rates will go up regardless and will do so without the associated benefits of a sale to Aqua.” Greenville St. No. 1-R, at 4; *see also id.* at 6 (noting further that “the public has spoken on the issue of this sale and as was evident from the public hearing, has overwhelmingly approved of the sale, despite the potential for a rate hike.”)

³⁵ Aqua Main Br., at 25 (citing Greenville St. No. 1-R, at 4).

³⁶ Aqua Main Br., at 19-21.

PUBLIC VERSION

discounts them because there is no timeline provided for when they will accrue or specific showing of how they will benefit the GSA customers.³⁷ The Commission, however, pursuant to *Popowsky*, “is not required to [. . .] quantify benefits where this may be impractical, burdensome or impossible.” 937 A.2d at 1057. Aqua provided ample evidence from which the Commission can conclude that the economies of scale are both real and will accrue to customers of the GSA and Aqua’s existing customers. In its Main Brief, Aqua specifically stated the anticipated benefits in this regard and they are restated here for ease of reference:

- 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.³⁸
- 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.³⁹

Taking the third point next, the GSA made it abundantly clear that without the proposed transaction, it will spend approximately \$46 million in capital improvements, which equates to an increase in needed revenues of \$2,775,886, or a 198.28% increase to the existing GSA rate of \$23.00.⁴⁰ Thus, without the proposed transaction, the GSA customers’ rates will increase nearly 200%, which is neither unsupported nor speculative.

Finally, as to the second point, Aqua provided ample evidence in its Main Brief of improvements that Aqua will make to the GSA system that will do more than keep the status quo,

³⁷ I&E Main Br., at 12.

³⁸ Aqua Main Br., at 21 (citing Aqua St. No. 3-RJ, at 9-10).

³⁹ Aqua Main Br., at 21 (citing Aqua St. No. 3-RJ, at 15).

⁴⁰ Aqua St. No. 3-RJ, at 12-13.

PUBLIC VERSION

including operational, safety, and customer service changes.⁴¹ While some of these changes will be made to ensure consistency of operations as it relates to Aqua's procedures, policies and protocols for its operation and maintenance of its wastewater assets, Aqua disagrees with the notion, as explained in detail *supra*, that all of the deficiencies identified in the system arise only because "Aqua would have done things differently."⁴² It is simply not the case and a plain reading of Mr. Martin's testimonies in this matter, as well as those of Aqua's other witnesses demonstrate that many of the deficiencies to be remedied by Aqua are a result of GSA's failures to maintain the system, implement or follow policies or procedures, and/or inexperience in management of wastewater assets.⁴³

3. Response to OSBA

The OSBA's position is that the proposed transaction is not in the public interest because the purchase price is too high and therefore the rate increase for GSA customers will outweigh any of the benefits achieved as a result of Aqua's acquisition of the GSA System.⁴⁴ The OSBA, however, does not spend time in its Main Brief examining the benefits to be provided by Aqua, rather its sole focus is on the public benefit analysis provided by Aqua, which shows that "[n]o matter how one tries to spin it, the reality is that a great deal of the revenue requirement deficiency is offset by real financial benefits to the GSA's customers, it is certainly not a zero offset, and those benefits should not be ignored; rather they should be given significant weight in this Application."⁴⁵ Aqua provided a calculation of tangible financial benefits of this application, as

⁴¹ Aqua Main Br., at 15-20.

⁴² I&E Main Br., at 11.

⁴³ *See generally*, Aqua Main Br., at 17-18 (citing Aqua St. No. 1-R, at 4-5, 7-8; Aqua St. No. 1, at 16-36 and Appendix A; Aqua St. No. 3-R, at 4-7; Aqua St. No. 2-R, at 3; Aqua St. No. 4, at 9-10).

⁴⁴ OSBA Main Br., at 5-6.

⁴⁵ Aqua St. No. 3-RJ, at 11.

PUBLIC VERSION

reproduced below,⁴⁶ and which Mr. Packer further explained at the evidentiary hearing in this matter in response to cross-examination by the OSBA:

		<u>Amount</u>	<u>Source:</u>
GV Public Benefits Calc	Gross Proceeds	\$18,000,000	- Appendix A
	Debt Repayment	(2,943,160)	- F/S 2023
	Cash on hand Available for use @ Closing	1,118,104	- F/S 2023
	Net Proceeds - for Deposit (Public) =====>	\$16,174,944	- 5.25% Interest bearing account
	Interest Income	\$849,185	- Annual @ 5% PLIGA
	Interest Savings (General Fund)	315,239	- F/S 2023
	O&M Expense Savings (Muni-Post Sale)	60,112	- Pension, Healthcare, W/C Insurance, Legal, Engineering 10% of administration (Gen. Gov)
	Property Tax - Received from Aqua	10,940	- Appendix A - TOTI Tab
	Avoided Rate Increases (NPV 10 yr)	1,155,655	- NPV Increase per year for 10 years assumed
	A.) Income/Cost Reductions for Public Benefit =>	\$2,391,130	
Rate Impact	Present Revenue	\$1,229,219	- Appendix A
	Revenue Requirement	3,452,219	- Appendix A
	B.) Revenue Deficiency \$ =====>	\$2,223,000	- Appendix A - 100% Cost of Service
Revenue Deficiency %	180.85%		
C.) Net Public Benefit / (Impact) =====>	\$168,131	- A.) minus B.) = C.)	

As reflected in this analysis, the fact remains – despite OSBA’s improper attempts to unilaterally change inputs and provide its counsel-supplied calculations in lieu of expert witness testimony concerning same – it is clear on this record that:

the financial benefits 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, 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.**⁴⁷

The OSBA claims in its Main Brief that the (i) interest income in Aqua’s public benefits analysis is “purely theoretical” because there are no assurances that the \$16.1 million net proceeds

⁴⁶ Aqua St. No. 3-R, at 7-8.

⁴⁷ Aqua St. No. 3-R, at 8 (emphasis added).

PUBLIC VERSION

will be invested,⁴⁸ and (ii) a separate adjustment is also warranted as related to the NPV of the avoided rate increases.⁴⁹ OSBA's counsel then embarks upon an improper attempt to calculate a corresponding reduction to the \$168,131 net benefit assuming no interest income and to reduce the NPV of avoided rate increases to conclude that removal of these two items from the calculation is appropriate and would yield a net public impact of approximately \$1.2 million. The issue here is twofold.

First, OSBA's witnesses did not perform the calculations resulting in the purported \$1.2 million conclusion – they are that of the OSBA's counsel and thus they have no evidentiary value in this case and must be disregarded, consistent with 66 Pa. C.S. §§ 332(c) and (d).⁵⁰ Second, and more importantly, those calculations do not properly account for multiple variables and inputs that would be required to be changed in order to properly evaluate any impacts on the public benefits analysis. As explained by Mr. Packer at the evidentiary hearing, while the public benefits analysis is theoretical only in the sense that nothing has happened yet, it does use actual data and quantifies some of the benefits that would inure financially to the constituents and the customers of the GSA and reflects what he thinks “is likely going to be the reality should this transaction be consummated.”⁵¹ More importantly, Mr. Packer also noted in response to questions regarding the many inputs into the calculation that “this is one way to look at it” and there could be another,⁵² but despite the fact that it could take a different form than that presented, “the benefits are undoubtedly very real.”⁵³ In sum, as Mr. Packer explained in his Rebuttal Testimony, “any

⁴⁸ OSBA Main Br., at 6.

⁴⁹ OSBA Main Br., at 7.

⁵⁰ See OSBA Main Br., at 6, n.9, and 7, n.13 and 14 (reflecting the “OSBA Calculation” with no corresponding citation to Surrebuttal or Direct testimony from its panel witnesses).

⁵¹ Evidentiary Hearing Tr., at 151-152.

⁵² Evidentiary Hearing Tr., at 152.

⁵³ Evidentiary Hearing Tr., at 167. Mr. Packer provided examples of the other forms of offsets to the revenue requirement including stormwater customers (who are also GSA customers) paying less due to proceeds received from

PUBLIC VERSION

suggestion that the ratepayers of GSA, who are also the taxpayers, will not benefit for offsetting costs to their municipality is not accurate. Having served as a municipal official for 17 years, I can assert that the financial benefits are real and substantial. While the residents of Greenville may not receive a check for the net proceeds at the time of their next property tax billing cycle, they benefit by virtue of the decreased costs prospectively from the net proceeds.”⁵⁴

B. Section 1329

The Opposing Parties do not propose any specific dollar adjustments to the value of the \$18 million rate base determined by the lesser of the purchase price or the average of the Gannett and ScottMadden appraisals.⁵⁵ However, in its Main Brief, the OSBA makes a statements regarding the \$18 million rate base valuations and the assumptions underlying them for which a response is necessary, including the following. First, OSBA states that “both parties to the transaction, Aqua and GSA, are incentivized to maximize the purchase price paid for the system assets.”⁵⁶ As Aqua explained in its Rebuttal Testimony, “[t]his is just not the case at all.”⁵⁷ Rather, both Aqua and the GSA understand that monetizing their system occasions a corresponding rate increase to customers and constituents. The increase in rates for the GSA customers is higher by virtue of their low present rates, which do not yet include the cost of significant required upgrades. The reality is that the lower the purchase price paid for a system that can meet the needs of the municipality, will at the same time provide greater benefits to the existing Company’s customers through consolidation.⁵⁸

the sale. *Id.* at 166. He also explained that he could not change one input (e.g., purchase price) and confirm the resulting impact on the analysis because he had not calculated it. *Id.* at 172.

⁵⁴ Aqua St. No. 3-R, at 22.

⁵⁵ OCA Main Br., at 42; OSBA Main Br., at 8 (note that OSBA’s average of \$21,408,817 for the two appraisals is incorrect and this amount should be \$20,977,920 as reflected in the Updated Application filed on April 12, 2024; and I&E Main Br., at 18 (note that I&E’s average of \$24,408,817 for the two appraisals is also incorrect).

⁵⁶ OSBA Main Br., at 8.

⁵⁷ Aqua St. No. 3-R, at 19.

⁵⁸ Aqua St. No. 3-R, at 19.

PUBLIC VERSION

Second, the OSBA claims that the “UVE’s use unrealistic assumptions in their valuations, particularly the capital spending requirements of GSA and the revenues (rates) use to earn a return” on rate base⁵⁹ and opine further that (i) those variables are better known now so the appraisals should be updated, and (ii) “an updated analysis would likely lead to a lower purchase price.”⁶⁰ In short, an updated analysis by the UVEs is unnecessary and any updated would likely result in a **higher** appraisal amount as explained by Mr. Walker in his rebuttal testimony:

The valuation date (May 31, 2023) is the specific date at which the value of the Wastewater System is based. **Generally, only the circumstances existing at the valuation date and events occurring up to the valuation date are considered.** Events which could affect the value may occur after the valuation date, but the appraised value remains the same since the valuation date remains unchanged. The appraisal reflects the asset inventory from the June 2023 Engineering Assessment and is close to the date (April 27, 2023) of the Asset Purchase Agreement. Updating the appraisal at this late stage given the Commission’s condensed timeline for review of such transactions would require an updated Engineering Assessment asset inventory and not be possible as it would only add further delays. **Further, given the known 7% to 10% increase in wastewater plant construction costs over those reflected in the current appraisal, any updated valuation would more than likely increase the fair market value determination, leading to a higher purchase price than is stated.**⁶¹

Thus, while a lower purchase price could moderate potential rate impacts to the GSA customers, it is not warranted on the basis of the APA or the UVE appraisals prepared in connection with this proposed transaction. The Commission should therefore approve \$18 million as the ratemaking rate base for the GSA system pursuant to Section 1329(c)(2).

⁵⁹ OSBA Main Br., at 9.

⁶⁰ OSBA Main Br., at 9.

⁶¹ Aqua St. No. 6-R, at 5-6 (emphasis added).

C. Section 507

I&E did not present testimony as part of this transaction on the proposed Section 507 approvals, and therefore also did not brief this issue.⁶² The OSBA similarly did not brief the Section 507 approvals issue.⁶³

The OCA, on the other hand, concocts a novel and unconvincing argument in an attempt to create another barrier to approval of the proposed transaction.⁶⁴ Specifically, the OCA argues that the Commission should find the APA is not reasonable, legal or otherwise valid, because Aqua's representations about the GSA system in its Application "directly conflict with warranties that GSA made as Seller" under Section 4.13 of the APA (related to Environmental Compliance).⁶⁵ This argument misses the mark entirely. First, this is another example of the OCA's *heads I win, tails you lose* approach to this Section 1329 proceeding. The OCA is here seeking to use Aqua's additional evidence put into the record based on due diligence site visits and identification of operational, safety or compliance issues against it, while failing to acknowledge that identification and correction of these issues present real public benefits of this transaction. The Company in good faith has put evidence into the record to support that there will be public benefits directly related to safety. The OCA in turn is taking that evidence and is advocating for a halt to the transaction because of the exact information that supports a sale.

Second, the OCA's argument that the GSA's improper handling of hazardous materials is a contradiction of the GSA's representation regarding environmental matters is based solely on the

⁶² I&E Main Br., at 23-24.

⁶³ OSBA Main Br., at 13.

⁶⁴ The OCA also suggests the use of the Commission's RRR as a reference point for evaluation of the \$18 million ratemaking rate base in this case. OCA Main Br., at 14-15. However, for the reasons stated in Aqua's Main Brief, Aqua continues to believe the Commission should give due consideration to the timing of the APA in this transaction as it stated in the application of the RRR and should be grandfathered, as the purchase price was negotiated and agreed upon in April 2023, before the Commission's July 2024 Order was issued. Aqua Main Br., at 39, n.125.

⁶⁵ OCA Main Br., at 49.

PUBLIC VERSION

OCA’s attorneys’ judgment and not that of a judge or a jury or even its expert witness in this case.⁶⁶

At the same time, however, the OCA discounts the validity of the very same findings it uses to support this claim when it seeks to minimize Aqua Witness Zach Martin’s findings in support of public benefits [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]. If the Commission finds Aqua’s examination and evaluation of the GSA system assets to be credible and supported by the evidence in this case, which it should, then it should nevertheless ignore this attempt by the OCA to halt the transaction on the basis of an alleged infirmity in the warranties of the APA which simply does not exist. [BEGIN CONFIDENTIAL] [REDACTED]

[END CONFIDENTIAL]

The OCA also argues – again, without any supporting expert testimony – that a statement in Aqua’s FMV Appraisal by Gannett which states “no hazardous conditions or materials exist

⁶⁶ OCA Main Br., at 10, 31-33.

⁶⁷ OCA Main Br., at 32

⁶⁸ Application, Exhibit B (APA), at § 4.13.

⁶⁹ Nor does any OCA witness state that the GSA has not complied with all Environmental Requirements. In any event, there is nothing that would prohibit Aqua and the GSA from updating Schedule 4.13 prior to closing.

⁷⁰ Martin Direct, at 21-22.

PUBLIC VERSION

which could affect the assets” is inaccurate in light of the above argument and renders his appraisal invalid.⁷¹ This is not only speculation on the part of the OCA, but ignores the fact that Mr. Walker verified his Direct Testimony on August 14, 2024, in which he notes that (i) Gannett “reviewed the assets, reviewed additional information provided by the Authority/Aqua and conducted additional research regarding the Authority and the Wastewater System, including a site visit. After those activities and data gathering, we developed the appraisal”; and (ii) makes no change to the following Q&A: “Q. IS THERE ANYTHING THAT YOU WOULD CHANGE IN THE GANNETT FLEMING APPRAISAL REPORT SINCE ITS PREPARATION? A. No.”⁷² Further, there is no evidence that the Gannett appraisal uses the same defined terms as the APA when it references hazardous conditions or materials. And, finally, the referenced statement is found in the “Limiting Conditions” section of the Gannett Appraisal, which states in full “We assumed all title to all assets included in the appraisal is good and marketable, no hidden defects in the property or soil and no hazardous conditions or materials exist which could affect the assets.”⁷³ [BEGIN

CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED] [END

CONFIDENTIAL]

In summary, Aqua has established that the APA and the contracts the GSA seeks to assign to Aqua as part of the proposed transaction are all reasonable, legal and valid pursuant to 66 Pa. C.S. § 507 and the Commission should therefore approve Aqua entering into those contracts.

⁷¹ OCA Main Br., at 33.

⁷² Walker Direct, at 11-12.

⁷³ Application, Exhibit Q (Gannett Appraisal), at 5, and Compliance-4.

⁷⁴ Aqua St. No. 1, at 21.

III. RECOMMENDATIONS

Aqua stands by its responses to the Opposing Parties' recommendations set forth in its Main Brief,⁷⁵ which recommendations have been incorporated into Aqua's proposed ordering paragraphs, as conditions of the Commission's approval of the proposed transaction, submitted as Appendix C to its Main Brief.

Aqua agreed to all of the proposed recommendations espoused by I&E, except that it would want reserve any opinion as to what the rate design would be for group bulk customers into a single separate class in the separate GSA COSS submitted in Aqua's next base rate case.⁷⁶ In its Main Brief, I&E acknowledged Aqua's agreement to establish an escrow fund for missing easements, but took no position on the sufficiency of that fund.⁷⁷ Aqua submits the amount of the fund is reasonable and is explicitly stated in the APA between Aqua and Greenville.⁷⁸

Aqua similarly addressed the OSBA's recommended conditions⁷⁹ in its Main Brief. However, for sake of clarity, Aqua would note that while the first two conditions requiring Aqua to conduct "an asset condition assessment based on an audit post-close" and "a detailed comparison or reconciliation between the Aqua proposed plan and the GSA proposed plan, including justification for capital spending decisions" were stated differently by OSBA Witnesses Cathcart and Hails in their testimony, Aqua's responses are nonetheless applicable and the portions of those conditions which Aqua has accepted are noted in its Main Brief and proposed Ordering Paragraphs.⁸⁰

⁷⁵ Aqua Main Br., at 43-56.

⁷⁶ I&E Main Br., at 21.

⁷⁷ I&E Main Br., at 21.

⁷⁸ Aqua St. No. 3-R, at 14 (citing Exhibit B to Application, APA at § 6.05(c)).

⁷⁹ OSBA Main Br., at 13.

⁸⁰ Aqua Main Br., at 54-55 and Appendix C, at ¶¶ 1.i and 1.j.

PUBLIC VERSION

Finally, Aqua addressed each of the OCA's recommendation conditions in its Main Brief, including the recommendations related to transaction and closing costs that the OCA claims Aqua had not responded to. In short, Aqua disagreed with the OCA's proposed condition in all respects and thus, Aqua's position is simply that it should not be required 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, especially considering it will not be seeking any recovery of closing costs incurred by the Seller.⁸¹

IV. CONCLUSION WITH REQUESTED RELIEF

For the reasons set forth above and in its Main Brief, Aqua Pennsylvania Wastewater, Inc. respectfully 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
 - (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;

⁸¹ Aqua Main Br., at 48.

PUBLIC VERSION

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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