

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Aqua Pennsylvania	:	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	:	

RECOMMENDED DECISION
NON-PROPRIETARY VERSION

Before
Alphonso Arnold III
Mark A. Hoyer
Administrative Law Judges

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I. INTRODUCTION

In this Application, Aqua Pennsylvania Wastewater, Inc. seeks, *inter alia*, to acquire the wastewater system assets of the Greenville Sanitary Authority. This Recommend Decision recommends that the Pennsylvania Public Utility Commission deny the Application because Aqua Pennsylvania Wastewater, Inc. failed to meet its burden of proving that a substantial affirmative public benefit will result from the proposed acquisition. The Commission’s last reasonable Public Meeting prior to the end of the six-month statutory deadline is December 5, 2024.

II. HISTORY OF THE PROCEEDING

On November 17, 2023, Aqua Pennsylvania Wastewater, Inc. (“Aqua,” “Applicant,” or “the Company”) filed an Application with the Pennsylvania Public Utility Commission (“Commission”), pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code (“Code”) (“Application”). Through its Application, Aqua requested that the Commission: (1) approve Aqua’s acquisition of the wastewater system assets of the Greenville Sanitary Authority (“GSA”); (2) approve the right of Aqua to begin providing wastewater service to the public in the Borough of Greenville (“the Borough”), Hempfield Township, and West Salem Township in Mercer County, Pennsylvania (“Requested Territory”); and (3) include, in its Order approving the acquisition, the ratemaking rate base of the acquired assets as determined under Section 1329(c)(2) of the Code, 66 Pa.C.S. § 1329(c)(2). As part of its Application, Aqua requested approval of the Asset Purchase Agreement (“APA”) dated April 27, 2023. Aqua also requested that the Commission, to the extent necessary, approve the assignments of contracts between Aqua and GSA pursuant to Section 507 of the Code, 66 Pa.C.S. § 507.

On December 1, 2023, the Office of Small Business Advocate (“OSBA”) filed a Protest, Notice of Intervention, and Public Statement, as well as a Notice of Appearance for Steven C. Gray, Esquire and Rebecca Lyttle, Esquire.

On December 8, 2023, the Office of Consumer Advocate (“OCA”) filed a Protest and Public Statement, as well as a letter concerning OCA’s inability to review “Exhibit Z” to the Application.

On December 12, 2023, the Commission’s Secretary’s Bureau issued a Letter to Aqua directing it to correct issues concerning “Exhibit Y” and “Exhibit Z” to the Application.

On December 13, 2023, Aqua filed a Notice of Appearance for Courtney L. Schultz, Esquire.

Between January 11, 2024, and April 12, 2024, Aqua petitioned the Commission seven times for extensions of the Commission’s initial review period of the Application, for the purposes of providing information deemed deficient by the Commission in the Commission’s review of the Application.

On May 2, 2024, the Commission’s Secretary’s Bureau issued a Letter to Aqua conditionally accepting Aqua’s Application. The Letter directed Aqua to comply with certain notice requirements before the Commission finalized acceptance of the Application.

On May 17, 2024, Aqua filed a Letter indicating that it has begun providing individualized notice of the proposed acquisition to its wastewater customers and that it is providing notice with its wastewater bills during a billing cycle beginning May 16, 2024, and running through approximately June 16, 2024.

On June 3, 2024, Keith Gabage filed a Protest.

On June 17, 2024, GSA and the Borough filed Petitions to Intervene in this proceeding.¹

On June 18, 2024, Aqua filed a Letter containing proof that it complied with the Commission's notice requirements set forth in the Commission's May 2, 2024, Letter.

On June 21, 2024, the Commission's Secretary's Bureau issued a Letter to Aqua informing it that the Commission has accepted the Application for filing.

On June 24, 2024, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance for Carrie B. Wright, Esquire.

On June 25, 2024, the Commission issued a Prehearing Conference Notice, scheduling a prehearing conference for July 17, 2024, and officially assigning this matter to the undersigned Administrative Law Judges.

On June 26, 2024, the Commission issued our Prehearing Conference Order which laid out the issues to be addressed at the prehearing conference and directed the parties to file prehearing memoranda by July 16, 2024.

¹ Although separate parties to this proceeding, GSA and the Borough are represented by the same attorney and have made joint filings in this matter.

On July 6, 2024, notice of the Application was published in the Pennsylvania Bulletin. The notice provided a deadline of July 16, 2024, for Protests and Petitions to Intervene.

On July 12, 2024, Aqua filed a Petition for Protective Order.

Also on July 12, 2024, the Commission issued a Telephonic Public Input Hearing Notice, scheduling a public input hearing for July 30, 2024, to begin at 6:00 p.m.

On July 15, 2024, the Commission issued a Corrected Telephonic Public Input Hearing Notice.

On July 16, 2024, Walter Wujcik filed a Protest.

Pursuant to the Prehearing Conference Order, prehearing memoranda were filed by Aqua, GSA and the Borough, OCA, OSBA, and I&E.

On July 17, 2024, the prehearing conference was held as scheduled. Counsel for Aqua, GSA and the Borough, OCA, OSBA, and I&E participated in the conference.²

Also on July 17, 2024, following the prehearing conference, the Commission issued an Evidentiary Hearings Notice, scheduling evidentiary hearings in this matter for August 15 and 16, 2024.

² Hereafter, Aqua, GSA and the Borough, OCA, OSBA, and I&E will be referred to collectively as the “active parties.”

On July 18, 2024, the Commission issued our Order Granting Petition for Protective Order, which granted Aqua's July 12, 2024, Petition for Protective Order.

Also on July 18, 2024, the Commission issued a Corrected Evidentiary Hearings Notice.

On July 22, 2024, the Commission issued our Prehearing Order which adopted the litigation schedule and the other procedural matters agreed upon at the prehearing conference. Additionally, the Petitions to Intervene of GSA and the Borough were formally granted through this Order.

On July 30, 2024, the 6 p.m. telephonic public input hearing was held as scheduled. Four people presented testimony on-the-record. The public input hearing testimony will be summarized in Section IV of this Recommended Decision, below.

On August 14, 2024, Aqua, on behalf of all the active parties, submitted through email a cross-examination matrix which indicated that OSBA intended to cross-examine two Aqua witnesses at the August 15, 2024, evidentiary hearing. Cross-examination of all other witnesses was waived by the active parties. We were further advised by the active parties that the parties agreed to stipulate to the admissibility of pre-submitted testimonies and exhibits. The active parties were informed through email that all witnesses, except for the witnesses identified for cross-examination, were excused from participation in the evidentiary hearings.

On August 15, 2024, the evidentiary hearing was held as scheduled. Counsel for the active parties were present for the hearing. All active parties moved to have their pre-submitted testimonies and exhibits entered into the record. As there were no objections, all documents and exhibits were entered into the record at the time of hearing. Cross-examination was conducted by OSBA on two Aqua witnesses. At the

conclusion of the hearing, the active parties agreed that the August 16, 2024, evidentiary hearing was unnecessary and could be cancelled.³

On August 16, 2024, the Commission issued a Hearing Cancellation Notice cancelling the August 16, 2024, evidentiary hearing.

On August 20, 2024, counsel for OCA provided a common outline for Briefs, on behalf of the active parties, pursuant to a conversation had at the August 15, 2024, evidentiary hearing.

On August 27, 2024, Main Briefs were filed by the active parties.

On September 5, 2024, Reply Briefs were filed by the active parties.

The record closed on September 5, 2024, when Reply Briefs were filed.

III. FINDINGS OF FACT

PARTIES

1. Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Application, at ¶ 8.

2. Aqua is engaged in the wastewater service business and furnishes wastewater service to approximately 60,000 customer accounts. Aqua's existing service

³ On August 16, 2024, an electronic transcript of the hearing was filed with the Commission. The combined electronic transcript of the prehearing conference, public input hearing, and evidentiary hearing is 178 pages in length.

territories cover various counties throughout Pennsylvania with wastewater operations in nearby Venango County, and its affiliate Aqua Pennsylvania, Inc. (“Aqua PA”) also provides water operations in close proximity in Mercer County, including Aqua’s Western Division office in Sharon, Pennsylvania. Application, at ¶ 8.

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

4. The GSA is a duly organized and validly existing municipal authority organized and existing under the Municipal Authorities Act of 1945. Application, at ¶ 9.

5. The GSA owns the sanitary wastewater collection and treatment system which provides sanitary wastewater service to approximately 2,281 customers and which also provides transmission and treatment service for Hempfield and West Salem. GSA accepts flows from approximately 1,168 Hempfield customers and 571 West Salem customers. GSA provides bulk treatment service for Hempfield and West Salem as these municipalities own their respective collection systems and bill their own residents. Application, at ¶¶ 9, 31.

6. OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

7. OSBA is a Commonwealth agency created by Act 181 of 1988 to represent the interests of small businesses before the Commission. 73 P.S. § 399.41.

8. I&E serves as the Commission's prosecutorial bureau for the purposes of representing the public interest in ratemaking and service matters and enforcing compliance with the Code and Commission Regulations and Orders. *See Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Final Procedural Order entered Aug. 11, 2011). I&E's analysis in this proceeding is based on its responsibility to represent the public interest. This responsibility requires balancing the interests of ratepayers, the utility company, and the regulated community as a whole. I&E St. No. 1, at 1.

GSA

9. The GSA bills its direct retail customers a monthly base fee of \$10.50 per unit, which includes an allowance of 500 gallons, and an inclining consumption charge per 1,000 gallons based on water usage. The GSA charges well users a flat rate of \$30.41 per month per unit. Application, at ¶ 35.

10. West Salem and Hempfield bill their own residents at their established rates; however, West Salem retains 15% of the revenue collected and remits the remainder to the GSA, and similarly, Hempfield retains 25% of the revenue collected and remits the remainder to the GSA. West Salem remits payment to GSA for its revenue collected on a monthly basis, and Hempfield remits payment to GSA for its revenue collected on a quarterly basis. Application, at ¶ 35; Application, Exhibit H.

11. After Closing, Aqua intended to implement the GSA's sanitary wastewater rates in effect at Closing, as reflected on Schedule 7.04(a) of the Agreement. The GSA presently bills on a monthly basis to GSA end use customers – the average wastewater customer pays approximately \$23.00 per month for service from the GSA. Aqua intended to continue to bill the GSA customers on a monthly basis. A schedule of

rates tariff page implementing monthly rates for the GSA customers post-Closing is attached to the Application as Exhibit G. Application, at ¶ 34; Application, Exhibit G.

12. Aqua intended to implement its Rules and Regulations to govern the provision of wastewater service in the Requested Territory. Application, at ¶ 36.

13. Based on the GSA's current rate schedule, Aqua projects annual revenue of \$1,229,219 from the GSA customers and annual Operating and Maintenance ("O&M") expenses of \$996,206 based on GSA's operating expenses presented in the 2022 financial statements, as adjusted by Aqua. Application, at ¶¶ 41, 42.

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

15. Mr. Isaiah Vernon was intended to be the assigned Certified Wastewater Operator for the System. Mr. Vernon's currently effective Wastewater Operator's License is attached to the Application as Exhibit L. Aqua was not anticipating any physical, operational or managerial changes at its Southeastern Division Office as a result of the acquisition. Application, at ¶¶ 43, 50; Application, Exhibit L.

16. Aqua is in good standing with the Department of Environmental Protection ("DEP"). Application, at ¶ 46.

17. The service area comprising the Requested Territory is consistent with the GSA's sewage planning and in compliance with the DEP-approved Act 537 Plans. Application, at ¶ 47.

18. The Water Quality Management (“WQM”) Permit for the wastewater treatment plant (“WWTP”) issued in 2023, the National Pollution Discharge Elimination System (“NPDES”) Permit for the WWTP, along with the GSA’s NPDES permit renewal application, and copies of Discharge Monitoring Reports were all provided with the Application as Exhibit M1, Exhibit N1, and Exhibit N2, respectively. Application, at ¶ 44, Application, Exhibit M1, Exhibit N1, and Exhibit N2.

19. Notices of Violation (“NOVs”) issued to the GSA, along with GSA’s response to the NOVs were included in the Application as Exhibit O1. Application, at ¶ 45, Application, Exhibit O1.

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

21. GSA’s plan to upgrade its facilities, prior its decision to sell its system to Aqua, was \$45.6 million. OSBA St. No. 1, at 11.

FITNESS

LEGAL FITNESS

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

FINANCIAL FITNESS

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

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

25. Aqua PA has a Standard and Poor's Rating of A and has approximately \$2.0 billion in outstanding long-term debt at a weighted average interest rate of approximately 4.10%. Aqua PA also has a \$100 million short-term credit facility and access to equity capital as a subsidiary of Essential. Aqua St. No. 3, at 7.

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

TECHNICAL AND MANAGERIAL FITNESS

27. Aqua intended to provide support for the operation of the System through its employees' expertise in accounting and financial, administrative, communications, corporate secretarial, customer service and billing, engineering, fleet services, human resources, information systems, operations, regulatory compliance, rates

and regulatory, risk management, water quality, legal, and purchasing, contracts and sales of real estate. Aqua planned to offer employment to the six current GSA employees. The System was intended to be operated from Aqua's Western Area office with support from employees located at Aqua's Headquarters. Aqua St. No. 2, at 8-9.

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

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

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

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

AFFIRMATIVE PUBLIC BENEFITS

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

33. Aqua has acquired 15 wastewater systems over the past 10 years. Many of these systems required significant investment to correct service and environmental issues. Other systems did not need substantial capital investment. The inherent diversification of systems and customers provides a foundation of stability in the day to day, month to month, and year to year operations of the utility, in that, they are all not requiring major capital investments at the same time, thus, spreading the financial impacts over the long-term operations of the acquiring utility. Aqua St. No. 3, at 11.

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

35. Under Aqua’s ownership, GSA customers would have received expansive customer service provided by the Company’s customer service call centers and

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

36. Aqua has real-time disruption notifications and mapping system initiated from its field personnel on site, at the disruption, so with respect to the field work improvements, when Aqua's technicians enter a work order and go "in route," a text notification is sent to the customer providing a notification with the technician's expected arrival time regardless of whether the work order is scheduled or unscheduled. Hearing Ex. No. 15, Aqua St. No. 1-R, at 9-10.

37. Aqua has a customer ePortal and Aqua App for mobile devices that provides access to improved customer tools for account maintenance, notifications, viewing meter reads and trending consumption, as well as viewing and paying bills from anywhere in the world. Aqua customers have the benefit of expanded bill payment options including auto-payment and pay by text. For customers using an ACH payment method, all of these options are free. Aqua's ePortal provides electronic billing and the ability to view prior bills. Aqua St. No. 1- R, at 10.

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

39. 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, meaning that many families may benefit from assistance. OCA St. 1, at 29; OCA Exhibit CMH-22.

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

41. The GSA customers would have access to customer assistance programs and funds. The Company offers a suite of programs designed to support limited income families in the Company’s service territory. These programs are designed to address affordability in a number of ways, including discounted wastewater services; a leak repair program for minor household leaks that lead to high water bills and thereby increase wastewater charges; conservation kits to reduce water and wastewater usage charges; and a hardship fund for customers who need assistance with arrears. The most comprehensive income-based assistance program is Aqua’s Customer Assistance Program (“CAP”), which provides three benefits to eligible participants (up to 200% of the Federal Poverty Level): (1) discounted monthly bills on a tiered basis; (2) \$25 credits towards pre-program arrearages for each timely monthly payment; and (3) protection from late payment charges. Aqua St. No. 5, at 3-4.

42. The hardship fund (known as Aqua Aid) would be available to GSA customers with a high bill or arrearages in need of assistance. Aqua St. No. 5, at 6.

43. Aqua agreed to provide an annual contribution of \$25,000 for the three years following closing of the transaction to Aqua Aid, representing a \$75,000 benefit for both existing and GSA customers alike. All funds remaining at the end of a

calendar year were intended to be rolled over to the following year. Aqua St. No. 5-R, at 7.

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

45. On March 6, 2024, GSA was provided with a letter from the DEP that informed it that it was in breach of the COA. Aqua St. 2-R, Exhibit MJB 2-R.

46. GSA did not move forward with the COA because it had entered into the APA with Aqua and the resulting pending application. Aqua St. 2, at 10; OCA St. 1 SR, at 9.

47. Other than being in breach of the COA, GSA is currently in environmental compliance. Aqua St. No. 2, at 16; OCA St. 1, at 15; OCA St. 1SR, at 9.

48. Aqua planned to make the following changes to what it deems to be “deficiencies” in the GSA system:

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

B. The GSA only requires minimal sampling and analysis be completed for the WWTP. Aqua would require the additional routine process control testing analysis above the regulatory requirements of the DEP to the discharge permit parameters. The addition and/or increased frequencies of the testing would facilitate optimization of the facility and processes, which would allow operators to make educated decisions and meet the permit effluent requirements. These process enhancements would also drive towards the optimization and cost control of the WWTP, which will directly benefit the environment and the community meeting the principal objectives of the Clean Water Act – fishable, swimmable, and drinkable waterways. Aqua St. No. 1, at 19.

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

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

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

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

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

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

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

49. GSA reported that the bypassing of trickling filter treatment occurred 10 times total in January, February, and April of 2024, which illustrates the presence of inflow and infiltration ("I&I"). Aqua St. No. 2-R, at 3.

50. Aqua has not conducted its own audit of the GSA system. Tr. 135, 136.

51. Aqua has devised a plan to address I&I at the GSA WWTP, in allocating funds for sewer main rehabilitation and replacement; such replacements would be targeted by the results of the metering program the Company would conduct. Aqua St. No. 2-R, at 3.

52. Aqua's plan to address this I&I includes conducting flow metering with GSA's collection system to identify areas with drainage basins exhibiting significant I&I, and then rehabbing and replacing GSA's sewer main. Aqua St. No. 2-R, at 2.

53. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

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

54. [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]

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

61. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

62. Aqua has key operations in nearby service areas and would be able to assume the operations of the GSA System, fold them into a larger scale, efficiently operated wastewater utility. Application, at ¶ 49.

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

64. Aqua's and the GSA's public benefits analysis shows tangible financial benefits of the transaction to GSA customers of paying off all their debt, being able to utilize their cash surplus (otherwise encumbered by sewer utility operations), have proceeds to place into interest earning securities, saving of administration expenses, avoiding their own projected 200% rate increase as a result of a \$46 million investment in their treatment assets, and having a new property tax paying business in their community that are substantial, and in this case offset the initial revenue requirement deficiency of \$2.223 million by \$168,131. Aqua St. No. 3-R, at 8; Aqua St. No. 3-RJ, at 8; Tr. 151-54, 164-70.

65. Aqua witness Packer testified that he was not aware of a plan on behalf of GSA to rebate property taxes, provide grants for the wastewater capital spending, or to provide any other specific benefits to GSA ratepayers with the proceeds from the sale of GSA to Aqua. Tr. 158, 159.

66. Aqua has not received any assurances from GSA or the Borough concerning how the proceeds from the sale would be spent or otherwise allocated in Greenville. Tr. 159, 160.

67. Aqua is subject to the regulatory oversight of the PUC requiring it to provide safe, adequate and reliable service at just and reasonable rates. The GSA is not subject to the PUC's jurisdiction and thus, no such PUC regulatory oversight currently exists for the GSA. Aqua St. No. 3, at 14; Greenville St. No. 1-R, at 6-7.

68. Additional property will be subject to tax in Greenville as Aqua would pay increased tax revenues following the closing of the Proposed Transaction. Aqua St. No. 3, at 14.

69. Aqua estimates that it would invest approximately \$20.4 million in the system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety. Moreover, GSA had no formal long-term capital planning in place and only performed reactive maintenance. Aqua St. No. 2, at 10-12; Greenville St. No. 1, at 5.

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

71. GSA plans to spend approximately \$46 million in upgrading its WWTP if the transaction is not approved, which would result in an immediate rate increase of nearly 200%. Aqua St. No. 3-RJ, at 12-13; Greenville St. No. 1-R, at 4-5.

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

73. 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-fair market value systems as of that case, as well as that the estimated non-fair market value systems cumulative revenue requirement per customer of approximately \$2,600, based on the Company's current rate case, is nearly 30% higher than the all-systems average of \$1,811 per customer. Aqua St. No. 3-RJ, at 10.

74. The acquisition would not have any immediate impact on the rates of either existing customers of Aqua or existing customers of the GSA. Application, at ¶ 53(g).

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

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

point in time estimate reflective of revenue deficiency upon year one ownership. Aqua St. No. 3, at 17 and Appendix A.

77. Following the transaction, the average current bill for an Aqua wastewater customer could increase by \$1.35 or 1.60%, and the average current bill for Aqua water customers could increase by \$0.09 or 0.12%. Application, Exhibit I1.

SECTION 1329

78. Aqua and the GSA have agreed to use the process presented in Section 1329 of the Code to determine the FMV of the wastewater system assets and the ratemaking rate base. Application, at ¶ 54.

79. Aqua and the GSA agreed on a Licensed Engineer to complete the Assessment of Tangible Property and engaged Utility Valuation Experts (“UVEs”) to perform Fair Market Value (“FMV”) analyses of the system in accordance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), utilizing the cost, market, and income approaches. Application, at ¶ 14; Application, Exhibits DD1 and DD2.

80. Aqua engaged the services of Gannett Fleming Valuation and Rate Consultants, LLC (“Gannett”). The GSA engaged the services of ScottMadden, Inc. (“ScottMadden”). Both firms were pre-certified as authorized UVEs and are on the list of qualified appraisers maintained by the Commission. Copies of the Fair Market Value Appraisal Reports of Gannett and ScottMadden were attached as Exhibit Q and Exhibit R, respectively, to the Application. Application, at ¶¶ 54-55; Application, Exhibits Q and R.

81. The purchase price agreed to by Aqua and the GSA was identified as \$18,000,000. Application, at ¶ 56.

82. The GSA treatment plant is “well maintained” and, while it is reaching the end of its design life, its general condition is fair. Application, Exhibit D.

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

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

Aqua St. No. 6, at 13.

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

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

Greenville St. No. 2, at 14.

85. A key assumption underlying Aqua’s fair market valuation of the GSA system is that “no hazardous conditions or materials exist which could affect the assets.” Aqua St. No. 6, at 12-13.

86. Neither of the two FMV appraisals underlying Aqua's Application recommended a downward adjustment to the valuation of the GSA's assets due to non-viability or poor condition. OCA St. 1, at 13.

87. If the Application is approved, Aqua calculates the GSA system will generate an annual revenue deficiency of \$2,223,000 that may be recovered from GSA customers, Aqua water customers, Aqua wastewater customers, or all three. Aqua St. 3, at Appendix A; OCA St. 1SR, at 19.

88. In three of Aqua's recent acquisitions, Lower Makefield (wastewater), Shenandoah Water, and East Whiteland Township (wastewater), Aqua's projected revenue deficiencies were under projected by \$706,082, \$1,402,877, and \$1,981,719, respectively. OCA St. 1 SR, at 6.

89. The ratemaking rate base determined pursuant to Section 1329(c)(2) is \$18,000,000, being the lesser of the negotiated purchase price of \$18,000,000 and the average of the fair market value appraisals which is \$20,977,920 – determined by \$23,260,000 presented in the Gannett appraisal and \$18,695,839 presented in the ScottMadden appraisal. Application, at ¶ 57.

90. Transaction and closing costs were identified as approximately \$487,250 which would be included in rate base. Exact closing costs would be determined at closing. Application, at ¶ 58; Aqua St. No. 3, at 22.

91. The purchased price of \$18 million is \$13,465,362 or 397% higher than the net book value of the GSA system assets as used by ScottMadden and \$11,145,561 or 263% higher than the original cost new less depreciation of the

wastewater system's utility plant in service as of May 31, 2023, of \$6,854,439 used by Gannett. Aqua St. No. 6-R, at 5; OCA St. 1 at 5.

92. The Commission recently released its first annual Reasonableness Review Ratio ("RRR"), which serves as a reference for assisting the Commission's review of Section 1329 purchases. *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303.

93. The Commission's recently-determined RRR result identified 1.68 as the reference point formed by its analysis of an approximation of a ratio of a proxy fair market value to the depreciated original cost of a similarly-situated investor owned water utilities. *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303 at 6.

94. The Commission's recently-determined RRR is not binding. *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303 at 3.

95. GSA budgeted total fees for services in the sewer fund budget of \$1,266,763 for 2022 and \$1,265,499 for 2023. Application, Exhibit J4.

96. Scott Madden's valuation income approach relied on revenue increases of 20% per year from 2024 to 2029, increasing to \$3,793,559 in total revenues in 2029. This 2029 revenue, relied upon by Scott Madden to ascertain an income approach value of \$19,372,669, represents a 300% increase from GSA's 2023 budget. Application, Exhibit R.

SECTION 507

97. Aqua and GSA are parties to an Asset Purchase Agreement dated April 27, 2023. Application, at ¶ 7; Application, Exhibit B.

98. The following six contracts would be assigned or entered into by Aqua at Closing:

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

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

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

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

F5 – Intermunicipal Sewage Agreement, dated December 21, 2006, between the GSA, Greenville, Hempfield Township Municipal Authority, and Hempfield.

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

Application, at ¶ 73; Aqua St. No. 3, at 22-23.

99. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL]

100. [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [END
CONFIDENTIAL]

CONDITIONS TO APPROVAL OF APPLICATION

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

102. Aqua agreed to provide a letter to the acquired customers that provides information regarding its low-income programs, including a description of the available programs, eligibility and requirements, and Aqua's contact information. Aqua 5-R, at 5-6.

103. Aqua agreed that its welcome letter should be sent within 30 days after closing so that eligible customers can benefit from the program as soon as possible and before rates are increased. Aqua 5-R, at 5-6.

104. Aqua agreed to include the same information regarding low-income programs in bills sent to GSA customers within 90 days after closing. Aqua agreed to report the number of eligible customers from the former GSA service area who are enrolled in Aqua's CAP and would provide this information to the Commission and to the parties every six months until the conclusion of Aqua's next base rate case. Aqua 5-R, at 5-6

105. As part of its Application, Aqua provided a list of 276 missing easements. Application Exhibit B; I&E St. No. 1, at 17.

106. As of the writing of the other parties' direct testimony in this proceeding, there were 119 missing easements remaining. OCA St. No. 1, at 25.

107. Both UVEs valued the easements at \$276. Aqua St. No. 6-R, at 3; Greenville St. No. 2-R, at 6.

108. Section 6.05 of the APA provides that all costs and expenses incurred in connection with obtaining each missing easement (including any payment to a landowner in connection with condemnation, in lieu of condemnation or otherwise) shall be paid by seller and no additional consideration is payable by buyer for any missing easement. Application, Exhibit B.

109. The APA contains a process by which a portion of the purchase price is held in escrow to ensure that GSA obtains any missing easements after closing occurs. Aqua St. No. 3-R, at 14.

IV. PUBLIC INPUT HEARING

Multiple letters in opposition to the Application were filed with the Commission's Secretary's Bureau and OCA indicated that there was public interest in this case. Therefore, we determined that there was sufficient public interest in this case and proceeded to schedule a telephonic public input hearing for July 30, 2024, at 6 p.m. Four people testified under oath at the public input hearing.

Joel Rinella testified as a residential customer of GSA.⁴ Mr. Rinella stated that he reviewed four years of minute meetings between GSA and the Greenville town council and has concluded that GSA is plagued by conflicts of interests regarding the makeup of its board, general mismanagement, billing miscalculations, and fee collection issues.⁵ Due to these issues that plague GSA, Mr. Rinella supports the acquisition of GSA by Aqua.⁶

Rod Wilt testified as the executive director of Penn-Northwest Development Corporation, which Mr. Wilt stated is the lead economic development agency for Mercer County, and as a business owner of a small restaurant in downtown Greenville.⁷ Mr. Wilt supports the acquisition of GSA by Aqua, stating that the acquisition of GSA by Aqua will provide a positive economic impact to the Greenville community because the sale of GSA will permit the community to reinvest the funds into economic development programs and will provide the community with access to a quality sewer system.⁸

⁴ Tr. 57.

⁵ Tr. 51.

⁶ Tr. 52, 53.

⁷ Tr. 59 - 62.

⁸ Tr. 61, 62.

Keith Gabage testified as a water only customer of Aqua.⁹ Mr. Gabage indicated that he was a previous employee of Aqua and previously worked for Aqua under the title of director of business development.¹⁰ Mr. Gabage filed a Protest in this matter and does not support the acquisition of GSA by Aqua.

Mr. Gabage testified that the higher purchase price Aqua agrees to pay, the more customers have to pay, and raised three additional points in his testimony at the public input hearing: (1) that the purchase price exceeds the \$5.7 million net value of the GSA's assets, causing customers to ultimately pay three times more than if Aqua had proceeded with this acquisition under 66 Pa.C.S. § 1327; (2) that the public notice that goes to customers should (i) be more detailed with respect to other Act 11, 66 Pa.C.S. § 1311(c), subsidies paid by water customers, and (ii) should disclose other pending acquisitions; and (3) that Aqua should include a line item on water customers bills that specifically calls out the subsidy that the water customers are paying to support the revenue requirement for the wastewater customers.¹¹

Richard Williams testified as a wastewater customer of GSA and a small business owner in Greenville.¹² Mr. Williams supports the acquisition of GSA by Aqua, stating that in his opinion upgrades are needed to be made to the GSA system.¹³ Mr. Williams also testified regarding a sewer line near a property that he owns that is leaking and emits an odor.¹⁴

⁹ Tr. 70.

¹⁰ Tr. 70.

¹¹ Tr. 71-74, 77.

¹² Tr. 80, 81.

¹³ Tr. 82, 83.

¹⁴ Tr. 81.

V. LEGAL STANDARDS

A. **Burden of Proof**

Aqua is the Applicant in this proceeding. Accordingly, as the proponent of a proposed rule or order, Aqua has the burden of proof in this proceeding.¹⁵ The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence.¹⁶ The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party.¹⁷

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence in the record.¹⁸ That is, the evidence must be substantial and legally credible and cannot be mere “suspicion” or a “scintilla” of evidence.¹⁹

B. **Certificate of Public Convenience**

In this matter, Aqua requests approval of the acquisition by Aqua of the wastewater system assets of the GSA and the right of Aqua to begin to offer, render, furnish, and supply wastewater service to the public in the Borough of Greenville, Hempfield Township and West Salem Township, Mercer County, Pennsylvania.

¹⁵ 66 Pa.C.S. § 332.

¹⁶ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹⁷ *Id.* at 856-57.

¹⁸ 2 Pa.C.S. § 704.

¹⁹ *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate of Public Convenience (“CPC”) prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission.²⁰

Section 1102(a)(3) of the Code requires a utility to first obtain a CPC from the Commission prior to a utility or an affiliated interest of a utility acquiring or transferring, to any person or corporation by any method, property used or useful in the public service.²¹

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

A certificate of public convenience shall be granted . . . only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience or safety of the public. The commission, in granting such certificate, may impose such conditions as it may deem to be just and reasonable.^[22]

According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.”²³ In establishing this precedent, the Court held that the

²⁰ 66 Pa.C.S. § 1102(a)(1)(i).

²¹ 66 Pa.C.S. § 1102(a)(3).

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

²³ *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (1972) (“*City of York*”).

statute's clear command is that the Commission must find that the granting of a certificate "will affirmatively benefit the public."²⁴

The Pennsylvania Supreme Court further held:

In conducting the underlying inquiry, the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome, or impossible; rather, the PUC properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters.^[25]

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction.²⁶ In addition, "in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue."²⁷ The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable.²⁸

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

²⁴ *Id.*

²⁵ *Popowsky v. Pa. Pub. Util. Comm'n*, 937 A.2d 1040, 1057 (2007).

²⁶ *Id.* at 1061.

²⁷ *Id.* at n.21.

²⁸ 66 Pa.C.S. § 1103(a).

[A]t least in a general fashion, the effect that a proposed merger is likely to have on future rates to consumers. Along with the likely effect of a proposed merger upon the service that will be rendered to consumers, the probable general effect of the merger upon rates is certainly a relevant criteria of whether the merger will benefit the public.^[29]

In applying this specific factor, the Pennsylvania Commonwealth Court recently held that the Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.”³⁰ While *McCloskey* held that rate impact must be addressed, it recognized that “the Commission is charged with deciding whether the impact of rates...is outweighed by...other positive factors that...served [as] a substantial public benefit.”³¹

The Commission and the courts have held that granting a CPC need not be “absolutely necessary” in order to be in the public interest.³² The Commonwealth Court reasoned, “[n]ot only would this approach be impractical and unrealistic, it would actually pose a danger to the health, safety and welfare of the public.”³³ In addition, when considering the public interest, the Commission may consider how the benefits and detriments impact “*all affected parties*, and not merely one particular group or geographic subdivision.”³⁴

²⁹ *City of York*, 295 A.2d at 829.

³⁰ *McCloskey v. Pa. Pub. Util. Comm’n*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlth. 2018) (“*McCloskey*”).

³¹ *Id.* at 1067.

³² *See, Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014).

³³ *Id.*

³⁴ *Middletown Twp. v. Pa. Pub. Util. Comm’n*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis in original); *see also, Dunk v. Pa. Pub. Util. Comm’n*, 232 A.2d

Recently, the Commonwealth Court upheld prior precedent that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition.³⁵ The Court explained that where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction.³⁶ Furthermore, the Court clarified that:

Where...there are **no benefits that differ substantially** from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result from the transaction, there are insufficient net benefits to support approving the transaction and granting the [CPC] under Section 1103(a).³⁷

The Court explained that providing the same services as are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits consistent with *City of York*, especially if the existing system is already operating safely and reliably.³⁸ Moreover, the public benefits arising from aspirational statements or benefits that cannot be quantified at the

231, 234-35 (Pa. Super. 1967), *aff'd*, 252 A.2d 589 (Pa. 1969) (where public benefit included companies and customers other than the proponent utility).

³⁵ *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlth. 2023) (“*Cicero*”).

³⁶ *Id.* at 1119.

³⁷ *Id.* (emphasis in original).

³⁸ *Id.*

time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms.³⁹

Additionally, in order to obtain a CPC, the acquiring public utility has the burden, by a preponderance of the evidence, to establish that it is technically, legally, and financially fit to provide the proposed service.⁴⁰ An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally.⁴¹ It is the protestant’s burden to rebut that presumption.⁴² Where an Applicant is both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy.⁴³

C. Ratemaking rate base value

In this matter, Aqua seeks an order from the Commission approving the acquisition that includes the ratemaking base of the GSA wastewater system assets pursuant to Section 1329(c)(2) of the Code.

Section 1329 of the Code establishes a process for ratemaking purposes to value the plant of municipal-owned water and wastewater systems to be acquired by certificated public utilities.⁴⁴ Under Section 1329, the value of water and wastewater

³⁹ *Id.* at 1120.

⁴⁰ *McCloskey* at 1058.

⁴¹ *Lehigh Valley Transp. Servs., Inc. v. Pa. Pub. Util. Comm’n*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012); *South Hills Movers, Inc. v. Pa. Pub. Util. Comm’n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

⁴² *Id.* at 58.

⁴³ *Id.*

⁴⁴ 66 Pa.C.S. § 1329.

system assets to be included in the acquiring utility’s rate base for ratemaking purposes will be the lesser of the purchase price negotiated by the acquiring utility and seller or the “fair market value” of the selling utility’s system.⁴⁵ Section 1329(g) defines “fair market value” as “[t]he average of the two utility valuation expert appraisals conducted under subsection (a)(2).”⁴⁶

The fair market valuation process under Section 1329 where the acquiring utility and the seller must elect and agree to have the fair market value of the seller’s assets established through separate, independent appraisals conducted by UVEs is voluntary.⁴⁷ The Commission maintains a list of qualified UVEs from which the acquiring utility and seller must choose their respective appraisers.⁴⁸

The UVEs must prepare an appraisal of the seller’s system assets in compliance with the USPAP, employing the cost, market, and income approaches.⁴⁹ The fair market value of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3).⁵⁰ 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.⁵¹

⁴⁵ 66 Pa.C.S. § 1329(c)(2).

⁴⁶ 66 Pa.C.S. § 1329(g).

⁴⁷ 66 Pa.C.S. § 1329(a).

⁴⁸ 66 Pa.C.S. §§ 1329(a)(1), (2).

⁴⁹ 66 Pa.C.S. § 1329(a)(3).

⁵⁰ 66 Pa.C.S. § 1329(g).

⁵¹ 66 Pa.C.S. § 1329(d)(1).

D. Utility-Municipal Contracts

In this matter, Aqua further asks the Commission to approve, to the extent necessary, assignment of contracts between Aqua and the GSA pursuant to Section 507 of the Code, and to provide such other approvals, certificates, registrations and relief, if any, under the Code that may be required. This includes approval of the executed APA between Aqua and GSA.

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

Except for a contract between a public utility and a municipal corporation to furnish service at the regularly filed and published tariff rates, no contract or agreement between any public utility and any municipal corporation shall be valid unless filed with the commission at least 30 days prior to its effective date. Upon notice to the municipal authorities, and the public utility concerned, the Commission may, prior to the effective date of such contract or agreement institute proceedings to determine the reasonableness, legality or any other matter affecting the validity thereof. Upon the institution of such proceedings, such contract or agreement shall not be effective until the Commission grants its approval thereof.^[52]

Thus, pursuant to Section 507, the Commission has discretionary power to institute proceedings to determine the reasonableness, legality, and validity of the contracts between a municipality and a public utility.⁵³

⁵² 66 Pa.C.S. § 507.

⁵³ 66 Pa.C.S. § 507; *see also*, *County of Allegheny v. Pa. Pub. Util. Comm'n*, 159 A.2d 227, 233 (Pa. Super. 1960).

VI. DISCUSSION

A. Section 1102 and 1103 Approvals

1. Fitness

1) Positions of the Parties

To obtain a CPC from the Commission, Aqua must establish that it is technically, legally, and financially fit to own and operate the assets it seeks to purchase from GSA.⁵⁴ An existing provider of public utility service is presumed fit.⁵⁵ Aqua is a Commission certified public utility and as such, enjoys a presumption of fitness. No party challenged Aqua's fitness in this proceeding.

First, regarding technical fitness, Aqua must have sufficient staff, facilities, and operating skills to provide the proposed service.⁵⁶ Aqua submitted that it will operate the GSA system from its Western Area office with support from its employees located at Aqua's headquarters.⁵⁷ Aqua indicated that it will provide support for the operation of the GSA system through its employees' expertise in accounting and financial, administrative, communications, corporate secretarial, customer service and billing, engineering, fleet services, human resources, information systems, operations, regulatory compliance, rates and regulatory, risk management, water quality, legal, and purchasing, contracts and sales of real estate.⁵⁸ Aqua further submitted that it employs 40 wastewater

⁵⁴ *McCloskey* at 1058.

⁵⁵ *Id.*

⁵⁶ *Re Perry Hassman*, 55 Pa.P.U.C. 661 (1982) ("*Re Perry Hassman*").

⁵⁷ Aqua St. No. 2, at 8, 9.

⁵⁸ Aqua St. No. 2, at 8, 9.

operators, many holding dual water and wastewater certifications, who may be called upon to assist in the operation of the system.⁵⁹ Aqua further noted that it has acquired many systems in the last three decades and has worked with the Commission and statutory advocates to improved troubled wastewater systems, such as the North Heidelberg Sewer Company and Treasure Lake wastewater systems.⁶⁰

Second, regarding legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission regulations.⁶¹ Aqua submitted that there are no pending legal proceedings challenging Aqua’s ability to provide safe and adequate service.⁶²

Third, regarding financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service.⁶³ Aqua submitted that it is a Class A wastewater utility with total net utility plant assets of approximately \$497 million and annual revenues of approximately \$60 million, as of December 31, 2022.⁶⁴ Aqua further submitted that it is a direct subsidiary of Aqua PA which is a Class A water utility with total net utility plant assets of \$4.4 billion and annual revenues of \$545 million, as of 2022.⁶⁵ As a direct subsidiary of Aqua PA, Aqua stated that it has access to Aqua PA’s financing capabilities, as well as access to equity capital as a subsidiary of Essential.⁶⁶ Moreover, Aqua submitted that it will use existing short-term credit lines to

⁵⁹ Aqua St. No. 2, at 11.

⁶⁰ Aqua St. No. 1, at 11, 12.

⁶¹ *See Re Perry Hassman.*

⁶² Aqua St. No. 3, at 7.

⁶³ *See Re Perry Hassman.*

⁶⁴ Aqua St. No. 3, at 7.

⁶⁵ Aqua St. No. 3, at 7.

⁶⁶ Aqua St. No. 3, at 7.

fund the acquisition, the funding of which will be converted to a mix of long-term debt and equity capital shortly after closing.⁶⁷

2. Substantial Affirmative Public Benefits

1) Aqua's Position

It is Aqua's position in this proceeding that its acquisition of the wastewater system assets of GSA is necessary or proper for the service, accommodation, convenience, or safety of the public. For this standard to be satisfied, the Commission must find that Aqua's acquisition of the wastewater system assets of GSA will "affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way."⁶⁸ Aqua argued that the proposed transaction will provide substantial affirmative public benefits to both existing Aqua customers and the acquired GSA customers, as well as to the Borough of Greenville.

Aqua's record of acquiring and improving wastewater systems

In support of its position, Aqua first turned to its record of acquiring and improving wastewater systems. Aqua submitted that it provides utility service to approximately 60,000 wastewater customers; has years of experience operating wastewater treatment and collection systems in a safe, reliable and efficient manner; and has the managerial, technical, and financial resources to continue to operate, maintain and improve the GSA System.⁶⁹ Aqua stated that it has acquired 15 wastewater systems over

⁶⁷ Aqua St. No. 3, at 8.

⁶⁸ *City of York*, at 828.

⁶⁹ Aqua St. No. 3, at 11; Application, at ¶ 53(d).

the past 10 years, many of which required significant investment to correct service and environmental issues.⁷⁰

Public Policy Endorsing and Encouraging Regionalization / Consolidation

Next, Aqua cited the Commission’s long-standing record of support for consolidation/regionalization of both water and wastewater systems, noting that the Commission has stated that “acquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry” in part because “these types of acquisitions will enhance the quality of ratepayers’ daily lives, promote community economic development, and provide environmental enhancements.”⁷¹ The Company submitted that the Commission in supporting these acquisitions understands that the utility industry will realize the benefits of better management practices, economies of scale, and resulting in greater customer, environmental, and economic benefits.⁷²

Enhanced customer service, customer billing, and payment protections

Aqua asserted that GSA customers will benefit under its ownership because the customers will receive enhanced customer service because they will gain access to the Company’s expansive customer service call centers and customer service work order programs. Aqua stated that its customer service call centers are available during normal business hours and for emergencies at every hour and can assist customers in the

⁷⁰ Aqua M.B., at 14.

⁷¹ Application, at ¶ 53(c) (citing *Pennsylvania Public Utility Commission, Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926, Final Order at 18 (Order entered Aug. 17, 2006)).

⁷² Application, at ¶ 53(c).

resolution of account issues, outages and emergencies.⁷³ Additionally, Aqua asserted that GSA customers will gain access to improved customer tools for account maintenance, notifications, viewing meter reads and trending consumption through Aqua’s customer ePortal and Aqua app for mobile devices. Aqua asserted that its ePortal and Aqua app also provide GSA customers with the ability to make payments electronically online, through auto-payment, and through text.⁷⁴

Access to Customer Assistance Programs and Funds

Noting that GSA customers do not currently have payment plan options available to them if they have trouble paying their wastewater bills, Aqua argued that GSA customers will benefit under its ownership because GSA customers will have opportunities to enter into payment plans with Aqua to help pay off their unpaid balances. Further noting that GSA also does not offer its customers an income-based discount program, Aqua argued that GSA customers who are below a certain income level will benefit under Aqua’s ownership because those customers will have access to Aqua’s customer assistance program and hardship fund.⁷⁵

Technological and Operational Benefits Creating Efficiencies and Enhancing Safety

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

⁷³ Aqua St. No. 1, at 9-10.

⁷⁴ Aqua St. No. 1-R, at 10.

⁷⁵ Aqua St. No. 5, at 3, 4, 6, 7.

permit compliance issues; (iv) lack of emergency preparedness training; (v) lacking safety and security equipment and training; (vi) hazardous chemical storage, labeling, safety and dichlorination issues; (vii) wastewater treatment plant (“WWTP”) ventilation, physical safety, and security concerns; (viii) inadequate SCADA and operator alarm systems; (ix) lack of proactive capital planning leading to a patchwork of physical assets; (x) insufficient emergency/standby power generation; and (xi) lack of asset management or compliance management software systems.⁷⁶

Aqua noted that the bypassing of trickling filter treatment occurred 10 times in total in January, February, and April 2024 illustrating the presence of I&I for the GSA system. Aqua asserted that it has allocated funds for sewer main rehabilitation and replacement which will address the significant I&I in the GSA system that GSA has failed to address. Aqua’s plan to address I&I through capital improvements, Aqua submitted, will reduce pumping and chemical costs and reduce the volume of wastewater bypassing flow to the betterment of the receiving stream and the existing biota. Reducing I&I, Aqua argued, will benefit GSA customers through reduced expenses and benefit the environment and communities around the Borough.⁷⁷

Aqua additionally noted that GSA had entered a COA with the DEP because for various months between June 2019 and June 2021, the GSA reported discharges from the GSA WWTP that exceeded the limits in the NPDES Permit, and informed the DEP that it could not presently comply with the 0.19 21 mg/l monthly average and 0.62 mg/l instantaneous maximum effluent limits for Total Residual Chlorine.⁷⁸ Following closing of the transaction, Aqua submitted that it will immediately

⁷⁶ Aqua St. No. 1-R, at 4-5; Aqua St. No. 1, at 16-36 and Appendix A; *see also* Aqua St. No. 3-R, at 4-7.

⁷⁷ Aqua St. No. 2-R, at 3.

⁷⁸ *Id.*

implement a flow meter based dichlorination chemical feed system as well as add flow control to the existing gas chlorine feed system to allow for more reliable compliance with these DEP limits.⁷⁹

Aqua addressed the operations of the GSA system, arguing that the system is deficient operationally, stating that currently [BEGIN HIGHLY CONFIDENTIAL]

[REDACTED]

[REDACTED] [END HIGHLY CONFIDENTIAL] Aqua argued that making these improvements in the operating efficiencies of the GSA system will further promote the proper treatment of wastewater for the GSA customers.⁸²

Additionally, Aqua addressed the physical security at the GSA facility, stating that [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

⁷⁹ Aqua St. No. 2-R, at 3, 4.

⁸⁰ Aqua St. No. 4, at 9.

⁸¹ Aqua St. No. 4, at 9-10.

⁸² Aqua M.B., at 18.

Net Benefits for the GSA's Customers

Regarding benefits for GSA customers, Aqua argued that GSA customers will become part of a larger scale, efficiently operated, wastewater utility and that the operational overlap between Aqua's wastewater utility operations in nearby areas means that the Company will be able to assume the operations of the GSA system and fold them into a larger scale efficiently operated wastewater utility which over time will yield further operating efficiencies and improve long term viability of the system.⁸⁹ The Company indicated that it projects lower O&M costs under Aqua's ownership that will likely be realized through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing and legal, among others. Specifically, referencing the GSA's 2022 Financial Statements, Aqua noted that the Total O&M Expenses for the GSA system were approximately \$1.160 Million whereas the Company is projecting annual expenses of approximately \$0.996 Million.⁹⁰ In addition, Aqua estimated that it will invest approximately \$20.4 million in the GSA system over the next ten years, including upgrades to pump stations, force mains and gravity collection systems based on conditions observed, facility age and safety; resulting in benefits to GSA customers.⁹¹ GSA, Aqua noted, has no formal long-term capital planning in place.⁹²

Also, Aqua claimed that if the transaction is not approved, GSA projects to spend nearly \$46 million in investing in its treatment assets and in having a new property tax paying business in the community, which would result in an immediate rate increase

⁸⁹ Application, at ¶49.

⁹⁰ Aqua St. No. 3, at 14.

⁹¹ Aqua St. No. 2, at 10-12.

⁹² Greenville St. No. 1, at 5.

of 200% to GSA customers. Thus, Aqua argued, this transaction will have the benefit to GSA customers of avoiding this immediate rate increase.⁹³

Moreover, Aqua claimed that there is a general public benefit for the GSA customers in that Aqua is subject to the regulatory oversight of the Commission requiring it to provide safe, adequate and reliable service at just and reasonable rates. GSA is not subject to the Commission's jurisdiction and thus, no such Commission regulatory oversight currently exists for the GSA.⁹⁴

Regarding benefits to the public in Greenville, Aqua argued that it will pay increased tax revenues following the closing of the transaction and that having additional property subject to tax provides a benefit to Greenville as a result of the transaction.⁹⁵

GSA and the Borough's Desire to Sell

Aqua noted that GSA agreed to sell its system and no longer desires to be in the utility business. As such, Aqua argued that the public interest will be served by allowing Aqua and its team of wastewater professionals to provide wastewater service in the Requested Territory and to address the issues of regulatory requirements and capital expenditures.⁹⁶

⁹³ Aqua St. No. 3-RJ, at 12-13; Greenville St. No. 1-R, at 4-5.

⁹⁴ Aqua St. No. 3, at 14; Greenville St. No. 1-R, at 6-7.

⁹⁵ Aqua St. No. 3, at 14.

⁹⁶ Application, at ¶ 53(b); Greenville St. No. 1-R, at 2-3.

Benefits to Aqua's Existing Customers

Regarding benefits to existing Aqua customers, the Company argued that the acquisition of the GSA will provide an approximate 4% increase in Aqua's customer base.⁹⁷ By virtue of the Company's larger customer base, Aqua submitted that future infrastructure investments across the state will be shared at a lower incremental cost per customer for all of Aqua's customers.⁹⁸ Further, an increased customer base will, Aqua argued, provide more flexibility and opportunity to deal with rate impacts over a much larger customer base.⁹⁹

Aqua further claimed that the transaction would result in economies of scale submitting 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 \$2,600, based on the Company's current rate case, is nearly 30% higher than the all systems average of \$1,811 per customer.¹⁰⁰

Rate Impact

Aqua stated that, in applying 100% of the revenue deficiency requirement borne by the acquired customers of the GSA and associated with the proposed rate base addition to the existing GSA rates, the average GSA bill would increase from \$23.09 per

⁹⁷ Aqua St. No. 3, at 15.

⁹⁸ Aqua St. No. 3, at 1; Application, at ¶53(f).

⁹⁹ Aqua St. No. 3, at 15.

¹⁰⁰ Aqua St. No. 3-RJ, at 10.

month to \$64.68 per month, or an 180.85% increase.¹⁰¹ Aqua argued that this calculation and percentage increase is, a point in time estimate reflective of revenue deficiency upon year one ownership, and although there is an expectation of increased rates going forward, Aqua asserted it is not proposing any change in rates to GSA customers as part of this transaction.¹⁰² Aqua indicated that proposed rate changes for GSA customers will be presented in an Aqua post-Closing base rate proceeding.¹⁰³

The Company submitted that, although the rates for GSA customers are reasonably expected to increase, whether by GSA (at nearly 200%) or after acquisition by the Company, the proposed transaction provides more flexibility and opportunity to deal with those impacts over a much larger customer base. Aqua argued that this benefits both existing and acquired customers alike to the extent that costs can be shared between systems over longer periods of time such that rate shock and affordability are mitigated.¹⁰⁴

Regarding the rates for existing Aqua customers, the average current bill for an Aqua wastewater customer could increase by \$1.35 or 1.60%, and the average current bill for Aqua water customers could increase by \$0.09 or 0.12%.¹⁰⁵ These estimations are based on existing Aqua wastewater customers assuming 50% of the cost and existing Aqua water customers assume 20% of the Cost of Service pursuant to a shift of wastewater revenue to water customers under 66 Pa.C.S. § 1311(c).¹⁰⁶

¹⁰¹ Aqua St. No. 3, at 17 and Appendix A.

¹⁰² Application, at ¶53(g).

¹⁰³ Aqua M.B. at 22.

¹⁰⁴ Aqua St. No. 3, at 18-19.

¹⁰⁵ Application, Exhibit I1.

¹⁰⁶ OCA St. 1, at 9.

Ultimately, it is Aqua’s position that that any potential rate impact to customers is hypothetical and outweighed by net benefits provided by Aqua’s ownership, including its expertise and ability to raise capital; the operational, safety and environmental benefits of the transaction; the furtherance of consolidation/regionalization of wastewater services; the financial benefits of the transaction, and the spreading of costs over a larger customer base.¹⁰⁷

Conclusion

To summarize, Aqua concluded that it has met its burden to show not only that there are net affirmative benefits that will result from this transaction, but that the transaction “affirmatively promotes the service, accommodation, convenience [and] safety of the public in [a] substantial way.”¹⁰⁸

2) GSA and the Borough’s Position

GSA and the Borough support Aqua’s position that the proposed transaction will provide substantial affirmative public benefits to GSA customers and the Borough as a whole.

Although GSA acknowledged that it is currently providing safe and reliable service to its customers, GSA asserted that it does so with significant concerns.¹⁰⁹ GSA submitted that the GSA is managed by a single Borough Manager (Borough witness Jasson Urey) whose duties are split between running GSA and supervising several

¹⁰⁷ Aqua M.B., at 23, 24.

¹⁰⁸ Aqua M.B., at 39 (citing *City of York*, at 828).

¹⁰⁹ Greenville M.B., at 8

departments in the Borough.¹¹⁰ GSA further submitted that GSA board members do not have experience in running wastewater systems. Transferring the system to Aqua will, GSA and the Borough argued, place GSA in the hands of a company with expertise in running wastewater systems and allow the Borough Manager to devote time to other governmental functions.¹¹¹

Further, Witness Urey testified with respect to GSA's wastewater assets, testifying that the assets are distressed, underfunded, and non-viable.¹¹² Mr. Urey noted that GSA has performed reactive maintenance when it is necessary for its wastewater assets, but that there is no long-term capital planning for the GSA system, except for what was compiled when GSA looked at the viability of selling the asset. Mr. Urey additionally stated that most of the WWTP is over 60 years old and that GSA's wastewater assets are past their life expectancy and in need of replacement or major repair.¹¹³ Mr. Urey also testified regarding the significant I&I and overloading at the WWTP, stating that the WWTP's wastewater mains have never been replaced and are insufficiently sized to handle heavy flows. Due to this issue, Mr. Urey testified that the GSA system is at risk of catastrophic failures.¹¹⁴ Mr. Urey indicated that a complete system overhaul is needed to address the needed repairs, to keep the GSA system functional going into the future, and to address the COA that GSA entered into with the DEP. The costs of the system overhaul, Mr. Urey testified, would be approximately \$46 million.¹¹⁵

¹¹⁰ Greenville St. No. 1-R, at 2, 3.

¹¹¹ Greenville M.B., at 6.

¹¹² Greenville St. No. 1, at 5.

¹¹³ *Id.*

¹¹⁴ Greenville St. No. 1, at 7.

¹¹⁵ Greenville St. No. 1-R, at 4.

For the above reasons, GSA and the Borough posited that the GSA system should be sold to Aqua. GSA and the Borough submitted that GSA board members engaged in a very extensive and thorough investigation of the benefits of keeping the GSA system and the benefits of selling their system.¹¹⁶ The primary benefits of selling the GSA system to Aqua, GSA and the Borough argued, will, amongst other things: (1) allow the GSA to exit the business of providing wastewater services which will permit the Borough to focus its attention and efforts on other governmental functions; (2) provide access for GSA customers to Aqua's low-income assistance program; (3) infuse capital into the Borough allowing it to jumpstart economic development; and (4) provide municipal, county, and school tax revenue because the transfer of the GSA system will place it on the public tax rolls.¹¹⁷

Moreover, Witness Urey testified to additional benefits to be provided by the transaction, stating amongst other benefits, that the transaction will: (1) secure future financial stability for the Borough and its residents and provides flexibility to make necessary future capital investments within the Borough; (2) improve security of information systems against cyber-attacks due to Aqua's security programs and procedures; (3) provide access to Aqua's customer assistance programs to provide payment assistance for qualifying customers; (4) provide enhanced customer service and operational functions through expanded customer service center hours, more streamlined payment options, enhanced customer information and education programs, and support provided by Aqua's team; and (5) provide enhanced operational expertise through review of GSA system processes, the identification of deficiencies not previously known or properly able to address.¹¹⁸ Mr. Urey further testified that the GSA has not been able to maintain its system and that the sale avoids GSA having to navigate possible non-

¹¹⁶ Greenville M.B., at 12.

¹¹⁷ Greenville M.B., at 6.

¹¹⁸ Greenville St. No. 1, at 2, 3.

compliance with stringent United States Environmental Protection Agency (“EPA”) and DEP regulations and rules.¹¹⁹

Regarding approximately \$46 million that GSA estimated will be needed to grade the GSA system, GSA and the Borough argued that if the transaction is not approved, that GSA will increase the rates of its customers by 200% to fund the needed capital improvements. Thus, GSA and the Borough argued that if GSA were to retain control of its system, then GSA customers might suffer increased rates that may be higher than those incurred by the sale.¹²⁰

Conclusion

In summary, GSA and the Borough concluded that Aqua and GSA have produced sufficient evidence that the proposed transaction is “necessary or proper, for the service, accommodation, convenience safety of the public” as required by Section 1103 of the Code, and that there is no credible evidence of record to suggest that the transfer will cause harm to the public or that it is not a substantial benefit to the GSA customers.¹²¹

3) OCA

It is the OCA’s position that the transaction does not result in net affirmative public benefits for existing Aqua water and wastewater customers and the acquired GSA customers.

¹¹⁹ Greenville St. No. 1, at 2.

¹²⁰ Greenville M.B., at 8, 12.

¹²¹ Greenville M.B., at 13, 14.

The Transaction will result in substantial rate harm to customers

OCA contended that it is likely and foreseeable that the rates paid by existing Aqua customers will increase because of the transaction, noting that Aqua projects an annual revenue deficiency of \$2,223,000 for its operation of the GSA system,¹²² which OCA submitted is likely understated as Aqua's projections of revenue deficiencies for recently acquired systems have been understated by as much as almost \$2 million.¹²³ Specifically, in three of Aqua's recent acquisitions, Lower Makefield (wastewater), Shenandoah Water, and East Whiteland Township (wastewater), Aqua's projected revenue deficiencies were under projected by \$706,082, \$1,402,877, and \$1,981,719, respectively.¹²⁴ So, taking Aqua's historic under projection of revenue deficiencies for acquired systems into account, OCA argued that 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.¹²⁵ Looking at the rate increases that Aqua customers have historically borne to cover the revenue deficiencies from Aqua's FMV acquisitions, OCA noted that in Aqua's 2021 rate case, Aqua included 5 acquisitions made pursuant to FMV and proposed to shift \$20.8 million from wastewater to water customers under Section 1311(c) of the Code. The Commission in its Opinion and Order approved shifting \$11.2 million to water customers.¹²⁶

OCA further argued that the continued rate burden Aqua's customers would face under the transaction are exacerbated in that Aqua has agreed to pay GSA a steep,

¹²² OCA St. 1SR, at 19

¹²³ OCA St. 1SR, at 6.

¹²⁴ *Id.*

¹²⁵ OCA M.B., at 13.

¹²⁶ *Pa. Pub. Util. Comm'n v. Aqua Pa., Inc.*, Docket Nos. R-2021-3027385 (water) and R-2021-3027386 (wastewater) (Opinion and Order entered May 12, 2022); OCA St. 1, at 10.

premium price (\$18 million purchase price) that is 2.63 times more than the GSA's system's depreciated original cost (\$6,854,439.1).¹²⁷ To put the purchase price of the GSA system into perspective, OCA cited to the Commission's first annual RRR.¹²⁸ Although OCA acknowledged that the RRR is not binding,¹²⁹ it argued that the RRR serves as a reference for assisting the Commission's review of Section 1329 purchases.¹³⁰ The Commission identified a 1.68 ratio of FMV to depreciated cost in its analysis in the RRR,¹³¹ thus, OCA submitted that Aqua's 2.63 ratio of FMV to depreciated cost is significantly higher than the Commission's 1.68 RRR.¹³²

The Transaction Benefits Alleged by Aqua are Mainly Insubstantial and Unlikely to Materialize and Do Not Outweigh the Substantial Rate Harm

OCA argued that the known and foreseeable harms which will result from approval of this Application outweigh the rather insubstantial benefits which Aqua avers will result from approval, first arguing that even accounting for the projected annual operating savings associated with GSA being a part of a larger system, the overall increase in annual costs under Aqua ownership will generate an annual revenue

¹²⁷ OCA St. 1, at 5, 6.

¹²⁸ *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303.

¹²⁹ *See Id.*, at 3.

¹³⁰ Specifically, the Commission entered a Final Supplemental Implementation Order at Docket No. M-2016-2543193 (Order entered July 2, 2024), which explained that it will publish, annually, a RRR that will assist in determining an approximate ratio of a proxy FMV to the depreciated original cost of a barometer group of similarly situated investor-owned water utilities.

¹³¹ *Bureau of Technical Utility Service Report on the Reasonableness Review Ratio for the Year Ended 12.31.2023 to Approximate Market Value in Section 1329 Proceedings*, Docket No. M-2024-3050303, at 6.

¹³² OCA M.B., at 15.

deficiency of \$2,223,000 and increase rates for the acquired GSA customers, as well as for Aqua's current customers.¹³³ Thus, OCA submitted that the savings resulting from Aqua's acquisition of the GSA system are not sufficient to outweigh the substantial cost to GSA customers to provide Aqua with its return on rate base, among other costs.¹³⁴

OCA submitted that the record shows that GSA is currently operating with regulatory requirements, therefore, what Aqua seeks through this transaction is to bring GSA's operations up to Aqua's standards, at the rate impact of the \$18 million purchase price and the \$20 million of capital expenditures which will nearly double rates over the first 10 years. OCA asserted that these rate impacts do not include the normal Aqua rate increases that would be approved over the course of the same 10-year period or the rate increases that may be shifted to former GSA customers from the acquisitions of other systems through FMV.¹³⁵ All of these harms, OCA argued, are tangible and should not be ignored.¹³⁶

Citing to *Cicero*,¹³⁷ OCA submitted that the benefits that Aqua asserts will result from the transaction are derived from the Company's fitness and would apply to any utility acquisition and are not benefits unique to the transaction. For example, Aqua's proposition that GSA customers would benefit from, among other things, additional capital investment by Aqua and better customer service relate, OCA argued, more to

¹³³ OCA St. 1, at 19

¹³⁴ OCA M.B., at 16.

¹³⁵ OCA, St. 1SR, at 3, 4.

¹³⁶ OCA M.B. at 17.

¹³⁷ Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Cicero*, 300 A.3d at 1119.

Aqua's fitness than to the proposed transaction. Thus, OCA submitted that these purported benefits are not substantial but simply perpetuate the *status quo*.¹³⁸

Aqua's Claimed Capital Improvement Benefits for the GSA Rely on Assumptions that Do Not Comport with the Record and Will Increase Costs.

Focusing on the \$20.4 million Aqua proposed to spend in investments over the next 10 years to upgrade the GSA's system, OCA asserted that Aqua does not tie its spending level and projected timeline to any demonstrated environmental compliance directive or other regulatory requirement.¹³⁹ OCA pointed out that, prior to agreeing to sell its system to Aqua, GSA devoted \$2.8 million on engineering design for upgrading its treatment plant.¹⁴⁰ OCA argued that GSA had no environmental compliance issues at the time of the filing of the application in November 2023 and that the only compliance issue that has arose during the pendency of the case is the notice it received from DEP for GSA's failure to move forward under its COA with DEP.¹⁴¹ OCA posited that nothing in the record indicates that GSA is incapable of meeting its COA obligation with DEP and that it is only in violation of this obligation because it entered into an APA with Aqua.¹⁴² OCA further submitted that Aqua's planned upgrades to the WWTP are the types of projects that a wastewater system undertakes in its normal course of business.¹⁴³

Regarding Aqua's plans to address what it deemed to be significant I&I at the WWTP, OCA pointed out that Aqua witness Bubel testified that Aqua has not

¹³⁸ OCA M.B., at 20.

¹³⁹ *See* Aqua St. No. 2 at 10.

¹⁴⁰ Aqua St. No. 2, at 10; OCA St. 1, at 15.

¹⁴¹ OCA St. 1 SR at 9; OCA Exhibit CMH-2SR.

¹⁴² Aqua St. No. 2-R at 10-11.

¹⁴³ OCA St. 1SR, at 8.

conducted its own audit of the GSA system¹⁴⁴ which OCA argued it would need to do first before it came up with a plan to address the alleged I&I issue. OCA further submitted that 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 following closing of the transaction.¹⁴⁵ In sum, OCA argued that Aqua's plan to address the excessive I&I in the GSA system is more of a statement of future intent than an actual plan.¹⁴⁶ Moreover, OCA argued that 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 years¹⁴⁷ so there is no record indication that GSA is incapable of addressing I&I that needs to be addressed.¹⁴⁸

In conclusion, OCA summarized its position by stating that Aqua has not demonstrated the need or urgency for the planned improvements to the GSA system, thus the costs that Aqua's improvements will generate for ratepayers does not support a determination that Aqua's capital improvement plan for GSA is a substantial affirmative public benefit.¹⁴⁹

¹⁴⁴ Tr. 135, 136.

¹⁴⁵ Aqua St. No. 2-R, at 2.

¹⁴⁶ OCA R.B., at 15.

¹⁴⁷ OCA St. 1 at 14; OCA Exhibit CMH-6

¹⁴⁸ OCA R.B., at 15.

¹⁴⁹ OCA M.B., at 21, 22.

Aqua's claims that Operating and Maintenance Costs for the GSA System Will Decrease under its Ownership Are Immaterial in Light of the More Than \$2 Million in Net Rate Harm.

Aqua witness Packer testified that operating and maintenance costs will decrease under its ownership, through reductions in costs for wastewater maintenance, as well as efficiencies in administrative and general costs, such as insurance, auditing and legal, among others.¹⁵⁰ Specifically, GSA had \$1.160 million in operating and maintenance expenses in 2022 and Aqua projects annual expenses of \$0.996 million, representing a reduction of \$164,000.¹⁵¹ Given that the annual deficiency of \$2,223 million factors in the projected savings in operating and maintenance costs, OCA argued that Aqua ratepayers will have to have their rates increased by at least \$2.223 million each and every year to cover the costs of running the acquired GSA system thereby negating any projected O&M expense decrease.¹⁵²

Aqua's Claimed Economies of Scale Lack Support

Next, OCA tackled Aqua's claim that existing customers will benefit from an increased customer base due to the transaction from which to spread future infrastructure costs and to provide more flexibility and opportunity to deal with rate impacts over a much larger customer base.¹⁵³ OCA submitted that the increase in Aqua's customer base is minimal, as Aqua will only be adding approximately 2,283 wastewater customers under the transaction to a 60,000 customer base.¹⁵⁴ Besides this point, OCA agreed with I&E's testimony that Aqua's claimed economies of scale are largely

¹⁵⁰ Aqua St. No. 3, at 14.

¹⁵¹ *Id.*

¹⁵² OCA M.B., at 23.

¹⁵³ Aqua St. No. 3, at 15.

¹⁵⁴ Application, at ¶ 9.

insubstantial and that those that may materialize lack a definitive timeline.¹⁵⁵ Moreover, OCA also agreed with I&E that because GSA is a standalone system that will not be interconnected with Aqua's system normal economies of scale achieved by combining treatment plants and/or closing a treatment plant will not be achieved through this acquisition.¹⁵⁶ In sum, OCA submitted that the transaction will not produce economies of scale.¹⁵⁷

Alleged cybersecurity benefits are speculative and ignore the realities of GSA's existing operations

OCA argued that while it supports sufficient, adequate and compliant cybersecurity, as well as improvements to cybersecurity of utility operations, the cybersecurity improvements Aqua alleged it will make to the GSA system¹⁵⁸ do not support a determination that Aqua's claimed cybersecurity benefits are substantial improvements beyond what GSA has in place and could readily pursue on its own. OCA argued that there is no evidence that GSA has violated any cybersecurity regulations nor is there any evidence that GSA has been informed by any authority that it must improve its cybersecurity to maintain compliance with the law.¹⁵⁹

Further, OCA argued that Aqua's cybersecurity improvement plans [BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED]

[REDACTED]

¹⁵⁵ I&E St. No. 1, at 13.

¹⁵⁶ *Id.*

¹⁵⁷ OCA M.B., at 26.

¹⁵⁸ *See* Aqua St. No. 4 at 8-12.

¹⁵⁹ OCA St. 1, at 26; OCA Exhibit CMH-16.

¹⁶⁰ OCA St. 1 at 27.

[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] Thus, OCA submitted that Aqua's intent on upgrading GSA's cybersecurity is not borne out of necessity but is borne out of Aqua's desire to make GSA's system consistent with its own processes which does not necessarily confer a benefit.¹⁶²

OCA additionally argued that, hypothetically, even if the evidence existed to show that GSA has a clear need to adopt the cybersecurity protocols Aqua identifies, GSA has the ability to seek funding and resources to make these improvements on its own. OCA claimed that GSA has the ability 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.¹⁶³ OCA submitted that GSA's decision not to avail itself of these opportunities is not a viable basis to determine that requiring Aqua's ratepayers to pay a premium for the GSA system is somehow a public benefit.¹⁶⁴

There is no established need for Aqua to rescue the GSA from security or safety issues

Aqua submitted that the GSA WWTP has [BEGIN CONFIDENTIAL]

[REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] OCA submitted that GSA has never been informed by any local, state,

¹⁶¹ *Id.*

¹⁶² OCA M.B., at 27, 28.

¹⁶³ OCA St. 1, at 29.

¹⁶⁴ OCA M.B., at 29.

¹⁶⁵ Aqua St. No. 1, at 30-31.

or federal authority that it must improve its physical security in order to maintain regulatory compliance with the law, thus Aqua’s proposal to upgrade GSA’s physical security is not essential.¹⁶⁶ OCA further argued that even if GSA was required to upgrade its physical security, the record does not support a finding that it would be incapable of doing so itself. OCA acknowledged that GSA’s physical security might be improved through the transaction, however, OCA asserted that any investor-owned utility in Pennsylvania will have more security funding and state-of-the-art resources and that this reality is only relevant in the context of Aqua’s technical fitness alone, which OCA has not challenged.¹⁶⁷

Beyond general claims, there is no evidence that the GSA system is distressed, underfunded, or non-viable

OCA submitted that GSA’s claim that the GSA system is non-viable is at odds with the underlying Application. OCA pointed out that the Engineering Report submitted by KLH Engineers, Inc., which provides an inventory assessment that underlies that FMV appraisals, indicates that the GSA treatment plant is “well maintained” and that while it is reaching the end of its design life, its general condition is fair.¹⁶⁸ OCA additionally submitted that from the perspective of Aqua’s and GSA’s UVE’s the GSA system was in fair condition because neither of the two FMV appraisals underlying Aqua’s Application recommended a downward adjustment to the valuation of the GSA’s assets due to non-viability or poor condition.¹⁶⁹ Any determination that GSA is a non-viable system, OCA asserted, would necessitate rejection of the UVE appraisals.¹⁷⁰

¹⁶⁶ OCA St. 1, at 26; OCA Exhibit CMH-16.

¹⁶⁷ OCA St. 1, at 28.

¹⁶⁸ Application, Exhibit D at 3.

¹⁶⁹ OCA St. 1, at 13

¹⁷⁰ OCA M.B., at 34.

GSA's desires to exit the wastewater business and its desire to sell is not evidence that substantial public benefits would result

GSA's desire to exit the wastewater business, OCA argued, does not constitute an affirmative public benefit. OCA submitted that Section 1329 transactions are not the only type of transactions under which a municipal system may be acquired.¹⁷¹ Therefore, OCA argued, GSA is not limited to selling its system to Aqua as part of this transaction. Given that Aqua has not shown that affirmative public benefit will be present through this transaction, OCA submitted that GSA's desire to exit the wastewater business is immaterial and insufficient, standing alone, to warrant approval of the Transaction.¹⁷²

Based on the Record, there are little, if any, perceptible changes in service, quality, or system staff for GSA customers if this transaction is approved.

Although Aqua argued that GSA's operations will be brought to top of the class performance, OCA argued that such general claims would come at a cost that is not commensurate with quantifiable service benefits, pointing to the rate impacts of the \$18 million purchase price and \$20 million of capital expenditures.¹⁷³

Addressing the physical security and cybersecurity improvements Aqua proposed to make to the GSA system, OCA again submitted that GSA is not out of compliance and that GSA can make improvements itself at a lower cost.¹⁷⁴

¹⁷¹ OCA St. 1SR, at 4.

¹⁷² OCA M.B., at 35.

¹⁷³ OCA M.B., at 36.

¹⁷⁴ OCA M.B., at 36.

Regarding Aqua's low-income program, while OCA agreed that GSA customers having access to this program could be beneficial,¹⁷⁵ OCA argued that this does not support a determination that Aqua's acquisition of the GSA system will produce substantial affirmative public benefits. As the acquired GSA customers will receive higher bills under Aqua's ownership,¹⁷⁶ OCA submitted that more customers would need assistance. Thus, OCA submitted that the 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.¹⁷⁷

The record evidence contradicts any determination that sale proceeds will benefit GSA customers or the community

OCA addressed the public benefits of the sale proceeds claimed by Aqua and GSA. GSA claimed that the sale of Aqua will allow the Borough to reinvest sale proceeds from the transaction into redevelopment in the community.¹⁷⁸ Aqua claimed that the proceeds will allow the Borough to pay off all its debt, being able to utilize its cash surplus (otherwise encumbered by sewer utility operations), and to have proceeds to place into interest earning securities.¹⁷⁹ OCA claimed that these benefits are unlikely to materialize as GSA counsel indicated that the Authority will still be in existence after the sale and that the sale proceeds will go to it and not the Borough.¹⁸⁰ Thus, OCA submitted that the community benefits from the sale proceeds of GSA are already spoken for in

¹⁷⁵ The median income in the Greenville Borough is \$54,237 and there are 1,766 individuals in Greenville that are below 200% of the 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

¹⁷⁶ OCA St. 1, at 30.

¹⁷⁷ OCA M.B., at 36, 37.

¹⁷⁸ Greenville St. No. 1, at 10.

¹⁷⁹ Aqua St. No. 3-R, at 8.

¹⁸⁰ Tr. at 157-158.

ways that do not contemplate a surplus of cash for the borough, redevelopment, or investment in interest-bearing accounts.¹⁸¹

Conclusion

In summary, OCA concluded that Aqua has not provided evidentiary support to establish that net benefits will result from the transaction when considering the long-term rate impact of the proposed transaction. To the extent that Aqua has alleged any benefits exist, with the exception of Aqua's ability to provide a low-income discount program, OCA submitted that 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, OCA asserted that Aqua has not met its burden of proof pursuant to Section 1103 of the Code to establish that net benefits would result from the transaction.¹⁸²

4) OSBA's Position

It is OSBA's position that the transaction will not provide net public benefits.

Regarding the claimed public benefit of \$849,185 in interest income from the assumed \$16,174,944 investment of the net proceeds from the transaction,¹⁸³ OSBA pointed out that Aqua witness William Packer testified that he had received no assurances regarding how GSA or Greenville will intend on using the proceeds from the

¹⁸¹ OCA M.B., at 38.

¹⁸² OCA M.B., at 40.

¹⁸³ *See* Aqua St. No. 3-R, at 8.

transaction.¹⁸⁴ OSBA therefore argued that the likelihood of the proceeds from the sale being invested is very small.¹⁸⁵

OSBA further argued that the assumed public benefit of the 10-year Net Present Value (“NPV”) of the avoided rate increases of \$1,155,655,¹⁸⁶ based on proposed capital spending,¹⁸⁷ is a theoretical calculation and will not be realized by customers, stating that there is no reason why GSA could not pursue a similar capital plan to Aqua’s, thus avoiding the costs themselves should the acquisition not materialize.¹⁸⁸ In addition, OSBA argued that GSA’s capital plan should not be included in assessing the benefits of the transaction because Mr. Packer testified that GSA did not have a capital plan.¹⁸⁹ Based on this fact and that GSA could pursue lower capital spending if left to implement the improvements itself, OSBA argued that a significant part of the NPV of avoided rate increases will not transpire, resulting in a further net benefit reduction of \$517,004.¹⁹⁰

Removing the public benefits, above, from the hypothetical public benefit calculation of \$168,131,¹⁹¹ result in the purported public benefit of \$168,131 being

¹⁸⁴ Tr. 160.

¹⁸⁵ OSBA M.B., at 7.

¹⁸⁶ The claimed NPV benefit is derived by calculating the avoided rate increases related to lower capital spending by comparing Aqua’s proposed capital plan of \$20.4 million to GSA’s capital plan of \$45.6 million, and then claiming the avoided capital over 10 years as a rate-related benefit. OSBA St. No. 1-S, at 4, 5.

¹⁸⁷ *See* Aqua St. No. 3-R, at 8.

¹⁸⁸ OSBA M.B. at 7.

¹⁸⁹ Tr. 137.

¹⁹⁰ OSBA M.B., at 7.

¹⁹¹ This number was derived from the incremental income and cost savings that will result from the sale subtracted by the revenue deficiency. Tr. 164, 165; Aqua St. No. 3-R, at 8.

revised to a net public impact of approximately \$1.2 million.¹⁹² OSBA submitted that given these more realistic calculations of benefits, the net public benefit is not demonstrable and should result in the Commission denying the Application.¹⁹³

Conclusion

In summary, OSBA concluded that the terms of the Application are not in the public interest because the transaction will lead to unfair and unreasonable rate increases for GSA customers and to a negative public impact of approximately \$1.2 million dollars.¹⁹⁴

5) I&E's Position

It is I&E's position that the transaction will not result in substantial public benefits.

I&E argued that GSA is currently providing adequate service, and no evidence has been provided to show that GSA cannot continue to do so at potentially a lower cost than Aqua can. Aqua witness Martin testified that GSA is under current breach of the COA with DEP to demonstrate GSA's alleged inability to operate the system properly, but that GSA's non-compliance with the COA is a direct result of the currently pending acquisition.¹⁹⁵

¹⁹² \$168,131 - \$849,185 - \$517,004 = \$1,198,058.

¹⁹³ OSBA M.B., at 7, 8.

¹⁹⁴ OSBA M.B., at 6; OSBA R.B., at 1.

¹⁹⁵ Aqua St. No. 2, p. 10.

I&E further argued that there are not currently significant service or quality concerns about the service being rendered by GSA. Aqua witness Bubel testified that GSA has largely responded in a timely fashion to address concerns raised by the DEP¹⁹⁶ and GSA witness Urey noted that GSA may be able to undertake improvements to its infrastructure and has done so on an as needed basis.¹⁹⁷ I&E submitted that the benefits that Aqua identified for the GSA customers: (1) acquisition of supplies at a lower cost; (2) acquisition of lower cost purchased power; (3) flexibility and efficiency in the provision of emergency and operational equipment; (4) reduced or eliminated reliance on outside professionals¹⁹⁸ all stem from the fact that Aqua would do things differently if it was running the GSA system and that simply doing things differently does not, in and of itself, indicate that GSA's operations are deficient.¹⁹⁹

Regarding the creation of economies of scale, I&E argued that what has been provided by the Company are unquantified, generalized assertions that are simply insufficient to show any economies of scale.²⁰⁰ Specifically, I&E argued that Aqua has provided no timeline for when these economies of scale might be achieved or shown how these would benefit GSA ratepayers whose rates will inevitably increase substantially. Further, I&E submitted that the GSA system will not be interconnected with the rest of the existing Aqua system which will likely further diminish these alleged economies of scale.²⁰¹ In all, I&E submitted that Aqua has not shown what economies of scale it would be able to achieve that GSA is not able to achieve on its own.²⁰²

¹⁹⁶ Aqua St. No. 2, pp. 13-16

¹⁹⁷ Greenville St. No. 1-R, p. 4.

¹⁹⁸ Aqua St. No. 3, p. 16.

¹⁹⁹ I&E M.B., at. 11.

²⁰⁰ I&E St. No. 1, p. 13.

²⁰¹ *Id.*

²⁰² I&E M.B., at. 13.

Regarding the rates of GSA customers, the current average GSA bill is approximately \$23.09 and in order for GSA customers to cover the full cost to serve for their system with no allocation to other Aqua customers, Aqua submitted that the rate for the GSA customers would need to be set at \$64.68.²⁰³ I&E asserted that this estimated figure is likely understated and GSA customers will likely experience even higher average residential bills.²⁰⁴ I&E submitted that the Company's estimated increase of 180.85% in the average GSA residential customer's bill alone is substantial enough to deny the Application, because this estimate represents a substantial near-term burden to GSA customers.²⁰⁵

Regarding the rates of Aqua customers, I&E cited OCA witness Hoover's testimony where she explained that the proposed acquisition will create a \$2,223,000 revenue deficiency and if Aqua continues to hold the GSA customers at current rates, the gap between the cost to serve the GSA customers and what is recovered from them will continue to grow due to the \$20.4 million capital expenditure commitments and any rate increases imposed on Aqua's existing customers.²⁰⁶ I&E submitted that the burden to cover the revenue deficiency will likely fall on existing Aqua customers.²⁰⁷

Conclusion

In summary, I&E concluded that Aqua did not meet its burden of demonstrating any affirmative public benefits as a result of the transaction because the

²⁰³ Aqua St. No. 3, p. 17.

²⁰⁴ I&E St. No. 1-SR, p. 3.

²⁰⁵ I&E M.B., at. 14.

²⁰⁶ OCA St. No. 1, p. 6.

²⁰⁷ I&E M.B., at. 15.

benefits alleged by Aqua regarding the creation of economies of scale are largely unsubstantiated and the rates for both GSA and the other currently existing Aqua customers will go up significantly. I&E submitted that the identified detriments of the transaction far outweigh any speculative benefits that existing ratepayers may hope to receive, therefore, the Application should be rejected.²⁰⁸

B. Section 1329

1. Aqua's Position

Aqua and the GSA negotiated a purchase price of \$18 million for the wastewater system. Aqua engaged the services of Gannett to provide a FMV appraisal of the GSA assets and the ratemaking rate base in accordance with USPAP, utilizing the cost, market and income approaches. GSA engaged the services of ScottMadden for the same purpose. Both firms were pre-certified as authorized UVEs and are on the list of qualified appraisers maintained by the Commission.²⁰⁹ Gannett's FMV appraisal is \$23,260,000²¹⁰ and ScottMadden's FMV appraisal is \$18,695,839.²¹¹ The average of the two is \$20,977,920.²¹² Aqua will incur transaction and closing costs of approximately \$487,250, which it will include in its rate base.²¹³

Aqua in its Application asks the Commission to issue an Order establishing the ratemaking rate base, pursuant to Section 1329(c)(2), of the GSA assets at \$18

²⁰⁸ I&E M.B., at 15-17.

²⁰⁹ Application, at ¶¶ 54-55, and Exhibit Q and Exhibit R.

²¹⁰ Aqua St. No. 6, at 13.

²¹¹ Greenville St. No. 2, at 14.

²¹² Application, at ¶57.

²¹³ Aqua St. No. 3, at 22.

million, being the lesser of the negotiated purchase price of \$18 million and the average of \$20,977,920 of the two appraisals.²¹⁴

2. GSA and the Borough's Position

GSA and the Borough's position aligns with the position of Aqua, and thus asks that the Commission issue an Order establishing the ratemaking rate base, pursuant to Section 1329(c)(2), of the GSA assets at \$18 million.²¹⁵

3. OCA's Position

OCA did not offer adjustments to the FMV appraisals of the GSA's system but opposes inclusion of an \$18 million ratemaking rate base for the GSA system into future Aqua rates due to its overall position that Aqua failed to demonstrate any affirmative public benefit as a result of the transaction.²¹⁶

4. OSBA's Position

OSBA argued that that the purchased price of \$18 million for the GSA system is too high, asserting that the purchase price is \$13,465,362 or 397% higher than the net book value of the GSA system assets as used by ScottMadden and \$11,145,561 or 263% higher than the original cost new, less depreciation of the wastewater system's utility plant in service as of May 31, 2023, of \$6,854,439 used by Gannett.²¹⁷

²¹⁴ Application, at ¶74(c).

²¹⁵ Greenville M.B., at 14.

²¹⁶ OCA M.B., at 42.

²¹⁷ Aqua St. No. 6-R, at 5.

To this point, OSBA further argued that the FMV appraisals by the UVEs rely upon materially higher revenue projections in 2024 and beyond as compared to GSA's 2023 revenue. In noting that GSA budgeted total fees for services in the sewer fund budget of \$1,266,763 for 2022 and \$1,265,499 for 2023,²¹⁸ OSBA explained that the ScottMadden valuation income approach relied on revenue increases of 20% per year from 2024 to 2029, increasing to \$3,793,559 in total revenues in 2029.²¹⁹ This 2029 revenue represents a 300% increase from GSA's 2023 budget and was relied upon by ScottMadden to ascertain an income approach value of \$19,372,669. OSBA further explained that the Gannett valuation income approach relied on even higher total revenues, with 2029 revenues escalating to \$4,448,90529,²²⁰ representing a 352% increase from GSA's 2023 budget.

OSBA submitted that the purchase price and resultant adjustment to rate base would heavily burden existing GSA customers if rates were increased to meet the cashflow requirements to generate a return for the new system owner.²²¹ A lower rate base, pegged at the purchase price, OSBA argued would result in a commensurately smaller need for rate increases to generate the revenue required post-transaction.²²²

5. I&E's Position

I&E does not challenge the UVEs appraisals in this case but submitted that the UVEs' reliance on the fact that all easements and real property rights will be transferred to Aqua by Greenville prior to closing may invalidate the accuracy of their

²¹⁸ Application, Exhibit J4.

²¹⁹ Application, Exhibit R.

²²⁰ Application, Exhibit Q.

²²¹ OSBA M.B., at 8.

²²² OSBA M.B., at 11.

appraisals.²²³ I&E therefore requested that, if the Commission approves the Application, that the Commission conditions its approval upon certain conditions relating to these missing easements. The recommended conditions I&E requested will be discussed in Section C5 of this Recommended Decision.

As I&E's overall position concerning the Application is that it should not be approved because Aqua has not met its burden to demonstrate that there are substantial affirmative public benefits, I&E recommended that the ratemaking rate base of \$18 million related to the GSA system not be incorporated into Aqua's rate base for ratemaking purposes.²²⁴

C. Recommended Conditions

As discussed above, OCA, OSBA, and I&E recommended that the Commission deny the Application. In the alternative, OCA, OSBA, and I&E recommended that certain conditions be applied should the Commission grant approval of the Application.

1. Cost of Service Studies

Both OCA and I&E recommended that Aqua be required to provide a separate cost of service study ("COSS") for the GSA system when Aqua files its next base rate case.²²⁵

²²³ I&E M.B., at 19.

²²⁴ I&E M.B., at 19, 20.

²²⁵ OCA M.B., at 44; I&E M.B., at 20.

Through Aqua witness Packer, Aqua agreed to submit a separate COSS for the GSA system similar to those that it submitted in its 2021 and 2024 base rate proceedings.²²⁶

I&E also recommended that “bulk service customers be grouped into a single separate class so that the parties and the Commission can determine if the revenue received from these bulk customers, including operating the West Salem sewer system, is more or less than the cost of providing service to these bulk customers.”²²⁷ Aqua did not agree to this recommendation, stating that it would want to 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.²²⁸

2. Employee Segregation from Borough of Greenville Stormwater Services

OCA recommended that GSA employees hired by Aqua must not be permitted to perform any work or services related to the Borough’s stormwater assets unless interest agreements and any other necessary steps are completed in order to protect Aqua customers from paying for stormwater-related costs that ought to remain with the Borough.²²⁹ This is due to OCA’s concern that those stormwater customers may be negatively impacted by the departure of employees who currently oversee the stormwater system.²³⁰

²²⁶ Aqua St. No. 3-R, at 15.

²²⁷ I&E St. No. 1, at 16; I&E St. No. 1-SR, at 20.

²²⁸ Aqua St. No. 3-R, at 17.

²²⁹ OCA St. 1, at 12.

²³⁰ OCA St. 1, at 12. (noting further that all GSA customers within the Borough are also stormwater customers).

Concerning this recommendation, Aqua represented that “any [GSA] employee hired by Aqua will not work on the Borough’s stormwater system”²³¹ and GSA and the Borough represented that the stormwater system is maintained by entirely separate Borough employees and thus will not be impacted by the sale.²³²

3. Low-Income Program Information and Tracking

OCA recommended that Aqua provide a letter to the acquired GSA customers within 30 days of closing and again with their first bill post-closing that provides information regarding Aqua’s low-income programs, including a description of the available programs, eligibility and requirements, and Aqua’s contact information to ensure that GSA customers can avail themselves of CAP programming benefits.²³³ OCA further recommended that Aqua report the number of eligible customers from the former GSA service area who are enrolled in Aqua’s CAP to the Commission and to the parties every six months until the conclusion of Aqua’s next base rate case.²³⁴

Aqua agreed to the above recommendations from OCA.²³⁵

4. Customer Notice Recommendations

OCA made three recommendations regarding customer notice. First, 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

²³¹ Aqua St. No. 1-R, at 2.

²³² GSA St. No. 1-R, at 4.

²³³ OCA St. 1, at 30.

²³⁴ *Id.*

²³⁵ Aqua No. 5-R, at 5-6.

because those are more consistent with the usage of smaller and larger families, respectively.²³⁶ Second, the OCA recommended that the rate impact notices include the monthly or quarterly estimated volumetric charge, as well as the impact that the DSIC will have on wastewater bills under Aqua ownership to provide a more accurate representation for what customers can expect their bills to look like should the Application be approved.²³⁷ Third, 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.²³⁸

Protestant Keith Gabage testified at the public input hearing in this matter concerning customer notice. Specifically, he testified that the public notice that goes to customers should (i) be more detailed with respect to other Act 11, 66 Pa.C.S. § 1311(c), subsidies paid by water customers, and (ii) should disclose other pending acquisitions; and (3) that Aqua should include a line item on water customers bills that specifically calls out the subsidy that the water customers are paying to support the revenue requirement for the wastewater customers.²³⁹

Regarding these recommendations as a whole, Aqua asserted that there is no regulatory mandate for any of the recommended notice changes.²⁴⁰

Specifically with regard to adding differing consumption levels to the notices, Aqua submitted that the Commission has stated that a notice “with a complex set

²³⁶ OCA St. 1, at 9.

²³⁷ *Id.* at 10.

²³⁸ *Id.* at 11.

²³⁹ Tr. 71-74, 77.

²⁴⁰ Aqua M.B., at 50.

of potential rate increases based on a variety of assumptions and scenarios, or even a range of potential outcomes” would not provide meaningful notice to customers and would be confusing and rejected such a recommendation by the OCA to include differing consumption levels in Section 1329 proceedings as recently as July of 2024.²⁴¹

In regard to including volumetric and/or DSIC charges in the customer notice, Aqua submitted that it cannot perform an analysis of the monthly or quarterly estimated volumetric charge with any accuracy outside of a rate case.²⁴² As it pertains to the DSIC, Aqua submitted that it must first include the acquired system in an amended LTIP filing, which may not be done for months or years post-closing, before the DSIC rate could be included on a customer’s bill.²⁴³

Lastly, regarding adding pending applications to the notices, Aqua argued against including pending applications into the rate impact notice, submitting that until the transactions concerning applications are closed any speculation regarding the impact that those transactions will have on rates would be premature.²⁴⁴

5. Missing Easements and Other Property Rights

OCA and I&E both recommended that the closing of the transaction not be permitted to occur unless and until GSA provides proof that it has (1) identified all missing easements including public rights-of-way and other property rights; (2) taken any and all necessary actions to obtain the missing easements and other property rights so that

²⁴¹ Aqua St. No. 3-R, at 11 (citing *July 2024 Final Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered July 2, 2024), at 39, 58, 67-72); Aqua St. No. 3- SR, at 4.

²⁴² Aqua M.B., at 51, 52.

²⁴³ Aqua St. No. 3-R, at 12.

²⁴⁴ Aqua M.B., at 51.

they may be conveyed to Aqua at closing; and (3) assumed all costs and expenses for obtaining and conveying the missing easements and other property rights so that Aqua's ratepayers are not burdened with those costs and associated expenses.²⁴⁵

Further, I&E recommended that the Commission condition the approval of Aqua's Application that for circumstances beyond GSA's control where it is unable to transfer all missing easements including public rights-of-way and other property rights before or at the closing of the transaction, Aqua and GSA may at their discretion close the transaction without the transfer of missing easements and other property rights, provided that an escrow account be established of an appropriate dollar amount from the purchase price to be used to obtain any post-closing transfers of the easements and other real property rights.²⁴⁶

In making these recommendations, I&E explained that the valuations of the UVEs were done under the belief that the GSA system will be transferred with all easements and other property rights needed to operate the system. Therefore, I&E submitted that GSA conveying the missing land rights and easements to Aqua at closing is essential to ensuring the UVE appraisals are accurate.²⁴⁷

Aqua contended that the conditions recommended by OCA and I&E are not necessary because not having the missing easements does not prevent Aqua from being able to complete work if required as (i) Aqua has the ability to secure a temporary construction easement for maintenance or repair from a property owner if no permanent easement exists; and (ii) Aqua would perform emergency work after notice to the

²⁴⁵ OCA St. 1, at 25-26; I&E St. No. 1, at 18.

²⁴⁶ I&E M.B., at 22, 23.

²⁴⁷ I&E M.B., at 23.

property owner²⁴⁸ and second because both UVEs valued the easements at \$276²⁴⁹ so preventing a closing based on failure to obtain easements pre-closing while assets like the treatment plant, pump stations, and other significant assets would be able to be transferred and included in rate base is, Aqua argued, illogical.²⁵⁰

Further, Aqua contended that this issue concerning missing easements and property rights is already contemplated in the APA. Aqua averred that Section 6.05 of the APA provides that all costs and expenses incurred in connection with obtaining each missing easement (including any payment to a landowner in connection with condemnation, in lieu of condemnation or otherwise) shall be paid by seller and no additional consideration is payable by buyer for any missing easement.²⁵¹ Aqua also asserted that the APA contains a process by which a portion of the purchase price is held in escrow to ensure that GSA obtains any missing easements after closing occurs.²⁵²

6. Transaction and Closing costs

OCA recommended that the Commission require Aqua 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, stating that Aqua should be barred from claiming any transaction and closing costs incurred by the seller pursuant to 66 Pa.C.S. § 1329(d)(1)(iv).²⁵³

²⁴⁸ Aqua St. No. 3-R, at 13.

²⁴⁹ Aqua St. No. 6-R, at 3; Greenville St. No. 2-R, at 6.

²⁵⁰ Aqua M.B., at 43, 44.

²⁵¹ Application, Exhibit B.

²⁵² Aqua St. No. 3-R, at 14.

²⁵³ OCA St. 1, at 5.

Aqua submitted that this recommendation is unnecessary because it is not seeking recovery of the GSA's transaction and closing costs.²⁵⁴

7. Increased Hardship Funding from Aqua

OCA recommended that Aqua provide an additional annual contribution of \$50,000 to the hardship fund for five years following the closing of the transaction and that these contributions should not be recovered in rates and all unspent funds at the end of the program year should be rolled over and added to the budget for the hardship grant program in the following year.²⁵⁵ OCA argued that this hardship fund will provide a concrete and actual benefit to Aqua's existing and acquired customers that will provide a small offset to the rate increase that will result from approval of this acquisition.²⁵⁶

Aqua did not entirely oppose OCA's recommendation but suggested that a more appropriate level of funding would be \$25,000 for each of the next three years.²⁵⁷

8. OSBA Recommendations

OSBA recommended several conditions for approval of the Application relating to capital expenditures and a multi-year rate plan, if the Commission decides to approve the Application. Those recommendations are the following:

- a. Aqua must conduct an asset condition assessment based on an audit post-close.

²⁵⁴ Aqua M.B., at 49.

²⁵⁵ OCA St. 1, at 30-31.

²⁵⁶ *Id.*

²⁵⁷ Aqua No. 5-R, at 7-8.

- b. Aqua must conduct a detailed comparison or reconciliation between the Aqua proposed plan and the GSA proposed plan, including rationalization, prioritization, and justification for capital spending decisions.
- c. Aqua must develop and submit a multi-year rate plan to phase in rate increases to mitigate rate shock.²⁵⁸

In making these recommendations, OSBA argued that Aqua's justification for the capital plan it proposed is not evident in that Aqua has proposed to upgrade the GSA system to the tune of \$20.4 million over 10 years while GSA's plan to upgrade its facilities, prior its decision to sell its system to Aqua, was \$45.6 million.²⁵⁹ OSBA further argued that Aqua's proposal to seek a 100% recovery of the revenue requirement deficiency from the customers of GSA at a future rate proceeding will result in bill increases that would constitute rate shock. A multi-year phase in plan, OSBA argued, would mitigate rate shock to GSA customers.²⁶⁰

Concerning OSBA's first recommendation, Aqua submitted that it will conduct a thorough and detailed post-acquisition audit to fully assess the condition of the GSA plant, which will allow the Company to refine its current assessment of future capital spend.²⁶¹ Aqua has agreed to file these audits with the Commission in its next base rate case.²⁶²

²⁵⁸ OSBA M.B., at 13.

²⁵⁹ OSBA St. No. 1, Page 11.

²⁶⁰ OSBA M.B., at 9, 10.

²⁶¹ Aqua St. No. 2-R, at 9-10.

²⁶² Tr. 141-143.

Addressing OSBA's second recommendation, Aqua argued that preparing a reconciliation of Aqua's planned capital investments to those in the GSA's capital plan is of little value given that Aqua is not proposing to make the same improvements as the GSA would make were the transaction not approved.²⁶³ However, Aqua agreed to provide a reconciliation in its next base rate case, if the application is approved, for Aqua's capital projects with those in the current GSA capital plan.²⁶⁴

Regarding OSBA's third recommendation, Aqua noted that it is not required by Section 1329 of the Code to propose a rate stabilization plan, stating that it is only required to include a rate stabilization plan in the proposed tariff, if applicable to the acquisition.²⁶⁵ Specifically, Aqua submitted that such a plan is required only if it is proposing to hold rates constant or phase rates in over a period of time after the next base rate case which Aqua has not proposed to do in this Application.²⁶⁶

Additionally, OSBA argued that Aqua and GSA UVEs update their models to reflect the delay in the case (i.e., nine months having elapsed between when the appraisals were completed and the filing of OSBA's direct testimony) and potential changes to capital spending plans.²⁶⁷

Aqua submitted that updating the UVE's appraisals is not necessary, nor is justified because the valuation date (May 31, 2023) is the specific date at which the value of the GSA system is based, and generally, only circumstances present at that point in

²⁶³ Aqua M.B., at 55.

²⁶⁴ Tr. 139.

²⁶⁵ Aqua St. No. 3-R, at 21 (citing 66 Pa.C.S. § 1329(d)(1)(v)).

²⁶⁶ Aqua St. No. 3, at 9.

²⁶⁷ OSBA St. No. 1, at 9-10; *see also* OSBA St. No. 2-SR, at 7 (noting valuations are 14 now months old).

time were considered in the valuations.²⁶⁸ Aqua additionally submitted that updating the valuation at such a late stage in the proceedings, given the Commission’s condensed timeline for review of Section 1329 matters would simply not be possible.²⁶⁹

9. Long Term Infrastructure and Improvement Plan (“LTIP”)

OCA recommended that Aqua’s amended LTIP including the GSA customers be filed within 90 days of closing. OCA further recommended that any GSA projects reflected in the amended LTIP should be in addition to, and not reprioritize existing capital projects.²⁷⁰ OCA argued that these recommendations are necessary to ensure that Aqua is accountable for timely planning of 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.²⁷¹

Aqua submitted that if it proposes to modify its LTIP to include the GSA system, the timing of such a filing will be at the Company’s discretion as there is not a requirement to file an updated LTIP after the closing of a Section 1329 transaction or any transaction under Section 1102.²⁷² Aqua further submitted that if the Commission determines that Aqua should file an LTIP update, the capital projects added for the GSA will be in addition to those that Aqua plans for existing systems in compliance with the Commission’s regulations.²⁷³

²⁶⁸ Aqua St. No. 6-R, at 5.

²⁶⁹ Aqua M.B., at 56.

²⁷⁰ OCA St. 1, at 32.

²⁷¹ *Id.* at 32, 33.

²⁷² Aqua M.B., at 48.

²⁷³ *Id.*

D. Section 507 Approvals

1. Aqua's Position

Aqua requested the Commission's approval of the assignment of six contracts with municipalities under 66 Pa.C.S. § 507. Aqua asserted that the contracts are necessary for the operation of the wastewater system, and that no party opposed Commission approval of the contracts. Aqua also contended that the contracts, including assignments, are reasonable, legal and valid.²⁷⁴ Aqua and the GSA also seeks approval of the APA that Aqua and GSA entered into on April 27, 2023.²⁷⁵

The six contracts that would be assigned or entered into by Aqua at the closing of the transaction are as follows:

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

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

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

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

²⁷⁴ Aqua M.B., at 57.

²⁷⁵ Application, Exhibit B.

F5 – Intermunicipal Sewage Agreement, dated December 21, 2006, between the GSA, Greenville, Hempfield Township Municipal Authority, and Hempfield.

F6 – Pro Forma Water Meter Read Agreement, between Aqua and GSA.²⁷⁶

2. GSA and the Borough’s Position

GSA and the Borough endorsed the position of Aqua regarding this issue.²⁷⁷

3. OCA’s Position

OCA argued that Aqua failed to demonstrate that the APA is reasonable or valid under Section 507, asserting 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 the record. In particular,

[BEGIN CONFIDENTIAL] [REDACTED]

[REDACTED] [END CONFIDENTIAL] OCA submitted that the

²⁷⁶ Aqua St. No. 3, at 22-23.
²⁷⁷ Greenville M.B., at 15.
²⁷⁸ Application, Exhibit B.
²⁷⁹ Aqua St. No. 1, at 21.
²⁸⁰ Aqua St. No. 2, at 4.
²⁸¹ Aqua St. 1, at 21.

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.²⁸²

4. OSBA's Position

OSBA took no position on this issue.²⁸³

5. I&E's Position

I&E took no position on this issue.²⁸⁴

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

Aqua also requested that the Commission acknowledge, in its Opinion and Order, the issuance of all other approvals, certificates, registrations and relief, if any, under the Code as may be appropriate.²⁸⁵

None of the Parties raised objections to this general request.²⁸⁶

²⁸² OCA M.B. 30-32, 49, 50; OCA R.B. at 4.

²⁸³ OSBA M.B., at 13.

²⁸⁴ I&E M.B., at 24.

²⁸⁵ Aqua M.B., at 57.

²⁸⁶ GSA M.B., at 15; OCA M.B., at 50; OSBA M.B., at 13; I&E M.B., at 24.

VII. RECOMMENDATION

A. Section 1102 and 1103 Approvals

In this proceeding, Aqua requested that the Commission, *inter alia*, approve its acquisition of the wastewater system assets of GSA and the right of Aqua to begin providing wastewater service to the public in the Requested Territory.

Pursuant to Section 1102 of the Code, Aqua must obtain a CPC from the Commission to acquire the GSA wastewater system and to begin to furnish service to the Requested Territory.²⁸⁷ Pursuant to Section 1103(a) of the Code, the Commission will grant a CPC “only if the commission shall find or determine that the granting of such certificate is necessary or proper for the service, accommodation, convenience, or safety of the public.”²⁸⁸ To satisfy this standard, the Commission must find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.”²⁸⁹ Section 1103(a) of the Code further states that the Commission in granting a CPC “may impose such conditions as it may deem to be just and reasonable.”²⁹⁰

1. **Fitness**

Pursuant to Section 1103(a) of the Code and the ability of the Commission to impose such conditions in granting a CPC as it may deem to be just and reasonable, an acquiring utility must demonstrate that it is technically, legally, and financially fit to

²⁸⁷ 66 Pa.C.S. § 1102.

²⁸⁸ 66 Pa.C.S. § 1103(a).

²⁸⁹ *City of York at 828.*

²⁹⁰ 66 Pa.C.S. § 1103(a).

provide the proposed service to obtain a CPC.²⁹¹ Therefore, Aqua has the burden of proof in this proceeding to show that it is technically, legally, and financially fit to acquire the wastewater system assets of GSA and to provide service to the Requested Territory.

After review of the evidentiary record, we find that Aqua has proven that it is technically, legally, and financially fit to acquire and operate the GSA system. First and foremost, Aqua is a Commission certified public utility, and as such enjoys a presumption that it is fit.²⁹² The fact that no party challenged this presumption supports our finding here that Aqua is fit to acquire the GSA system and to provide service to the Requested Territory.

Technically, Aqua demonstrated that it has employees with the expertise necessary to operate the GSA system and that it has years of experience in acquiring and operating wastewater systems. Legally, there are no pending legal proceedings against Aqua to suggest that it is not legally fit. Financially, Aqua through its own financial resources, and through its access to the financial resources of Aqua PA and Essential, has demonstrated that it is financially fit.

Overall, we find that Aqua has demonstrated that it possesses the requisite technical, legal, and financial fitness to acquire the GSA system and to provide safe, adequate, and reasonable wastewater service to GSA customers.

²⁹¹ *McCloskey* at 1058.

²⁹² *Lehigh Valley Transp. Servs., Inc. v. Pa. Pub. Util. Comm'n*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012); *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

2. Substantial affirmative public benefits

As Aqua has proven that it is financially fit to acquire the wastewater system assets of GSA and to provide service to the Requested territory, we will now analyze whether Aqua met its burden of proof by a preponderance of the evidence that a substantial affirmative public benefit will result from the transaction by weighing the factors for and against the transaction, including the impact that the transaction will have on rates.²⁹³ Aqua, GSA and the Borough contend that Aqua has met its burden of proof regarding this issue while OCA, OSBA, and I&E contend that Aqua has not.

After review of the evidentiary record we find that when weighing all the factors for and against the transaction to GSA customers, existing Aqua customers, and to the public-at-large, that Aqua failed to demonstrate that a substantial affirmative public benefit will result from this transaction. We therefore recommend that the Commission deny the Application.

Rate Impact

Starting first with the impact that the transaction will have on rates, Aqua projects an annual revenue deficiency of \$2,223,000 for its operation of the GSA system.²⁹⁴ Aqua indicated that the revenue deficiency will be recovered from GSA customers, Aqua water customers, and Aqua wastewater customers.

Regarding GSA customers Aqua acknowledged that their rates would eventually increase as a result of the transaction. Specifically, Aqua plans to recover 100% of the \$2.223 million revenue requirement deficiency from GSA customers,

²⁹³ See *McCloskey* at 1066-1067.

²⁹⁴ Aqua St. 3, at Appendix A; OCA St. 1SR, at 19.

estimating that that the average GSA customer's bill would increase by 180.85% from \$23 per month to \$64.68 per month after Aqua's next base rate case following the acquisition of the GSA system.²⁹⁵ However, although Aqua acknowledged that rates would increase, it argued that absent approval of the transaction GSA would have to proceed with approximately \$46 million in capital improvements to its WWTP which would in turn lead to a 200% rate increase for GSA customers. Thus, Aqua and GSA argued that the transaction will save GSA customers \$20 million of capital costs and an immediate rate increase of 200%.

With respect to existing Aqua water and wastewater customers, Aqua estimated that the average current bill for Aqua wastewater customers could increase by \$1.35 or 1.60%, and that the average current bill for Aqua water customers could increase by \$0.09 or 0.12%, after Aqua's next base rate case after acquisition of the GSA system.²⁹⁶

While Aqua acknowledged the above rate impacts, we find persuasive the evidence presented by OCA in this proceeding that Aqua has likely understated the potential rate impacts of this transaction based on the fact that Aqua has historically under projected the revenue deficiencies for acquired systems. For example, OCA noted that Aqua's projected revenue deficiencies for three of its recent acquisitions in Lower Makefield (wastewater), Shenandoah Water, and East Whiteland Township (wastewater) were under projected by \$706,082, \$1,402,877, and \$1,981,719, respectively.²⁹⁷ Thus, it is likely that Aqua under projected the annual revenue deficiency for the GSA system as well as the rate increases that Aqua estimated are necessary to recover the deficiency.

²⁹⁵ Aqua St. No. 3, p. 17.

²⁹⁶ Application, Exhibit I1.

²⁹⁷ *Id.*

Further, the rate impacts that Aqua has acknowledged do not reflect the rate increases that may result from other pending and future Aqua acquisitions, the \$20.4 million that Aqua plans to invest into the GSA system over 10 years, nor the rate increases that may result from future base rate proceedings after the first base rate proceeding following the acquisition of the GSA system.²⁹⁸

Given the analysis above, the rate impact that this transaction would have on Aqua customers and even more so on GSA customers is significant. Although we acknowledge that the rates of GSA customers will not increase immediately as a result of this proceeding (not until the next base rate proceeding including the GSA system), and that denial of the Application will result in an immediate increase in rates of 200% for GSA customers, GSA customers are likely to experience higher rates as a result of this transaction in the long run due to the reasons stated above than the higher rates they will experience following denial of this transaction.

However, even though the impact of rates on customers would be significant as a result of this transaction, that alone is not reason to deny the Application. As stated in *McCloskey*, the Commission is charged with deciding whether the impact of rates...is outweighed by...other positive factors that...served [as] a substantial public benefit.”²⁹⁹ Thus having determined that the negative rate impact of this transaction will be significant for GSA and Aqua customers, we must now analyze whether the positive factors of this transaction outweigh the negative impact on rates.

²⁹⁸ Aqua files requests to increase its rates on average every three years. *See* Docket Nos. R-2018-3003561, R-2021-3027386, and R-2024-3047824 (currently pending).

²⁹⁹ *Id.* at 1067.

GSA System

Aqua generally claimed in this proceeding that the GSA System is in need of significant infrastructure investment and suffers from various operational and safety deficiencies. GSA went as far as to claim that the GSA system is distressed, underfunded, and non-viable.³⁰⁰ Aqua proposed to make various improvements to the GSA system as part of this transaction to address these alleged deficiencies and professed that the planned improvements would result in substantial public benefits.

COA

Aqua contended that significant infrastructure improvements are needed to be made to the GSA system so that the system can comply with the COA that GSA entered into with the DEP.

GSA entered into the COA with the DEP on December 21, 2021, because the GSA reported discharges from the GSA WWTP that exceeded the limits in the NPDES Permit, and informed the DEP that it could not presently comply with the maximum effluent limits for Total Residual Chlorine. GSA is in breach of the COA, as of March 6, 2024, for its failure to implement the DEP-approved plan for upgrades to the WWTP to correct the discharges. Aqua proposed to implement a flow meter based dichlorination chemical feed system and add flow control to the existing gas chlorine feed system so that the GSA system can comply with the COA.³⁰¹

Although GSA is presently in breach of the COA, the reason that GSA did not move forward under the COA and make the DEP-approved upgrades to its system

³⁰⁰ Greenville St. No. 1, at 5.

³⁰¹ Application, at ¶ 45; Application, Exhibit O2; Aqua St. No. 1-R, at 3, 11.

was because it entered into the APA with Aqua.³⁰² Thus, we agree with the arguments presented by OCA and I&E that GSA's non-compliance with the COA is due to the pending transaction. The record evidence does not support a finding that GSA cannot meet its obligations pursuant to the COA absent Aqua's intervention. In fact, GSA planned to spend an approximate \$46 million to upgrade its system prior to entering into the APA with Aqua, the bulk of which was planned to address the COA. GSA also devoted \$2.8 million on engineering design for upgrading its treatment plant prior to entering into the APA. Thus, the evidence demonstrates that GSA can fulfill its obligations under the COA without Aqua's ownership.

I&I

Aqua also contended in this proceeding that infrastructure improvements are needed to be made to the GSA system to correct GSA's excess I&I. Aqua's plan to address this alleged issue includes conducting flow metering with GSA's collection system to identify areas with drainage basins exhibiting significant I&I, and then rehabbing and replacing GSA's sewer main.³⁰³

GSA claimed that the bypassing of trickling filter treatment occurred 10 times total in January, February, and April of 2024, which Aqua claimed illustrates the presence of I&I,³⁰⁴ while OCA argued that Aqua's plan to address I&I is unsupported by the record in part because Aqua has yet to conduct its own audit of the GSA system to gauge the existence of I&I.³⁰⁵

³⁰² Aqua St. 2, at 10; OCA St. 1 SR, at 9.

³⁰³ Aqua St. No. 2-R, at 2.

³⁰⁴ Aqua St. No. 2-R, at 3.

³⁰⁵ Tr. at 135-136.

While the evidentiary record supports a finding that the GSA system has I&I, and that Aqua would be proactive in addressing I&I, the record does not support a finding that GSA is incapable of correcting the issue on its own without Aqua's ownership. As pointed out by OCA, GSA has been able to replace infrastructure within the system and to make all necessary upgrades to the system within the past 10 years.³⁰⁶ As such, the evidence demonstrates that this issue can be corrected by GSA without the intervention of Aqua.

Physical security

Aqua raised multiple concerns about the status of the physical security at the GSA facility, arguing that [BEGIN CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END CONFIDENTIAL] As a result of these perceived physical security deficiencies, Aqua proposed to make a number of corrections and improvements to the GSA facility.³⁰⁸

In the contrary, OCA pointed out that GSA has not been informed by any local, state, or federal regulatory authority that it must improve its physical security in order to maintain compliance with the law.³⁰⁹ As further pointed out by OCA, [BEGIN CONFIDENTIAL] [REDACTED]

³⁰⁶ OCA St. 1 at 14; OCA Exhibit CMH-6.

³⁰⁷ Aqua St. No. 1, at 31-32.

³⁰⁸ *See Id.*

³⁰⁹ OCA St. 1, at 26; OCA Exhibit CMH-16.

[REDACTED]
[REDACTED] [END CONFIDENTIAL]

The record evidence demonstrates that GSA would be capable of responding to a physical safety incident if such an incident were to occur. Furthermore, there is no evidence that GSA would not be capable of upgrading the physical security at its facility through the raising of capital if required. Put simply, Aqua hasn't demonstrated the need for the proposed upgrades to the GSA facility because Aqua has not first demonstrated that the physical security at the GSA facility is at risk. The upgrades that Aqua proposed in this matter might serve to improve the physical security at the GSA facility by upgrading the facility to that of one of its own. However, such upgrades do not establish an affirmative public benefit in this instance when weighed against the harms of the transaction (i.e. a substantial increase in rates). The physical security at the GSA system might not rise to the level of the physical security present at an Aqua facility, however, there is nothing in the evidentiary record to demonstrate that the physical security that GSA implements at its facility is insufficient.

Cyber security

Aqua additionally raised multiple concerns about GSA's cyber security, arguing that [BEGIN HIGHLY CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

310 OCA St. 1 at 28.
311 Aqua St. No. 4, at 8.

noted by OCA, GSA has the capabilities to seeking funding for cyber security projects if necessary to improve its cyber security environment.

Employees

GSA is being operated by six employees and a Borough Manager. Aqua contended these individuals do not possess the skills to operate and make process control decisions for the WWTP or the collection system assets.³¹⁷ GSA contended that GSA board members do not have experience in running wastewater systems and transferring the system to Aqua will, GSA and the Borough argued, place GSA in the hands of a company with expertise in running wastewater systems and allow the Borough Manager to devote time to other governmental functions.³¹⁸

First and foremost, we acknowledge that the GSA's service is not perfect; however, perfection is not required for service to be adequate.³¹⁹ The evidence provided in this matter demonstrates that GSA is currently providing safe and reliable service to its customers and has been able to make improvements to its WWTP over the years when it has needed to, even if those improvements have been reactionary in nature. No information on the record indicates that GSA would be incapable of hiring additional employees or managers to help operate the system if need be.

While the GSA employees might not have the same level of expertise as Aqua employees, the fact that GSA is currently being operated in a manner that is providing satisfactory wastewater service to its customers demonstrates that its

³¹⁷ Aqua St. No. 1, at 18.

³¹⁸ Greenville M.B., at 6.

³¹⁹ *Analytical Lab Servs., Inc. v. Metro. Edison Co.*, Docket No. C-20066608 (Opinion and Order entered Dec. 21, 2007).

employees have a level of expertise sufficient to continue to operate the GSA wastewater system.

Public Input Hearing Testimony

Mr. Rinella testified at the public input hearing in support of the acquisition of GSA by Aqua, stating that GSA is plagued by conflicts of interests regarding the makeup of its board, general mismanagement, billing miscalculations, and fee collection issues.³²⁰ Mr. Williams also testified in support of the acquisition at the public input hearing stating that upgrades are needed to be made to the GSA system and that a sewer line near a property that he owns is leaking and emits an odor.³²¹

While we acknowledge the testimony provided by Mr. Rinella and Mr. Williams, their testimony does not address the impact in rates that this transaction will have on GSA customers. Ultimately, the evidence in this case shows that, overall, the GSA system has been providing safe and reliable service to its customers and that GSA is capable of making upgrades to its system without Aqua's intervention. GSA was in the process of upgrading its system prior to entering into the APA with Aqua and can return to its efforts to upgrade the system if this transaction is denied by the Commission.

Conclusion

The evidence put forth in this proceeding by Aqua and by GSA attempt to paint the GSA system as a troubled system. However, there is no evidence to suggest that GSA is a troubled system, or a distressed, underfunded, and non-viable system. In fact, the record evidence suggests the opposite. Outside of its breach of the COA it entered

³²⁰ Tr. 51.

³²¹ Tr. 81.

into with DEP, which GSA has the tools to comply with itself, GSA is in compliance with environmental regulations and has not been informed by any kind of authority that it must upgrade its physical or cyber security measures. If such issues were to arise within the GSA system in the future, GSA has proven capable of correcting the issues itself without Aqua's intervention. GSA is a system that has been providing safe and reliable service to its customers and the evidence does not demonstrate that GSA would not be capable of providing safe and reliable service in the future.

We do not deny that Aqua's proposed improvements could result in benefits for GSA customers and the Greenville community. However, while Aqua's planned improvements might result in an even more efficiently run wastewater system, GSA is already being run efficiently and Aqua has not demonstrated a need for its planned improvements to the GSA system. Ultimately, the benefits provided by the planned improvements must be weighed against the harm that the transaction will cause customers in terms of an increase in rates. Considering the fact that the GSA system is currently being efficiently run, and that GSA is providing safe and reasonable wastewater service to its customers, Aqua has not demonstrated that its planned improvements to the GSA system outweigh the increase in rates (of at least 185%, which as discussed is likely under projected) to customers.

GSA's desire to exit the utility business

GSA has indicated that the Borough no longer desires to be in the utility business.³²² Aqua claimed that it is in the public interest to permit GSA to exit the utility business.

³²² Greenville St. No. 1-R, at 5, 7.

Although we have considered the fact that GSA desires to be out of the wastewater utility business, Aqua has not presented evidence that demonstrates why GSA's desire is an affirmative public benefit. Further, as noted by OCA, Section 1329 transactions are not the only type of transactions under which a municipal system may be acquired.³²³ As such, there are other options available to GSA to exit the wastewater business if it so desires. In sum, no affirmative public benefit will result from GSA's desire to exist the utility business.

GSA customer benefits

In support of the alleged benefits to GSA customers, Aqua claimed that under its ownership, GSA customers will have access to enhanced customer service available 24/7/365, customer billing options, and payment protections including access to Aqua's CAP and Aqua aid for eligible customers. Aqua further claimed that under its ownership GSA customers will have access to Aqua's ePortal and App access for account information, consumption, e-billing, and auto-payment.³²⁴

We agree with Aqua that GSA customers having access to Aqua's CAP and Aqua aid will benefit those who are eligible,³²⁵ as CAP and Aqua Aid will serve to assist low-income GSA customers in paying their bills. This is especially true in light of the fact that GSA does not currently have a low-income program for its customers. Further, providing customers access to the ability to check their consumption online and the ability to pay online will make it easier for them to manage their water consumption and to pay their bills. Certainly, these are benefits that will be derived from this transaction.

³²³ OCA St. 1SR, at 4.

³²⁴ Aqua St. No. 1- R, at 9, 10.

³²⁵ OCA submitted that 1,766 individuals in Greenville are below 200% of the FPL and 335 families in Greenville that are below 200% of the FPL. OCA St. 1 at 29.

However, we are tasked with weighing the benefits of this transaction against the harms of this transaction. As discussed, GSA customers will experience higher bills as a result of this transaction to the tune of a 185% increase, a number which is likely understated. As such, the access that GSA customers have to low-income programs and assistance will be counteracted by the fact that they will be paying significantly higher rates. As far as the other enhancements are concerned, the record evidence does not indicate that GSA customers are unsatisfied with the customer service they are currently being provided. While customer service would be enhanced under Aqua's ownership for current GSA customers, we do not find that the proposed enhancements are worth an increase in rates by at least 185%. Ultimately, Aqua has not demonstrated that GSA customers' access to the above customer service enhancements will outweigh the harms from this transaction.

Existing Aqua customer benefits

Aqua argued that the acquisition of the GSA will provide an approximate 4% increase in Aqua's customer base³²⁶ leading to lower incremental cost per customer for future infrastructure investments across the state.³²⁷ Aqua asserted that an increased customer base will also provide more flexibility and opportunity to deal with rate impacts over a much larger customer base.³²⁸

Aqua further claimed in this proceeding that acquiring the GSA system would result in economies of scale and lower overall average costs. In support, Aqua submitted that the revenue requirement per customer served by the Company based on

³²⁶ Aqua St. No. 3, at 15.

³²⁷ Aqua St. No. 3, at 1; Application, at ¶53(f).

³²⁸ Aqua St. No. 3, at 15.

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 \$2,600, based on the Company's current rate case, is nearly 30% higher than the all-systems average of \$1,811 per customer.³²⁹

OCA and I&E argued that the claimed economies of scale are "aspirational," and I&E claimed that the normal economies of scale that would be achieved by combining treatment plants and/or closing a treatment plant will not be achieved through this acquisition because the GSA system will not be physically interconnected to any other Aqua system.³³⁰

We recognize that the transaction will result in an approximate 4% increase in Aqua's customer base. We agree with Aqua's testimony that, as a result of the Company's larger customer base, future infrastructure investments across the Commonwealth will be shared at a lower incremental cost per customer for all of Aqua's customers. However, we also agree with OCA's testimony in that the benefits achieved as a result of increasing Aqua's customer base is nominal, as the customer base is only being increased by 4%. Factoring in the fact that customer rates will rise and continue to rise as a result of this transaction, Aqua has not demonstrated that the benefits that Aqua customers will receive as a result of this transaction are outweighed by the harm caused by this transaction.

Regarding the claimed economies of scale, there is no information in the record to show that the transaction would make rates more affordable in the long-term due to economies of scale. As noted by I&E and OCA, normal economies of scale that

³²⁹ Aqua St. No. 3-RJ, at 10.

³³⁰ I&E St. No. 1, at 13.

would be achieved by combining treatment plants and/or closing a treatment plant will not be achieved through this acquisition because the GSA system will not be physically interconnected to any other Aqua system.

Greenville community benefits

Aqua claimed that the influx of \$18 million will benefit the Borough, its residents, and the surrounding communities.³³¹ Specifically, Aqua and GSA claimed that the proceeds from the sale of GSA will allow the Borough to pay off all of its debt, being able to utilize their cash surplus (otherwise encumbered by sewer utility operations), and to have proceeds to place into interest earning securities.³³² Aqua also claimed that the community will benefit through having a new property tax paying business in its community.³³³ Aqua claimed that these benefits will offset the initial revenue requirement deficiency of \$2.223 million by \$168,131. GSA claimed that the sale of Aqua will allow the Borough to reinvest sale proceeds from the transaction into redevelopment in the community.³³⁴

At the public input hearing in this matter, Mr. Wilt testified in support of the Application stating that the acquisition of GSA by Aqua will provide a positive economic impact to the Greenville community in part because the sale of GSA will permit the community to reinvest the funds into economic development programs.³³⁵

³³¹ Aqua St. No. 3, at 14.

³³² Aqua St. No. 3-R, at 8.

³³³ *Id.*

³³⁴ Greenville St. No. 1, at 10.

³³⁵ Tr. 61, 62.

OCA, however, countered the claims of Aqua and GSA by arguing that the alleged Greenville community benefits are unlikely to materialize as GSA counsel indicated that the Authority will still be in existence after the sale and that the sale proceeds will go to it and not the Borough.³³⁶ Thus, OCA submitted that the community benefits from the sale proceeds of GSA are already spoken for in ways that do not contemplate a surplus of cash for the borough, redevelopment, or investment in interest-bearing accounts.³³⁷

We find that the evidence in this proceeding does not detail where the proceeds from the sale of GSA will go following the close of the transaction. The assumption that the sale proceeds will go to the Borough so the proceeds can be invested into the Greenville community is speculative, at best, given that Aqua has not received any confirmation from GSA that the proceeds will go to the Borough, instead of to GSA. Specifically to this point, Aqua witness Packer testified at the hearing in this matter that Aqua has not received any assurances from GSA or the Borough concerning how the proceeds from the sale would be spent or otherwise allocated in Greenville.³³⁸ Thus, given the speculative nature of Aqua's argument here, we do not find that the Greenville community will receive a benefit from this transaction.

Public benefits

Aqua argued that the transaction benefits the public-at-large by promoting the Commission's policy favoring regionalization and consolidation of water and wastewater systems and the public policy goals in 66 Pa.C.S. § 1329.

³³⁶ Tr. at 157-158.

³³⁷ OCA M.B., at 38.

³³⁸ Tr. At 159, 160.

Aqua is correct in that the Commission supports the consolidation and regionalization of water and wastewater system assets. In the Commission's *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, it stated:

[A]cquisitions of smaller systems by larger more viable systems will likely improve the overall long-term viability of the water and wastewater industry. Additionally, these types of acquisitions will also enhance the quality of ratepayers' daily lives, promote community economic development and provide environmental enhancements. We strongly believe that these types of acquisitions generally serve public policy goals....^[339]

However, as recently stated by Commission, the goal of regionalization and consolidation is not simply to acquire as many water and wastewater systems as possible and combine them into one system, but to consolidate systems in a way that benefits customers.³⁴⁰ Aqua has not demonstrated in this proceeding that the acquisition of the GSA system will benefit customers in a way that outweighs the harms presented by this transaction.

Conclusion

The record supports that the proposed acquisition will significantly negatively impact existing customers while not providing substantial affirmative benefits. The evidence presented by Aqua did not establish that any benefit realized from the transaction would outweigh the harms to customers.

³³⁹ *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 at 18 (Order entered Aug. 17, 2006).

³⁴⁰ *Application of Pennsylvania-American Water Company, pursuant to Section 1329 for the acquisition of the wastewater collection and conveyance system owned by the Borough of Brentwood*, Docket No. A-2021-3024058 at 76 (Opinion and Order entered Feb. 22, 2024).

Most importantly, GSA is currently providing safe, adequate, and reliable service to its customers and is capable, and there is nothing in the record to suggest that GSA would be incapable, of continuing to provide safe, adequate, and reliable service to its customers without Aqua’s intervention. While the Commission and the courts have held that granting a CPC need not be “absolutely necessary” in order to be in the public interest,³⁴¹ we still must perform a net benefit assessment pursuant to case law. Many of the benefits that Aqua asserted will be present through this transaction (for example, improvements to physical and cyber security, improvements to customer service) are services that GSA are already providing its customers in an adequate and efficient manner. Aqua’s ability to improve upon the services that GSA is currently providing its customers is due to Aqua’s fitness discussed previously. We find the evidence of record does not support a finding that substantial affirmative public benefits will result from this transaction. As the Commonwealth stated in *Cicero*, it is not a benefit to provide for upgrades that [the selling utility] is equally capable of providing.³⁴² Ultimately, the upgrades that Aqua proposed in this matter would have the impact of turning the GSA system into a system run by Aqua. Although Aqua might operate its systems in a different manner than how GSA runs its system, the GSA is being run effectively and upgrading the GSA system so that it runs more like an Aqua system is not an affirmative public benefit. As stated in *Cicero*, where, there are no benefits that differ substantially from the benefits already being provided by the existing system operator, those alleged benefits arise as a result of the acquiring utility's fitness, rather than from the actual transaction, and where there are acknowledged or known harms that will result

³⁴¹ See, *Hess v. Pa. Pub. Util. Comm’n*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014).

³⁴² *Cicero*, 300 A.3d at 1119.

from the transaction, there are insufficient net benefits to support approving the transaction and granting the CPC under Section 1103(a).³⁴³

Regarding the investments Aqua proposed to make to GSA's infrastructure, GSA is capable of completing upgrades to its system without adding to the financial burden of current GSA customers to fund Aqua's purchase. The record does not suggest that GSA is incapable of complying with the COA it entered into with the DEP, or incapable of making any other upgrades to its system as needed. Although GSA indicated that performing upgrades to its system will cost an estimated \$45.6 million and result in an increase in its customers rates of 200%, GSA customers will likely experience an even greater increase in rates in the near future if this transaction were to be improved.

In addition to the above points, Aqua has not demonstrated that GSA customers, existing Aqua customers, or the public-at-large will benefit from this transaction in a manner that outweighs the harms to be caused by this transaction.

In conclusion, for all of the above reasons, we recommend that the Application be denied.

B. Section 1329

As discussed above, we recommend that the Commission deny the Application based on Aqua's failure to meet its burden of demonstrating that public benefits sufficient to meet the requirement of Section 1103(a) will ensue from the proposed transaction. The issue of the appropriate rate/base to put into rates, therefore, is moot and will not be discussed in this Recommended Decision.

³⁴³ *Id.*

C. Recommended Conditions

As explained, OCA, OSBA, and I&E argued that the Application should be denied. In the alternative, OCA, OSBA, and I&E recommended that the Commission impose several conditions upon Aqua if the Commission chooses to approve the Application.

As discussed above, we recommend that the Commission deny the Application based on Aqua's failure to meet its burden of demonstrating that public benefits sufficient to meet the requirement of Section 1103(a) will ensue from the proposed transaction. As a result, the issue of what conditions to impose on Aqua upon approval of the Application is moot and will not be discussed in this Recommended Decision.

D. Section 507 Approvals

As discussed above, we recommend that the Commission deny the Application based on Aqua's failure to meet its burden of demonstrating that public benefits sufficient to meet the requirement of Section 1103(a) will ensue from the proposed transaction. Therefore, Aqua's request for approval of the APA and other contracts pursuant to 66 Pa.C.S. § 507 is moot and will not be discussed in this Recommended Decision.

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

As discussed above, we recommend that the Commission deny the Application based on Aqua's failure to meet its burden of demonstrating that public benefits sufficient to meet the requirement of Section 1103(a) will ensue from the

proposed transaction. Therefore, Aqua’s request for approvals, certificates, registrations, and relief, if any, is moot and will not be discussed in this Recommended Decision.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 507, 1102, 1329.

2. Aqua Pennsylvania Wastewater, Inc is a public utility as defined in Section 102 of the Public Utility Code. 66 Pa.C.S. § 102.

3. The burden of proving entitlement to a certificate is upon the applicant as it is the applicant that is seeking a proposed rule or order. 66 Pa.C.S. § 332.

4. The term “burden of proof” means a duty to establish a fact by a preponderance of the evidence. The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the slightest degree, than the evidence presented by the opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854, (Pa. 1950).

5. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence in the record. 2 Pa.C.S. § 704. That is, the evidence must be substantial and legally credible and cannot be mere “suspicion” or a “scintilla” of evidence. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980).

6. The Public Utility Code requires Commission approval in the form of a certificate of public convenience for a public utility to expand its service territory

and to acquire property used or useful in the public service. 66 Pa.C.S. §§ 1102(a)(1), 1102(a)(3).

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

8. The Commission, in granting a certificate of public convenience, may impose such conditions as it may deem to be just and reasonable. 66 Pa.C.S. § 1103(a); *see also, Seaboard Tank Lines v. Pa. Pub. Util. Comm’n*, 502 A.2d 763 (Pa. Cmwlth. 1985).

9. According to the Pennsylvania Supreme Court, satisfying the standard of Section 1103(a) of the Code requires the Commission to find that the proposed transaction will “affirmatively promote the service, accommodation, convenience, or safety of the public in some substantial way.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 828 (1972).

10. The Pennsylvania Supreme Court further explained, when determining if the standard of Section 1103(a) of the Code has been met, that the Commission is not required to secure legally binding commitments or to quantify benefits where this may be impractical, burdensome or impossible; rather, the Commission properly applies a preponderance of the evidence standard to make factually-based determinations (including predictive ones informed by expert judgment) concerning certification matters. *Popowsky v. Pa. Pub. Util. Comm’n*, 937 A.2d 1040 (2007).

11. One of the factors that the Pennsylvania Supreme Court identified in *City of York* for the Commission to consider in determining whether there is an

affirmative public benefit is, at least in a general fashion, the effect that a proposed transaction is likely to have on future rates to consumers. *City of York v. Pa. Pub. Util. Comm'n*, 295 A.2d 825 (1972).

12. The Pennsylvania Commonwealth Court recently held that the Commission must perform “the balancing test required by Section 1102 of the Code to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit.” In that regard, 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. Pub. Util. Comm'n*, 195 A.3d 1055, 1066-1067 (Pa. Cmwlt. 2018).

13. Where there are known harms, the transaction must have benefits that differ substantially from the benefits already being provided by the existing system operator to support approving the transaction. *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlt. 2023).

14. Providing the same services as are already being provided, or providing for upgrades that the existing system operator is capable of providing, are not substantial affirmative benefits consistent with *City of York*, especially if the existing system is already operating safely and reliably. *Cicero v. Pa. Pub. Util. Comm'n*, 300 A.3d 1106 (Pa. Cmwlt. 2023).

15. Granting a certificate of public convenience need not be “absolutely necessary” in order to be in the public interest. *Hess v. Pa. Pub. Util. Comm'n*, 107 A.3d 246, 262 (Pa. Cmwlt. 2014).

16. The party receiving the assets and service obligation must be technically, legally, and financially fit. *McCloskey v. Pa. Pub. Util. Comm'n*, 195 A.3d 1055 (Pa. Cmwlth. 2018).

17. An existing certificate holder is entitled to a “continuing presumption regarding its fitness to operate,” which includes a presumption that the certificate holder has a propensity to operate legally. *Lehigh Valley Transp. Servs., Inc. v. Pa. Pub. Util. Comm'n*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012); *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

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

19. If the parties agree to the Section 1329 process, the acquiring public utility and the selling municipality each select a utility valuation expert from a list of experts established and maintained by the Commission. The selected utility valuation experts perform independent fair market value appraisals of the system in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches. 66 Pa.C.S. § 1329(a)(1)-(3).

20. The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility. 66 Pa.C.S. § 1329(c)(2).

21. Fair market value is defined as “[t]he average of the two utility valuation expert appraisals conducted under Section 1329 (a)(2) of the Public Utility Code.” 66 Pa.C.S. § 1329(g).

22. Section 507 of the Public Utility Code states that, except for contracts between a public utility and a municipal corporation to furnish service at tariff rates, no contract or agreement between a public utility and a municipal corporation shall be valid unless filed with the Commission at least 30 days prior to its effective date. 66 Pa.C.S. § 507.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Application filed by Aqua Pennsylvania Wastewater, Inc. pursuant to Sections 507, 1102 and 1329 of the Pennsylvania Public Utility Code for Approval of its Acquisition of the wastewater system assets of the Greenville Sanitary Authority, filed at Docket No. A-2023-3041695, be denied.

2. That the Secretary's Bureau mark Docket No. A-2023-3041695 as closed.

Date: October 3, 2024

_____/s/
Alphonso Arnold III
Administrative Law Judge

_____/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge