



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

October 22, 2024

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

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

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CBW/ac  
Enclosures

cc: Deputy Chief Administrative Law Judge Mark A. Hoyer (via email – [mhoyer@pa.gov](mailto:mhoyer@pa.gov))  
Administrative Law Judge Alphonso Arnold III (via email – [alphonarno@pa.gov](mailto:alphonarno@pa.gov))  
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Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: October 22, 2024

**TABLE OF CONTENTS**

**I. INTRODUCTION AND PROCEDURAL HISTORY..... 1**

**II. SUMMARY OF THE ARGUMENT ..... 1**

**III. REPLY EXCEPTIONS..... 2**

    A. REPLY TO AQUA EXCEPTION NO. 1 and GSA EXCEPTIONS  
    NOS. 1, 3, 4, 5, 7, 8, 11 and 12: WEIGHING OF ALL OF THE  
    FACTORS INCLUDING THE IMPACT ON RATES DOES NOT  
    WARRANT THE FINDING OF AFFIRMATIVE PUBLIC BENEFITS. .. 2

    B. REPLY TO AQUA EXCEPTIONS NO. 2: THE FAIR MARKET  
    VALUE RATEMAKING RATE BASE NEED NOT BE DECIDED  
    IN THIS PROCEEDING..... 10

    C. REPLY TO GSA EXCEPTION NO. 2, 6, 9: GSA CUSTOMERS  
    ARE LIKELY TO EXPERIENCE HIGHER RATES AS A RESULT  
    OF THIS TRANSACTION..... 10

**IV. CONCLUSION ..... 12**

## TABLE OF AUTHORITIES

### Cases

<i>Cicero v. Pa. P.U.C.</i> , 910 CD 2022 (July 23, 2023) .....	5
<i>City of York v. Pa. P.U.C.</i> , 449 Pa. 136, 295 A.2d 825 (1972) .....	6
<i>McCloskey v. Pa. P.U.C.</i> , 195 A.3d, 1055 .....	3
<i>Middletown Twp. v. Pa. P.U.C.</i> , 482 A.2d 674 (Pa. Commw. 1984) .....	8
<i>Popowsky v. Pa. P.U.C.</i> , 937 A.2d 1040 (Pa. 2007) .....	3
<i>Samuel J. Lansberry, Inc. v. Pa. P.U.C.</i> , 578 A.2d 600 (Pa. Cmwlth. 1990) .....	2

### Statutes

66 Pa. C.S. § 1102 .....	2
66 Pa. C.S. § 1103 .....	2
66 Pa. C.S. § 1103(a) .....	5
66 Pa. C.S. § 1329 .....	2, 4, 7
66 Pa. C.S. § 2102 .....	2
66 Pa. C.S. § 332(a) .....	1
66 Pa. C.S. § 507 .....	2

## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On August 27, 2024, the Bureau of Investigation and Enforcement (I&E) filed a Main Brief in this proceeding. The history of the proceeding was addressed in I&E's Main Brief<sup>1</sup> and Reply Brief.<sup>2</sup> On August 27, 2024, Aqua Pennsylvania Wastewater, Inc. (Aqua or Company), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Greenville Sanitary Authority (GSA or Greenville), also filed Main Briefs. On September 4, 2024, Aqua, I&E, OCA, OSBA and GSA filed Reply Briefs.

On October 3, 2024, Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Alphonso Arnold, III (the ALJs) issued a Recommended Decision (RD) which recommended that the Commission deny the Application. Aqua and GSA filed Exceptions to the ALJs' RD. I&E now timely files the instant Replies to Exceptions filed by Aqua and GSA.

## **II. SUMMARY OF THE ARGUMENT**

Aqua, as the proponent of the Application, bears the burden of proof to establish that it is entitled to receive the approvals being sought in the Application.<sup>3</sup> Aqua's burden includes the obligation to establish a preponderance of evidence which is substantial and legally credible. In order to meet its burden of proof, Aqua must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. To satisfy its burden, Aqua must demonstrate, by a preponderance of the

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<sup>1</sup> I&E Main Brief, pp. 1-2.

<sup>2</sup> I&E Reply Brief, p. 1.

<sup>3</sup> I&E Main Brief, p. 4; 66 Pa. C.S. § 332(a).

evidence, that its proposed transaction complies with Pennsylvania law and should be approved.<sup>4</sup> Specific to this case, Aqua has the burden of proving that the proposed transaction is in compliance with Sections 507, 1102, 1103, 2102 and 1329 of the Code. Aqua has not met its burden, as demonstrated by the ALJ in her Recommended Decision, because its application does not comply with the requirements listed above.

### **III. REPLY EXCEPTIONS**

No party has attempted to argue that Aqua is not legally, financially, and technically fit to own and operate the Greenville system. The crux of the issue in this case relates to whether there will be any substantial affirmative benefits to the transaction.

The ALJ, however, was persuaded by the evidence presented by I&E and OCA and determined based on that evidence that Aqua did not meet its burden in demonstrating that the transaction will promote the public interest by providing affirmative public benefits to all affected entities.<sup>5</sup>

#### **A. REPLY TO AQUA EXCEPTION NO. 1 and GSA EXCEPTIONS NOS. 1, 3, 4, 5, 7, 8, 11 and 12: WEIGHING OF ALL OF THE FACTORS INCLUDING THE IMPACT ON RATES DOES NOT WARRANT THE FINDING OF AFFIRMATIVE PUBLIC BENEFITS.**

In Exceptions, Aqua argues that the ALJs focused exclusively on the potential rate impact to customers as the basis for denying this acquisition.<sup>6</sup> This is simply untrue. The ALJs explain, “[a]fter review of the evidentiary record we find that when weighing all the

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<sup>4</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>5</sup> RD p. 35.

<sup>6</sup> Aqua Exceptions, p. 6.

factors for and against the transaction to GSA customers, and to the public-at-large, that Aqua has failed to demonstrate that a substantial affirmative public benefit will result from this transaction.”<sup>7</sup> The ALJs further acknowledged that “...even though the impact of rates on customers would be significant as a result of the transaction, that alone is not reason to deny the Application.”<sup>8</sup> As this demonstrates, the ALJs have weighed all the evidence to reach the conclusion that Aqua has simply not met its burden of proving by a preponderance of the evidence that this acquisition will result in affirmative public benefits.

Aqua goes on to say the ALJs misapplied the balancing test espoused in *Popowsky*.<sup>9</sup> As Aqua correctly quotes, the *McCloskey* case says that the Commission is charged with deciding whether the impact on rates is outweighed by any substantial public benefits.<sup>10</sup> Once again, Aqua’s perception that the ALJs misapplied the balancing test. As *McCloskey* states, the Commission must decide whether the rate impact outweighs the purported benefits of the transaction. Here the ALJs weighed all factors for and against the transaction<sup>11</sup>, and determined that approval of the Application was not in the public interest. Simply disagreeing with the ALJs recommendation does not imply that the ALJs misapplied the balancing test.

Next Aqua criticizes the ALJs for stating that Aqua plans to recover the \$2.223 million revenue requirement deficiency from GSA customers.<sup>12</sup> Aqua goes on to state

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<sup>7</sup> RD, p. 94.

<sup>8</sup> *Id.* at 96.

<sup>9</sup> Aqua Exceptions, p. 7.

<sup>10</sup> *McCloskey v. Pa. P.U.C.*, 195 A.3d, 1055, p. 1067.

<sup>11</sup> RD, p. 94.

<sup>12</sup> Aqua Exceptions, p. 8.

that this was not its position, but merely one data point to show what might happen if there was no cost sharing.<sup>13</sup> Aqua’s argument in this regard seems designed simply to detract from the fact that acquisition of this system will create a \$2.223 million revenue deficiency. In fact, the ALJs acknowledge that “...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.”<sup>14</sup> However, the ALJs found the evidence presented by OCA that these rate impacts were likely understated persuasive as Aqua has a demonstrated history of under-projecting revenue deficiencies in Section 1329 acquisitions.<sup>15</sup> Additionally, the ALJs noted that even Aqua acknowledged its projections do not reflect increases that result from other acquisitions or planned investments in the GSA systems if the acquisition is approved.<sup>16</sup>

Aqua points to the offset the initial revenue requirement deficiency of \$2.223 million by \$168,131 as a benefit the ALJs ignored in this proceeding.<sup>17</sup> However, given the scale of this acquisition along with the many others Aqua customers are currently funding, this \$168,131 is a paltry sum compared for a company as large as Aqua. This benefit is at best nominal and does nothing to offset the potential harms of the acquisition.

Both Aqua and GSA attempt to juxtapose the 108.85% potential increase under

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<sup>13</sup> *Id.*

<sup>14</sup> RD, p. 95.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 96.

<sup>17</sup> Aqua Exceptions, p. 11.

Aqua ownership versus the potential 200% increase under GSA ownership.<sup>18</sup> However, as explained in detail in Section C below, this is simply looking at one point in time and not considering the every three year rate increases that have historically been imposed on Aqua customers.

Something more than merely a willing buyer and a willing seller must be present to demonstrate affirmative public benefits.<sup>19</sup> The Commonwealth Court has concluded 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).”<sup>20</sup> In this proceeding GSA’s expressed desire to sell the system is not controlling. In fact, that notion runs afoul of the public interest and would place a tremendous burden on ratepayers who would be forced to fund these endeavors simply because a municipal utility doesn’t feel like running its system anymore.

In its Exceptions, Aqua points to Aqua’s CAP and Aqua Aid and the ability to enter into deferred payments arrangements that GSA does not currently have as benefits to the GSA customers.<sup>21</sup> However, as the RD notes, while GSA will have access to low-income programs, this is counteracted by the higher rates the GSA customers will face

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<sup>18</sup> Aqua Exceptions, pp. 13-15, GSA Exceptions, p. 8.

<sup>19</sup> Aqua Exceptions, pp. 15-16, GSA Exceptions, pp. 12-13.

<sup>20</sup> *Cicero v. Pa. Pub. Util. Comm’n*, 910 CD 2022 (July 23, 2023) at 20.

<sup>21</sup> Aqua Exceptions, p. 16.

under Aqua's ownership.<sup>22</sup> As explained by OCA, these are more akin to band aids than benefits, as they address a need that will either be created by, or exacerbated by, approval of the acquisition.<sup>23</sup>

Further, in the *City of York v. Pennsylvania Public Utility Commission*, it was established that in order to show that a proposed transaction benefits the public, it must be shown to affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.<sup>24</sup> As previously explained, but for seemingly minute amount of \$168,131 Aqua made unquantified and generalized assertions that current customers will benefit from the economies of scale, and the potential (but not guarantee) that Aqua may be able to do some things cheaper than GSA would. While the goal of doing things cheaper than GSA is laudable, it does not make up for the large increase these customers will see in their rates and is insufficient to show any affirmative public benefits. Vague assertions such as these of what is likely to occur fail to result in an affirmative public benefit. In order for this acquisition to be in the public interests, there must be benefits for Aqua's existing customers, as well as benefits for GSA customers.

Simply put, having more customers to spread costs across at some unknown future date does not create the affirmative public benefits necessary to approve this transaction. Aqua has failed to provide any information to show that the benefits of this acquisition outweigh the detriments. Therefore, I&E recommends that the Application be denied as Aqua has failed to show substantial public benefits associated with this acquisition.

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<sup>22</sup> RD, p. 106.

<sup>23</sup> OCA MB, pp. 36-37.

<sup>24</sup> *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825, 828 (1972).

Regarding the benefits to current Aqua customers, Aqua alleges the RD “glosses over” the evidence it put forth showing that it expects to realize a 14% reduction in O&M expenses.<sup>25</sup> This “economies of scale” argument has been espoused in essentially every Section 1329 acquisition proceeding. Yet, to date, no real economies of scale seem to have been achieved which makes this argument seem less and less plausible. While the goal is laudable, rates simply aren’t going down as a result of these acquisitions. In cases such as the instant where the system to be acquired will not be physically interconnected to the Aqua system, the usual economies of scale are harder to achieve. As noted in the RD,

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. 108 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.<sup>26</sup>

The result of this acquisition for both GSA and the other currently existing Aqua customers is that their rates will go up significantly base both on the information provided in this Application and review of the impact of past acquisitions on Aqua rates. Aqua’s application poses identifiable detriments to existing customers. The detriment imposed upon existing customers is relevant because, in its public interest analysis, the Commission should consider the benefits and **detriments** of the transaction “with respect

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<sup>25</sup> Aqua Exceptions, pp. 17-19.

<sup>26</sup> RD, pp. 107-108.

to the impact on all affected parties”<sup>27</sup> including existing customers. Accordingly, considering that the identified detriments of the transaction far outweigh any speculative benefits that existing ratepayers may hope to receive, I&E submits that Aqua’s Application fails the public interest test, and it should be rejected just as the ALJs have recommended. The GSA system does not appear to be troubled, and the instant acquisition presents merely speculative public benefits to GSA and Aqua’s existing customers. The detriments that would result from this acquisition are real and identifiable and I&E believes the acquisition is not in the public interest and should not be approved. Therefore, I&E recommends the Commission reject Aqua’s Application.

In exceptions, GSA states that it is “alarming” that the ALJs and the Protestants have reached their conclusion without the benefit of “...coming to the community, speaking to the community, and speaking with community leaders.”<sup>28</sup> This undermines the purpose of the public input hearing that was held in this matter. The community at large was invited to participate at the public input hearing held on July 30, 2024 at 6:00 p.m. The testimony taken at that public input hearing is summarized in the ALJs’ RD.<sup>29</sup> While neither the Parties nor the ALJ can force participation in these hearings, the testimony of those members of the public who do choose to testify is taken seriously and considered in these matters. Therefore, to the extent that the community and community leaders wished to provide input in this matter, the input provided was considered and clearly utilized in the development of the ALJs’ recommendation in this matter.

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<sup>27</sup> *Middletown Twp. v. Pa. P.U.C.*, 482 A.2d 674, 682 (Pa. Commw. 1984) (emphasis added).

<sup>28</sup> GSA Exceptions, pp. 7-8.

<sup>29</sup> RD, pp. 33-34.

GSA excepts to the ALJs' finding that the record evidence does not demonstrate that GSA cannot meet its obligations under the Consent Order and Agreement (COA) without the assistance of Aqua.<sup>30</sup> GSA excepts because it states this finding is "irrelevant."<sup>31</sup> It is clearly not the case that GSA cannot comply with the COA unless Aqua steps in and, in fact, GSA had a plan prior to entering into this transaction with Aqua to upgrade its system. Therefore, the ALJs clearly did not err in finding GSA can upgrade its system without Aqua's intervention. It seems because this finding makes GSA's ability to operate the system clear, GSA would have the Commission disregard it. Simply because the evidence demonstrates GSA's ability to operate its system when GSA would prefer the Commission think it unqualified does not make the finding irrelevant. The ALJs correctly found that GSA can, on its own, take steps to comply with the COA and correctly weighed this evidence as part of the affirmative public benefits test.

GSA also excepts to the determination that Aqua did not demonstrate that its planned improvements outweigh the increase in rates stating that improvements are just part of the overall benefits and should not be viewed separately.<sup>32</sup> As demonstrated above and throughout the testimony and briefs in this proceeding, the rate increase to be faced by these customers are large and will likely only continue to get larger throughout Aqua's ownership. The ALJs properly weighed Aqua's ability to make system improvements as part of the necessary affirmative public benefits test and thereby determined the benefits did not outweigh the detriments. Therefore, the ALJs did not err.

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<sup>30</sup> GSA Exceptions, p. 8.

<sup>31</sup> *Id.*

<sup>32</sup> GSA Exceptions, pp. 11-12.

It is clear that the ALJ did not err in determining that this acquisition is not in the public interest. The service and improvements under Aqua's ownership, will likely be largely the same as those that could be made under GSA's ownership. As a result, Aqua has not demonstrated that there is an affirmative public benefit. As demonstrated above and by the RD, Aqua has failed to show that the affirmative public benefits test has been met. With no benefits for either GSA customers, or Aqua's existing customers, the Commission must deny this acquisition.

**B. REPLY TO AQUA EXCEPTIONS NO. 2: THE FAIR MARKET VALUE RATEMAKING RATE BASE NEED NOT BE DECIDED IN THIS PROCEEDING.**

Aqua excepts to the failure of the RD to address the ratemaking rate base of the GSA system.<sup>33</sup> As Aqua notes, no party recommended specific adjustments to the ratemaking rate base in this proceeding.<sup>34</sup> However, I&E submits that as the ALJs recommendation was to deny the Application, there was no need to address the ratemaking rate base. The rate base would only come into play if the ALJs recommended approval of the acquisition. Therefore, the ALJs did not err in not making a ratemaking rate base determination in this proceeding.

**C. REPLY TO GSA EXCEPTION NO. 2, 6, 9: GSA CUSTOMERS ARE LIKELY TO EXPERIENCE HIGHER RATES AS A RESULT OF THIS TRANSACTION.**

In Exceptions, GSA states that the ALJs' determination that GSA customers are likely to experience higher rates under Aqua's ownership is a blatant disregard of the

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<sup>33</sup> Aqua Exceptions, pp. 21-24.

<sup>34</sup> *Id.* at 22.

circumstances GSA is facing.<sup>35</sup> While it is clear that under either Aqua or GSA ownership, there will likely need to be improvements made to the system, GSA is incorrect in its reasoning. GSA is focusing on a singular issue; namely that GSA projects to invest approximately \$46 million into the assets if the acquisition is not approved. This is apparently to be looked at in contrast to the 180.85% increase that would be necessary for GSA to cover 100% of the revenue deficiency created by the acquisition.

However, GSA's argument ignores an important point. GSA has been able to operate the system while keeping bills at \$23.09 for the last 10 years.<sup>36</sup> Aqua clearly will not be able to do so given that, as the RD notes, it has recently filed a base rate case on average every three years.<sup>37</sup> Therefore, while GSA identified a significant costs that, if the project is carried out, will significantly increase rates, GSA clearly does not increase rates every three years like Aqua does. It is likely that under Aqua's ownership, rates will exceed even the 200% increase that may result under GSAs continued ownership.

GSA notes that it disagrees with the ALJs use of the word "significant"<sup>38</sup> to describe the rate impact on customers as a result of this acquisition. GSA apparently believes that "significant" is too subjective a word to describe the rate impact. Quite frankly, words have meaning and significant is a frequently used word, that in the context of this proceeding most could discern as meaning large. This can be demonstrated simply by looking at the numbers provided by Aqua. GSA's quibbling with the ALJs'

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<sup>35</sup> GSA Exceptions, p. 8.

<sup>36</sup> Aqua Exceptions, p. 12.

<sup>37</sup> RD, p. 96.

<sup>38</sup> GSA Exceptions, p. 11.

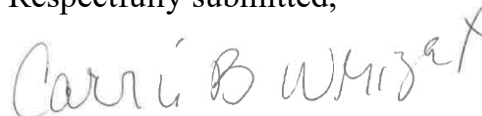
word choice does not change this Application in a meaningful way that would demonstrate there are affirmative public benefits to this acquisition. Therefore, GSA's argument must be disregarded.

As noted above, the acquisition is not in the public interest and Aqua's Application must be denied.

#### **IV. CONCLUSION**

Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Alphonso Arnold, III correctly determined that this acquisition produces no affirmative public benefits and is, therefore, not in the public interest and should not be approved by the Commission. I&E requests the Commission adopt the ALJ's Recommended Decision and deny the instant Application.

Respectfully submitted,



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**BEFORE THE  
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of Greenville, Hempfield Township, :  
and West Salem Township, Mercer :  
County, Pennsylvania :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Exceptions** dated October 22, 2024, in the manner and upon the persons listed below.

**Served via Electronic Mail Only**

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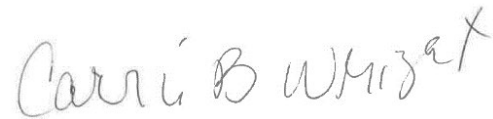
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