

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 12, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement
Kimberly Barrow, Vice Chair, Statement, Dissenting
Kathryn L. Zerfuss, Statement, Dissenting
John F. Coleman, Jr.
Ralph V. Yanora

Application of Aqua Pennsylvania Wastewater, Inc.
(Aqua), pursuant to 66 Pa.C.S. §§ 1102 and 1329 for:
(1) approval of the acquisition by Aqua of the
Greenville Sanitary Authority (GSA); (2) approval of
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; and (3) an
order approving the acquisition that includes the
ratemaking rate base of the GSA's wastewater system
assets pursuant to Section 1329(c)(2) of the Public
Utility Code

A-2023-3041695

Request for Approval of Contracts, including
Assignments of Contracts, between Aqua and the GSA,
Pursuant to Section 507 of the Public Utility Code.

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Aqua Pennsylvania Wastewater, Inc. (Aqua, the Company, or the Applicant) filed on October 15, 2024, in the above-captioned proceeding. Also, before the Commission are the late-filed Exceptions of the Greenville Sanitary Authority (the GSA) and the Borough of Greenville (the Borough)(collectively, Greenville)¹ received on October 16, 2024.² The Exceptions were filed in response to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Alphonso Arnold III and Deputy Chief ALJ Mark A. Hoyer (collectively, the ALJs) issued on October 3, 2024.³ For the reasons stated, *infra*, we shall: (1) grant the Exceptions of Aqua and Greenville; (2) modify, the Recommended Decision; and (3) grant the Application, consistent with this Opinion and Order.⁴

¹ Although they were separate Parties to this proceeding, the GSA and the Borough are represented by the same attorney and have made joint filings in this matter. Accordingly, the GSA and the Borough will jointly be referred to as “Greenville.”

² By Secretarial Letter issued October 18, 2024, the Commission’s Secretary: (1) notified the Parties that there was no Certificate of Service or other indication that Greenville’s Exceptions were served on the Parties; and (2) placed the Secretarial Letter on the record and served it upon the Parties, in order to ensure due process.

³ Reply Exceptions were filed by the Commission’s Bureau of Investigation and Enforcement (I&E) and the Office of Consumer Advocate (OCA) on October 22, 2024. Also, on October 22, 2024, Aqua filed a letter stating that it would not be filing Reply Exceptions.

⁴ This Opinion and Order does not cite to any confidential materials identified by the Parties. Accordingly, it is being issued without any proprietary designation.

I. History of the Proceeding

This matter concerns the Application filed with the Commission by Aqua on November 17, 2023,⁵ pursuant to Sections 507, 1102, and 1329 of the Public Utility Code (Code), 66 Pa.C.S. §§ 507, 1102, and 1329 (as amended, the Application). In its Application, Aqua requested Commission approval of the Asset Purchase Agreement (APA) dated April 27, 2023 for acquisition of substantially all of the assets, properties and rights related to the wastewater collection and treatment system (the System) owned by the GSA,⁶ and the right of the Company to provide wastewater service in the areas served by the GSA, through the issuance of a Certificate of Public Convenience (CPC) under Section 1102. Application at ¶ 5; 66 Pa.C.S. § 1102. The Application also requested, pursuant to Section 1329(c)(2), the Commission's approval to utilize fair market value (FMV) for the ratemaking rate base of the System.⁷ Application at ¶ 5; 66 Pa.C.S. § 1329. In addition to the request for approval of the acquisition and APA, Aqua requested approval of other municipal agreements to be assumed by Aqua as a

⁵ Between January 11, 2024, and April 12, 2024, Aqua petitioned the Commission seven times for extensions of the Commission's internal review period of the instant Application. During this period, Aqua provided updated information contained in the initial filing to resolve the filing's deficiencies and comply with the requirements of an application filed under Section 1329 of the Code.

⁶ The GSA assets consist of, *inter alia*, the assets, properties, and rights of the GSA used in the system and all treatment and collection facilities, pipes, pumping stations, generators, improvements, manholes and pipelines and billing-and collections-related assets necessary to run the wastewater system. Application ¶ 25.

⁷ Under 66 Pa.C.S. § 1329, FMV is the lesser of the negotiated purchase price in the APA, or the average of the appraisal of the GSA's Utility Valuation Expert (UVE) and the appraisal of Aqua's UVE. In this proceeding Aqua is seeking to establish a ratemaking rate base of \$18,000,000 for the GSA's System assets based on the negotiated purchase price, as the negotiated purchase price of \$18,000,000 is less than the average of the fair market value appraisals, which is \$20,977,920 (determined by $\frac{\$18,695,839 + \$23,260,000}{2} = \$20,977,920$) presented in the appraisal of ScottMadden, Inc. (ScottMadden) and \$23,260,000 presented in the appraisal of Gannett Fleming Valuation and Rate Consultants, LLC (Gannett Fleming). [(\$18,695,839+\$23,260,000)/2=\$20,977,920]. Greenville St. 2 (Revised) at 14; Aqua St. 3 (Revised) at 21; Aqua St. 6 (Revised) at 13; Application at ¶ 57.

result of the transaction, pursuant to Section 507 of the Code, 66 Pa.C.S. § 507. Application at ¶¶ 5, 73; Application at 19; 66 Pa.C.S. § 507.

On December 1, 2023, the Office of Small Business Advocate (OSBA) filed a Protest, Notice of Appearance, Notice of Intervention, and Public Statement. On December 8, 2023, the OCA filed a Protest and Public Statement, as well as a letter concerning the OCA’s inability to review “Exhibit Z” to the Application, which Aqua had designated as Confidential Security Information.

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 its Notice of Appearance.

In accordance with the Commission’s Bureau of Technical Utility Services’ (TUS) requests during its completeness review of the Application, between December 20, 2023, and April 24, 2024, Aqua filed the requested information deemed deficient by the Commission in its review of the Application.

By Secretarial Letter dated May 2, 2024, the Commission notified Aqua that the Application had been conditionally accepted for filing, contingent upon certain service and notice requirements.⁸

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

⁸ Also on May 23, 2024, Aqua filed a general base rate increase request for its water and wastewater operations. *See Pa. PUC v. Aqua*, Docket Nos. R-2024-3047822 (Water) and R-2024-3047824 (Wastewater) (*Aqua 2024 Base Rate Case*).

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

On June 18, 2024, Aqua filed a verification stating that it had complied with all service and notice requirements of the Secretarial Letter of May 2, 2024.

On June 21, 2024, by way of a Secretarial Letter, the Commission accepted the Application for filing.

On June 24, 2024, I&E filed a Notice of Appearance.

The Commission published notice of the Application in the *Pennsylvania Bulletin* on July 6, 2024, with a protest deadline of July 16, 2024. 54 Pa. B. 3863.

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

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

A Telephonic Prehearing Conference took place on July 17, 2024, during which counsel for Aqua, the GSA, the Borough, I&E, the OCA, and the OSBA participated.

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

On July 22, 2024, the Commission issued the ALJs' Prehearing Order which adopted the litigation schedule, and the other procedural matters agreed upon at the

prehearing conference.⁹ Additionally, the Petitions to Intervene of the GSA and the Borough were formally granted through this Order.

On July 30, 2024, a telephonic public input hearing was held, as scheduled, during which a total of four individuals offered testimony.

The evidentiary hearing was held, as scheduled, on August 15, 2024. 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 the 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. Accordingly, on August 16, 2024, the Commission issued a Hearing Cancellation Notice cancelling the August 16, 2024 evidentiary hearing.

Main Briefs were filed on August 27, 2024, by Aqua, Greenville, I&E, the OCA, and the OSBA. Thereafter, Reply Briefs were filed on September 5, 2024, by Aqua, Greenville, I&E, and the OCA.

⁹ The litigation schedule, set forth in the ALJs' Prehearing Order, provided for the filing of testimony, hearings and briefs as follows:

Direct Testimony of other Parties:	July 26, 2024
Rebuttal Testimony:	August 2, 2024
Surrebuttal Testimony:	August 9, 2024
Rejoinder Testimony:	August 13, 2024
Evidentiary Hearing:	August 15 and 16, 2024
Main Briefs:	August 27, 2024
Reply Briefs:	September 5, 2024

Prehearing Order at 3-4.

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

In the Recommended Decision issued on October 3, 2024, the ALJs recommended that the Commission deny the Application because Aqua did not meet its burden of establishing that there is an affirmative public benefit resulting from the acquisition of the GSA's System. R.D. at 1.

As discussed, *supra*, Aqua filed Exceptions on October 15, 2024, and Greenville submitted Exceptions on October 16, 2024, that were served on the Parties by Secretarial Letter issued on October 18, 2024. Reply Exceptions were filed by I&E and the OCA on October 22, 2024.¹⁰

II. Transaction Overview

Aqua is a regulated public utility company, duly organized and existing under the laws of the Commonwealth of Pennsylvania. Aqua provides wastewater service to approximately 60,000 customer accounts in Adams, Berks, Bucks, Carbon, Chester, Clarion, Clearfield, Delaware, Lackawanna, Luzerne, Monroe, Montgomery, Pike, Schuylkill, Venango, and Wyoming Counties. Aqua is a subsidiary of Aqua Pennsylvania, Inc. (Aqua PA), the second largest investor-owned water utility in the Commonwealth of Pennsylvania, providing water and wastewater service to approximately 510,000 customers (450,000 water and 60,000 wastewater). In turn,

¹⁰ No Parties filed objections to Greenville's late-filed Exceptions. Indeed, I&E and the OCA address them in their respective Reply Exceptions. Under the circumstances, no Party appears to have suffered prejudice from Greenville's failure to comply with the filing deadline. Therefore, we shall consider them, below. We further note that additional ex parte correspondence was received on October 29, 2024 from Mr. Ryan Connors of the investment firm Northcoast Research Partners, LLC. This correspondence was placed into the Public Comment file associated with this proceeding.

Aqua PA is a subsidiary of Essential Utilities, Inc. (Essential Utilities). Application at ¶ 8; Aqua St. 3 at 6.

The GSA is a duly organized and validly existing municipal authority organized and existing under the Municipal Authorities Act of 1945. The GSA owns, operates, and maintains the System, consisting of a sanitary wastewater collection and conveyance system and the GSA wastewater treatment plant (WWTP), which provides wastewater service to approximately 2,281 customers in the Borough. In addition to Borough customers, the GSA accepts sewage flow from approximately 1,168 customers located in Hempfield Township (Hempfield) and 571 customers located in West Salem Township (West Salem) (together, the Contributing Municipalities) that is treated at the GSA's WWTP. The GSA provides bulk treatment service for Hempfield and West Salem, as these Contributing Municipalities own their respective collection systems and bill their own residents.¹¹ Application at ¶ 9; Greenville St. 1 at 4.

On April 27, 2023, Aqua and the GSA entered into an APA for the sale of the assets, properties, and rights of the GSA's System (other than the Excluded Assets, as defined by the APA) at an agreed-upon price of \$18,000,000. According to the APA, Aqua agreed to the following:

- Establish an Easement Escrow Fund, which will be funded by \$2,000 for each missing easement at the time of Closing; and

¹¹ As explained by Greenville, through inter-municipal agreements with Hempfield and West Salem, both townships bill their own customers and remit the total amount collected to the GSA, less a 15% reduced amount which is held for administrative billing purposes. In addition to the 15%, Hempfield withholds an additional 10% to maintain its collection system. The Borough conducts the maintenance of the West Salem collection system. Thus, no further withholding is made from their remittance. Greenville St. 1 at 12.

- Adopt, upon Closing, the GSA’s wastewater rates then in effect and apply no increase to these rates until the Company’s first base rate case following the Closing date.

See APA, Sections 6.05(e) and 7.04(a).

As required by Section 1329(a)(4) of the Code, 66 Pa.C.S. § 1329(a)(4), Aqua and Greenville jointly retained the services of KLH Engineers, Inc. (KLH Engineers) to complete the engineering assessment and original cost of the System. See Application, Exh. D. Aqua selected Gannett Fleming, and Greenville selected ScottMadden, as their respective UVEs to prepare FMV appraisals of the System. The Aqua-sponsored appraisal performed by Gannett Fleming concluded that the value of the System was \$23,260,000. The Greenville-sponsored appraisal performed by ScottMadden concluded that the value of the System was \$18,695,839. Both appraisals were prepared in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP) standards. The FMV as defined in Act 12 of 2016¹² is the average of these two appraisals, which is \$20,977,920. As previously noted, under Section 1329, the ratemaking rate base is the lesser of either the purchase price in the APA, which is \$18,000,000, or the FMV, which is \$20,977,920. Therefore, since the purchase price is lower than the FMV, the ratemaking rate base for the System is \$18,000,000. Aqua St. 3 (Revised) at 21; Aqua St. 6 (Revised) at 13; Greenville St. 2 (Revised) at 14; Application at ¶ 57.

¹² Then-Governor Tom Wolf signed into law Act 12 of 2016 (Act 12) on April 14, 2016. Act 12 amended Chapter 13 of the Code by adding a new section, Section 1329, which became effective on June 13, 2019. 66 Pa.C.S. § 1329 (Section 1329).

III. Public Input Hearings

One public input hearing was conducted telephonically to give the public an opportunity to be heard regarding the acquisition of the System by Aqua. The public input hearing was held at 6 PM on July 30, 2024, at which a total of four individuals testified to raise issues to be considered by the Commission. R.D. at 33. We refer to the Recommended Decision for a detailed summary describing the positions of the witnesses who testified at the public input hearing, which is incorporated by reference herein. *See* R.D. at 33-34.

IV. Legal Standards

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

As the proponent of a rule or order in this proceeding, Aqua has the burden of proof to establish that it is entitled to the relief it is seeking. 66 Pa.C.S. § 332(a). The Applicant must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Applicant's evidence must be more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

B. Certificate of Public Convenience, 66 Pa.C.S. §§ 1102, 1103

Section 1102(a)(1)(i) of the Code requires a utility to first obtain a Certificate of Public Convenience (Certificate) prior to beginning to offer or supply utility service to a different territory than that previously authorized by the Commission. 66 Pa.C.S. § 1102(a)(1)(i).

Section 1102(a)(3) of the Code requires a utility to first obtain a Certificate from the Commission prior to a utility or an affiliated interest of a utility to acquire or transfer to any person or corporation by any method, property used or useful in the public service. 66 Pa.C.S. § 1102(a)(3).

Section 1103(a) of the Code establishes the standard for granting a Certificate 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.

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

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.” *City of York v. Pa. PUC*, 295 A.2d 825, 828 (Pa. 1972) (*City of York*). In establishing this precedent, the Court held that the statute’s clear command is that the Commission must find that the granting of a certificate “will

affirmatively benefit the public.” *Id.* (overruling in part, *Northern Pennsylvania Power Co. v. Pa. PUC*, 333 Pa. 265, 267, 5 A.2d 133, 134).

The 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.

Popowsky v. Pa. PUC, 937 A.2d 1040, 1057 (Pa. 2007) (*Popowsky*).

Further, the Court explained that demonstration of the affirmative public benefit does not require that every customer receive a benefit from the proposed transaction. *Popowsky*, 937 A.2d at 1061. In addition, “in some circumstances conditions may be necessary to satisfy the Commission that public benefits sufficient to meet the requirement of Section 1103(a) will ensue.” *Id.* at n.21. The Commission can, under Section 1103(a), impose conditions that it deems just and reasonable. 66 Pa.C.S. § 1103(a).

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:

[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.

City of York, 295 A.2d at 829.

In applying this specific factor, the Pennsylvania Commonwealth Court 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.” *McCloskey v. Pa. PUC*, 195 A.3d 1055, 1066-67 (Pa. Cmwlth. 2018), *appeal denied*, 207 A.3d 290 (Pa. 2019) (*McCloskey*) (emphasis added). 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.” 195 A.3d at 1067.

The Commission and the courts have held that granting a certificate need not be “absolutely necessary” in order to be in the public interest. *See Hess v. Pa. PUC*, 107 A.3d 246, 262 (Pa. Cmwlth. 2014) (*Hess*). 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.” *Id.* 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.” *Middletown Twp. v. Pa. PUC*, 482 A.2d 674, 682 (Pa. Cmwlth. 1984) (emphasis in original); *see also, Dunk v. Pa. PUC*, 232 A.2d 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).

Recently, in *Cicero v. Pa. PUC*, 300 A.3d 1106 (Pa. Cmwlth. 2023), *alloc. granted*, 320 A.3d 667 (Table) (Pa. 2024) (*Cicero*), the Commonwealth Court held

that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. 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. *Cicero* at 1119. Furthermore, the Court stated 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 [Certificate] under Section 1103(a).

Id. (emphasis in original). 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. *Id.* at 1118. Moreover, the public benefits arising from aspirational statements or benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms. *Id.* at 1120.

In order to obtain a Certificate, 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. *McCloskey*, 195 A.3d at 1058. 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. PUC*, 56 A.3d 49, 58 (Pa. Cmwlth. 2012) (*Lehigh Valley Transp.*); *South Hills Movers, Inc. v. Pa. PUC*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992) (*South Hill Movers*). It is the protestant's burden to rebut that presumption. *Lehigh Valley Transp.* at 58. Where an Applicant is

both presumed fit and sets forth affirmative evidence demonstrating fitness, this burden is particularly heavy. *Id.*

C. Ratemaking Rate Base Value, 66 Pa.C.S. § 1329

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. 66 Pa.C.S. § 1329. Under Section 1329, the value of water and wastewater 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. 66 Pa.C.S. § 1329(c)(2).

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. 66 Pa.C.S. § 1329(a). The Commission maintains a list of qualified UVEs from which the acquiring utility and seller must choose their respective appraisers. 66 Pa.C.S. §§ 1329(a)(1), (2).

The UVEs must prepare an appraisal of the seller's system assets in compliance with the USPAP, employing the cost, market, and income approaches. 66 Pa.C.S. § 1329(a)(3). The FMV of the system is defined as the average of the two separate UVE appraisals conducted in compliance with Section 1329(a)(3). 66 Pa.C.S. § 1329(g).

The Applicant must provide to the Commission copies of the appraisals; the purchase price; the ratemaking rate base; the closing costs; and, if applicable, a tariff and rate stabilization plan. 66 Pa.C.S. § 1329(d)(1).

D. Utility-Municipal Contracts, 66 Pa.C.S. § 507

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.

66 Pa.C.S. § 507.

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. *Id.*; *see also, County of Allegheny v. Pa. PUC*, 159 A.2d 227, 233 (Pa. Super. 1960).

E. General Standards

In the Recommended Decision, the ALJs made 109 Findings of Fact and reached 22 Conclusions of Law. *See* R.D. at 6-32, 114-18. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without

comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

As we proceed in our review of the various positions of the Parties in this proceeding, we are reminded that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Exceptions that we do not specifically address shall be deemed to have been duly considered and denied without further discussion.

V. Discussion

A. Sections 1102 and 1103 Approvals

1. Fitness

Pursuant to 66 Pa.C.S. § 1103, Aqua must show that it possesses the technical, legal, and financial capability to own and operate the assets it seeks to purchase from Greenville. *Seaboard Tank Lines*, 502 A.2d 762; *Warminster Twp. Mun. Auth. v. Pa. PUC*, 138 A.2d 240 (Pa. Super. 1958). As to legal fitness, Aqua must demonstrate that it has obeyed the Code and Commission Orders and Regulations. As to financial fitness, Aqua must demonstrate that it has sufficient financial resources to provide the proposed service. As to technical/managerial fitness, Aqua must have sufficient staff, facilities, and operating skills to provide the proposed service. *Re Perry Hassman*, 55 Pa. P.U.C. 661 (1982). As a certificated public utility, Aqua benefits from a rebuttable presumption that it possesses such requisite fitness. *South Hills Movers*, 601 A.2d 1308; 66 Pa.C.S. § 1329.

The ALJs found that the evidentiary record supports a finding that Aqua is technically, legally, and financially fit to acquire and operate the GSA System. Upon review of the record, we agree that the Company has proven that it is technically, legally, and financially fit to acquire the GSA System. As the ALJs explained, no Party disputed or challenged Aqua’s technical, legal, and financial fitness to render wastewater service. In addition, Aqua is a public utility regulated by the Commission, with a good compliance history, and there are no pending legal proceedings that would suggest that the Company is not legally fit to provide service to customers on GSA’s System. Aqua has also demonstrated on the record that it possesses the requisite financial and technical fitness to provide safe, adequate, and reasonable service to its customers. Regarding financial fitness, Aqua has demonstrated that it will have access to the financial resources of Aqua PA and Essential Utilities. R.D. at 92-93.

2. Substantial Affirmative Public Benefits

a. Positions of the Parties

(1) Aqua

Aqua argued that it met its burden to show that there are net affirmative public benefits that will result from the transaction. Specifically, the Company asserted that the transaction “affirmatively promotes the service, accommodation, convenience [and] safety of the public in [a] substantial way.” Aqua M.B. at 39 (citing *City of York*, 295 A.2d at 828).

According to the Company, there are substantial affirmative public benefits that will accrue to Aqua’s current customers, the GSA’s customers, and the community in and around the Borough resulting from the proposed transaction. Aqua submitted that its Application will have positive net benefits because: the GSA System is not operating

safely today, the upgrades that Aqua plans to make would not be made by the GSA if the transaction is not approved, other benefits provided by Aqua arise as a result of this transaction, and the only purported identified harm of the transaction is the increase to customer rates (which ignores the evidence that without the transaction the GSA would implement a nearly 200% rate increase for its wastewater customers in short order). Aqua M.B. at 13.

In support, Aqua argued that the transaction will result in the following public benefits:

- Aqua asserted that it has a record of acquiring and improving wastewater systems. The Company stated that it has acquired 15 wastewater systems over the past 10 years, many of which required significant investments to correct service and environmental issues. Aqua M.B. at 14.
- Aqua noted the Commission's public policy of endorsing and encouraging regionalization and consolidation of both water and wastewater systems. According to the Company, the Commission supports these acquisitions because they provide the utility industry with the opportunity for better management practices, economies of scale, and greater customer, environmental, and economic benefits. *Id.* at 14 (citing *Final Policy Statement on Acquisitions of Water and Wastewater Systems*, Docket No. M-00051926 (Order entered August 17, 2006) (*2006 Final Policy Statement*)).
- Aqua proffered that the GSA customers will benefit from access to expansive customer service provided by the Company's customer service call centers and the customer service work order programs. The Company also highlighted the payment protection options for its customers, such as deferred payment arrangements to help pay off unpaid balances, and options to participate in Aqua's low-income assistance programs. Aqua M.B. at 15-16.
- The Company contended that the GSA customers who currently do not have an income-based discount program will, through the proposed transaction, gain access to Aqua's customer assistance programs and funds. These assistance programs include the Company's Customer Assistance Program (CAP) and the hardship fund, known as Aqua Aid. Aqua also

emphasized its agreement to provide an annual contribution of \$25,000 for the three years following the closing of the transaction, which represents a \$75,000 benefit for both its existing customers and the GSA customers. *Id.* at 16.

- Aqua argued that the GSA is a troubled system that suffers from several operational deficiencies not historically addressed by the GSA, including: (i) limited quantity and availability of licensed operators, and limited access to training and redundancy of operators; (ii) limited or lacking process control testing; (iii) permit compliance issues; (iv) lack of emergency preparedness training; (v) lack of 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 supervisory control and data acquisition (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. Aqua asserted that it will be able to address each of these deficiencies, thereby conferring substantial public benefits for the GSA system and its customers. *Id.* at 17 (citing Aqua St. 1-R at 4-5; Aqua St. 1 at 16-36 and Appendix A; and Aqua St. 3-R at 4-7).
- According to Aqua, the technological and operational benefits it will be able to provide, which include addressing the GSA system's significant inflow and infiltration (I&I) problems, are benefits that are specific to this transaction and show that the Company will provide much more than the GSA currently provides. Aqua M.B. 17-19.
- Aqua averred that the proposed transaction will confer a variety of net benefits for the GSA's customers, which include becoming a part of a larger scale, efficiently operated, wastewater utility that is subject to the jurisdiction of the Commission. Aqua also projected operating efficiencies and lower operating and maintenance (O&M) costs under the Company's ownership resulting in likely cost reductions in administrative and general costs such as insurance, auditing, legal, and environmental expenses. Specifically, Aqua projected a 14% reduction in annual expenses under the Company's ownership. *Id.* at 19 (citing Aqua St. 3 (Revised) at 14).
- Regarding purported benefits for the GSA's customers, Aqua argued that it will invest \$20.4 million in the GSA system over the next 10 years, including upgrades to pump stations, force mains, and gravity collection systems. Aqua also noted that the GSA has no formal long-term capital

planning in place. Aqua M.B. at 19-20 (citing Aqua St. 2 at 10-12 and Greenville St. 1 at 5). Moreover, Aqua argued that if the transaction is not approved, the GSA projects to spend nearly \$46 million investing in its treatment assets, which would result in an immediate rate increase of 200%. Aqua M.B. at 20 (citing Aqua St. 3-RJ at 12-13 and Greenville St. 1-R at 4-5). Aqua further submitted that the public in Greenville will benefit from increased property tax revenues following the closing of the transaction. Aqua M.B. at 20 (citing Aqua St. 3 (Revised) at 14).

- Aqua proffered that the GSA has agreed to sell its system because it no longer desires to be in the utility business. According to Aqua, the public interest will be served by allowing its team of wastewater professionals to provide service in the requested territory and to address the regulatory requirements and capital expenditures. Aqua M.B. at 20 (citing Greenville St. 1-R at 2-3).
- Regarding benefits to Aqua's existing customers, the Company asserted that the acquisition of the GSA System will provide an approximate 4% increase in its customer base. Aqua submitted that a larger customer base will promote future infrastructure investments across the state that will be shared at a lower incremental cost per customer for all of the Company's customers. Aqua M.B. at 20 (citing Aqua St. 3 (Revised) at 1).
- Aqua also argued that the transaction will result in economies of scale for its customers because of a lower revenue requirement per customer. Specifically, the Company noted that its revenue requirement per customer, based on its 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. Aqua further estimated that the cumulative revenue requirement for non-FMV systems in its recently filed *Aqua 2024 Base Rate Case* is approximately \$2,600, which is 30% higher than the all-systems average of \$1,811 per customer. Aqua M.B. at 20-21 (citing Aqua St. 3 (Revised) at 1; Aqua St. 3-RJ at 9-10).
- In further support, the Company stated that the GSA System has a revenue deficiency of \$1,512 per customer that is both lower than Aqua's existing systems and the consolidated group. According to Aqua, this demonstrates a reasonable cost of operations, such that the entirety of systems operated by the Company will benefit by adding the GSA to its service territories. Aqua M.B. at 21 (citing Aqua St. 3-RJ at 15).
- Aqua proffered a variety of arguments that the acquisition will not have an adverse effect on rates. 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 month to \$64.68 per month, representing an increase of 180.85%. The Company 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 is not proposing any change in rates to the GSA customers as part of this transaction. Rather, Aqua explained, any proposed rate changes for the GSA customers will be presented in a subsequent base rate proceeding. Aqua M.B. at 22 (citing Aqua St. 3 (Revised) at 17 and Appendix A).

- The Company submitted that, although the rates for GSA customers are reasonably expected to increase, whether by the 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. Aqua M.B. at 22 (citing Aqua St. 3 (Revised) at 18-19).
- Regarding the rates for existing Aqua customers, Aqua argued that any potential rate impact is hypothetical and outweighed by the net benefits provided by the Company's ownership. Aqua M.B. at 23-24.

(2) Greenville

Greenville argued that Aqua and the GSA have produced sufficient evidence that the proposed transaction is “necessary or proper, for the service, accommodation, convenience[, or] safety of the public,” as required by Section 1103 of the Code. Further, Greenville contended 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. Greenville M.B. at 13-14.

Although Greenville acknowledged that it is currently providing safe and reliable service to its customers, it asserted that the GSA does so with significant

concerns, noting that the Borough manager splits duties between running the GSA, and supervising several departments in the Borough. Greenville further submitted that the GSA board members do not have experience in running wastewater systems and that transferring the system to Aqua will place the 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. Greenville M.B. at 6, 8; Greenville St. 1-R at 2-3.

Greenville also alleged that the GSA's assets are distressed, underfunded, and non-viable. According to Greenville, the GSA has performed reactive maintenance and the assets are past their life expectancy and in need of replacement or major repair. Citing concerns about significant I&I and overloading at the WWTP, Greenville's witness, Mr. Jasson Urey, testified that the GSA System is at risk of catastrophic failures. According to Greenville, a complete overhaul of the System is needed for repairs and to address the Consent Order and Agreement (COA) that the GSA entered into with the Pennsylvania Department of Environmental Protection (DEP) amounting to approximately \$46 million in capital investment needs. Greenville St. 1 at 5 and 7; Greenville St. 1-R at 4.

Greenville submitted that the primary benefits of selling the GSA System to Aqua will: (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 the 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. Greenville M.B. at 6, 12.

Additionally, Greenville asserted that the transaction will: (1) secure future financial stability for the Borough and its residents and provide 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 the GSA System processes to identify deficiencies not previously known or which were not able to be properly addressed. Greenville St. 1 at 2-3.

(3) I&E

I&E argued that Aqua did not meet its burden of demonstrating any affirmative public benefits as a result of the transaction because the benefits alleged by the Company regarding the creation of economies of scale are largely unsubstantiated, and the rates for both GSA and the other currently existing Aqua customers will increase significantly. Additionally, I&E contended that the GSA is currently providing adequate service, and no evidence has been provided to show that the GSA cannot continue to do so at potentially a lower cost than Aqua can. I&E also emphasized the absence of any current significant service, or quality of service, concerns being rendered by the GSA. I&E submitted that the identified detriments of the transaction far outweigh any speculative benefits that existing ratepayers may hope to receive, and therefore, the Application should be rejected. I&E M.B. at 15-17.

(4) OCA

The OCA argued 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. According to the OCA, to the extent that Aqua has alleged that any benefits exist – with the exception of the Company's ability to

provide a low-income discount program – those benefits result entirely from Aqua’s fitness, are not specific to this transaction, and do not differ substantially from the service currently provided by the GSA. As a result, the 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. OCA M.B. at 40.

In support, the OCA proffered the following arguments:

- The OCA asserted that the transaction would result in substantial rate harm to customers, noting that Aqua projects an annual revenue deficiency of \$2,223,000 for its operation of the GSA System. According to the OCA, this revenue disparity will likely increase because Aqua has historically understated the deficiencies for recently acquired systems by nearly \$2 million. OCA M.B. at 12-13 (citing OCA St. 1-SR at 6 and 19). Additionally, the OCA argued that Aqua has agreed to pay the GSA a steep, premium, price of \$18 million, which is 2.63 times the original cost of the GSA System (of \$6,854,439). OCA M.B. at 14-15 (citing OCA St. 1 at 5-6).
- The OCA contended that the transaction benefits alleged by Aqua are mostly insubstantial and are unlikely to materialize, and do not outweigh the substantial rate harm. The OCA argued, in part, that regardless of any cost savings or economies of scale, Aqua is still projecting a revenue deficiency of 180.85% of current revenues. According to the OCA, the purported benefits are not substantial, but simply perpetuate the status quo. OCA M.B. at 16-20.
- The OCA submitted that Aqua’s claimed capital improvement benefits for the GSA System rely on assumptions that do not comport with the record and will increase costs. Focusing on the proposal to spend \$20.4 million in investments over the next 10 years on upgrades, the OCA asserted that the Company does not tie its spending and timeline to any demonstrated environmental compliance directive or other regulatory requirement. OCA M.B. at 21-22. Regarding Aqua’s plans to address significant I&I in the GSA System, the OCA stated that the Company does not have an actual plan, but is simply making a statement of intent. Additionally, the OCA argued that the GSA has been able to make all necessary upgrades and is capable of remedying any I&I problems. OCA R.B. at 15.

- The OCA also contended that 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. OCAM.B. at 22-23.
- The OCA submitted that Aqua's claimed economies of scale lack support. According to the OCA, the increase of 2,283 customers to the customer base would be minimal. Additionally, the OCA argued that the nature of the GSA, as a standalone system that will not be interconnected with Aqua's system, normal economies of scale realized from combining or closing systems would not be achieved. OCA M.B. at 24-25.
- The OCA proffered that the alleged cybersecurity benefits are speculative and ignore the realities of the GSA's existing operations. According to the OCA, the proposed cybersecurity improvements do not support the Company's claims of substantial improvement beyond what the GSA already has in place or could pursue on its own. OCA M.B. at 26-29.
- The OCA argued that there is no established need for Aqua to rescue the GSA from security or safety issues. Noting the lack of any governmental directives to improve its physical security, the OCA submitted that Aqua's proposed upgrades are not essential. Regardless, the OCA added, the GSA is capable of making such upgrades. OCA M.B. at 30-34.
- Beyond general claims, the OCA stated that there is no evidence that the GSA system is distressed, underfunded, or non-viable. In contrast, the OCA noted that the FMV appraisals indicated that the GSA System is well-maintained and that the general condition is fair, despite reaching the end of its design life. Moreover, the OCA argued neither of the FMV appraisals recommended a downward adjustment to the valuation due to non-viability or poor condition. OCA M.B. at 34.
- The OCA also argued that the GSA's desire to exit the wastewater business and to sell are not evidence that substantial public benefits would result. OCA M.B. at 35.
- According to the OCA, there would be little, if any, perceptible changes in service, quality, or system staff for the GSA customers if this transaction is approved. The OCA argued, in part, that any benefits that might flow from customer access to Aqua's low-income program are more akin to band aids when considering the rate increase consequences resulting from the transaction. OCA M.B. at 35-37.

- The OCA contended that the record evidence contradicts any determination that sale proceeds will benefit the GSA customers or the community. The OCA claimed that any redevelopment benefits for the community are unlikely because the sale proceeds will be going to the GSA, and not the Borough. Thus, the OCA submitted, community benefits are already accounted for in ways that do not contemplate a surplus of cash for the Borough, redevelopment, or other investments. OCA M.B. at 37-38.

(5) OSBA

The OSBA argued that the transaction will not provide net public benefits. According to the OSBA, the terms of the Application are not in the public interest because the transaction will lead to unfair and unreasonable rate increases for the GSA customers, and to a negative public impact of approximately \$1.2 million dollars. OSBA M.B. at 6; OSBA R.B. at 1.

b. Recommended Decision

Finding that Aqua had proven its fitness to acquire the wastewater system assets of the GSA and to provide service to the requested territory, the ALJs next analyzed whether the Company met its burden of proof, by a preponderance of the evidence, that a substantial affirmative public benefit will result from the transaction. In their analysis, the ALJs weighed the factors for and against the transaction, including the impact that the transaction will have on rates. R.D. at 94.

After reviewing the evidentiary record, the ALJs found that when weighing all the factors for and against the transaction to the 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. Therefore, the ALJs recommended that the Commission deny the Application. *Id.*

(1) Rate Impact

Starting first with the impact that the transaction will have on rates, the ALJs noted that Aqua projects an annual revenue deficiency of \$2,223,000 for its operation of the GSA System. The ALJs explained that Aqua plans to recover the revenue deficiency from the GSA customers, Aqua water customers, and Aqua wastewater customers. R.D. at 94 (citing Aqua St. 3 (Revised) at Appendix A; OCA St. 1-SR at 19).

Regarding the GSA customers, the ALJs highlighted Aqua's acknowledgement that the Company's rates would eventually increase because of the transaction. Citing Aqua's testimony, the ALJs stated that Aqua plans to recover 100% of the \$2.223 million revenue requirement deficiency from the GSA customers, estimating 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. R.D. at 94-95 (citing Aqua St. 3 (Revised) at 17).

Although Aqua acknowledged that rates would increase, it argued that absent approval of the transaction, the GSA would have to proceed with approximately \$46 million in capital improvements to its system, which would in turn lead to a 200% rate increase for GSA customers. Thus, the ALJs considered Aqua and Greenville's arguments that the transaction will save the GSA customers \$20 million of capital costs and an immediate rate increase of 200%. R.D. at 95.

The ALJs further evaluated Aqua's estimated increase for its existing water and wastewater customers. Here, the Company estimated that the average current monthly bill for Aqua wastewater customers could increase by \$1.35, or 1.60%, and that the average current monthly 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. R.D. at 95 (citing Application at Exh. I1).

In their evaluation, the ALJs found persuasive the OCA's evidence that Aqua has likely understated the potential rate impacts of this transaction based on the Company historically under projecting the revenue deficiencies for acquired systems. For example, the 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. Thus, the ALJs found it 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. R.D. at 95 (citing OCA St. 1-SR at 6).

Further, the ALJs reasoned that 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, or the rate increases that may result from future base rate proceedings after the first base rate proceeding after acquiring the GSA System. Regarding the frequency of rate filings, the ALJs noted Aqua's three-year average of filing rate cases, citing Aqua's rate proceedings at Docket Nos. R-2018-3003561, R-2021-3027386, and R-2024-3047824 (currently pending). According to the ALJs, Aqua files requests to increase its rates every three years, on average. R.D. at 96.

Based on their analysis, the ALJs found the rate impact of the transaction on Aqua customers, and even more so on the GSA customers, to be significant. The ALJs acknowledged that the rates of the GSA customers will not increase immediately as a result of this proceeding, and that denial of the Application will result in an increase in rates of 200% for GSA customers. However, the ALJs concluded that the GSA

customers are likely to experience higher rates because of this transaction in the long run, above those following denial of this transaction. R.D. at 96.

Although they found the impact of rates on customers would be significant because of this transaction, the ALJs stated that this factor alone is not reason to deny the Application. Citing to *McCloskey*, the ALJs explained that they must also analyze whether the positive factors of this transaction outweigh the negative impact on rates. R.D. at 96.

(2) GSA System

Next, the ALJs considered Aqua's claims that the GSA System needs significant infrastructure investment and suffers from various operational and safety deficiencies. The ALJs also acknowledged Greenville's contention that the GSA System is distressed, underfunded, and non-viable. R.D. at 97 (citing Greenville St. 1 at 5).

In this transaction, Aqua proposed various improvements to the GSA System to address these alleged deficiencies and professed that the planned improvements would result in substantial public benefits. The ALJs rejected the arguments that the GSA System is troubled, finding no evidence to suggest it is a distressed, underfunded, or non-viable system. In support, the ALJs addressed each of the arguments pertaining to the needs of the GSA System, including: (1) the COA with the DEP; (2) I&I improvements; (3) physical security improvements; (4) cyber security enhancements; (5) employee staffing; and (6) public input hearing testimony. R.D. at 97-103.

The ALJs reasoned that outside of the breach of the COA the GSA entered into with DEP, which GSA has the tools to comply with itself, the 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, the ALJs determined that the GSA has proven capable of correcting the issues itself without Aqua's intervention. The ALJs found the GSA has been providing safe and reliable service to its customers and the evidence does not demonstrate that the GSA would be incapable of providing safe and reliable service in the future. R.D. at 103-04.

The ALJs further acknowledged that Aqua's proposed improvements could result in benefits for the GSA customers and the Greenville community. However, the ALJs explained that, although Aqua's planned improvements might result in a more efficiently run wastewater system, the GSA is already being run efficiently and Aqua has not demonstrated a need for its planned improvements to the GSA System. Ultimately, the ALJs reasoned, 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 that the GSA System is currently being efficiently run, and that the GSA is providing safe and reasonable wastewater service to its customers, the ALJs found that Aqua has not demonstrated that its planned improvements to the GSA System outweigh the increase in rates (of at least 180.85%, which the ALJs found likely to be under projected) to customers. R.D. at 104.¹³

(3) The GSA's Desire to Exit the Utility Business

Next, the ALJs considered the GSA's desire to exit the wastewater utility business. R.D. at 104 (citing Greenville St. 1-R at 5, 7). According to the ALJs, Aqua

¹³ At various points in their recommendation, the ALJs stated that the projected increase in rates pursuant to the transaction would be at least 185%. *See, e.g.*, R.D. at 104 and 106. This is an apparent error, because the record evidence by Aqua indicates a projected increase of 180.85%. *See Aqua St. 3 (Revised) at 17.* Accordingly, in our summary of the disposition of the Recommended Decision, we will refer to the projected increase as being 180.85% rather than 185%.

has not presented evidence that demonstrates why such a desire is an affirmative public benefit. Additionally, the ALJs agreed with the OCA that Section 1329 transactions are not the only type of transactions under which a municipal system may be acquired. R.D. at 105 (citing OCA St. 1-SR at 4). Thus, the ALJs reasoned, there are other options available to the GSA to exit the wastewater business if it so desires. In sum, the ALJs found that no affirmative public benefit would result from the GSA's desire to exit the utility business.

(4) Benefits to GSA Customers

Regarding the alleged benefits to the GSA customers, the ALJs addressed Aqua's claims that under its ownership, the GSA customers will have access to enhanced (1) customer service available 24/7/365, (2) customer billing options, and (3) payment protections, including access to Aqua's CAP and Aqua Aid for eligible customers. The ALJs further noted Aqua's claim that under its ownership, the GSA customers will have access to Aqua's ePortal and App access for account information, consumption, e-billing, and auto-payment. R.D. at 105 (citing Aqua St. 1-R at 9-10).

The ALJs agreed that having access to Aqua's CAP and Aqua Aid will benefit those customers who are eligible, as CAP and Aqua Aid will serve to assist low-income customers of the GSA in paying their bills. R.D. at 105 (citing OCA St. 1 at 29). According to the ALJs, this is especially true because the GSA does not currently have a low-income program for its customers. Further, the ALJs agreed that 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. R.D. at 105.

However, the ALJs explained that they are required to weigh the benefits of this transaction against the harms of this transaction. Again, the ALJs referenced the

expectation of higher bills of at least 180.85%, a number which, according to the ALJs, is likely understated. As such, the ALJs found that the access that the GSA customers would have to low-income programs and assistance would be counteracted by their payment of significantly higher rates. Regarding other enhancements, the ALJs concluded that the record evidence does not indicate that the GSA customers are unsatisfied with the customer service currently being provided. Although the ALJs noted that customer service would be enhanced under Aqua's ownership for current customers of the GSA, the ALJs reasoned that the proposed enhancements would not be worth an increase of at least 180.85% in rates. Ultimately, the ALJs found that Aqua has not demonstrated that the GSA customer access to the above customer service enhancements will outweigh the harms from this transaction. R.D. at 106.

(5) Benefits to Existing Aqua Customers

Next, the ALJs cited Aqua's argument that the acquisition of the GSA will provide an increase in the Company's customer base of approximately 4%, leading to lower incremental costs per customer for future infrastructure investments across the state. 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. R.D. at 106 (citing Aqua St. 3 (Revised) at 1, 15; Application at ¶53(f)).

The ALJs noted Aqua's further claim 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 of \$1,660, based on the last rate case, 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. R.D. at 106-07 (citing Aqua St. 3-RJ at 10).

The ALJs further cited the response arguments that the claimed economies of scale are “aspirational”; and the normal economies of scale achieved by combining treatment plants and/or closing a treatment plant will not occur through this acquisition because the GSA System will not be physically interconnected to any other Aqua system. R.D. at 107 (citing I&E St. 1 at 13).

The ALJs recognized that the transaction will result in an increase to Aqua’s customer base of approximately 4%. Further, the ALJs agreed with Aqua 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, the ALJs also agreed with the OCA that the benefits achieved as a result of increasing Aqua’s customer base are nominal because the customer base is only being increased by 4%. Factoring in that customer rates will rise, and will continue to rise, as a result of this transaction, the ALJs reasoned that Aqua has not demonstrated that the benefits to the Company’s customers are outweighed by the harm caused by this transaction. R.D. at 107.

Regarding the claimed economies of scale, the ALJs found no evidence in the record to show that the transaction would make rates more affordable in the long-term due to economies of scale. According to the ALJs, 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 Company system. R.D. at 107-08.

(6) Greenville Community Benefits

Moving to the benefits for the Greenville community, the ALJs cited Aqua’s claim that the influx of \$18 million will benefit the Borough, its residents, and the surrounding communities. Specifically, Aqua and the GSA claimed that the proceeds

from the sale of the system will allow the Borough to pay off all of its debt, to utilize its cash surplus (otherwise encumbered by sewer utility operations), and to have proceeds placed into interest earning securities. The ALJs noted Aqua's additional claim that the community will benefit through having a new property tax paying business in its community. According to Aqua, these benefits will offset the initial revenue requirement deficiency of \$2.223 million by \$168,131. R.D. at 108 (citing Aqua St. 3 (Revised) at 14; Aqua St. 3-R at 8).

Further, the ALJs referenced the GSA's claim that the sale will allow the Borough to reinvest the proceeds from the transaction into redevelopment in the community. R.D. at 108 (citing Greenville St. 1 at 10).

At the public input hearing, the ALJs explained, Mr. Rod Wilt testified in support of the Application stating that the acquisition by Aqua will provide a positive economic impact to the Greenville community, in part because the sale of the GSA will permit the community to reinvest the funds into economic development programs. R.D. at 108 (citing Tr. at 61-62).

Summarizing the response arguments, the ALJ noted the OCA's argument that the alleged Greenville community benefits are unlikely to materialize because the GSA's counsel indicated that the GSA will still be in existence after the sale and that the sale proceeds will go to it, and not the Borough.¹⁴ Thus, the OCA submitted that the community benefits from the sale proceeds of the GSA are already spoken for in ways that do not contemplate a surplus of cash for the borough, any redevelopment, or investment in interest-bearing accounts. R.D. at 109 (citing Tr. at 157-58; OCA M.B. at 38).

¹⁴ The OCA noted that the GSA currently oversees the stormwater system assets on behalf of the Borough, which are not part of this transaction, and that the GSA would continue in existence if the transaction were approved. OCA St. 1 at 11-12.

The ALJs reasoned that the evidence does not detail where the proceeds from the sale of the GSA System will go following the close of the transaction. According to the ALJs, the assumption that the sale proceeds will go to the Borough so that the proceeds can be invested into the Greenville community is speculative, at best, given that Aqua has not received any confirmation from the GSA that the proceeds will go to the Borough, instead of to the GSA. Thus, the ALJs considered Aqua's arguments to be speculative and did not find that the Greenville community would receive a benefit from this transaction. R.D. at 109 (citing Tr. at 159-60).

(7) Public Benefits

As to public benefits, the ALJs considered Aqua's argument 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 set forth in 66 Pa.C.S. § 1329. R.D. at 109-10 (citing *2006 Final Policy Statement* at 18).

The ALJs recognized that the Commission supports the consolidation and regionalization of water and wastewater system assets. However, the ALJs explained, the Commission recently stated that 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.¹⁵ According to the ALJs, 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. R.D. at 110.

¹⁵ R.D. at 110 (citing *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 (Opinion and Order entered February 22, 2024) (*Brentwood*) at 76).

(8) Conclusion

The ALJs determined that the proposed acquisition will negatively impact existing customers in a significant manner while not providing substantial affirmative benefits. According to the ALJs, the evidence presented by Aqua did not establish that any benefit realized from the transaction would outweigh the harms to customers. R.D. at 110.

The ALJs found that, most importantly, the 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 the GSA would be incapable of continuing to provide safe, adequate, and reliable service to its customers without Aqua's intervention. Although noting that the Commission and the courts have held that granting a CPC need not be "absolutely necessary" to be in the public interest, the ALJs stated that the Commission still must perform a net benefit assessment pursuant to case law. R.D. at 111 (citing *Hess*, 107 A.3d at 262).

The ALJs reasoned that 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 the GSA are already providing its customers in an adequate and efficient manner. According to the ALJs, Aqua's ability to improve upon the services that the GSA is currently providing its customers is due to Aqua's fitness, discussed previously. The ALJs found that the evidence of record does not support a finding that substantial affirmative public benefits will result from this transaction.

Citing to the Commonwealth Court's decision in *Cicero*, the ALJs stated that it is not a benefit to provide upgrades that the selling utility is equally capable of providing. The ALJs determined that the ultimate upgrades proposed in this matter

would have the impact of turning the GSA System into a system run by Aqua. According to the ALJs, 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. R.D. at 111 (citing *Cicero*, 300 A.3d at 1119).

Regarding the investments Aqua proposed to make to the GSA's infrastructure, the ALJs found that the GSA is capable of completing upgrades to its System without adding to the financial burden of its current customers to fund Aqua's purchase. The ALJs determined that the record does not suggest that the 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%, the ALJ reasoned that the GSA customers will likely experience an even greater increase in rates in the near future if this transaction were to be improved. R.D. at 112.

In addition, the ALJs found that Aqua has not demonstrated that the GSA customers, existing Aqua customers, or that the public-at-large will benefit from this transaction in a manner that outweighs the harm to be caused by this transaction. Thus, the ALJs recommended that the Application be denied. R.D. at 112.

c. Exceptions and Replies

(1) Aqua Exception No. 1, Greenville Exception Nos. 1-12, and Replies

(a) Aqua Exception No. 1

In its Exception No. 1, Aqua objects to the conclusion that the Company has not met its burden of showing that there are significant public benefits of the proposed transaction that outweigh the purported harm of the rate impact. Rather, Aqua argues, a weighing of all the factors, including the impact on rates, supports approval of the acquisition because affirmative public benefits will result. Aqua Exc. at 6.

According to Aqua, the Recommended Decision departs from the recognized balancing test in *Popowsky, supra*. Aqua contends that the ALJs did not weigh all of the factors for and against the transaction, but improperly gave significant weight to a potential rate impact to GSA and Aqua customers. Aqua submits that the ALJs failed to address how the single articulated harm of the revenue requirement deficiency, and subsequent hypothetical rate impact, outweighs the numerous stated public benefits. Aqua Exc. at 7.

In support, Aqua asserts eight sub-arguments that, it claims, the ALJs failed to consider evidence regarding rate impact and net financial benefits.

First, Aqua proffers that the ALJs improperly concluded that the Company plans to recover 100% of the \$2.223 million revenue requirement deficiency from GSA customers. Aqua asserts that it never stated plans to recover *all* of the revenue requirement from GSA customers or that a 180.85% rate increase to GSA customer bills

is certain. Rather, Aqua submits that it simply provided the estimated rate increase as a stand-alone calculation so that the parties understand one end of the spectrum of rate impacts for GSA customers. According to Aqua, the 180.85% rate increase would be one possible outcome, and an extreme at the other end would be a 0% rate impact. Aqua contends that the ALJs' reliance on a hypothetical rate impact ignores the Company's evidence of tangible financial benefits offsetting the revenue deficiency. Aqua Exc. at 8-9.

In its second argument, the Company objects to the finding in the Recommended Decision that Aqua has historically under-projected the revenue deficiencies for acquired systems, citing to three recent acquisitions for comparison. Aqua asserts that the ALJs' reliance on comparison numbers beyond the first year of operation is ill-fitting and cannot be used as viable evidence to prove that Aqua likely understated its revenue requirement deficiency. Instead, Aqua argues that proper weight should be afforded to its calculations of the revenue deficiency as it aligns with the Commission's Section 1329 implementation orders. Aqua Exc. at 9-10.

Third, Aqua contends that the ALJs failed to acknowledge the considerable testimony regarding the net public benefits and offsets to rate impacts that would result from the transaction. According to the Company, it put forth a new calculation of tangible financial benefits resulting in a net positive benefit of \$168,131, offsetting the initial revenue requirement deficiency of \$2.223 million in its entirety. Aqua Exc. at 11 (citing Aqua St. 3-R at 7-8). Aqua proffers that the ALJs failed to consider this evidence which mitigates the alleged harm of the potential rate increase for GSA customers. Aqua Exc. at 11-12.

In its fourth argument, Aqua asserts that the ALJs failed to consider the underlying causes of the potential 180.85% rate impact. Aqua contends that the average monthly bill of a residential customer has remained at approximately \$23.09 per month

for the last 10 years due to the GSA's inability to appoint and retain individuals to govern the system. According to the Company, the ALJs improperly recommended that these governance concerns be dismissed, by asserting that the GSA would be capable of hiring additional employees or managers to continue operations. Aqua Exc. at 12.

In support of the purported underlying causes, Aqua notes that the Borough recently worked its way out of Act 47 distressed status after 21 years. As a result of the designation and the resulting restrictions, Aqua argues that the Borough had limits in hiring staff which placed increased responsibilities on existing employees. Aqua also references the testimony of the Borough's witness, Mr. Urey, who noted the GSA's struggles in finding candidates for GSA Board positions. Additionally, Mr. Urey testified that the Board only meets on a quarterly basis, posing difficulties and delays in dealing with the GSA System problems or customer billing issues. Aqua Exc. at 12-13 (citing Greenville St. 1 at 4, 6 and Greenville St. 1-R at 3).

In its fifth argument, Aqua reiterates its prior arguments that there are numerous substantial affirmative public benefits that outweigh the potential impact on rates. Aqua Exc. at 13-14.

Moving to the sixth argument, the Company excepts to the suggestion in the Recommended Decision that Aqua's planned improvements to the System, although acknowledged as a public benefit, are outweighed by the harm of the rate increase of approximately 180.85%. According to Aqua, this ignores the reality that the GSA will implement these planned improvements regardless of the acquisition approval at a larger and, more immediate, percentage increase in rates of approximately 200%. Aqua Exc. at 14-15.

Additionally, Aqua objects to the ALJs' refusal to consider the GSA as a troubled system. Here, Aqua again cites to the Borough's recent departure from Act 47

status as a distressed community. The Company also contends that Section 1329 is not limited to troubled systems and that the present viability of the system is not a valid basis for denying the acquisition. Aqua Exc. at 15.

In its seventh argument, Aqua submits that consistent with the GSA's stated difficulties with governance and mismanagement, the GSA has indicated a strong desire to exit the wastewater utility business. The Company objects to the rejection of this desire as a public benefit when the record evidence shows that the GSA customers will benefit from the System being managed by numerous qualified wastewater professionals, where presently there are none. Additionally, Aqua criticizes the finding of the ALJs that other options are available to the GSA to exit the utility industry. In reality, Aqua contends pursuing other regulatory options through a non-FMV application via Section 1327 of the Code would result in more uncertainty. Aqua Exc. at 16.

In its eighth argument, Aqua emphasizes benefits to the GSA and Aqua customers as well as benefits to the Greenville community. Regarding benefits to the GSA customers, Aqua argues that the ALJs incorrectly minimized the multiple benefits from the transaction – e.g., access to Aqua's CAP and Aqua Aid, access to deferred payment arrangements, and tools for checking consumption – as being outweighed by the hypothetical impact on rates. Aqua submits that the ALJs failed to consider that if the acquisition is denied, customers would face an even larger rate increase of 200% without the numerous benefits Aqua could offer to customers. Aqua Exc. at 16-17.

Regarding the benefits to Aqua customers, the Company argues that the ALJs glossed over evidence pertaining to an anticipated 14% reduction in O&M expenses and other system-wide economies of scale expected from the transaction. Aqua also reiterates its prior arguments that the transaction will result in economies of scale for its customers because of a lower revenue requirement per customer. Aqua again highlights that the GSA System, at a revenue requirement of \$1,512 per customer, demonstrates a

reasonable cost of operations, such that the entirety of systems operated by Aqua would benefit by adding the GSA to its service territories. Aqua Exc. at 17-18.

Additionally, Aqua objects to the discounting of its economies of scale arguments in the Recommended Decision. Aqua Exc. at 18-19.

Regarding the benefits to the Greenville community, the Company argues that the ALJs' determination, that the benefits are speculative, is flawed. According to Aqua, the benefits of the proceeds of the sale inure to taxpayers and ratepayers because these two groups are largely the same – e.g., a significant majority of the GSA customers are residents of the Borough. Aqua submits that customers will benefit from the transaction because the proceeds, whether used to reduce stormwater rates or to allow the Borough to incur less debt, will reduce costs passed through to them. Aqua Exc. at 19.

As a final matter, Aqua contends that the ALJs improperly minimized the Commission's long-standing support for the consolidation and regionalization of water and wastewater systems and the numerous substantial benefits that stem from the acquisition, by claiming that they are outweighed by the one purported harm of a hypothetical rate increase. Aqua Exc. at 20.

(b) Greenville Exception Nos. 1-12

Similar to Aqua, Greenville argues that the record demonstrates that the proposed transaction will deliver numerous and substantial affirmative benefits to the Borough, the GSA, and the customers of the GSA. Greenville also contends that the ALJs misconstrued Section 1103(a) of the Code and erroneously relied on appellate caselaw, which it considers to be merely guidance to the Commission. Greenville Exc. at 3-4. For example, Greenville argues that the ALJs improperly found that Aqua failed

to establish substantial affirmative public benefits because it is not required by Section 1103 of the Code. *Id.* at 5.

Greenville contends that the ALJ's recommendation suggests that a municipality wishing to sell its wastewater assets must establish the existence of some element of operational distress and that future rates are not to be increased by the sale, regardless of the benefits received. According to Greenville, this was not the legislative intent of Sections 1103 and 1329 of the Code. Greenville adds the following in support:

Admittedly, some of the language in the applicable statutes is subjective in nature, but that was by design, not by accident. The subsequent caselaw attempts to provide some guidance when interpreting the relevant statutes, but in the end, the Judge's [sic] must make a Finding that is consistent with the language in the statutes, not caselaw dicta.

Greenville Exc. at 4.

In arguments that substantially overlap with those proffered by Aqua, Greenville enumerates twelve Exceptions to the findings in the Recommended Decision. Greenville Exc. at 5-14.

In its Exception No. 1, Greenville argues that the ALJs incorrectly determined that Aqua failed to establish that a substantial affirmative public benefit will result from this transaction. Again, Greenville submits that such a finding is not required by Section 1103 of the Code. Nonetheless, Greenville contends that the record evidence establishes many invaluable public benefits from the transaction including the fact that the GSA System is aging and in need of substantial capital improvements expected to cost \$45.6 million. Greenville also emphasizes that the GSA has limited and overburdened administrative staff. Moreover, Greenville asserts that the public deserves

professional oversight over its wastewater system rather than relying on volunteer board members for governance and ensuring regulatory compliance. Greenville Exc. at 5-6.

Further, Greenville argues that transferring the GSA to Aqua will result in increased public tax rolls, which would be a substantial affirmative benefit for the Borough, the County, and the Greenville Area School District. Greenville also credits the low-income assistance programs offered by Aqua as an affirmative benefit. Greenville Exc. at 6.

Next, Greenville proffers that the proposed upgrades to the security system of the GSA is an affirmative benefit impacting the continuity of service to customers and to the safety of the employees. Greenville further submits that the use of proceeds from the sale would be a substantial benefit to the community and would be spent as seen fit by the sitting Board members, as appropriate. Greenville Exc. at 7-8.

In its Exception No. 2, Greenville objects to the finding that the GSA customers are likely to experience higher rates as a result of the transaction. According to Greenville, the unequivocal evidence supports a finding that if the transaction is denied, the GSA improvement capital project will proceed resulting in an even larger rate increase for its customers. Greenville Exc. at 8.

Regarding its Exception No. 3, Greenville references the ALJs' determination that the record does not support a finding that the GSA cannot meet its obligations under the COA, absent Aqua's intervention. Greenville argues that this finding is irrelevant to the criteria under Section 1103 of the Code. Such a finding, Greenville continues, is contrary to legislative intent because it would require a showing that the seller is incapable of running its system before being allowed to sell and would encourage neglect of their systems. In contrast, Greenville alleges that the correct standard to be applied is whether the proposed sale is "proper." Greenville Exc. at 8.

In its Exception No. 4, Greenville again argues that the weighing of benefits against a perceived harm of the proposed transaction is not required under Section 1103 of the Code. However, Greenville continues, if the Commission chooses to follow the standard suggested by the appellate courts, the ALJs misapplied the test by giving more weight to the potential rate increase than the courts intended. Additionally, Greenville argues that the statutory advocates did not appear at any of the public input hearings when the sale was being considered. Greenville objects that the ALJs gave more credibility to the arguments of the statutory advocates rather than the GSA and its customers, none of whom voiced objections to the sale at public hearings. In light of the absence of protests by the GSA customers, Greenville considers the finding of harm of the potential rate increase to be a “shameful overreach” by the ALJs. Greenville Exc. at 9-10.

Regarding its Exception No. 5, Greenville contends that the finding pertaining to the likelihood of Aqua’s past rate impacts as being understated is inappropriate and irrelevant. According to Greenville, the language of Section 1103 of the Code does not require that rate changes be addressed in the approval or denial of the application. Alternatively, Greenville proffers that past rate increases are not determinative of the accuracy of the current estimate. Greenville Exc. at 10.

As to its Exception No. 6, Greenville objects to the finding that the transaction will have a significant rate impact on the GSA customers. Returning to the argument that Section 1103 of the Code does not require consideration of such a rate impact, Greenville also contends that the term “significant” is not defined, possibly indicating legislative intent that it is not relevant. Additionally, Greenville argues that the term is subjective and that a possible rate increase of \$4.85 per month may not be significant for some of the GSA customers. Greenville adds that even with such an increase, the Commission will have the ability to control future increases by Aqua. Greenville Exc. at 11.

For its Exception No. 7, Greenville objects to the finding that Aqua has not demonstrated that its planned improvements to the GSA System outweigh the increase in rates. If the Commission chooses to consider the weighing test, which Greenville contends is not required under Section 1103, Greenville argues that the improvements to the GSA System outweigh the potential rate increase harm. Greenville Exc. at 12.

Greenville's Exception No. 8 pertains to the finding that no affirmative benefit will result from the GSA's desire to exit the utility business. Greenville considers this statement to be offensive to the GSA Board and staff who have expressed the need to transfer the system to a more capable owner. Greenville Exc. at 12-13.

Regarding its Exception No. 9, Greenville argues that the rates for the GSA customers will be increasing regardless of whether the proposed transaction proceeds. According to Greenville, the finding that the GSA customers will be experiencing higher bills as a result of the transaction is speculative and irrelevant. Greenville Exc. at 13.

As to its Exception No. 10, Greenville highlights the finding that the proposed security upgrades do not establish an affirmative public benefit. Here, Greenville simply states that it "contends to the contrary." Greenville Exc. at 14.

In its Exception No. 11, Greenville references the finding that the GSA has the tools to comply with the COA. In response, Greenville asserts that the GSA and its engineers have determined that substantial system upgrades are necessary, with costs in excess of \$45.6 million. Greenville submits that it will need to secure a loan for this amount, which will be a challenge. Greenville Exc. at 14.

Regarding its Exception No. 12, Greenville objects to the finding that Aqua has not demonstrated a need for its planned improvements to the GSA System. According to Greenville, the record evidence is undisputed that improvements are

needed, and the only question is when they need to be made. Greenville contends that the GSA Board members, with input from their employees and engineers, are the only credible witnesses to this finding who made the decision to proceed with the needed improvements. Greenville Exc. at 14.

(c) I&E Reply Exceptions

In its reply to Aqua's Exception No. 1, and the majority of Greenville's Exceptions, I&E argues that when weighing all of the factors including the impact on rates, the ALJs correctly determined that the Application does not warrant a finding of affirmative public benefits.¹⁶ I&E first addresses the allegations of Aqua and Greenville that the ALJs focused exclusively on the impact to customers as the basis for denying the acquisition. Here, I&E argues that the ALJs weighed all the evidence to reach the conclusion that Aqua has simply not met its burden of proof to show the acquisition will result in affirmative public benefits. I&E R. Exc. at 2-3.

I&E also rejects the contention that the ALJs misapplied the balancing test for evaluating substantial public benefits. According to I&E, the ALJs weighed all the factors for and against the transaction before concluding that the acquisition was not in the public interest. Regarding Aqua's criticism that it plans to recover the \$2.223 million revenue requirement from the GSA customers, I&E submits that such criticism is designed to detract from the fact that acquisition of this system will create a \$2.223 million revenue deficiency. I&E asserts that Aqua acknowledged anticipated rate increases for its customers in its next rate case. Also, I&E contends that the ALJs correctly referenced, as persuasive, evidence of Aqua under-projecting revenue

¹⁶ In its reply, I&E asserts global arguments to Greenville Exception Nos. 1, 3, 4, 5, 7, 8, 11 and 12. *See* Greenville Exc. at 2-10.

deficiencies in Section 1329 acquisitions and of not reflecting increases from other acquisitions or planned investments in the GSA System. I&E R. Exc. at 4.

Regarding the allegation by Aqua that the ALJs ignored the anticipated savings of \$168,131 as an offset to the initial revenue requirement deficiency, I&E contends that such a savings is nominal and does not offset the potential harms of the acquisition. I&E also argues that something more than a willing buyer and a willing seller must be present to demonstrate affirmative public benefits. In support, I&E contends that the GSA's express desire to sell is not controlling. Rather, I&E submits that such a desire would place a tremendous burden on ratepayers forced to fund the acquisition simply because a municipality does not feel like running its system anymore. I&E R. Exc.at 4-5.

I&E also addresses Aqua's argument that the Recommended Decision did not fully consider the expected 14% reduction in O&M expenses from the acquisition. According to I&E, Aqua's economies of scale arguments are less plausible in cases such as this, in which the acquired System will not be physically connected to Aqua's system. I&E argues that Aqua's application fails the public interest test and that the Commission should reject it. I&E R. Exc. at 7-8.

Specifically, in response to Greenville's argument about the alleged failure of the statutory advocates to come to the community and speak with residents about the sale, I&E argues that it disregards the purpose of the public input hearing held in this proceeding. I&E notes that participants were invited to testify at the scheduled public input hearing. To the extent that the community and local leaders wished to provide input at the hearing, such input was considered and utilized in the ALJs' recommendation, I&E states. I&E R. Exc. at 8.

Regarding Greenville's argument about the findings pertaining to the COA, I&E contends that the GSA had a plan prior to entering into this transaction to upgrade its system. According to I&E, the ALJs correctly found that the GSA can, on its own, take steps to comply with the COA and appropriately weighed this evidence as part of the affirmative benefits test. I&E R. Exc. at 9.

In summary, I&E contends that the ALJs correctly determined that the acquisition is not in the public interest. According to I&E, the service and improvements under Aqua's ownership will likely be largely the same as those that could be made under the GSA's ownership. As a result, I&E submits that Aqua has not demonstrated an affirmative public benefit. Accordingly, I&E argues, with no demonstrated benefits for either the GSA customers, or Aqua's existing customers, the Commission must deny this acquisition. I&E R. Exc. at 10.

I&E also addresses Greenville Exception Nos. 2, 6, and 9 pertaining to the likelihood of the GSA customers experiencing higher rates as a result of the transaction. Specifically, I&E argues that the GSA has been able to operate the System while keeping bills at \$23.09 for the last ten years. I&E proffers that Aqua will clearly not be able to do so, noting that it has recently filed a base rate case, on average, every three years. Although the GSA has identified significant anticipated costs of possibly \$46 million, I&E argues that the GSA, unlike Aqua, will not increase rates every three years. Moreover, I&E asserts that under Aqua's ownership, rates will exceed even the 200% increase that may result under the GSA's continued ownership. I&E R. Exc. at 10-11.

(d) OCA Reply Exceptions

The OCA argues that Aqua Exception No. 1 and Greenville Exception Nos. 1 to 12 should be denied as being unsupported by the evidentiary record. In support, the OCA asserts five arguments. OCA R. Exc. at 2-17.

In its first argument, the OCA submits that the ALJs correctly determined that the majority of the averred benefits would not result, on net, in the public benefitting in some substantial way from the transaction. The OCA contends that both Aqua and Greenville fail to recognize that Aqua's fitness, as compared to the GSA, is not determinative of whether this Application should be approved. OCA R. Exc. at 2-3 (citing *Cicero*). In fact, the OCA does not challenge Aqua's fitness to run a wastewater facility. Rather, the OCA proffers that many of the benefits purported by Aqua and Greenville are already being provided by the GSA to its customers in an adequate and efficient manner. OCA R. Exc. at 3.

As examples, the OCA notes that there is no evidence to support a conclusion that the GSA cannot or will not be able to handle challenges related to the COA obligations, correcting I&I issues, providing any needed upgrades to its physical or cybersecurity systems, or hiring adequately trained employees. Further, the OCA objects to the purported positions of Aqua and Greenville that the GSA is incapable of operating its System. Rather, the OCA argues that there is no evidence to establish that the GSA System is distressed, underfunded, or non-viable. OCA R. Exc. at 3-4.

As to its second argument, the OCA states that the ALJs correctly found that the benefits to the Greenville community would not benefit the public in some substantial way. In support, the OCA references the language of the Recommended Decision determining the lack of substantial evidence demonstrating that the proceeds would be invested into the Greenville community. The OCA also notes the statements of Greenville's attorney that the Borough will not benefit from the proceeds of the sale and that only the GSA will benefit. OCA R. Exc. at 4-5 (citing R.D. at 109 and Tr. at 157-58).

Responding to Aqua's allegation that the ALJs failed to consider its new public benefits analysis, the OCA argues that Aqua is merely trying to deflect attention

from the clear rate harm that would result from this transaction. According to the OCA, Aqua's public benefits analysis is flawed and misleading and should be assigned little weight. In support, the OCA cites to the testimony of its witness, Ms. Christine Hoover, who highlighted a variety of what she deemed to be flaws or unsupported assumptions related to Aqua's calculations in its public benefits analysis. OCA R. Exc. at 5 (citing OCA St. 1SR at 12-13).

The OCA argues that there was little evidence, beyond pure speculation, which indicated that the Borough would receive the proceeds from the sale to be able to invest them in the Greenville community. According to the OCA, the absence of such evidence undermines the first and most critical assumption of Aqua's analysis that benefits would flow beyond the GSA. Thus, the OCA submits that when faced with the concrete harm of approximately \$2.2 million per year compared with the highly speculative public benefits proffered by Aqua, the ALJs correctly concluded that Aqua's analysis cannot amount to substantial evidence that outweighs the known harm of the transaction. OCA R. Exc. at 6.

In its second argument, the OCA also addresses the GSA's desire to exit the wastewater business. Here, the OCA notes that the ALJs appropriately reasoned that such a desire does not affirmatively benefit the public in a substantial way. The OCA contends that Greenville overlooks the existence of other types of acquisition options and argues that Aqua prefers the Section 1329 process, as opposed to other acquisition options, because the benefits inure to the Company and not the public. OCA R. Exc. at 6.

Regarding the arguments by Aqua about the Borough's recent exit from Act 47 status, the OCA acknowledges that the ALJs did not directly address this issue. However, the OCA submits that the record does not support the conclusion that the GSA's receipt of the proceeds of the sale would result in any benefits to the Borough's revitalization efforts. In this regard, the OCA highlights that the GSA is an entity distinct

from the Borough and there is no evidence of the GSA ever being considered distressed. OCA R. Exc. at 6-7.

Moving to its third argument, the OCA argues that the ALJs correctly found that no substantial benefit would arise when considering Aqua's alleged public policy benefits. In response to Aqua's contention that denying the Application would defy legislative intent of the General Assembly in enacting Section 1329 and the Commission's policy supporting regionalization and consolidation, the OCA proffers that the ALJs adequately assessed the proposed transaction in accord with the *City of York* standard and relevant Commission policy. OCA R. Exc. at 7-9.

The OCA further argues that the Commission's policy promoting regionalization and consolidation of the water and wastewater industry is targeted at providing greater environmental and economic benefits to customers, not the reduction of overall water and wastewater services to Pennsylvania. OCA R. Exc. at 9 (citing 52 Pa. Code § 69.721(a)). According to the OCA, the ALJs correctly explained that the goal of regionalization is not simply to acquire as many water and wastewater systems as possible and combine them into one system, but to consolidate in ways that benefit customers. The OCA submits that Aqua has not shown that the acquisition of the GSA System will benefit customers in a way that outweighs the harms of the transaction. OCA R. Exc. at 9.

In its fourth argument, the OCA asserts that the ALJs correctly assessed the rate harm posed by the Application. The OCA presents a variety of arguments contending that the factual averments of Aqua and Greenville regarding the rate impact in this proceeding should be rejected because they fail to amount to even aspirational statements with respect to the potential impacts from the acquisition. OCA R. Exc. at 10-16.

For example, regarding the contention that the ALJs failed to adequately compare the rate impact of 180.85% with the avoided rate increase from this transaction, the OCA contends there is a dearth of evidence to support any such concrete analysis – that is, there is no solid evidence for any evaluation of the rate increase that would be avoided from this transaction as compared with the costs the GSA would need to incur with near-term plant investments. OCA R. Exc. at 11.

The OCA also argues that the estimated avoided costs – the \$46 million in proposed capital improvements – are not the appropriate benchmark for how much the GSA will need to invest in plant to satisfy its COA with DEP. Rather, the OCA submits that the GSA can implement the more cost-effective solutions identified by Aqua which is included within the \$20 million the Company plans on investing into the GSA System within the first ten years of ownership. OCA R. Exc. at 11 (citing OCA St. 1SR at 8-9; Aqua St. 2-R at 10-11). Thus, the OCA asserts that the estimated increase of 200% if the transaction is not completed is based on the speculative conclusion that the GSA would need to invest \$46 million to upgrade its wastewater treatment plant. OCA R. Exc. at 11.

Further, the OCA argues that the evidence supports the ALJs' conclusion that even if the 200% increase in rates were accepted as true, such an increase remains substantially less than the long-term rate impact that the GSA customers will experience under Aqua ownership. Here, the OCA cites to its testimony and arguments that Aqua has continuously understated the revenue deficiencies that accrue for acquired systems in addition to the Company's proposed capital improvements and frequent base rate cases. OCA R. Exc. at 12-13.

Regarding the purported continued under-projections, the OCA adds that the ALJs appropriately found that the 180.85% increase was only the first of many substantial increases the GSA customers would experience under Aqua's ownership. In support, the OCA notes that if Aqua seeks to create rate consolidation of the GSA

customers with its Rate Zone 1, then the 180.85% increase proposed in this case is slightly over half of the overall rate increase the GSA customers would experience to become consolidated prior to any future increase to Rate Zone 1 rates. OCA R. Exc. at 14.

In further support of its arguments, the OCA asserts that the GSA has been able to provide adequate, safe, and reliable service to its customers and to make improvements to its wastewater plant when needed. For example, the OCA notes that the GSA recently spent \$2.8 million on the engineering design of an upgrade to its treatment plant without any increase in rates. OCA R. Exc. at 14.

Moreover, the OCA agrees with the ALJs determination that the purported economies of scale related to the transaction are nominal because Aqua has not shown that the incremental increase in customer base would result in substantial benefits other than lowering the weighted average cost per customer. OCA R. Exc. at 15.

In its sixth argument, the OCA reiterates prior arguments that the ALJs correctly weighed the benefits from the transaction against the known harms to find, on net, that affirmative public benefits would not result in some substantial way. The OCA asserts that, contrary to Aqua's argument, the number of harms compared to the number of benefits is not the correct standard required by Section 1103 of the Code. Rather, the OCA reasons that the correct standard as applied by the ALJs in this matter are those which are unique to this transaction. According to the OCA, they do not merely arise out of the acquiring utility's fitness but involve benefits beyond the capacity of the acquired system which must be weighed against the known harms, so that on net there is affirmative public benefit in some substantial way. OCA R. Exc. at 16 (citing *Cicero*, 330 A.3d at 1119).

The OCA argues that the ALJs methodically sifted between those benefits alleged by Aqua and Greenville that would result from Aqua's fitness, or that Greenville is capable of providing, from those benefits which would arise out of this transaction. When weighing the benefits specific to this transaction, the OCA asserts that it is clear that this transaction would not affirmatively benefit the public in some substantial way. Thus, the OCA contends that Aqua Exception No. 1 and Greenville Exception Nos. 1 to 12 should be denied. OCA R. Exc. at 17.

Additionally, the OCA provides specific responses to Greenville Exception Nos. 1, 3-7, and 9, arguing that Greenville repeatedly misapplies the law concerning Section 1103. The OCA asserts that Greenville fundamentally misunderstands how the Commission applies, and has interpreted, Section 1103. Specifically, the OCA argues that Greenville erroneously relegates Pennsylvania caselaw implementing Section 1103, as dicta, concerning the *City of York* standard in Greenville Exception No. 1, the balancing test of benefits and harms in Greenville Exception Nos. 4 and 7, rate impacts in Greenville Exception Nos. 5, 6, and 9, and the correct test to apply in Greenville Exception No. 3. OCA R. Exc. at 19-23.

The OCA explains that the *City of York* standard requires the Commission, when assessing an application brought under Section 1102(a) of the Code, to find that a proposed merger would "affirmatively promote the 'service, accommodation, convenience, or safety of the public' in some substantial way." OCA R. Exc. at 20 (citing *City of York*, 295 A.2d at 828). According to the OCA, the ALJs correctly applied the *City of York* standard as Pennsylvania courts and the Commission have done for over half a century when determining if an Application under Section 1102 meets the requirements of the Code. *Id.*

Regarding Greenville Exception Nos. 4 and 7, the OCA argues that Greenville's contentions about Section 1103 are incorrect. The OCA asserts that for this

transaction, as in any acquisition under Section 1103, Aqua must show that the benefits to the public from approval of the transaction will outweigh the harms in some substantial way. OCA R. Exc. at 20 (citing *City of York*).

Likewise, in response to Greenville Exception Nos. 5 and 9, the OCA argues that Greenville's view that Section 1103 concern evaluation of the rate impact of the transaction is incorrect and inconsistent with relevant law. OCA R. Exc. at 21 (citing *McCloskey*, 195 A.3d at 1067). The OCA contends that, consistent with *McCloskey*, the ALJs properly considered rate impacts in weighing the benefits claimed by Aqua and Greenville with the evidence provided by other parties. OCA R. Exc. at 21.

The OCA also argues that Greenville misapplies the *City of York* standard in its third Exception pertaining to the ALJs' finding that the GSA can meet its COA obligations without Aqua's intervention. There, Greenville contends that the legislature did not intend Section 1103 to require a seller to be incapable of running its System before being permitted to sell. In response, the OCA submits that the Recommended Decision applied no legal standard requiring the GSA to be nonviable in order for a sale of the System to warrant approval of the Application; rather, the OCA argues that the ALJs concluded that the GSA is capable of performing the upgrades to the System, which Aqua and Greenville allege that it cannot, a conclusion which is supported by record evidence and correctly considered to not be a benefit arising out of the proposed transaction under Section 1103's implementing caselaw. OCA R. Exc. at 22 (citing *Cicero*, 330 A.3d at 1119).

The OCA argues that the ALJs performed an analysis consistent with the requirements of the Code and Section 1103. Thus, the OCA requests that the portions of Greenville's Exceptions which allege that the Recommended Decision applied the incorrect legal standard when assessing this Application should be denied. OCA R. Exc. at 22-23.

d. Disposition

Upon review of the evidentiary record and after application of the balancing test required under Section 1102 of the Code, we find that Aqua has demonstrated that it is technically, legally, and financially fit to acquire the GSA's System, and has also demonstrated that the acquisition has substantial affirmative public benefits that outweigh the purported harms asserted by the opposing parties.

With respect to evaluating whether the acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition, as set forth in the Commonwealth Court's decision in *McCloskey*, our obligation in performing "the balancing test under Section 1102 of the Code [is] to weigh all the factors for and against the transaction, including the impact on rates, to determine if there is a substantial public benefit." *McCloskey*, 195 A.3d at 1066 (applying *City of York*). We are further "charged with deciding whether the impact of rates ... is outweighed by ... other positive factors that ... served [as] a substantial public benefit." *Id.* at 1067. Moreover, the Pennsylvania Supreme Court has explained that "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." *Popowsky*, 937 A.2d at 1061, n.21. The Commission has consistently applied this balancing test for evaluating whether to issue Certificates in Section 1329 proceedings. *See e.g., Application of Aqua Pennsylvania Wastewater, Inc. – Cheltenham Township*, Docket No. A-2019-3008491 (Opinion and Order entered November 5, 2019); *Application of Pennsylvania-American Water Company – Valley Township*, Docket Nos. A-2020-3019859 and A-2020-3020178 (Opinion and Order entered October 28, 2021); and *Brentwood*.

In the seminal Section 1329 case in *McCloskey*, the Commonwealth Court considered the Commission's findings that the applicant in that proceeding, as an owner of numerous water and wastewater systems, had sufficient expertise and ability to raise

capital to support system operations. The Court also acknowledged the finding that the Commission has a policy in support of consolidation and regionalization of wastewater system assets that allows for increased maintenance, upgrade, and expansion of public sewer and water facilities. In its rationale, the Court stated that these Commission findings were of the type that the Pennsylvania Supreme Court in *Popowsky* held were sufficient to meet the Section 1103 public benefit standard. “As per [*Popowsky*], these *aspirational statements are substantial evidence* to support the notion that there is a public benefit for the merger.” *McCloskey*, 195 A.3d at 1065 (emphasis added).

Recently, as discussed, *supra*, the Commonwealth Court in *Cicero* reversed a Commission Order that had approved the acquisition of a municipality’s wastewater assets by a large public utility under 66 Pa.C.S. § 1329 because the benefits did not outweigh the acknowledged harms of the acquisition. The Court in *Cicero* held that the substantial affirmative benefits of a proposed acquisition must outweigh the acknowledged harms resulting from the acquisition. The Court further explained that where harms result from the transaction, the acquisition must also provide benefits that differ substantially from those already being provided by the existing system operator, and providing the same services that 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*. Also, the Court stated that public benefits arising from aspirational statements or those benefits that cannot be quantified at the time of the transaction may not always constitute affirmative public benefits that will be substantial enough to outweigh known harms. *See Cicero* at 1119-20.

Aqua, in part, argues 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. Indeed, the

Commission supports the consolidation and regionalization of water and wastewater system assets. To that end, we 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....

2006 Final Policy Statement at 18.

After enactment of Section 1329, we further emphasized similar public policy goals. We explained that Section 1329 reflects a determination by the General Assembly that fair market value acquisitions of municipal water and wastewater systems further the public interest. *See, generally, Implementation of Section 1329 of the Public Utility Code – Tentative Implementation Order*, Docket No. M-2016-2543193 (Order entered July 21, 2016); and *Implementation of Section 1329 of the Public Utility Code – Tentative Supplemental Implementation Order*, Docket No. M-2016-2543193 (Order entered September 20, 2018).

The proposed acquisition is no exception to these principles. Furthermore, the analysis set forth in *City of York, McCloskey, Popowsky, and Cicero* is equally applicable in this proceeding. Therefore, we are required to evaluate whether Aqua has established that the substantial affirmative benefits of the proposed acquisition outweigh the acknowledged harms resulting from it. Our evaluation herein considered whether Aqua has satisfied the preponderance of the evidence standard with the understanding that it is not required to secure legally binding commitments nor quantify benefits if impracticable, burdensome, or impossible. *See Popowsky* at 1057; *Cicero* at 1119-20.

Additionally, an integral part of our review included full consideration of the harms of the acquisition on the existing customers of Aqua and the GSA, and the public-at-large.

As summarized above, the ALJs recommended denial of the Application because Aqua failed to establish that the GSA System under Aqua's ownership will affirmatively promote the service, accommodation, convenience, or safety of the public, and that the evidence did not establish that any benefit to be realized from the proposed transaction would outweigh the harms to current Aqua customers or existing customers of the GSA. R.D. at 110.

In their Exceptions, Aqua and Greenville each object to the ALJs' conclusions and argue that the proposed transaction is supported by substantial affirmative benefits. As summarized, *supra*, Aqua describes the benefits of the proposed transaction for the GSA's customers, Aqua's customers, the Greenville community, and the public as substantially outweighing the detriments including the hypothetical increase in rates. *See* Aqua M.B. at 12-22. Aqua submits that any increase in rates is outweighed by the recognized benefits of Aqua's ownership including its expertise and ability to raise and deploy capital for needed improvements and upgrades, the furtherance of consolidation and regionalization of wastewater services, and spreading the costs over a larger customer base. Aqua Exc. at 20.

Similarly, as described, *supra*, Greenville also asserts that Aqua has established affirmative public benefits for the proposed transaction. Greenville argues that there is no basis in fact for the conclusion in the Recommended Decision that the evidence did not establish that any benefit of the proposed acquisition would outweigh the harms. In sum, Greenville avers that the Recommended Decision is against the weight of the evidence because the record demonstrates this proposed transaction will deliver numerous and substantial affirmative benefits for the Borough, the GSA, and the GSA's customers. Greenville Exc. at 2.

In Reply, as summarized, *supra*, both I&E and the OCA argue that the ALJs correctly determined that the proposed acquisition does not result in a net benefit for the public-at-large, customers of the GSA System, or Aqua's existing customers. I&E R. Exc. at 2-10; OCA R. Exc. at 2-19.

With respect to whether the proposed acquisition has substantial affirmative public benefits that outweigh the harms resulting from the acquisition, we agree with Aqua and Greenville that, based upon the record evidence in this particular instance, the benefits to be realized from the proposed acquisition sufficiently outweigh the harms to current Aqua customers or existing customers of the GSA.

As Aqua asserts, the acquisition of the GSA System will not only result in regionalization and economies of scale for both Aqua and the GSA customers, but will also result in better management practices, protective customer service programs, and technological advancements for the GSA customers. Additionally, and most compellingly, the transaction will resolve significant safety and operational deficiencies on the GSA System, including:

- Hazardous chemical storage, labeling, safety and dichlorination issues;
- WWTP ventilation, physical safety, physical security, and cyber security concerns;
- Insufficient emergency/standby power generation;
- Limited quantity and availability of licensed operators, and limited access to training and redundancy of operators;
- Limited or lacking process control testing;
- Permit compliance issues;
- Lack of emergency preparedness training;

- Lack of safety and security equipment training;
- Inadequate SCADA and operator alarm systems; and
- Lack of asset management or compliance management software systems.

Aqua M.B. at 17 (citing Aqua St. 1-R at 4-5; Aqua St. 1 at 16-36 and Appendix A; and Aqua St. 3-R at 4-7).

In addition to these safety concerns, the transaction also addresses environmental deficiencies with the GSA System. The GSA entered into a COA with DEP on December 21, 2021, in relation to violations of effluent limitations between June 2019 and June 2021. The reasons for the GSA's entry into the COA with DEP is that the System has exceeded total residual chlorine allowable limits in its National Pollutant Discharge Elimination System permit multiple times, and the exceedance of the fecal coliform permit parameter led to the entry into the COA with the DEP. At present, the GSA is in breach of the COA. Aqua St. 1 at 20.

As part of this transaction, Aqua has committed to invest approximately \$20.4 million in the GSA's System over the next ten years. Aqua's estimated ten-year \$20.4 million capital investment obligation is inclusive of its estimated \$16.7 million investment required to meet the COA. Therefore, Aqua's less expensive WWTP upgrade (\$16.7 million less the \$45.6 million) required to meet the COA will save customers over \$20 million in otherwise required incremental expenditures. Aqua has existing wastewater operations in nearby Venango and Mercer Counties and has already met with DEP regarding 17 proposed planned improvements to the GSA System. Aqua's planned improvements expenditures are also less than half the cost the GSA planned to spend to address the COA, saving customers over \$20 million in otherwise required incremental expenditures. Aqua St. 2, at 10-11, 17.

We recognize that this acquisition will result in rate increases for the GSA customers, and potentially Aqua's customers as well. However, it is informative to review the GSA's current rates, which are approximately \$23 a month for residential customers, when judging this case as a whole. Such a monthly bill is significantly lower than the tariffed wastewater rates for other major regulated wastewater utilities in the Commonwealth.¹⁷ We find this low monthly rate to be indicative of a wastewater system which has been neglected. As the evidence in this proceeding indicates, the System is in need of rehabilitation, whether from the GSA or Aqua. Moreover, as emphasized by the GSA: “[t]he rates for GSA customers will be increasing regardless of whether or not [the] transaction proceeds.” GSA Exc. at 13. The instant Application represents a prudent option for the System to achieve its much-needed improvements while moving rates toward more reasonable cost-of-service.

Aqua has the expertise, licensed professionals, and capital to resolve these significant safety, operational, and environmental deficiencies in the GSA System. In contrast, the Borough has recently worked its way out of Act 47 distressed status after 21 years. As a result of the Act 47 designation, the Borough has struggled with Board participation, infrastructure investment, and customer billing issues for the GSA. Due to these difficulties, the GSA has indicated a strong desire to exit the wastewater utility business.

When weighing all these factors, we find that the acquisition has substantial affirmative public benefits which outweigh the rate impact. Therefore, we will reverse the ALJs' recommendation, grant Aqua's Exception No. 1 and GSA's Exception Nos. 1 through 12, and grant the Application.

¹⁷ For example, Pennsylvania-American Water Company's Zone 1 Wastewater Rate is approximately \$133. See Pennsylvania-American Water Company, Supplement No. 52 to Tariff Wastewater Pa. P.U.C. No. 16, Ninth Revised Page 11.1.

B. Section 1329 Analysis

1. Fair Market Value for Ratemaking Purposes

a. Positions of the Parties

(1) Aqua

Aqua stated the negotiated price for the System is \$18,000,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$20,977,920.¹⁸ The Company noted, under Section 1329, the ratemaking rate base is the lesser of the negotiated purchase price and the average of the UVEs' appraisals. Aqua St. 3 (Revised) at 21. Therefore, Aqua asserted \$18,000,000 is the ratemaking rate base of the System. Aqua St. 3 (Revised) at 21. Transaction and closing costs were identified by Aqua as approximately \$487,250, which it will include in rate base. Exact closing costs will be determined at closing. Application at ¶ 58; Aqua St. 3 (Revised) at 22.

Consequently, Aqua requested the Commission approve the addition of \$18 million to rate base for the acquisition of the System, consistent with Section 1329(c)(2) of the Code. Aqua M.B. at 42; Application at ¶ 74(c).

¹⁸ As previously noted, Aqua's appraisal was \$23,260,000 and Greenville's appraisal was \$18,695,839. Aqua St. 3 (Revised) at 21; Greenville St. 2 (Revised) at 14. Therefore, $[(\$23,260,000 + \$18,695,839)/2] = \$20,977,920$.

Aqua further noted that no Party proposed any specific dollar amount adjustments to the value of the \$18 million ratemaking rate base.¹⁹ However, in its Main Brief, the OSBA made statements regarding the \$18 million rate base valuations and the assumptions underlying them. Aqua R.B. at 17.

(1) Greenville

Greenville's position aligned with the position of Aqua, and thus requested that the Commission issue an Order establishing the ratemaking rate base, pursuant to Section 1329(c)(2), of the GSA assets at \$18 million. Greenville M.B. at 14.

(2) I&E

As explained more fully above, I&E is not proposing any adjustments to the proposed value of the ratemaking rate base itself, but proposed the Application be denied under Section 1102 of the Code, arguing that the Application does not present the requisite affirmative public benefits; therefore, I&E submitted that the ratemaking rate base of \$18 million related to the GSA System should not be incorporated into Aqua's rate base for ratemaking purposes. I&E M.B. at 19-20.²⁰

¹⁹ Aqua R.B. at 17 (citing OCA M.B. at 42; OSBA M.B. at 8 (note that the OSBA's average of \$21,408,817 for the two appraisals is incorrect and this amount should be \$20,997,920 as reflected in the Updated Application filed on April 12, 2024); and I&E M.B. at 18 (note that I&E's average of \$24,408,817 for the two appraisals is also incorrect)).

²⁰ I&E has not challenged the UVEs' appraisals in this case; however, as discussed in Section V.C.5, *infra*, I&E 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 appraisals. Because the UVEs' appraisals were predicated, at least in part, on the assumption that Aqua would obtain all easements, public rights-of-way, and other real property rights if Greenville does not transfer such, at or prior to closing, I&E took the position that the UVEs' appraisals are flawed and unreliable. I&E M.B. at 19.

However, if the Commission ultimately approves the Application, I&E requested the approval of certain conditions, as discussed, *infra*.

(3) OCA

The OCA did not offer adjustments to the FMV appraisals of the GSA's System but opposed 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. OCA M.B. at 42.

(4) OSBA

The OSBA argued that the purchase 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 Fleming. R.D. at 76 (citing Aqua St. 6-R at 5); OSBA M.B. at 8.

To this point, the OSBA further argued that the FMV appraisals by the UVEs rely upon materially higher revenue projections in 2024 and beyond, as compared to the GSA's 2023 revenue. In noting that the GSA budgeted total fees for services in the sewer fund budget of \$1,266,763 for 2022 and \$1,265,499 for 2023,²¹ the 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 2029.²² OSBA M.B. at 10-11. This 2029 revenue represents a 300% increase from the

²¹ See Application, Exh. J4 (Town of Greenville 2023 Sewer Fund Budget).

²² See Application, Exh. R (ScottMadden Valuation).

GSA's 2023 budget and was relied upon by ScottMadden to ascertain an income approach value of \$19,372,669. The OSBA further explained that the Gannett Fleming valuation income approach relied on even higher total revenues, with 2029 revenues escalating to \$4,448,905,²³ representing a 352% increase from the GSA's 2023 budget.

The OSBA submitted that the purchase price and resultant adjustment to rate base would heavily burden the existing customers of the GSA if rates were increased to meet the cashflow requirements to generate a return for the new system owner. OSBA M.B. at 8. A lower rate base, pegged at the purchase price, the OSBA argued, would result in a commensurately smaller need for rate increases to generate the revenue required post-transaction. *Id.* at 11.

b. Recommended Decision

The ALJs explained that they are recommending 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, the ALJs concluded that the issue of the appropriate rate base to put into rates is moot and would not be discussed in their Recommended Decision. R.D. at 112.

c. Aqua Exception No. 2

In its Exception No. 2, Aqua objects that the ALJs failed to address the fair market value and the ratemaking rate base in their Recommended Decision. The Company acknowledges that the OSBA was the only party challenging the UVE appraisals and references the OSBA's objections to some of the variables used. In

²³ See Application, Exh. Q (Gannett Fleming Valuation).

response, Aqua argues that the OSBA's statements should not be considered because the OSBA did not perform an appraisal of the GSA's assets or recommend specific adjustments to consider. Moreover, Aqua asserts that it previously addressed each of the points raised by the OSBA. Aqua Exc. at 23 (citing Aqua St. 6-R at 5-6).

Aqua proffers that although a lower purchase price could moderate potential rate impacts to the GSA customers, it is not warranted based on the APA or the UVE appraisals prepared in connection with this proposed transaction. In conclusion, the Company asserts that the ratemaking rate base of the GSA System is \$18 million pursuant to Section 1329(c)(2). Aqua Exc. at 23-24.

d. Reply Exceptions

In their respective replies to Aqua Exception No. 2, I&E and the OCA agree with the ALJs' reasoning that there was no need to address the ratemaking rate base due to their recommendation to deny the Application. According to I&E and the OCA, the ALJs did not commit any error of fact or law in concluding that the determination requested by Aqua is moot. I&E R. Exc. at 10; OCA R. Exc. at 17-18. Additionally, the OCA argues that the ALJs' handling of this issue was consistent with the Commission's prior handling of the decision in *Brentwood*. OCA R. Exc. at 18.

e. Disposition

Upon review, we shall grant Aqua's Exception No. 2. Due to our conclusions above, that there is sufficient proof of a public benefit resulting from the proposed acquisition, we must also approve the ratemaking rate base resulting from the transaction.

Consistent with Section 1329(c)(2), the ratemaking rate base is the lesser of the negotiated purchase price and the average of the UVEs' appraisals. In this proceeding, the negotiated price for the System is \$18,000,000 and the average of the appraisals of the buyer's UVE and the seller's UVE is \$20,977,920. Accordingly, Aqua requests that the Commission approve the addition of \$18 million to rate base for the acquisition of the System. We shall approve Aqua's request.

As discussed above, no Party proposed any specific dollar amount adjustments to the value of the \$18 million ratemaking rate base. In its arguments, the OSBA leveled criticism at the UVE evaluations for relying upon materially higher revenue projections in 2024 and beyond, as compared to the GSA's 2023 revenue. According to the OSBA, a lower rate base, pegged at the purchase price, would require much smaller rate increases to generate the revenue required post-transaction. However, the OSBA did not provide any specific adjustments but made general assertions that the purchase price should be lowered. Moreover, the OSBA did not file a reply to Aqua Exception No. 2.

Under the circumstances, we find that Aqua has satisfied its burden of proof that the appropriate ratemaking rate base resulting from the approved transaction is \$18 million.

C. Recommended Conditions for Approval

While I&E, the OCA, and the OSBA noted their opposition to the relief requested in the Application, discussed *supra*, should the Commission grant approval, I&E, the OCA, and the OSBA each recommended certain conditions be applied, as discussed below. Based upon the ALJs' recommendation that there was insufficient proof of a public benefit, as discussed, *supra*, the ALJs concluded that the issue of what conditions to impose on Aqua upon approval of the Application became moot.

R.D. at 113. In light of our determination that Aqua has satisfied its burden of establishing proof of public benefits, we shall address the request to impose the recommended conditions, as discussed below.

1. Cost of Service Studies

a. Positions of the Parties

(1) Aqua

Aqua agreed that it will provide a separate Cost of Service Study (COSS) for the GSA System in its next base rate case, as recommended by I&E and the OCA,²⁴ with the stipulation that it would want to reserve any opinion as to what the rate design would be for grouping together bulk customers into a single separate class in the separate GSA COSS submitted in Aqua's next base rate case. Aqua M.B. at 45-46 (citing Aqua St. 3-R at 15, 17).

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

²⁴ I&E M.B. at 20-21 (citing I&E St. 1 at 16); OCA M.B. at 44 (citing OCA St. 1 at 31).

(3) I&E

I&E explained, as follows

[a] COSS determines the cost to operate the different systems, calculates the cost of the utility's services, separates the costs between the different customer classes, attributes the costs to the different classes, determines how the costs will be recovered from the different customer classes, and establishes the existence and extent of any inter or intra-class subsidizations. Because these subsidizations could be significant, it is important that the Commission know what the extent of this subsidization is, if this acquisition is approved.

I&E M.B. at 20. Therefore, I&E proposed that, if the transaction is approved, Aqua be required, in its next base rate case, to provide a separate COSS for the GSA System similar to the methodology it used for other systems acquired through Section 1329 proceeds in its 2021 and 2024 base rate proceedings. I&E M.B. at 20; I&E St. 1 at 15-16.

Regarding the separate COSS, I&E also proposed that bulk customers be grouped into a single separate class so that the parties and the Commission, in Aqua's next rate case that would include this system, could determine if the revenues from these customers, including operating the West Salem sewer system, are more or less than the cost to serve these bulk customers. I&E M.B. at 21 (citing I&E St. 1 at 16).

(4) OCA

Similar to I&E, the OCA proposed that Aqua file a separate COSS for the GSA System in its next base rate case, so that the information needed to establish rates that reflect the costs of the GSA System can be established. The OCA also recommended

that Aqua submit a wastewater COSS that removes all costs and revenues associated with the operation of the GSA System. OCA M.B. at 44 (citing OCA St. 1 at 31).

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

Aqua agreed that it will provide a separate COSS for the GSA System in its next base rate case, as recommended by I&E and the OCA. However, Aqua's agreement was subject to the stipulation that it would want to reserve any opinion as to what the rate design would be for grouping together bulk customers into a single separate class in the separate GSA COSS submitted in Aqua's next base rate case. We agree that this proposed condition, as stipulated by Aqua is reasonable and in the public interest.

2. Employee Segregation from Borough of Greenville Stormwater Services

a. Positions of the Parties

(1) Aqua

Aqua stated that GSA employees hired by Aqua will not work on the Borough's stormwater system. Aqua St. 1-R at 2. Additionally, Aqua noted the explanation of Greenville's witness, Mr. Urey, that Greenville's stormwater system is

maintained by entirely separate Borough employees, and thus will not be impacted by the sale. Aqua M.B. at 52 (citing Greenville St. 1-R at 4).

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

The OCA recommended that the GSA employees hired by Aqua cannot perform any work or services related to the Borough's stormwater assets unless interest agreements and any other necessary steps are completed. OCA St. 1 at 12. The OCA observed that an agreement appears to exist, however the OCA stated that it should be memorialized as a condition of the transaction, to protect Aqua customers. OCA M.B. at 44.

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

Aqua stated that GSA employees hired by the Company will not work on the Borough's stormwater system. We find this agreement by Aqua to be reasonable and in the public interest.

3. Low-Income Program Information and Tracking

a. Positions of the Parties

(1) Aqua

Aqua noted the OCA made several recommendations regarding low-income programs and access to those programs for the GSA's customers. Accordingly, Aqua has agreed to include color flyers describing the CAP in a letter to the GSA customers, post-closing, as well as including a bill insert more specific to acquired customers, post-closing, with their first bills. Further, Aqua agreed to track enrollment of the GSA customers into Aqua's CAP and report the enrollments every six months to the Commission and parties until the conclusion of Aqua's next base rate case. Aqua M.B. at 53 (citing OCA St. 1 at 29-30).

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

To educate the GSA's customers about Aqua's CAP program, the 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. Further, the OCA 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. OCA St. 1 at 30.

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

Aqua noted that the OCA made several recommendations regarding low-income programs and access to those programs for the GSA's customers. Accordingly, Aqua has agreed to include color flyers describing the CAP in a letter to the GSA customers, post-closing, as well as including a bill insert more specific to acquired customers, post-closing, with their first bills. Further, Aqua agreed to track enrollment of the GSA customers into Aqua's CAP and report the enrollments every six months to the Commission and parties until the conclusion of Aqua's next base rate case. We find these proposed conditions to be reasonable and in the public interest.

4. Customer Notices

a. Positions of the Parties

(1) Aqua

Aqua asserted that none of the requested changes to the customer notice are appropriate, necessary, or mandated by existing Commission Regulations. Aqua M.B. at 50.

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

The OCA made three recommendations regarding customer notice. First, the OCA recommended that, moving forward, the notices Aqua sends to its customers extend beyond average usage and include rate impacts at usages of 5,000 and 10,000 gallons per month because those are more consistent with the usage of smaller and larger families, respectively. Second, the OCA recommended that the rate impact notices include the monthly or quarterly estimated volumetric charge, as well as the impact that the Distribution System Improvement Charge (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. Third, the 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, at the time of a system sale. OCA St. 1 at 9-11.

(5) OSBA

The OSBA took no position on this issue.

(6) Keith Gabage

At the public input hearing, Protestant Mr. Gabage testified that the public notice that goes to customers should be more detailed with respect to other Act 11, 66 Pa.C.S. § 1311(c), subsidies paid by water customers and should disclose other pending acquisitions. Additionally, Mr. Gabage testified 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. Tr. at 71-74, 77.

b. Disposition

We agree with Aqua that none of the requested changes to the customer notices are appropriate, necessary, or mandated by existing Commission Regulations. Accordingly, we shall decline to impose the recommended conditions with respect to customer notices.

5. Missing Easements and Other Property Rights

a. Positions of the Parties

(1) Aqua

Aqua contended that not having easements does not prevent it from being able to complete work if required. When maintenance or repair is required, Aqua stated that it can secure temporary construction easements from property owners if no permanent easement exists, and Aqua may perform emergency work after notice to the property owner. Further, Aqua insisted that the issue of missing easements and property rights is already contemplated in the APA. Aqua stated that Section 6.05 of the APA provides that all costs and expenses incurred with obtaining each missing easement shall be paid by the GSA and no additional consideration is payable by buyer for any missing easement. Lastly, Aqua asserted that the APA contains a process by which a portion of the purchase price is held in escrow to ensure that the GSA obtains any missing easements after closing occurs. Aqua M.B. at 43-45.

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E noted that the UVE's valuation contains a presumption that the System be transferred with all easements and other property rights needed to operate the System and, if the GSA is unable to transfer all the necessary easements and property rights to Aqua at closing, the UVE appraisals may be considered factually inaccurate and invalid.

I&E St. 1 at 17-18. Therefore, I&E recommended that the closing of the transaction not be permitted to occur until the 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 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.

I&E St. 1 at 19.

Additionally, I&E recommended 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 easements and other real property rights. I&E St. 1 at 19.

(4) OCA

As a condition for approval of the application, the OCA recommended that the closing of the transaction shall not be permitted to occur until Aqua has completed the three requirements proposed by I&E, *supra*. OCA St. 1 at 25-26.²⁵

The OCA also recommended that Aqua not be permitted to recover in rates any costs for obtaining and conveying the missing easements and other property rights.

²⁵ We note that with respect to these three requirements, I&E proposed that they be completed by the GSA, while the OCA proposed that they be completed by Aqua.

Finally, the OCA argued that Aqua should not be permitted to include the GSA assets in its rate base until it acquires all outstanding easements. OCA St. 1 at 25-26; OCA St. 1SR at 15.

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

We agree with Aqua that the absence of easements does not prevent the Company from being able to complete work if required. When maintenance or repair is required, Aqua stated that it can secure temporary construction easements from property owners if no permanent easement exists, and the Company may perform emergency work after notice to the property owner. Further, Aqua insisted that the issue of missing easements and property rights is already contemplated in the APA. Aqua stated that Section 6.05 of the APA provides that all costs and expenses incurred with obtaining each missing easement shall be paid by the GSA and no additional consideration is payable by Aqua as the buyer for any missing easement. Lastly, Aqua asserted that the APA contains a process by which a portion of the purchase price is held in escrow to ensure that the GSA obtains any missing easements after closing occurs.

As such, no additional information is required at this time. Accordingly, we shall decline to impose the proposed condition, recommended by I&E and the OCA, that the closing of the transaction shall not be permitted to occur until Aqua has completed the three requirements proposed by I&E, *supra*.

6. Transaction and Closing Costs

a. Positions of the Parties

(1) Aqua

Aqua noted it is not seeking recovery of the GSA's transaction and closing costs. Aqua M.B. at 49.

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

Pursuant to 66 Pa.C.S. § 1329(d)(1)(iv), the OCA proposed that Aqua 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. Furthermore, the OCA contended that Aqua should be barred from claiming any transaction and closing costs incurred by the seller. OCA M.B. at 47 (citing 66 Pa.C.S. § 1329(d)(1)(iv)).

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

As Aqua is not seeking recovery of the GSA's transaction and closing costs, no additional information regarding the tracking of closing costs is required at this time. We agree that Aqua's approach is appropriate. Thus, we shall not impose the above condition, recommended by the OCA, with respect to transaction and closing costs.

7. Increased Hardship Funding from Aqua

a. Positions of the Parties

(1) Aqua

Based on the facts and circumstances present in this transaction, Aqua argued that it would be appropriate to increase funding for its hardship fund, Aqua Aid, by \$25,000 per year for the next three years. Aqua also noted that monitoring funding levels is important to ensuring funds are appropriately allocated to where they are most beneficial and, therefore, recommended an annual review of Aqua Aid through the Aqua Assistance Collaborative (AAC). Aqua St. 5-R at 7-8.

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

The OCA contended that Aqua should provide an additional annual contribution of \$50,000 to the hardship fund for five years following the closing of the transaction. The OCA asserted 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(s). OCA St. 1 at 30-31.

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

Aqua argued that it would be appropriate to increase funding for its hardship fund, Aqua Aid, by \$25,000 per year for the next three years. The Company also noted that monitoring funding levels is important to ensuring funds are appropriately allocated to where they are most beneficial. Therefore, Aqua recommended an annual review of Aqua Aid through the AAC. We find the increased funding and the monitoring functions proposed by Aqua to be reasonable and in the public interest. Accordingly, we shall approve this proposed condition.

8. The OSBA's Recommendations

a. Positions of the Parties

(1) Aqua

Aqua opposed any recommendation to moderate or further assess Year 1 or Year 2 spending, averring it provided ample support for the reasonableness and need for the improvements provided in the proposed 10-year capital plan for the System. Further, Aqua noted it conducts post-acquisition audits to evaluate the plant condition, which will also allow the Company to refine its current assessment of future capital expenditures. Aqua agreed to file these audits with the Commission in its next base rate case. Since Aqua is not proposing to make the same improvements as the GSA would make, were the transaction not approved, Aqua does not recommend preparing a reconciliation of its planned capital investments to those in the GSA's capital plan. However, Aqua agreed to provide a reconciliation in its next base rate case, if the application is approved, for Aqua's capital projects and expenditures, with those in the current GSA capital plan. Aqua St. 2-R at 9-10.

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

The OCA took no position on this issue.

(5) OSBA

The OSBA recommended several conditions for approval of the Application relating to capital expenditures and a multi-year rate plan, as follows:

- 1) Aqua must conduct an asset condition assessment based on an audit post-close.
- 2) 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.
- 3) Aqua must develop and submit a multi-year rate plan to phase in rate increases to mitigate rate shock.

OSBA St. 1 at 4, 23-24.

b. Disposition

We agree with Aqua that any recommendation to moderate or further assess Year 1 or Year 2 spending is not necessary. Thus, we decline to impose any related condition in this regard. Rather, Aqua avers that it provided ample support for the reasonableness and need for the improvements provided in the proposed 10-year capital plan for the System. Further, Aqua noted it conducts post-acquisition audits to evaluate the plant condition, which will also allow the Company to refine its current assessment of future capital expenditures. Aqua agreed to file these audits with the Commission in its next base rate case.

Because Aqua is not proposing to make the same improvements as the GSA would make, were the transaction not approved, Aqua does not recommend preparing a reconciliation of its planned capital investments to those in the GSA's capital plan. However, the Company agreed to provide a reconciliation in its next base rate case, if the application is approved, for Aqua's capital projects and expenditures with those in the current GSA capital plan.

Finding Aqua's plan to be reasonable and in the public interest, we shall approve it.

9. Long Term Infrastructure and Improvement Plan (LTIIIP)

a. Positions of the Parties

(1) Aqua

Aqua stated there is not a requirement to file an updated LTIIIP after the closing of a Section 1329 transaction or any transaction under Section 1102. Therefore, Aqua recommended, that if it modifies its LTIIIP to include the GSA, that the timing of filing a modified LTIIIP be at the Company's discretion. However, the Company explained that if the Commission determines that Aqua should file an updated LTIIIP, 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. Aqua M.B. at 48 (citing 52 Pa. Code §§ 121.1 *et seq.*). Finally, Aqua insists that its capital plans are flexible, and it must maintain the ability to prioritize and allocate projects based on system needs as they evolve during an LTIIIP period. Aqua St. 3-R at 15.

(2) Greenville

Greenville noted its support for Aqua's position, indicating a blanket opposition to all recommended conditions of approval. Greenville M.B. at 14-15.

(3) I&E

I&E took no position on this issue.

(4) OCA

The OCA recommended that Aqua file an updated LTIP, to include GSA, within 90 days of closing. The OCA further recommended that any of the GSA projects reflected in the amended LTIP should be in addition to, and not reprioritizing, existing capital projects. Further, the 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 the GSA, that existing customers' projects will not be compromised, and that the GSA customers contribute to projects in their service area. OCA St. 1 at 32-33.

(5) OSBA

The OSBA took no position on this issue.

b. Disposition

We agree with Aqua that there is no requirement to file an updated LTIP after the closing of a Section 1329 transaction or any transaction under Section 1102. Therefore, if Aqua modifies its LTIP to include the GSA, that the timing of filing a

modified LTIP be at the Company's discretion. Accordingly, we shall decline to impose the above condition recommended by the OCA.

D. Section 507 Approvals

1. Positions of the Parties

a. Aqua

Aqua requested in its Application that the Commission approve, pursuant to 66 Pa.C.S. § 507, which requires that contracts between a public utility and a municipal corporation for other than the furnishing of service at tariff rates be filed with the Commission, the following six agreements:

- 1) Intermunicipal Sewage Agreement, dated October 28, 1998, between the Borough, the GSA, West Salem, and the West Salem Township Municipal Sewage Authority (WSMSA);
- 2) Addendum to Intermunicipal Sewage Agreement, dated December 23, 1998, between the Borough, the GSA West Salem, and the WSMSA;
- 3) Addendum to Intermunicipal Sewage Agreement, dated March 19, 2008, between the Borough, the GSA, West Salem, and the WSMSA;
- 4) Consent Agreement, dated June 16, 2011, between the Borough, the GSA, West Salem, and the WSMSA;
- 5) Intermunicipal Sewage Agreement, dated December 21, 2006, between the GSA, the Borough, the Hempfield Township Municipal Authority (HTMA), and Hempfield; and

- 6) Pro Forma Water Meter Read Agreement, between Aqua and the Greenville Water Authority (GWA).

Application at ¶ 73.

Aqua contended that these agreements are necessary to allow Aqua to provide service to the service territory currently served by the GSA System and are reasonable and in the public interest. R.D. at 89-90. Aqua and Greenville also sought approval of the APA that Aqua and the GSA entered into on April 27, 2023. Application, Exh. B.

b. Greenville

The GSA and the Borough endorsed the position of Aqua regarding this issue. Greenville M.B. at 15.

c. I&E

I&E took no position on this issue. R.D. at 91 (citing I&E M.B. at 24).

d. OCA

The OCA argued that the Commission should find the APA is not reasonable, legal, or otherwise valid, because Aqua’s representations about the GSA System in its Application “directly conflict with warranties that GSA made as Seller” under Section 4.13 of the APA (related to Environmental Compliance). OCA M.B. at 49. The OCA contended that, since neither Aqua nor the GSA reconciled the conflicts between their claims regarding the GSA System and the APA, the Commission should not approve the APA. OCA M.B. at 50.

e. OSBA

The OSBA took no position on this issue. R.D. at 91 (citing OSBA M.B. at 13).

2. Recommended Decision

Consistent with their determination pertaining to the appropriate ratemaking rate base to approve, the ALJs found Aqua's request for the approval of the APA and other contracts pursuant to 66 Pa.C.S. § 507 to be moot and did not further discuss the request. R.D. at 113.

3. Aqua Exception No. 3 and Reply Exceptions.

In its Exception No. 3, Aqua argues that the Commission should approve, if necessary, Aqua's APA with the GSA and the assignment of six contracts with municipalities under Section 507 of the Code. According to Aqua, the contracts are necessary for the operation of the System and neither I&E nor the OSBA opposed the issuance of the certificates. Aqua further argues that the OCA's position regarding the APA is without merit. Aqua Exc. at 24-25 (citing Aqua R.B. at 19-21).

In reply, the OCA argues that the ALJs correctly found that the requested approvals by Aqua were moot and the handling of the issue was consistent with the Commission's determination in *Brentwood*. The OCA also reiterates its prior arguments pertaining to alleged warranties made by the GSA. OCA R. Exc. at 18-19 (citing OCA M.B. at 10, 32-34, 49-50; OCA R.B. at 39-40).

4. Disposition

We agree with Aqua that the six agreements referenced above are necessary to allow Aqua to provide service in the service territory currently served by the GSA System and are reasonable and in the public interest. Additionally, Aqua and Greenville sought approval of the APA that Aqua and the GSA entered into on April 27, 2023. We determine that approval of the APA is reasonable and in the public interest.

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

Consistent with our grant of Aqua's Application, *supra*, we shall approve the necessary certificates grant the associated relief therewith, consistent with the discussion in this Opinion and Order.

VI. Conclusion

Based on the foregoing discussion, we shall: (1) grant the Exceptions of Aqua and Greenville; (2) modify, the Recommended Decision; and (3) grant the Application, consistent with this Opinion and Order. **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Aqua Pennsylvania Wastewater, Inc., filed on October 15, 2024, at Docket No. A-2023-3041695, are granted, consistent with this Opinion and Order.

2. That the Exceptions of the Greenville Sanitary Authority and the Borough of Greenville, filed on October 16, 2024, at Docket No. A-2023-3041695, are granted, consistent with this Opinion and Order.

3. That the Recommended Decision of Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Alphonso Arnold III, issued on October 3, 2024, at Docket No. A-2023-3041695, is modified, consistent with this Opinion and Order.

4. 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 collection system assets of the Greenville Sanitary Authority on November 17, 2023, and as amended, at Docket No. A-2023-3041695, is approved, consistent with this Opinion and Order.

5. That, in the first base rate proceeding filed by Aqua Pennsylvania Wastewater, Inc., that includes the Greenville Sanitary Authority system assets, Aqua Pennsylvania Wastewater, Inc., shall submit a separate Cost of Service study for the Greenville Sanitary Authority system.

6. That, within thirty (30) days following closing, and again with the first bill, Aqua Pennsylvania Wastewater, Inc., will send a welcome letter to the Greenville Sanitary Authority customers with color flyers containing information regarding income assistance programs and Aqua's Customer Assistance Program, in particular.

7. That Aqua Pennsylvania Wastewater, Inc., shall track enrollment of the Greenville Sanitary Authority customers into Aqua's Customer Assistance Program and report the enrollments every six months to the Commission's Bureau of Consumer

Services and to the active Parties to this proceeding until the conclusion of Aqua's next base rate case.

8. That Aqua Pennsylvania Wastewater, Inc., shall contribute \$25,000 per year for each of the three years following closing of the transaction to Aqua Aid, which contributions shall not be included in customer rates in any subsequent base rate case. Aqua Pennsylvania Wastewater, Inc., shall also conduct an annual review of Aqua Aid through the Aqua Assistance Collaborative.

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

10. That Aqua Pennsylvania Wastewater, Inc. is not required to file an updated Long Term Infrastructure Improvement Plan after the closing of this transaction.

11. If Aqua Pennsylvania Wastewater Inc. modifies its Long Term Infrastructure Improvement Plan to include the Greenville Sanitary Authority system, the timing of filing a modified plan shall be at the Company's discretion.

12. That, upon Commission approval of a modification to the Long Term Infrastructure Improvement Plan of Aqua Pennsylvania Wastewater, Inc., that includes the Greenville Sanitary Authority system, Aqua shall be permitted to recover the eligible expenses associated with Greenville Sanitary Authority in the Distribution System Improvement Charge.

13. That Aqua Pennsylvania Wastewater, Inc., shall file all post-closing audits conducted to fully assess the wastewater treatment plant's condition with the Commission in its next base rate case including the Greenville Sanitary Authority system.

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

15. That the Commission's Secretary shall issue a Certificate of Public Convenience evidencing the right of Aqua Pennsylvania Wastewater, Inc., under Sections 1102(a)(1), 1102(a)(3) and 1329(c)(2) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 1102(a)(1), 1102(a)(3), and 1329(c)(2) to:

- a. acquire, by purchase, the wastewater system assets of the Greenville Sanitary Authority situated within the Borough of Greenville, Hempfield Township, and West Salem Township, Mercer County, Pennsylvania;
- b. begin to offer, render, furnish, or supply wastewater service to the public in portions of the Borough of Greenville, Hempfield Township and West Salem Township, Mercer County, Pennsylvania; and
- c. allow Aqua Pennsylvania Wastewater, Inc., to incorporate the ratemaking rate base of \$18,000,000 for the Greenville Sanitary Authority wastewater system assets in its next base rate case pursuant to 66 Pa. C.S. § 1329(c)(2).

16. That the Commission's Secretary shall issue a Certificate of Filing under Section 507 of the Public Utility Code, 66 Pa. C.S. § 507, for each of the following agreements:

a. Asset Purchase Agreement between the Greenville Sanitary Authority (as Seller) and Aqua Pennsylvania Wastewater, Inc. (as Buyer) dated as of April 27, 2023, attached to the Application as Exhibit B.

b. Intermunicipal Sewage Agreement, dated October 28, 1998, between the Borough of Greenville, the Greenville Sanitary Authority, the Township of West Salem, and the West Salem Township Municipal Sewage Authority, attached to the Application as Exhibit F1;

c. Addendum to the Intermunicipal Sewage Agreement, dated December 23, 1998, between the Borough of Greenville, the Greenville Sanitary Authority, the Township of West Salem, and the West Salem Township Municipal Sewage Authority, attached to the Application as Exhibit F2;

d. Addendum to the Intermunicipal Sewage Agreement, dated March 19, 2008, between the Borough of Greenville, the Greenville Sanitary Authority, the Township of West Salem, and the West Salem Township Municipal Sewage Authority, attached to the Application as Exhibit F3;

e. Consent Agreement, dated June 16, 2011, between the Borough of Greenville, the Greenville Sanitary Authority, the Township of West Salem, and the West Salem Township Municipal Sewage Authority, attached to the Application as Exhibit F4;


f. Intermunicipal Sewage Agreement, dated December 21, 2006, between the Borough of Greenville, the Greenville Sanitary Authority, the Hempfield Township Municipal Authority, and the Township of Hempfield, attached to the Application as Exhibit F5;

g. Pro Forma Meter Reading Agreement between the Greenville Municipal Water Authority and Aqua Pennsylvania Wastewater, Inc., attached to the Application as Exhibit F6.

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

18. That the Commission's Secretary, upon the receipt of written notice from Aqua Pennsylvania Wastewater, Inc., filed with the Secretary's Bureau notifying the Commission of the closing of the acquisition shall mark this docket closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 12, 2024

ORDER ENTERED: December 20, 2024